

**DEPARTMENTS OF TRANSPORTATION, TREASURY AND GENERAL GOVERNMENT, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2005**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

**MATERIAL SUBMITTED BY AGENCIES NOT APPEARING FOR FORMAL HEARINGS**

[CLERK'S NOTE.—The following agencies of the Subcommittee on Departments of Transportation, Treasury and General Government, and Related Agencies did not appear before the subcommittee this year. Chairman Shelby requested these agencies to submit testimony in support of their fiscal year 2005 budget request. Those statements submitted by the chairman follow:]

**SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION**

**PREPARED STATEMENT OF ALBERT S. JACQUEZ, ADMINISTRATOR**

The U.S. Saint Lawrence Seaway Development Corporation (SLSDC or Corporation), a wholly owned government corporation and an operating administration of the U.S. Department of Transportation (DOT), is responsible for the operations and maintenance of the U.S. portion of the St. Lawrence Seaway between Montreal and Lake Erie. This responsibility includes maintaining and operating the two U.S. Seaway locks located in Massena, NY, and vessel traffic control in areas of the St. Lawrence River and Lake Ontario. In addition, the SLSDC performs trade development functions designed to enhance Great Lakes St. Lawrence Seaway System utilization.

Since its opening in 1959, the binational St. Lawrence Seaway has been a vital transportation corridor for the international movement of bulk commodities such as steel, iron ore, grain, and coal, serving a North American region that makes up one quarter of the U.S. population and nearly half of the Canadian population. The binational waterway serves as a deep draft waterborne link between major U.S. and Canadian agricultural, manufacturing, and industrial cities, including Chicago, Detroit, Toronto, Cleveland, Duluth, Toledo, Milwaukee, Montreal, and Green Bay, and European, South American, and North African markets.

The SLSDC coordinates its activities with its Canadian counterpart, The St. Lawrence Seaway Management Corporation (SLSMC), particularly with respect to rules and regulations, overall day-to-day operations, traffic management, navigation aids, safety, environmental programs, security, operating dates, and trade development programs. The unique binational nature of the Seaway System requires 24-hour, year-round coordination between the two Seaway entities.

The SLSDC's principal performance goal is to provide a safe, secure, reliable, and efficient U.S. portion of the St. Lawrence Seaway to its commercial users. Since its opening in 1959, more than 2.3 billion metric tons of cargo has been transported through the combined sections of the St. Lawrence Seaway (Montreal-Lake Ontario and Welland Canal) with an estimated value of more than \$400 billion.

The navigation season typically runs from late March to late December. During the 2003 navigation season, the availability of the U.S. sectors of the Seaway, including the two U.S. locks maintained and operated by the SLSDC, was 98.9 per-

cent; the annual goal is 99 percent. Weather and vessel incidents were the causes for all delays in 2003. Of the remaining factors that cause lockage shutdowns, the one that the SLSDC has the most control over is the proper functioning of lock equipment. During the 2003 navigation season, there were no system delays due to malfunctioning lock equipment.

#### FISCAL YEAR 2005 BUDGET ESTIMATE

The SLSDC's fiscal year 2005 budget request provides the agency with the funding necessary to provide a safe, secure, reliable, and efficient waterway system for the movement of commercial goods to and from the Great Lakes region of North America.

The SLSDC fiscal year 2005 proposed level of \$16,800,000, includes an appropriation request from the Harbor Maintenance Trust Fund of \$15,900,000 and an estimated non-appropriated \$900,000 in non-Federal revenues. This proposed level will allow the agency to fund its 157 Full-Time Equivalent (FTE) staff and continue the day-to-day operational and maintenance programs for the U.S. portion of the St. Lawrence Seaway between Montreal and Lake Erie. These programs include managing vessel traffic control in areas of the St. Lawrence River and Lake Ontario, maintaining and operating the two U.S. Seaway locks, and continuing increased security-related activities that were initiated as a result of the terrorist-related events of September 11, 2001. In addition, the SLSDC performs trade development activities designed to enhance Great Lakes St. Lawrence Seaway System awareness and utilization.

The request also directly supports four of the five President's Management Agenda (PMA) initiatives (budget and performance integration, strategic management of human capital, financial performance improvement, and electronic government expansion; the SLSDC is exempt from competitive sourcing as a government corporation), the Department's strategic goals of Global Connectivity (efficient cargo movement) and Security (transportation system recovery), as well as the SLSDC's internal strategic goals. These agency goals include: safety, security, and the environment; reliability and availability; trade development; and management accountability. The request, separated by Departmental strategic goals and performance measures, includes \$15,650,000 in appropriated funds directed at maritime navigation programs and personnel, and \$250,000 towards the SLSDC's security and infrastructure protection activities.

The SLSDC's budget request also includes funding for the Seaway Automatic Identification System (AIS) and the agency's financial management system, both of which support the PMA. The AIS system, which serves as one of the agency's "Expanding E-Government" PMA initiatives, utilizes Global Positioning System (GPS) to allow the SLSDC to more efficiently manage vessel traffic control and vessel transits at the U.S. Seaway locks. Implemented at the start of the 2003 navigation season, the Seaway became the first inland waterway in the western hemisphere to implement an operational AIS vessel traffic services system.

The SLSDC's financial management system supports the President's "Improving Financial Management" initiative and includes nine subsystems that allow Corporation officials to track all financial-related information and meet all independent auditor reporting requirements. The SLSDC has received 40 consecutive unqualified or "clean" financial audits since its first audit in 1955, a major achievement under the PMA initiative of financial performance improvement. The AIS system and the financial management system represent \$70,000 of the fiscal year 2005 budget estimate. This amount is consistent with the fiscal year 2004 request for operating and maintaining these two programs.

#### CONCRETE REPLACEMENT PROJECT

The fiscal year 2005 appropriation request is \$1.627 million above the fiscal year 2004 enacted level and is principally attributable to the planned start of a \$6 million concrete replacement project at the two U.S. Seaway locks (\$1.5 million each year in fiscal years 2005-2008). The Eisenhower Lock has a history of concrete problems, caused by the use of natural cement in the mix composition during the construction of the lock. Due to the amount of concrete in need of replacement, the difficulties associated with accessing these areas of deteriorated concrete, and the need for in-house maintenance crews to focus on other essential non-concrete lock maintenance projects, it is more efficient and cost effective for outside contractors to complete this project. The SLSDC's Office of Engineering has researched other solutions to the concrete deterioration problem and found that there are no other substances as effective as concrete in protecting the structural integrity of the lock chambers.

The concrete replacement work to take place in fiscal years 2005–2008 includes areas identified by the U.S. Army Corps of Engineers (Corps) in its 1991 lock survey and evaluation of the two U.S. Seaway locks (Corps Technical Report ITL–91–4, November 1991). The report concluded, “It is important for the SLSDC to maintain an aggressive maintenance program of replacing deteriorated concrete. In the near future, attention should be given to the repair of deteriorated concrete near the bottom of the lock walls at Eisenhower Lock.”

Since 1991, the SLSDC has made in-house repairs to the most critical areas identified by the Corps, but further deterioration and harsh winter conditions have caused additional damage to the lock walls at Eisenhower Lock and newly-identified problems at the Snell Lock have also been targeted for replacement. In addition to concrete deteriorating along the lower portions of the lock walls, freeze-thaw damage is significant in the lock walls at high and low pool levels at both locks. As it deteriorates, pieces of concrete become dislodged and fall into the lock chambers. This poses a risk to people on the decks of commercial vessels and pleasure boats.

Due to the amount of concrete in need of replacement, the difficulties associated with accessing these areas of deteriorated concrete, and the need for in-house maintenance crews to focus on other non-concrete lock maintenance projects, it is more efficient and cost effective for outside contractors to complete the project than in-house personnel.

Between 1959 and 2003, the SLSDC expended more than \$25 million on concrete replacement at the two locks during the off-season winter months, with the majority of work taking place at the Eisenhower Lock. Most of the work over that time was completed with in-house labor. The last major concrete replacement projects that utilized contractors were completed in fiscal years 1986 and 1987, at a total cost of \$4.3 million. The Seaway is a single-lock system, consisting of 15 individual U.S. and Canadian locks; a delay/shutdown to any one of the locks would cause a delay/shutdown of the entire waterway. Although the SLSDC has never experienced a major lock failure, the Canadian Seaway agency suffered a lock failure at the Welland Canal in 1985, which trapped 53 vessels above the Canal for 24 days at a cost to the carriers of \$24 million.

#### ENHANCED SEAWAY INSPECTION PROGRAM

The SLSDC and the U.S. Coast Guard (USCG), in conjunction with Transport Canada and the SLSMC, signed a Memorandum of Understanding in March 1997 to develop a program of coordinated vessel inspection and enforcement activities to expedite the safe transit of shipping through the Great Lakes Seaway System. The principal goal of the Enhanced Seaway Inspection (ESI) program is to inspect all ocean vessels for safety and environmental protection in Montreal, Quebec, before they enter U.S. waters. Starting in 2002, security-related risk assessment inspections have been conducted concurrent with the ESI, further improving transit times for Seaway users. In 2003, the SLSDC continued this program and met its internal performance goal of inspecting 100 percent of all ocean vessels in Montreal (208 total inspections).

The ballast water exchange program continues to be an important function of the ship inspection program. These inspections are carried out concurrently with the ESIs, by Corporation personnel in Montreal. In 2003, 56 ballast water examinations were conducted in Montreal on ocean vessels transiting the Seaway. The SLSDC performed 31 ballast water examinations for subsequent trip vessels and eight follow-up examinations in Massena.

Prior to the inception of the ESI program, foreign flag vessels experienced numerous delays at the U.S. locks to accommodate USCG-required safety-related inspections, as well as ballast water management activities. Inspection in Montreal eliminates duplicative inspections, allows for a seamless and efficient transit of the Seaway, and provides a better location for repair resources, if required. This improved inspection regime has saved each vessel, on average, 4 hours per transit and ensured that any safety or environmental issues are addressed prior to entering U.S. waters. As a result, ocean carriers using the Seaway saved more than \$500,000 in operating costs during the 2003 season. Seaway customers have responded favorably to the ESI program through annual customer surveys.

#### CRITICAL INFRASTRUCTURE AND NAVIGATION SECURITY MEASURES

The SLSDC has been proactive in implementing increased security measures following the events of September 11, 2001. Within days of the terrorist attacks, risk assessment inspections of all foreign flagged vessels were conducted in Montreal, prior to their entry into U.S. waters. This protocol was developed with the full cooperation of the Canadian SLSMC, as well as U.S. and Canadian law enforcement

and Coast Guard personnel. The protocol was further refined in March 2002 when the risk assessment inspection was combined with the existing Enhanced Seaway Inspection (ESI) program. By combining the two inspections into a single process, foreign-flag vessels are not unnecessarily delayed for security screenings, unless the initial risk assessment compels an additional examination. During the 2003 navigation season, SLSDC inspectors completed 216 risk assessment inspections in Montreal.

Security procedures, both maritime and internal, were developed to ensure that security was enhanced while minimizing any impacts on the efficiency of Seaway operations. In late 2001, SLSDC inspection personnel logged substantially more staff hours in carrying out the risk assessment protocol than normally projected. However, when the protocol was refined in 2002 and merged with the existing ESI program, this impact was ameliorated.

Another major security milestone for the SLSDC was the expansion of the U.S. and Canadian Seaway mandatory Notice of Arrival requirement for all foreign commercial vessels. With the start of the 2002 navigation season, all foreign ships entering the St. Lawrence Seaway are required to give 96-hour advance notification of arrival in Montreal, Quebec. Ships failing to give complete notice are prohibited from entering the Seaway.

The notification requirement on the St. Lawrence Seaway is unique because it mandates 96 hours notice prior to arrival in Montreal, as opposed to all other U.S. waterways which require the notice prior to reaching the first U.S. port of call. This modified requirement was needed due to the geography of the key U.S. ports on the Great Lakes Seaway System, which are several hundred miles into U.S. waters and, in many cases, require transit of all 15 Seaway locks before reaching the port. The Seaway's 96-hour notification requirement provides SLSDC officials, as well as law enforcement and intelligence agencies, even more advance notice (approximately 10 additional hours) to review vessel crew lists and manifests before the vessel enters U.S. waters. The SLSDC immediately sends the pre-entry information it receives to the USCG, which in turn submits the information to its National Vessel Movement Center for screening through various law enforcement databases.

Other U.S. and Canadian agencies involved in the development of both the risk assessment inspection program and 96-hour notification requirement included Transport Canada, Citizenship and Immigration Canada, Canadian Navy, Royal Canadian Mounted Police, U.S. Customs, U.S. Immigration and Naturalization Service, and the U.S. Consul General's Office in Montreal.

In February 2002, the SLSDC contracted for services to assess the physical security for SLSDC infrastructure and workplace assets in Massena. This assessment was intended to supplement and enhance an initial security assessment that was conducted immediately following September 11. The assessment focused on the two U.S. Seaway locks, the Eisenhower Lock Visitors' Center, and the SLSDC's marine base/maintenance facility. In addition, another contractor conducted a detailed blast analysis of the highway tunnel under the Eisenhower Lock. Based on the contractor's recommendations, the SLSDC has made and continues to make several security enhancements and improvements to the lock infrastructure and other workplace assets. It is estimated that the SLSDC will expend more than \$2.2 million in other-than-personnel security enhancements and improvements during fiscal years 2002 through 2005.

Significant security-related enhancements and improvements made to date include:

- Installation of approximately 4,400 feet of additional 8-foot-high, chain-link fencing and various slide and swing gates. Gate controllers will not be installed until the fiber optic system is installed.
- Purchase of a Nasatka portable vehicle barrier to shut down or control access, as needed, to our facilities, particularly the Eisenhower Lock highway tunnel. This vehicle barrier has been deployed during elevated threat level conditions.
- Construction of approximately 61 concrete "jersey barriers" topped with a 4-foot-high section of chain-link fence to keep vehicles and pedestrians in the Visitors' Center parking lot from approaching too close to the lock structure. These barriers, built at a considerable cost savings with in-house labor, will also be used in conjunction with the Nasatka portable vehicle barrier to shut down or control vehicular traffic.
- Completion of several improvements at the Eisenhower Lock Visitors' Center, including (a) fencing of both ends and the lock side of the lower and upper observation decks, (b) closure of some ground level observation area to visitors, (c) movement of visitor parking areas further away from the lock chamber, and (d) setup of a security checkpoint at the Center entrance with a security guard on duty during operating hours.

In fiscal year 2003, the SLSDC contracted with the firm of Edwards and Kelsey to conduct an engineering plan for the implementation of other security-related enhancements recommended in the previous assessments. At the end of fiscal year 2003, the SLSDC finalized plans to install a fiber optic network necessary for the electronic-based security enhancements. In fiscal year 2004, the fiber network will be installed and the purchase and installation of video cameras and smart card/EZ pass systems for access to gates and buildings will be finalized. The SLSDC will contract with an "8-a, small business" firm for the installation of the security enhancements. In fiscal year 2005, the SLSDC will continue to aggressively pursue the objectives of its security program, which includes greater protection of SLSDC facilities, new and improved measures for employee and visitor entry into facilities, and planned contingencies for facilities/infrastructure in the event of a heightened security alert.

The SLSDC fully participated in the U.S. Department of Transportation's role in the TOPOFF 2 weapons of mass destruction response exercise mandated by the U.S. Congress and conducted in May 2003. The agency is currently participating in several preparatory exercises that will culminate in "Exercise Forward Challenge '04"—the government-wide continuity of operations exercise that is scheduled for May 12–13, 2004.

In addition, the SLSDC will continue to work cooperatively with security and intelligence officials at both the Departments of Transportation and Homeland Security to ensure that the St. Lawrence Seaway, and its navigation assets, is protected to the maximum extent possible. This relationship was highlighted by the General Accounting Office's Top Fiscal Year 2004 Management Challenges for the Department of Transportation (Establishing and Managing an Ongoing DOT/Department of Homeland Security (DHS) Programmatic Relationship).

The SLSDC has worked closely with DHS and the Transportation Security Administration (TSA) since their inception. In February 2002, the Corporation contacted officials in the TSA Explosives Unit to request its consultation on security concerns regarding the Eisenhower Lock highway tunnel. Additionally, SLSDC security and emergency staff have also conducted a series of informational meetings with TSA officials from its Office of Maritime and Land Security to educate them on those same issues. To date, SLSDC/TSA interactions have proven to be informative, constructive, and useful.

#### TRADE DEVELOPMENT INITIATIVES

Since 1985, the SLSDC has performed trade development and promotional activities geared at generating trade to and from North America via the Great Lakes Seaway System. Program-wide activities include hosting overseas trade missions that promote the entire Seaway System at maritime and trade-related exhibitions, developing commodity-specific marketing plans, and working directly with ports, carriers, terminal operators, labor, and importers/exporters in the development of promotional materials and initiatives. Overseas trade missions, which include U.S. and Canadian maritime, government, industry, and labor delegates, have led to the development of new international cargo movements into the System. Since 1985, the SLSDC has sponsored 26 trade missions to 56 cities in 37 countries. In October 2003, the SLSDC led a 23-member delegation of U.S. and Canadian Great Lakes executives to Belgium and The Netherlands, two of the Seaway's largest trading partners.

In addition to overseas trade missions, the SLSDC is working with various Great Lakes Seaway System port authorities, the Great Lakes Cruising Coalition, the Great Lakes Waterways Management Forum, State and local governments, and tourism associations, to attract cruise vessels into the Great Lakes. Also, the SLSDC is working on joint trade development initiatives with the Canadian SLSMC to maximize the use of waterborne transportation as North American highways become more congested, including the examination of the Seaway System for short sea shipping movements and niche container trade as well as exploring partnerships with other inter-modal connections in an effort to generate new business for the Seaway System.

In an effort to provide its global customers with a single portal for news and information related to the Great Lakes Seaway System commercial navigation, the SLSMC and SLSDC developed and launched a binational Internet web site ([www.greatlakes-seaway.com](http://www.greatlakes-seaway.com)) in 2001 that has been extremely well received domestically and internationally from the maritime and trade communities. In 2003, average monthly site page hits grew from 70,000 in 2002 to more than 120,000 hits. The site recorded an all-time high in December 2003 with 153,000 page hits, and re-

ceived more than 1.4 million hits for the year from viewers in more than 110 countries.

#### U.S. ARMY CORPS OF ENGINEERS' GREAT LAKES ST. LAWRENCE SEAWAY STUDY

The Water Resources Development Act of 1999 directed the Corps, in consultation with DOT (through the SLSDC), to undertake the Great Lakes St. Lawrence Seaway Study (Study) to examine improvements to the commercial navigation infrastructure of the Great Lakes St. Lawrence Seaway System. Since January 2001, the Corps has partnered closely with DOT/SLSDC to carry out the Study's reconnaissance phase.

The Corps completed a 2-year reconnaissance study in February 2003 and concluded that more analysis was needed to determine if a Federal interest exists to improve the commercial navigation infrastructure on the Great Lakes and Seaway. The current scope of the Study is to establish a 50-year baseline for the current infrastructure to analyze the engineering, economic, and environmental consequences of maintaining, and not maintaining that infrastructure at its current level of reliability. The Study is primarily a commercial navigation study, but as evidenced by the composition of the Steering Committee, it will include environmental considerations.

On May 1, 2003, the U.S. Department of Transportation and Transport Canada signed a Memorandum of Cooperation that established the intent of each agency to work together to ensure the future viability of the Great Lakes Seaway System as a commercial navigation waterway. Memorializing this intent in the MOC document cleared the way for Canada to work together with the Corps and DOT on the Study.

Currently, all projects related to the revised scope of the Study are underway (engineering, economics, and environmental), along with meetings of the Study Steering Committee. The Steering Committee is made up of the senior level officials from Corps, DOT, Transport Canada, SLSDC, Canadian SLSMC, as well as representatives from the U.S. Fish and Wildlife Service and Environment Canada.

#### SEAWAY AIS/GPS PROJECT

Since 1992, the SLSDC has worked with the U.S. Department of Transportation's Volpe National Transportation System Center and Canadian partners to design and implement state-of-the-art AIS/GPS navigation technology.

On March 31, 2003, with the start of the navigation season, the U.S. and Canadian Seaway agencies began enforcing mandatory AIS use on commercial vessels entering the waterway in North America to employ this technology as a requirement for transit. The AIS/GPS project represents a major step forward in marine navigation technology. In fact, the Seaway is currently the world leader in developing shore-side applications for AIS/GPS.

AIS technology uses data from ship-to-ship, ship-to-shore, and shore-to-ship, thereby enabling a constant two-way communication between mariners and the three Seaway vessel traffic control centers. Originally developed primarily for safety reasons, AIS has become increasingly of interest to maritime security officials in the post-9/11 environment as it offers the ability for them to track any vessel carrying a transponder with great precision.

In the near future, permanent installation of AIS equipment will be required on-board commercial vessels in the entire Great Lakes St. Lawrence Seaway System from the Lakehead in Duluth, MN, to traffic entering the Gulf of St. Lawrence on the Atlantic. Adoption of the technology, which has been approved by the International Maritime Organization, was embraced early on by the Canadian Ship-owners Association and the Shipping Federation of Canada, both of which provided technical and financial assistance. The Department's Volpe National Transportation Systems Center served as technical contractor for development of the AIS project, which began almost a decade ago. AIS will soon be required internationally on commercial vessels and will be mandatory throughout the Great Lakes Seaway System by December 2004.

#### 2003 NAVIGATION SEASON OVERVIEW

The estimated tonnage for the combined sections of the St. Lawrence Seaway in 2003 was 40.9 million metric tons. This was 500,000 metric tons or 1 percent below the 2002 total (a decrease of 1 percent). The decrease can be attributed, in large part, to higher global freight rates, weaker U.S. dollar valuation, the continuation of grain export reductions (7 percent decrease) due to lower European grain imports, and significant reductions to general cargoes, including iron and steel products (38 percent reduction). The reduction of import steel also had a secondary effect on export grain. It is estimated that approximately 20–30 percent of ocean-going vessels

exporting grain from the Great Lakes Seaway System enter the waterway carrying steel. The final weeks of the navigation season did result in high levels of grain movements on Canadian lakers as the Canadian Wheat Board began moving more grain exports via the St. Lawrence Seaway. In addition to cargo movements, estimated total commercial transits through the St. Lawrence Seaway were on par with 2002 levels at 3,886 transits.

Several commodities posted increases in 2003: iron ore (up 10.5 percent to 10.7 metric tons); coal (up 33 percent to 4.1 million metric tons); petroleum products (up 2 percent to 1.8 million metric tons); salt (up 17 percent to 2.3 million metric tons); stone (up 8 percent to 800,000 metric tons); potash (up 48 percent to 144,000 metric tons); ores and concentrates (up 68 percent to 357,000 metric tons); and gypsum (up 25 percent to 652,000 metric tons).

#### CONCLUSION

The SLSDC's fiscal year 2005 budget request reflects the agency's ongoing commitment of providing a safe, secure, reliable, and efficient waterway and lock transportation system for the movement of commercial goods to and from the Great Lakes region of North America. Maritime commerce on the Great Lakes Seaway System is vitally important to the Great Lakes regional economy, annually supports more than 150,000 U.S. jobs, \$4.3 billion in personal income, \$3.4 billion in transportation-related business revenue, and \$1.3 billion in Federal, State, and local taxes.

Since 1959, the SLSDC has played a significant role in not only the operations and maintenance of the U.S. Seaway assets, but also in the promotion and development of new business for the waterway in concert with its North American stakeholders. As the St. Lawrence Seaway nears its 50th year of operation, the SLSDC remains committed to working with its customers and stakeholders to ensure the waterway's reliability and competitiveness for its next 50 years.

#### MERIT SYSTEMS PROTECTION BOARD

##### PREPARED STATEMENT OF NEIL ANTHONY GORDON MCPHIE, ACTING CHAIRMAN

Chairman Shelby, Ranking Member Murray and members of the subcommittee, thank you for the opportunity to submit this statement for the record on the fiscal year 2005 appropriations request for the U.S. Merit Systems Protection Board (MSPB or "the Board"). This year is particularly significant for the Board, as 2004 marks the agency's Silver Anniversary. Over the course of the Board's 25-year history, its Chairmen, Board members and staff have held steadfast and true to the agency's mission: to serve as guardian of Federal merit systems. In those 25 years, the Board has issued decisions in over 239,000 cases. The Board has issued over 80 reports of studies of the Federal merit systems and the degree to which employees are managed free from prohibited personnel practices. In addition, the Board has conducted outreach activities on its findings on appeals and studies to promote the improved application of merit principles. I am pleased to take this opportunity to explain to the subcommittee the basis for the President's appropriations request on behalf of the Board and its importance in enabling the Board to continue to fulfill its statutory missions during fiscal year 2005.

##### OVERVIEW OF THE REQUEST

The President is requesting \$35,303,000 in appropriated funds to support the operations of the Merit Systems Protection Board. This request represents a \$1,800,000 increase over the fiscal year 2004 appropriations request. This increase covers the \$1,501,000 in additional expenses resulting from the January 2004 and 2005 pay raises that were included in the President's budget. However, because Congress approved a higher pay raise for fiscal year 2004 than the President recommended, MSPB needs an additional \$375,000 to cover the difference between the President's recommended raise and the amount that was ultimately approved by Congress. This request also covers the increase in commercial rent charges for fiscal year 2004 (\$183,000), the \$78,000 necessary to provide for inflationary costs increases in other non-personnel costs and the \$38,000 necessary to cover the cost of Workers Compensation Programs in fiscal year 2005.

At the request of the Office of Management and Budget (OMB), the Merit Systems Protection Board is not requesting that funds be transferred from the Civil Service Retirement and Disability Trust Fund for fiscal year 2005. Instead, at OMB's request, the funding previously supplied from the Trust Fund for adjudication of Civil

Service Retirement appeals is being requested as part of the regular appropriation total of \$37,303,000.

FISCAL YEAR 2003 AND FISCAL YEAR 2004 ACCOMPLISHMENTS WITH FISCAL YEAR 2005  
OUTLOOK (BY BUDGET ACTIVITY)

ADJUDICATION

The bulk of the Board's resources are dedicated to processing our appellate workload; 192 FTE—or 84 percent of the 228 FTE estimated for fiscal year 2004 and fiscal year 2005—will be used for adjudication. During the last several years, we have maintained an average processing time of approximately 3 months for appeals and other cases processed in our regional and field offices. However, the average case processing time at headquarters increased slightly because the Board functioned with only one member for approximately 6 weeks in fiscal year 2003.

We estimate that in each of the next 2 years the administrative judges will process approximately 7,300 appeals and other cases in our regional and field offices, and the Board members will adjudicate approximately 1,300 cases at headquarters. In fiscal year 2003, the Board decided 8,416 cases: 7,227 in the regional and field offices and 1,189 in the headquarters office. The average processing times were 94 days in the regional and field offices and 295 days for headquarters. Of the Board's final decisions that were appealed to the U.S. Court of Appeals for the Federal Circuit, the Court left 94 percent of the Board's decisions unchanged.

This case workload is determined by factors beyond our control, as it results from the number of appealable actions taken by Federal agencies, the number of employees who decide to challenge those actions, and from legislative changes that affect our jurisdiction. Two such changes are enactment of the Homeland Security Act of 2002 and the National Defense Reauthorization Act of 2004. Under these statutes, the Department of Homeland Security (DHS) and the Department of Defense (DOD), respectively, were granted authority to establish their own appeals process.

The Department of Homeland Security has decided to retain MSPB appeal rights for its employees at the regional and headquarters levels. DHS issued proposed regulations establishing an expedited appeals processing system which requires the Board to process employee appeals using shorter timeframes at the headquarters level. As required by statute, DHS officials consulted with MSPB prior to issuing those regulations.

These expedited procedures might well require an increase in our adjudication staff in the headquarters office. Further, while DOD employees' MSPB appeals rights are currently limited by statute to the petition for review (PFR) level, it is still possible that DOD will also decide to provide first-level MSPB appeals rights for its civilian employees by regulation. If DOD does not provide first-level MSPB appeal rights for its employees, we expect the number of PFR's to increase, as this avenue of appeal will present DOD employees with their first opportunity for an independent review of the agency's employment action. This increase in PFR's will likely require additional Board staff to review the PFR's at MSPB headquarters.

Notwithstanding the new DHS appeals procedures or the changes to DOD's appeals procedures, the Board will still hear DOD and DHS appeals under the Whistleblower Protection Act, the Uniformed Services Employment and Reemployment Rights Act, and the Veterans Employment Opportunities Act. Thus, the Board is seeking the level of funding reflected in its fiscal year 2005 budget request because we do not anticipate a decrease in the Board's caseload or staffing needs.

It is important to note that even a small increase in workload per administrative judge could cause a significant increase in processing times. MSPB needs the requested funds in order to maintain the adjudication staff and to continue technological improvements that will facilitate case processing and avoid escalation of costs to the government as a whole.

Achievement of the Board's performance goals related to the adjudication of cases at headquarters depends on having a quorum of Board members. When the Board has a full complement of three members, cases at headquarters are closed by a unanimous vote or a majority vote of the Board. When the Board has only two members, there is a quorum, but no majority is possible unless both members agree. If the two members cannot agree, the Board's regulations permit the issuance of a "split-vote" order, which makes the initial decision under review final but not precedential. When the Board has only one member, as it did for almost 2 months during fiscal year 2003, no decisions can be issued.

I am serving under the recess appointment I received from the President in April 2003. On December 10, 2003, the President designated me as Vice Chairman of the Board. Because the position of Board Chairman was vacant, I became the Board's Acting Chairman pursuant to the Board's operating statute, 5 U.S.C. § 1203(b). Un-

less confirmed, my appointment to the Board will end when Congress adjourns sine die at the end of the 108th Congress. The term of the current Board member, Susanne T. Marshall, ended on March 1, 2004. However, Ms. Marshall has exercised her option to continue to serve in this position for up to 1 additional year if no successor is named. While the President has recently submitted a nominee to the Senate for confirmation to fill the one remaining vacancy on the Board, this position has been vacant since December 2001. The Board has not had its full complement of three members since then.

During fiscal 2003 MSPB implemented an electronic appeals process (e-Appeal) that allows appellants to file an initial appeal using the Internet.

The Board's new alternative dispute resolution pilot program, called the Mediation Appeals Program (MAP), became fully functional in fiscal year 2003 with the completion of mediation training by 15 Board employees. As part of the training, these employees completed three to five co-mediations with dispute resolution experts. Fifty percent of the completed co-mediations resulted in settlements of pending appeals.

#### MERIT SYSTEMS STUDIES AND OVERSIGHT

The MSPB has the statutory responsibility to conduct studies of the civil service and other merit systems in the Executive Branch. Our goal is to support strong and viable merit systems that ensure the public's interest in a high quality, professional workforce managed under the merit principles and free from prohibited personnel practices. In fiscal year 2005, the MSPB will increase its program of in-depth, timely analysis of major merit and human capital management issues. In fiscal year 2005 we expect to issue at least six reports and a quarterly newsletter, "Issues of Merit." This function will use approximately 13 FTE, or about 4 percent of the approximately 228 FTE the Board is projected to use in fiscal year 2005.

The Board makes reports of our studies available to a wide audience, including the President, members of Congress, Federal policy officials, managers, employee groups, academicians and others with an interest in the merit systems and Federal human resources management. Reports address policy issues as well as issues that affect the operation and practice of merit in the workplace. In fiscal year 2005, we will continue our efforts to work with organizations such as the Federal Executive Boards, the Senior Executive Association, and the Federal Managers' Association.

The President's Management Agenda item on Human Capital Management and GAO's rating of human capital management as high risk influence our report topics. Alternative systems, such as those authorized by the Homeland Security Act of 2002 and the National Defense Reauthorization Act of 2004, are covering larger and larger portions of the workforce. Our charter to examine the policies and implementation of traditional and alternative personnel systems and their impact on merit principles and prohibited personnel practices is more important than ever.

We are working closely with other research groups from the General Accounting Office, the Office of Personnel Management, the National Academy of Public Administration, and the Partnership for Public Service to include a sharing of research agendas and an expansion of peer reviews of our respective work products. These other groups have either a constituency group funding them or are direct agents of the administration. Accordingly, their clients' interests shape the views they express on an issue. MSPB is distinct in its statutory mission to provide an independent, unbiased perspective. Our clients are the American people and our responsibility to them is to protect the public's interest in a viable, merit-based system.

In fiscal year 2003, the MSPB released three major studies and three editions of the newsletter. The major studies were, *The Federal Selection Interview: Unrealized Potential*, which makes recommendations to improve this important part of the selection process, *Help Wanted: A Review of the Federal Vacancy Announcements*, which makes recommendations to make vacancy announcements more useful in the recruitment process, and *The Federal Workforce for the 21st Century: Results of the Merit Principles Survey 2000*, which addresses employees' concerns before September 11, 2001. We are also planning our largest Merit Principle Survey ever using electronic web-based methodology. This electronic survey capability will be a centerpiece of our research agenda.

#### MANAGEMENT SUPPORT

The management support function, which uses approximately 26 FTE, or 11 percent of the 228 estimate in fiscal year 2004 and fiscal year 2005, provides the necessary management support for information resources management, human resources management, budget, finance, procurement, equal employment opportunity, travel, space and property management. The management support function, which

uses approximately 26 FTE, or 11 percent of the 228 estimate in fiscal year 2004 and fiscal year 2005, provides the necessary management support for information resources management, budget, finance, procurement, equal employment opportunity, travel, space, and property management.

Fiscal year 2003 was the first year that we were required to have a financial audit pursuant to the Accountability of Tax Dollars Act of 2002. We received a clean audit opinion. An additional important administrative accomplishment was the development and implementation of the Continuity of Operations Plan.

The Board determined that a restructuring of its regional and field office configuration was necessary in order to consolidate resources and to allow for the most efficient management of case processing. After evaluating workload shifts, costs, economies of scale, changes in the Federal workforce, and the flexibility needed to adjust to civil service reform, Board management determined that it was necessary to close two of these offices to enable the Board to further its mission more efficiently and effectively.

Effective March 31, 2004, the Board closed its field offices in Seattle, Washington and Boston, Massachusetts. This action affected a total of 12 employees in these two offices (four in the Boston office and eight in the Seattle office). The Board received authority to grant voluntary early retirement and voluntary separation incentive payments to affected employees. The Board will continue to operate five regional offices (Philadelphia, Washington, Atlanta, Chicago, and San Francisco) and three field offices (New York, Dallas and Denver).

The restructuring was accomplished without a reduction in force. Every employee in the affected offices was offered a reassignment to an equivalent position within the Board. These reassignments were made without loss of pay or grade for the affected employees. Additionally, the Board will pay all required and most optional relocation expenses for employees who are reassigned. Eligible employees who declined the reassignment were offered the option of taking voluntary early retirement or the voluntary separation incentive payments. Under these arrangements, only five employees are separating from the Board; three are retiring and receiving voluntary separation incentive payments, one employee transferred to another Federal agency and one employee is serving in a temporary assignment, while seeking other employment.

We believe that the restructuring will have a neutral budgetary impact. The annual rent on the Seattle field office is approximately \$150,000 and the rent on the Boston field office is approximately \$100,000 annually. As of April 1, 2004, the Board will cease to pay rent on the Seattle office. We are tied to a lease agreement that will obligate the Board to pay some amount for the Boston property through the end of the lease term, which is February 14, 2005. However, we are currently negotiating with the management company in an effort to pay a lesser amount from April 1, 2004, through the end of the lease period. We anticipate that any savings in rent expenses will be offset by an increase in expenses associated with the additional staff needed to meet the challenges presented by the new Department of Homeland Security and Department of Defense appeals systems.

In fiscal year 2004, the Board implemented a new case management system. This system replaces a 13-year-old case management system, whose major components had long become obsolete. Two of the features of this new system that will improve the overall efficiency of the adjudicatory process include: (1) interfaces between the Board's Case Management System, Document Management System, and Document Assembly System to reduce duplicative data entry and to automate the use of data from CMS to produce standard case documents; and (2) use of off-the-shelf software as the basis of the system, which will allow more frequent upgrading of other software.

Additionally, in fiscal year 2004, the Board expects to replace all of the agency's personal computers (PC's) in accordance with our policy of replacing PC's every 4 years. As part of that upgrade, we will update word processing and other desktop software, and we will investigate the feasibility of installing a wireless network within our building.

Finally, the Board's information resource management office will continue to enhance information technology security for the Board's IT systems. These enhancements will follow up on the recommendations of the independent auditor which were included in the agency's fiscal year 2003 Federal Information Security Management Act report.

In fiscal year 2005, we will implement a pilot program to evaluate the cost and feasibility of scanning case documents received from the parties. This is another phase of the e-Filing initiative which would permit documents that we do not produce or receive in electronic form through e-Appeal to be made part of the electronic case file nonetheless.

## CONCLUSION

I am honored to serve as Acting Chairman of the Merit Systems Protection Board. The Board and its staff continue to work diligently to maintain the reputation for efficiency, effectiveness and fairness it has earned over its 25-year history. I have enjoyed serving the Board as a member and now as Acting Chairman. I welcome the opportunity to lead the organization as it builds upon its legacy of excellence for service in the public interest.

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 U.S. ACCESS BOARD

PREPARED STATEMENT OF LAWRENCE W. ROFFEE, EXECUTIVE DIRECTOR

## INTRODUCTION

The Access Board is requesting a total budget authority of \$5,686,000 for fiscal year 2005. The proposed budget is a 5.3 percent increase over the amount appropriated for fiscal year 2004. The Board is not planning new costly initiatives in fiscal year 2005 but will continue with the programs started in fiscal year 2004, and has followed the directives issued by the Office of Management and Budget for the preparation of the fiscal year 2005 budget.

## GOVERNMENT PERFORMANCE AND RESULTS ACT ANNUAL PERFORMANCE PLAN

Following the Government Performance and Results Act (GPRA), the Board has established long-range goals and annual objectives that describe the strategies it will implement to achieve the long-range goals. The objectives are described in terms that permit future assessment regarding whether the objectives were achieved. To satisfy the requirements for an annual performance plan and review, this budget justification presents information under each of the Board's program areas regarding the long-range goals, reports on the results of the fiscal year 2003 activities, reviews the planned fiscal year 2004 activities, and presents the fiscal year 2005 objectives.

The Board was established by section 502 of the Rehabilitation Act and is the only Federal agency whose primary mission is accessibility for people with disabilities. The Board is responsible for developing guidelines under the Americans with Disabilities Act, the Architectural Barriers Act, and the Telecommunications Act for ensuring that buildings and facilities, transportation vehicles, and telecommunications equipment covered by these laws are readily accessible to and usable by people with disabilities. The Board is also responsible for developing standards under section 508 of the Rehabilitation Act for accessible electronic and information technology used by Federal agencies, and for providing training under the Assistive Technology Act to Federal and State employees on obligations related to section 508 of the Rehabilitation Act.

In 2002, the Board was given new responsibilities under the Help America Vote Act to serve on the Board of Advisors and the Technical Guidelines Development Committee that will assist the new Election Assistance Commission in developing voluntary guidelines and guidance for voting systems, including accessibility for people with disabilities.

The Board also enforces the Architectural Barriers Act and provides training and technical assistance on each of its guidelines and standards, and on a variety of other accessibility issues. Additionally, the Board maintains a small research program that develops technical assistance materials and provides information needed for rulemaking.

The Board has adopted this mission statement to guide its programs: The Board is the catalyst for achieving an accessible America. The statement recognizes that achieving an accessible America requires bringing together public and private sectors. The Board has established three long-range goals for its programs:

- Take a leadership role in the development of codes and standards for accessibility;
- Work in partnership with agencies and others to make the Federal Government a model of compliance with accessibility standards; and
- Be known as the leading source of information about accessibility and disseminate that information to customers in effective ways.

In developing objectives and strategies for achieving the long-range goals, the Board seeks to work together with its stakeholders toward common objectives. The Board's plan is simple: work with its stakeholders to establish consensus-based guidelines and standards that are fair, reasonable, and acceptable to all interests;

where the Board has enforcement responsibilities over Federal agencies, assist those agencies to achieve full compliance; and involve its stakeholders in developing and disseminating materials and manuals that will help them understand and comply with our guidelines and standards.

The Board's programs will result in accessible buildings and facilities, transportation vehicles, telecommunications equipment, and electronic and information technology across our country and, ultimately, the full economic and social integration of people with disabilities into our society. Achieving these results will depend not only on the Board's activities, but also on the level of commitment and action taken by other Federal agencies, State and local governments, and businesses who are required to comply with or enforce the various laws that guarantee the civil rights of people with disabilities.

#### ACCESSIBILITY GUIDELINES AND STANDARDS

The Board will continue to develop and update accessibility guidelines and standards and to work cooperatively with organizations which develop codes and standards affecting accessibility through fiscal year 2005 and beyond. The status of current guidelines and standards efforts is presented below.

##### *ADA and ABA Accessibility Guidelines*

This rule will revise the accessibility guidelines for the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA), and include new guidelines for accessible housing covered by both of these laws. Through this rulemaking, the Board will ensure consistency and coordination in the development of guidelines applicable to the public and private sector, as well as the Federal Government. A notice of proposed rulemaking (NPRM) was published for public comment in November 1999. The NPRM consisted of separate scoping parts for each law. The ADA scoping part was based on the recommendations of the Board's ADAAG Review Advisory Committee and covers private facilities, such as places of public accommodation and commercial facilities, and State and local government facilities. The ABA scoping part applies to Federally financed facilities and is based on the ADA scoping part, with a few changes due to differences in the coverage of the two laws. For example, the ABA scoping part covers facilities leased by Federal agencies. The NPRM contained a single set of updated technical requirements based on the recommendations of the ADAAG Review Advisory Committee. Both the ADA and ABA scoping parts reference these common technical requirements. The comment period for the proposed rule closed in May 2000 and over 2,500 comments were received. The Board held two public hearings on the proposed rule. The Board also held informational meetings in Washington, DC in October 2000 to hear from industry associations and disability groups on issues regarding automated teller machines, reach ranges, and captioning equipment for movie theaters. The Board required further information on these issues before deciding how to address them in the final rule.

