

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than \$1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

**(d) Treatment of Johnny Micheal Spann Patriot Trusts**

Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities de-

scribed in clauses (i) and (ii) of section 30101(20)(A) of title 52 so that a general solicitation of funds by an individual described in paragraph (1) of section 30125(e) of title 52 will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

**(e) Notification of Trust beneficiaries**

Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust: *Provided*, That, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

**(f) Regulations**

Not later than 90 days after November 25, 2002, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

(Pub. L. 107-296, title VI, § 601, Nov. 25, 2002, 116 Stat. 2215.)

REFERENCES IN TEXT

The Authorization for Use of Military Force, referred to in subsec. (c)(1), is Pub. L. 107-40, Sept. 18, 2001, 115 Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

SUBCHAPTER VII—MANAGEMENT

**§ 341. Under Secretary for Management**

**(a) In general**

The Under Secretary 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, shall be responsible for the management and ad-

ministration 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, 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), the Under Secretary 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, there shall be transferred to the Under Secretary 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

The Under Secretary for Management shall—

- (1) 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) enter into an annual performance agreement with the Secretary that shall set forth measurable individual and organizational goals; and

- (3) 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 has made satisfactory progress toward achieving the goals set out in the performance agreement required under paragraph (2).

(Pub. L. 107-296, title VII, § 701, Nov. 25, 2002, 116 Stat. 2218; Pub. L. 110-53, title XXIV, § 2405(a), (b), Aug. 3, 2007, 121 Stat. 548.)

#### AMENDMENTS

2007—Subsec. (a). Pub. L. 110-53, § 2405(a)(1), inserted in introductory provisions “The Under Secretary 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.”

Subsec. (a)(7). Pub. L. 110-53, § 2405(a)(2), added par. (7) and struck out former par. (7) which read as follows: “Identification and tracking of performance measures relating to the responsibilities of the Department.”

Subsec. (a)(9). Pub. L. 110-53, § 2405(a)(3), added par. (9) and struck out former par. (9) which read as follows: “The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.”

Subsec. (c). Pub. L. 110-53, § 2405(b), added subsec. (c).

#### CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (b)(1)(A), changed to Bureau of Immigration and Cus-

toms Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108-32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

**DEADLINE FOR APPOINTMENT; INCUMBENT**

Pub. L. 110-53, title XXIV, §2405(c), Aug. 3, 2007, 121 Stat. 549, provided that:

“(1) **DEADLINE FOR APPOINTMENT.**—Not later than 90 days after the date of the enactment of this Act [Aug. 3, 2007], the Secretary of Homeland Security shall name an individual who meets the qualifications of section 701 of the Homeland Security Act (6 U.S.C. 341), as amended by subsections (a) and (b), to serve as the Under Secretary of Homeland Security for Management. The Secretary may submit the name of the individual who serves in the position of Under Secretary of Homeland Security for Management on the date of enactment of this Act together with a statement that informs the Congress that the individual meets the qualifications of such section as so amended.

“(2) **INCUMBENT.**—The incumbent serving as Under Secretary of Homeland Security for Management on November 4, 2008, is authorized to continue serving in that position until a successor is confirmed, to ensure continuity in the management functions of the Department.”

**§ 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.

**(b) Program analysis and evaluation function**

**(1) Establishment of Office of Program Analysis and Evaluation**

Not later than 90 days after October 16, 2004, the Secretary shall establish an Office of Program Analysis and Evaluation within the Department (in this section referred to as the “Office”).

**(2) Responsibilities**

The Office shall perform the following functions:

(A) Analyze and evaluate plans, programs, and budgets of the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 454(b)(2) of this title.

(B) Develop and perform analyses and evaluations of alternative plans, programs, personnel levels, and budget submissions for the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 454(b)(2) of this title.

(C) Establish policies for, and oversee the integration of, the planning, programming, and budgeting system of the Department.

(D) Review and ensure that the Department meets performance-based budget requirements established by the Office of Management and Budget.

(E) Provide guidance for, and oversee the development of, the Future Years Homeland Security Program of the Department, as specified under section 454 of this title.

(F) Ensure that the costs of Department programs, including classified programs, are presented accurately and completely.

(G) Oversee the preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance for the Department, consistent with sections 1115 and 1116, respectively, of title 31.

(H) Provide leadership in developing and promoting improved analytical tools and methods for analyzing homeland security planning and the allocation of resources.

(I) Any other responsibilities delegated by the Secretary consistent with an effective program analysis and evaluation function.

**(3) Director of Program Analysis and Evaluation**

There shall be a Director of Program Analysis and Evaluation, who—

(A) shall be a principal staff assistant to the Chief Financial Officer of the Department for program analysis and evaluation; and

(B) shall report to an official no lower than the Chief Financial Officer.

**(4) Reorganization**

**(A) In general**

The Secretary may allocate or reallocate the functions of the Office, or discontinue the Office, in accordance with section 452(a) of this title.

**(B) Exemption from limitations**

Section 452(b) of this title shall not apply to any action by the Secretary under this paragraph.

**(c) Notification regarding transfer or reprogramming of funds**

In any case in which appropriations available to the Department or any officer of the Department are transferred or reprogrammed and notice of such transfer or reprogramming is submitted to the Congress (including any officer, office, or Committee of the Congress), the Chief Financial Officer of the Department shall simultaneously submit such notice to the Select Committee on Homeland Security (or any successor to the jurisdiction of that committee) and the Committee on Government Reform of the House of Representatives, and to the Committee on Governmental Affairs of the Senate.

(Pub. L. 107-296, title VII, §702, Nov. 25, 2002, 116 Stat. 2219; Pub. L. 108-330, §§3(d)(1)(B), 6, 7, Oct. 16, 2004, 118 Stat. 1276, 1278, 1279.)

**AMENDMENTS**

2004—Pub. L. 108-330, §§6, 7, designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

Pub. L. 108-330, §3(d)(1)(B), substituted “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 Sec-