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**TREASURY**

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**DEPARTMENT OF THE TREASURY  
AGENCY TEAM REPORT**

**NATIONAL PERFORMANCE REVIEW**

**INTERNAL WORKING DOCUMENT--NOT FOR DISTRIBUTION**  
**August 2, 1993**

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# **Section I**

## **Introduction**

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fees on imported merchandise. Its 1993 budget authority is about \$1.5 billion.

**The Bureau of Engraving and Printing** manufactures the financial and other securities of the U.S. including currency, postage stamps, Treasury securities, identification cards and naturalization certificates. Its operations are financed by an industrial revolving fund.

**The Federal Law Enforcement Training Center** provides law enforcement training to a wide variety of law enforcement agencies. Its 1993 budget authority is over \$47 million.

**The Financial Management Service** serves as the central financial manager of the government. Its mission is to improve the quality of government management by linking program and financial management objectives. Its 1993 budget authority is about \$214 million.

**The Internal Revenue Service** is responsible for collecting the proper amount of tax revenue at the least cost to the public. Its 1993 budget authority is over \$157 million.

**The United States Mint** manufactures coins and medals. Its 1993 budget authority is about \$53 million.

**The Bureau of Public Debt** borrows the money needed to operate the government and account for the resulting debt.

**The U.S. Savings Bonds Division** promotes the sale and retention of savings bonds.

**The U.S. Secret Service** protects the life of the President, Vice President, their immediate families and other officials. It is also responsible for investigating violations of certain criminal laws.

**The Office of Thrift Supervision** assures the safety and soundness of the thrift industry through supervisory and enforcement activities. It operates principally from assessments on thrifts, examination fees and interest on investments.

Since mid-April 1993, the National Performance Review (NPR) seven-member Treasury Team has focused its inquiries on the major Treasury programs. The NPR reviewed the General Accounting (GAO) reports, the Treasury's Inspector General (IG) reports, studies conducted by various associations and think tanks and internal Treasury management reports. Also studied were the transition materials from the Clinton Transition

## THE DEPARTMENT OF THE TREASURY

### INTRODUCTION AND EXECUTIVE SUMMARY

In April 1776, the Continental Congress laid the foundation for today's Department of the Treasury (Treasury) by providing for a "Treasury Office" to administer public finance. The Department of the Treasury was formally established in 1789.

Treasury's mission is formulating and recommending economic, fiscal and tax policies; serving as financial agent of the U.S., enforcing the law, protecting the President and other dignitaries; and manufacturing coins and currency. The department employs over 160,000 people and has a fiscal year 1993 budget of over \$10 billion.

Treasury's broad functions include serving as the President's principal advisor in formulating international monetary, financial and trade policies; regulating national banks, the government securities markets and federal and state chartered thrifts; collecting income tax and other revenue; disbursing payments to over 100 million citizens annually; training law enforcement officers; and improving government-wide financial management.

Treasury is divided into thirteen departmental offices and twelve bureaus. The departmental offices serve as a holding company for the Treasury; some oversee individual bureaus and others perform department-wide or non-bureau-specific functions. The following descriptions of the bureaus illustrates the very diverse missions of Treasury:

**The Bureau of Alcohol, Tobacco and Firearms** enforces the federal firearms laws, combats arson and the misuse of explosives, and enforces alcohol, tobacco and firearms tax provisions. Its 1993 budget authority is about \$368 million.

**The Office of the Comptroller of the Currency** maintains and promotes a system of bank supervision and regulation to ensure a safe and stable financial system while promoting the competitiveness, efficiency, integrity and stability of the financial services marketplace. It supervises about 3,700 national banks with assets totalling almost two trillion dollars. Its operating funds are derived from assessments paid by national banks and interest on investments.

**The U.S. Customs Service** regulates the movement of people, goods and merchandise between the U.S. and other countries. It assesses and collects duties, taxes and



are aimed at controlling the movement of people and goods across the U.S. borders. As the market place has become global and migration has increased, these two functions have become inextricably linked. The NPR recommends creating a single agency for managing border operations. This new agency will provide the opportunity for meeting the challenges of the future for facilitating the movement of people and goods across our borders.

The NPR examined how the Internal Revenue Service (IRS) and state tax agencies could work together to increase collections and provide better service to the taxpayer. The NPR recommended that state agencies be permitted to collect federal income taxes and to offset federal tax refunds to collect state tax delinquencies.