In April 2002, the Board placed in the docket for public review a draft of the final guidelines to promote harmonization of the Board's guidelines with the International Code Council (ICC)/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities and the International Building Code. The ICC/ANSI A117 Committee and the ICC were in the process of revising the private sector codes and standards. This provided another opportunity to harmonize the Board's guidelines with those of the private sector. The Board's final rule will be published in fiscal year 2004.

##### *Outdoor Developed Areas*

The Board's Outdoor Developed Areas Regulatory Negotiation Committee presented its report to the Board in September 1999. This committee developed new sections for parks, trails, and camping and picnic areas. In October 2001 the Board sponsored an information meeting on the final report of the Outdoor Developed Areas Regulatory Negotiation Committee. The meeting was attended by about 50 individuals and was held in Denver, CO during the annual meeting of the National Recreation and Park Association. The meeting was informal and provided an opportunity for a dialogue with Board members about the report.

In September 2003, the Board decided to develop an NPRM on Outdoor Developed Areas using only its rulemaking authority under the Architectural Barriers Act. Taking this approach will help move this rulemaking forward and allow the Federal Government to take the initiative of addressing accessibility in this area before applying requirements to State and local governments or private entities. Future rulemaking under the ADA would be enhanced by the experience of implementing accessibility guidelines at Federal facilities. The Federal Government would gain experience in implementing the guidelines and this experience should prove important be-

fore applying them to other entities. A proposed rule will be published for public comment in fiscal year 2004.

#### *Passenger Vessels*

In September 1998, the Board convened a 21-member Passenger Vessel Access Advisory Committee to develop accessibility guidelines for cruise ships, ferries, excursion boats, and other vessels covered by the Americans with Disabilities Act. The committee presented its report with recommendations to the Board in November 2000. The Board created an ad hoc committee of Board members to begin developing a proposed rule on access to passenger vessels.

Standard means of boarding passenger vessels and the interaction between vessels and shoreside facilities present unique challenges to accessibility. It is a major issue the Board will address in guidelines it is developing for passenger vessels. The Board held public meetings in New Orleans (August 2003) and Seattle (September 2003) to gather information and input on viable access solutions that will allow persons with disabilities independent access onto and off of large vessels such as cruise ships, dinner boats, ferries, and gaming boats. Over 150 vessel designers and operators, pier operators, persons with disabilities, and others attended the meetings. A notice of availability (or draft rule) is expected to be published in fiscal year 2004.

#### *Public Rights-of-Way*

In October 1999, the Board created a 32-member Public Rights-of-Way Access Advisory Committee to assist it in developing new guidelines for access to sidewalks, street crossings, and related pedestrian facilities. The committee presented its report with recommendations to the Board in January 2001. The committee is continuing to meet to develop recommendations for a technical assistance manual for agencies and practitioners to support implementation of the future guidelines. In June 2002, the Board released draft guidelines on accessible public rights-of-way for public comment. The draft guidelines were made available for public review and comment prior to issuing a notice of proposed rulemaking. Written comments were accepted until October 28, 2002; we received approximately 1,400 comments—all of which are available on our website.

A public meeting on the draft guidelines was held in Portland, OR on October 8, 2002. The meeting provided an opportunity for industry groups, persons with disabilities, civil engineers, local governments, and other interested parties to comment on the published draft. Over 100 people attended the meeting, and approximately 40 people provided testimony. Comments focused on the impact of various provisions in the guidelines. A proposed rule is expected to be published in fiscal year 2004.

#### *Fiscal Year 2003 Results—Rulemaking*

In fiscal year 2003, we did not issue any guidelines.

#### *Fiscal Year 2003 Results—Codes and Standards*

Our long-range goal is to take a leadership role in the development of codes and standards for accessibility. The Board works with model code organizations and voluntary consensus standards groups that develop and periodically revise codes and standards affecting accessibility. We have voting membership in several codes and standards organizations, and monitor or are actively involved in the development or revision of dozens of other codes and standards affecting accessibility.

We believe this goal enhances the Board's credibility as a knowledgeable source of information regarding technical aspects of accessibility. Additionally, by working cooperatively with codes and standards-setting bodies, Federal and private codes and standards will be more similar, or harmonized, and the Board will be more alert to non-Federal influences affecting its constituencies. Harmonization between Federal and private requirements will make it more likely that buildings and facilities will be accessible, thus reducing the necessity for complaints and litigation. Some highlights of accomplishments in fiscal year 2003 include:

- The parent of a child with a hearing loss petitioned the Board to include new provisions in ADAAG for acoustical accessibility for individuals who are hard of hearing because the acoustical environments found in many schools today are barriers to communication and therefore to learning for children with hearing impairments. Rather than initiating rulemaking, the Board collaborated with an existing Acoustical Society of America (ASA)/American National Standards Institute (ANSI) Working Group on Classroom Acoustics to develop private sector technical and scoping standards. The standard was recently adopted by ANSI. The approved standard, Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools (ANSI S12.60–2002), sets specific criteria for maximum background noise and reverberation.

—Currently, the Board is finalizing revisions to the ADA and ABA accessibility guidelines. A key goal of this revision is to make the guidelines more consistent with model building codes and industry standards, particularly those issued by the ICC/ANSI A117 Committee. The ICC/ANSI A117.1 standard is referenced by the International Building Code and various State codes, among others. While the Board's guidelines derive from earlier versions of the ICC/ANSI A117 standard, significant differences between the documents have remained. From the outset of its rulemaking to update the ADA and ABA guidelines, the Board has sought to reconcile these differences. The ICC/ANSI A117 Committee is in the process of updating the A117.1 standard and is working to harmonize the new edition with the Board's upcoming guidelines. In April 2002, the Board released a draft of the final ADA and ABA guidelines to facilitate this effort. Later, the ICC/ANSI A117 Committee completed a series of hearings on changes to the standard to make it more consistent with the Board's draft final guidelines.

*Fiscal Year 2004 Plans—Rulemaking*

In fiscal year 2004, we will issue one final guideline and three proposed guidelines:

- Final rule on revisions to the ADA and ABA accessibility guidelines
- NPRM on outdoor developed areas
- Notice of availability (draft rule) on access to passenger vessels
- NPRM on access to public rights-of-ways

*Fiscal Year 2004 Plans—Codes and Standards*

The Board will be assisting the new Election Assistance Commission in the development of voluntary voting system guidelines under the Help America Vote Act. Among other things, the legislation requires the new Election Assistance Commission to develop voluntary voting system guidelines, including accessibility for people with disabilities. The voting system guidelines are to be developed with the assistance and input of a Technical Guidelines Development Committee and Board of Advisors. The legislation requires that the Access Board be represented on both groups.

As a result of the September 11, 2001 attacks on the World Trade Center, code provisions for emergency egress from tall buildings are being re-examined. There is renewed interest in the use of elevators for both occupant egress and fire fighters access. Therefore, a workshop on the Use of Elevators in Fires and Other Emergencies will be held on March 2–4, 2004, in Atlanta, GA. This workshop is being co-sponsored by the Access Board, the American Society of Mechanical Engineers, National Institute of Standards and Technology, International Code Council, National Fire Protection Association, and the International Association of Fire Fighters.

*Fiscal Year 2005 Objectives—Rulemaking*

In fiscal year 2005, we will issue three final guidelines:

- Final rule on outdoor developed areas
- NPRM on access to passenger vessels
- Final rule on access to public rights-of-ways

*Fiscal Year 2005 Objectives—Codes and Standards*

In fiscal year 2005, the Board will continue efforts to harmonize its guidelines with model codes and standards, including the ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities.

TECHNICAL ASSISTANCE

The Board provides technical assistance to a wide variety of people regarding the accessibility guidelines and standards it issues. The Board's customers include architects, builders, designers, manufacturers, people with disabilities, State and local governments, and Federal agencies. The Board's technical assistance program has four components:

- Responding to customer inquiries. The Board responds to about 13,000 customer inquiries each year. We have four toll-free telephone lines for customers to call with questions. Customers also e-mail and fax us questions. Many literally are sitting at a drawing table with a design problem. They want accurate, reliable, and timely advice. Our customers value being able to discuss their questions directly with our accessibility specialists who developed the guidelines and standards.

- Developing and disseminating bulletins, manuals, and other publications. The Board maintains about 30 publications on accessibility issues. These range from short bulletins responding to frequently asked questions about specific issues such as accessible parking, to manuals on the Board's guidelines and standards. We send out about 12,000 publications each year in print and alternate formats.
- Providing training. The Board conducts about 100 training sessions each year. Training usually is provided at conferences and seminars sponsored by other organizations. Training sponsors generally reimburse us for travel expenses.
- Maintaining the Board's website. The Board's website (<http://www.access-board.gov>) has become a very effective way to distribute information to the public. Customers can download many of our publications and view our accessibility guidelines and standards from our website. We received over 12 million "hits" on our website in fiscal year 2003.

The Board also has established partnerships with other organizations such as the American Institute of Architects, the National Association of ADA Coordinators, the Disability and Business Technical Assistance Centers, and the Information Technology Technical Assistance and Training Center (ITTATC) to disseminate information about the Board's programs. The ITTATC, which is funded by the National Institute on Disability and Rehabilitation Research, collaborates with stakeholders to improve the awareness and availability of accessible electronic and information technology and telecommunication products and services and disseminates information, training, and technical assistance. Many of the Board's guidelines and publications are available through these organizations' on-line networks. The Board also provides training for these organizations. The Board's long-range goal is to be known as the leading source of information about accessibility and to disseminate information to our customers in effective ways. As we revise the guidelines for the Americans with Disabilities Act and the Architectural Barriers Act and develop guidelines for new areas such as outdoor developed areas, passenger vessels, and public rights-of-ways, there will be increased demands for technical assistance from existing and new customer groups. There also will be opportunities to use existing partnerships and establish new partnerships with customer groups to disseminate information about the Board's guidelines and standards.

#### *Fiscal Year 2003 Results—Leading Source of Information*

As a result of our expertise in accessibility issues, many government agencies and private organizations ask for our assistance in ensuring access at their facilities. During fiscal year 2003, we met with staff from the General Services Administration (GSA) on the design of a new courthouse annex in Washington, DC and plans for a new courthouse in Eugene, OR and we visited an existing courthouse in Upper Marlboro, MD with GSA staff. We also reviewed accessibility issues for the planned new Department of Transportation headquarters building.

Many foreign government agencies also ask for our assistance in promoting access in their countries. In fiscal year 2003, we met with the Chairman of the Disability Rights Commission from the United Kingdom. The Disability Rights Commission helps implement the Disability Discrimination Act of 1995. We also met with a researcher from Sweden regarding accessible design and provided information on model building codes and met with Japanese researchers regarding Japanese initiatives on "talking signs" and detectable warnings. We also met with an Australian company representative to provide feedback on a new pocket Braille writer and with staff from the Royal National Institute for the Blind (England) to discuss United States and European cooperation on accessibility standards for information technology. We also hosted an architect from Portugal who is in the United States through the Fulbright Visiting Scholar Program. Recognizing the international interest in access to information technology, we recently posted translations of the section 508 standards in Spanish and Japanese on our website.

Each year the Board meets outside of Washington, DC to encourage a more direct and open dialogue with members of the public about accessibility and the work of the Board. These visits outside the Washington beltway substitute for one of the Board's regular meetings, which are held every other month in the Washington, DC area. In September 2003, the Board held a meeting in Seattle, WA. During its stay in Seattle, the Board explored accessibility as it pertains to information technology and outdoor environments such as parks and trails. In a visit to Microsoft headquarters, the Board was briefed by representatives from Microsoft, Hewlett Packard, Cingular Wireless, and NCR Corporation on industry efforts to improve access to information technology. Presentations included information on how accessibility is mainstreamed into operating systems, other software, hardware and telecommunication products and services. The Board also toured several area parks to learn

more about ways of providing access to campgrounds, picnic areas, trails, and other outdoor sites.

The Board also held public meetings in Seattle and New Orleans to gather information and input on viable access solutions that will allow persons with disabilities independent access onto and off of large vessels such as cruise ships, dinner boats, ferries, and gaming boats. Over 150 vessel designers and operators, pier operators, persons with disabilities, and others attended the meeting. In advance of the meetings, the Board toured vessels and boarding facilities at area ports.

Digital wireless phones present significant compatibility and interference problems for people who use hearing aids and cochlear implants. The Board assumed a lead role in organizing a conference on the subject held in September 2003 at Gallaudet University in Washington, DC. Sponsored by the Interagency Committee on Disability Research (ICDR), the "Summit on Interference to Hearing Technologies by Digital Wireless Telephones" explored compatibility issues and potential solutions. Digital wireless phones, unlike analog wireless phones, can emit interference caused by radio frequency from the antenna and magnetic interference from the battery leads and other electronic components. Noises resulting from such interference, which were simulated at the conference, make them virtually unusable by people who use hearing technologies. Participants included representatives from the digital wireless phone and hearing technologies industries, disability organizations, research centers, and Federal agencies such as the Federal Communications Commission (FCC) and the Food and Drug Administration (FDA).

In fiscal year 2003, the Board responded to 12,193 customer inquiries; distributed 1,673 information packets; and conducted 90 training sessions which were attended by 8,414 people. An information packet usually contains several publications. Since we do not collect data on publications disseminated through partner organizations, the actual number of publications disseminated to our customers is greater than our current data indicate. Technical assistance, research, and training projects funded in fiscal year 2003 include:

- Recreation Technical Assistance with the Marina Operators Association of America. This project will develop technical assistance and training materials and conduct training sessions for marina operators on the requirements of the new guidelines for marinas and boating facilities.
- Maintenance and Weatherability of Detectable Warnings with the Transportation Research Board. The Board has contributed to a larger project funded by several transportation industry organizations to collect and report on detectable warnings testing undertaken by several State departments of transportation. The Board will be a member of the project advisory committee.
- Curb Ramp Directionality Workshop with the Institute of Transportation Engineers. This project will bring together highway engineers, orientation and mobility specialists, and consumers in a 2-day workshop to consider possible changes to roadway design that can facilitate wayfinding.
- Passenger Vessels Coaming Research with the Volpe Transportation Research Center. This project will investigate current and possible approaches to ship-board coaming treatments for accessibility.

We use existing partnerships with organizations and will be establishing new partnerships to develop training and technical assistance materials. We have used our website to provide copies of the Board's guidelines and answers to frequently asked questions about the guidelines so that more customers can get the information they need. The number of user sessions on our website continues to grow. There were approximately 1,423,465 user sessions in fiscal year 2003, nearly 200,000 more than the previous year. Due to the increasing use of the Board's website, we are focusing on web-based dissemination of information since this allows a variety of options for speedy distribution at a low cost to the Board. We also published and distributed six issues of Access Currents, a free newsletter the Board issues every other month by mail and e-mail. In addition, we responded to press inquiries from:

- National and syndicated newspapers, magazines and radio and television shows such as: Houston Chronicle; Los Angeles Times; and the Washington Post.
- Government related newspapers and journals including: Government Computer News and Federal Computer Week.
- Disability related newsletters including: Report on Disability Programs and the Disability Compliance Bulletin.
- Trade association periodicals such as: Transit Access Report; Land Development Today magazine; Buildings Magazine; States News Service; and the International Council of Cruise Lines newsletter.
- Local newspapers, television, and radio stations such as: Orange County Register; Nashville City Paper; Daily Times (Merryville, TN); Canyon Current

(Canyon City, CO); El Nuevo Dia (The New Day), a newspaper in Puerto Rico; and the Daily Camera (Boulder, CO newspaper).

We also wrote an article on section 508 for Telecommunications for the Deaf, Inc. (TDI) and developed an article on the Board's section 508 standards for the Information Technology and Disabilities Journal, a new, quarterly electronic journal.

We added to our growing inventory of technical assistance materials by creating new brochures on the Board and the Architectural Barriers Act. We also posted several new documents on the Board's website, including a research report on play surfaces, a new report on audible pedestrian signal products and their interface with traffic signal controllers, and a summary on ADAAG's detectable warning requirements. We also updated the on-line version of ADAAG including the requirements for children's elements, prisons and courtrooms, play areas, and recreation facilities into one integrated document.

Last September, the Board issued new guidelines that address access to various types of recreation facilities covered by the ADA. These guidelines, which supplement the Board's ADA Accessibility Guidelines, specify access to amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf courses, sports facilities, and swimming pools, wading pools, and spas. The guidelines are one of the first of their kind in detailing access to these environments. To help users become familiar with the Board's new recreation facility guidelines, including the meaning and intent of specific provisions, we developed seven supplementary guides on each of the facility types covered. The guides summarize and explain requirements for each facility type.

*Fiscal Year 2004 Plans—Leading Source of Information*

The upcoming publication of the new ADA and ABA Accessibility Guidelines offers a timely opportunity to develop and implement an accessible web-based technical assistance and training strategy to augment current Board publications. Completion of the revised and reformatted ADA and ABA Accessibility Guidelines will necessitate a review of the Board's many technical assistance manuals and publications. Many documents will need revision; others may no longer be required, and some new publications may be indicated.

The redesign of our agency graphic identity has provided us with a coordinated range of new templates for the layout of reports, bulletins, our internet presence, and other print and electronic materials. We developed this new and more appropriate graphic expression, including both logo and text, for our family of print materials. We did this to reflect the Board's professionalism and to communicate that we are the only Federal agency devoted to accessibility in the built environment and in communications and electronic technologies.

Also, in a few years we will be largely finished with our planned rulemaking activities. It is an opportune time to share our accomplishments and insights with the rest of the world and encourage them to look at some of the access issues we have explored such as access to electronic and information technology, playgrounds, and recreation facilities. To do this will require that our documents become available in other languages. In fiscal year 2004, we will redesign most of our publications as well as our website using the Board's new graphic identity and will translate the ADA and ABA Accessibility Guidelines into other languages.

*Fiscal Year 2005 Objectives—Leading Source of Information*

In fiscal year 2005 and beyond, we will develop training and information materials on our planned final rules on outdoor developed areas, access to passenger vessels, and access to public rights-of-ways. As we publish final rules, we make every effort to ensure that training and technical assistance materials will be available to organizations and individuals that must apply the new requirements.

Additionally, we plan to further our outreach activities to foreign government agencies who ask for our assistance in promoting access in their countries. In recent years we have hosted numerous delegations from other countries who are interested in learning more about our experiences with the Americans with Disabilities Act and other laws, as well as to discuss general accessibility issues. We plan to share our accomplishments and insights with the rest of the world by translating many more of our documents and guidelines into other languages and by looking for opportunities to work collaboratively with international entities on accessibility issues. With this new material we can more effectively encourage others to look at some of the unique access issues we have addressed.

ARCHITECTURAL BARRIERS ACT COMPLIANCE AND ENFORCEMENT

The Board enforces the Architectural Barriers Act (ABA), which requires that most buildings designed, constructed, altered, or leased by the Federal Government

and certain other Federally financed facilities be accessible to people with disabilities. Complaints received by the Board concern post offices, national parks, military facilities, veterans hospitals, subway stations, and a variety of other facilities. When the Board has jurisdiction and finds that the applicable accessibility standards were not followed, we request a corrective action plan and monitor the case until the barrier is removed. Even when the Board does not have jurisdiction or no violation is found, we attempt to negotiate voluntary barrier removal.

The Board's long-range goal is to work in partnership with Federal agencies and others to make the Federal Government a model of compliance with accessibility standards. The Board's experience with resolving complaints is that most violations are not intentional. When violations are found, it is usually because the people responsible for designing buildings, reviewing plans, and on-site construction did not have a good understanding of the accessibility standards and how to apply them. People responsible for building planning and design at headquarters, regional and field offices, and local sites must have a working knowledge of the accessibility standards if compliance is to be achieved. As Federal agencies are reorganized and personnel assignments and responsibilities change, it is important that agencies have effective systems for training new people responsible for applying the accessibility standards and for monitoring compliance with the Architectural Barriers Act. Training will be even more important when the accessibility guidelines and standards for the Architectural Barriers Act are revised.

#### *Fiscal Year 2003 Results—ABA Compliance*

In fiscal year 2003, the Board received 140 written complaints. These included complaints investigated under the Architectural Barriers Act, and also those concerning facilities not covered by that law but potentially covered by other laws, such as the Americans with Disabilities Act and the Rehabilitation Act. Of the 140 complaints, we opened 83 as new Architectural Barriers Act cases. Although the Board did not have authority under the Architectural Barriers Act in the other 57 complaints, we responded to the complainants, usually by referring them to the appropriate enforcement agency. In addition, we referred another 37 complainants to other agencies for action when our investigations revealed there was no violation of the Architectural Barriers Act or we did not have jurisdiction. The Board receives many comments from its customers, indicating they are pleased that we make this extra effort to ensure that their complaints are addressed. The Board continued its high rate of successful complaint resolution in fiscal year 2003. Of those cases closed where the Board had jurisdiction and a violation of applicable standards was found, 100 percent resulted in the successful removal of barriers. Additionally, in those instances where the Board did not have jurisdiction over the facility or no violation was found, we negotiated voluntary barrier removal in 21 percent of the cases.

The Board responds quickly to all new complaints and contacts complainants frequently to update them on the status of their complaints. In fiscal year 2003, the Board sent initial letters to complainants acknowledging receipt of their complaint or began an investigation of the issues they raised within an average of 4 days. The Board's customers regularly say they are pleased to hear from a Federal agency so promptly. It is Board practice to keep complainants informed on a regular basis throughout the course of our investigations. In fiscal year 2003, we contacted 116 complainants to provide updates on the status of their complaints.

#### *Fiscal Year 2003 Results—Working in Partnership with Agencies*

During fiscal year 2003 we continued ongoing actions under our long-term goal of working in partnership with agencies and others to make the Federal Government a model of compliance with accessibility standards. Under our partnership with the National Institutes of Health (NIH), we completed a series of training sessions on accessibility requirements under the Americans with Disabilities Act Accessibility Guidelines and the Uniform Federal Accessibility Standards.

We completed our partnership with the General Services Administration (GSA) resulting in its development of a comprehensive desk guide of GSA policies and procedures regarding accessibility for use by GSA personnel to assist in implementing its National Accessibility Program. We also continued working in partnership with the Smithsonian Institution, Kennedy Center, and Library of Congress to develop a resource tool that organizations can use as guidance in evaluating and improving their emergency evacuation plans for persons with disabilities.

#### *Fiscal Year 2004 Plans—ABA Compliance*

In fiscal year 2004, the Board will continue to investigate complaints under the Architectural Barriers Act. At the beginning of fiscal year 2004, the Board had 104 active cases. We expect to receive 145 new complaints in fiscal year 2004. Of this total, we estimate that 85 will be opened as new Architectural Barriers Act cases

and 60 will be referred to other agencies for enforcement under other laws, such as the Americans with Disabilities Act and the Rehabilitation Act. The Board anticipates responding to complaints in an average of 3 or fewer business days and will continue to provide periodic updates to complainants on the status of their complaints. We also will evaluate and refine our electronic complaint-filing system and the compliance and enforcement information presented on our website.

*Fiscal Year 2004 Plans—Working in Partnership with Agencies*

In fiscal year 2004, we will continue working with agencies to assist in development of ways to assess and improve plans for emergency evacuation of persons with disabilities. We will continue efforts to learn about plans or actions being developed by the standard-setting agencies with regard to implementation of the new ABA standards.

*Fiscal Year 2005 Objectives—ABA Compliance*

In fiscal year 2005, the Board will continue to investigate complaints under the Architectural Barriers Act. We estimate that we will have 105 active cases at the beginning of fiscal year 2005 and will receive 145 new complaints. We expect to open 85 new Architectural Barriers Act cases and refer 60 complaints to other agencies for enforcement under other laws. We will continue to provide good customer service.

*Fiscal Year 2005 Objectives—Working in Partnership with Agencies*

Once new ABA standards are issued by the standard-setting agencies, our objective will be to work with the agencies on the development of web-based training or other interactive methods to ensure their effective implementation. In addition, we will continue our efforts to work with agencies to identify and publicize best practices for ensuring ABA compliance.

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OFFICE OF PERSONNEL MANAGEMENT

PREPARED STATEMENT OF KAY COLES JAMES, DIRECTOR

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to submit for the record a statement discussing the appropriations request for the Office of Personnel Management (OPM) for fiscal year 2005 and the relationship between that request and the implementation of the President's Management Agenda and other critical administration initiatives.

Before reviewing the President's request for appropriations for OPM, I would like to provide some context by outlining briefly the significant strides we have made and the tremendous challenges we face.

Consistent with our objective of shaping a Federal workforce that honors the President's commitment to the taxpayers for citizen-centered, results-oriented, market-based government, we have made the President's Management Agenda the cornerstone of our corporate management. We are proud to note that the Office of Management and Budget cited us as one of the two most improved agencies, based on our rating on the Executive Branch management scorecard. Our employees have embraced the agenda and work as a team to identify and solve management problems. Since September of 2002, under the competitive sourcing initiative, OPM employees have aggressively competed and won all 11 competitions undertaken.

Given the government-wide nature of our responsibilities, we have focused on improving the strategic management of human capital in all agencies in many ways. We have analyzed the human capital efforts of agencies and shared our insights and guidance by providing agencies with workshops, tools, and information on specific human capital topics.

Perhaps our most groundbreaking achievement was our joint effort with the new Department of Homeland Security (DHS) in creating a human resources management (HRM) system that provides the flexibility to manage more than 180,000 employees in a manner consistent with the unique mission requirements of that Department. The pioneering development of such a system through a joint regulatory process was unique. The collaborative and inclusive nature of the process involved employees, managers, the Department's largest labor unions, and a broad array of stakeholders and experts from the Federal sector and private industry. Currently, we are reviewing the many comments submitted in response to the publication of draft regulations on February 20, 2004.

In addition, in conjunction with DHS and other agencies, OPM assisted Federal employees with safety planning, both at work and at home. Our efforts involved producing a series of publications to educate Federal workers and their families on

dealing with emergency situations and providing training for employees in both security and emergency procedures. Further, we have conducted, for the past 2 years, surveys on emergency planning in the agencies and have worked to highlight areas of improvement to ensure better safety for employees.

Beyond DHS, OPM is now working in a total partnership, as prescribed by law, for the standup of the new National Security Personnel System at the Department of Defense (DOD). OPM and DOD are pursuing a similar process to that used during the DHS process, with joint agency staff teams, meetings with unions and stakeholders, and, ultimately, joint signoff of implementing regulations by Secretary Rumsfeld and me.

In fiscal year 2005, our appropriations request will build on those achievements in several ways. First, it will help us to continue to focus on the strategic use of human resources flexibilities tailored to each agency's unique requirements.

Second, it will enable us to build the capacity to hold agencies accountable for using tools effectively, as well as sustaining the core values of Federal service. Third, OPM's budget request includes funding for security and emergency action programs to support increased outreach efforts designed to ensure the safety and security of the Federal workforce. OPM's efforts are being conducted in conjunction with the DHS and the General Services Administration.

A significant highlight of our request is the support for OPM to continue our critical work as the managing partner for e-Government projects. For example, our request for \$6.615 million will allow us to complete the Federal payroll enterprise architectural model and recommend a technology solution to replace legacy systems following the consolidation of payroll providers. We project that this investment will help yield over \$1 billion in cost savings and avoidance through the project's life cycle. Also, with \$3 million in base funding and \$3.9 million from our revolving fund, we will continue our recruitment one-stop initiative to operate and enhance the USAJOBS Federal employment information system, increasing usage and satisfaction for Federal job seekers. Since launching new technology in August of 2003, the USAJOBS website has been used by job seekers to log more than 53 million visits; and more than 483,000 new resumes have been created by Americans interested in public service careers. Through the USAJOBS website, this initiative is delivering to Federal agencies a greater number of highly-qualified candidates in a more efficient and cost-effective manner.

While the requests for other e-Government initiatives are somewhat smaller, they are no less crucial. The \$2 million requested for the Enterprise Human Resources Integration effort will enhance the capability of agencies to submit timely and accurate data electronically to OPM's data warehouse. This data warehouse will help improve decision making and policy development through comprehensive, accurate, and efficient transfer of data, as well as by allowing improved analytics. Additionally, with our requested \$2 million in salaries and expenses funding for e-Clearance, we will promote reciprocity of security clearances among agencies. Expanding reciprocity can save money and improve efficiency without adverse consequences to security.

Our \$800,000 request for the e-HRIS initiative will enable us to research, plan, and develop a project plan to establish standardized and integrated human resources information systems across the Federal Government, and the \$685,000 sought for e-training will facilitate the transformation of the Go.Learn.gov site to a fully reimbursable activity that increases economies of scale and, through shared solutions, reduces duplicative investments.

In addition to the innovative approaches taken in our e-Government initiatives, the establishment of the Human Capital Performance Fund is a major step toward transforming Federal employment by creating a pay-for-performance culture. This Fund is an important tool for use by Federal agencies in rewarding high-performance employees. It points the way toward greater emphasis on employee performance contributions to mission accomplishment, rather than longevity. By requiring robust performance management as a criterion for funding, it would also provide an incentive for agencies to improve their performance management systems and human capital strategies and align them more closely with their missions and goals.

As you are aware, the establishment of this Fund has not affected the operation of the General Schedule pay system itself. Individual employees remain at their existing grades and steps and continue to receive annual across-the-board pay adjustments, locality payments, and periodic within-grade increases. However, if the request for \$300 million for the Human Capital Performance Fund is granted, high-performing employees will be rewarded with additional payments that will be treated as basic pay for the purposes of retirement and other benefits and will stay with the employees in the future.

OPM will administer the Fund to ensure that agency plans for the distribution of payments from the fund are predicated strictly on appropriately assessed employee and/or organizational performance.

Full funding of this request is essential to the progress of meaningful pay reform for the benefit of dedicated employees, critically challenged agencies, and taxpayers.

Of course, beyond the e-Government initiatives and the Human Capital Performance Fund, OPM is requesting funding for the ongoing operation of our transformed agency. Our focus will be to build the government's capacity for human capital flexibility, accountability, and national security. With the funding we have requested for our new organizational framework—called Team OPM—we will concentrate on developing strategic human resources flexibilities through approaches tailored to each agency's unique requirements. We will also build the capacity to hold agencies accountable for using tools effectively, as well as sustaining the core values of Federal service. Also, as noted earlier, we will devote additional resources to the support of government-wide disaster and emergency action working groups.

Turning to our request for resources to support these priorities, it is important to note that the total OPM fiscal year 2005 budget request of slightly more than \$35 billion, an increase of nearly \$1.4 billion, includes appropriations that are 98 percent mandatory and only 2 percent discretionary.

OPM's general fund request for basic operating expenses totals \$131.3 million and covers 831 full-time equivalent (FTE) employees. This includes \$114.9 million in annual funds, \$11.4 million in no-year funds for the e-Government projects discussed earlier (excluding recruitment one-stop), and \$5 million in 2-year funds to coordinate and conduct program evaluation and measurement.

The annual funds include an increase of slightly more than \$3 million and 24 FTE to increase the human capital support to agencies, to develop hiring solutions, to provide enhanced information technology support, to conduct competitive sourcing studies, and to support homeland security and emergency response needs.

With regard to the transfers from benefits trust funds, OPM is requesting a total of nearly \$128.5 million to support 1,151 FTE in the administration of the employee retirement and insurance programs. This includes more than \$100.8 million in annual funds, representing an increase of almost \$2.2 million from fiscal year 2004. These resources will be devoted to retirement benefits calculation, increased call center support during peak season, telephone system upgrades, and contract cost increases. The total also includes more than \$27.6 million in no-year funds for the retirement systems modernization effort.

It is important to note here that a significant portion of the funding for the Office of the Inspector General in OPM is derived from trust fund transfers, too. That request will be discussed in greater detail by that office in a separate statement, but it should be mentioned that the overall request totals \$18.1 million dollars and 140 FTE. Of that total, \$1.6 million would come from general funds, while \$16.5 million would represent transfers from the trust funds. Of course, we strongly support the important work of Inspector General Pat McFarland and his fine staff. OPM maintains an independent relationship with the IG, but on issues of common concern, such as the maintenance of employee and retiree confidence in the trust funds and the Combined Federal Campaign, the teamwork and professionalism of the IG and his staff are outstanding.

In addition to the 141 FTE financed by reimbursements from other agencies for the provision of HRM technical assistance and from OPM programs for the provision of agency-wide services, it is also worth noting that OPM provides a variety of services that are financed by payments from other agencies through our revolving fund.

For ongoing revolving fund programs, the fiscal year 2005 budget includes slightly more than an estimated \$1 billion in obligations and 2,601 FTE to be financed by payments from other agencies for OPM's services.

These services include professional development and continuous learning for Federal managers and executives; providing one-stop access to high-quality e-training products and services; testing potential military personnel for the Department of Defense in those locations where it is cost-effective for OPM to do so; providing employment information and assessment services; automating other agencies' staffing systems; providing examining services when requested by an agency; providing technical assistance and consulting services on all facets of HRM; coordinating the selection and development of Presidential Management Fellows; and, through contracts with private companies, conducting suitability and security investigations.

As always, the OPM budget request includes mandatory appropriations to fund the government contributions to the health benefits and life insurance programs for Federal annuitants. This is because OPM serves as the "employing agency" for these individuals relative to these benefit programs.

Given the mandatory nature of these payments, we are requesting a “such sums as may be necessary” appropriation for each of these accounts. We estimate that, for the 500,000 annuitants under age 65 who elect post-retirement life insurance coverage and for whom we are responsible, \$35.0 million will be needed, while an appropriation of about \$8 billion will be required to pay the government’s share of the cost of health benefits coverage for the 1.9 million annuitants who participate in that program. That represents an increase of \$688 million over fiscal year 2004.

In addition, as mandated by the financing system established in 1969 by Public Law 91–93, liabilities resulting from changes (principally pay raises) since that year which affect retirement benefits must be amortized over a 30-year period. We are requesting a “such sums as may be necessary” payment to the Civil Service Retirement and Disability Fund for that purpose. We estimate the amount needed to be \$26.4 billion, an increase of \$402 million to cover this service cost that is not funded by and for active employees under the Civil Service Retirement System.

Finally, the President’s budget for fiscal year 2005 proposes a pay increase for white-collar workers of 1.5 percent, to be distributed between an across-the-board raise and locality pay as determined by the President later in the year. In addition, funding in the amount of 0.2 percent has been included in agency budgets for use in addressing specific recruitment and retention needs. When combined with the basic pay adjustment and the \$300 million request for the Human Capital Performance Fund, the overall amount available for a pay adjustment amounts to 2.0 percent.

Once again, we have included in the government-wide general provisions in the budget the appropriate legislative language to ensure that blue-collar Federal employees receive pay adjustments up to the amount received by their white-collar colleagues if warranted by local private sector market rates.

Thank you for the opportunity to discuss OPM’s request for the record. I would be pleased to provide any additional information the subcommittee may require.

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PREPARED STATEMENT OF PATRICK E. MCFARLAND, INSPECTOR GENERAL

Mr. Chairman and members of the subcommittee, thank you for providing me with this opportunity to discuss the President’s fiscal year 2005 request for appropriations for the Office of the Inspector General (OIG). The total request for the Office of the Inspector General is \$18,088,000, which is an increase of \$2,257,000 above the amount appropriated in fiscal year 2004. Of this amount, \$1,627,000 is from the salaries and expenses/general fund, and \$16,461,000 is from the trust funds. The additional resources are requested to:

- Increase criminal investigative oversight of the Office of Personnel Management (OPM) administered trust fund programs;
- Conduct audits of pharmacy benefit managers participating in the Federal Employees Health Benefits Program (FEHBP);
- Expand the scope of audit for the largest community-rated health maintenance carriers;
- Further develop computer assisted audit tools and techniques to ensure effective audits of the FEHBP;
- Increase the number of health carrier information systems audits; and
- Provide pre-award contract audit support.

The Office of the Inspector General recognizes that oversight of the retirement and health and life insurance trust funds administered by OPM is, and will remain, its most significant challenge. These trust funds are among the largest held by the United States Government. Their assets totaled \$650.0 billion in fiscal year 2003, their revenue was \$78.2 billion, and their annual program and operating expenses were \$164.1 billion. The amounts of their balances are material to the integrity of the government’s financial position. I continue to allocate the vast majority of the Office of the Inspector General’s efforts and resources to trust fund oversight, and we remain fully committed to trust fund activities.

OPM makes outlays from the retirement trust funds in the form of payments to millions of annuity recipients. The health insurance trust fund provides payments to approximately 260 health insurance plans nationwide. In turn, the health insurance carriers pay millions of claims for services filed by their enrollees and health care providers. We have shown through our investigations and audits that such health insurance payments may be at risk through improper, inaccurate or fraudulent claims.

We are obligated to Federal employees and annuitants to protect the integrity of their earned benefits. Our audit and criminal investigative work reduces losses due to fraud and otherwise improper payments and recovers misspent funds whenever

possible. We have a special obligation to the Federal agencies and the American taxpayers who provide the majority of the funding.

The Office of the Inspector General has achieved an impressive record of cost effectiveness. Audits and criminal investigations of the OPM administered trust fund programs have resulted in significant financial recoveries to the trust funds and commitments by program management to recover additional amounts. Since fiscal year 1992, these recoveries and commitments have exceeded \$1 billion which is approximately \$10 of positive financial impact for each direct program dollar spent. In addition, we believe that Office of the Inspector General audits and criminal investigations provide a significant deterrent against future instances of fraud, waste, and abuse.

The Office of the Inspector General's fiscal year 2005 request includes additional resources totaling \$2.25 million. Of this amount, \$0.6 million will be used to increase criminal investigative oversight of the Federal Employees Health Benefits Program and the Civil Service Retirement/Federal Employees' Retirement programs.

These additional criminal investigative resources will be dedicated to speed the handling of our current inventory of criminal investigative cases and also increase our ability to handle the growing number of referrals we have been receiving because of past success. As a result of this additional oversight, we expect to increase the number of arrests, indictments and convictions by approximately 60 percent, as well as increase financial recoveries by \$5 million for the trust funds from criminal investigations. We are particularly concerned with the extent to which health care fraud puts the health and safety of current Federal employees, annuitants, their survivors, and eligible family members at risk.

An additional \$0.7 million will be used to conduct audits of pharmacy benefit managers (PBMs). It is estimated that \$6 billion will be paid during 2004 in prescription drug premiums by the Office of Personnel Management and Federal employees. This represents approximately 26 percent of total premiums paid for health benefits coverage for Federal employees and annuitants. The premiums paid for prescription drug coverage have risen exponentially over the last 10 years. However, Federal prescription drug benefits have never been audited because the FEHB Program historically has defined health care providers and suppliers as other than Federal subcontractors. Since health care providers and suppliers, including PBMs were not subcontractors, they were not subject to our audits. In light of increasing expenditures on prescriptions and allegations against PBMs, the FEHB Program has amended its carrier contracts to define PBMs as Federal subcontractors subject to our audits.

By performing these audits, we will help the FEHBP recover inappropriate costs charged to it in previous years, negotiate more favorable contracts, and positively affect the future costs and benefits provided to program enrollees. Ultimately, these audits will reduce health care costs while improving the quality of health care for FEHBP enrollees.

An additional \$0.5 million will be used to expand the scope of audits for the largest community-rated health maintenance organization carriers participating in the FEHBP. During fiscal year 2002, \$4.9 billion of FEHBP premiums were paid to community-rated carriers. Of this amount, \$3.4 billion was paid to 25 carriers most of whom use some sort of experience-based rating to set premiums. The additional resources will enable us to expand the audit testing to include reviews of this information to identify overpayments charged to the FEHB Program which will result in increased financial recoveries to the Program totaling approximately \$5 million.

An additional \$0.3 million will be used to increase the efforts of our office's information systems audit program. The purpose of this program is twofold: (1) to perform information systems audits of Office of Personnel Management systems, including computer security, and (2) to develop computer-assisted audit tools and techniques (CAAT) such as computer claims analysis applications that our auditors use while conducting carrier audits. These new computer-related resources will be used primarily to increase the number of information systems audits we conduct on providers participating in the FEHBP.

Also, we will further our development of a data warehouse of health benefit claims. A data warehouse offers the best opportunity for detecting erroneous health benefit payment transactions by medical providers, insurance carriers and subscribers by accumulating all benefit claims for all fee-for-service insurance carriers in a single data repository. This effort will enhance our current claims reviews by enabling the auditors to target certain types of potential claim payment errors on a program-wide rather than on a plan-by-plan basis. This will provide a significant improvement in our audit efficiency and effectiveness by offering us the opportunity to address significant issues one time only, instead of multiple times per year and to recover overcharges to the program when appropriate.

The data warehouse will provide information enabling our criminal investigative staff to react quickly to criminal investigative leads. For example, the OIG investigators will be able to determine the potential program risks associated with an identified provider or subscriber fraud allegation, and take appropriate action in a matter of hours instead of the days or weeks currently required.

The remaining \$0.1 million increase will be used to obtain technical expertise in the field of pre-award contract auditing. We will perform audits of selected bid proposals before OPM enters into large contracts with vendors.

