



Legislative Bulletin.....July 29, 2008

Contents:

- H.R. 6340**—To designate the Federal building and United States Courthouse located at 300 Quarropas Street in White Plains, New York, as the “Charles L. Brieant, Jr. Federal Building and United States Courthouse”
- H.R. 5170**—Department of Homeland Security Component Privacy Officer Act
- H.R. 5983**—Homeland Security Network Defense and Accountability Act
- H.R. 5531**—Next Generation Radiation Screening Act
- H.R. 2490**—To require the Secretary of Homeland Security to conduct a pilot program for the mobile biometric identification in the maritime environment of aliens unlawfully attempting to enter the United States
- H.R. 6193**—Improving Public Access to Documents Act
- H.R. 4806**—Reducing Over-Classification Act
- H.R. 3815**—Homeland Security Open Source Information Enhancement Act
- H.R. 6098**—Personnel Reimbursement for Intelligence Cooperation and Enhancement of Homeland Security Act
- H.R. 6388**—The Government Accountability Office Improvement Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 2

Total Cost of Discretionary Authorizations: \$66 million in FY 2009 and \$378 million over the FY 2009—FY 2013 period

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 2

Number of Reported Bills that Don’t Cite Specific Clauses of Constitutional Authority: 0

H.R. 6340—“Charles L. Brieant, Jr. Federal Building and United States Courthouse” Designation (*Lowey, D-NY*)

Order of Business: The bill is scheduled for consideration on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 6340 would designate the Federal building and United States Courthouse located at 300 Quarropas Street in White Plains, New York, as the “Charles L. Brieant, Jr. Federal Building and United States Courthouse.”

Additional Information: According to the [New York Times](#), Judge Charles Brieant, Jr. served as a federal judge in the U.S. District Court for Southern New York from 1971 through 2007. During his time on the bench, Judge Brieant served as chief judge from 1986 until 1993. During his career, Judge Brieant heard more than 15,000 cases, wrote over 700 opinions and presided over a number of high-profile cases. In 1986, Judge Brieant ruled that the oil company Texaco did not have to post a \$12 billion bond that a Texas court ordered following a suit brought by Pennzoil. In a separate case in 1997, Judge Brieant ruled that Texaco had to pay \$115 million to 1,350 employees that charged the company with race-discrimination. Judge Brieant also ruled that a man who was convicted of murdering two people must be let go because the man’s initial case was based on a confession that was made during an Alcoholics Anonymous meeting, which Brieant decided had the same legal privilege as a religious organization. On July 20, 2008, Judge Brieant died of cancer at the age of 85.

Committee Action: H.R. 6340 was introduced on June 20, 2008, and referred to the House Committee on Transportation and Infrastructure, which took no official action.

Cost to Taxpayers: A CBO score for H.R. 6340 is unavailable, but the only costs associated with a U.S. Courthouse renaming are those for sign and map changes, none of which significantly affect the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? A Committee Report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits was not available.

Constitutional Authority: Although no committee report citing constitutional authority is available, Article I, Section 8, Clause 7 of the Constitution grants Congress the authority to establish Post Offices and post roads.

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H.R. 5170—Department of Homeland Security Component Privacy Officer Act of 2008 (*Carney, D-PA*)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5170 would require the Secretary of Homeland Security, in consultation with the relevant heads of Homeland Security Agencies, to appoint a full-time privacy official within every Department of Homeland Security (DHS) component.

The bill would require a full-time privacy official for the following DHS components:

- The Transportation Security Administration;
- The Bureau of Citizenship and Immigration Services;
- Customs and Border Protection;
- Immigration and Customs Enforcement;
- The Federal Emergency Management Agency;
- The Coast Guard;
- The Directorate of Science and Technology;
- The Office of Intelligence and Analysis; and
- The Directorate for National Protection and Programs.

H.R. 5170 would require each privacy official to report to their respective component's head as well as the chief privacy officer of the DHS. Each component's full-time privacy official would be the main point of contact regarding privacy policies and directives. The bill would require the privacy official to advise the head of the component on all privacy matters relation to any law, regulation or policy that is implemented by the component. The privacy official would also be required monitor the components compliance with all relevant privacy laws, ensure that personal information is handled properly, assist in drafting and reviewing privacy guidelines, and conduction supervision and training for privacy programs.