### **Introducing Market Dynamics**

This theme involves making government operate more like a business. One of the ways to do this is to allow the government to charge fees for its service. The Bureau of Alcohol, Tobacco and Firearms currently charges \$30 for a three year federal firearms license. This fee has not been increased since 1968 and does not even cover the cost of processing. The NPR recommends that fee be raised to cover the cost of the service.

Fees for service should be charged to those who benefit from the service. Increased staffing is needed to quickly move people and goods across our borders. Currently, international air travelers pay \$12 per person to travel across the border, but travelers across the land border pay virtually no fees. The NPR recommends lifting this exemption to generate fund to be used to facilitate international transportation.

Currently, the U.S. Mint receives budget appropriation for its operations. The NPR is proposing that it operate more like a private business and thus become self-sustaining revolving fund.

### **Creating a Quality Management Culture**

The primary thrust of the recommendations in this category is related to changing the way Treasury manages its organizations. It encompasses empowerment of employees, decentralization of authority, business process re-engineering, and information technology.

The U.S. Customs Service has an opportunity to re-create itself through strategic

Team, GAO, the Office of Management and Budget (OMB) and Treasury. The team also conducted many personal and telephone interviews and visited a few critical field sites--time did not permit extensive visits to field organizations. The team also participated in focus and working groups which surfaced new issues and multiple points of view.

Based on the many sources, the NPR team focused on 24 major issues which fall into four reinvention themes. The four reinvention themes are:

- o Shifting from Red Tape to Results
- o Introducing Market Dynamics
- o Creating a Quality Management Culture
- o Now is the Time.

### **Shifting from Red Tape to Results**

This theme includes all the NPR recommendations about stripping away control systems to empower Treasury managers and employees to meet the needs and expectations of their internal and external customers. It emphasizes the importance of a clearly defined mission for an organization and an organization's ability and flexibility to meet the challenges of an ever-changing workplace. Several of the Treasury issues fell in this category.

Many of the functions of Treasury overlap with those of other federal agencies. This has resulted in duplicative effort, inefficient operations, confusing missions, wasted resources and less than satisfactory customer service.

These problems are particularly apparent in the federal law enforcement community which includes more than 140 organizations charged with enforcing more than 3,000 criminal laws. The NPR recommends establishing a Director of Law Enforcement who will be responsible for establishing and implementing a national law enforcement strategy. The NPR recommends that the Director chair an Executive Law Enforcement Council which will be responsible for clarifying jurisdictional responsibility among agencies. The NPR further recommends combining agencies whose jurisdictions are so tied that their separation causes severe duplication of effort.

Currently, Treasury and the Department of Justice manage separate programs that

Since the NPR and the internal Treasury Teams were unable to come to consensus on several of the recommendations, "Section V: Treasury's Rebuttal," contains the Treasury rebuttal papers.



management and business process re-engineering. It is currently hampered by an outmoded legal framework that promotes paperwork and manual transaction-by-transaction processing. The current framework can be an impediment to the free flow of commerce instead of the means of low cost and efficient operations for both customs and the trade community. The NPR recommends enactment of legislation which would allow Customs to promote efficient service to the trade community through fully automated and electronic analysis and processing of data.

The Resolution Trust Corporation (RTC) was established to resolve failed savings and loans. The RTC has been innovative in creating new sales strategies and quickly moving properties out of the government's portfolio. The knowledge and experience gained by RTC personnel are assets which should not be lost to the government when RTC sunsets on December 31, 1996. The Federal Deposit Insurance Corporation (FDIC) is faced with assuming insurance responsibilities for savings and loans beginning in October of 1993. Although employees assigned to RTC have return rights to FDIC, FDIC is facing diminishing staffing needs. The NPR proposes that FDIC use innovative techniques to retain RTC staff with highly specialized skills and that RTC's experience be put to use by FDIC.

### **Now is the Time**

Recommendations under this theme involve cutting spending, increasing revenues, and eliminating functions. The NPR team is recommending the reduction of duplication in law enforcement training and streamlining background investigations of Federal employees. The majority of the recommendations in this category are focussed on revenue production. Examples are adjusting civil monetary penalties to the inflation index, authorizing Federal tax payment by credit card, and increasing compliance with tax requirements.