I would also like to bring to your attention the significant progress we have made in implementing Public Law 105-266, the Federal Employees Health Care Protection Act of 1998. Final regulations necessary to implement the financial sanctions authorities provided in this legislation were published in the Federal Register in March 2004. These financial sanctions, in the form of civil monetary penalties and monetary assessments, provide OPM the ability to recover, through administrative action, FEHBP funds lost to provider misconduct. In addition, we believe they will serve as a deterrent against FEHBP program violations.

Also, OPM is now using new suspension and debarment regulations that went into effect during fiscal year 2003, to process actions. To date over 3,400 debarments under the new authorities have been issued. These new authorities are more efficient to administer and are designed specifically to address health care provider integrity concerns within the FEHBP. They have largely supplanted the previous regulations which, although we have used them to issue over 24,000 debarments and suspensions since 1993, are relatively inefficient to operate and, since they were dependent on Medicare or other agency debarments, were not tailored directly to the health, safety, and integrity issues that are most significant in the FEHBP.

Thank you for this opportunity to present my resource request for fiscal year 2005.

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## GENERAL SERVICES ADMINISTRATION

### PUBLIC BUILDINGS SERVICE

#### PREPARED STATEMENT OF F. JOSEPH MORAVEC, COMMISSIONER

As Commissioner of the Public Buildings Service of the U.S. General Services Administration, I am pleased to present a statement for the record regarding our fiscal year 2005 budget request.

There are three primary programs within the Federal Buildings Fund (FBF)—New Construction, Leasing, and Asset Management.

#### NEW CONSTRUCTION

We construct new buildings when our agency customers have a need for specialized space. The majority of our newly constructed buildings are courthouses, border stations, laboratories and highly specialized facilities like the U.S. Mission to the United Nations and the National Oceanic and Atmospheric Administration, (NOAA) Weather Satellite control center. The courthouse construction program has a fewer number of projects this year due to the large investment required to construct the Los Angeles, CA Courthouse. This project is the No. 1 priority on the Judiciary's 5-Year Plan, which reflects priorities approved by the Judicial Conference.

As part of our performance-based budget, we have committed to completing 85 percent of our new construction projects on schedule, and within 1 percent of the original appropriation by fiscal year 2005. PBS is undertaking many initiatives to keep projects on schedule and within budget. Project status is being closely monitored throughout design and construction to alert us to any emerging issues in a timely manner. For projects over \$25 million, evaluations are scheduled at 15 percent, 60 percent and 100 percent of the design process. In addition, a new performance measurement tool has been developed and implemented. This tool allows comparison of a project's construction schedule and outlays to standards and reports variances for both measures.

#### LEASING

GSA has a total leased inventory of over 160 million square feet located in 6,200 buildings across the United States and its territories. Our leasing program is an important tool for managing our portfolio because when clients' space requirements cannot be met with available Federal space, we lease space from the private sector. This program area has been undergoing significant expansion due to the growth of

Defense, law enforcement, and security-related agencies. The decision to lease space is part of a coherent overall local Portfolio Strategy. Our strategies to keep leasing costs at or below market levels include comparing lease offers to comparable industry benchmarks, using market surveys to comparison shop for best prices, using published market sources to gain a better understanding of area markets and partnering with the private sector for brokerage services. We are very proud that our vacant space within our leased inventory is 1.4 percent. The top priority within the Leasing Program is implementing the National Broker Contract. Analysis has indicated that “no cost” contracts and limited fee-based broker contracts will help meet future capacity needs, lower leasing costs and provide a higher level of customer service and satisfaction. GSA has taken the first steps toward implementing this important initiative.

#### ASSET MANAGEMENT

##### *Repairs and Alterations*

Our inventory of owned buildings contains more than 100 million square feet of space where the design and physical condition of the space make it very difficult to meet modern day needs. This space typically has inefficient energy systems, lacks the flexibility to readily provide state-of-the-art information technology features to occupants and—for those buildings constructed during the 1960’s and 1970’s—have exterior materials which have outlived their useful lives. To address many of these issues we have instituted a portfolio restructuring and reinvestment strategy that uses private sector techniques to tier our owned properties, remediate those that can still cost-effectively contribute to the overall financial strength of the FBF, and reshape other parts of the portfolio to include disposal of some properties. GSA measures the percentage of government-owned assets with a Return on Equity greater than 6 percent to gauge progress in this area. For each of the past several years, we have directed nearly \$1 billion toward the reinvestment in the modernization of our inventory, with on-time, on-budget completion a program priority. Within government owned space, the vacancy rate is 8.3 percent with 35 percent committed to tenants and 25 percent currently under construction or alteration. That makes the amount of vacant available space in the owned inventory 5.0 percent.

##### *Operations*

The most critical initiative affecting the Asset Management program is the Human Capital Strategy. The Human Capital Strategy/Workforce Transformation project is primarily driven by the following factors:

- An aging workforce and previous inability to replenish talent lost through attrition;
- Customer demands for more complete real estate services; and
- Skills needed to focus PBS business priorities on customer relationships.

PBS is currently engaged in implementing a comprehensive Human Capital Strategy that will guide the recruiting, training, management and deployment of our most important asset in the years ahead.

For GSA to meet our customers’ expectations and remain cost competitive with the private sector, we must maintain below-market operating costs and reduce energy consumption, while simultaneously maintaining a high level of customer satisfaction. Our strategy is to leverage buying power through better planning, using national tools like the Federal Supply Schedule, and holding contractors accountable for performance. We must leverage our workforce via user-friendly contracting vehicles, multi-regional operations/maintenance and energy contracts, electronic data systems, contractual data sharing, workload visibility, and national vendor alliance management and acquisition. Because many operational services are readily available from the private sector, and to obtain the best possible value for the taxpayer, we are subjecting many of the activities we currently perform with in-house staff to the rigorous analysis required by the A-76 process.

I am willing to answer any questions you or other members of the subcommittee may have on the President’s fiscal year 2005 budget request for the General Services Administration.

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#### GENERAL SERVICES ADMINISTRATION

##### PREPARED STATEMENT OF STEPHEN A. PERRY, ADMINISTRATOR

Mr. Chairman and members of the committee, the General Services Administration (GSA) budget request for fiscal year 2005 reflects our strong commitment to fulfilling our mission, which is: “to help Federal agencies better serve the public by

offering, at best value, superior workplaces, expert solutions, acquisition services and management policies. All areas of GSA, including the Public Buildings Service, the Federal Technology Service, the Federal Supply Service, our Office of Governmentwide Policy and our Office of Citizen Services are working together to efficiently and effectively meet the requirements of our Federal agency customers and the public.

Americans demand that the Federal Government show results. Accordingly, President Bush has challenged GSA and all Federal agencies to improve performance through the use of good management practices as outlined in the President's Management Agenda. In striving to achieve improved performance results, Federal agencies often rely upon GSA to provide the property management and acquisition services they need for successful operation. Additionally, each Federal worker relies upon GSA's assistance in creating a productive work environment by providing the appropriate facilities, equipment, supplies and services they need. GSA is committed to achieving our critically important mission in an efficient and effective manner that yields best value for the American taxpayer.

In the last few years, GSA has strengthened its Performance Management Process to document customer-focused goals, action plans and performance measures to enhance our achievement of high performance results and accountability. Our fiscal year 2005 budget request will provide the resources needed to achieve these high priority goals in support of Federal agencies, including our support of the U.S. Military, Homeland Security, the Judiciary and other law enforcement and security related agencies.

As you know, GSA offers its core expertise in acquisition services to Federal agencies on a "non-mandatory" basis. Therefore, agencies can decide to devote their own resources directly to the acquisition process or they can use GSA to provide this service. Where GSA provides the most efficient and effective approach, agencies are increasingly deciding to use GSA and thereby reducing the overall cost to the government. Further, this enables the customer agency's personnel to avoid duplication of effort and focus on their core missions. GSA charges fees to cover its costs and most of GSA's resources come from these customer payments. In fact, only a relatively small amount of GSA resources, close to 1 percent of funding, is from direct appropriations.

#### FISCAL YEAR 2005 BUDGET REQUEST

The total GSA budget for fiscal year 2005 budget is \$24.3 billion. This is a 3.0 percent increase over fiscal year 2004, representing increased business in revolving funds (i.e., the General Supply Fund and the Information Technology Fund). Approximately 1 percent, or \$218 million, of this amount is for funding GSA's appropriated activities.

The volume of services that GSA provides to other Federal agencies has increased each year because of our successful efforts to make GSA a more timely and cost-effective source for property management and acquisition services. At the same time, we have made process improvements and significantly streamlined our organization. Our employment level of 12,508 for fiscal year 2005 is 26 percent below the fiscal year 1995 levels. Lower employment levels mean that only 5.0 percent, or \$1.2 billion, of our budget is expended for salaries and benefits and that 95 percent of GSA's funding is spent directly with private sector firms for goods and services procured on behalf of Federal agencies.

For fiscal year 2005, although our overall net request for budget authority is down \$225 million from fiscal year 2004, given the increased income level there is a robust construction and repair and alteration program. In addition, our request also funds modest spending increases to support our E-Government component of the President's Management Agenda. The fiscal year 2005 budget does not include a request for an appropriation to the Federal Buildings Fund (FBF). The FBF New Obligational Authority request is funded entirely from rent revenue and other income to the Fund.

#### *Public Buildings Service*

GSA's Public Buildings Service (PBS) has reinvigorated the process for carrying out its responsibility to maximize the value of GSA's portfolio of government-owned buildings. The government-owned facilities under GSA's stewardship represent a real estate portfolio with a replacement value of approximately \$34.7 billion. For fiscal year 2005, we are requesting \$7.2 billion in New Obligational Authority (NOA) to spend available resources in the Federal Buildings Fund. Of this amount, \$980 million is for our Repairs and Alterations program.

One of GSA's biggest financial challenges is funding the large backlog of deferred maintenance and repair work at its government-owned facilities. To address this

challenge, we have taken steps to transform our owned portfolio into one comprised of well-maintained, modernized, functional assets with positive cash flows. We have determined that in order to better allocate our funds for capital investment, we must redeploy our non-performing assets so that those properties that remain in our portfolio will provide appropriate workplaces for Federal workers.

PBS has begun to implement the policy of Executive Order 13327 on Federal Real Property Asset Management. GSA already “promotes the efficient and economical use of America’s real property assets.” We use asset management principles to allocate the limited resources of the Federal Buildings Fund to address the backlog of Repairs and Alterations projects. These asset management principles were applied to develop our \$980 million Repairs and Alterations program for fiscal year 2005.

The program includes:

- \$394 million for basic (non-prospectus) Repairs and Alterations
- \$473 million for prospectus Repairs and Alterations
- \$50 million for design
- \$13 million for chlorofluorocarbons program
- \$30 million for energy conservation program
- \$20 million for glass fragmentation retention program

There is \$650 million for Construction and Acquisition of Facilities in GSA’s fiscal year 2005 budget request. It includes the following projects:

- \$381 million for construction for U.S. Courthouses in Los Angeles, CA and El Paso, TX; and design of a U.S. Courthouse in San Diego, CA
- \$89 million for FDA Consolidation in Montgomery County, MD
- \$14 million for FBI Facility in Los Angeles, CA
- \$2 million for Southeast Federal Center Site Remediation, Washington, DC
- \$53 million to purchase 10 West Jackson Blvd., Chicago, IL
- \$91 million for 12 Border Stations
- \$10 million for non-prospectus construction and acquisition
- \$10 million for repayment to the Judgment Fund

Government-owned space represents approximately half of our inventory, however, today we are continuing to secure leased space to meet general-purpose office and special space needs. For fiscal year 2005 we project adding 2.6 million rentable square feet of leased space to our inventory. Under the Federal Buildings Fund operating programs, the \$3.7 billion budget for Rental of Space is based on projections of known requirements such as (1) leases already in the inventory and the scheduled cost increases associated with these leases and (2) identified expansion and cancellation projects.

The \$1.7 billion budget request for Building Operations funds essential building services provided by PBS for facilities occupied by our Federal Government customers, including cleaning, maintenance, minor repairs, utilities, space management and other building services.

The following performance measures illustrate some of our successes.

- Costs for leased space are 7.4 percent below the industry average.
- Operating costs are 14.8 percent below industry benchmarks.
- Energy consumption has been reduced by 19 percent from the fiscal year 1985 baseline. PBS plans to reduce energy consumption by an additional 11 percent by the end of fiscal year 2005.
- PBS has improved the percentage of Repairs and Alterations projects completed on time from 75 percent in fiscal year 2001 to 78 percent in fiscal year 2003.

#### *Electronic Government*

Expanding the scope and level of the Federal electronic government (E-Gov) program is a major focus of the President’s Management Agenda. Through E-Gov initiatives GSA is transforming the way information is disseminated to the American people. By leveraging Internet technologies, GSA is building a more citizen-centric and results-oriented Federal Government. In support of E-Gov initiatives, our budget request includes \$23.4 million in Operating Appropriations for select E-Gov initiatives led by GSA, \$5 million for the E-Gov Fund, and \$40 million in the General Supply Fund for government-wide initiatives.

To provide much needed resources for E-Gov projects, GSA is proposing a new general provision that would amend existing law to permit the Administrator, after consulting with the Office of Management and Budget, to retain surplus funds generated by the operation of the General Supply Fund in an amount not to exceed \$40 million in any given fiscal year and use those funds for E-Gov initiatives. These funds would be used for government-wide E-Gov projects for purposes authorized under the E-Gov Act of 2002 (Section 3604 of Title 44). The fiscal year 2005 budget anticipates \$40 million in funding from the GSA General Supply Fund.

GSA realizes that common solutions shared by agencies are absolutely critical to the effective and secure operations of the government. The \$23.4 million requested in the fiscal year 2005 budget will be used to provide standardized Federal approaches to electronic government. GSA will provide a leadership role to customer agencies by integrating key E-Gov initiatives into the daily business of government. For example:

- USA Services, one of the President's E-Gov initiatives, is part of GSA's Office of Citizen Services and Communications. USA Services seeks to make government more citizen-centric by providing a front door where citizens can get answers to their questions about the Federal Government by phone, on line, by e-mail, or by print publications. At the same time, USA Services seeks to improve citizen customer service government-wide. We are requesting \$1.5 million to establish government-wide standards in customer service, performance benchmarking, and best practices for Federal contact centers responding to citizen inquiries.
- A component of USA Services is the internet site FirstGov.gov, the official web portal of the U.S. Government. We are requesting \$17.3 million, an increase of \$3.7 million, to maintain and enhance FirstGov.gov by further leveraging Internet technology and by providing a highly secure environment. And by sharing the FirstGov technology and infrastructure, we are helping the government reduce costs. In fiscal year 2003, there were 580 Federal web sites using FirstGov.gov search services as their primary search engine mechanism, equating to a savings of \$21 million from avoiding the need to purchase search engine software for each individual web site.
- GSA is playing a key role in setting standards for identity management and electronic authentication. In order for the Federal e-Government initiatives to be successful, the Office of Governmentwide Policy is working towards establishing a cross-agency governance structure and process for e-Authentication and identity management in order to unify Government systems. GSA is requesting \$4.6 million to support this effort, an increase of \$0.57 million.

Another key E-Gov initiative led by GSA is e-Travel. In 2003, the Office of Governmentwide Policy (OGP) and our partner agencies established a standard booking engine as well as a consistent travel and voucher system for the Federal Government. As the e-Travel service becomes operational, management of the e-Travel contracts will transfer from the Office of Governmentwide Policy (OGP) to the Federal Supply Service (FSS) in fiscal year 2005. FSS will integrate e-Travel with GSA's other travel service offerings. GSA will provide an additional \$9.9 million to this E-Gov project in fiscal year 2005 through the General Supply Fund.

We believe these and other E-Gov initiatives are critical to becoming a citizen-centric government. These projects provide government-wide solutions to meet common needs across agencies, thus eliminating redundancies and duplicate spending.

#### APPROPRIATION REQUEST

While only about 1 percent of the total proposed budget is funded through direct appropriations, our Operating activities are a vitally important part of GSA's total program. These funds support our Office of Governmentwide Policy function, the Office of Citizen Services and Communications, the E-Gov Fund, the Office of Inspector General, Former Presidents, the Presidential Transition, and various other operating programs. The \$218 million requested is \$15 million above fiscal year 2004 levels. Approximately half of this increase, \$7.7 million, is for Presidential transition.

Our request is shown by account in the following table:

#### THE FISCAL YEAR 2005 BUDGET IN SUMMARY

[In thousands of dollars]

|  | Fiscal Year 2003<br>Actual | Fiscal Year 2004<br>Current | Fiscal Year 2005<br>Request |
|--|----------------------------|-----------------------------|-----------------------------|
| <b>TOTAL OBLIGATIONS</b>                                       |                            |                             |                             |
| Operating Accounts (Appropriations) .....                      | \$853,133                  | \$206,550                   | \$218,682                   |
| Federal Buildings Fund Direct (Including Appropriations) ..... | 6,546,606                  | 7,100,494                   | 7,313,195                   |
| Reimbursable Programs .....                                    | 1,245,899                  | 1,014,798                   | 1,155,694                   |
| Real Property Relocation .....                                 | .....                      | 6,050                       | 6,000                       |
| General Supply Fund .....                                      | 4,066,351                  | 4,896,773                   | 5,130,708                   |
| Information Technology Fund .....                              | 10,034,941                 | 9,970,687                   | 10,071,313                  |
| Working Capital Fund .....                                     | 316,914                    | 347,877                     | 357,698                     |

## THE FISCAL YEAR 2005 BUDGET IN SUMMARY—Continued

[In thousands of dollars]

|  | Fiscal Year 2003<br>Actual | Fiscal Year 2004<br>Current | Fiscal Year 2005<br>Request |
|--|----------------------------|-----------------------------|-----------------------------|
| Federal Citizen Information Center Fund (Reimb.) .....   | 2,650                      | 3,901                       | 4,353                       |
| Permanent Appropriations .....   | 15,928                     | 29,493                      | 34,926                      |
| Subtotal .....   | 23,082,422                 | 23,576,623                  | 24,292,569                  |
| REQUIRING APPROPRIATIONS ACTION  |                            |                             |                             |
| Operating Appropriations:  |                            |                             |                             |
| Office of Governmentwide Policy .....  | 55,569                     | 59,669                      | 62,100                      |
| Operating Expenses, GSA .....  | 81,089                     | 83,971                      | 82,175                      |
| Electronic Government Fund .....   | 4,968                      | 2,982                       | 5,000                       |
| Election Reform Payments .....   | 650,000                    | 0                           | 0                           |
| Election Reform Reimbursements .....   | 14,903                     | 0                           | 0                           |
| Office of Inspector General .....  | 37,270                     | 38,938                      | 42,351                      |
| Federal Citizen Information Center .....   | 13,356                     | 13,917                      | 14,907                      |
| Presidential Transition .....  | 0                          | 0                           | 7,700                       |
| Former Presidents .....  | 3,156                      | 3,373                       | 3,449                       |
| Subtotal Budget Authority/Appropriation .....  | 860,311                    | 202,850                     | 217,682                     |
| Federal Buildings Fund New Obligational Authority:   |                            |                             |                             |
| Construction & Acquisition of Facilities .....   | 734,868                    | 745,314                     | 650,223                     |
| Repairs and Alterations .....  | 985,009                    | 1,002,997                   | 980,222                     |
| Installment Acquisition Payments .....   | 178,897                    | 169,677                     | 161,442                     |
| Rental of Space .....  | 3,381,265                  | 3,551,032                   | 3,672,315                   |
| Building Operations .....  | 1,546,514                  | 1,608,064                   | 1,709,522                   |
| Subtotal FBF New Obligational Authority .....  | 6,826,553                  | 7,077,084                   | 7,173,724                   |
| FBF Net Budget Authority .....   | 463,347                    | 254,194                     | 15,447                      |
| FBF Appropriations .....   | 375,711                    | 459,669                     | 0                           |
| TOTAL, Transportation/Treasury Appropriation Action (BA/NOA) ..                                | 7,673,508                  | 7,266,017                   | 7,376,499                   |
| Budget Authority .....   | 1,310,302                  | 443,127                     | 218,222                     |
| Appropriations .....   | 1,222,666                  | 648,602                     | 202,775                     |
| Total, VA/HUD Appropriations Action (BA): Federal Citizen Information<br>Center (Direct) ..... | 13,356                     | 13,917                      | 14,907                      |

Mr. Chairman, this concludes my formal statement, and I look forward to continuing to discuss our fiscal year 2005 budget request with you, members of the committee and your staff.

## DEPARTMENT OF TRANSPORTATION

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

## PREPARED STATEMENT OF ANNETTE M. SANDBERG, ADMINISTRATOR

## OVERVIEW: SAFETY, SECURITY, PRODUCTIVITY

People depend on motor carriers for the safe, reliable, and efficient movement of the goods they use everyday. The trucking industry comprises almost 650,000 motor carriers operating in interstate commerce and some 7.9 million large trucks. Trucks account for most of the freight movement in our Nation's transportation system. Approximately 80 percent (by value) of all domestic commodity movements are carried by truck. The trucking industry also employs approximately 9.9 million people in jobs related to trucking activity, including several million drivers. People rely on motor coaches for safe and secure transportation. Commercial motor coaches traveled 2.4 billion miles in 2001, carrying more than 500 million passengers. Clearly,

both the trucking and motor coach industries contribute to competitiveness and a robust economy.

Mobility, as crucial as it is to our economic well-being, presents significant hazards in terms of safety on our highways. Trucks and buses share roadways with passenger vehicles and pedestrians. Over the last several years, approximately 5,000 people have died annually in crashes involving a truck. This is unacceptable. Truck transportation of hazardous materials presents even greater potential safety consequences. And, there is increasing recognition and appreciation that there can be no safety without security. In most cases, there is a close connection between safety and security, and strategies designed to mitigate one often impact both.

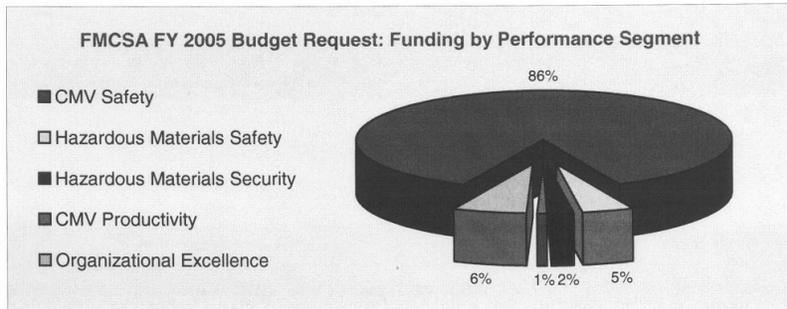
FMCSA has defined five strategic goals linking to Department of Transportation and national objectives, illustrated in Figure 1 below. Among these, safety is FMCSA's primary mission. At the same time, the agency looks to employ a coordinated strategy that balances the inter-relationships between these missions and leverages solutions that achieve the greatest overall public good.

Figure 1



The agency's \$455 million request for fiscal year 2005 will fund programs and activities supporting all five agency strategic goals. Figure 2, below, illustrates the allocation of funds by agency strategic goal in our fiscal year 2005 budget request.

Figure 2



## CMV SAFETY

Safety is the capstone of this agency's strategic hierarchy. The FMCSA safety vision is to develop and promote, in coordination with other Departmental modes, data-driven, analysis-based, and innovative programs to achieve continuous safety improvements in the Nation's highway system, intermodal connections, and motor carrier operations. Saving lives and reducing crashes involving trucks and motor coaches on our highways is the agency's primary mission, and our fiscal year 2005 budget request allocates approximately 86 percent of the agency's resources to 10 performance segments in support of this strategic goal. Figures for 2002 show a reduction in truck-related fatalities of 4.2 percent from 2001, despite a projected increase in truck vehicle miles traveled (TVMT). This decrease extends to five consecutive years (1998–2002) the trend of improved commercial motor vehicle safety. We may be beginning to realize the results of agency regulation and safety interventions undertaken since the establishment of the agency in 1999, enabling us to pursue with greater confidence our coordinated safety strategy.

With the encouragement of Secretary Mineta, FHWA Administrator Peters, NHTSA Administrator Runge, and I are coming together for safety. Improving highway safety is an administration and national goal. All highway fatalities are unacceptable. If we are to stem the tide of this terrible loss of life on our Nation's highways we all must play a role, combine our knowledge and expertise, and coordinate our program delivery. My colleagues and I share the belief that our programs are complementary rather than competing. So, FMCSA will work together with FHWA and NHTSA to pool and focus our effort, energy, and resources where they will have the greatest impact on safety. Our new CMV safety goal, harmonized with the DOT Highway Safety performance goal and FHWA and NHTSA measures, evinces our intermodal approach. Encouragingly, FMCSA achieved its fatality rate performance target for 2002.

Enforcement is FMCSA's primary safety mitigation strategy and the agency's core competency. Appropriately, it is the focus of the greatest share of program resources. FMCSA conducts enforcement operations and provides grants to support State enforcement efforts. To the extent possible, we look to increasingly align Federal and State enforcement operations in mutually-reinforcing ways. The effectiveness of enforcement interventions in reducing crashes, fatalities, and injuries is borne out by findings of the CR Impact Assessment Model and the Roadside Inspection and Traffic Enforcement Intervention Model. We propose to expand the toolbox of enforcement techniques, close loopholes permitting unsafe practices, and improve our penalty structure. We look to implement a balanced enforcement model—an approach that balances and capitalizes on prevention (compliance reviews, safety audits), deterrence (inspections, traffic enforcement), and remediation (sanctions and penalties) interventions. New entrant safety audits will broaden our enforcement regime.

Information is a high near-term priority. As a data-driven organization, information is the essential backbone for all major FMCSA operational and support programs and activities. To ensure our maximum operational effectiveness and efficiency, we need to base our decisions on the highest quality data possible and sound statistical analysis of that data. A highlight for fiscal year 2005 will be issuing the results of the Large Truck Crash Causation Study. Information initiatives are addressed in the respective performance segments and the cross-cutting Information Management proposal for fiscal year 2005 is attached as an Appendix.

States play essential partnership roles in highway safety, providing critical safety data and extending regulation and enforcement reach. The Motor Carrier Safety Assistance Program, which provides (MCSAP) grants to State highway safety authorities, is the primary means we have of moving our goal of safety advocacy from focus to action.

## HM SAFETY

FMCSA authority extends to enforcing compliance with the Federal Hazardous Materials Regulations (FHMRS) to provide adequate protection against the risks to life and property inherent in the highway transportation of hazardous materials in commerce. The agency's goal is to reduce serious reportable hazardous materials incidents involving trucks. This links to and supports the DOT hazardous materials performance goal. Approximately 5 percent of the agency's fiscal year 2005 budget request is attributed to 3 performance segments contributing to achievement of this goal. A priority initiative is the institution of a grant program to extend safety inspection by States of HM carriers crossing the borders.

## HM SECURITY

Continued emphasis on commercial carrier, driver, vehicle, and cargo security, and particularly hazardous materials operations is required, supporting the DOT Security strategic goal and administration priorities. Following the successful transfer of the Transportation Security Administration (TSA) to the Department of Homeland Security, FMCSA will continue to work in concert with TSA and other agencies to establish the protocols ensuring the security of commercial motor vehicle transportation. To this end, FMCSA has designated approximately 2 percent of the fiscal year 2005 budget request to two performance segments aimed at heightening the awareness of hazardous materials carriers to security threats.

## CMV PRODUCTIVITY

The efficient movement of goods is a critical component of a healthy economy. FMCSA's authority extends to ensuring compliance of household goods carriers with the Federal Motor Carrier Commercial Regulations (FMCCRs). Judging by complaints received on our hotline, and more recently on the new website we have established for this purpose, closer scrutiny of and attention to the responsibilities of carriers and the rights of consumers is needed. Reducing the cycle time for response to complaints is a priority. Our fiscal year 2005 budget request includes approximately 1 percent for two performance segments supporting CMV productivity and the integrity of goods movement. Our aim is to provide informative and timely responses to all household goods complaints and HHG Congressional inquiries. We will track our progress toward accomplishment of this goal by the following two new performance metrics: percent of HHG consumer complaints receiving an initial response within 72 hours of the complaint, and percent of HHG Congressional inquiries receiving an initial response within the DOT time limit.

## ORGANIZATIONAL EXCELLENCE

At the core of organizational excellence are our strategies for developing, acquiring, and sustaining the components of capability to perform our safety, security, and productivity missions: people, information, and financial resources. The President's Management Agenda (PMA) frames our agency efforts to ensure we put the right capability in the right place, at the right time, and at the right cost. Our five Organizational Excellence performance segments align with the PMA initiatives. We aim to sharpen our resource effectiveness and have allocated 6 percent of our fiscal year 2005 budget request in support of these performance-accelerating strategies.

In addition to the PMA, we are increasingly integrating findings and recommendations of the Government Accounting Office (GAO), DOT Office of the Inspector General (OIG), and the National Transportation Safety Board (NTSB) as integral components of our agency strategy and operational guidance. Our activities supporting these recommendations are addressed in our performance budget narrative. As a result of these efforts, we are pleased to have closed numerous recommendations in fiscal year 2002.

*Strategic Management of Human Capital and Competitive Sourcing.*—We will soon complete our agency-wide competency survey, and the priority objective will be the completion of the agency's Human Capital Plan. The Human Capital Plan will provide baseline information about the competencies of our workforce relative to our mission and performance targets; projections of potential competency gaps; and strategies for preventing those gaps. Competitive Sourcing is one approach in a coordinated strategy for managing human capital effectively and efficiently, along with hiring, learning and development, the use of personnel flexibilities, restructuring and reorganization of work, and contracting new work to result in best-value service to our customers.

*Budget and Performance Integration and Financial and Procurement Performance.*—Our agency's initial performance budget effort 1 year ago provided the framework for a more performance-based approach to formulation of this year's request. Agency senior leadership met and reviewed cross-cutting performance implications in the allocation of program resources in this performance budget request for fiscal year 2005. To advance our resource-to-results linkage, we have integrated our grant programs into our program logic, the better to track and discern the contribution of complementary Federal and State program efforts. We are also piloting FMCSA Division Administrator annual State plans to further increase the linkage between Federal and State plans, and to strengthen alignment with national goals. Our alignment and attribution of resources by performance segment also supports our advances in managerial cost accounting.

*E-Government.*—FMCSA is a data-driven and citizen-centered organization. The agency looks to increasingly capitalize on information and IT to streamline internal processes, and to increase public accessibility to programs and information. Our e-Gov initiatives include advances in e-grants, business compliance one-stop, e-rule-making, and others.

#### FMCSA ADMINISTRATOR'S IMPERATIVES

My priorities for fiscal year 2004–2005 include:

- Full implementation of the New Entrant Program as mandated by MCSIA
- Reauthorization of FMCSA safety programs
- Improved safety data to inform targeting of enforcement operations
- Reduction in the backlog of rulemakings
- Improving the credibility and integrity of the CDL program
- Improving cycle time for response to household goods complaints.

#### BUREAU OF TRANSPORTATION STATISTICS

##### PREPARED STATEMENT OF RICHARD KOWALEWSKI, DEPUTY DIRECTOR

Mr. Chairman, Ranking Member Murray, members of the subcommittee, thank you for the opportunity to discuss the Bureau of Transportation Statistics' fiscal year 2005 budget request.

The Bureau of Transportation Statistics (BTS) proudly joins other agencies in our Federal statistical system to provide the unbiased data that drive planning, projections, and policies at the Federal, State, and local levels. Those decisions in turn determine the course of countless business and civic initiatives that support our prosperity, quality of life, and well-being as a Nation. In the transportation arena, BTS is committed to helping ensure the health and growth of efficient, safe, and environmentally sound infrastructure and operations across the various transportation modes.

The availability and use of BTS data support each of Secretary Mineta's Strategic Goals of safety, mobility, global connectivity, environmental stewardship, security, and organizational excellence. While our data are critical for decision making, they also provide an important, unbiased report card. The success of government programs cannot be simply proclaimed; it must be objectively measurable by the people those programs serve. Thus, BTS plays a critical role at both ends of the policy-making process: we fuel transportation decisions and help provide critical performance benchmarks. Operating under the strict guidelines that apply to any Federal statistical agency, and in line with congressional intent in creating BTS, we do our work objectively, free of bias toward any one mode of transportation.

#### RECENT ACCOMPLISHMENTS

BTS has accomplished much in the past year and has set its sights on doing fewer things better in the budget year to come. Our fiscal year 2005 budget request of \$32.2 million from the Highway Trust Fund reflects critical information needs and incorporates decisions we have made internally to further the work that supports our mandate. In addition, as authorized in the VISION 100 aviation legislation, we propose that \$4.045 million in reimbursable funding from the Airport and Airway Trust Fund be used to cover direct costs of our air transportation statistics program, which produces our most-requested and closely watched data.

BTS's air transportation statistics program is relied upon for decisions with far-reaching economic implications. Our data on passenger enplanements drive the Federal Aviation Administration's (FAA) distribution of Airport Improvement Grants, and our data on flight delays and their causes help in FAA's decisions about infrastructure and operational investments, as well as decisions by the airlines and the traveling public. We have worked with Alaskan carriers to improve the quality of the monthly traffic data that they report to BTS and which the U.S. Postal Service uses to decide which carriers are eligible to receive mail contracts for intra-Alaskan mail under the Rural Service Improvement Act. We provided airline financial and operating information for decisions on post-9/11 grants and loan guarantees to passenger and freight carriers. Our aviation data assist the Transportation Security Administration in decisions regarding the allocation and deployment of resources across the country, and support the Office of the Secretary in making decisions about service to underserved communities and on international routes.

For more than 11 years, Congress also has turned to BTS for both in-depth and quick turn-around answers, briefings, and visual presentations of data. We have

analyzed the impact of railroad rationalization in the upper Great Plains, compared the costs of highway and rail construction, and assessed the impact of international trade on highway demands in our border States. We have prepared maps showing structurally deficient and functionally obsolete bridges in each State and congressional district so that members of Congress can be better informed in setting priorities on infrastructure needs.

As the smallest of the Federal statistical agencies, BTS has always worked hard to maximize available resources, matching the right expertise to the job at hand and tuning our programs based on customers' feedback. That feedback has helped us determine the most effective approach in doing fewer things better.

In 1997, for example, we developed an innovative survey design that allowed us to cut the size of the Commodity Flow Survey in half, reducing its budgetary cost and burden on respondents, without compromising data quality. Between 2001 and 2003 we replaced a 30-year-old patchwork mainframe computer system that had been running our aviation data programs and replaced it with a modern mid-tier computer platform to increase our efficiency and the data's usability. Our work in helping to develop, validate, and verify performance measures for DOT contributed toward the high ranking of the Department's fiscal year 2003 performance report by the Mercatus Center of George Mason University—DOT's performance report tied for number one in the Federal Government.

BTS is working to improve its operations through initiatives of the President's Management Agenda, and to reorganize our lines of business to be simpler, more easily managed, and more results-oriented. As envisioned in the Administration's Safe, Accountable, Flexible, and Efficient Transportation Equity Act (SAFETEA) legislation and our budget, BTS proposes to sharpen its focus around five core data programs and two cross-cutting research programs. The core data programs are freight, travel, transportation economics, air transportation, and geographic information systems. The cross-cutting programs assess overall transportation system performance and improved statistical methods to address transportation-specific problems.

In the freight and travel areas, this past year saw the release by BTS of the full datasets from our two major survey activities, the National Household Travel Survey, collected in 2001–2002 with the Federal Highway Administration (FHWA), and the Commodity Flow Survey, collected in 2002 with the Census Bureau. Analysis of each of these datasets will play a critical role in driving Federal, State, and local transportation planning and investment for the next 5 to 10 years.

BTS is especially pleased to have unveiled two new economic indices that for the first time provide a comprehensive picture of transportation activity, help us to analyze its economic impact, and provide better information on what passengers pay for airline service:

- The monthly Transportation Services Index (TSI) measures outputs in the for-hire movement of freight and people and is a new leading economic indicator, better clarifying our understanding of transportation's relationship to the economy.
- The quarterly Air Travel Price Index (ATPI) illustrates the rate of national and local market fluctuations in the price of air travel. The ATPI yields greater understanding of the cause and effect relationship between airline industry market decisions, external market factors, and the affordability of travel.

These indices provide new insight into interrelationships and potential macro-economic impacts of changes in transportation activity. This, in turn, helps economists better anticipate turning points in our Nation's economy. We are also working, consistent with the late Senator Moynihan's original vision for BTS, on improving our measures of the productivity of the Nation's transportation sector.

In fiscal year 2004, BTS also released an innovative product called GeoFreight, an intermodal freight planning tool on CD-ROM that graphically displays the geographic relationship between freight movements and infrastructure. Developed jointly with FHWA, the tool was designed to aid the planning of State and local governments and augment their ability to anticipate demands on capacity.

Our work on improved statistical methods has led to the adoption of a new method to protect the confidentiality of statistical data that responds to customer demands to make more data available while preventing the disclosure of confidential data. We also led the development of Information and Dissemination Quality Guidelines for the Department, as required by recent data quality legislation.

We have also worked at increasing the accessibility of our data. Our Web-based data platform, TranStats, has won several awards as an exemplary e-government initiative, including the Industry Advisory Council/Federal CIO Council Excellence.Gov Award (Top 5 Winner), the Sun/Computerworld iForce Excellence Award for Business Intelligence, and the Computerworld Honors Program Award. Along

with our other web-based information services, we serve an estimated 3.7 million users per year, allowing users to analyze data on-line and access electronic copies of the documents of the National Transportation Library.

#### CHALLENGES THAT REMAIN

While BTS has made good progress in many areas of our statistical programs, challenges remain that need to be addressed to improve BTS's performance, such as BTS's freight flow data for imports and exports, geolocation data on the Nation's transportation network, and exposure data for general aviation operations.

Recently, the Transportation Research Board has called upon BTS to fill gaps in our freight data program. The modest budget increase we have requested for fiscal year 2005, along with our refocusing of effort on core programs, will allow us to increase sample sizes on our key freight and travel data, improving the quality of data available to our users.

BTS has much to accomplish at a time when our Nation has a new level of interest in and understanding of how the interconnectedness of our transportation system affects global competitiveness and national security. We need to develop a more timely and complete understanding of freight flows, as our economy moves increasingly to a just-in-time rhythm. We need a more comprehensive overview of our Nation's mobility and connectivity by collecting data that link transit trips, passenger terminal information, highway usage and capacity, and levels of commercial service. We also need improved highway safety exposure data, allowing improved analysis of the area where most of our transportation deaths occur. Possession of these data would reveal areas of economic opportunity, help us set our course more precisely, and help us to better predict the potential transportation impacts of terrorist attacks.

We look forward to working with the committee to meet the Nation's needs for reliable, accurate transportation data, so that our policymaking can be well-informed and our transportation planning can make accurate assessments of the Nation's transportation needs. We will continue to seek out innovative data collection strategies that provide better data quality at lower cost.

#### RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

##### PREPARED STATEMENT OF SAMUEL G. BONASSO, DEPUTY ADMINISTRATOR

Chairman Shelby, Ranking Member Murray, and members of the committee, on behalf of the Research and Special Programs Administration (RSPA), thank you for the opportunity to address the important safety, environmental and other performance goals supported by the President's fiscal year 2005 funding request for RSPA. With the active participation of our State, local, private sector and university partners, RSPA has made significant advances in meeting our performance goals, and we are looking forward to working with the members of this committee and with the Congress in continuing to reduce deaths, injuries, property damage and economic consequences resulting from hazardous materials, pipeline, and other transportation incidents. Working together, we need to develop and implement the programs and systems America needs to meet the important transportation safety challenges facing the Nation.

Effective fulfillment of RSPA's safety responsibilities is critical to both the transportation and economic needs of the Nation. Approximately 28 percent of America's freight ton-miles involve transportation of hazardous materials, regulated by RSPA. The safe and secure movement of hazardous materials is fundamental to America's economy and industry, delivering much of the petroleum products and raw materials that fuel American business. Hazardous materials are also fundamental to everyday personal needs—for example, chlorine treats our water, making it safe to drink; anhydrous ammonia fertilizes our fields, allowing America to feed our Nation and some of the world. The volume of hazardous materials regulated by RSPA is substantial:

- The Office of Pipeline Safety regulates 2.3 million miles of pipeline that move 63 percent of America's consumed energy—they are literally the arteries of our way of life. On a ton-mile basis, pipelines carry 21 percent of the Nation's freight.
- The Office of Hazardous Materials Safety regulates over 800,000 daily shipments of hazardous materials—working with all modes of transportation on packaging and handling to help assure safe movement through America's transportation system. Hazardous materials outside of pipelines account for 7 percent of the freight ton-miles transported annually in the United States.

- The Transportation Safety Institute conducts cutting-edge training in hazardous materials safety, as well as safety, security and environmental stewardship training in all modes of transportation for State and local first responders, public and private sector engineers, inspectors, and other employees.
- Equally important to the efficient operation of America's transportation systems are RSPA's emergency transportation and research activities. Through RSPA:
  - The Office of Emergency Transportation manages the DOT Crisis Management Center, a 24/7 operations center to track and respond to natural and human-caused transportation incidents; and coordinates continuity of operations and emergency transportation planning for all Department of Transportation's (DOT) operating administrations and in direct coordination with all other Federal departments.
  - The Office of Innovation, Research and Education leads DOT's involvement in the President's Hydrogen Fuel Initiative, coordinating with all DOT administrations, the Department of Energy and other Federal agencies in conducting research and development and standards-setting activities to ensure the safety of hydrogen-fueled vehicles and the infrastructure to support them.
  - The Office of Innovation, Research and Education manages 26 University Transportation Centers that conduct research in all areas of transportation engineering and management, advancing the state of the practice and preparing students to be the transportation systems leaders of tomorrow.
  - The Volpe National Transportation Systems Center provides technical systems expertise to all DOT agencies and non-DOT clients in all areas of transportation systems, including safety, homeland and national security, mobility, environmental stewardship, systems engineering, navigation, operator performance, and economic analysis.