The legislation would require DHS component heads to ensure that the privacy official has all the information and material necessary to fulfill the obligations in the bill. H.R. 5170 would also require DHS component heads to advise privacy policy changes and develop new privacy programs and rules with the privacy official.

Additional Background: According to the Committee on Homeland Security, in [House Report 110-755](#), the Homeland Security Act of 2002 (PL 107-296), which established the Department of Homeland Security (DHS), established a chief privacy officer for DHS. The officer is responsible for each DHS component's privacy policies and regulations. It is the officer's job to establish privacy regulations within the agency and to see that they are implemented properly. The officer works with every component of the DHS, but not every component has a full-time privacy official of their own. The Committee on Homeland Security reports that the three components of the DHS that do have full-time

privacy officials account for 57% of the total number of Privacy Impact Assessments (PIAs) that are reported to the DHS' privacy officer. H.R. 5170 would require each component of the DHS to establish its own privacy official in an effort to increase privacy regulations, compliance, and reporting.

Committee Action: H.R. 5170 was introduced on January 29, 2008, and referred to the Committee on Homeland Security, which held a mark-up and reported the bill, as amended, by voice vote on June 26, 2008.

Cost to Taxpayers: According to CBO, H.R. 5170 would cost \$1 million annually to pay for the salaries, benefits, and support staff for five new privacy officials within the Department of Homeland Security.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, it requires each component of the DHS to establish a privacy official. Five of the DHS components that would be required to hire a privacy official do not currently have such a position.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-755](#), "this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI."

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-755](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 5983—Homeland Security Network Defense and Accountability Act of 2008 (*Langevin, D-RI*)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5983 would specify the exact responsibilities of the Department of Homeland Security's (DHS') Chief Information Officer (CIO). The bill would also require the Secretary of Homeland Security to develop protocols and controls to test the security of DHS' information infrastructure and require the Secretary to include new information security related requirements in DHS contracts. The specific provisions of the bill are summarized below.

Authority of the Chief Information Officer and Qualifications for Appointment

The bill would require the Secretary of Homeland Security to delegate any authority necessary for the development, implementation, and oversight of information infrastructure to the Chief Information Officer (CIO) of DHS. The legislation also stipulates that anyone appointed as the CIO must have demonstrated ability and knowledge in information technology and security, and possess no less than five years of executive management experience in information technology.

H.R. 5983 would require the CIO to establish and maintain an incident response team to provide the DHS with the ability to detect, respond to, investigate, and report any computer incident that poses a threat of a violation of computer security policies. The CIO would also be required to maintain a network diagram detailing how DHS security controls are positioned throughout the department and ensure that regular vulnerability assessments were conducted.

Attack-Based Testing Protocols

H.R. 5983 would require the CIO, in consultation with the Inspector General of DHS, the Assistant Secretary for Cybersecurity, and the heads of other appropriate Federal agencies, to establish security controls and protocols to ensure that DHS's information infrastructure is effectively protected against known attacks on federal and contractor information. The legislation would require the CIO to oversee the development of the security controls and to update them on a regular basis.

Inspector General Reviews of Information Infrastructure

The bill would require the Inspector General (IG) of DHS to conduct announced and unannounced inspections and performance reviews of the DHS information infrastructure to determine the effectiveness of security policies and controls. Under the bill, the IG would be required to test and validate the system's security controls using attack-based testing within 270 days of enactment. In addition, the bill defines "information infrastructure" as "systems and assets used in processing, transmitting, receiving, or storing information electronically."

The bill would also require the IG to conduct programmatic reviews to determine whether a DHS agency is complying with policies, processes, and procedures established by the CIO. H.R. 5983 would require the IG to submit information security reports and corrective action reports regarding the findings from these reviews.

Requirements for Network Service Providers

The bill adds a number of requirements regarding contracts entered into by DHS for the purpose of providing information services to the agency. The legislation would require the CIO to determine the contractor's internal information security policies and ensure

that they are in compliance with those of DHS. The bill would prohibit the CIO from making any of the contractor's internal security policies public.

H.R. 5983 would require DHS to include in all future contracts, provisions requiring contractors to comply with DHS information security policies. The bill also requires DHS, to the extent practicable, to require current contractors to comply with these new DHS information security policies prior to enactment. Finally, the bill would require that future contracts include requirements that contractors award information security subcontracts to small, disadvantaged, and minority-owned businesses, as appropriate.