All the Treasury recommendations are discussed in detail in "Section II: Issue Papers and Recommendations." The internal Treasury Reinvention Team's many activities are discussed in "Section III: Agency Reinvention Activities." "Section IV: Fiscal Impact Summary" will be completed once the fiscal estimates are received from the appropriate offices.



**Shifting from Red Tape to Results**

## **Section II**

# **Issue Papers and Recommendations**

amended, established Offices of Inspectors General within agencies to ensure employee and program integrity through prevention and detection of criminal activity, unethical conduct, and program fraud and abuse. Since then, due to identified needs, some IG personnel have acquired full law enforcement authority from the Attorney General's Office to make arrests and carry firearms in the performance of their duties. This has received mixed opinions in the law enforcement community and DOJ has conducted studies in this regard..

Of the top ten organizations with law enforcement responsibilities, the majority of the overlap and duplication appears to be between and within agencies of the Departments of Justice (DOJ) and Treasury (Treasury).<sup>4</sup> Some of the Treasury agencies involved in law enforcement were originally created for regulatory and revenue purposes. Over the years they have gradually acquired investigative and law enforcement responsibilities which exceed their original purpose and duplicate the functions of DOJ agencies.

For example, in 1972 the Internal Revenue Service's (IRS) Bureau of Alcohol, Tobacco and Firearms Division was designated as a separate agency within the Treasury Department, and was named the Bureau of Alcohol, Tobacco and Firearms (BATF).<sup>5</sup> Hence, BATF is an outgrowth of federal legislation concerning taxation and regulatory functions related to alcohol, tobacco and firearms. Today, BATF's mission has expanded to include investigation and enforcement of laws related to drugs, gangs, explosives, arson and violent crimes. BATF's results in the alcohol and tobacco areas are limited in comparison to the firearms and explosives areas. In 1992, BATF initiated only 10 alcohol cases which resulted in recommending 10 suspects for prosecution, and 13 tobacco cases which resulted in recommending 8 suspects for prosecution. In comparison, BATF initiated 12,314 firearms and explosives cases which resulted in recommending 11,406 suspects for prosecution.<sup>6</sup> Thus, the majority of BATF's effort have involved cases which are duplicative of the DOJ efforts, particularly in the areas of firearms, explosives and drugs.

To achieve their goals, BATF is divided into two basic functions: law enforcement and compliance (e.g., regulatory and revenue) operations.<sup>7</sup> BATF's law enforcement and compliance functions are performed separately. Law enforcement activities are performed by Special Agents (e.g., Series 1811- Criminal investigators) and compliance operations (i.e., regulatory and revenue) are performed by regulatory inspectors and revenue collectors.

## IMPROVE COORDINATION AND STRUCTURE OF FEDERAL LAW ENFORCEMENT AGENCIES

### Background

There are over 140 different Federal organizations with some law enforcement functions.<sup>1</sup> These organizations consist of over 40,000 employees who are responsible for various police and/or criminal investigative functions.<sup>2</sup> Their responsibilities pertain to more than 4,100 federal criminal laws. Most federal crimes involve violations of a number of these laws, many of which come under the jurisdiction of multiple federal agencies. For example, a drug investigation may involve violations of financial, firearms, immigration or customs laws, in addition to drug statutes.

Fragmentation and jurisdictional overlap have hindered a comprehensive national and international approach to law enforcement. It has led to a lack of coordination and information sharing, as well as duplication of efforts and inefficient use of resources. Although competition among law enforcement agencies might be expected to result in a more dynamic law enforcement, competition for funding and performance credit has led to counterproductive rivalry among law enforcement agencies. This is especially true in the areas of drugs and violent crimes.

The turf battles have been highlighted in the media and have served to undermine citizen confidence in federal law enforcement. According to current and former law enforcement officials, the rivalry appears to exist more often in the upper level management than in the field. A news article reads "Sometime agents themselves would be willing to cooperate, but their managers were in a turf struggle... It was like watching kids fight in a playground. Here are the agents trying to get the work done, and they have to watch the supervisors fight."<sup>3</sup> Although law enforcement agencies try to avoid parallel investigations, they still occur. It is not uncommon for agents from one federal law enforcement agency to unknowingly conduct an investigation of agents from another, believing the other to be the criminal element. This is inefficient and could result in life threatening situations.