Implicit in all of these regulatory, technical, research and training activities supporting safety is a significant concern for national and homeland security. Our overall focus on safety supports administration and Congressional goals for improving transportation security. All of RSPA's offices work closely with the Department of Homeland Security to ensure that our program activities keep security as an important focus, an integral part of providing safe transportation systems.

RSPA's budget is performance-based, keyed to DOT's six strategic goals, rather than to specific "budget line activities." RSPA strives to deliver the results that Congress expects in all six DOT strategic areas:

- Safety*.—Enhancing public health and safety by working toward elimination of transportation-related deaths and injuries.
- Mobility*.—Advancing accessible, efficient intermodal transportation for the movement of people and goods.
- Global Connectivity*.—Facilitating a more efficient domestic and global transportation system that enables economic growth and development.
- Environmental Stewardship*.—Promoting transportation solutions that enhance communities and protect the natural and built environment.
- Security*.—Balancing homeland and national security transportation requirements with the mobility needs of the Nation for personal travel and commerce.
- Organizational Excellence*.—Advancing the Department's ability to manage for results and achieve the goals of the President's Management Agenda.

The President's total budget request for RSPA in fiscal year 2005 is \$137.3 million, an increase of \$11.7 million (9.0 percent) over the fiscal year 2004 enacted level. Seventy-five percent of the President's fiscal year 2005 budget request for RSPA is dedicated towards achieving results supporting the DOT safety strategic goal. Another 16 percent supports the environmental stewardship strategic goal, reducing environmental damage from pipeline incidents, with the remaining 9 percent supporting the other goals. The additional resources requested will primarily support efforts to reduce hazardous materials incidents and to advance preparation for emergency transportation response.

RSPA sets performance goals to implement the DOT strategic goals. Some of those goals, and the funding requested to achieve them, include:

- Safety*.—RSPA requests \$103.3 million, an increase of \$7.6 million, to meet our three critical safety performance goals:
  - Reduce deaths, injuries, property damage and economic consequences resulting from hazardous materials transportation incidents.
  - Reduce death, injuries, and property damage resulting from pipeline incidents.
  - Promote the safe transport of hydrogen fuels and fuel systems so that alternative fuel vehicles can be developed as a safe alternative to petroleum-fueled vehicles.

- Mobility/Security*.—RSPA requests \$5.7 million, an increase of \$2.0 million, in order to prepare our Nation's transportation system—in advance—to aid people and property harmed by natural and terrorist disasters.
- Environmental Stewardship*.—RSPA requests \$22.5 million, an increase of \$1.7 million, to reduce the amount of oil or other hazardous liquids released from pipeline systems.
- Organizational Excellence*.—RSPA requests \$5.9 million, an increase of \$0.4 million, in order to improve our operating efficiencies in all programmatic areas. RSPA is achieving results in all of our critical areas, and is committed to continuing improvements in transportation safety. For example:
  - The number of serious hazardous materials incidents in transportation has dropped by 18.5 percent since 2000.
  - RSPA's Office of Pipeline Safety has addressed most of a 12-year backlog of outstanding Congressional mandates and recommendations from oversight agencies.
  - RSPA is ensuring that pipelines are tested and repaired according to higher integrity management standards, and RSPA is working with our Federal partners to expedite the repair permits.
  - Hazardous liquid pipeline incidents have decreased by 28 percent and the volume of oil spilled has been significantly reduced.
  - Third party excavation accidents have decreased by 59 percent over the past 10 years, even while housing starts were on the rise, which brings construction risk near pipelines by encroachment on rights-of-way.
  - RSPA's Transportation Capability Assessment for Readiness (TCAR) scores continue to improve annually.
  - The Transportation Safety Institute trains over 50,000 students annually, graduated its 650,000th student in 2003, and recently acquired university credit for various courses.
  - The University Transportation Centers continue to graduate over 1,500 students with advanced degrees annually.
  - RSPA's Hazardous Materials Emergency Preparedness Grants program, which prepares communities to respond to hazardous materials incidents, received a "moderately effective" score of 83 percent on a Program Assessment Rating Tool (PART) analysis conducted for the fiscal year 2005 budget cycle. We are working to remedy implement the recommendations resulting from the PART analysis.

In conclusion, RSPA's requested \$11.7 million increase will be invested in improving our performance, further reducing death, injuries, property damage and economic consequences resulting from transportation incidents.

Again, Mr. Chairman, thank you for the opportunity to testify before you today. I look forward to responding to any questions you may have.

## DEPARTMENT OF THE TREASURY

### FINANCIAL CRIMES ENFORCEMENT NETWORK

#### PREPARED STATEMENT OF WILLIAM J. FOX, DIRECTOR

Chairman Shelby, Senator Murray, and members of the committee, thank you for the opportunity to submit my statement for the record on the President's fiscal year 2005 budget request for the Financial Crimes Enforcement Network. This \$7.271 million request reflects the important role FinCEN plays in the United States government's efforts to understand, detect, and prevent terrorist financing.

On December 1, 2003, I became FinCEN's fourth director. Prior to coming to FinCEN, I was working as the principal assistant to the General Counsel of the Treasury Department on issues relating to terrorist financing, which were issues that occupied a great deal of my time. Coming from the Department, I understood, to a large extent, the nature of FinCEN's responsibilities and what it was doing to carry out the obligations imposed by these responsibilities. In these 5 months, I have done a great deal of listening and learning from inside and outside of FinCEN. I have met extensively with the law enforcement and intelligence communities that we serve and the financial industry that we help regulate. I also have met with some of my counterparts in foreign governments and communicated with many more and I have met with and listened to the staffs of interested committees in the Congress—including this subcommittee.

In this short time, I have found an organization populated with employees with diverse and highly specialized talents, who are extremely dedicated to the agency

and its mission. I have found an agency that is a good steward of the human and capital resources that have been provided by the Congress. However, I have also found an agency facing many important challenges—challenges relating to the effective and efficient management of the extremely sensitive data collected under the Bank Secrecy Act; challenges relating to its analytic staff and the analytic product they produce; challenges relating to the administration of its regulatory programs under the Bank Secrecy Act; challenges relating to refocusing its important partnerships with financial intelligence units around the world—the Egmont Group; and, challenges relating to the agency’s present organizational structure.

My statement will address how FinCEN is going to meet these challenges and then it will focus on our fiscal year 2005 budget request.

#### BACKGROUND

FinCEN’s mission is to help safeguard the financial system of the United States from being abused by criminals and terrorists. FinCEN works to accomplish its mission through: (1) administration of the Bank Secrecy Act—a regulatory regime that provides for the reporting of highly sensitive financial data that are critical to investigations of financial crime; (2) dissemination of the data reported under the Bank Secrecy Act to law enforcement and, under appropriate circumstances, the intelligence community; (3) analysis of information related to illicit finance—both strategic and tactical analysis; and, (4) the education and outreach provided to law enforcement and the financial industry on issues relating to illicit finance. FinCEN has many attributes that are key to understanding the agency and how it works to achieve its mission:

—*FinCEN is a regulatory agency.*—FinCEN has an obligation to administer the Bank Secrecy Act, the principal regulatory statute aimed at addressing the problems of money laundering and other forms of illicit finance, including terrorist financing. It is responsible for shaping and implementing this regulatory regime and, in concert with the functional banking, securities, and commodities regulators and the Internal Revenue Service, for ensuring compliance with that regime. The agency is also charged with protecting the integrity and confidentiality of the information collected under the Bank Secrecy Act.

—*FinCEN is a financial intelligence agency.*—While not a member of the intelligence community, FinCEN, with the help of the Internal Revenue Service, collects, houses, analyzes and disseminates financial information critical to investigations of illicit finance.

—*FinCEN is a law enforcement support agency.*—While FinCEN has no criminal investigative or arrest authority, much of our effort supports the detection, investigation and successful prosecution of financial crime.

—*FinCEN is a network.*—We are not directed to support one agency or a select group of agencies. We make our information, products and services available to all agencies that have a role in investigating illicit finance. In fact, we network these agencies. Our technology tells us when different agencies are searching the same data and we put those agencies together—avoiding investigative overlap and permitting the agencies to leverage resources and information.

Given this important mission, FinCEN fits perfectly in the Department of the Treasury; possibly even more so after the Homeland Security reorganization rather than before that reorganization. The creation of the Office of Terrorism and Financial Intelligence within Treasury only enhances that fit. FinCEN will be able to help “operationalize” Treasury’s policy priorities on these important issues and our operational analytic work will complement the analysis that will eventually be done in the newly created Office of Financial Intelligence. I believe this coordinated effort will lead to a greater emphasis and understanding of money laundering, terrorist financing and other forms of illicit finance not only at Treasury, but within the United States, and that will make us all safer. FinCEN will also benefit from the Department-wide, policy-coordinating role this office will provide.

#### FINCEN’S COUNTER-TERRORISM STRATEGY

The single, most important operational priority for FinCEN is counter-terrorism support to law enforcement and the intelligence community. To emphasize the importance of this work we have improved and are now implementing a comprehensive counter-terrorism strategy that draws from our analytic support to law enforcement, our regulatory tools and expertise, and our international networking capabilities. We believe the implementation of this strategy will strengthen our focus and ensure that FinCEN is more active and aggressive rather than reactive on issues relating to terrorism. The strategy has five basic components.

#### *Analysis of Terrorist Financing Suspicious Activity Reports*

FinCEN analyzes suspicious activity reports for both tactical and strategic value. At the tactical level, we are implementing a program in which every report that indicates a connection to terrorism is immediately reviewed and validated and then analyzed with other available information. This information will be packaged and referred to the Terrorist Threat Integration Center (TTIC), FBI-TFOS, and other relevant law enforcement. Moreover, this information will be stored in a manner that facilitates its access and availability for analysis. We have already had success with this process resulting in important information being passed along to law enforcement agency.

At the strategic level, we are also devoting analysts to study Bank Secrecy Act data and all other available information to gain an increased understanding of methodologies, typologies, geographic patterns of activity and systemic vulnerabilities relating to terrorist financing. These analysts will focus on regional and systemic “hot spots” for terrorist financing, studying and analyzing all sources of information. Such focus, which produced the study mandated by the Congress on Informal Value Transfer Systems, can significantly add to the knowledge base of law enforcement. For example, we have begun a process to comprehensively study illicit trade in diamonds and other precious stones and metals and the links to terrorist finance. Although this initiative is currently underway, in order to fully implement it, we will need to upgrade analysts’ security clearances and obtain additional equipment appropriate for the handling and processing of national security information.

#### *USA PATRIOT Act Sections 311 and 314 Implementation*

Some of the new tools afforded us through the USA PATRIOT Act are proving to be invaluable in the war against terrorist financing, particularly Section 314 of the Act. FinCEN also has initiated a program to provide the analytic, regulatory and legal resources needed to support effective implementation of Section 311 by the Treasury Department. I have directed my staff to give priority to the pro-active targeting of those financial institutions and jurisdictions that are involved, wittingly or unwittingly, in the financing of terror. This prophylactic measure goes to the very heart of FinCEN’s mission—to safeguard the financial system of the United States from money launderers and the financiers of terror.

Building on a successful pilot program that we began with the Bureau of Immigration and Customs on a 314(a) money-laundering request, FinCEN is now dedicating several analysts to apply this program to all 314(a) terrorism requests. Specifically, the analysts will run all 314(a) terrorism-related requests against Bank Secrecy Act data concurrent with these requests being sent to financial institutions. Based on this initial data review, the law enforcement requester will then be able to request a more in-depth analysis if desired.

#### *International Cooperation and Information Sharing*

FinCEN will increase the exchange of terrorist financing investigative and analytical information with other foreign financial intelligence units around the world. We are implementing a program by which FinCEN will automatically request information from relevant financial-intelligence-unit counterparts as part of any terrorism related analysis project. As part of this program, we are also upgrading our response to incoming requests for information from financial intelligence units by providing appropriate information and analysis from all sources of information.

#### *Terrorism Regulatory Outreach*

We will continue our work in improving our ability to provide information to the regulated community to better identify potential terrorist financing activity. One area of particular focus will be money services businesses. Money services businesses continue to require more attention and resources, and FinCEN will undertake an initiative to educate segments of the industry most vulnerable to terrorist abuse. These segments include small businesses that typically offer money remittance services, check cashing, money orders, stored value products and other informal value transfer systems. As we learned from the attacks of September 11, funds used to finance terrorist operations can be and have been moved in small amounts using, for example, wire transfer, traveler’s check and automated teller machine services. I have directed FinCEN’s Office of Regulatory Programs and Office of Strategic Analysis to enhance our outreach program that will include training on how terrorists have used and continue to use money services businesses; the reason for and importance of the registration requirement for money services businesses; and the importance of complying with the reporting requirements of the Bank Secrecy Act, especially suspicious activity reporting. We are planning to streamline sus-

picious activity reporting for small money services businesses with a simplified form.

#### *Analytic Skill Development*

As a general matter, I have directed that FinCEN make training of personnel the highest human resource management priority. The top priority of this new program will be analytic skill development relating to terrorist financing. We plan to begin by seeking reciprocal opportunities for terrorist finance analytic skill development within law enforcement, the Egmont Group, the intelligence community and the financial industry. This initiative is intended to build a foundation for continuous improvement of our analytic assets through cross training and diversification; production of joint terrorist financing threat assessments and other reports; understanding of intelligence processes; the international context of terrorist financing; and the financial industry perspective. In addition, we will need to support training focused on financial forensics, language skills, and geographically targeted studies that focus on culture, infrastructure and other unique aspects of a particular region.

I believe the full implementation of this strategy will materially assist the Department of the Treasury and the United States in addressing the financing of terror. Approaching this problem in a systemic way with dedicated resources is, in our view, the best way to make this strategy a success.

#### FINCEN'S NEAR TERM CHALLENGES

As I mentioned before, FinCEN is facing a number of significant challenges. Because each of these challenges affects FinCEN's effectiveness, I feel it is important to raise these challenges with the subcommittee.

#### *Security and Dissemination of Bank Secrecy Act Information*

As the administrator of the Bank Secrecy Act, there is no duty I view as more critical than the effective collection, management and dissemination of the highly sensitive and confidential information collected under that Act. If FinCEN does nothing else, it must ensure that such data are properly collected, are secure and are appropriately and efficiently disseminated. This is FinCEN's core responsibility.

FinCEN must modernize the way it houses and provides access to information collected under the Bank Secrecy Act. Currently, our data are accessed by most of our customers through an outmoded mainframe system. This system does not have the robust data mining capabilities or analytical tools we should be providing. This has led many of our customers to ask for wholesale copies of the data, or direct access to the data in a way that will not permit us to perform our responsibilities relating to the administration and management of the data. Accordingly, we must create a system that provides robust data mining and analytical tools to our customers in law enforcement and that preserves our ability to: (1) effectively administer and secure and audit use of the information; (2) network those persons who are querying the data to prevent overlapping investigations and encourage efficient use of law enforcement resources; and, (3) develop and provide adequate feedback to the financial industries we regulate, which will ensure better reporting. That system is called "BSA Direct."

When fully implemented, BSA Direct will make available robust, state-of-the-art, data mining capabilities and other analytic tools directly to law enforcement. We plan to provide all access to these data through BSA Direct, working with our law enforcement customers to ensure that their individual systems will be able to extract the maximum value from the Bank Secrecy Act reporting. We will be exploring ways to enable these agencies to integrate the Bank Secrecy Act reporting with their other systems while maintaining, and even improving our ability to audit and network the use of the data and obtain feedback concerning their value. This new system will provide us with the capability to discharge our responsibilities relating to the administration of these sensitive data: security and access control, networking, and feedback. This system will also significantly enhance our coordination and information sharing abilities, as well as our ability to safeguard the privacy of the information and monitor BSA compliance. We have already started work on this system and its deployment is crucial to FinCEN moving forward and meeting its various challenges. We have requested in our fiscal year 2005 budget a transfer of \$2.5 million from the Internal Revenue Service for this system.

#### *Enhancing FinCEN's Analytical Capabilities*

Another challenge FinCEN is facing relates to its analytic capabilities. In my view, FinCEN must move away from its current emphasis on data checks and data retrieval, and move its analytic resources toward more robust and sophisticated analysis. FinCEN had moved to data checks and data retrieval in response to criti-

cisms about lag time in responding to simple requests for information. Now, as our systems improve, our customers will be able to retrieve data themselves, which will give FinCEN more time and resources for analysis of data.

I believe that FinCEN can and must provide value through the application of our focused financial analytic expertise to mining information and providing link analyses that follow the money of criminals and terrorists, or identify systemic or geographic weaknesses to uncover its source or the existence of terrorist networks. For example, in addition to providing geographic threat analysis for law enforcement, FinCEN has been studying systemic trends in money laundering and terrorist financing. We were instrumental in bringing the black market peso exchange system to the forefront of policy decisions, and we are focusing on other trends and patterns that we now see emerging in the global market. I recently made a trip to Dubai to participate in the growing dialogue on the potential use of diamonds and other commodities for illicit purposes, including money laundering and terrorist financing. We recently developed cases from Bank Secrecy Act data involving foreign gem companies with links to the United States and referred this information to law enforcement authorities. This is part of our focus on and study of what may be another iteration of money laundering and terrorist financing—commodity-based systems.

In my view, while FinCEN still has some of the best financial analytic talent in the United States government, the challenges we face require us to further develop that talent to enable the full exploitation and integration of all categories of financial information—well beyond Bank Secrecy Act information. I have directed FinCEN's managers to concentrate on training, as well as the hiring of new, diverse financial analytic expertise.

#### *Enhancing FinCEN's Technology*

As I have mentioned, information sharing is critical to our collective efforts to detect and thwart criminal activity and that is why I believe enhancing our technological capabilities is extremely important. Section 314(a) of the USA PATRIOT Act allows law enforcement to query United States financial institutions about suspects, businesses and accounts in money laundering and counter terrorism investigations. FinCEN facilitates this interaction between the financial industry and law enforcement by electronically sending law enforcement requests to various banks that, in turn, check their records and relay the information back to FinCEN to then provide to the requestor. This saves law enforcement time and resources. We are currently enhancing the Section 314(a) electronic capabilities to allow for the originating request to be made to FinCEN via a secure website. This system is an example of how critical technology is to our law enforcement counterparts.

We must continue to work to enhance the development of the PATRIOT Act Communications System, a system that permits the electronic filing of reports required under the Bank Secrecy Act. This system was developed and brought on-line under a very tight legislative deadline. FinCEN received the E-GOV award for its work on this system. Filing these forms on-line is not only more efficient; it will help eliminate some of the data errors and omissions.

As of April 19, 2004, 1.2 million Bank Secrecy Act forms had been electronically filed through this system. We now support nearly 1,100 users, which include 15 of the top 25 filers of Bank Secrecy Act information. These top 25 filers accounted for approximately 50 percent of all Bank Secrecy Act forms filed in fiscal year 2003. While this is all good news, the bad news is that the current number of forms filed electronically remains quite small on a percentage basis. The forms being filed through the PATRIOT Act Communications System represents only approximately 5 percent of the universe of all Bank Secrecy Act reports filed. I have directed our PATRIOT Act Communications System team to reach out to the financial industry and determine what more needs to be done to convince them to file electronically. As we learn about what is holding institutions back from filing, I have directed our team to work closely with system developers to build the system stability and tools necessary to improve the overall percentage of filing.

FinCEN presently lacks the capacity to detect Bank Secrecy Act form filing anomalies on a proactive, micro level. As I mentioned earlier, BSA Direct will integrate Bank Secrecy Act data into a modern data warehouse environment and it will include tools to flag Bank Secrecy Act form filing anomalies for action by FinCEN and/or referral to appropriate authorities. In the meantime, FinCEN is developing a request to the Detroit Computing Center to provide periodic exception reports on financial institutions whose Bank Secrecy Act form filing-volume varies beyond prescribed parameters during prescribed time frames. While we will not be able to conduct the sophisticated monitoring that will be available with BSA Direct, this interim step should produce an alert in the event of a catastrophic failure to file

forms, as was experienced in the Mirage case in which the Mirage Casino in Las Vegas failed to file over 14,000 currency transaction reports in an 18-month period.

*Enhancing FinCEN's Regulatory Programs*

The administration of the regulatory regime under the Bank Secrecy Act is a core responsibility for FinCEN. Given the nature of our regulatory regime—a risk-based regime—our partnership with the diverse businesses in the financial services industry is the key to our success. I must tell you that it is my perspective that the financial industry is generally a model of good corporate citizenship on these issues. The industry's diligence and commitment to the recordkeeping and reporting requirements of the Bank Secrecy Act is by and large outstanding. The industry's cooperation with FinCEN in implementing many of the provisions of the USA PATRIOT Act has strengthened the foundation of our efforts to safeguard the financial system from criminal abuse and terrorist financing. I have met with many of our industry partners in the last several months, both old and new, and I have been struck with how concerned they are that the information they provide be of value to the fight against terrorist financing and other financial crimes. In turn, FinCEN is committed to enhancing the guidance they need as they strive to meet the requirements and objectives of new regulations.

The challenge before FinCEN on this issue is simple: we must ensure the remaining regulatory packages required by the USA PATRIOT Act are completed and implemented. Moreover, as we work with our regulatory partners to implement this regulatory regime, we must provide constant feedback and guidance. We have asked the industry to create anti-money laundering programs that are risk-based—custom tailored to each institution based upon the business in which that institution engages and the customers that institution has. We must find ways to help the industry define that risk. Development of secure web-based systems that will foster the communication discussed above is a step in the right direction. But we must continue to find new and better ways to reach out to the industry. They understand the threat money laundering and illicit finance poses to our financial system and they are willing to help.

Perhaps our most significant challenge lies in ensuring that financial institutions are appropriately examined for compliance with the Bank Secrecy Act and its implementing regulations. As you know, we have issued and will continue to issue anti-money laundering program regulations that will bring new categories of businesses under this form of Bank Secrecy Act regulation for the first time.

We have and will continue to rely on the judgment, expertise, and resources of the Federal banking, securities and commodities regulators. But the expansion of the anti-money laundering regime comes with the additional responsibility and challenges of examining thousands of addresses and businesses for compliance. We have relied on the Internal Revenue Service to examine those non-bank institutions. The addition of the insurance industry and dealers in precious stones, metals, and jewels, two categories of financial institutions for which we will shortly issue final anti-money laundering program regulations, will themselves stretch the resources of agencies responsible for examination. We must find ways to ensure that these regulatory programs are implemented in a fair, consistent and timely manner that is focused on achieving the goals of the Bank Secrecy Act. Although difficult, this is an issue that must be resolved.

Finally, we intend to take even a more active role in working with our regulatory partners to ensure the effective examination of financial institutions. We will find appropriate ways to enhance our ability to provide prompt, interpretive guidance to examiners, obtain consistency in the application of the regulations across industry lines, and identify and address compliance issues as they arise.

*Enhancing FinCEN's International Program*

FinCEN's international initiatives and programs are driven by a stark reality: finance knows no borders. Next year will mark the tenth anniversary of the founding of the Egmont Group—a milestone event that FinCEN will host in Washington, DC next June. The Egmont Group is an international collection of “financial intelligence units”—entities, which, like FinCEN, are charged with the collection and analysis of financial information to help prevent money laundering and other illicit finance. The Egmont Group has achieved remarkable growth since its inception in 1995. Membership has risen from 6 charter members to 84. This membership number will rise to 92 this year and is expected to top 100 by the time of the June 2005 Plenary.

The Egmont Group serves as an international network, fostering improved communication and interaction among financial intelligence units (FIUs) in such areas as information sharing and training coordination. The goal of the Group is to provide a forum for FIUs around the world to improve support to their respective gov-

ernments in the fight against financial crimes. This support includes expanding and systematizing the exchange of financial intelligence information, improving expertise and capabilities of personnel employed by such organizations, and fostering better and more secure communication among FIUs through the application of technology.

Egmont's secure web system permits members of the group to communicate with one another via secure e-mail, and to post and assess information regarding trends, analytical tools, and technological developments. FinCEN, on behalf of the Egmont Group, maintains the Egmont Secure Web. Currently, 76 of the 84 members (90 percent) are connected to the secure web site. I am very pleased to announce that FinCEN will launch a new and more efficient secure web site for Egmont in June. We expect this new site will generate more robust usage, which will enhance international cooperation among Egmont members.

FinCEN has played a significant role in the growth and health of the Egmont Group and it maintains bilateral information sharing agreements with financial intelligence units around the world. However, in my view, this program has not received the priority it should have in recent times. Merely because of the simple statement I made earlier—that finance knows no borders—we must step up our international engagement with our counterparts around the world. Our plan is to do three principal things:

- Lead the Egmont Group to begin focusing on actual member collaboration. Egmont members should be collaborating in a more systemic way to address issues relating to terrorist financing, money laundering and other illicit finance at both a tactical and strategic level.
- Enhance the FinCEN analytical product we provide to our global counterparts when we receive requests for information. Today, we principally provide the results of a data check. We think we owe our colleagues more in-depth analysis of the information we provide. As noted before, we will also be making more requests for information and analysis from our partners—particularly when the issue involves terrorist financing or money laundering.
- Foster exchanges of personnel with financial intelligence units around the world. We have already begun discussions with certain counterparts about such an exchange and we are hopeful we can begin this program soon. The benefits of this type of exchange are obvious. It is the best way we can learn together how to address a truly global problem.

FinCEN will also enhance its support for Treasury policy officials' work in the Financial Action Task Force (FATF) and FATF regional bodies. We will continue our work with the State Department in the drafting and editing of the "International Narcotics Control Strategy Report." Finally, we will continue our important efforts on financial intelligence unit outreach and training. Presently, we are working with the United Arab Emirates on a South Asia FIU Conference for Afghanistan, Bangladesh, India, Maldives, Pakistan and Sri Lanka.

Additionally, FinCEN has given its support and participation to the "3+1" Working Group on terrorist financing in the Tri-border Area. The issues of information sharing and the bolstering of FIUs in the participating states of Argentina, Brazil and Paraguay are critical issues for the U.S. delegation to the "3+1" Working Group led by the Department of State's Office of Counter-Terrorism.

#### *FinCEN's Organizational Structure*

We have been working closely with Treasury on our efforts to more effectively marshal our resources at FinCEN. As a result, I recently proposed a realignment of FinCEN that reflects my priorities to enhance FinCEN's analytical component and improve its focus and services devoted to outreach, education and technology on behalf of both its clients and the financial services community. We have briefed your staff on this proposal and, just last week, have received approval from the Department to go forward with this realignment.

Essentially, the realignment provides the ability to pull out the non-analytical functions presently entangled in FinCEN's analytical unit so that those managers and analysts can focus exclusively on analysis. We are also combining all client services and systems under a single manager in order to ensure that our technology is coordinated and better focused on serving its users. Similarly, I want this organizational structure to highlight the importance of education and training of our law enforcement clients and the regulated community. Only by working closely and cooperatively with these groups can FinCEN truly understand what services it must provide and what requirements it must meet to assist in the detection, prevention and dismantling of terrorist financing.

## FISCAL YEAR 2005 BUDGET REQUEST

The proposed fiscal year 2005 budget is designed to assist in strengthening our role in the United States Government's efforts to understand, detect, and prevent terrorist financing. I also believe it will allow us to begin to meet the challenges that I have outlined above. The President's fiscal year budget request would provide \$64,502,000 and 291 full-time equivalents for FinCEN. This request includes:

- \$1.533 million and 4 FTE for program increases to:
  - (1) enhance regulatory support to newly covered industries as required under the USA PATRIOT Act (\$0.278 million and 2 FTE);
  - (2) enhance access to Bank Secrecy Act information by putting information technology aids in place to the Gateway system to increase the current 1,000 law enforcement users to 3,000 users by fiscal year 2008 (\$1.055 million and 2 FTE); and,
  - (3) procure financial and administrative services which would enable FinCEN to consolidate its accounting and financial reporting by using a Treasury franchise service provider, assuring continued submission to TIER and other accounting-related reporting in the Treasury format (\$0.200 million and FTE).
- \$2.5 million transfer from the Internal Revenue Service for the Bank Secrecy Act (BSA) Direct System. See *infra*.
- \$3.238 million and 10 FTE for adjustments necessary to maintain current levels (\$1.716 million) and program annualizations for fiscal year 2004 initiatives (\$1.522 and 10 FTE).

## CONCLUSION

The fiscal year 2005 budget request for FinCEN supports the President's fight against terrorism, and continues to build the framework necessary for accomplishing our complex mission of protecting the United States financial systems from abuses imposed by criminals and terrorists and assisting law enforcement in the detection, investigation, disruption and prosecution of such illicit activity through our role as the administrator of the Bank Secrecy Act.

I look forward to continuing to work with you to meet these challenges and enhance our contributions to the war on financial crime and terrorist financing.

Mr. Chairman, this concludes my statement.

## ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

## PREPARED STATEMENT OF ARTHUR J. LIBERTUCCI, ADMINISTRATOR

Mr. Chairman, Senator Murray, and members of the subcommittee, it is my pleasure and honor to have the opportunity to highlight the Alcohol and Tobacco Tax and Trade Bureau's (TTB) accomplishments for the past year and discuss our fiscal year 2005 budget submission.

The Alcohol and Tobacco Tax and Trade Bureau was established January 24, 2003, as a result of the Homeland Security Act of 2002. The Act authorized the transfer of all of the firearms, explosives, and arson functions of the Bureau of Alcohol, Tobacco and Firearms (ATF) to the Department of Justice and established TTB within the Department of the Treasury. While the agency was given a new name, the history of TTB's regulatory responsibilities dates back to creation of the Department of the Treasury and the first Federal taxes being levied on distilled spirits in 1791.

The mission of TTB is to collect alcohol, tobacco, firearms and ammunition excise taxes, to ensure that alcohol beverages are labeled, advertised, and marketed in accordance with the law, and to administer the laws and regulations in a manner that protects the revenue, protects the consumer, promotes voluntary compliance, and facilitates import and export trade in beverage and industrial alcohols.

Not since the late 1940's has there been such a large overhaul and reorganization of the government and its agencies. The challenges in standing up a brand new bureau were many, but the men and women on board at the time of the transition understood and were ready for the challenging job that lay ahead. When we began, we only had about half of our projected FTE on board. Most of fiscal year 2003 and part of fiscal year 2004 were dedicated to hiring personnel in all of our offices in Washington, DC, and around the country, and finding appropriate office space for field personnel.

Late in 2003 we began the move to our new headquarters location, two blocks from the Department. This was accomplished in two phases. A majority of the offices located in Washington, DC, which include Headquarters and Field Operations

staff, moved September 2003. My staff and the Office of Chief Counsel moved April 2004. Our goal in both moves was to continue with business as usual, carrying out our mission, and have as seamless a transition as possible.

#### AUTHORITIES

TTB oversees the regulation of alcohol under the Federal Alcohol Administration Act (FAA Act) and the Internal Revenue Code of 1986 (IRC). Under the FAA Act, TTB regulates the authorized operations, labeling, advertising, and trade practices for those engaged in the alcohol beverage industry. This includes trade practice provisions, which regulate such practices as exclusive outlets, tied house arrangements, commercial bribery, and consignment sales. These provisions are intended to ensure fair dealing within the industry and to protect the consumer by prohibiting sales arrangements that result from anti-competitive practices.

We also administer the IRC provision relative to the qualification and operation of distilleries, wineries, breweries, and industrial alcohol producers and users. Under this authority, we administer classification and collection of tax on alcohol products, and the collection of various occupational taxes from alcohol dealers. TTB's responsibilities under the IRC cover the production, packaging, bottling, labeling, and storage requirements related to alcohol products.

With respect to tobacco, TTB work involves chapter 52 of the IRC, relating to the manufacture, importation, exportation, and distribution of tobacco products. Specifically, we examine applications and issue permits for tobacco manufacturers and importers, and export warehouses, and oversee their operations. TTB classifies a wide variety of tobacco products for tax purposes, and collects the tax on such tobacco products, as provided under the statute and implementing regulations. Finally, TTB also administers the excise tax on firearms and ammunition pursuant to its authority under the IRC.

#### MISSION

TTB administers Federal tax laws on alcohol, tobacco, firearms, and ammunition, and ensures that the alcohol and tobacco commodities TTB regulates are lawfully sold in the United States. In carrying out its mission responsibly, TTB must be sensitive to the industry's concerns as the government's customers, by reducing delays and regulations that impede business while also providing a tangible benefit to the American public. TTB's history indicates that an appropriate regulatory presence provides a deterrent against tax evasion schemes. TTB is committed to carrying out its responsibilities in a manner that makes effective and efficient use of the public resources entrusted to us. We carry out our mission without imposing inappropriate or undue burden on those whom we regulate and from whom we collect taxes. At the same time we maintain an aggressive enforcement program that deters violations by industry members and promotes voluntary compliance.

The split from our predecessor agency has enabled TTB to return to its roots and focus on collecting the revenue and protecting the public. In the year since our inception, we have returned to that core mission, and we have proven that despite myriad administrative details, we have been able to focus on excise tax collection. Allow me to explain some of our highlights of the past year.

TTB created a Field Operations Directorate that includes the pre-established National Revenue Center in Cincinnati, Ohio, which reconciles returns, reports, and claims; screens applications and issues permits; and provides expert technical assistance for industry, the public, and government agencies to ensure fair and proper revenue collection. The NRC is currently undergoing a business process re-engineering study in order to maximize customer service and efficiency, while allowing TTB to handle an ever-increasing workload with existing staff.

The Trade Investigations Division (TID), staffed with Investigators, has seven field groups located across the country dedicated to ensuring that only qualified applicants are granted permits to engage in the production and distribution of alcohol and tobacco products. Field investigations of industry members are conducted to help promote voluntary compliance with the laws and regulations enforced by TTB and prevent misleading labeling and advertising of alcohol beverages.

Investigators also respond to credible information suggesting a health-related contamination of an alcohol or tobacco product. In addition, TID conducts trade practice and Certificate of Label Approval (COLA) fraud investigations. Some investigations over the year have resulted in revocations of permits or in the applicant withdrawing the permit as it is unable to meet the government requirements to operate. The work done by Trade Investigations is not only about educating our customers, but showing our presence and clearly helping carry out our unique and necessary mission.

Because of a greater field presence, in fiscal year 2003 we accepted 13 Offers-in-Compromise (OIC) for a total of \$1.162 million. In fiscal year 2004, we have so far accepted 12 OICs for a total of \$270,086, and we have an additional 7 cases pending for \$176,472. As an example, we collected a \$35,000 OIC from a company who was found to have been receiving and shipping product without proper label approval. Investigators also conducted a product integrity investigation into a winery in the Southwest and found numerous label, record keeping, and administrative violations. We have also participated in counterfeit alcohol and tobacco investigations along the border in Texas and New Mexico.

TTB's Tax Audit Division and program was first established in late fiscal year 2003 as part of TTB's strategic plan to collect the revenue that is rightfully due from the alcohol, tobacco, and firearms and ammunitions industries because in the past, ATF's program priorities and investigations were placed primarily on firearms and explosives. The division was established to provide a systematic approach to safeguard over \$14 billion in annual revenue collected by TTB.

The Tax Audit Division verifies the proper payment of tax and ensures compliance with the laws and regulations that protect the revenue and promote voluntary compliance. TTB Tax Audit uses a risk-based approach to target non-compliant industry members. A goal in 2004 is to establish a baseline for measuring tax revenue audited in a 5-6 year period and the industry compliance rate (percentage of taxpayers audited with no material findings, thereby validating the amount of tax paid was accurate and rightfully due).

TTB's accomplishments in Tax Audit include establishing 10 audit offices across the country and recruiting and hiring 80 audit staff. The average staff person has 10 years of previous audit experience and holds one audit certification (i.e. Certified Public Accountant). TAD also established a formal industry-training program: 75 percent of the workforce has been trained in three or more industries (Distilled Spirits Plants, Beer, Wine, Manufacture of Non-beverage Products, and Firearms). They also implemented an automated audit documentation tool to facilitate a standard audit approach and create efficiencies, and developed an audit work plan scheduling 110 taxpayers for review in 2004.

I am pleased to report that initial audit findings have identified approximately \$4.7 million in additional tax revenue due, and to date, these audits have resulted in approximately \$500,000 in additional revenue collected by TTB. Further, these audits have identified an additional \$523,000 in revenue due to the governments of Puerto Rico and the Virgin Islands for taxes collected on articles (i.e. rum) produced in Puerto Rico or the Virgin Islands (also called cover over).

These divisions work hand in glove with the Risk Management Staff who develop, implement, and maintain programs that ensure TTB is collecting all the revenue due and protecting the public. Divisions within Headquarters Operations often support the work done by TTB Auditors and Investigators in the field.

The Regulations and Procedures Division (RPD) drafts new and revised regulations under the Internal Revenue Code and the Federal Alcohol Administration Act. They issue rulings, procedures, and informational documents to clarify the law and regulations. Most notably, they evaluate important policy issues before TTB and write proposed regulations and Treasury Decisions for publication in the Federal Register and the Code of Federal Regulations.

In 2003, much attention was placed on the issuance of limitations set for health claims related to consumption of alcoholic beverages. On March 3, 2003, TTB, along with the Treasury Department, issued final regulations to prohibit the appearance on labels or in advertisements of any health-related statement that is untrue or tends to create a misleading impression. The regulations require that specific health claims must be truthful, adequately substantiated by scientific or medical evidence, disclose the health risks associated with both moderate and heavier levels of alcohol consumption, and outline the categories of individuals for whom any alcohol consumption poses risks. The new rules took effect June 2, 2003.

In addition, in March 2003, TTB and the Treasury Department issued proposed regulations that would clarify the status of flavored malt beverages by refining the regulatory definitions of "beer" and "malt beverage." The proposal would limit the amount of alcohol added to beer or malt beverages through flavors use. It would also require display of alcohol content on flavored malt beverage labels, and would prohibit references to distilled spirits on all malt beverage labels. The proposal garnered a considerable amount of congressional interest and TTB received over 16,000 comments from the public; the norm is 10-20 comments per Notice of Proposed Rulemaking. In the weeks and months following the closure of the comment period, staff catalogued and reviewed the comments. A decision will be published once Treasury completes the review.

This past year brought the opening of the new laboratory facility that TTB's Scientific Services Division shares with the ATF. This state-of-the-art facility, which was dedicated in June 2003, in Ammendale, Maryland, provides chemists and support staff an optimum working environment in which to process samples for its customers. The Laboratory supports TTB by providing expertise in the analytical analyses of distilled spirits, wines, malt beverages, specially denatured alcohol, non beverage alcohol, and tobacco products. TTB has a second lab in Walnut Creek, California, known as the Compliance Monitoring Laboratory that primarily conducts tests of alcohol beverages. In this regard, TTB uses a market basket sampling approach as well as other methods to evaluate products on the market and ensure that products are properly labeled, do not contain prohibited substances, and that the products do not impose a health hazard to consumers.

An important component of TTB's external relations are its partnerships in the international arena. The International Trade Division (ITD) acts as TTB's liaison on issues related to alcohol beverages, and facilitates the trade of alcohol beverages by serving as an advisor to industry members, various U.S. Government agencies and embassies. In this capacity TTB is represented at international trade meetings and participates in international trade negotiations, primarily working with the Office of the United States Trade Representative (USTR).

Again, through ITD, TTB contributed to the World Wine Trade Group's (WWTG) progress toward a labeling agreement designed to facilitate trade in wine among the member countries. The WWTG is an informal group of seven countries who have a common interest in exporting wine worldwide. The United States, Canada, Chile, Argentina, South Africa, New Zealand and Australia are members of this group.

Also, in the international trade arena, TTB continues to work with USTR in crafting a Memorandum of Understanding (MOU) with Mexico to clarify requirements for U.S. bottlers who receive bulk tequila. The United States has worked hard to convince the Mexican government to reconsider their proposal to ban the exportation of bulk tequila. Mexico cited failures by other countries in protecting the standard of tequila as a reason for suggesting the ban. Such a ban would adversely impact the U.S. distilled spirits industry's ability to profitably continue to sell and distribute tequila in the United States and all over the world, and, in turn, cause Mexico to inadvertently hurt one of their own most profitable exports. TTB participated in several meetings this year in Mexico, the United States, and Canada and played a key role in delaying the implementation of the bulk shipment ban by describing to the Mexican government our past efforts in enforcing the integrity of tequila and by stressing our continued commitment to protect this beverage and demonstrating how the TTB enforcement mechanism makes such a ban unnecessary. The MOU seeks to both clarify and prevent undue extraterritorial requirements on U.S. bulk tequila.

One of the largest components of Headquarters Operations is the Advertising, Labeling and Formulation Division. This division carries out TTB's statutory mandate to prevent consumer deception and ensure that alcohol labels provide the consumer with adequate information as to the identity and quality of the product.

In fiscal year 2003, ALFD's staff of nine label specialists reviewed 101,000 Certificate of Label Approval (COLA) applications and issued nearly 75,200 certificates. Four formula specialists reviewed over 1,800 domestic beverage alcohol formulas, and approximately 1,500 pre-import applications.

In May 2003, ALFD launched an electronic filing system for use by industry members and third parties to file applications for COLAs. This new web-based system, known as COLAs Online, provides industry members with a streamlined, more expedient and paperless means of obtaining a COLA. COLAs Online allows industry members to submit COLA applications via the Internet, as well as provides a way for ALFD employees to review the application electronically. Submitted applications are electronically approved, returned for correction, or rejected. The system also provides an online capability for industry members to obtain the status of electronically filed forms and the Public COLA Registry section of COLAs Online allows the public to view approved COLAs, including images of the alcohol labels. We currently receive approximately 15 percent of all COLA applications electronically and we expect that amount to steadily increase with time.