Additional Background: According to the Chief Information Officers (CIO) Council Website, the Council was created by an executive order in 1996 and was codified in law by Congress in 2002. The council is comprised of one CIO from each major federal department. According to the Council, their role includes “developing recommendations for information technology management policies, procedures, and standards; identifying opportunities to share information resources; and assessing and addressing the needs of the Federal Government's IT workforce.” The Council serves as the main inter-agency medium for improving the use, sharing, performance, and security of government information resources. Each CIO is responsible not only for the internal information resources of its own agency, but the transfer and dissemination of that information throughout other agencies.

According to the Committee on Homeland Security, in [House Report 110-777](#), the Subcommittee on Emerging Threats, Cybersecurity, Science and Technology has conducted numerous hearings during the 110th Congress focusing on the federal government's Cybersecurity. According to the report, the committee was “particularly concerned with improving the information security posture of the Department of Homeland Security, regarded by many experts--including the Government Accountability Office--as having inadequate security controls in place to safeguard the existing information infrastructure.” H.R. 5983 is intended to address a number of these concerns by specifically requiring the CIO of DHS to implement information infrastructure policies that protect security information and take steps to ensure that the policies are implemented within the agency and by contractors alike.

Committee Action: H.R. 5983 was introduced on May 7, 2008, and referred to the Committee on Homeland Security, which held a mark-up and reported the bill, as amended, by voice vote on June 26, 2008.

Cost to Taxpayers: According to CBO, H.R. 5983 would cost \$25 million in FY 2009 and \$163 million over the FY 2009 through FY 2013 period to hire to pay for up 150 additional staff to carry out the requirements of the bill.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-777](#), “this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-777](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 5531—Next Generation Radiation Screening Act (King, R-NY)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5531 would clarify certain definitions that limit the federal procurement and deployment of advanced spectroscopic portal (ASP) systems, which are used to detect radioactive materials by identifying radioactive isotopes. The bill would also authorize funding for the Securing Cities Initiative, which funds radioactive threat (dirty bombs) detection in urban areas.

H.R. 5531 would require the Director of the Domestic Nuclear Detection Office (DNDO) and the Commissioner of Customs and Border Protection to agree on the minimum functionality requirements of the ASP that must be met before it is deployed. The bill would require that the Director and the Commissioner, via the Secretary of Homeland Security, to present Congress with an agreement regarding the minimum deployment functionality requirement of the ASP within 60 days.

The bill would also require the establishment of a definition of the phrase “significant increase in operational effectiveness” with regard to the ASP. Under current law, no government funds may be used to fund ASP programs until a “significant increase in operational effectiveness is achieved.” H.R. 5531 would require the Secretary of Homeland Security, in consultation with the National Academies, to establish quantitative metrics to determine any significant increase (or lack thereof) in the effectiveness of the ASP.

Finally, the bill would authorize \$40 million in FY 2009, and “such sums” for each year thereafter, for the Securing Cities Initiative, which is a program carried out by the DNDO to detect radiation and the transportation of radioactive materials in urban areas.

Additional Background: According to the Committee on Homeland Security, in [House Report 110-764](#), the advanced spectroscopic portal (ASP) is a next-generation radiation

detection technology that has the potential to provide “improved detection capabilities while reducing the number of nuisance alarms caused by the legitimate transport of non-threat-related radioactive material.” Under the Consolidated Appropriations Act of 2008 (Public Law 110-161), funding may not be used to deploy ASP systems until a “significant increase in operational effectiveness” of the system is made. H.R. 5531 would require that a quantifiable metric for determining significant increases in the ASP systems effectiveness is established to hasten the use of the ASP in the field. The bill also authorizes funding for the Securing Cities Initiative, which was established by the Domestic Nuclear Detection Office and launched in New York, to detect and report unauthorized attempts to transport, store, or develop material that could be used as a component of a “dirty bomb” in an urban area.

Committee Action: H.R. 5531 was introduced on March 5, 2008, and referred to the Committee on Homeland Security, which held a mark-up and reported the bill, as amended, by voice vote on June 26, 2008.

Cost to Taxpayers: According to CBO, H.R. 5983 would authorize \$40 million in FY 2009 and \$212 million over the FY 2009 through FY 2013 period to fund the Securing Cities Initiative.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-764](#), “this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-764](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 2490—To require the Secretary of Homeland Security to conduct a pilot program for the mobile biometric identification in the maritime environment of aliens unlawfully attempting to enter the United States (Bilirakis, R-FL)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 2490 would require the Secretary of Homeland Security, acting through the Coast guard, to conduct a maritime mobile biometric identification program to detect suspected individuals, including terrorists, to enhance border security. The Secretary would be required to ensure that the program was coordinated with other Department of Homeland Security (DHS) biometric programs.