To compound the problem, the Offices of Inspector General (IG) at various agencies are now involved in law enforcement. The Inspector General Act of 1978, as



out their drug law enforcement responsibilities independent of each other. They independently develop investigative strategies and priorities, operate separate intelligence systems, and have developed different systems for reporting and measuring their performance.<sup>9</sup> Over the years several initiatives and agreements have been implemented to encourage cooperation, coordination and information sharing between the FBI and DEA<sup>10</sup>. Such efforts have not resolved the problem.<sup>11</sup> As an alternative solution, several Attorneys General have considered merging DEA into the FBI, however, no action was ever taken. In the past, the different strategies of the DEA and the FBI in fighting the drug war was a major concern when considering a merger. Today, the DEA now has a "Kingpin" strategy, which is consistent with the FBI strategy to identify the drug organizations through intelligence efforts and dismantle these organizations through prosecution. Still, the DEA and the FBI have significantly different view points relative to consolidation.

The FBI, which is a multi-mission agency, contends that the expansive management and investigative resources of a multi-mission agency provides superior capabilities to investigate drug trafficking organizations that perpetrate a wide range of crimes. In a white paper to the Attorney General, the FBI stated "The problem of illegal drug trafficking cannot be segregated from the other criminal programs, and even some of the non-criminal programs, for which the FBI is responsible."<sup>12</sup> The DEA which is a single mission agency, contends that they give top priority to a focused U.S. Government response to the drug problem. In response to the FBI white paper, DEA stated "The loss of a single-mission drug enforcement agency would diminish the current effectiveness of the United States Government's domestic and international counter-narcotics efforts. As just one of the FBI's ten divisions, the FBI drug program will always compete for priority and resources with the FBI's other programs."<sup>13</sup>

Law enforcement responsibilities and jurisdiction often ambiguous and involve many different organizations. To address the problems, federal officials have generally tried coordination efforts, as opposed to consolidation or clarification of jurisdictional lines. This has resulted in a variety of task forces, committees and other efforts designed to promote interagency coordination. Some have attained varying degrees of success, but still

Regulatory and revenue matters that raise the possibility of criminal activity are generally passed to the BATF law enforcement component for criminal investigation, rather than to another federal agency (e.g., Federal Bureau of Investigation (FBI), Drug Enforcement Administration, (DEA) etc.) which has the same law enforcement authorities. The 1993 Branch Davidian standoff in Waco, Texas and the World Trade Center bombing in New York City are examples of BATF and FBI overlap. As a result, in April 1993, a congressional bill was introduced to transfer all functions of BATF relating to the regulation of firearms from Treasury to Justice, then into the FBI.<sup>8</sup> The bill was referred jointly to the Committees on Ways and Means and the Judiciary.

Similar to BATF, the U.S. Customs Service (Customs) was not created for traditional law enforcement purposes. Customs was created to guard the nation's borders and enforce trade laws. However, Customs is now involved in drug enforcement and duplicates the efforts of DOJ agencies. Customs receives significant funding in the drug control area. For example, Customs fiscal year 1992 budget for drug control was about \$785 million. In contrast, DOJ's Drug Enforcement Administration's (DEA) fiscal year 1992 budgets for drug control was approximately \$710 million, the FBI's budget was \$205 million, and Immigration and Naturalization Service's (INS) budget was \$141 million. In addition to drugs, Customs duplicates the investigative and law enforcement efforts of the FBI, DEA, and INS in the illegal alien area.

The Departments of Treasury (i.e., Customs, BATF and IRS ) and Justice (i.e., DEA, FBI, U.S. Attorneys, and the Criminal and Tax Divisions) agencies also overlap in the area of money laundering. Treasury manages and maintains the Financial Crimes Enforcement Network (FINCEN) and is involved in investigating financial crimes matters, particularly those related to tax crimes. The DEA and FBI are also involved in investigating financial crimes, particularly those which are tied to major illegal drug enterprises. Both departments are required to investigate money laundering operations to accomplish their missions, and adequate coordination is necessary to avoid duplication.

In addition, within DOJ there is considerable overlap and lack of coordination between the FBI and DEA in the areas of drugs, firearms, gangs, money laundering and wiretaps. According to a 1990 General Accounting Office report, DEA and the FBI carry



(DCI) position was created to establish a single leader of the intelligence community and acts as the primary advisor to the President and National Security Council on foreign intelligence. The Director of Central Intelligence Agency serves as the DCI.