In addition to these divisions, TTB is supported by a world class cadre of attorneys and Office of Management personnel. Often these are the employees who serve as the glue to the functions we perform as a Bureau. Further, a majority of services we use are contracted out and managed through a Memorandum of Agreement with ATF. This arrangement facilitates TTB becoming a stand-alone Bureau within the Department of Treasury. The memorandum will be renegotiated, but TTB continues to search for, and has found, many new ways to less expensively outsource required

services including moving many management functions to the Bureau of Public Debt.

#### FISCAL YEAR 2005 APPROPRIATIONS REQUEST

The funding request for fiscal year 2005 is \$81.9 million and 544 FTE, a \$2.4 million increase over fiscal year 2004. This increase represents adjustments necessary to maintain current levels of operations. It supports TTB's core mission to protect the public and collect the revenue. The request is fiscally sound, and I believe that we have proven that while we are a small Bureau, we are focused and effective, providing results-driven service to America.

One of our priorities for fiscal year 2005 is to be completely separate from ATF's Information Technology services. ATF is not a service provider and is part of the Department of Justice. At this time, ATF has given written notice that beginning in fiscal year 2006, it will no longer service TTB's information technology needs. Also, ATF may not be able to provide administrative and other management services to TTB. We have formulated a plan that will help us cover services internally and externally by outsourcing from the public and private sectors. As resources become available, we believe we can judiciously acquire the services needed to run our Bureau, although much work needs to be done to complete this task by fiscal year 2006.

#### CONCLUSION

Through the judicious and responsible use of the resources Congress provides, we look forward to continuing to provide services that are not only unique in American Government, but provide a clear service to America by collecting taxes and protecting the public. It is not only my honor to lead the men and women of this Bureau, but I appreciate your support of this new Bureau and our wholehearted efforts to carry out our mission. Thank you.

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### U.S. OFFICE OF SPECIAL COUNSEL

#### PREPARED STATEMENT OF SCOTT J. BLOCH, SPECIAL COUNSEL

I am pleased to present testimony on behalf of the U.S. Office of Special Counsel and our fiscal year 2005 budget request. As the new Special Counsel, I look forward to working with the U.S. Senate in my role as independent guardian of the merit system of civil service by protecting Federal employees from unfair workplace discrimination or mistreatment, including reprisal for whistleblowing, as well as imposing corrective action to protect those employees and bringing disciplinary action against negligent supervisors.

#### GOALS

My goals for the agency are twofold: (1) to continue to strengthen the civil service merit system by vigorously enforcing the three statutes for which the Office of Special Counsel bears responsibility: the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act; (2) to provide an intense, more visible level of enforcement of the Uniformed Services in Employment and Re-Employment Rights Act (USERRA).

#### GUIDING PRINCIPLES FOR ACHIEVING THESE GOALS

The integrity of the civil service merit system depends on the alertness and effectiveness of its watchdogs. The most significant challenge we face into next year is to eliminate our pending case backlog and to develop methods to make the agency more efficient and effective in its main mission, while at the same time assuring complainants a fair review. No Federal employee should have to wait years, in some instances, for a valid complaint or situation to be addressed or an offending supervisor disciplined.

We will accomplish this by asking for great energy and focus of the current staff, and by bringing on new talent, skilled at locating issues and understanding problem solving, keen on protecting rights and mindful of the need to address cases that lack jurisdiction or do not meet the requisite thresholds. In all of this, we will be guided by the understanding that this is being done so that we can better service the merit system and protect whistleblowers. If we can do all of that, then we can institute a mode of operation that prevents us from allowing such a backlog of cases to surface again.

During this challenging time in our Nation, the security of the country depends on our armed forces. And our armed forces depend as never before on the vital roles played by national guardsmen and reservists. Every reservist and guardsman must know that the United States stands fully behind them, and will investigate and fight for justice on their behalf regarding their employment and re-employment after active service deployments. Without extremely strong enforcement in this area, serving in the guard and reserves becomes less attractive, and the entire military system currently in use becomes weakened.

The teeth behind our effectiveness in enforcing each of our mandates lie in our ability to litigate in pursuit of justice. To become a more effective enforcer implies an increase in meritorious litigation, which I hope to pursue.

Finally, I know that Congress also shares our desire to protect Federal whistleblowers; however, the protection does not occur if Federal employees do not know about the existence and purpose of the Office of Special Counsel. Therefore, a critical function is our extensive outreach and training efforts so that Federal employees know they can call us when they have a complaint or problem within their agency.

#### RELEVANT FUNDING FACTORS

For fiscal year 2005, the OSC is requesting \$15.449 million, in order to fund approximately 113 full-time employees (FTE) and related non-personnel costs.

The purpose of this requested increase is to manage and process the agency's steadily increasing workload since fiscal year 2000 of prohibited personnel practice complaints, whistleblower disclosures, and Hatch Act matters, and to reduce persistent case processing backlogs—including serious backlogs in the processing of whistleblower disclosures. Given the increasing workload of OSC, 113 FTE is a modest request.

Looking at the data for the past several years, I believe several factors account for or contribute to this workload increase. They include: publicity about an increased number of high-profile cases handled by the OSC, including whistleblower disclosures, and four Public Servant Awards issued to whistleblowers by the OSC; heightened awareness and concern over national security disclosures after the events of September 11, 2001; increased public interest in elections since the 2000 presidential election, and the start of the 2004 campaigns; the OSC's 2302(c) Certification Program; and significant improvements in OSC's web site, increasing awareness by government employees and others of the OSC and its functions.

I will highlight specific areas that I believe warrant an increase in staffing:

- In April 2004, soon after I became the new Special Counsel, I established a new Special Projects Unit (SPU) specifically to examine the organization's system for handling cases, to handle the pending backlogs, and to consider and experiment with new methods for increasing the efficiency and effectiveness of all other aspects of the OSC. Several of the most experienced OSC attorneys are now assigned to the unit to help remove the current backlog of cases and to prevent such problems in the future. This includes a careful look at the agency's web site and methods of electronic filing.
- Given the increasing numbers of complaints and cases in all units of the agency, increased levels of labor and staff costs are required to ensure no backlogs will build up again.
- Regarding prohibited personnel practice complaints, increased staff costs are also required for higher compliance with the 240-day prosecution deadline currently required by statute.
- I am confident of our ability to fulfill our stated goal of providing a more visible level of enforcement of USERRA, even in (and especially in) the midst of one of the largest-ever demobilizations of reservists from overseas in the coming year. In conjunction with other Federal entities, we will aggressively prosecute USERRA claims. But this may require a higher number of staff focused in the USERRA area.
- Public awareness of the OSC's Disclosure Unit (DU) has grown in recent years and the greater awareness of national security issues, following the terrorist attacks of September 11, 2001, and subsequent events, have also caused a record number of whistleblower disclosure filings with the OSC. During fiscal year 2002–2003, for example, the DU received 535 or more disclosures each year—compared with 380 disclosures in fiscal year 2001 and an average of 360 in the preceding 4 fiscal years. Many of the disclosures filed after fiscal year 2001 have dealt with national security issues (some involving complex and sensitive classified material) that have required the work of more than one DU staff attorney.

As of September 30, 2003, the total number of cases pending in the DU was a record 690 (up drastically from 556 at the end of fiscal year 2002, and 287 at the end of fiscal year 2001). A significant number of these cases were more than a year old, including matters designated after initial review as the highest priority disclosure—an allegation of a substantial and specific danger to public health and safety likely to merit referral to the head of the agency involved for investigation. The OSC is requesting additional FTE allocation to DU backlog reduction efforts (i.e., to provide timelier resolutions of whistleblower disclosures filed with the OSC).

By law, the OSC has 15 days to review a disclosure and to determine whether there is a substantial likelihood that the information provided discloses any violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. Given the increasing numbers and complexity of disclosures in recent years, as well as the time required to contact whistleblowers, examine information submitted, perform necessary analysis, and draft required correspondence, this timetable has, in reality, proven to be unattainable in most cases. This has resulted in a persistent backlog.

While the OSC is fully committed to directing whatever resources are required to immediately process and refer critical national security disclosures, additional resources (not only in staff but in facilities and other resources needed to properly handle such critical matters) are needed.

The Disclosure Unit backlog has become an issue of understandable concern to Congress. It has also been a pressing concern to the OSC, which has implemented several measures in recent years in efforts to improve upon its timeliness in processing whistleblower disclosures. For example, the DU has implemented a priority system for matters received; those priorities are tracked using the agency's automated case tracking system; additional employees have been detailed to DU work; and, as funds have permitted, a limited number of additional staff has been allocated to the unit.

—In response to recent calls for the OSC to attack the problem more aggressively, the OSC has begun the process of applying more intensive and focused strategic workforce planning to that problem, as part of a comprehensive strategy to address all areas of backlog in the agency. No strategy can succeed, however, without adequate funding to support additional staff and associated resources. The OSC's fiscal year 2005 budget request will provide funding for the additional staff needed to more adequately comply with the 15-day time limit for DU decisions, and to make progress toward the goal of reducing the Unit's backlog.

—The increased amount of litigation necessary to strongly enforce adherence to the statutes also has a cost in terms of employee resources.

—Next, in this busy election year, we expect our Hatch Act complaints and cases to increase as they always do during the national election cycle. The unit has received a significant increase in the number of complaints alleging Federal, State, and local Hatch Act violations, and a steadily growing number of requests for advisory opinions on the Act. Between fiscal year 2001–2003, the Hatch Act Unit received an average of 198 complaints per year, compared to 84 complaints on average in each of the previous 3 fiscal years. Likewise, there has been a significant increase in the number of alleged Hatch Act violations referred for field investigation—i.e., 35 in fiscal year 2003, compared to 8 in fiscal year 2002, and 10 in fiscal year 2001.

Hatch Act enforcement spawned lengthy and resource-intensive MSPB litigation activity by OSC in fiscal year 2003.

The OSC's fiscal year 2005 budget request will provide funding for the staff resources needed to handle increasing numbers of Hatch Act complaints, opinions, and enforcement efforts, including litigation.

—As mentioned, outreach within the Federal workforce is critical to the mission of OSC. Success in outreach obviously generates a greater numbers of complaints, whistleblower disclosures, allegations and requests for assistance than in previous years. I believe our excellent professional staff will rise to the occasion, but the agency needs an increase in FTEs and an increased travel budget to keep up with those demands.

—Higher labor funding is also required to better address Freedom of Information Act (FOIA) processing, investigations, and enforcement.

—The OSC's fiscal year 2004 funding was intended to pay for the cost of 113 FTE, but the agency has incurred several unfunded mandates: increased benefit costs (transit subsidy increases), new requirements for financial statements and audits, significant increase in costs under an interagency agreement for receipt of

administrative services, and unanticipated real estate taxes for its D.C. office. Salaries and benefits make up approximately 83 percent of OSC's operating expenses for fiscal year 2004, so the agency has little ability to reprogram funds when salaries and benefits for authorized FTE exceed appropriations. While these types of costs may be easily absorbed by most agencies' budgets that dwarf OSC's, these types of expenses can easily swamp a relatively tiny agency like ours, materially having an impact on achieving goals and even core missions.

—To be successful in meeting our goals of vigorously enforcing the statutes for which we are responsible, with the least possible headcount, we are moving to further automate several steps within our processes, which also bears costs in equipment and development resources.

#### PROGRESS MADE

As noted earlier with respect to prohibited personnel practice complaints, the OSC's ongoing and intensive efforts to improve upon its responsiveness began to yield results in fiscal year 2003. The agency processed 85 percent of those complaints within the 240-day timetable established by Congress. The OSC intends to build on these results, and achieve close to 100 percent success in this regard—all the while avoiding any backlogs.

#### SUMMARY

The largest part of the requested increase in the fiscal year 2005 budget, therefore, is for the full cost of the fiscal year 2004 FTE increase. The capacity to fund 113 FTEs is needed to properly manage OSC's statutory responsibilities and to reduce, if not eliminate, processing delays.

Our office exists to ensure good government. When people behave in ways that do not promote good government, or jeopardize safety and health in the Nation, we must take corrective and disciplinary action. We exist to promote good, efficient, fair government, and integrity for the Nation among the Federal workforce. The fiscal year 2005 budget request will enable OSC to reach its mission to promote good government in an expeditious way.

Thank you for your interest in the Office of Special Counsel.

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### FEDERAL ELECTION COMMISSION

#### PREPARED STATEMENT OF ELLEN L. WEINTRAUB, VICE CHAIR

Mr. Chairman, Ranking Member Murray, and members of the committee, it is my privilege to present the Federal Election Commission's (FEC's) fiscal year 2005 appropriation request. To begin, on behalf of the agency, I thank you for last year's appropriation. Your bipartisan support of the FEC budget has enabled us to continue to implement the Bipartisan Campaign Reform Act of 2002 (BCRA), which amended the Federal Election Campaign Act of 1971.

Our fiscal year 2005 appropriation request is for \$52,159,000, an increase of \$2,016,596 or 4.02 percent, and for 391 FTE, the same as our fiscal year 2004 FTE level. This year, as last year, the FEC is seeking only a modest increase over the fiscal year 2004 budget of \$50,142,404 (less the government-wide across-the-board 0.59 percent rescission) and 391 FTE. I am pleased to report this request conforms to the President's fiscal year 2005 budget request for the FEC.

Additionally, last year Congress appropriated \$800,000 (less the 0.59 percent rescission) to the Commission for the operations of the Office of Election Administration (OEA), with the understanding that any remaining funds and other assets of the OEA would be transferred, pursuant to section 801 of Public Law 107-252, to the Election Assistance Commission (EAC) once the EAC was constituted. We are pleased to report, effective April 1, 2004, the OEA and all of its assets (including \$500,527 in unobligated funds, property and records), personnel and liabilities, were transferred to the EAC.

The fiscal year 2005 request represents a continuation of fiscal year 2004 funding levels, adjusted for inflation, and salary and benefit increases (\$1,744,700—a 4.85 percent increase). As such, it represents a Current Services request for fiscal year 2005, with no additional funds or staff for new programs or initiatives by the FEC and represents an overall increase of only 1.92 percent for non-personnel costs. These minimal increases are detailed in our fiscal year 2005 Budget Justification.

In its annual review of legislative recommendations, the Commission has submitted 12 recommendations for legislative action. Four of those were unanimously

endorsed as priority recommendations; the remaining 8 as non-priority. The 4 priority recommendations, in brief, are that Congress: (1) allow as a permissible use of Federal campaign funds donations to State and local candidates and for any other lawful purpose that does not violate subsection (b) of section 439a; (2) increase the amount that authorized committees may give to authorized committees of other candidates; (3) modify terminology of “reason to believe” finding; and (4) require mandatory electronic filing of Senate reports. The remaining 8 recommendations, while placed in the non-priority category are, nonetheless, supported unanimously by the Commission as substantive or technical in nature. We are confident these legislative changes will result in efficiencies, not only for the FEC, but also for the regulated community.

Over the past few years, the FEC has achieved major successes, including meeting statutory and court deadlines for the BCRA implementation and legal challenges to the BCRA, as well as the expansion of the compliance program. These successes are the result of FEC efforts and support from our Congressional oversight committees. In addition, two programs have received accolades from the regulated community—the Administrative Fine Program and Alternative Dispute Resolution (ADR) Program. With the addition of these two programs, we have been able to successfully streamline the enforcement process.

I now will provide a brief overview of the FEC’s three core program areas and relate those areas to the agency’s fiscal year 2005 budget request.

#### DISCLOSURE PROGRAM

The FEC’s disclosure program includes not only the review and placement of information on the public record, but also educational outreach, including campaign finance workshops and seminars, a toll-free line for consumer requests, and automatic fax transmission of our publications 24 hours a day, 7 days a week. FEC meeting agendas and related documents also are available on our web site. Our disclosure program accounts for over a third of the agency’s staffing (137 FTE), distributed among the Public Records Office, Information Technology Division, Reports Analysis Division, Press Office, Information Office and those sections of the Office of General Counsel that formulate proposed regulations and draft responses to advisory opinion requests.

Improvements in productivity, aided by IT enhancements, generally have enabled the FEC to keep pace with the large increases in Federal campaign finance activity during recent election cycles, activity which has nearly doubled in the last 12 years. Total disbursements for a non-Presidential election cycle have increased from \$1.1 billion in 1986, to \$3.8 billion for the 2000 presidential and 3.1 billion for the 2002 congressional cycle—a 282 percent increase. We anticipate \$4 billion in total disbursements for Federal campaigns in the 2004 cycle, from about 8,000 committees filing over 90,000 reports and generating 3 million itemized transactions. The 2006 cycle, a congressional cycle, should be slightly lower in volume than the 2004 presidential cycle. Every election cycle since 1992 has seen a new record in total spending in Federal elections for Congressional and Presidential elections. With your help, we are building an impressive communications system capable of handling our Information Technology (IT) needs well into the future. This system offers the capability of instantly updating our database and expanding the types of information collected. As you are aware, however, this system is expensive. The average annual cost is about \$1 million to maintain the electronic filing system.

With the passage of mandatory electronic filing, we are beginning to see the benefits of timeliness and work process improvements such a sophisticated system affords. Since the institution of electronic filing, median time to process all documents has improved from 10 to 11 days to 5 to 6 days.

#### COMPLIANCE PROGRAM

Obtaining voluntary compliance is the foundation of the FEC’s strategic and performance plans, and is at the core of our mission statement. A credible enforcement program, however, is necessary to provide sufficient incentive to the regulated community to achieve this voluntary compliance. In fiscal year 2005, we anticipate assigning 189 FTE to the compliance function, including enforcement, supervisory and support staff from OGC, Information Technology and the Audit Division. In the audit track of the compliance program, we are pleased to report sufficient resources have been provided to allow the Commission to initiate 40 to 45 audits “for cause” for the 2004 election cycle, as opposed to 25 in the 1998 cycle. Details on the compliance program are contained in the fiscal year 2005 Budget Justification.

The first major overhaul of the FEC’s enforcement program occurred in May 1993. Faced with a large number of complex cases the Commission developed the Enforce-

ment Priority System (EPS), to prioritize cases for substantive enforcement action. This system is designed to provide a consistent and impartial ranking of cases based on the relative seriousness of the alleged violations, and gives us a tool to match the seriousness of a particular case to the resources available to undertake the investigation. We use the EPS in conjunction with the case management system, which enables the Commission to measure performance with regard to the substantive resolution of cases by issue and to measure timeliness of enforcement actions. Under EPS, the Commission has activated more cases, closed more cases with substantive action, and resolved some cases that would otherwise have been dismissed.

The EPS has enabled the Commission to focus limited enforcement resources on the more important enforcement actions and to close low-rated and stale cases. The increased level of civil penalties assessed by the Commission following implementation of the EPS has demonstrated the benefits of pursuing more substantive cases. In 1991, there were 262 cases closed with civil penalties totaling \$534,000; in 1995, there were 229 cases closed with \$1,967,000 in civil penalties. By fiscal year 2003, there were 377 cases closed with civil penalties and fines totaling \$2,774,603.

Before 2000, the FEC's enforcement program was administered entirely by the Office of General Counsel. Two new components of the Commission's enforcement efforts—the Administrative Fine Program and the ADR program—are administered by the Staff Director. The goal of the ADR Program is to resolve matters quickly and effectively through bilateral negotiations. Both the ADR and Administrative Fine programs are designed to expand the FEC enforcement presence and resolve certain types of cases without resorting to the more lengthy traditional enforcement process. The Commission has met its compliance goals. Today, the Commission focuses its legal resources on the more complex enforcement matters, while using administrative processes to handle less complex matters. For example, from fiscal year 1995 through fiscal year 2000, the FEC closed an average of 197 cases each fiscal year. In fiscal year 2001, with the addition of the Administrative Fine and ADR programs, the FEC closed 518 cases, a 163 percent increase over the fiscal year 1995–2000 annual average of 197 cases. In fiscal year 2002, the FEC closed 229 cases, including enforcement, ADR and administrative fine cases. The total in fiscal year 2003 was 535 closed cases. We are confident the figure for fiscal year 2004 will be higher.

#### PUBLIC FUNDING PROGRAM

The Commission also administers the program providing a public subsidy to Presidential election campaigns. During fiscal year 2005, approximately 64 FTE from the Audit Division, Office of General Counsel, and Information Technology Division, will be directly involved in this program, which will entail audits of the seven candidates receiving matching funds for the 2004 election. In addition, two general election candidate committees will be audited, as will two host committees and two convention committees, for a total of 13 Presidential audits in fiscal year 2004 and 2005. This program began certifying eligible primary candidates for matching funds and processing submissions for funding awards on January 2, 2004.

On a related matter, we believe it is appropriate to bring to your attention the potential shortfall in the Presidential Public Funding Program. There was a brief shortfall with the February primary matching payments for the 2004 Presidential election, which was restored with the February deposits to the Fund. This is the only anticipated shortfall for the 2004 cycle. We did not experience a major shortfall for the 2004 Presidential election because several major candidates decided not to take Federal matching funds for the 2004 primaries; however, this may change in future elections. The Treasury Department maintains the matching fund account which is comprised of money derived from a taxpayer check-off system. Shortfalls in 1996 and 2000 occurred for several reasons. First, the eligibility requirements for receiving matching funds have not been adjusted for inflation since 1974, thus allowing more candidates to qualify for matching funds. Second, the “front-loading” of the primary and caucus nominating process which puts a premium on “early” fundraising for Presidential candidates, resulted in a high volume of funds being raised in 1995 and 1999 that were eligible for matching payments in January of 1996 and 2000. Absent legislative action, the Public Funding Program faces potential shortfalls because of declining participation in the check-off program, and the failure to index contributions to inflation while the pay-outs are indexed.

The foregoing summarizes the FEC's fiscal year 2005 budget request. For a more detailed review of this request, I would urge members of the committee to consult our more detailed Budget Justification, which includes charts delineating how our budget request would be allocated and how it compares to previous years. It also

demonstrates how the FEC has developed and used strategic and performance planning.

Again, I thank you, Mr. Chairman and the committee, for your continued support and the opportunity to present our fiscal year 2005 budget request.

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OFFICE OF NATIONAL DRUG CONTROL POLICY

PREPARED STATEMENT OF JOHN P. WALTERS, DIRECTOR

I am pleased to set forth the fiscal year 2005 budget request for the Office of National Drug Control Policy (ONDCP). I want to thank the subcommittee for its strong bipartisan commitment to our shared national goal of reducing drug use in America, especially among our youth. This subcommittee provides critical funding to support ONDCP's programmatic, policy, and budget development functions.

Your support of ONDCP's \$510.959 million budget request permits ONDCP to continue fulfilling our dual mission of serving as the President's primary Executive Branch support for counter-drug policy and program oversight and simultaneously managing our own programmatic responsibilities. We continue to work to achieve results of our stated goals and we are meeting those goals. For example, in February 2002, President Bush unveiled his goal of reducing youth drug use by 10 percent in 2 years in the National Drug Control Strategy. That goal has been exceeded. The 2003 Monitoring the Future Study confirms that current use (past 30 days) of any illicit drug between 2001 and 2003 among students declined by 11 percent. Similar declines were seen for past year use (11 percent) and lifetime use (9 percent).

ONDCP takes seriously its primary statutory responsibility to develop national drug control policy and a supporting budget, to coordinate and oversee the implementation of that policy and budget, and evaluate drug control programs to ensure that our efforts are coordinated and focused on obtaining measurable results. In addition to our policy role, ONDCP is responsible for managing and evaluating four key programs: The National Youth Anti-Drug Media Campaign, the Drug-Free Communities Support Program, the High Intensity Drug Trafficking Areas Program (HIDTA) Program, and the Counterdrug Technology Assessment Center (CTAC).

ONDCP is requesting \$510.959 million in budget authority for fiscal year 2005. The fiscal year 2004 enacted level is \$522.247 million. The budget request reflects four program accounts: Salaries and Expenses; the Counterdrug Technology Assessment Center (CTAC); Other Federal Drug Control Programs; and the High Intensity Drug Trafficking Areas (HIDTA) program.

*A. Salaries and Expenses: \$27.609 million*

In fiscal year 2005, ONDCP is requesting \$27.609 million for Salaries and Expenses to support a full complement of 125 Full-Time Equivalents (FTEs) and a pay raise. The request reflects a decrease of \$222,321 below the fiscal year 2004 enacted amount. This request is essential if ONDCP is to carry out its policy, budget, and programmatic responsibilities in a manner consistent with achieving measurable results. This includes:

*Operational Request: \$26.259 million*

Will provide compensation and benefits for all authorized FTEs including a full complement of Executive Level (EX) positions; contract services; rental payments to the General Services Administration; travel and transportation; communications and utilities; printing and reproduction; supplies, materials and equipment.

Includes resources to support 125 FTEs, an increase of 5 FTEs over the fiscal year 2004 enacted level. This FTE increase is requested to offset the loss of many of the 30 military detailee positions the Department of Defense has supported at ONDCP since 1996. Increasing the staff level to 125 FTEs will enable ONDCP to assess and respond to the drug threat facing the Nation. ONDCP will be able to monitor agency implementation of the National Drug Control Strategy programs and improve inter-agency coordination. ONDCP will be able to evaluate programs and identify those that work. Additionally, ONDCP will be able to provide policy guidance and oversight to the Counterdrug Technology Assessment Center (CTAC), High Intensity Drug Trafficking Area (HIDTA) Program, and Other Federal Drug Control Programs.

Provides for two new initiatives: High Speed TS Communication Line Costs and Communication Line Costs for DOD Intel-Link computers on-site. ONDCP will need to assume these costs because of budget realignments within the DOD Counterdrug budget.

*Policy Research Request: \$1.350 million*

This request will continue and expand ONDCP's policy research program, an increase of \$7,965 over the fiscal year 2004 enacted amount. ONDCP conducts research to develop and assess drug policy, identify and detail changing trends in the supply of and demand for illegal drugs, monitor trends in drug use and identify emerging drug problems, assess program effectiveness, and improve the sources of data and information about the drug situation. The requested funding will support a wide range of new and continuing policy research projects.

*B. Counterdrug Technology Assessment Center (CTAC): \$40 million*

In fiscal year 2005, ONDCP is requesting \$40 million to support the Counterdrug Technology Assessment Center (CTAC). The fiscal year 2004 enacted level is \$41.752 million. The aggregate request includes funding for two distinct components: Research and Development Program (\$18 million) and the Technology Transfer Program (\$22 million).

*Technology Research and Development: \$18 million*

*Demand Reduction R&D Program: \$12 million.*—CTAC's Demand Reduction Initiatives, in conjunction with the National Institute on Drug Abuse (NIDA), will continue to improve upon existing technology available for substance abuse, dependence, and addiction research. CTAC has established a "niche" in developing and installing advanced neuroimaging instrumentation at drug abuse research facilities operating under grants from NIDA. The Demand Reduction Technology Review Committee (DRTRC) has been established in conjunction with NIDA to address and prioritize research initiatives with which CTAC can assist in the future.

*Supply Reduction R&D Program: \$6 million.*—This funding will provide for developing technology for use by Federal, State, and local law enforcement agencies in reducing the supply of illegal drugs by developing technologies that satisfy identified law enforcement requirements for increased investigative capability. Once tested and evaluated, developed technologies become available either through the Technology Transfer Program or through independent purchase. Sponsored R&D items in fiscal year 2004 include a panoramic 360-degree video surveillance camera, a Project 25 digital audio body-wire, and a Title III telephone intercept expansion capability.

*Technology Transfer Program (TTP): \$22 million*

The Technology Transfer Program (TTP) relies on technical and operational performance testbed evaluations and outreach to industry to acquire additional items for law enforcement. The TTP makes available state-of-the-art, affordable, easily integrated, and maintainable tools to enhance the capabilities of State and local law enforcement agencies for counterdrug missions. TTP is not a grant program; rather, it provides drug crime fighting information technology and analytical tools, communications interoperability, tracking and surveillance, and drug detection devices from a catalog of items proven to be operationally effective by Federal, State, and local law enforcement. Hands-on training and maintenance support are provided to all recipients, and TTP maintains extensive records of State and local applications and jurisdiction statistics on every aspect of the program including the status of deliveries, departments receiving equipment, and training records.

*C. Other Federal Drug Control Programs: \$235 million*

In fiscal year 2005, ONDCP is requesting \$235 million for the Other Federal Drug Control Programs. The fiscal year 2004 enacted level is \$227.649 million. This account provides funds to a diverse group of ongoing programs: the National Youth Anti-Drug Media Campaign, the Drug-Free Communities Support Program, World Anti-Doping Agency (WADA) Membership Dues, the U.S. Anti-Doping Agency, Counterdrug Intelligence Executive Secretariat, National Drug Court Institute, and Performance Measures Development.

*The National Youth Anti-Drug Media Campaign: \$145 million*

In fiscal year 2005, ONDCP is requesting \$145 million for the National Youth Anti-Drug Media Campaign. The fiscal year 2004 enacted level is \$144.145 million. The Media Campaign uses multi-media advertising and public communications strategies aimed at youth and parents to promote anti-drug attitudes and behavior. The Campaign is a comprehensive national effort that integrates paid advertising at national and local levels with Web sites, clearinghouses, media events, outreach to the entertainment industry, and strategic partnerships that enable messages to resonate in ways that generate awareness and ultimately change beliefs and intentions toward drug use by teens.

Recently, ONDCP released results from the Monitoring the Future (MTF) Survey, which revealed that current use of illicit drugs among 8th, 10th, and 12th graders was down a statistically significant 11 percent from 2001. This reduction surpassed the President's ambitious goal of reducing youth drug use by 10 percent in 2 years. Moreover, MTF revealed that exposure to anti-drug advertising had an effect on improving youth anti-drug attitudes and intentions.

While these results are promising, each day 4,800 kids try marijuana for the first time and more adolescents continue to enter treatment for marijuana dependence than for all other drugs combined, demonstrating the need for continued funding. Therefore, this request continues funding for ONDCP's Media Campaign, an integrated effort that combines paid and donated advertising with public communications outreach.

In January 2004, the Media Campaign launched a new effort to urge friends and parents of teenagers to take early action against drug use. This new effort targets those closest to the user—friends and parents—and encourages them to intervene at an early stage. Giving friends and parents of teens the skills necessary to recognize symptoms of drug use and underage drinking, and to take action to stop it, can make a difference in the futures of young people at an important crossroads in their lives, before they need addiction treatment and before they encounter life-altering or deadly consequences.

*The Drug-Free Communities Support Program: \$80 million*

In fiscal year 2005, ONDCP is requesting \$80 million for the Drug-Free Communities Support Program (DFCSP). The fiscal year 2004 enacted level is \$69.587 million. The DFCSP provides a competitive process to award matching Federal grants of up to \$100,000 per year directly to local community anti-drug coalitions for the purpose of supporting local efforts to prevent or reduce drug use among youth. The program currently supports over 600 community coalitions in all 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Together, these community anti-drug coalitions serve a national network of local citizens, community leaders, and key professionals working daily to help keep young people free of the well-known dangers of drug use, including the underage use of alcohol and tobacco. Approximately 30 of the DFCSP grants have been awarded to communities where American Indian or Alaskan Native youth are the majority of young people served. Approximately 40 percent of DFCSP grants go to communities in small towns and rural areas.

Of the total amount of \$80 million that ONDCP is requesting for this program in fiscal year 2005, \$74.2 million will be awarded in grants to as many as 750 community anti-drug coalitions. An additional amount of \$1 million is requested to continue support for the National Community Anti-Drug Coalition Institute to provide much-needed training and technical assistance to the growing number of coalitions around the country. An amount of \$4.8 million is requested to support all other costs associated with grants management, program evaluation, and program administration.

*World Anti-Doping Agency Membership Dues: \$1 million*

In fiscal year 2005, ONDCP is requesting \$1 million for World Anti-Doping Agency (WADA) Membership Dues. The fiscal year 2004 enacted level is \$0.795 million. The dues assessment is formula driven and accounts for the increase from fiscal year 2004. WADA receives its funding in equal amounts from the International Olympic Committee and world governments. Governments are divided into six geographic regions. The United States, along with Canada, Central America, the Caribbean, and South America, are part of the Americas region. The Americas region is required to contribute 29 percent of the governments' funding. As of fiscal year 2004, the regions dues are based upon the relative contribution levels to the Organization of American States.

Created in 2001, WADA is a partnership among world governments, intergovernmental organizations, the Olympic movement, athletes, and other entities concerned about the consequences of doping and drug use in sport. WADA's mission is to promote healthy, doping free sport at the international level. WADA's doping-control program is key to upholding the fundamental rights of athletes to participate in doping-free sport through an effective detection and deterrence program, promoting consistency and ensuring an independent, quality-controlled process seeking equity for all athletes in all sports in all countries. In addition to drug testing, WADA's budget funds education and prevention programs for athletes at all age and levels (with a particular emphasis on youth) and research related to drug use in sport.

*United States Anti-Doping Agency: \$1.5 million*

ONDCP is requesting \$1.5 million to support the United States Anti-Doping Agency (USADA). The fiscal year 2004 enacted level is \$7.158 million. Since fiscal year 2002, funding to support USADA has been passed directly from ONDCP to USADA. USADA is a non-profit entity under the leadership of an independent board of directors. USADA began operations October 1, 2000, with full authority for drug testing, education, research, and adjudication for U.S. Olympic, Pan Am Games, and Paralympic athletes. Congress and the President have subsequently recognized USADA as the official anti-doping agency for the above-stated purposes (Public Law 107-67). Since its inception, USADA has received worldwide acclaim for its effective and innovative testing and education initiatives.

The \$1.5 million request would support USADA's ongoing drug testing regime that includes management, sample collection, and testing procedures. The fiscal year 2005 request considers the adjudication costs as the result of increased testing and the implementation of blood testing, which is more costly (and accurate) than urine drug testing. The request would also fund drug-related research, educational programs aimed at school-aged athletes and coaches, efforts to inform athletes of the rules governing the use of performance enhancing substances, and the ethics of doping and its harmful health effects. The public awareness efforts will be particularly important since the World Anti-Doping Agency adopted a new universal Code in March 2003 that will govern U.S. amateur athletes.

*Counterdrug Intelligence Executive Secretariat: \$4.5 million*

In fiscal year 2005, ONDCP is requesting \$4.5 million for the administration and operations of the Counter-drug Intelligence Executive Secretariat (CDX). The fiscal year 2004 enacted level is \$2.982 million. The CDX staff was established to coordinate the implementation of the General Counterdrug Intelligence Plan (GCIP) established in February 2000 and revalidated in May 2002. Fiscal year 2005 funding of CDX will ensure that the action items established by GCIP, as well as additional projects requested by the interagency Counterdrug Intelligence Coordination Group, can be accomplished.

*National Drug Court Institute: \$1 million*

In fiscal year 2005, ONDCP is requesting \$1 million for the National Drug Court Institute (NDCI). The fiscal year 2004 enacted level is \$0.994 million. Due to the fact that nearly 50 percent of the Nation's drug courts have only been in operation for the last 4 years, the Institute's education, research, and scholarship programs request these funds to continue the expansion of its discipline-specific and topic-specific drug court training programs for practitioners; to convene regional evaluation trainings in order to provide a forum for practitioners and researchers to enhance drug court evaluation techniques; to continue to publish and disseminate monographs on important and timely drug court issues; to continue to publish and disseminate the National Drug Court Institute Review; and to continue to publish and disseminate best practices fact sheets for drug court practitioners.

*Performance Measures Development: \$2 million*

In fiscal year 2005, ONDCP is requesting \$2 million for Performance Measures Development. The fiscal year 2004 enacted level is \$1.988 million. ONDCP will use the requested funding to develop and implement data sources to monitor illegal drug use and supply for national policy-makers. Projects funded with these resources will include efforts to work with selected programs to develop and/or improve needed data sources. In recent years, ONDCP has worked with the National Institute of Justice to redesign and expand the Drug Use Forecasting program into the Arrestee Drug Abuse Monitoring program. ONDCP has also worked with the DEA to improve the methodology of the Heroin Signature Program and the Domestic Monitoring Program. The requested funding will continue this collaborative interagency effort to develop and implement programmatic performance measures.

*D. High Intensity Drug Trafficking Areas (HIDTA): \$208.35 million*

In fiscal year 2005, ONDCP is requesting \$208.35 million for the operations of the High Intensity Drug Trafficking Area program (\$206.3 million for grants and Federal transfers and \$2.050 million auditing for services and associated activities, including development and implementation of a data collection system to measure program performance). The fiscal year 2004 enacted level is \$225.015 million. Each HIDTA has an Executive Committee (EXCOM) that serves as the governing body for the individual HIDTA. The EXCOM consists of an equal number of representatives from local/State and Federal agencies. The EXCOM is responsible for the development and implementation of the HIDTA Strategy and the attendant initiatives and budgets, as well as for the fiscal operations of the HIDTA.

The HIDTA mission includes coordination efforts to reduce the production, manufacturing, distribution, transportation, and chronic use of illegal drugs, as well as the attendant money laundering of drug proceeds. In addition, HIDTAs assess regional drug threats, develop strategies to address the threats, integrate initiatives, and provide Federal resources to implement initiatives. These resources are allocated to link local, State, and Federal drug enforcement efforts and to optimize the investigative return on limited fiscal and personnel resources. Properly targeted, HIDTAs offer greater efficiency in countering illegal drug trade in local areas by facilitating cooperative investigations, intelligence sharing (coordinated at HIDTA Investigative Support Centers), and joint operations against drug-trafficking organizations.

Since fiscal year 2002, in addition to recurring HIDTA funding, ONDCP has provided additional funds to HIDTAs that have developed and conducted investigations against major drug trafficking organizations with connections to the Consolidated Priority Organization Target (CPOT) list. (The CPOT list, developed in 2001 by key Federal law enforcement entities, with input from the Intelligence Community and other Federal agencies, is comprised of the drug trafficking organizations generally agreed to represent the most significant drug threat to the United States. The list, which is maintained by the Justice Department, is updated periodically and is not public.) In fiscal year 2004, ONDCP has proposed to make approximately \$16 million available to generate and advance investigations of domestic targets with a nexus to or affiliation with major drug trafficking organizations on the CPOT list. ONDCP hopes that continued discretionary funding will be available for HIDTAs through the CPOT Initiative in fiscal year 2005.

At present, 406 United States counties (about 13 percent of the total) in 43 States, Puerto Rico, the United States Virgin Islands, and the District of Columbia are designated as part of 28 HIDTAs. Since January 1990, counties in the following 28 areas have been designated as HIDTAs: Houston, Los Angeles, South Florida, New York, and the Southwest Border, which includes partnerships in South Texas, West Texas, New Mexico, Arizona, and Southern California (in 1990); Washington/Baltimore, and Puerto Rico/U.S. Virgin Islands (in 1994); Atlanta, Chicago, Philadelphia/Camden (in 1995); Gulf Coast (Alabama, Louisiana, and Mississippi), Lake County, Indiana, the Midwest (Iowa, Kansas, Missouri, Nebraska, North Dakota, and South Dakota), Northwest (Washington), Rocky Mountain (Colorado, Montana, Utah, and Wyoming) (in 1996); Northern California (San Francisco Bay Area) and Southeast Michigan (in 1997); Appalachia (Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, and North Texas (Northern Texas and Oklahoma) (in 1998); and Central Valley California, Hawaii, New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Ohio, and Oregon (in 1999); Northern Florida and Nevada (in 2001). The HIDTAs nationwide contribute significantly to the removal of drug traffickers and the trafficking organizations that drive the illegal drug market and also to the elimination of tons of illegal drugs that flow each year through high intensity drug trafficking areas to other American communities.

#### CONCLUSION

Thank you for the opportunity to provide this formal statement for the record. I will be happy to address any questions you may have and I look forward to working with this subcommittee as we work to meet the goal of reducing drug use in America, especially among our youth.

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#### SURFACE TRANSPORTATION BOARD

##### PREPARED STATEMENT OF ROGER NOBER, CHAIRMAN

Chairman Shelby and members of the subcommittee, I am Roger Nober, Chairman of the Surface Transportation Board (Board). I thank you for the opportunity to submit this statement setting forth the Board's budget request for fiscal year 2005.

##### BACKGROUND ON THE BOARD

The Board is a three-member, bipartisan, decisionally independent adjudicatory body organizationally housed within the Department of Transportation (DOT) with jurisdiction over certain surface transportation economic regulatory matters.

The rail oversight of the Board encompasses rate reasonableness, car service and interchange, mergers, line acquisitions, line constructions, and abandonments. The

jurisdiction of the Board also includes certain oversight of the intercity bus industry and pipeline carriers; and rate regulation involving noncontiguous domestic water transportation, household goods carriers, and collectively determined motor carrier rates. The Board is statutorily empowered, through its exemption authority, to promote deregulation administratively.

The Board's Section of Environmental Analysis performs environmental reviews on the Board's construction, abandonment, and merger matters as required by the National Environmental Protection Act. These reviews have become more complex and require significant resources.

#### THE BOARD'S FISCAL YEAR 2005 BUDGET REQUEST

In fiscal year 2005, the Board requests budget resources totaling \$21,283,000. This budget request mirrors the Board's fiscal year 2004 budgetary authority approved by Congress, adjusted for the fiscal year 2005 pay raise and some program increases. In this budget request, the Board also seeks resources and authority to operate at 150 FTEs, or five more FTEs than the current level.