H.R. 2490 would require the Secretary to submit a cost analysis to Congress of expanding the Coast Guard's biometric identification capabilities. Specifically, the cost analysis would have to detail the cost of biometric identification capabilities for use by the Coast Guard's Deployable Operations Group, cutters, stations, and other deployable maritime teams considered appropriate by the Secretary.

Additional Background: Biometric identification systems allow the government to identify individuals using technology that recognizes individual-specific characteristics such as fingerprints, photographs, voice patterns, eye retinas, and hand measurements to authenticate a person's identity. According to the Committee on Homeland Security, in [House Report 110-751](#), the U.S. Coast Guard initiated the "Biometric Identification At Sea Pilot Project" in 2006 to begin collecting biometric information from individuals apprehended in the Caribbean. The information retrieved from individuals in the Caribbean is run against international terrorist databases to ensure that foreign terrorists are not using maritime passages to attack the U.S. The Committee on Homeland Security reports that since this project has been instated, the Coast Guard has used highly specialized, portable picture and fingerprint scanners to collect information from more than 1,100 migrants, and identify 257 known criminals that were attempting to enter the U.S. illegally. 72 of those criminals were brought ashore for U.S. prosecution rather than being repatriated. Under H.R. 2490, the Coast Guard would identify individuals and cross-reference them for any criminal activity using photographic and fingerprint records.

Committee Action: H.R. 2490 was introduced on May 24, 2007, and referred to the Committee on Homeland Security, which held a mark-up and reported the bill, as amended, by voice vote on June 26, 2008.

Cost to Taxpayers: According to CBO, H.R. 2490 would "have no effect on the federal budget because the agency has already carried out pilot projects using biometric identification and is adopting the technique for its homeland security activities."

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-751](#), "this bill, as reported, contains no congressional earmarks,

limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-751](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 6193—Improving Public Access to Documents Act of 2008 *(Harman, D-CA)*

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 6193 would require the Secretary of Homeland Security to promote the sharing of homeland security and intelligence information with other agencies and state and local officials when appropriate. The bill would require the Department of Homeland Security (DHS) to develop a standard format for intelligence documents that are designated as Controlled Unclassified Information (CUI). The bill would also require the Secretary to develop a framework for sharing CUI and to provide CUI training and tracking.

Controlled Unclassified Information Framework Implementation

H.R. 6193 would require the Secretary of Homeland Security to develop and oversee policies regarding the implementation of a framework for sharing CUI between the Department of Homeland Security and the Archivist of the U.S. The bill would require the Secretary to create a standard format for all CUIs identified as “Finished Intelligence Products” and ensure that the standard format is used throughout the agency. The standardized CUI format and framework would be meant to “to maximize the disclosure to the public of, homeland security information, terrorism information, weapons of mass destruction information, and other information.” The measure would require the Secretary to ensure that when implementing CUI policies national security and the personal privacy of U.S. persons are protected. The bill would also require the Secretary to establish a mechanism to audit CUI policies and procedures to see that they are carried out properly and to report the findings of the audits to Congress annually.

The legislation would require the Secretary to establish a system whereby federal employees and contractors could challenge the use of CUI markings. The bill would also establish a number of penalties for failure to comply with CUI policies. In addition, the Secretary would be required to maintain a list of all federal documents that were designated as CUI and have been withheld in response to a Freedom of Information Act (FOIA) request.

Enforcement of Controlled Unclassified Information Framework

H.R. 6193 would require the Secretary to assess technologies that are already available to DHS which could be used to assign an electronic personal identification marker to DHS employees or contractors with access to CUI in order to track documents designated as CUI by a particular employee. The electronic tracking system would also be used to identify any misuses of CUI markings and assess the impact of such misuses on information sharing.

The bill would also require the secretary to establish a training program for the proper use of and compliance with the CUI framework. The training would be mandatory for every employee or contractor with a designation that gives them access to CUI. The legislation would also require DHS to establish a program within the U.S. National Archives and Records Administration (NARA) to train DHS personnel about the policies, procedures, and laws governing the CUI Framework.