### **Recommendations**

1. **The President should establish a Director of Law Enforcement (DLE) modeled after the Director of Central Intelligence (DCI).** The Attorney General should serve a dual role as the DLE and head of the Department of Justice. The DLE should be the chief law enforcement officer of the federal government and the primary adviser to the President on national law enforcement matters. The DLE should also be the central policy and priority setting authority with respect to all federal law enforcement activities, and be responsible for establishing and implementing a national strategy on law enforcement. In addition, the DLE should review and approve all federal law enforcement resource allocations and program funds in accordance with the Administration's priorities.
2. **The President should establish an Executive Law Enforcement Council (ELEC), chaired by the DLE.** The ELEC should include representatives of the Departments of Justice, Treasury, State, Transportation, Defense, and the Central Intelligence Agency, the Border Agency and the Office of National Drug Control Policy. The ELEC should advise the DLE on all federal law enforcement matters. Such matters should include clarification of jurisdictional responsibilities among agencies, resolution of interagency conflicts, development of policies to ensure coordination and information sharing among agencies, development of a uniform statistical reporting system to ensure accurate law enforcement data, recommendations on the structure and alignment of law enforcement agencies, development of a performance measurement system which rewards interagency team efforts, development of programs to enhance federal support to state and local law enforcement, and development of standards to evaluate each agency's contribution to the DLE's priorities.
3. **The President should initiate a realignment of federal law enforcement, as follows:**

fail to address structural impediments to coordination, particularly in the area of drug enforcement. Notable examples include the Organized Crime Drug Enforcement Task Force (OCDETF), Committee for the Coordination of FBI/DEA Activities (Link-Up Committee), the Six-City Joint Drug Plan, and efforts of the Office of National Drug Control Policy (ONDCP). OCDETF, which is managed by DOJ, uses a combined appropriation for federal drug enforcement investigations. While the objectives of these task forces are laudable, they require considerable staff-hours and funding to coordinate and do not represent a single solution to the difficulties.

The objective for federal law enforcement should be a unified, comprehensive, cooperative and mission driven effort with the flexibility to respond to changes in national priorities. This direction was supported in testimony before the U.S. Senate Committee on Governmental Affairs, where the Comptroller General of the United States stated "Strengthened central management systems would permit the Attorney General to establish, communicate, coordinate, and oversee national goals and priorities... Despite increased resources for investigating white collar crime, the effectiveness of this effort is not yet adequate, in part because of the decentralized Department and diffusion of responsibility, authority and resources between Justice and other agencies."<sup>14</sup>

While consolidation of most law enforcement agencies which have the same or similar jurisdiction is one solution; other alternatives include the identification of a single leader of the law enforcement community, a modified restructuring of agencies which clearly have significant overlap, coupled with clarification of missions, jurisdiction and authority among organizations. The most immediate and critical need is the establishment of central leadership. There is currently no single leader of the federal law enforcement community to articulate and oversee a national law enforcement strategy, manage resources, coordinate efforts, and resolve conflicts among law enforcement entities in accordance with Administration priorities. Although the Attorney General is the nation's chief law enforcement officer, she does not have authority over law enforcement activities outside of DOJ.

Many of the problems that currently exist in the law enforcement community mirror those which plagued the intelligence community. The Director of Central Intelligence



violence.

The personnel in administrative and support positions will be impacted. The most effective and efficient distribution of such personnel should be considered in the merger. Redundancies in management, intelligence data bases, physical facilities, communications equipment, training, and research and development will be reduced by reducing the number of different systems for measuring drug investigation performance and accomplishments and provide a clearer picture of national efforts.

The efficiency of service delivery to citizens would improve by defining and moving law enforcement resources closer together. This approach would provide more uniformity of policy, guidelines, and programs and create more a centralized national crime fighting strategy.

### **Fiscal Impact**

The recommendations will result in a substantial increase in efficiency, effectiveness and economy, especially in the administrative and support functions (for example, Public and Congressional Affairs, Administrative Services, Laboratory, Internal Affairs, Procurement, Personnel, Equal Employment Opportunity, Legal Counsel, and Training) if federal law enforcement agencies performing similar functions are efficiently realigned to meet current needs.