The Board would use the additional funds to address two primary costs. First, the additional resources are requested to cover salary and employee benefit costs associated with the fiscal year 2004 and fiscal year 2005 pay increase. Unlike many agencies, there is little room at the Board's current budget level to absorb a pay increase without the additional resources, because fixed costs, including salary and rent, comprise about 95 percent of the agency's expenses. Absorbing even a small amount of the pay increase impairs the Board's ability to perform its statutory mission.

Second, the Board would use most of the additional resources to implement initiatives to expedite resolution of rail rate disputes between railroads and their largest customers and to offer a meaningful forum for the railroads' smaller customers. In fiscal year 2003, the Board adopted new rules to streamline the rail rate process, and it now provides for mediation and for technical conferences among the parties and Board staff that have produced agreements on numerous discovery and technical issues, thereby resolving matters that in the past would have taken months to litigate before the Board. Nevertheless, the press of large rate cases will continue, and we also expect parties will file small rate cases once new procedures for such cases are in place. Therefore, one of the additional FTEs would be to implement the congressional desire that the agency have an Administrative Law Judge, who would assist in fostering agreements among the parties in various agency proceedings and would expedite the resolution of small rate matters. Additional FTEs would provide the Board with another 3-person rate team for fiscal year 2005 to continue to resolve rate cases within their statutory deadlines.

The requested authorization for 150 FTEs also will provide the Board with the discretion to hire staff to replace tenured, retirement-eligible staff prior to their anticipated retirement date. Several retirements can be expected in the near future, and having the flexibility to hire qualified people when they are available is particularly important for a high-rated agency that must hire economic and technical expertise when they are available in the labor market.

Consistent with appropriation acts for past fiscal years, the Board requests a provision allowing user fee collections to be credited to the appropriation as offsetting collections and used for necessary and authorized expenses, to the extent that they are collected. The overall budget request reflects the workload that is expected and the statutory and regulatory deadlines associated with the resolution of the cases filed.

#### RECENT DEVELOPMENTS THAT IMPACT THE BOARD'S BUDGET REQUEST—YUCCA MOUNTAIN

Under the Interstate Commerce Act, the Board must authorize the construction of new rail lines that are part of the national rail system. Since the Board submitted its budget request for fiscal year 2005, it has been named a cooperating agency in the environmental review associated with building a rail line to the repository at Yucca Mountain, in Nye County, Nevada. The Department of Energy (DOE) has been working for years on a program to use Yucca Mountain as a repository for spent nuclear fuel and high-level radioactive waste that would be transported there from throughout the United States.

On April 2, 2004, DOE announced that its preferred mode to transport the radioactive materials from throughout the United States to Yucca Mountain was "mostly rail," and it selected as its preferred corridor for a new rail line to Yucca Mountain one beginning near Caliente, Nevada. Then on April 8, 2004, DOE announced its intent to prepare an Environmental Impact Statement (EIS), as required by the National Environmental Policy Act, for construction and operation of this rail line.

On May 5, 2004, DOE formally requested that the Board, along with the Bureau of Land Management and the Air Force, become a cooperating agency on the environmental review of the Caliente Corridor leading to the Yucca Mountain facility. DOE made this request due to the Board's statutory authority to review rail construction projects and its expertise in doing so.

Our responsibilities as a cooperating agency have already begun. The Board's Section of Environmental Analysis attended the opening meetings to determine the scope of the environmental review for this project. Three meetings were held in Nevada over 3 days the week of May 3rd in Armagosa Valley, Goldfield, and Caliente. A meeting was also held the week of May 10th in Reno, and another is scheduled for May 17 in Las Vegas. Additional meetings are planned for this month and there will be numerous meetings this year and throughout the EIS process, which the DOE expects to last at least 2 years.

DOE has not yet determined whether it will structure the line in a way that would trigger Board review. While the Board receives many applications to build new rail lines that are subject to the Board's jurisdiction, not every rail line construction project requires Board approval. The Board has jurisdiction over and must approve the construction of any common carrier rail line—a rail line on which the railroad must provide service to any shipper who requests it. However, the Board does not license the construction of a private rail line—a line over service is not available to the general public.

When the Board receives an application to build and operate a new rail line, it conducts the required environmental review of these projects and, unless the project is not in the public convenience and necessity, licenses the project. In the typical case, the Board is the lead agency for any necessary environmental review.

In conducting the environmental review, the Board is usually able to accept certain services that are paid for by the project proponent. For example, to complete the environmental review of a rail construction project, the applicant selects a third-party contractor from the Board's list of pre-approved contractors and retains it. Although the contractor works at the direction of the Board's Section of Environmental Analysis, the project proponent pays the contractor. The Board is not reimbursed for its staff time or travel.

In discharging our duties as a cooperating agency, the Board will require a third party contractor who will assist the Board by attending meetings regarding the EIS, evaluating the environmental concerns, and providing the specialized, technical expertise concerning issues affecting the rail line construction that would supplement the work of the Board's Section of Environmental Analysis. The Board is working with DOE for DOE to reimburse the Board for the costs associated with this contractor.

However, it would be difficult for the Board to accept any offer for DOE to pay for Board staff and travel since, as discussed, in the future DOE may seek Board approval for this line.

Since DOE may become an applicant before the Board, the Board does not want to risk compromising its independence in considering the merits of a DOE application by accepting financial support from DOE for additional salary and travel costs. The Board's review of such a proposal must be independent. Otherwise, if the Board issued a license, that issuance could be subject to challenge in court on grounds that the agency's independence was jeopardized by its acceptance of reimbursements beyond those reimbursements that are ordinarily permissible in any rail construction case. A successful challenge could be costly to the taxpayers and delay the project.

The Yucca Mountain EIS process will require the resources for two full-time staff and travel costs for the biweekly participation meetings. The Board's participation in the Yucca Mountain EIS will require 25 percent of the Board's current environmental staff, which would adversely affect the Board's ability to conduct the environmental reviews required for abandonment and rail line construction cases currently pending before the Board and those that may be in the pipeline awaiting formal filing. In order to fully participate, the Board would need an additional 2 FTEs and \$250,000 above what it has requested for fiscal year 2005.

#### OVERALL GOALS OF THE BOARD

In the performance of its functions, the objective of the Board is to ensure that, where regulatory oversight is necessary, it is exercised efficiently and effectively, integrating market forces, where possible, into the overall regulatory model. In particular, the Board seeks to resolve matters brought before it fairly and expeditiously. Through use of its regulatory exemption authority, streamlining of its decisional process and the regulations applicable thereto, and consistent application of legal and equitable principles, the Board seeks to facilitate commerce by providing an ef-

fective forum for efficient dispute resolution and facilitation of appropriate business transactions. The Board continues to strive to develop, through rulemakings and case disposition, new and better ways to analyze unique and complex problems, to reach fully justified decisions more quickly, and to reduce the costs associated with regulatory oversight.

To be more responsive to the surface transportation community by fostering governmental efficiency, innovation in dispute resolution, private-sector solutions to problems, and competition in the provision of transportation services, the Board will:

- Continue to strive for a more streamlined process for the expeditious handling of rail rate reasonableness and other complaint cases, in an effort to provide additional regulatory predictability to shippers and carriers;
- Continue to process diligently cases before the Board and to ensure that appropriate market-based transactions in the public interest are facilitated;
- Continue to develop new opportunities for the various sectors of the transportation community to work cooperatively with the Board and with one another to find creative solutions to persistent industry and/or regulatory problems involving carriers, shippers, employees, and local communities; and
- Continue to work to ensure the provision of rail service that is responsive to the needs of customers.

#### FISCAL YEAR 2004 AND 2005 ACTIVITIES OF THE BOARD

Building upon the Board's success in fiscal year 2003—including issuing 890 decisions in fiscal year 2003, developing regulations to expedite the resolution of large rate cases,<sup>1</sup> investigating ways to improve the process for small rate cases,<sup>2</sup> and informally resolving disputes between railroads and between railroads and their customers—the Board will continue to look for ways to streamline or otherwise improve applicable regulations and the regulatory process and to promote private-sector resolution of problems. In this regard, the Board will entertain any proposed exemptions from regulation that might be appropriate and resolve as expeditiously as possible petitions for rulemaking filed by parties. The Board will also continue to look independently for ways to shorten and streamline its procedures for bringing and prosecuting both large and small rate cases, and to make the environmental review process for new rail line construction cases more streamlined as well. And it will continue to use its processes to encourage private-sector dispute resolution.

As noted, the Board is requesting resources for 5 additional staff positions in fiscal year 2005. In particular, the Board would use those resources to establish a new rate team, to hire an administrative law judge, and to add additional staff to its office that handles consumer complaints. Although the Board has attempted to use retirements within the agency to begin to realign its resources for its future needs, it cannot complete that realignment through retirements alone.

The Board is seeking staff resources for three rate team personnel, who will help move the rate docket forward. The workload involving rail rates and services is expected to increase in fiscal year 2004 and remain stable through fiscal year 2005, particularly given the likely continuing expiration of long-term coal transportation contracts. Currently, the Board has 5 coal rate complaint cases at various States of adjudication and 5 petitions to reopen and reconsider in former coal rate complaint cases, for a total of 10 rate cases under review. These proceedings will require significant staff attention and additional resources, given the complex nature of the cases, the numerous steps such as motions and discovery resolution, and the tight 9-month statutory timeframes for completion once the record is closed. Indeed, the bulge in rate cases is already producing a strain on our resources, which have historically been geared to handle two rate cases at a time. (It is for this reason that we are requesting additional resources from Congress for one additional 3-person rate team for fiscal year 2005.) Additionally, the Board will continue to handle rail cases involving questions of whether certain rail activity cannot be regulated at the State or local level because such regulation is preempted by Federal law.

In July and August, 2003, the Senate Committee on Commerce, Science and Transportation considered and reported S. 1389, The Surface Transportation Board Reauthorization Act of 2003. S. 1389 is a bill to reauthorize the Surface Transportation Board for 5 years, beginning in fiscal year 2004. Section 4 of S. 1389 addressed the small rate case issue, and directed the Board to modify its small rate case procedures to address many of their identified problems within 180 days. Sub-

<sup>1</sup> Ex Parte No. 638, Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology.

<sup>2</sup> Ex Parte No. 646, Rail Rate Challenges in Small Cases.

section 4©) of that bill specifically directed that, when revising its small rate case procedures, the Board “may provide for an initial determination of such [small] rate challenges by an administrative law judge, with an opportunity for appeal of such determination by the full Board[.]” At a subsequent hearing on rail regulatory matters held in October 2003, several Senate Commerce Committee members again noted the benefits of the Board having an Administrative Law Judge to consider small rate cases in the first instance, oversee discovery, and issue preliminary decisions in matter of months compared to years with large rate cases. The Administrative Law Judge would decide the cases under a clear standard with cases being appealable to the full Board and ultimately to the courts.

The final additional staff position would provide the Board expertise on passenger rail service and would coordinate and resolve scheduling and operational issues between freight railroads and between those railroads and their customers. The Board’s Rail Consumer Assistance Program is an informal mechanism for resolving disputes that has proven very effective, but additional resources will help it address the increasing number of inquires that result from it becoming more widely known.

With respect to rail carrier consolidations, we are not aware of any major rail mergers in the immediate future. Therefore, the workload in this category is expected to remain somewhat stable through fiscal year 2005 because this category includes a broad array of control transactions among larger railroads and smaller railroads. Of course, it is impossible to know whether a major merger may be proposed during fiscal years 2004 or 2005. As noted, the Board continues to resolve issues related to past Class I rail mergers. Also, the Board will continue to handle other rail consolidations involving smaller railroads that are filed with it.

Concerning other rail restructuring matters, rail abandonment decisions are expected to remain somewhat constant through fiscal year 2005. While the number of rail abandonments has remained at this level for the past number of years, the increased complexity of abandonment filings continues to require more than one decision in certain cases. The Board continues to see a high volume of “post abandonment” activity relating to trail use, as proponents avail themselves of the National Trails System Act, and also relating to offers of financial assistance to continue freight rail service.

With the notable exception of the Yucca Mountain rail line construction project, the Board projects that its line construction docket will remain constant through fiscal year 2005. We emphasize that demands on the Board to conduct environmental reviews for such transactions continue to grow, and that such activities require a significant number of resources to complete.

Other line transaction activity is expected to increase slightly through fiscal year 2005 as more carriers continue to sell unprofitable or marginally profitable lines as an alternative to service abandonment, particularly in light of the recent economic downturn. In the past few years, the Board has seen a number of line acquisitions by both small carriers and noncarriers as rail carriers restructure their rail systems.

#### SUMMARY

The Board’s budget request would ensure the resources needed for the Board to continue to implement its responsibilities expeditiously and effectively as Congress intends. I would be happy to answer any other questions that the Committee may have about the Board’s fiscal year 2005 budget request.

#### ATTACHMENT NO. 1

#### SALARIES AND EXPENSES

[Dollars in thousands]

|   | Fiscal Year<br>2003 Actual | Fiscal Year<br>2004 Estimate | Fiscal Year<br>2005 Request | Difference<br>From |
|---|----------------------------|------------------------------|-----------------------------|--------------------|
| Permanent Positions .....                 | 145                        | 145                          | 150                         | 5                  |
| Full-time Equivalents .....               | 137                        | 145                          | 150                         | 5                  |
| Personnel Compensation and Benefits ..... | \$15,268                   | \$16,025                     | \$17,703                    | \$1,678            |
| Travel .....                              | \$41                       | \$80                         | \$87                        | \$7                |
| Other Costs .....                         | \$3,998                    | \$3,416                      | \$3,493                     | \$77               |
| <b>TOTAL BUDGET RESOURCES .....</b>       | <b>\$19,307</b>            | <b>\$19,521</b>              | <b>\$21,283</b>             | <b>\$1,762</b>     |

## CHANGES IN RESOURCES

For personnel compensation and benefits, \$17,703,000 is requested to support the Board's permanent positions. Included in this request is \$144,000 to fund the annual cost of the January 2004 pay raise and \$221,000 for the January 2005 pay raise. The request also includes \$50,000 for lump-sum leave payments to retiring employees.

A travel budget of \$87,000 is requested primarily for on-site visits to railroads to finalize audits and review public accountants' workpapers, to physically inspect proposed rail abandonment and construction sites, and to verify environmental data provided by parties to proceedings, conduct operational reviews, meet with shippers regarding rail service issues and compliance, defend the Board's decisions in courts across the country, and generally provide presentations, upon request, on issues within the Board's jurisdiction. Due to the increased number of environmental reviews associated with new rail construction cases and attendance at field hearings on high-profiled cases, staff travel has increased and is expected to remain at the increased level through fiscal year 2005.

Funding to cover other costs is requested at \$3,493,000. Included in this number are rental payments to the General Services Administration (GSA) and payments for employee training, telephone service, postage, information technology systems support and equipment, miscellaneous services and supplies, and reimbursable services acquired from other Federal agencies. The increase in other costs is mainly associated with the projected increase in rental payments to GSA and an increased level of security for all Federal agencies. The Board has increased its level of physical security in light of recommendations by GSA and the Department of Homeland Security and has implemented a Business Continuity Plan along with sheltering-in-place procedures to provide for the physical security of its employees and the continuity planning and continuance of its statutory mission.

## ATTACHMENT No. 2

FISCAL YEAR 2005 CONGRESSIONAL BUDGET JUSTIFICATION WORKLOAD SUMMARY <sup>1</sup>

| Workload Category                         | Actual Fiscal Year 2003 Board Decisions and Court-related Work | Estimated <sup>2</sup> Fiscal Year 2004 Board Decisions and Court-related Work | Estimated <sup>3</sup> Fiscal Year 2005 Board Decisions and Court-related Work |
|---|--|--|--|
| Rail Carrier Control Cases .....          | 52   | 55   | 55   |
| Rail Rates and Service .....              | 70   | 86   | 86   |
| Rail Abandonments and Constructions ..... | 512  | 501  | 501  |
| Other Line Transactions .....             | 186  | 204  | 204  |
| Other Rail Activities .....               | 33   | 51   | 47   |
| Non-Rail Activities .....                 | 39   | 51   | 53   |
| <b>Total .....</b>                        | <b>890</b>   | <b>948</b>   | <b>946</b>   |

<sup>1</sup>At this time, the Board believes that the number of Board decisions and court-related work is the best measure of workload at the Board. Certain activities performed at the Board that provide direct and indirect support for rulemakings and decisions in specific cases are not reflected in these workload numbers. Such activities not reflected include: enforcement activities; rail audits and rail carrier reporting oversight; administration of the rail waybill sample and development of the Uniform Rail Costing System; and case-related correspondence and informal public assistance.

<sup>2</sup>Estimated workloads for fiscal year 2004 and 2005 are based on historical information regarding actual filings and best estimates of probable future filings by parties. Because the Board is principally an adjudicatory body, it does not directly control the level or timing of actual case filings.

<sup>3</sup>Ex Parte No. 638, Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology.

## OFFICE OF GOVERNMENT ETHICS

## PREPARED STATEMENT OF MARILYN GLYNN, ACTING DIRECTOR

Thank you for the opportunity to submit a statement in support of the request of the U.S. Office of Government Ethics (OGE) for fiscal year 2005 resources of \$11,238,000 and 80 FTEs. This request represents an increase of \$500,000, primarily to meet expected increases in personnel costs.

The Office of Government Ethics is responsible for overseeing the ethics program of the executive branch, a program designed to help prevent conflicts of interest and promote integrity in Government. OGE sets the requirements of the program, develops executive branch-wide policies, serves as a resource/consultant to agency ethics officials and monitors agency programs to help ensure that the agencies are carrying

out their responsibilities effectively. OGE also plays a significant role in the review and certification of the financial disclosure forms of nominees to positions requiring Senate confirmation. The day-to-day activities of the program are the responsibility of each executive branch agency. These activities include initial collection and review of financial disclosure forms; providing advice and training to agency employees on the criminal conflict of interest laws and the executive branch standards of conduct; and investigation and administrative enforcement of the standards of conduct.

The ethics program that is directed by OGE is part of the basic infrastructure that supports good governance within the Federal executive branch. The resources expended by OGE to help promote integrity and prevent conflicts of interest are small in comparison to the resources expended by investigators and prosecutors who enforce ethics and conflict of interest rules and laws. Moreover, our preventive efforts help guard against the loss of resources through inadvertent or deliberate misuse. We believe the resources we have requested are those necessary to adequately support a strong ethics program.

#### FISCAL YEAR 2005

We would like to highlight some of the major programs anticipated for fiscal year 2005.

During any fiscal year in which a Presidential election occurs, OGE anticipates a large influx of Presidential appointees, regardless of the outcome of an election. OGE's role in clearing Presidential nominees is designed to help them understand the application of the conflict of interest requirements to their Government service and to secure their agreement to taking the necessary steps to resolve potential conflicts of interest. Our goal is to review nominee statements in a timely manner to avoid any unnecessary delay in the nomination/confirmation process. OGE's resources are shifted from other programs during this period to handle the increased workload in our financial disclosure review systems. Once an individual is appointed, OGE follows through to see that any agreements made by an appointee to address potential conflicts of interest are carried out. In addition, during this period, OGE will continue to conduct a second level review of over 1,000 annual and termination financial disclosure statements filed by Presidential appointees each year.

As a part of the change that typically occurs after a Presidential election, OGE also will provide ethics training through OPM, and the White House if requested, to incoming Presidential appointees, new noncareer SES and Schedule C appointees, and White House staff. Additionally, we expect to help agencies provide accurate post-employment advice to employees who are leaving the government.

In the education and training area, OGE will develop instructor and participant guides to be used by departments and agencies to deliver their annual ethics training, as well as training evaluation instruments to measure what employees learned from various instructor-led and web-based training courses. In training ethics officials, OGE will develop and conduct additional instructor-led ethics training courses for ethics practitioners, trainers, counselors, financial disclosure reviewers, and enforcement officials in headquarters and the regions.

To reach ethics officials outside the Washington area, OGE plans to offer regional symposia for approximately 240 ethics practitioners in the field. OGE maintains an e-mail list service to communicate with 2,000 practitioners and enforcement personnel world-wide. OGE also will host the 15th Annual National Government Ethics Conference for approximately 700 ethics practitioners in September 2005.

The Office has added an employee survey to its evaluations of individual agency ethics programs. Begun on a more limited basis this fiscal year, these surveys will be carried out throughout fiscal year 2005 in approximately one-third of the 35 Federal agencies evaluated. The information gathered through the surveys helps provide OGE with a better basis on which to judge the effectiveness of the individual agency programs under review and the overall executive branch ethics program.

OGE desk officers will maintain their day-to-day communications with agencies assigned to them. This continuing liaison between OGE and agency ethics staffs enables OGE to respond to the needs of the agencies in a timely and accurate manner. In addition, this interaction provides OGE with an early warning that an agency ethics program is deficient or has problems that require specialized attention.

OGE will continue to provide international technical assistance at the request of the Departments of State and Justice. In fiscal year 2005, OGE plans to participate in Global Forum IV, the Follow-up Mechanism for the Inter-American Convention Against Corruption and the evaluation mechanisms of the Council of Europe's Group of States Against Corruption. The United States will also be reviewed under the latter two mechanisms during fiscal year 2005.

These are just some of the programs and activities envisioned for fiscal year 2005. We are pleased with the past success of the executive branch ethics program and look forward to the challenge of maintaining and enhancing the quality of the program.



## NONDEPARTMENTAL WITNESSES

[CLERK'S NOTE.—The following testimonies were received by the Subcommittee on Transportation, Treasury and General Government, and Related Agencies for inclusion in the record. The submitted materials relate to the fiscal year 2005 budget request.

The subcommittee requested that public witnesses provide written testimony because, given the Senate schedule and the number of subcommittee hearings with Department witnesses, there was not enough time to schedule hearings for nondepartmental witnesses.]

### PREPARED STATEMENT OF THE INTERNATIONAL LORAN ASSOCIATION

On behalf of the International Loran Association (ILA), I am writing in conjunction with your work on the fiscal year 2005 Department of Transportation, Treasury and Related Agencies Appropriations bill. I respectfully request that this submission be made part of your hearing record in conjunction with the subcommittee's work.

The ILA is asking the committee to support \$25 million in funding from the fiscal year 2005 Federal Aviation Administration (FAA) budget—the same level as requested last year—as the next increment necessary to continue modernization and enhancement of Loran.

In recent years, the committee has provided about \$120 million to modernize and upgrade Loran because it is a multimodal navigation system with demonstrated cost/benefits important for our national transportation safety and security objectives. In fact, at this juncture, it would cost about \$100 million to decommission the system, approximately the same amount that will be required to complete the modernization. However, the most compelling reason to continue providing resources to complete this work is because Loran is the only multimodal system we have in the United States that can support the global positioning satellite (GPS) system in all modes of transportation, as well as in timing applications affecting the majority of our population.

In previous years, our submissions for the hearing record have documented numerous security, economic and technical issues as to why the operation of our national infrastructure and the safety of our citizens should not be placed at risk by depending solely on GPS for vast transportation, timing and navigation needs. The Volpe Center's "Vulnerability Assessment of the Transportation Infrastructure Relying on the Global Positioning System" in 2001 framed those issues regarding overdependence on a single system, and an ever-growing body of evidence continues to be amassed to validate the continuation of Loran as the most complementary and cost effective system available to support GPS and eliminate national vulnerabilities. Indeed, ongoing studies have verified that not only is Loran the only other multimodal system we have, but also that Loran is the most complementary and most cost effective system we have.

As you and other committee members are aware, the FAA, the U.S. Coast Guard (USCG), academic and industry experts have conducted an active Loran evaluation program spanning several years and a final report on that evaluation program is to be submitted to the U.S. Department of Transportation (DOT) on March 31, 2004. There are two major aspects to the report: one is the technical evaluation to ensure a modern or enhanced Loran system can meet the performance requirements of the FAA and USCG; and the other is a Loran benefit-cost study completed by the Volpe Center in 2003. It is fair to say that the technical evaluation section will be very positive, particularly because virtually all of the contributing studies have been continuously presented at numerous professional conferences and other technical fora. In addition, previous DOT-sponsored economic studies on Loran have been uniformly positive, and given the identified need for a national GPS backup, it is virtually assured that the economic section of the Loran evaluation study will be very favorable as well.

Other recent government documents also indicate there is widespread acknowledgement that Loran is indeed the best system the country can utilize to backup and support GPS.

For example, in April 2003, a Memorandum of Agreement (MOA) regarding the recapitalization, modernization, and operation of Loran was finalized and approved by the FAA, USCG, and DOT. This interagency MOA states: "The parties recognize the multi-modal nature of the Loran navigation system and the necessity of managing Loran as a national asset in a multi-modal manner. The purpose of this agreement is to set forth terms by which the parties will provide service in order to provide a multi-modal backup to the Global Positioning System (GPS) based services". In referencing the Volpe Study on GPS vulnerabilities cited above, the MOA states: "both the FAA and USCG acknowledged that GPS is indeed vulnerable to intentional and unintentional interference and that backup systems are required for both the National Airspace System (NAS) and the Marine Transportation System (MTS) . . . The FAA and USCG also recognize that Congress, aviation, maritime, and other users regard Loran-C as a national asset that must be preserved as a part of the nation's critical infrastructure".

In January 2004, the DOT released a report for Secretary Mineta entitled: "Radionavigation Systems: A Capabilities Investment Strategy," which also contained some important findings, even though much of the report's information was approximately 1 year old. First, it once again clearly identified Loran as the only multimodal backup to GPS and the best theoretical backup to GPS. Second, although the Loran report is less than 1 month away, it includes a recommendation to "Complete the evaluation of enhanced Loran to validate the expectation that it will provide the performance to support aviation Non-Precision Approach (NPA) and maritime Harbor Entrance and Approach (HEA) operations. If enhanced Loran meets the aviation NPA and maritime HEA performance criteria, and is cost effective across multiple modes, the Federal Government should operate Loran as an element of the long-term radionavigation system mix". In addition, the report looks forward and identifies Loran as a backup for the new aviation Automatic Dependent Surveillance—Broadcast (ADS-B) system and the new marine Automatic Identification System (AIS), both of which will be widely used in the future. Finally, the report suggests exploration of the collocation of GPS augmentation and Loran facilities, which would not only maximize their synergies but also optimize cost savings to the Nation.

From an international perspective, there is also recognition regarding the need and benefits of Loran. Ultimately, that realization will provide a major economic opportunity for U.S. technology because of equipment standardization and market globalization, similar to what has occurred with GPS. For example, in August 2003 the European Maritime Radionavigation Forum published a study entitled: "GNSS Vulnerabilities & Mitigation Measures: A Study for the European Maritime Radionavigation Forum," and among its conclusions were: "There is a significant risk of losing GNSS for limited periods and in limited areas . . . The consequences of losing GNSS will become greater as reliance on it increases . . . Loran could provide an effective backup in Europe, at a capital cost estimated at 50m".

In addition, the ILA was invited to participate in a meeting in Japan last fall, where representatives from Japan, China, Korea, Russia, and the United States were asked to address the question of GPS vulnerabilities and how to solve the problem. Virtually the entire conference focused on one system: Loran.

In summary, recognition of the various safety, security, economic, and political benefits that Loran can provide to the Nation has continued to grow rapidly, based on solid scientific and economic studies by our government, academia, industry, and other governments. A positive Loran report will be delivered to the DOT on March 31, 2004, and the DOT has committed to making a long-overdue Loran policy decision. It is now a certainty that Loran provides the Nation with the ability to mitigate GPS vulnerabilities in multimodal transportation and timing applications that play key roles in the continuing operations of the national infrastructure, and that the technology does so at a remarkably low cost.

Loran's future, and its ability to complement GPS, depends on the continuation of the modernization program, which is already well underway. As previously documented, that modernization program will reduce Loran's operations and maintenance costs from approximately \$27 million a year to approximately \$15 million annually, and enable multimodal support at a fraction of the cost other single mode systems require. Moreover, the enhanced Loran system that will evolve from the modernization program will provide better performance than the single mode systems, and provide a national roadmap to future GPS-based systems that can incorporate Loran as a backup, such as ADS-B and AIS.

As you and all committee members well understand, GPS has recognized vulnerabilities that could potentially affect the safety of tens of millions of Americans and the security of our critical national infrastructure. In combination with a modernized Loran system, GPS and Loran can together form the basis of a national infrastructure that is extremely robust, now and well into our future.

For these reasons, we urge the committee to support fiscal year 2005 funding in the FAA budget of no less than \$25 million to continue a Loran modernization program that will help assure our Nation's transportation safety and infrastructure security objectives are achieved in a most cost-effective manner for government providers, private users, and taxpayers.

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PREPARED STATEMENT OF BERNARD H. BERNE, M.D., PH.D.

OPPOSITION TO BUDGET REQUEST FOR APPROPRIATION TO FEDERAL BUILDINGS FUND FOR FOOD AND DRUG ADMINISTRATION CONSOLIDATION, MONTGOMERY COUNTY, MARYLAND

I am a resident of Arlington, Virginia. I serve the Food and Drug Administration (FDA) as a Medical Officer and as a reviewer medical device approval applications. I am submitting this statement as a private individual.

I ask your subcommittee to deny the administration's request to provide \$88,710,000 to the General Services Administration's (GSA's) Federal Buildings Fund for the construction of a FDA Consolidation in Montgomery County, Maryland. This request appears on page 961 of the President's Budget for fiscal year 2005.

The General Services Administration (GSA) is now designing and constructing this facility. GSA would use the additional funds to continue this wasteful project in suburban White Oak, Maryland. Please deny these funds for the following reasons:

*Economic Considerations*

FDA will need to pay rent to GSA if it occupies this facility. The rents would likely be higher than rents that GSA and FDA pay to private property owners, since GSA would not need to enter into competitive bidding processes.

Congressional authorizing committees need to evaluate the current costs of the consolidation and compare them to the costs of maintaining FDA's current facilities. No Congressional committee has done this during the past 15 years.

*Lack of Need for Relocating FDA to White Oak Facility*

All or nearly all of FDA's offices that would move to White Oak are presently located in satisfactory leased facilities. Some, such as my own, are now in excellent buildings. There is no clear need or economic reason to relocate these offices to White Oak or to consolidate any part of FDA at this location.

White Oak is an unsatisfactory location for FDA's headquarters consolidation. The project would promote urban sprawl.

FDA's White Oak facility would occupy 125 acres next to a golf course in a suburban residential neighborhood in Montgomery County, Maryland. The FDA site is outside of the Capital Beltway on a largely forested 750-acre property surrounded by heavily congested roads and highways. The site is 3 miles from the nearest Metro station, and has only infrequent bus service.

An FDA consolidation at White Oak would bring 6,000 FDA employees to this Washington area suburb. Most would need to commute for much longer times and distances than they presently do. White Oak is more than 20 miles from most present FDA facilities.

I and thousands of other FDA employees presently commute to work by Metro, as our workplaces are near Metro stations. This will be impossible at White Oak.

FDA employees driving to White Oak will add traffic congestion and air pollution to the Washington Metropolitan Area. This is especially unfortunate because the Washington Metropolitan Area already has the second worst traffic congestion of all urban areas in the United States. The Federal Government will need to subsidize many improvements to roads and public transit to accommodate the many FDA employees and associated businesses that would relocate from better locations to this distant suburb.

FDA employee surveys have revealed widespread opposition to this relocation. Three years ago, a survey of those employees who would relocate first to White Oak showed that 70 percent opposed the move. Many stated that the relocation would impair FDA's ability to regulate drugs and medical devices.

It is clear that the location of the facility will have long-lasting adverse effects on FDA's ability to recruit and retain qualified employees. Further, many more FDA

employees will telecommute than presently do. They will rarely work at the new facility. This will greatly diminish FDA's efficiency and will contradict a major goal of the FDA consolidation at White Oak.

The Washington Metropolitan area has a number of better sites at which FDA can consolidate. Some of these, such as the Southeast Federal Center in the District of Columbia, are near other Federal facilities and Metrorail stations.

#### *Legal Issues*

On February 23, 2001, I and a number of other FDA employees joined the Sierra Club and the Forest Conservation Council in a law suit that is intended to stop the White Oak project. For a number of reasons, FDA's occupancy of any buildings at White Oak would be illegal. The U.S. District Court for the District of Columbia is presently considering this suit.

The White Oak facility would house the Office of the Commissioner of Food and Drugs, as well as most other FDA headquarters offices. This would violate 4 U.S.C. § 72, which states:

"All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided in law."

4 U.S.C. § 72 is derived from the 1790 Act that established the District of Columbia as the Nation's capital. The first Congress enacted this law, which President George Washington signed.

There is no law that expressly provides that FDA's headquarters offices shall be exercised outside of the District of Columbia.

The FDA Revitalization Act (Public Law 101-635; 21 U.S.C. § 369b), authorizes the Secretary of HHS to enter into contracts to acquire property and to construct and operate a consolidated FDA headquarters facility. This Act does not provide the location of the consolidated facility.

I ask Congress not to appropriate funds to support an illegal activity. The 1790 Act had the worthy purpose of ensuring that all central offices of the Federal Government would consolidate in the Federal capital District, and not elsewhere. The consolidated FDA facility would be one such office that is "attached to the seat of government".

Article 1, Section 8, of the Constitution gives Congress exclusive jurisdiction over the District of Columbia. Your committee should take no action to support the location of FDA's headquarters at a location that is outside of the District. Any such action would tend to vitiate this section of the Constitution, which 4 U.S.C. § 72 is intended to support.

Executive Order 12072, Aug. 16, 1978, (40 U.S.C. §490 note) states in Section 1-1, Subsection 101:

"Federal facilities and Federal use of space in urban areas shall serve to strengthen the nation's cities and to make them attractive places to live and work. Such Federal space shall conserve existing urban resources and encourage the development and redevelopment of cities."

White Oak is not in or near any city. An FDA consolidation at White Oak (which is in an "urban area", the Washington Metropolitan Area) would not strengthen any cities. The FDA facility would not encourage the development or redevelopment of any cities.

Executive Order 12072, Section 1-1, Subsection 101, contains the word "shall" in several locations. FDA therefore can not legally locate its headquarters in suburban White Oak.

Executive Order 12072 and several Federal statutes require that heads of Federal agencies consult with local city officials to obtain their recommendations for and objections to all proposed new Federal facilities. Neither GSA nor FDA officials ever consulted with officials of the District of Columbia or of the City of Rockville in Montgomery County, Maryland, concerning the White Oak facility.

This lack of consultation violated Executive Order 12072 and several laws. It prevented District and Rockville officials from recommending alternative sites for the consolidated facility within their own jurisdictions and from objecting to the selection of the White Oak site.

The Public Buildings Act of 1959, as amended, requires that the Committee on Environment and Public Works of the U.S. Senate approve prospectuses that describe the location and maximum costs of any large buildings that GSA may wish to construct before Congress can appropriate funds to design and construct such buildings. That Committee has never approved a prospectus that describes FDA's White Oak facility.

Paragraph 7 of Senate Rule XVI requires that committee reports on general appropriations bills identify each provision “which proposes an item of appropriation which is not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.” If your committee proposes any appropriation of funds for an FDA consolidation, your Committee Report needs to identify this appropriation as being one that is not made to carry out the provisions of any existing law, treaty, or act or resolution that the Senate has previously passed during this session.

The Treasury and General Government Appropriations Act, 2000 (Public Law 101-58), the Consolidated Appropriations Act, 2001 (Public Law 106-544), the Treasury and General Government Appropriations Act, 2002 (Public Law 107-67), the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), and the Consolidated Appropriations Act, 2004 (Public Law 108-199) appropriated funds to GSA that could support FDA’s consolidation in Montgomery County, Maryland. However, all of these Acts contain provisions that state:

“Provided further, That funds available to the General Services Administration shall not be available for expenses of any construction, repair, alteration, or acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus.”

The Public Buildings Act of 1959, as amended, requires a prospectus that describes FDA’s White Oak facility because the project’s cost exceeds \$1,500,000. No prospectus that described this facility had been approved before Public Law 101-58, Public Law 106-544, Public Law 107-67, and Public Law 108-199 were enacted into law. Therefore, GSA may only legally use the funds appropriated in these Acts for “required expenses for the development of a proposed prospectus”. GSA cannot legally use the funds to design and construct any buildings.

The report of the Committee on Appropriations of the House of Representatives (House Report 107-152, July 23, 2001), which accompanied the bill (H.R. 2590) that became Public Law 107-67, states on p. 65 under the heading: “General Services Administration” “Federal Buildings Fund” “Construction and Acquisition” “Recommendation” the following: “All construction projects funded in this bill are subject to authorization by the Committee on Transportation and Infrastructure”.

FDA’s White Oak project was one of the construction projects funded under Public Law 107-67 (H.R. 2590). Despite this, GSA is presently designing and starting to construct the FDA consolidation without an approved prospectus and without receiving authorization by the Committee on Transportation and Infrastructure. GSA’s actions are contrary to the House Appropriations Committee’s statement in House Report 107-152, and, further, are illegal.

Some GSA officials claim that the FDA Revitalization Act (Public Law 101-635) authorizes appropriations to GSA without the need for prospectus approvals. This claim is incorrect. Public Law 101-635, which amended the Federal Food, Drug and Cosmetic Act, authorized appropriations that permit the Secretary of HHS to enter into contracts to construct and operate a consolidated FDA facility.

Public Law 101-635 specifically limits the role of the Administrator of General Services in the FDA consolidation to consultation with the Secretary of HHS. Public Law 101-635 does not authorize any appropriations that can permit GSA to conduct any such activities, nor does it authorize any appropriations to GSA’s Federal Buildings Fund. Clearly, GSA will use any new funds illegally, just as it is using the previously appropriated funds.

The National Environmental Policy Act (NEPA) of 1969 requires that Federal agencies compare in an Environmental Impact Statement (EIS) alternative locations for any large new Federal facility. However, the EIS for the White Oak FDA facility did not make any such comparisons.

The EIS only compared the environmental impacts of an FDA consolidation at White Oak with the “no action” alternative. Following this legally inadequate comparison, GSA and FDA officials selected White Oak as the location for the facility.

GSA and FDA officials therefore violated NEPA when they selected the White Oak site. Congress should not appropriate funds to support this illegal selection.

A Federal court may prevent FDA from consolidating its facilities at White Oak for one or more of the above reasons. Congress should not provide funds for FDA to occupy the White Oak facility until the Federal courts decide whether the project can proceed.

I therefore ask that your subcommittee not provide the requested \$88,710,000 to GSA in this legislation. Thank you.

## PREPARED STATEMENT OF THE AMERICAN PASSENGER RAIL COALITION

Chairman Shelby and Members of the Subcommittee on Transportation, Treasury and General Government, thank you for the opportunity to provide testimony on fiscal year 2005 funding for Amtrak, the Nation's intercity passenger railroad. My name is Harriet Parcels and I am Executive Director of the American Passenger Rail Coalition (APRC), a national association of railroad equipment suppliers and rail businesses.

For fiscal year 2005, Amtrak has requested \$1.79 billion. Of this total, nearly \$800 million is for capital investments to continue the work taking place under the leadership of Amtrak President David Gunn to bring Amtrak into a state of good repair. Amtrak's request for operations is \$570 million, \$11 million less than Amtrak requested in fiscal year 2004 and an indication that Mr. Gunn's efforts to improve efficiency, reduce costs and implement management reforms at Amtrak are yielding positive results. APRC supports Amtrak's budget request and asks the subcommittee to fund Amtrak at \$1.79 billion. While we recognize that funding constraints face the subcommittee, APRC believes that funding Amtrak much below \$1.79 billion would jeopardize the substantial progress taking place at Amtrak. The administration's fiscal year 2005 budget of \$900 million for Amtrak is nearly 50 percent below Amtrak's budget request and \$318 million or 26 percent below Amtrak's current appropriation of \$1.218 billion. Funding Amtrak at \$900 million would provide virtually no funding to continue the important capital investments identified in Amtrak's Five Year Strategic Capital Plan and that Amtrak has been undertaking since 2003. Amtrak President David Gunn has stated that funding at \$900 million would lead to a shutdown of the national system. APRC also supports strong funding for the rail safety and research and development programs at the Federal Railroad Administration.

## AMTRAK RIDERSHIP IS STRONG ON TRAINS NATIONWIDE

Amtrak is a valued means of transportation used by million of Americans annually. For travel in metropolitan corridors, Amtrak provides a cost-effective, efficient alternative to congested highways and airports. For residents of rural communities, Amtrak trains are often the only convenient, affordable, all-weather public transportation available. In fiscal year 2003, 24 million passengers rode Amtrak trains, the highest level in Amtrak's history. Ridership gains occurred on routes across the system. Each month from June-December 2003, gains in rail ridership ranged from 7–12 percent over levels for the same period in 2002. Amtrak ticket revenues also rose each month from June-December 2003. Thanksgiving ridership was Amtrak's highest ever for this holiday—Amtrak carried approximately 595,000 passengers over the 7 days from Tuesday, November 25-Monday, December 1. Ridership on Amtrak's long-distance trains was particularly strong, with increases of 14 percent or more over last year.

Some policymakers question the need for long-distance trains, yet the strong growth in ridership on these trains underscores the important mobility and economic benefits they provide, especially for America's small cities and rural communities (see table 1).

TABLE 1.—AMTRAK MONTHLY RIDERSHIP GROWTH JUNE-DECEMBER FISCAL YEAR 2003 COMPARED TO FISCAL YEAR 2002

[Amount in percent]

| Month           | Systemwide Total | Long-distance Trains |
|-----------------|------------------|----------------------|
| June .....      | + 6.8            | + 13.6               |
| July .....      | + 7.1            | + 9.4                |
| August .....    | + 7.3            | + 14.1               |
| September ..... | + 11.4           | + 22.2               |
| October .....   | + 10.7           | + 30.9               |
| November .....  | + 11.7           | + 32.0               |
| December .....  | .....            | + 16.3               |

Source: Amtrak and NARP News (Jan. 2004 issue).