Additional Background: On May 9, 2008, the President released a memo regarding the framework for dealing with Controlled Unclassified Information (CUI), which is defined as “government information of such sensitivity as to warrant placing degree of control over its use and dissemination.” The President’s memo stated that CUI would now be regarded as the only designation used for executive branch information that is unclassified, yet significant to the national interests of the U.S. Currently, there are over 100 different control designations for unclassified information. H.R. 6163 is intended to address concerns within the Committee on Homeland Security that the CUI designation may limit the sharing of DHS documents with state and local officials, as well as other agencies, and may lead to intelligence lapses. H.R. 6163 would require the Secretary to establish a framework by which CUI could be shared while still upholding certain standards to ensure that CUI is not improperly disseminated.

Committee Action: H.R. 6193 was introduced on June 5, 2008, and referred to the Committee on Homeland Security, which held a mark-up and reported the bill, as amended, by voice vote on June 26, 2008.

Cost to Taxpayers: According to CBO, H.R. 6193 would cost less than \$500,000 annually to carry out additional training programs required by the bill.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-779](#), “this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-779](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 4806—Reducing Over-Classification Act of 2007 *(Harman, D-CA)*

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4806 would require the Secretary of Homeland Security to establish and administer a policy and procedures to prevent the over-classification of information regarding security, terrorism, weapons of mass destruction, or any other type of information that must be disseminated to prevent terrorism.

The bill would require the Secretary, in coordination with the Archivist of the U.S., to create a standard format for classified and unclassified intelligence products and ensure that all policies regarding the format of classified and unclassified material are followed. The bill would also require that the Secretary establish an auditing mechanism to assess whether applicable policies regarding classified and unclassified information are being complied with.

H.R. 4806 would require the Secretary to assess technologies that are already available to DHS which could be used to assign an electronic personal identification marker to DHS employees with original classification authority in order to track documents designated as classified by a particular employee. The electronic tracking system would also be used to identify any over-classification or misuses of document classification markings.

The bill would also require the secretary to establish a training program for employees and contractors with classification authority and who are responsible for analysis, dissemination, preparation, production, receiving, publishing, or otherwise communicating written classified information. The training would educate employees regarding the proper classification markings and the consequences of over-classification and other improper uses of classification markings.

Additional Background: According to the Committee on Homeland Security, in [House Report 110-776](#), over-classification of DHS documents may be defined as “the automatic decision to classify government information rather than an informed, deliberative process.” The committee is concerned that certain intelligence and security information has been “over-classified” by the DHS, meaning that the information has been labeled as classified without proper review. As classified information may not be widely disseminated throughout agencies, some have expressed a concern that over-classification

limits information sharing that is vital to the nation's defense. Much like H.R. 6193, this legislation requires the Secretary of DHS to establish new policies to limit over-classification and increase information sharing.

Committee Action: H.R. 4806 was introduced on December 18, 2007, and referred to the Committee on Homeland Security Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment. On June 11, 2008, the subcommittee held a mark-up and reported the bill, as amended, to the full committee on. On June 26, the full committee held a mark-up and reported the bill, as amended, by voice vote.

Cost to Taxpayers: According to CBO, implementing H.R. 4806 would cost less than \$500,000 annually because "DHS already conducts compliance reviews to determine whether documents are properly classified and has an annual training program for its employees."

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-776](#), "this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI."

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-776](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 3815—Homeland Security Open Source Information Enhancement Act of 2008 (*Perlmutter, D-CO*)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3815 would require the Secretary of Homeland Security to establish an open source (publicly available) collection, analysis, and dissemination program within the Department of Homeland Security (DHS). The program would investigate publicly available information that could be linked to terrorist activities. The bill would require the program to analyze news and foreign developments related to terrorism. The bill would also require that the Secretary to utilize computer-based electronic visualization

and electronic tools to combine “imagery, sound, and written material into unclassified open source intelligence products.”

H.R. 3815 would require the Secretary to share the unclassified results of the program with state, local, federal, and private sector officials as is appropriate. The bill requires the Secretary to ensure that open source material is collected and disseminated in such a way so as to protect privacy. The legislation would also require the Inspector General of the DHS to audit the use and dissemination of open source information to evaluate the effectiveness of the program.

Finally, the bill would authorize “such sums” annually to carry out the program over the FY 2009 through FY 2013 period.