Significant economies of scale would be realized through reduction and consolidation of headquarter and field office facilities, air-fleets, information management systems, etc. Consolidation will also result in a more comprehensive and coordinated approach to law enforcement. This will eliminate wasteful duplication of resources and counterproductive competition.

By merging three agencies together (BATF and DEA, into FBI), the management structure can be merged into one, requiring fewer personnel and other duplicative resources. Every effort could be made to allow this to occur through attrition rather than reduction in force. The issue of excepted service versus career service will have fiscal impact which must be addressed.

The preliminary projected cost to merge DEA into the FBI is about \$110 million.

**(a) Transfer the law enforcement functions, authorities and related resources of the Bureau of Alcohol, Tobacco and Firearms (BATF) from the Department of Treasury to the Department of Justice and merge then into the Federal Bureau of Investigation (FBI);**

**(b) Transfer the compliance (e.g., regulatory and revenue) functions, authorities and related resources of BATF to the Internal Revenue Service (IRS); and**

**(c) Merge (e.g., as a Division) the Drug Enforcement Administration (DEA) into the Federal Bureau of Investigation (FBI).**

### **Implications**

The establishment of a DLE will result in greater accountability for federal law enforcement efforts and ensure that budgets are effectively spent on national law enforcement objectives. The creation of the ELEC will assist the DLE in addressing turf battles, reducing duplication of effort and fostering cooperation among agencies. The DLE assisted by the ELEC will serve to clarify the missions of the major federal law enforcement entities.

The transfer and realignment of agencies and responsibilities will require Presidential and congressional approval. Most DEA and BATF personnel currently come under Civil Service status while FBI personnel possess Excepted Service status. The appeals processes, in connection with personnel issues, vary with the two systems. Any consolidation of the two agencies must address this issue.

The mix of BATF and DEA agents with FBI agents will afford multi-mission agency type cross-training opportunities to both BATF and DEA agents, and result in a more diverse personnel base within the FBI. The mix will also afford FBI agents enhanced training in the drugs and firearm areas. The multi-mission approach to criminal conduct which attends drugs, firearms, gangs and explosives will offer an expansive investigative jurisdiction to address all these crimes. This will result in a more unified, comprehensive and coordinated attack on criminal enterprises through the consolidated jurisdiction and resources made available to the FBI. This will send a strong message that all the resources of the FBI and other agencies will now be coordinated to fight the war on drugs and



## CREATE AN INDEPENDENT BORDER MANAGEMENT AGENCY

### Background

The Department of Justice's Immigration and Naturalization Service (INS) and the Department of the Treasury's U.S. Customs Service (Customs) share responsibility for controlling and regulating the flow of people and goods into the U.S. Although they are both responsible for border security and even perform what may appear to the public to be identical functions at some locations, their separate and distinct missions have led to dysfunctional operations. In carrying out their separate missions, the agencies' operations often overlap, creating duplication and conflict. The result is confusion in the management of the U.S. borders which resists solution by the best of managers while the current system continues.

INS' mission is to determine the eligibility of persons to enter and remain in the U.S.; collect fees for services; prevent and deter smuggling of people and narcotics into the U.S.; and protect the American public against the results of illegal entry of aliens. Customs' mission is to determine the eligibility of carriers and goods to cross U.S. borders; assess and collect duties, taxes and fees on imports; prevent and deter smuggling of goods and narcotics; protect the American public against the results of illegal entry of products.

Both INS and Customs perform these duties through inspectors, examiners, and law enforcement personnel both at the border and in interior locations. Both have inspectors at nearly 300 land, air, and sea international arrival Ports of Entry (POEs) into the U.S. In addition to its inspectors, INS also has Border Patrol agents who deter entry along the land border between POEs and adjudicators in interior locations who perform quasi-judicial functions related to the status of non-citizens.<sup>15</sup> INS' law enforcement functions include investigators who apprehend criminal aliens and enforce laws against illegal alien employment. INS' detention and deportation officers detain and remove aliens from the U.S.