California's Pacific Surfliner trains, operating between San Diego and Los Angeles and Santa Barbara, continue to experience record-breaking ridership. Two million passengers rode these trains in fiscal year 2003, a 25 percent increase over fiscal year 2002. Ridership on other major rail corridors in the State—the San Joaquin service and the Capitol Corridor—also had strong ridership growth. Ridership on

the Texas Eagle rose 20 percent in fiscal year 2003 over 2002 levels. In the Midwest, eight trains that serve the region experienced a 16 percent rise in ridership from May-December 2003 compared to 2002. In the Northeast, Acela Regional trains carried more passengers than any other Amtrak service in the Nation—nearly 6 million riders—up 3.7 percent over last year. The Pennsylvanian train ridership surged 64 percent, benefitting from a routing change that terminated the train in Pittsburgh rather than Chicago.

*Ridership Gains Continue in Fiscal Year 2004.*—Gains in Amtrak ridership continued in first 4 months of fiscal year 2004 (Oct. 2003-Jan. 2004). Northeast Corridor ridership was up over 6 percent; ridership on long-distance trains was up nearly 20 percent.

#### AMTRAK'S ABILITY TO CONTINUE CAPITAL INVESTMENTS IS CRUCIAL

Amtrak President David Gunn and the Amtrak Board of Directors began implementing a program of capital investments in fiscal year 2003 that, if sustained over the next several years, will bring the national Amtrak system into a state of good repair. These capital investments are essential to improving the reliability, safety and efficiency of the national Amtrak system. Amtrak's accomplishments to date in making capital improvements are significant. In fiscal year 2003, 147,600 concrete ties were installed in the Northeast Corridor, replacing old wood ties. Twenty-two miles of continuous welded track were installed and track bed was improved. These investments will provide a smoother ride for travelers and reduce track maintenance costs. Track improvements to a third track have increased capacity and enabled speeds to rise from 60 to 110 mph. Thirty-three miles of signal cables were replaced, 37 miles of electric catenary hardware renewed and 22 bridges retimbered. Substantial improvements were and continue to be made to rolling stock. Twenty-one wrecked Amfleet and Superliner railcars were rebuilt and 23 food service cars were remanufactured and restored to service on routes around the country. One hundred and three railcars and locomotives went through heavy overhauls or were remanufactured. APTC urges Congress to provide Amtrak with sufficient funding in fiscal year 2005 to enable the railroad to continue these essential capital investments.

#### RAIL CAPITAL INVESTMENTS PRODUCE U.S. JOBS AND OTHER BENEFITS

The U.S. rail manufacturing and supply industry contributes to the health of the U.S. economy, with over \$20 billion in annual sales (approximately \$7 billion to U.S. intercity, commuter and transit passenger railroads) and over 150,000 workers employed. Capital investments made by Amtrak support jobs for Americans in factories and businesses in States across the country. Investments in transportation infrastructure are vital to the efficient movement of people and goods and a robust, competitive economy. Every billion dollars invested in transportation infrastructure projects creates approximately 42,000 jobs.

In the Pacific Northwest, investments in new rail infrastructure and equipment by Washington, Oregon and public and private partners to improve the quality and speed of rail service in the Pacific Northwest High Speed Rail Corridor resulted in a tripling in intercity passenger rail ridership over levels 10 years ago. With further investments, the region anticipates rail ridership to grow to 2.2 million by the year 2018. The Midwest Regional Rail Initiative, a plan to link cities and communities throughout the Midwest with improved passenger rail service, is projected to stimulate substantial public and private investment and create 2,300 permanent new rail service jobs, 6,300 construction jobs (over 10 years) and 18,200 indirect jobs. Public investments to bring the Acela high-speed rail service to the Northeast Corridor generated economic benefits for States and businesses around the country. Contracts were signed with over 70 suppliers in more than 20 States.

#### AIR-RAIL INTERMODAL CONNECTIONS PROVIDE MANY BENEFITS

Intermodal transportation hubs that provide an easy transfer for travelers between modes—from airplanes to intercity passenger trains or intercity trains to local transit systems—enhance the efficiency of the overall transportation system and provide many benefits to travelers. While progress in developing intermodal connections has been made since enactment of the "Intermodal Surface Transportation Efficiency Act of 1991", much work remains in this area. Only a few U.S. airports, such as Newark Airport in New Jersey and Burbank Airport in California, provide an easy transfer between Amtrak trains and airplanes. At Newark Airport, Continental Airlines and Amtrak have created a code-sharing arrangement, the only one in the Nation, which covers rail travel for Continental passengers between Newark Airport and six cities on the Northeast Corridor. A study comparing travel by

several different modes (Amtrak, NJ Transit or by car) to Newark Airport from nearby cities (Newark, NYC, Philadelphia, Trenton) found that considerable time can be saved when rail transportation is used. An added benefit is that adverse weather and road conditions which cause great time increases for auto travel generally don't impact rail. At Maryland's BWI Airport, travelers can easily connect between trains and airplanes by a bus service that operates between the airport and Amtrak's BWI train station. This service works well and is used by many travelers. In Pennsylvania, part of the plan for the new Harrisburg International Airport terminal is a \$10 million train station, which will connect to the new airport terminal by a glass-enclosed moving sidewalk. A larger number of U.S. airports have convenient rail transit connections to the airport: Atlanta's Hartsfield Airport; Chicago's Midway and O'Hare Airports; St. Louis Lambert Field Airport; Washington DC's Reagan National Airport and others. These types of intermodal connections are commonplace throughout Europe and other parts of the world where airports have become true multi-modal transportation centers. U.S. transportation policy and funding should continue to encourage development of intermodal centers and easy connections between modes to boost the efficiency of the U.S. transportation system and ease travel for passengers.

#### RAIL INFRASTRUCTURE BONDS TO COMPLEMENT APPROPRIATED FUNDS FOR RAIL

The need for funding to improve railroad infrastructure greatly exceeds what is available through annual Federal appropriations. States lack adequate funding to make these investments alone. An innovative Federal-State partnership is needed. Several bills have been introduced in the Senate and the House of Representatives that would fund investments in rail infrastructure through tax-credit bonds or private activity bonds. In the Senate, two comprehensive rail authorization bills have been introduced. The American Rail Equity Act of 2003 (AREA) or S. 1505 was introduced by Senator Kay Bailey Hutchison and cosponsors. S. 1505 establishes a non-profit Rail Infrastructure Finance Corporation (RIFCO) that is authorized to issue \$48 billion in tax-credit bonds for rail infrastructure investments over 6 years. It also authorizes \$12 billion for Amtrak over 6 years. A second bill, the American Railroad Revitalization, Investment and Enhancement Act of the 21st Century (ARRIVE 21) or S. 1961 was introduced by Senator Ernest Hollings and cosponsors and creates a non-profit public-private partnership, the Rail Investment Finance Corporation (RIFCO), that is authorized to issue \$30 billion in tax-credit bonds over 6 years. S. 1961 also reauthorizes Amtrak at \$1.5 billion per year for 6 years. In the House, the Transportation and Infrastructure Committee approved RIDE-21 (HR 2950) which authorizes \$59 billion in rail infrastructure improvements and establishes authority for States or State compacts to issue \$12 billion in tax-credit bonds and \$12 billion in private activity bonds over 10 years for investments for high-speed rail infrastructure. APRC strongly supports enactment of legislation that would establish a non-profit corporation authorized to issue bonds for investments in rail infrastructure. The bonds would help address the large unmet need for investments in rail infrastructure to improve passenger and freight rail service and capacity and would complement rail funding available through the annual appropriations process.

Chairman Shelby and members of the subcommittee, thank you for the opportunity to provide testimony on the needs of our Nation's passenger rail system.

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#### PREPARED STATEMENT OF THE COALITION OF NORTHEASTERN GOVERNORS (CONEG)

As the subcommittee begins the fiscal year 2005 transportation appropriations process, the Coalition of Northeastern Governors (CONEG) is pleased to share with the subcommittee testimony on the fiscal year 2005 Transportation and Treasury Appropriations bill. The CONEG Governors commend the subcommittee for its past support of funding for the Nation's highway, transit, and rail systems. Although we recognize the extensive demands being made upon Federal resources in the coming year, we urge the subcommittee to continue the important Federal partnership role that is vital to strengthening the multi-modal transportation system. This system is a critical underpinning to the productivity of the Nation's economy and the security and well-being of its communities.

First, the Governors urge the subcommittee to fund the combined highway, transit and safety programs at levels that will continue the progress in recent years to improve the condition and safety of the Nation's highways, bridges and transit systems. These improvements, documented in the U.S. Department of Transportation's 2002 Conditions and Performance Report to Congress, were made possible by the substantial level of investments made by the Federal-State partnership in highway,

bridge and transit infrastructure under the Transportation Equity Act for the 21st Century (TEA21). Continued and substantial investment in these infrastructure improvements—in both urban and rural areas—is necessary if the Nation's surface transportation system is to safely and efficiently move people and the substantial growth in freight movement that is projected in the coming decade. According to the Conditions and Performance Report, a combined Federal highway and transit program of \$53 billion annually is needed simply to maintain our Nation's highways and transit systems in the current conditions.

Within the transit program, the Governors strongly urge the subcommittee to provide funding levels that at least maintain the basic program structure and address the solvency of the mass transit account. Further, the Governors urge the subcommittee to continue the traditional 80/20 Federal-State match for the New Start Program and the Bus and Bus Facilities Discretionary Grant Program. These programs have been instrumental in ensuring that needed funds are invested to improve and extend transit services in both our urban and rural communities.

Second, the Governors strongly urge the subcommittee to provide at least \$1.8 billion in fiscal year 2005 for intercity passenger rail. Intercity passenger rail is a vital part of the Nation's transportation system, particularly in the Northeast and Mid-Atlantic region, where it provides essential mobility, enhances capacity of other modes, and provides much needed redundancy to the Nation's transportation system. In recent years, the Congress has imposed discipline on the management of Amtrak operations, with the result being greater financial accountability and oversight of the Federal Government's investment in intercity passenger rail. While the Congress, administration and States continue to work cooperatively to determine the future of intercity passenger rail and Amtrak in the Nation's transportation system, a funding level of \$1.8 billion in fiscal year 2005 will help provide a period of stability for intercity passenger and commuter rail operations. This funding level is critically needed to maintain services and begin a program of essential investments in equipment and infrastructure to bring the system back to a state of good repair for reliable service. The United States Department of Transportation Inspector General has noted that over \$1 billion in capital funds is needed annually just to sustain the current intercity passenger rail system, regardless of who operates that system. The States are already major investors in the current intercity passenger rail system, with the Northeast and Mid-Atlantic States having invested over \$4 billion in intercity passenger rail operations and infrastructure since 1991.

Third, the Governors urge the subcommittee to continue funding for investments in Intelligent Transportation Systems (ITS) that can maintain and enhance the capabilities and security of the Nation's transportation system. ITS helps States and communities along the densely populated Atlantic Coast region improve the safe and reliable operations on highway and transit systems on a daily basis. The Northeast's rural areas and communities also benefit significantly from ITS investments. The region's ITS systems, including those provided by TRANSCOM and the I-95 Corridor Coalition, have demonstrated their critical role, both in the emergency management and recovery phases, when security demands put added pressure on the region's transportation networks.

Fourth, safety on the Nation's highways, transit and rail systems remains a priority of the Governors. The safety of the aging rail tunnels along the Northeast Corridor is a particular concern, and we urge the subcommittee to fund life safety improvements for the Amtrak-owned Baltimore and New York tunnels. The Governors also support maximum funding for the Section 130 Highway-Rail Crossing Program. As part of the Federal-State partnership to correct hazardous conditions on the Nation's highways, investments in highway-rail crossings can reduce injuries and death from accidents even as they allow higher train speeds and increased reliability.

Fifth, the Governors urge the subcommittee to provide sufficient funding for border crossing and gateway infrastructure projects. A strong program—one that invests in transportation projects addressing both security and transportation needs—can contribute to safer, more efficient and secure flows of people and goods across international borders and through gateways.

Sixth, the Governors also support the President's funding request of \$20 million for the Surface Transportation Board. The Board is essential for oversight and effective implementation of decisions affecting the ongoing process of railroad consolidations that will affect local and regional economies across the Nation.

Finally, the Governors support continued Federal investment in transportation research and development programs, particularly the Federal Railroad's Next Generation High Speed Rail program. This program enhances safety and helps stimulate the development of new technologies, which will benefit improved intercity rail service across the Nation.

The CONEG Governors thank you, Ranking Member Patty Murray, and the entire subcommittee for the opportunity to share these priorities and appreciate your consideration of these requests.

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PREPARED STATEMENT OF THE NATIONAL TREASURY EMPLOYEES UNION

NTEU represents 150,000 Federal employees in 29 Federal agencies and departments, including the men and women who work at the Internal Revenue Service. I appreciate the opportunity to provide the subcommittee with comments on the IRS budget for fiscal year 2005.

There are several items in the administration's IRS budget that NTEU believes would be detrimental to the IRS' mission. The two most egregious items include the administration's proposal to contract out tax collection to private tax collection agencies, and an inadequate budget request that will prevent the IRS from continuing to improve its customer service record while bolstering enforcement efforts.

PRIVATE TAX COLLECTION

The Treasury Department's fiscal year 2005 budget proposal to allow the IRS to use private collection agencies to collect Federal income taxes is risky, costly, and unnecessary. NTEU strongly opposes this plan. This proposal would risk exposing sensitive taxpayer information, would subject taxpayers to the abusive tactics of private debt collectors, and would cost U.S. citizens much more money than if IRS employees did the job.

IRS employees are the most reliable, cost-effective means for collecting Federal income taxes. IRS employees can collect outstanding debt more cheaply than private contractors. With an appropriation of \$296 million for compliance, the IRS could collect an additional \$9.47 billion in revenue per year. That's a \$31 return per dollar spent, compared to only \$3 revenue per dollar spent for private collection agencies. Furthermore, there is the potential for abusive treatment from private debt collectors. There is a very real risk of exposing sensitive taxpayer information to those who might misuse it. In this era of identity theft, I do not believe the Federal Government should engage in practices that could needlessly expose confidential taxpayer information.

A February 2003 Treasury Inspector General for Taxpayer Administration (TIGTA) report faulted the IRS for failing to conduct background checks on more than 2,100 private contract employees working in offices in Maryland who had access to sensitive information. In 1996 and 1997 tax years, Congress authorized a pilot program to test private tax collection. The 1996 program resulted in such egregious abuses by private debt collectors that the 1997 program was cancelled. According to an IRS Internal Audit Report (Ref. No. 080805, 12/19/97), the private debt collectors under contract to the Federal Government committed hundreds of violations of the Fair Debt Collection Practices Act—including calling a taxpayer at 4:19 a.m.

There is widespread opposition to privatization of tax collection. Several taxpayer advocacy groups: the Tax Executives Institute; the National Association of Enrolled Agents; Citizens for Tax Justice; Consumer Federation of America; Consumers Union; National Consumer Law Center; National Consumers League; and large segments of the taxpaying public oppose the privatization of collection duties. Specifically, Global Strategy Group, Inc. conducted a poll last year that found 66 percent of respondents disapprove of allowing the Internal Revenue Service (IRS) to hire private debt collection companies. When details of the IRS's plan were provided, the number in opposition rose to 79 percent. The results of this poll strongly indicate that Americans across all political, geographic and income lines oppose this proposal.

While the IRS is liable for damages caused by an IRS employee's misuse of sensitive taxpayer information, taxpayers would not have proper redress with the Federal Government for misuse of their confidential information by contractors. Instead, taxpayers would be left to seek damages against the private collection agency. It is plain and simple. This plan to privatize tax collection at the IRS will hurt U.S. taxpayers and will hurt IRS workers.

Having cited these failed attempts for private tax collection, I would urge the subcommittee to prohibit any appropriation funds from being used for contracting out tax collection services to recover U.S. debt.

While NTEU agrees with IRS' goal of enhancing tax compliance and enforcement, we don't agree with the approach of eliminating front-line employees in order to pay for additional compliance efforts. As the number of tax returns continues to grow, the number of IRS employees continues to shrink. As the IRS Oversight Board pointed out in its 2003 Annual Report, the IRS workload has increased by 16 percent while at the same time the number of full time equivalent employees has decreased by 16 percent from 1999 to 2002. This is caused by a number of circumstances, including an increasingly complex tax code and an increasing number of tax returns—paper as well as electronic returns. This has led to a serious decline in the size of the IRS workforce as a way to cope with increasing budgetary demands.

NTEU strongly encourages the subcommittee to increase the IRS budget by 10 percent over fiscal year 2004, as recently recommended by the IRS Oversight Board in its fiscal year 2005 Budget/Special Report (March 2004). The administration expects the IRS to do more with fewer resources and this is simply an unrealistic demand placed on the IRS workforce. If Congress wants more out of the IRS, then they are going to have to pay for it. The IRS Oversight Board makes a compelling case for increasing the IRS budget because it will ultimately mean an increase in Treasury revenues.

I would encourage Congress to work with the administration to anticipate costly events—such as pay increases or costly changes to the tax code—and budget accordingly. This did not happen last year. For instance, NTEU encouraged the IRS to make a supplemental funding request for administering last summer's child tax credit refunds to taxpayers. To our dismay, the request was not made and IRS was forced to do more work without any additional resources. This places a great burden on an IRS workforce that is expected to provide business results while improving customer service. This is unrealistic and unfair. Improving customer service, enhancing tax return processing and increasing tax compliance will only occur if Congress and the administration support increased funding for staffing, advanced technology and equipment, and better training.

The IRS is using the excuse of bolstering compliance to justify a recently announced reduction in force (RIF) of roughly 1,600 IRS Case Processing and Insolvency support employees in 92 locations across the country—only to turn around and hire 1,000 new employees to do the same work in four consolidated IRS Service Center sites. NTEU opposes the RIF and urges the IRS to keep its employees in the field, serving the local taxpayers. NTEU urges Congress to appropriate the needed funding to keep these employees in the field.

Presumably, IRS intends to save money and increase efficiency with this move, but there is no evidence of cost savings and IRS' business case assumptions are faulty. IRS has failed to provide information on the cost of hiring and training new employees when the current employees already know how to do the job.

In responding to the announcement of the RIFs, former IRS commissioner Donald Alexander was recently quoted as saying, "Centralization is not always more efficient, especially when it moves support people away from those they are supporting."

As one of the rationales for the current centralization, the IRS indicates that Case Processing had not been reorganized since the 1970's. However, several attempts have been made to centralize Case Processing over the years, but have failed and this function has remained in the field. In fact, Case Processing functions were located in Service Centers until the IRS reorganized 25 years ago to locate these functions closer to the employees who perform collection and exam work. Reorganizing for the sake of reorganization is a waste of time and money, neither of which the IRS can afford to squander.

Case processing support employees assist Revenue Agents and Revenue Officers in resolving issues related to overdue taxes. One of the more important duties performed includes releasing liens on property once overdue taxes are paid so that a taxpayer can secure a loan and calculate interest penalty abatements.

Insolvency employees are responsible for monitoring tax compliance throughout the life of the bankruptcy, including trust fund taxes and pyramiding of business taxes. Insolvency employees must adhere to strict deadlines in order to avoid violations of the automatic stay and possible sanctions. Failure to take timely and appropriate actions could result in the IRS being sued for damages and/or attorney fees. Centralizing Insolvency work means that the new employees will need to know the local rules and standing orders of the various bankruptcy courts that take precedence under the Bankruptcy Code. It is unreasonable to expect employees to be able

to follow the rules of dozens of different States and courts, likely resulting in delays and errors and a greater cost to the IRS.

The IRS has failed to provide information on how local taxpayers will be affected by its plan. Despite a lack of information from the IRS on the affect on taxpayers, NTEU believes that this RIF will indeed affect taxpayers nationwide.

Federal-State disclosure agreements—and the statutes that govern these agreements—differ by State. Centralizing the Insolvency work will mean that employees in the centralized sites will need to be responsible for knowing and adhering to all 50 variations. It will take longer for cases to close if they have to be shipped to a centralized site and this could hurt the taxpayer who is waiting for her case to be closed.

Currently, if a taxpayer has a question about the process, she can find one of the Case Processing employees locally and get her question answered. If these jobs are shipped out of State, it will be much more difficult for the taxpayer to get her question answered, or for the cases to be resolved in a timely and complete manner.

Finally, this removes accountability at the local level. If a member of Congress is contacted by a taxpayer constituent with an IRS case processing problem, that member will be directed to some out of State Service Center where the new employee has no comprehension of the region, much less the local personnel involved in closing a case, or the member of Congress making the inquiry.

NTEU agrees with the IRS that there is a great need to bolster enforcement efforts, but this RIF does not guarantee new or enhanced enforcement positions. Once again, this is a waste of time and money for the IRS. This is unfair to the current employees who are trained and successfully performing the Case Processing and Insolvency work; this is unfair to the taxpayers who rely on the services provided by their local Case Processing workers.

IRS also has plans for a RIF of approximately 2,200 employees at the Memphis Submission Processing Center. NTEU strongly disagrees with the IRS' decision to conduct this RIF. The IRS claims that it is taking this action because there has been an increase in electronic filing of tax returns, and it no longer needs employees to process paper returns. However, according to the General Accounting Office (GAO-02-205), the IRS has fallen far short of meeting its electronic filing goals. IRS is using unrealistic, optimistic assumptions to project the increase in electronic tax return filing and then using these assumptions to justify the RIF.

I commend the House of Representatives Appropriators who recognize the risks of reducing IRS staffing of manual submission processing. In House Committee Report 108-243, they have asked IRS to report back prior to “initiating any premature and ill considered reductions in force . . .” (see H. Rept. 108-243, IRS MANUAL SUBMISSIONS PROCESSING).

NTEU recognizes that electronic filing will eventually become a reality of IRS' modernization efforts. But we strongly believe that any resulting reorganizations should occur when there is a genuine need for a shift to an e-filing workforce and every effort should be made to avoid a RIF by retraining and placement of current employees.

These examples of reducing the IRS workforce demonstrates the need for Congress to commit to funding the IRS at adequate levels so the IRS is not made to choose between bolstering enforcement and providing the superior service our taxpayers expect and deserve. I hope the subcommittee will give serious consideration to the Oversight Board's recommendation and increase the IRS fiscal year 2005 budget by 10 percent over fiscal year 2004.

#### PAY PARITY

The administration has proposed a completely inadequate 1.5 percent raise for civilian Federal workers in 2005, and a 3.5 percent pay raise for members of the military. NTEU supports the higher raise for all employees and I applaud the Senate's budget resolution calling for civilian-military pay parity in 2005.

This vote—and in particular, the bipartisan nature of the vote—not only sends an important message to Federal employees that they are valued and respected but it is another important step in the government's continuing efforts to recruit and retain the high-quality employees the public wants and expects in Federal agencies.

The Senate budget resolution is in step with a recently approved House resolution, which supports the concept of pay parity between Federal civilian and uniformed military employees. By a vote of 299-126, the members of the House went on record in support of equal pay raises for both groups of public employees in 2005. The House vote reflected the importance of pay parity and signaled that members of Congress understand the need for fair pay in the competition with private sector employers for the most talented workers.

The vote by the full Senate on the pay issue preceded the rejection earlier this year of language supporting civilian-military pay parity by the House Budget Committee in its 2005 budget resolution.

Congressional action on Federal pay reflects the role that civilian employees play not only serving the public in their specific agencies, but in the continuing fight against terrorism. They work in a variety of capacities that impact national security, including such roles as helping secure the country's borders, protecting the food supply, and much more. Again, I commend those Senators who voted for the pay parity resolution and urge the appropriators to fund civilian pay on par with military pay at a 3.5 percent increase for fiscal year 2005.

#### CONTRACTING OUT

Finally, after a bipartisan compromise was reached on the fiscal year 2004 Omnibus Appropriations bill, the White House insisted that the conference committee strip language that would have provided a level playing field for Federal employees whose jobs are made available for private competition.

One bipartisan provision that was stripped from the bill would have required contractors to show significant cost savings (the lesser of 10 percent or \$10 million) over the in-house competitor in order to be awarded a competition. Instead, agencies will now only have to take cost savings into consideration during public-private competitions since the requirement was removed from the bill language. This allows the agencies to outsource the work regardless of whether or not it saves the Federal taxpayers money—or costs the taxpayers more money.

Another provision that was stripped from the Omnibus bill would have provided the Federal employees an independent and impartial venue to appeal an agency's contract award decision. Stripping this provision sends a clear message to Federal employees that the administration wants private contractors to retain their unfair advantage in public-private competitions.

The administration further weakened the Omnibus bill by limiting the guarantee that all Federal employees would have the opportunity to submit their own best bids. The altered bill language limits the right of employees to come up with their own cost-saving bid to those employees in only the agencies funded by the Transportation-Treasury bill. This means, for competitions in most agencies, contractors will still be able to submit their best bids while Federal employees will not be allowed to offer their best bid.

NTEU strongly encourages the appropriator to include legislative language that will level the playing field for Federal employees who are expected to compete against private contractors. It is simply unfair to give private contractors an unfair advantage in public-private competitions when Federal employees can do the same job with better and less costly results.

#### CONCLUSION

On behalf of the dedicated Federal employees NTEU represents, I am proud to submit these views for the hearing record. I encourage the committee to make a strong investment in the Federal workforce by appropriating the 10 percent increase as requested by the IRS Oversight Board; preventing private tax collection; prohibiting the IRS from moving forward with the unnecessary RIFs; providing pay parity for Federal workers; and giving the Federal workers a level playing field when competing for their jobs with private contractors.

Without a doubt, the frontline employees are committed to working with management and Congress to increase efficiency and customer satisfaction. NTEU is committed to striking a balance between taxpayer satisfaction, business results and employee satisfaction. I encourage Congress to join us in this commitment.

#### PREPARED STATEMENT OF THE AIR TRAFFIC CONTROL ASSOCIATION, INC.

##### INTRODUCTION—AVIATION AT THE CROSSROADS

The Federal Aviation Administration is at a crossroads—and the future of U.S. aviation hangs in the balance.

The administration has delivered to Congress a proposed fiscal year 2005 budget that cuts \$393 million (14 percent) from FAA's capital investment account, and provides less than current services funding for ATC system operations and maintenance. Funding for RE&D, already down to \$117 million last year, is reduced another \$2 million.

The FAA and the new Air Traffic Organization (ATO) are attempting to respond to this new funding reality in the only way possible. The organization is getting

leaner. The mantra is managing to the reduced level of resources, rather than responding to demand with increased service. Every modernization initiative must be justified by an immediate and measurable payback. Projects that deliver economies and efficiencies for the air traffic service provider will be favored over those that offer new, improved, and/or long-term customer benefits. And under the administration's proposal, long term investment in promising concepts and technologies is not receiving the "mission drive focus" required for what FAA is predicting to be an overall increase in passenger traffic of 4.3 percent per year (5.2 percent increase internationally) over the next 10 years. The ATO already has deferred to future years the digital programming and data link elements of NEXCOM, not waiting for future funding decisions by Congress. FAA was a leading, global proponent of this technology and yet we are deferring a solution that only a few short years ago was deemed vital to address the imminent dearth of available radio frequencies.

On the other hand, Homeland Security requirements and the War on Terrorism are placing new burdens and requirements on an already stressed air transportation system. If past is prologue, the current downturn in passenger traffic is temporary and aviation demand will come roaring back. Most airports already are reporting passenger traffic increases, and many are again experiencing congestion and delay. Earlier this year, under DOT order two hub carriers American and United agreed to a 5 percent reduction in flight schedules in order to cut down on delays that reached the highest level ever recorded. Because these cuts did not improve delays enough, DOT last week ordered the airlines to reduce flights another 2.5 percent. This is not a long-term solution to meeting passenger and airline demand for more capacity at one of the world's busiest airports, much less a panacea for the entire aviation system.

The path U.S. aviation has been placed on with this proposed budget is clear: we will limp into the future with an air transportation system that is inefficient, at capacity, and unprepared for a tripling of demand in the future. The weight of increasing airline operations due to the greater usage of smaller regional jets, and the increasing burdens on aviation from the Department of Homeland Security will paralyze the aviation system.

If instead we dare to envision a safe, secure, efficient, and capable air transportation system in the future, we must be bold in our approach, and we must act now. We cannot allow terrorists to scare us out of the skies. We must not so constrain ourselves that in seeking safety that we harness mobility. The answer is to be found in technology, investment, vigilance, and perseverance in the face of uncertainty—the very attributes that have carried aviation so far in its first century.

#### THE CHANGED FACE OF U.S. AVIATION

The Nation has come to view aviation in a new light over the past 3 years. No longer is air transportation predominantly about travel and tourism. Aircraft have been used as weapons against civilians, and we must do everything reasonably possible to prevent it from happening again. The Departments of Defense and Homeland Security rely on civil aviation facilities and agencies to perform their mission. Aviation is much more critical and important for United States and world commerce today. America's vision of a global economy is based on the ability of aviation to serve as the bridge connecting nations, cultures and people. This vision—that is inclusive of, but transcends security—must be the guiding force in developing a fresh perspective, and new principles to guide Federal air traffic control investment policy and planning.

—*We demand more of the air transportation system than ever before.*—The Nation's aviation infrastructure must meet National Defense and Homeland Security needs while continuing to function as the economic engine that drives the National economy. Many of the requirements, or safety procedures dictated by the added requirements are new, for example upgraded surveillance systems; data collection, transmission, and sharing capabilities; reliable high speed communications networks; and extensive plans, procedures, and facilities for Homeland Security and National Defense. This means developing and implementing new and improved air traffic systems that deliver operating benefits for users and efficiencies for FAA while strengthening security. It also means building an air transportation system for the future that allows passengers and shippers to go anywhere, any time, and hassle free. All of this is a tall order. But for the safety and security of the public, and the viability of the National economy, we must not deliver less.

—*Regular, robust investment in aviation infrastructure is a National imperative.*—The threat of terrorism has become an unfortunate fact of life in the world today. Continual vigilance and preparedness are a necessity. For aviation this

means regular investment in developing and implementing equipment and technologies that can help counter ever changing, and increasingly sophisticated dangers. Timely, continuous investment in the public air transportation infrastructure is no less important for civil aviation. FAA expects air traffic demand to grow steadily over the next 10 years, with tower operations to increase 28 percent, instrument operations to increase 29 percent, and air route traffic control center operations to increase 34 percent. We will not meet the requirements of this capacity increase sufficiently under the administration's current budget approach.

#### MEETING THE CHALLENGE

The Nation's air transportation system simply cannot fulfill National Defense and Homeland Security requirements, and accommodate ever increasing civil aviation demand on a diet of continually diminishing resources. Even with the improvements and efficiencies anticipated from implementation of the new Air Traffic Organization, the administration's funding proposal for fiscal year 2005 is unrealistic. FAA's mission is growing, demand is growing, and the only thing shrinking is the budget to fund new technology and equipment to handle this growth. ATCA therefore urges Congress to act upon the following:

- FAA's Facilities and Equipment account must be funded at the authorized level.*—ATCA urges the Congress to appropriate, at minimum, the full, authorized amount of \$2.993 billion for FAA Facilities and Equipment (F&E) in fiscal year 2005.<sup>1</sup> FAA must equip the aviation system for the War on Terrorism and still continue fielding needed air traffic system improvements. And just as important, FAA must begin to lay the groundwork for a capable future air transportation system. FAA already is behind the power curve installing the modernized systems that deliver on the promise of its Operational Evolution Plan—systems that are the necessary foundation for improved functionality, safety and efficiency. Promising projects and technologies such as controller pilot data link communications (CPDLC), Next Generation Communications System (NEXCOM), and the System Wide Information Management system (SWIM) are being deferred. Others, like the User Request Evaluation Tool (URET), the FAA Telecommunications Infrastructure (FTI), ADS-B programs (Safe Flight 21), and Terminal Doppler Weather Radar (TDWR) product improvements could be completed and continue delivering cost and efficiency benefits to FAA and users sooner if additional funding were applied. All of these projects are necessary, and will have to be completed eventually. Interrupting these efforts over and over again only increases the ultimate cost, and postpones benefits. The ATO also must have the resources to continue a vigorous NAS System Architecture and systems integration activity. Because the new organization is structured according to lines of business, an overarching planning function is necessary to assure that requirements 5 to 10 years hence are anticipated and provided for, and that new elements being delivered into the system interface correctly and work together. Otherwise, equipment must continually be redesigned and retrofitted at great expense.
- Aviation capabilities and resources of related agencies must be protected and leveraged.*—NASA's Aeronautics research capability has become essential to FAA's mission, and must be funded adequately. DOD's \$69 billion research and development activity must be consistently mined for concepts and core technologies transferable to the civil sector. Synergy and cooperation between Federal and civil research organizations in the United States, and those of friendly governments around the world should be investigated, enabled, and encouraged. The world is a different place today than yesterday. The United States should not be seen as "going it alone." The ATC organizations around the world have many ideas, programs, and procedures that merit consideration and coordination in order to ensure everyone's stated goal of global interoperability.
- The Federal Government must prepare for large funding requirements associated with core future technologies.*—There is universal agreement that some core capabilities are essential to meeting future Homeland Security/National Defense requirements, and to accommodate air transportation demand we know is coming. The first of these key technologies is an aviation system-wide information

<sup>1</sup> Cutting funding for FAA F&E by 14 percent in fiscal year 2005 as the administration proposes could have an unintended, fiscally disastrous consequence of invoking application of an enforcement provision in authorization law that prohibits funding for FAA Operations if Airport Grants and F&E appropriations are less than the authorized amount. Clearly, the administration's proposal is out of step with congressional intent that air transportation system modernization and improvement be a National Priority.

network, through which all stakeholders, including the DOD, DHS, and law enforcement, can derive whatever data and information needed for the National Defense, security, and safe, efficient aircraft operations. The second is a capable, reliable data communications system connecting aircraft to the air traffic control system. The third is a sophisticated toolset enabling collaborative decision making among participants in the ATM system. All of these technologies are crucial for Defense and Homeland security missions. All will enhance aviation safety and security. And all can be used to increase operating efficiency, and overall system efficiency and capacity. But a clear direction to proceed with development and implementation, and a healthy flow of resources must be applied now, if these technologies are to be available to meet current and future demand.

—*A Federal Government-wide, aviation community-supported air transportation system future planning activity must be supported and adequately resourced.*—Secretary of Transportation Mineta is leading an interagency effort (including NASA, and the Departments of Defense and Homeland Security) to design the Next Generation Air Transportation System. This activity will be carried out through a Joint Planning and Development Office (JPDO), with the advice of the FAA Research and Advisory Committee. Secretary Mineta's initiative should be supported, with the expectation that it will be well managed, adequately resourced, and that it will yield a product that can be the basis of community consensus and capable of being implemented. It is recommended that this effort be coordinated with other future design activities around the world, with the object of assuring global compatibility of ATM systems and a seamless future operating environment. The future system plan should contain a realistic roadmap for transforming current thinking and technology into the future air transportation system, with recommendations for policies and programs to facilitate the transition to a new system and equipment for all aircraft operators. ATCA urges the entire aviation community to support the activities of the JPDO.

—*The Nation's aviation research and development capability must be recreated and empowered.*—Congress is urged to authorize and appropriate \$500 million per year for the foreseeable future to establish and resource a bold, aggressive, well-managed Federal aviation research and development activity. Critical National Defense and Homeland Security needs require that FAA and NASA continually be on the forefront in developing and implementing cutting-edge surveillance, communications, and information technologies. There is simply no question that break-through concepts and technologies will be essential if we are to safely and efficiently accommodate a tripling of civil air traffic by the year 2020. Developments of this nature take 10 to 15 years or more to bring to fruition, so major investments in R&D capabilities—labs, equipment, people—must be made today.

#### CONCLUSION

Global aviation is facing challenges of historic proportions. Terrorism is a constant threat. Depressed demand as a result of 9/11 and economic recession have left governments and aviation enterprises financially debilitated, and reluctant or unable to make investments in infrastructure and capital equipment. The U.S. aviation system has survived and is now growing at a pace last seen pre-9/11, yet investment in the future is being cut. An increased investment in FAA Airport Improvement Program funding cannot be viewed as a complete solution to addressing future capacity when the users and passengers are measuring our system on a curb-to-curb basis.

The success of the Nation's air transportation system depends on achieving a collective commitment to secure a reliable, robust funding stream for air transportation system modernization, the determination and focus to complete projects already underway, and a forward looking vision. The aviation system requires total commitment and full funding in order to meet tomorrow's demand, and this is a commitment we must make today in order to be successful.

Again, we cannot allow the terrorists to scare us out of the skies or to divert our financial resources away from building the safest and most efficient air traffic control system to meet growing demand. Safety and security are inextricably linked, and overcrowded skies and airports cannot be the result of terrorist threats, or they have won and most assuredly we have lost.

We must not so constrain ourselves that in seeking safety we harness mobility. The answer is to be found in technology, investment, vigilance, and perseverance

in the face of uncertainty—the very attributes that have carried aviation so far in its first century.

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PREPARED STATEMENT OF THE CALIFORNIA GOVERNMENT AND PRIVATE SECTOR  
COALITION FOR OPERATION CLEAN AIR

Mr. Chairman and members of the subcommittee, on behalf of the California Government and Private Sector Coalition for Operation Clean Air's (OCA) Sustainable Incentive Program, we are pleased to submit this statement for the record in support of our fiscal year 2005 funding request of \$31,000,000 for OCA as part of a Federal match for the \$180 million already contributed by California State and local agencies and the private sector for incentive programs. This request consists of \$31,000,000 from the Department of Transportation (DOT) for alternative fuel vehicle funding.

California's great San Joaquin Valley is in crisis. Home to over 3.3 million people, its 25,000 square miles now has the unhealthiest air in the country. Even Los Angeles, long known as the smog capital of the Nation, can boast better air quality by certain standards. While peak concentrations of air pollutants are still greater in Los Angeles, for the past 4 years, the San Joaquin Valley has exceeded Los Angeles in violations of the ozone 8-hour Federal health standard.

A combination of geography, topography, meteorology, tremendous population growth, urban sprawl and a NAFTA corridor of two major highways with over 5 million diesel truck miles per day, have collided to produce an air basin in which over 300,000 people, nearly 10 percent of the population, suffer from chronic breathing disorders. In Fresno County, at the heart of the San Joaquin Valley, more than 16 percent of all children suffer from asthma, a rate substantially higher than any other place in California. The extreme summertime heat creates smog even though smog-forming gases are less than half the amount in the Los Angeles basin. There is no prevailing wind to flush the natural geologic bathtub and, as a result, pollutants and particulates stagnate, accumulate and create unhealthy air.

Degradation of human health is not the only consequence of poor quality air. In December 2003, the San Joaquin Valley Air Pollution Control District Board decided to become the first Air District in the Nation to voluntarily declare itself an "extreme" non-attainment area. This designation, if approved by USEPA, will defer until 2010 the date for attainment of Federal standards of air quality, but comes at a cost of imposing permitting on thousands of more businesses and even further discouraging business expansion or relocation. More Valley's businesses will be required to obtain permits and comply with increasingly burdensome regulations imposed by Federal and State law and the Air Pollution Control District, resulting in added cost in compliance, reporting and record keeping. At the same time, the area is burdened by chronic unemployment rates of nearly 20 percent. Encouraging business expansion in or relocation to the San Joaquin Valley to combat unemployment will be extremely difficult in the face of such regulatory burdens.

The San Joaquin Valley is home to the most productive agricultural land in the world. Over 350 crops are produced commercially on 28,000 farms encompassing more than 5 million irrigated acres. While the agricultural industry has made great strides at considerable expense to replace old diesel engines and manage fugitive dust and other emissions, farming does contribute to the problem. However, it is a \$14 billion industry that forms the backbone of the Valley's economy, and its vitality is crucial.

Industry alone is not the source of the Valley's poor air quality. Population growth rates exceeding those in the rest of the State and most of the Nation, in an area without effective mass transit, where cheap land has led to a landscape of suburbia and sprawl, results in excessive over-reliance on the automobile. Trucking has increased dramatically with the increase in population, and Federal free trade policies. Other factors such as fireplace burning in the winter, open field agricultural burning because of lack of sufficient alternatives, and wild fires resulting from lack of controlled burning in the nearby foothills and mountains all contribute to the problem.

Despite the challenges listed above, much progress has been made. The State has spent nearly \$80 million on improvement and compliance programs. Local government and private industry have spent over \$100 million on technology and compliance. As specific examples, over one half of the diesel operated irrigation pumps used by agriculture have been replaced with cleaner engines. The City of Tulare has converted its entire fleet of vehicles to natural gas as have several other private fleet operators. A \$45 million Federally financed comprehensive study of ozone and

particulate matter is nearing completion. As a result, the number of 1-hour EPA health standard exceedences has been reduced by 40 percent since 1989.

But much more needs to be done. The District estimates that daily emissions must be reduced by 300 tons to achieve attainment. There is no single or short-term quick fix. The entire Valley (an area the size of the State of Connecticut) is part of the problem and the entire Valley will need to be part of the solution.

The Department of Transportation is an important partner in achieving air quality improvement. The Federal Clean Air Act requires that transportation plans be consistent with State Implementation Plans. Mobile sources are the single largest contributor to the San Joaquin Valley's air pollution problem. Depending upon the season, mobile sources contribute up to 60 percent of the emission inventory in the Valley. Heavy-duty vehicles make up half of these emissions.

California and the San Joaquin Valley bear the emissions burden associated with the significant volume of goods that flow into and out of the country through vehicular traffic. It is estimated that 6 million truck-miles a day are traveled in the Valley. The emissions associated with these activities are projected to grow significantly with port expansions and upcoming changes associated with the implementation of the North American Free Trade Agreement (NAFTA) that will allow, for the first time, foreign trucks with less rigorous emission controls to travel through the San Joaquin Valley.