Additional Background: Open source information is information that is widely available from non-classified sources such as the Internet. According to the Committee on Homeland Security, in [House Report 110-763](#), “Open source information is a valuable source of data about terrorists themselves that must be fully integrated into the intelligence cycle to ensure that policymakers are fully and completely informed about threats. It therefore should be viewed not only as a supplement to classified data but also as a potential source of valuable intelligence that can make the Nation safer. Open source has the added benefit of being open, unclassified information that can be shared rapidly with State, local, and tribal law enforcement and other first preventers without the need for security clearances. Unfortunately, the Department of Homeland Security has not sufficiently exploited this type of information as part of its effort to provide its meaningful products to its customers. The Department must dedicate the time and resources to analyzing open source information and creating unclassified intelligence products based on it that help police, sheriffs, and other first responders—and the public—take appropriate preventative and preparedness action.” H.R. 3815 would establish a new program within DHS specifically to gather and analyze open source information.

Committee Action: H.R. 3815 was introduced on October 10, 2007, and referred to the Committee on Homeland Security Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment. On June 11, 2008, the subcommittee held a mark-up and reported the bill, as amended, to the full committee on. On June 26, the full committee held a mark-up and reported the bill, as amended, by voice vote.

Cost to Taxpayers: According to CBO, implementing H.R. 3815 would cost \$1 million annually over the FY 2009 through FY 2013 period.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the bill requires the DHS to establish a new program to collect and analyze publicly available information and disseminate reports regarding foreign terrorist organizations.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-763](#), “this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-763](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 6098—Personnel Reimbursement for Intelligence Cooperation and Enhancement of Homeland Security Act (Reichert, R-WA)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 6098 would allow state and local governments to use Department of Homeland Security (DHS) grants, including the State Homeland Security Grant Program and the Urban Area Security Initiative grants, to pay for personnel without limits on the length of time an employee can serve under a grant. Under current law, grant funds may only be used to pay the salary of the same personnel for up to two years. The bill also stipulates that up to 50% of State Homeland Security Grant Program and the Urban Area Security Initiative grants may be used for paying personnel, including overtime costs.

Additional Background: The State Homeland Security Grant Program and the Urban Area Security Initiative make grants available for Homeland Security activities conducted by state and local officials. Among the programs funded by the grants are “fusion centers,” which are collective federal, state, and local entities that come together to share and analyze security information. Under guidance issued by the Federal Emergency Management Agency (FEMA), fusion center personnel may only be paid through grant funding for a period of two years. According to the Committee on Homeland Security, in [House Report 110-752](#), “Congress’ intent was to allow continued use of Federal funds to fund specific analysts regardless of their date of hire or their time in service.” As such, H.R. 6098 removes the limit on how long analysts may be paid with grants and allows up to 50% of grant funds to be spent on personnel costs.

Committee Action: H.R. 6098 was introduced on May 20, 2008, and referred to the Committee on Homeland Security Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment. On June 11, 2008, the subcommittee held a mark-up and reported the bill, as amended, to the full committee on. On June 26, the full committee held a mark-up and reported the bill, as amended, by voice vote.

Cost to Taxpayers: According to CBO, implementing H.R. 6098 would have no significant cost over the next five years.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-752](#), “this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-752](#), cites constitutional authority in Article 1, Section 8, Clause 1, which grants Congress the power to provide for the common defense.

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H.R. 6388—Government Accountability Office Improvement Act of 2008 (*Waxman, D-CA*)

Order of Business: The bill is scheduled to be considered on Tuesday, July 29, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 6388 would authorize the Comptroller General of the Government Accountability Office (GAO) to obtain any executive branch records that are necessary for the “discharge of his duties.” The legislation would authorize the Comptroller to bring a civil action against executive agencies in order to obtain information if necessary. The bill would also require a court to recognize the continued force and effect of the Comptroller’s authority until such time as that authority is repealed under the law.

H.R. 6388 would authorize the Comptroller to administer oaths to witnesses during investigations. An employee or officer of the Comptroller would also be given the ability to administer oaths, but only in the case of audits, settling accounts, and with the expressed approval of the Comptroller.

H.R. 6388 would stipulate that no provision of the Social Security Act shall be construed to limit the Comptroller from obtaining information regarding Medicare C or D from the Secretary of Health and Human Services. The legislation would also state that no provision of the Federal Food, Drug, and Cosmetic Act shall be construed to limit the Comptroller’s access to trade secrets. Finally, the bill would state that no provision of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 shall be construed to prevent

the Comptroller from accessing pre-merger materials required to be filed with the Federal Trade Commission (FTC) and the Department of Justice (DOJ).