In addition to its inspectors at POEs, Customs' Office of Air and Marine Interdiction patrols the border and deters illegal entry of goods. Customs' examiners perform quasi-



The projected savings in the first year are about \$83 million and \$63 million per year thereafter. The projected savings resulting from a merger of BATF into FBI is pending.

primary inspection (initial screening to determine their admissibility) and are referred for secondary inspection if necessary. Although both agencies' inspectors are cross-designated to perform each others' primary inspections, and have formal agreements providing for a fifty/fifty split in responsibility for staffing traffic lanes, there is no coordinated approach for addressing staffing imbalances and traffic backups. In interviews with the General Accounting Office (GAO), each agency charges the other has taken unilateral uncoordinated action to facilitate traffic flow and each charges the others' action has adversely affected its mission.<sup>19</sup> Because INS has less than half of Customs' staffing along the southern border (fiscal 1993 staffing: Customs--1903; INS--925), INS is frequently unable to open as many lanes as Customs' staffing would allow. Until recently, if INS' staffing permitted it to open only eight lanes of traffic, Customs would adhere to the strict letter of the agreement and also open only eight.<sup>20</sup>

In October 1992, INS undertook a one-day test, using overtime funds, to determine the effect on traffic backups from opening additional lanes at San Ysidro, California. The result was smooth traffic movement all day. Customs alleged that because this action was not coordinated in advance between both agencies it adversely affected narcotics seizures. Yet in November, three weeks after INS' San Ysidro test, Customs--without advising INS--permanently increased staffing during peak traffic periods, alleging after the fact that it had planned the increases for some time.<sup>21</sup>

Both Customs and INS maintain canine units which are trained at different facilities using different systems. Customs' dogs are trained to detect drugs; INS' to detect both drugs and concealed people. The two agencies have been unable to agree on how and where the dogs should be used. Customs alleges INS' dogs are inadequately trained. INS alleges Customs uses its dogs in a manner which subjects the U.S. Government to potential liability. Therefore, when Customs deploys its canines at pedestrian border crossing points, INS closes its lanes thereby impeding pedestrian traffic movement.

Problems such as those concerning lane staffing and canine deployment are aggravated because no one is in charge of and responsible for overall port operations. Although each agency is cross-designated to perform the primary inspections of the other, Customs has not established performance standards addressing INS' mission. There are

judicial functions related to the status of goods.<sup>16</sup> Customs' law enforcement functions include investigators who enforce laws against illegal entry of goods.

Both Customs and INS have missions fundamentally tied to the U.S. border. The standard for the management of the entry of both people and goods should be the enforcement of U.S. laws with a minimum of delay and disruption to legitimate traffic. The historically secular approach to border management has resulted in a patchwork division of labor which has led to operational inefficiencies and diminished mission performance.

For example, at air POEs INS is responsible for primary inspection (initial screening) while both INS and Customs maintain individual responsibility for secondary inspection. At most land border POEs INS and Customs share responsibility for primary inspection while each maintains individual responsibility for secondary inspections. For illegal air traffic over the border Customs is responsible; for illegal traffic at ground level, INS is responsible.

These problems are compounded by the involvement of other federal agencies in border issues. Nearly 20 other agencies as well as state and local governments have some border security functions.<sup>17</sup> Several of these have missions which require inspections at the border. With the exception of the U.S. Department of Agriculture, which maintains an inspection staff at many POEs, INS and Customs serve as surrogate inspectors for these agencies.

For nearly a century, relationships between INS and Customs have been marked by fragmented authority, overlap and duplication of jurisdiction, and interagency rivalry deeply ingrained in their management cultures. Each agency has different law enforcement authorities, statutory responsibilities, operational guidelines and organizational structures. Each has personnel components which promote independence and autonomy. Turf battles, competing priorities, poor customer service and ineffective operations are the inevitable result.<sup>18</sup> These problems are exacerbated by separate employee unions and separate congressional oversight and appropriations committees.

Ineffective operations at southwest POEs illustrate the often counterproductive nature of the current arrangement. Individuals and vehicles arriving at land POEs go through



committees, there is no means to balance resource requirements and allocations between the two agencies. The Border Patrol lacks resources needed to have a "reasonable" opportunity to accomplish its mission (see elsewhere in this report), while Customs' air interdiction program is generously funded (see elsewhere also).