Finally, heavy-duty mobile source emissions reductions are some of the most cost-effective emission reduction programs currently available. The cost-effectiveness of emission reductions achieved through clean heavy-duty projects that are requested through the Department of Transportation is approximately \$13,650/ton of emission reduced. In many cases this is one-half of the cost associated with similar emission reductions achieved through the regulation of industrial sources of pollution. If our request is fully funded, it will provide up to 11,000 tones of emissions reductions over the 12 year life of the projects.

Operation Clean Air is a coalition of business, government, health care, and environmental groups throughout the eight county San Joaquin Valley Air Pollution Control District. Its goal is to clean the Valley's air and increase its economic prosperity. The coalition seeks to catalogue efforts that have produced positive effects and identify those strategies that could produce even greater effects if supported by sufficient resources. At the heart of its efforts will be an array of sustainable, voluntary practices and activities that can and will be undertaken by all of the residents of the San Joaquin Valley, both public and private, to improve air quality.

This unique public-private partnership has invested considerable resources in this project to date, and will continue to do so, but Federal funding is both imperative and justified to help address what is essentially an unfunded Federal mandate.

For fiscal year 2004, our Coalition is seeking funding of \$31,000,000 from the Department of Transportation (DOT) for alternative fuel vehicles throughout the San Joaquin Valley Air Basin. We are also seeking funding for alternative fuels infrastructure through other avenues, which will allow accelerated introduction of alternatively fueled vehicles in municipal fleets, public school fleets, and private fleets. The widespread use of lower-emitting motor vehicles will provide significant improvement to air quality in the San Joaquin Valley while furthering the goals of the Department of Transportation to reduce emissions from public fleets. Development of alternative fuel infrastructure will augment the low-emission vehicle program by providing much needed compressed natural gas (CNG) and liquefied natural gas (LNG) fueling facilities.

Thank you very much your consideration of our requests.

PREPARED STATEMENT OF THE CALIFORNIA INDUSTRY AND GOVERNMENT CENTRAL  
CALIFORNIA OZONE STUDY (CCOS) COALITION

Mr. Chairman and members of the subcommittee, on behalf of the California Industry and Government Central California Ozone Study (CCOS) Coalition, we are pleased to submit this statement for the record in support of our fiscal year 2005 funding request of \$500,000 from the Department of Transportation (DOT) for CCOS as part of a Federal match for the \$9.4 million already contributed by California State and local agencies and the private sector. We greatly appreciate your past support for this study (\$250,000 in fiscal year 2004) as it is necessary in order for the State of California to address the very significant challenges it faces as it seeks to comply with air pollution requirements of the Federal Clean Air Act.

Most of central California does not attain Federal health-based standards for ozone and particulate matter. The San Joaquin Valley has recently requested redesignation to extreme and is committed to updating their 1-hour ozone State Imple-

mentation Plan (SIP) in 2004, based on new technical data. In addition, the San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area exceed the new Federal 8-hour ozone standard. SIPs for the 8-hour standard will be due in the 2007 timeframe—and must include an evaluation of the impact of transported air pollution on downwind areas such as the Mountain Counties. Photochemical air quality modeling will be necessary to prepare SIPs that are approvable by the U.S. Environmental Protection Agency.

The Central California Ozone Study (CCOS) is designed to enable central California to meet Clean Air Act requirements for ozone SIPs as well as advance fundamental science for use nationwide. The CCOS field measurement program was conducted during the summer of 2000 in conjunction with the California Regional PM<sub>10</sub>/PM<sub>2.5</sub> Air Quality Study (CRPAQS), a major study of the origin, nature, and extent of excessive levels of fine particles in central California. This enabled leveraging of the efforts of the particulate matter study in that some equipment and personnel served dual functions to reduce the net cost. From a technical standpoint, carrying out both studies concurrently was a unique opportunity to address the integration of particulate matter and ozone control efforts. CCOS was also cost-effective since it builds on other successful efforts including the 1990 San Joaquin Valley Ozone Study.

CCOS includes an ozone field study, data analysis, modeling performance evaluations, and a retrospective look at previous SIP modeling. The CCOS study area extends over central and most of northern California. The goal of the CCOS is to better understand the nature of the ozone problem across the region, providing a strong scientific foundation for preparing the next round of State and Federal attainment plans. The study includes five main components:

- Designing the field study;
- Conducting an intensive field monitoring study from June 1 to September 30, 2000;
- Developing an emission inventory to support modeling;
- Developing and evaluating a photochemical model for the region; and
- Evaluating emission control strategies for upcoming ozone attainment plans.

The CCOS is directed by Policy and Technical Committees consisting of representatives from Federal, State, and local governments, as well as private industry. These committees, which managed the San Joaquin Valley Ozone Study and are currently managing the California Regional PM<sub>10</sub>/PM<sub>2.5</sub> Air Quality Study, are landmark examples of collaborative environmental management. The proven methods and established teamwork provide a solid foundation for CCOS. The sponsors of CCOS, representing State, local government, and industry, have contributed approximately \$9.4 million for the field study. The Federal Government has contributed \$4,874,000 to support some data analysis and modeling. In addition, CCOS sponsors are providing \$2 million of in-kind support. The Policy Committee is seeking Federal co-funding of an additional \$2.5 million to complete the remaining data analysis and modeling. California is an ideal natural laboratory for studies that address these issues, given the scale and diversity of the various ground surfaces in the region (crops, woodlands, forests, urban and suburban areas).

There is a national need to address national data gaps and California should not bear the entire cost of addressing these gaps. National data gaps include issues relating to the integration of particulate matter and ozone control strategies. In addition, new national ambient air quality standards will require air quality assessments for time periods of greater duration, and the impact of weekend travel activities on air quality will play a part in the ability to simulate air quality for longer durations. That is why, concurrent with the CCOS air quality field study, a \$600,000 traffic activity study was conducted for the purpose of gathering detailed, hourly travel activity patterns during the field study. It is also why the CCOS allocated an additional \$250,000 to develop a link-based digital map of roadways throughout the domain (using state-of-science Geographic Information System, or GIS, software) that included the activity patterns from the traffic study on specific roadway segments. However, due to the scarcity of weekend data in the transportation community and travel demand models, these projects were not able to address the spatial change in travel patterns during a weekend. In addition to the weekend activity issue, developing mobile source emissions inputs for longer-term air quality modeling studies will require more efficient mobile source emissions processing, including better use of GIS software and technology.

For fiscal year 2005, our Coalition is seeking funding of \$500,000 from DOT through highway research funds. The CCOS would use the \$500,000 requested for fiscal year 2005, in conjunction with other funding, to study and integrate travel activity patterns into modeling inputs. The CCOS would also use a fiscal year 2005 earmark to develop more efficient mobile source emissions processing tools and im-

prove the consistency and linkages between travel demand models used in the transportation community and emissions factor models used for conformity purposes in the air quality community. DOT is a key stakeholder because Federal law requires that transportation plans be in conformity with SIPs. The motor vehicle emission budgets established in SIPs must be met and be consistent with the emissions in transportation plans. Billions of dollars in Federal transportation funds are at risk if conformity is not demonstrated for new transportation plans. As a result, transportation and air agencies must be collaborative partners on SIPs and transportation plans. These plans are linked because motor vehicle emissions are a dominant element of SIPs in California as well as nationwide. Determining the emission and air quality impacts of motor vehicles is a major part of the CCOS effort.

Thank you very much for your consideration of our request.

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#### PREPARED STATEMENT OF EASTER SEALS

Chairman Shelby, Ranking Member Murray and members of the subcommittee, Easter Seals appreciates this opportunity to share the successes and needs of Easter Seals Project ACTION.

#### PROJECT ACTION OVERVIEW

The Transportation appropriations process initiated Project ACTION in 1988 by providing funding to the Federal Transit Administration to undertake this effort with Easter Seals. We are indeed grateful for that initiative and the ongoing strong support of this subcommittee in subsequent years.

Following its initial round of appropriations, Congress authorized assistance to Project ACTION in 1990 with the passage of ISTEA and reauthorized the project in 1997 as part of TEA21. The strong interest and support of all members of Congress has been greatly appreciated by Easter Seals as it has pursued project ACTION's goals and objectives.

Since the project's inception, Easter Seals has administered the project through a cooperative agreement with the Federal Transit Administration. Through steadfast appropriations support, Easter Seals Project ACTION has become the Nation's leading resource on accessible public transportation for people with disabilities. The current project authorization level is \$3 million, and Easter Seals is pleased to request the appropriation of that sum for fiscal 2005.

The strength of Easter Seals Project ACTION is its continued effectiveness in meeting the congressional mandate to work with both the transit and disability communities to create solutions that improve access to transportation for people with disabilities of all ages and to assist transit providers in complying with transportation provisions in the Americans with Disabilities Act (ADA).

The activities of the project are guided by input from a 19 member national steering committee that includes representatives from transportation and disability organizations. Easter Seals Project ACTION has worked effectively with the Department of Transportation under four Presidents, and numerous Department of Transportation (DOT) Secretaries and Federal Transit Administration (FTA) Administrators. Today, Project ACTION is working closely with Secretary Mineta and FTA Administrator Dorn and their teams. Secretary Mineta, who worked on the original authorization of Project ACTION, has worked closely with us since taking over DOT.

Easter Seals Project ACTION was also heavily featured in the President's New Freedom Initiative Progress Report released in 2004. This demonstrates how closely the administration is working with Project ACTION to reach our shared goal of a safe, accessible, reliable, efficient and affordable transportation for and by citizens with disabilities at the local, State, regional and national levels throughout the United States.

#### SUPPORT FOR EASTER SEALS PROJECT ACTION

Easter Seals Project ACTION's successes are diverse and the value of the Project to both the transit and disability communities can be well documented. For instance, Barry Barker, Executive Director of the Transit Authority of River City (Louisville, KY) states that, "Easter Seals Project ACTION's support has enhanced our ability to maximize the quality of service we provide to all of our customers. The project helps us provide our customers with the mobility necessary to fully participate in the community."

Maureen McCloskey, National Advocacy Director of the Paralyzed Veterans of America states that, "The forum that Easter Seals Project ACTION has provided

has created a dynamic dialogue between the disability and transit communities that has resulted in increased access to transportation for people with disabilities.”

#### EASTER SEALS PROJECT ACTION WORKING AT THE COMMUNITY LEVEL

Among the programs pursued by the project in the recent period have been efforts aimed at increasing community capacity to meet the transportation needs of people with disabilities. For instance, in 2001, Easter Seals Project ACTION initiated the first Mobility Planning Services (MPS) Institute. The latest Institute took place in November of 2003 and approximately 25 communities took part in the 2-day event. This was the second group of communities to go through the MPS training. The first group of 20 communities remains active and working with Project ACTION to continue their work at the community level. To participate in the Institute, each community had to identify a leadership team to attend the training. The leadership team had to consist of representatives from transit providers, disability service providers and disability advocacy organizations. This team approach will assure that all stakeholders are involved in implementing MPS. The greatest success so far of the MPS concept has been that it provides the disability community and the transportation industry an opportunity to develop tools for working together where in the past there had often been a lack of communication and in some cases even animosity. By implementing MPS, communities do a better job of meeting the transportation needs of people with disabilities and therefore better meet the transportation needs of all residents. Communities that participate in MPS receive ongoing in-depth technical assistance from Project ACTION staff ranging from access to Project ACTION materials to on-site training and facilitation by Project ACTION staff.

#### EASTER SEALS PROJECT ACTION WORKING AT THE STATE LEVEL

Project ACTION is partnering with the FTA on several initiatives designed to increase the capacity of States to support accessible transportation for people with disabilities.

The first initiative is a series of regional dialogues being held throughout the country. These dialogues built on the success of 2002's successful National Dialogue on Accessible Transportation. The goal of these events was to bring people with disabilities and transit providers together at the regional level to foster communication that will hopefully lead to jointly developed solutions to unique barriers to accessible transportation identified together in each region.

Project ACTION is also working with FTA to support the success of the multi Federal Department "United We Ride" initiative. Project ACTION helped facilitate a national meeting in March of Governor appointed representatives from State Departments of Labor, Transportation, Education and Health and Human Services. Forty-six States and territories participated in this forum that was one of five elements of an FTA effort to bring together Federal and State agencies to help identify, plan and alleviate barriers to human service transportation coordination. Project ACTION is assisted in the dissemination of the FTA developed Framework for Action planning process guide to help States and communities build and operate coordinated transportation systems and has already begun to provide technical assistance on its use throughout the country.

#### EASTER SEALS PROJECT ACTION WORKING AT THE NATIONAL LEVEL

Easter Seals Project ACTION actively works with both the disability and transit communities to determine existing needs for products and training. Easter Seals Project ACTION also convenes special topic meetings to address concerns and identify strategies on issues identified by various stakeholders. This year's special topic meetings will focus on the development of a "One System for All", concept that emerged from the Project's National Dialogue conducted last Summer. The meeting will involve a small group of disability and transit advocates to further develop the concept and also begin to address the design and provision of technical assistance and other resources necessary to advance the availability of seamless community transportation systems for people with and without disabilities. Another special topic meeting will bring together travel trainers to develop a curriculum for the further training of these specialists that enhance the participation of people with disabilities using fixed route transportation. Convening special topic meetings enable Easter Seals Project ACTION the flexibility to address emerging issues as they arise.

Some of the materials that Easter Seals Project ACTION has developed during the past year include:

- A collection of “success stories” that share, in the own words of people with disabilities, stories about their successful use of transportation and the positive difference it made in their lives;
- New resources and guidance on good practices for conducting physical functional assessments for determining paratransit eligibility;
- A collection of innovative practices in operating paratransit;
- A redesigned resource called “You Can Ride,” a reference guide on how to use public transportation for people who can’t read; and,
- All resource materials available from Easter Seals Project ACTION activities are available free of charge through the Project ACTION catalog.

As mentioned, Project ACTION staff also are involved in continuously providing technical assistance to transit providers, nonprofit human service organizations, people with disabilities, and the general public. The forms of technical assistance provided are provided based on the determination of what would be the most helpful in the situation being addressed. Assistance from Project ACTION ranges from the delivery of basic information in the form of brochures from our national clearinghouse to telephone, e-mail, participation in the training program and on single or ongoing on-site work.

#### CONTINUING NEED FOR EASTER SEALS PROJECT ACTION

Access to transportation is a vital issue for people with disabilities. For many people with disabilities, a lack of accessible, affordable public transportation is the primary barrier to employment, education and participation in community life. In his New Freedom Initiative, President Bush recognized the importance of accessible transportation for people with disabilities, and has proposed an increase in Federal support for promoting innovative and alternative transportation solutions for people with disabilities. As these proposals are implemented, it will become increasingly important that the resources and skills, relationships and knowledge that Easter Seals Project ACTION has fostered remain strong. Should the appropriations process support this New Freedom Initiative, Project ACTION is committed to working with DOT on implementation.

There is a growing need for outreach by Project ACTION to specific populations. While Project ACTION has historically worked with rural communities to help address their transportation issues, the lack of access for rural residents with disabilities is still unacceptable. Easter Seals national headquarters and Project ACTION are working together to coordinate efforts to better serve rural residents with disabilities in a variety of service areas including transportation. Further, as the population ages, there is also a need to provide develop and provide additional specific resources and assistance to transit providers and older passengers. Since most people will experience some level of disability as they age and require accessible transportation, Project ACTION’s resources will again be invaluable as transit providers struggle to meet the needs of this new wave of riders.

#### FISCAL 2005 REQUEST

In order to continue the outstanding work of Easter Seals Project ACTION, Easter Seals national headquarters respectfully requests that \$3 million be allocated in fiscal 2005 to the Department of Transportation for project activities.

Mr. Chairman, thank you for the opportunity to present this testimony to the subcommittee. Your efforts have improved the accessibility of transportation for persons with disabilities and the ability of the transportation community to provide good service to all Americans. Easter Seals Project ACTION looks forward to continuing to work with you toward the pursuit of these objectives.

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#### PREPARED STATEMENT OF THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

Mr. Chairman and members of the subcommittee, on behalf of the American Public Transportation Association (APTA), thank you for the opportunity to provide written testimony on the need for investment in Federal Transit Administration (FTA) programs under the Transportation, Treasury and General Government Appropriations bill for fiscal year 2005.

#### ABOUT APTA

APTA’s 1,500 public and private member organizations serve the public by providing safe, efficient, and economical public transportation service, and by working to ensure that those services and products support national economic, energy, environmental, and community goals.

APTA member organizations include public transit systems and commuter railroads; design, construction and finance firms; product and service providers; academic institutions; and State associations and departments of transportation. More than 90 percent of the people who use public transportation in the United States and Canada are served by APTA member systems.

#### OVERVIEW

Mr. Chairman, the fiscal year 2005 Transportation, Treasury and General Government appropriations bill provides an opportunity to advance key national goals through increased Federal investment in the Nation's surface transportation infrastructure, including public transportation. A study conducted by Wirthlin Worldwide in February 2004, found that most Americans (80 percent) see quality of life benefits from increased investment in public transportation, and 76 percent of those surveyed support public funding for the expansion and improvement of public transportation. Clearly, Americans support Federal policies that create good, high-paying jobs, especially U.S. jobs that cannot be exported. Investment in our national public transportation and highway systems creates jobs—47,500 per \$1 billion of Federal investment. This investment does more than create jobs, it helps improve the economy by reducing congestion, promoting energy conservation, and providing transportation options to workers and tens of millions of other Americans.

As a Nation, we need to maintain and improve the transportation system that has served this country so well. Congress has made a substantial investment in public transit systems around the country, and those systems serve tens of millions of customers each day; but much needs to be done to maintain and increase the return on that investment. With ridership at record levels, the American Association of State Highway and Transportation Officials (AASHTO) estimates that an annual capital investment of more than \$44 billion is needed to adequately maintain, improve and expand public transportation across America.

Demand for surface transportation options—including modern, safe, and efficient public transportation service—is at an all-time high. New transit service is being added in areas around the country, including Houston, Minneapolis, Phoenix, and Charlotte. More and more communities are voting for new and expanded transit service every year. Demand for transit options is a product of growing frustration with increased congestion that negatively affects our quality of life by wasting time and money, and a desire for mobility options. The Wirthlin Worldwide poll also demonstrates that voters support public transportation regardless of whether they live in urban, suburban, small urban or rural communities, and that they are more likely to vote for Congressional candidates who support such investment.

Similarly, as the population ages, older Americans will need more and better transit service. As driving becomes less of an option for many older Americans, they as well as persons with disabilities are seeking good public transportation options so that they can continue to fully participate in society. Yet many older Americans and people with disabilities live in areas where public transportation services are limited or non-existent, despite the fact that access to good transit service can mean the difference between living independently and moving into assisted living. Nearly two-thirds of residents in urban, small urban and rural communities have few if any transportation options—41 percent have no access to transit, another 25 percent live in areas with below-average transit services. Clearly, our Nation's small-town and rural areas have real and growing transportation needs.

#### FISCAL YEAR 2005 TRANSIT INVESTMENT

APTA believes it is crucial to provide significant investment in the Nation's transit and highway infrastructure in the fiscal year 2005 appropriations process. That investment advances key national goals by producing jobs, providing more mobility options to all Americans, improving the environment and reducing dependence on foreign oil, and by providing a solid return on the investment.

APTA's recommendations for reauthorization of the Transportation Equity Act for the 21st Century (TEA21) propose to grow the transit Federal transit program to \$14 billion by fiscal year 2009. The Senate has passed a TEA21 reauthorization bill that would authorize \$8.65 billion for transit in fiscal year 2005, and we urge the subcommittee to invest no less than that amount for the Federal transit program in fiscal year 2005.

Mr. Chairman, in that regard we thank you for your outstanding leadership as chairman of the Senate Banking Committee in crafting the transit portion of that legislation, which addresses critical public transportation investment needs.

## PUBLIC TRANSPORTATION INVESTMENT CREATES JOBS AND GROWS THE ECONOMY

Americans are growing increasingly concerned about jobs. An Associated Press poll taken March 19–21 showed that 35 percent of Americans view economic conditions as the most important factor on which they will vote. A Washington Post poll taken April 15–18 shows that the economy and jobs are the most important issues that 26 percent of voters want to hear about in the upcoming election, more than any other topic. Polls by Newsweek and Harris this year have produced similar results for the last several months. Jobs are the No. 1 concern of Americans.

Policy makers know that increased investment in our Nation's transit and highway transportation infrastructure will help the economy and will produce jobs. The Department of Transportation has demonstrated that for every \$1 billion in Federal highway and transit investment, 47,500 jobs are created or sustained. This view is shared by Senate Environment and Public Works Committee Chairman James Inhofe (R-OK), who stated upon passage of SAFETEA that the bill "will create nearly 2.8 million job opportunities for the American people." He went on to call TEA21 reauthorization the "biggest job creation bill of this Congress."

The jobs that investment in public transportation can create are high-paying, stable, and cannot be exported. The jobs created are not just those needed to operate new and expanded transit service, which are significant; but also in the private manufacturing sector, which supports and supplies the public transportation industry. For instance, transit buses are built in, among other places, Anniston, Alabama; Wichita, Kansas; Brownsville, Texas; Lamar, Colorado; St. Cloud, Minnesota; Hayward, California; Imlay City, Michigan; Pembina, North Dakota; and Oriskany, New York. Engines for those buses may be built in Detroit or Columbus, Indiana. Spending on transit also benefits hundreds of other private sector companies around the United States that build rail cars, fareboxes, vehicle parts and equipment or provide software, engineering, and construction services for the transit industry. According to a Cambridge Systematics Inc. study, for every \$10 spent on transit capital projects, \$30 in business sales is generated. Every \$10 invested in transit operations results in \$32 in private business sales.

Mr. Chairman, public transportation serves another important economic purpose: alleviating highway congestion. According to the Texas Transportation Institute's "2003 Urban Mobility Report", congestion costs \$69.5 billion annually—more than 3.6 billion hours of delay and 5.7 billion gallons of excess fuel consumed. The report says without public transportation, there would be 1 billion more hours (30 percent) more delay. The average driver is losing more than 1½ weeks of work (62 hours) each year sitting in gridlock. The average cost of congestion per peak road traveler is \$1,160 a year. All of that congestion holds up more than 64 percent of the Nation's freight that moves by truck on highways, which represents annual value to the economy of more than \$5 trillion. As the Free Congress Foundation's Paul Weyrich and Bill Lind demonstrate in their study, "How Transit Benefits People Who Do Not Ride It", public transportation, by alleviating congestion, brings real benefits not just to those who use it, but also to those who do not use it.

But public transportation does not just improve the economy by taking cars off the road—it provides transportation options to low-income workers who cannot afford to drive to work. According to the Surface Transportation Policy Project, the proportion of household expenditures devoted to transportation has grown from 14 percent in 1960 to almost 20 percent today. A recently published Bureau of Transportation Statistics Issue Brief found that Americans who commute by car or truck spent about \$1,280 per year in 1999, while those who were able to use public transportation to get to and from work spent just \$765 per year. Clearly public transportation provides real and needed savings for the many entry-level workers coming into the workforce who are so critical for the Nation's economy.

## PUBLIC TRANSPORTATION IS IN DEMAND

Last November voters in several communities, including Denver, Houston, Grand Rapids and Kansas City, approved by large margins new local taxes to provide new and expanded public transportation services. These were just a few of efforts across the country to increase funding for transportation infrastructure, and follows successful actions in other cities over the past 5 years to expand transit service, including Phoenix, Charlotte, Dallas and Minneapolis.

That these referenda have been approved should come as no surprise. Polls have consistently shown that the American public not only supports increased public transportation services but also supports providing the resources to pay for it. As mentioned earlier, the recent Wirthlin Worldwide study showed that 80 percent of Americans surveyed see quality of life benefits from increased investment in public transportation; 76 percent support public funding for the expansion and improve-

ment of public transportation; two-thirds support pro-public transportation Congressional candidates; and a majority (52 percent to 41 percent) of Americans believe transportation investment is preferable to tax cuts to stimulate the economy. These findings hold true across areas of all sizes—urban, suburban, small town and rural. A poll taken in spring 2003 by APTA and the American Automobile Association (AAA) showed that 95 percent of those surveyed said traffic congestion, including commutes to and from work, had grown worse over the last 3 years, with 92 percent believing it was either very important (71 percent) or somewhat important (21 percent) for their community to have both good roads and viable alternatives to driving.

The Wirthlin Worldwide poll demonstrates that support for public transportation has increased dramatically not only in our biggest cities, but in smaller urban communities and rural areas as well, where 40 percent of America's rural residents have no access to public transportation, and another 28 percent have substandard access. It is estimated that rural America has 30 million non-drivers, including senior citizens, the disabled and low-income families, all of whom need transportation options. According to a survey of APTA members, bus trips in areas with populations less than 100,000 increased from 323 million to 426 million in a recent 5-year span.

While demand for new and expanded service is increasing, the resources required to simply maintain the present level of service are immense. A 2002 AASHTO report estimates that \$44 billion is needed annually to meet current transit capital needs for new projects and improvements to existing systems as well to expand the availability of transit service to more Americans.

#### PUBLIC TRANSPORTATION PROVIDES MOBILITY OPTIONS

Public transportation provides mobility options to persons who choose not to, or cannot, drive because of age or a disability. For many in this population, public transportation may be the only option to living a fully independent and productive life. For many Americans, public transportation can be the difference between staying in their own homes or moving into an assisted living community.

According to the AARP's *Beyond 50.03: A Report to the Nation on Independent Living and Disability*, released in August 2003, as people move from their 70's into their 80's, the percentage of licensed drivers falls to 50 percent from just over 90 percent. With the baby-boom generation approaching retirement age, this means the population of elderly Americans who do not have a driver's license will soon grow significantly.

Persons with disabilities face similar mobility problems. Many cannot drive or afford vehicles that are fitted to their needs. Public transportation can provide them the options they need to stay active and independent. However, according to AARP's report, 32 percent of people with disabilities over 65 report that inadequate transportation is a problem. The report states further that while public transportation is more economically efficient in areas with high population density, many older Americans with disabilities live "outside of central cities in communities where public transportation is found least often." This is becoming a growing problem, and it is clear that we need to begin to address the important transportation needs in these areas.

#### PUBLIC TRANSPORTATION PROVIDES GOOD VALUE

Unlike other modal transportation projects funded through the Department of Transportation, major capital transit projects funded by the FTA are subject to a rigorous Federal review process. A comprehensive alternatives analysis process is undergone, with various transportation alternatives weighed and considered. The overall review process typically involves 5 or more years of planning, environmental studies and technical analysis. The projects must be included both in State and local transportation programs and plans. To qualify for project approval and a full funding grant agreement, project sponsors must demonstrate not only financial capacity to construct the project but also to maintain and operate the service once put in place. Much of the process turns on ridership and project cost estimates. In that regard, we are pleased to note that ridership and project cost and benefit estimates for recent new start and bus rapid transit projects have been very accurate, and we will continue to work with the FTA and our members to make sure that forecasting is as accurate as possible. The result of this rigorous process is that the completed transit projects provide real value and an excellent return on the dollar, often in areas not typically recognized: increased value and income for property owners; expanded markets, rising productivity and increased revenues for business and commercial owners/occupants; and enhanced tax revenues for local governments—from rising land values, expanded development and an upsurge in business transactions.

While we support this rigorous review process and the excellent projects that result from it, we remain concerned that it does not apply to other transportation projects under the jurisdiction of the Department of Transportation. We think it would be good public policy to have all major Federally funded transportation projects subject to similar Federal review processes.

PRESIDENT'S BUDGET PROPOSAL

The President's fiscal year 2005 budget proposal proposes to freeze funding for Federal transit programs at the fiscal year 2004 level of \$7.266 billion. In its proposal for a 6-year authorization bill, which was submitted to Congress 9 months earlier, the administration had proposed to fund Federal transit programs at \$7.369 billion in fiscal year 2005, \$103 million more than the amount for transit in the fiscal year 2005 budget proposal.

Mr. Chairman, now is not the time to shortchange investment in public transportation! While the administration continues to advocate for policies that will support a healthy economy and produce more jobs, its budget proposal for transit does not adequately address the need to improve our Nation's transit systems, and create jobs in the process. We again emphasize the 47,500 jobs created by every \$1 billion invested in the public transportation infrastructure or the \$30 million in private business sales that are generated for every \$10 million invested in transit.

Mr. Chairman, we strongly believe that growth of the Federal investment in public transportation can help advance many of the Nation's key goals, and that freezing Federal funding for transit simply defers the growing backlog of unmet transit capital needs. We urge the subcommittee to fund the Federal transit program in fiscal year 2005 at no less than \$8.65 billion, the amount provided in SAFETEA (S. 1072), the Senate-passed TEA21 reauthorization bill.

CONCLUSION

Public transportation should and can play a key role in meeting the goals of the administration and Congress in providing jobs and economic development, energy independence, and mobility options for millions of American. Mr. Chairman, we look forward to working with the subcommittee as it takes up the fiscal year 2005 appropriations bills, and urge you to invest in surface transportation programs at the highest levels possible.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF RAILROAD PASSENGERS

Thank you for the opportunity to submit this statement. We support the Amtrak request for \$1.798 billion. We also support efforts to make the Federal Government a true funding partner with States to permit development of high speed rail corridors, for which many States already have well-advanced plans. Finally, we strongly favor Federal support for the CREATE/Chicago Project to modernize Chicago's railroad infrastructure, and we support continuing efforts to bring to fruition a North Station/South Station Rail Link in Boston.

\$900 MILLION IS A SHUTDOWN BUDGET FOR AMTRAK

Secretary of Transportation Norman Y. Mineta has made clear his agreement that \$900 million would be a shutdown budget. At his interest-group budget briefing on February 2, I asked him about a seeming disconnect between the administration's budget recommendation and Amtrak President & CEO David L. Gunn's statement last fall that \$900 million is a shutdown budget that "won't work." Mineta responded, "Gunn is right on the numbers" but we are sending a message about the importance of our reforms. The following table illustrates the problem with \$900 million:

[In millions of dollars]

|                     | Amount |
|---------------------|--------|
| Operating .....     | 570    |
| Debt Service .....  | 262    |
| Environmental ..... | 22     |

[In millions of dollars]

|             | Amount |
|-------------|--------|
| Total ..... | 854    |

NOTE.—Amtrak has taken on no new commercial debt since David Gunn's May, 2002, arrival, and has no plans to. The cost of debt service peaks in Fiscal 2005 and declines thereafter. Most of the environmental portion of Amtrak's capital budget involves work that Amtrak is legally obligated to undertake, so could not be set aside in favor of fleet or infrastructure work that otherwise would be considered more vital to the system's continued, viable operation.

Gunn in February said Amtrak has “a strategy of moving resources from emergency repairs to programmed maintenance.” This obviously makes for more reliable service, while maximizing revenues (fewer en-route problems means satisfied customers) and reducing maintenance costs. However, much of the programmed maintenance is considered capital, so a maintenance budget at or close to zero forces either an immediate shutdown or an immediate downward spiral in service quality.

But this means the system would collapse on zero capital, and 2,000 employees would be let go. That's essentially what the administration's \$900 million would require.

#### PASSENGER RAIL SECURITY

We agree that rail security has been underfunded and join with those noting the huge gap between Federal spending on aviation security and on railroad security—\$11 billion versus \$115 million, according to one representative at today's House subcommittee hearing. We understand that the Bush Administration's Transportation Security Administration request for fiscal year 2005 is \$5.3 billion, of which all but \$147 million is for air security.

The most obvious needs in rail security relate to infrastructure—especially bridges, tunnels, stations and yards—and training for front-line personnel.

*Infrastructure.*—Issues in the Northeast Corridor are well-known. At major stations nationwide, items for consideration include: an increased police presence with K-9 units, video surveillance at key points of entry and exit, vapor detectors, coordinated plans for first responders in case of an event.

Attention must also be paid, as Amtrak notes, to “non-public locations, such as loading docks, adjacent yards and buildings.”

Consider this recent news item regarding a major commuter railroad:

“Train yards in New Haven and Bridgeport have major security problems 2 months after Federal Homeland Security chief Tom Ridge asked rail operators to be on a heightened state of alert following the Spain train bombings that killed 191 people, WTNH-TV reported Thursday. A reporter and cameraman walked into the New Haven rail facility at 3 a.m. on a recent day and found no security or police guarding the Metro-North trains that carry nearly 40,000 Connecticut commuters into New York each weekday.

“No one stopped the news team, which was able to walk around the rail yard for about two hours, the station reported. The reporter, Alan Cohn, climbed aboard one of the engines . . . The television station found a similar lack of security at the Bridgeport rail yard . . . It's the job of Metro-North and Metropolitan Transit Authority police to patrol [these] rail yards. Metro-North President Peter Cannito promised that changes would be made.”

This report raises the obvious question: how secure are other rail yards?

There is also a Federal interest in the security level of the Nation's vast, privately-owned railroad system which is important both to Amtrak's national network and to freight transportation. For example, loss of major Mississippi River bridges, especially south of Memphis where the number of crossings is small, could wreak havoc with freight commerce.

*Personnel.*—Our understanding is that Israel, the U.K., and Germany are nations where training front line staff has actually deterred bombers and saved lives. This has been a sensitive issue in the United States. Their approach needs to be studied to see what aspects of this work could usefully be transferred. This does not mean “pre-boarding” interviews; that is not feasible for reasons discussed below. But Amtrak's on-board employees in many cases have several hours or more of intermittent contact with passengers and thus the possibility—with the right training—of identifying potential wrongdoers.

*What is not realistic.*—Many Americans begin their thinking about rail passenger security by citing baggage (and shoe!) X-ray procedures they experience at airports but obviously not at train stations. Amtrak (and most commuter railroads) have two extremes: places like New York's Pennsylvania Station where passenger volumes and proximity to commuter trains would make anything approaching airline-style

security both impractical and largely ineffective. Conversely, many small stations have such small passenger volumes as to make any security equipment seem wasteful. As Mesa Airlines CEO Jonathan Ornstein recently noted (in a March 9 Washington Post report about holes in security at small airports), “When there are more TSA people than passengers, you have to ask yourself, does that make sense?”

We note with approval that TSA seems to agree. For example, TSA Undersecretary Asa Hutchinson said that the device that sniffs for explosives and is in a month-long test at New Carrollton, Maryland, is not permanent but simply to gain knowledge for TSA “so that in the event there is a specific threat or a specific need, we have the knowledge, the capability to put inspections in place in a particular threat environment.”

#### THE PUBLIC WANTS THE RAIL CHOICE

Amtrak’s ridership reports starting around May show strong increases—a further sign both that Gunn is succeeding in stabilizing the railroad, and that people want the service. For the first 5 months of fiscal year 2005 (October-February), ridership increases on the long-distance trains ranged from 6 percent to 34 percent, with only two routes below 10 percent. Short-distance route changes ranged from –3 percent to +22 percent, with 7 of 16 routes showing double-digit percentage increases. (Actually, the New York-Pittsburgh route was up 104 percent but this is not exactly an apples-to-apples comparison.) Two routes showed slight declines.

In March, systemwide ridership was up 3.2 percent and revenues were up 5.8 percent versus 1 year ago.

#### THE NATIONAL NETWORK

We reiterate our strong belief that funding Amtrak’s national network is a Federal responsibility, and that implementation of any “reform” which requires a multiplicity of States to provide operating grants is tantamount to shutting down the system. The suggestion—heard more than once from Secretary Mineta—that a train could run “closed door” through non-paying States is not workable because, almost without exception, revenues lost from skipping any State would far exceed the negligible cost savings. The Empire Builder in crossing the thin northern tip of Idaho might conceivably skip Sandpoint, Idaho, with minimal damage but it’s hard to think of any other benign example.

Similarly, we do not believe a “route closing commission” could shed any significant new light. The system is already so skeletal that deletion of any surviving route would mean wholesale elimination of service to major cities and States. Indeed, as we have testified previously, we favor an expansion of the network.

Amtrak’s Sunset Limited is often cited by Amtrak’s critics as wasteful because it would be cheaper to fly passengers from Orlando to Los Angeles. However, relatively few passengers travel that entire distance. Other city-pairs the route serves do not have direct flights, or affordable flights, or in some cases any flights. In addition, some passengers are physically unable to fly. And elimination of the Sunset Ltd. would create a domino effect as the loss of connecting passengers and ability to share facility costs with the Sunset would unravel the economics of the Texas Eagle, City of New Orleans, and Crescent.

The large subsidy-per-passenger figures sometimes cited for given Amtrak long-distance routes include “fully allocated” costs. These are misleading because they often are interpreted to mean that discontinuance of a given route would reduce Amtrak’s operating grant requirement by the product of the number of passengers times the fully allocated loss per passenger. Using the Silver Star fiscal year 2002 figures at page 471 of the House subcommittee’s April 10, 2003, hearing record, the math would be \$189 times 252,240.

The product does not represent an avoidable cost, since many allocated costs will not disappear but simply get re-allocated to surviving routes. Obvious example: a share of the Amtrak president’s salary. Also, a high proportion of long-distance-train passengers make connections with other trains, so discontinuing one train negatively impacts revenues on other trains.

This helps explain why “FRA-defined train contribution” figures were developed, by Federal Railroad Administration working with Amtrak when they were implementing the agreements under which DOT approves funds before Amtrak gets them. In the case of the Silver Star, the FRA defined contribution is actually positive: \$12 per passenger or 2 cents per passenger-mile. (Measures stated in terms of passenger-mile are normally used in intercity travel statistics because they take into account the dramatic variations in trip lengths.)

Thank you for considering our views. Please let us know if we can provide further information that would be helpful to the committee’s work.

## PREPARED STATEMENT OF SIGNATURE FLIGHT SUPPORT

## THE EFFECTS OF CLOSING DCA TO GENERAL AVIATION

Ronald Reagan Washington National Airport was closed to general aviation ("GA") on September 11, 2001 and has not reopened since. It is the only airport in the country that has been shut down to general aviation. Following the September 11 attacks, the FAA also closed the three small general aviation airports within 15 miles of Washington: Potomac Airfield, Washington Executive Airport and College Park Airport ("DC-3 airports"). Although the DC-3 airports have been allowed to re-open, they are subject to unique tight restrictions and cannot land any incoming traffic. No other airports in the country are subject to comparable restrictions.

General aviation businesses that were operating at Reagan National and the smaller DC-3 airports have suffered substantial losses as a result of these closures and restrictions, which is entirely the result of government edicts. The use of their property has been "taken" by the Federal Government. They should be compensated for these losses.

Prior to 9/11, as the sole provider of ground support services for general aviation at Reagan National, Signature Flight Support handled an average of 175 flights per day, and employed 55 aviation service professionals. Two employees now handle approximately 20 flights per month. During the last 6 months, virtually all of these flights have been government officials. The flights primarily are aircraft belonging to the Bureau of Immigration and Customs Enforcement, the Drug Enforcement Agency, the FBI, NASA, and miscellaneous dignitaries.

Although Signature's rent has been abated by the Metropolitan Washington Airports Authority, Signature has suffered substantial losses to revenues and workforce. In the 2½ years since closure, Signature Flight Support alone has lost after tax profits, offset by modest gains at our Washington Dulles and Baltimore facilities, in excess of \$10 million.

## COMPENSATION IS NEEDED AND APPROPRIATE

The Fifth Amendment to the Constitution provides that no "private property shall be taken for public use without just compensation." The closure to general aviation and its effect on Signature is legally known as a regulatory taking. The general aviation shutdown has left Signature with a facility and a business that cannot possibly be used for any other purpose. Given this situation, the Federal Government should compensate Signature and other similarly affected business for the losses that have resulted. Compensation should be paid for the lost profits and actual losses incurred since the closure of Reagan National to general aviation.

Congress immediately recognized the need for compensation in the wake of 9/11, when it passed the 2001 Emergency Supplemental, which included \$40 million to the Metropolitan Washington Airports Authority to compensate its concessionaires for the temporary closure and reduced commercial flight schedule at Reagan National immediately after 9/11. However, this fund compensated businesses only for the period immediately following 9/11; no funds were made available to businesses that continued to suffer substantial losses at Washington area airports. These losses were uniquely suffered at these airports. This failure can and should be addressed this year. Funding for these losses has now been fully authorized.

Last year, Congress recognized the importance of compensating businesses for the significant losses suffered post 9/11 as a result of the closure of general aviation. The FAA reauthorization bill, The Vision 100—Century of Aviation Reauthorization, provides for the reimbursement of losses incurred by general aviation entities. The bill was enacted last December.

The compensation provision specifically states, "the Secretary of Transportation may make grants to reimburse . . . general aviation entities for the security costs incurred and revenue foregone as a result of the restrictions imposed by the Federal Government following the terrorist attacks on the United States that occurred on September 11, 2001.<sup>1</sup> Item 1 is "general aviation entities that operate at Ronald Reagan Washington National Airport."<sup>2</sup> The statute authorizes that \$100,000,000 to be appropriated for reimbursements to carry out the section. This year, Congress should follow through by making this authorization a reality, particularly for the highest priority category, which is the only category where general aviation has been totally banned since 9/11.

A provision should be included in the Fiscal 2005 Transportation Appropriations legislation that compensates those businesses that have suffered losses as a result

<sup>1</sup> Public Law No. 108-176 (H. Res. 2115) (December 12, 2003).

<sup>2</sup> Public Law No. 108-176 (H. Res. 2115) (December 12, 2003).

of the termination of general aviation activity at Reagan National Airport. This provision should provide for a minimum of \$10 million, the approximate amount lost by Signature Flight Support since the closure of Reagan National on 9/11.