The measure would require the Comptroller to prescribe policies to protect proprietary or trade secrets obtained by GAO from being publically disclosed.

Additional Background: According to the Committee on Oversight and Government Reform, in [House Report 110-771](#), H.R. 6388 improves the “investigative authority” of the GAO by allowing the Comptroller General to pursue civil actions in order to obtain information from executive agencies. This authority, according to the committee, is necessary in light of “efforts by executive branch officials to withhold information from GAO and impede Congress’ ability to legislate effectively.” Specifically, the legislation would reverse a court decision regarding the GAO’s ability to obtain certain executive records from Vice President Cheney. The committee states:

(The first) section makes clear that Congress authorizes GAO to pursue civil actions if federal agencies or the White House improperly withhold federal records. In litigation arising from GAO’s efforts to obtain information about the operations of Vice President Cheney’s energy task force, a federal district court held that the Comptroller General lacked standing to enforce GAO’s right to information (*Walker v. Cheney*, 230 F. Supp. 2d 51 (D.D.C. 2002)). This case was wrongly decided and misconstrued congressional intent regarding the role of the Comptroller General. The decision was also an improper invasion into Congress’ constitutional prerogatives to determine how best to carry out its investigative responsibilities. While another court considering this issue would almost certainly reach a different decision, passing new legislation is the most expedient way to confirm the authority of the Comptroller General. For this reason, this section contains express authorization from Congress to the Comptroller General to pursue litigation if documents are improperly withheld from GAO, without the need for additional approval as the *Walker v. Cheney* court incorrectly suggested. In effect, this provision represents a legislative repudiation of the court’s decision in *Walker v. Cheney*.

Similar legislation (H.R. 5683) which was scheduled to be considered on June 3, 2008, was removed from the House calendar because of a number of concerns regarding access to private insurance information. Though H.R. 6388 contains language requiring the Comptroller to prescribe policies to protect proprietary or trade secrets obtained by GAO from being publically disclosed, United States Code (31 U.S.C. 716e(3)) states that the GAO may not withhold information from Congress. Therefore, there remains a possibility that sensitive information could be made public by Congress, which is not required to protect such secrets, after it receives the information from GAO. Because of these concerns, it is likely that the Bush Administration will issue a veto threat against H.R. 6388.

Possible Conservative Concerns:

- Overturing of Walker v. Cheney. Some conservatives may be concerned that H.R. 6388 is an attempt to overturn the U.S. District Court for the District of Columbia’s decision in *Walker v. Cheney* where the court held that GAO lacked standing to sue the vice president to compel the release of information pertaining to the Vice President’s energy task force.

- **Disclosure of Private Patient Records.** H.R. 6388 would permit GAO to request claims data and related information from private health plans offering coverage through Medicare Part C (Medicare Advantage) or the Part D prescription drug benefit. Because existing law (31 U.S.C. 716(e)(3)) requires GAO to comply with all requests from Congress for information, some conservatives may be concerned that this provision could allow Committee Chairman, Members of Congress, or Congressional staff to access claims information from private insurance companies, which could include access to patient medical records. Some conservatives may further be concerned that there are no penalties for the disclosure—whether inadvertent or deliberate and willful—of confidential medical records by Members of Congress and their staff, which could make the public disclosure of medical records much more likely.

- **Requests for Proprietary Information.** Some conservatives also may be concerned that the Medicare information disclosure provisions will lead to GAO—and potentially Members of Congress and their staff—reviewing private and proprietary information related to the claims and bidding practices of private health plans providing prescription drug coverage through Medicare Advantage and under Part D, and could be used to initiate “fishing expedition” investigations at the behest of Democrats philosophically opposed to having private entities provide coverage to Medicare beneficiaries.

Committee Action: H.R. 6388 was introduced on June 26, 2008, and referred to the Committee on Oversight and Government Reform. On July 16, 2008, the committee held a mark-up and reported the bill, as amended, by voice vote.

Cost to Taxpayers: According to CBO, implementing H.R. 6388 would have no significant impact on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Homeland Security, in [House Report 110-771](#), “H.R. 6388, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.”

Constitutional Authority: The Committee on Homeland Security, in [House Report 110-771](#), cites constitutional authority in Article 1, Section 8, Clause 18 (the “necessary and proper clause”).

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