Myriad studies have addressed border management and the rivalry between Customs and INS and have recommended solutions from the broad to the band-aid. A 1988 report by the Senate Committee on Governmental Affairs cited more than 25 such studies, beginning with President Taft's April 4, 1912, proposal to abolish the Revenue Cutter Service (a precursor to Customs) and divide its responsibilities among other services and agencies.<sup>26</sup> Over this long history of review, the studies have focused on one or more of three overriding solutions: (1) transferring jurisdiction, authority, resources and personnel between or among affected agencies and departments; (2) unifying parts of border control agencies, identifying one as the "lead" but not "single" agency; or (3) merging entire agencies and creating a new organization.<sup>27</sup> All solutions stress the potential for improved interdiction and enforcement, especially in the areas of drug trafficking and illegal immigration, enhanced economy and efficiency, curtailment of interagency rivalry and conflict, and end to duplication and overlap.

No broad-scale reorganization has ever been approved by Congress, although many have had persistent and sometimes intense high level support.<sup>28</sup> Opposition from affected agencies, Cabinet departments, congressional committees, labor unions or private sector organizations has always prevailed.<sup>29</sup>

Customs and INS have attempted to address the underlying problems identified in the studies by promising to improve cooperation and coordination. The GAO has reported that cooperation agreements signed since 1977 have not been adhered to or updated.<sup>30</sup> As recently as May 1993, the newly appointed Customs Commissioner reiterated his commitment to resolving interagency disputes. Customs and INS, in the presence of their Cabinet secretaries, have met to discuss improved cooperation.<sup>31</sup> The two agencies recently held a joint meeting to address border interdiction issues and renewed promises to improve cooperation and coordination. Yet, during this review, Customs repeatedly submitted draft papers proposing that it assume INS' duties at land POEs (but not those between land POEs

also no performance measures to judge the overall effectiveness of their joint personnel or programs.<sup>22</sup> The agencies have separate musters at the beginning of inspectors' shifts. As a result, problems both agencies inspectors might expect to encounter during the work day are not jointly aired, and potential solutions go unidentified. There is no formal mechanism for a unified approach to dealing with mutual problems.

Problems with operations are not limited to land POEs. In the early 1980s, faced with increasing workload, Customs prevailed upon INS to perform the initial screening of all passengers for both INS and Customs purposes. This allowed Customs to develop a "selectivity" system which targets high risk passengers and cargo, and allows the expeditious entry of low risk travelers. Customs' selectivity system uses combinations of automated data analysis and "roving" inspectors skilled in observational and behavioral analysis to direct its enforcement efforts at suspect violators.<sup>23</sup>

Customs' selectivity system is fundamentally grounded on INS performing Customs' initial screening. Yet in interviews, Customs now contends INS clings unjustifiably to a requirement to examine every passenger, thereby providing poor customer service by unwarranted delays to low risk travelers. Various Customs officials also speculated that INS continues to examine every airline passenger in order to justify its authority to charge a \$5 dollar user fee.

Both agencies use the automated Interagency Border Inspection System (IBIS) to process low risk travelers quickly, while alerting them to potential problem travelers. Although "owned" and managed by Treasury, the IBIS enforcement system allows several Federal agencies shared access to suspect lookout records.<sup>24</sup> Customs also uses the system to "prove" INS' deficiencies. In papers presented to the National Performance Review, Customs pointed to the fact that less than 15 percent of referrals using the IBIS system were as a result of information obtained from INS sources.<sup>25</sup> In interviews, Customs officials presented statistics stressing Customs "versus" INS performance in speeding traffic.

The land and air space between POEs also involve overlapping responsibilities between Customs and INS. Both are responsible for illegal traffic across the borders. The Customs operation is aimed at air traffic; INS' Border Patrol focuses on ground traffic. However, because the agencies' appropriations are controlled by separate Congressional



Department of Justice. Neither agency proposes that option; both would prefer not to assume responsibility for one or more parts of the others' duties. And placing responsibility for all functions into a subordinate part of an existing agency would not create the independence necessary to develop, advocate at the highest levels of the U.S. Government and implement a single border management mission.

In effect, Customs' proposed alternative described above--in which it would assume responsibility for land POEs while INS retains responsibility for air POEs and the land border between POEs--is a version of previous studies' second potential solution of unifying parts of border control agencies. This option would not solve the problem of a disjointed approach to border management or allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. It would inhibit the development of integrated policies and strategies and would have to rely heavily on the personalities of agency management.

A single border management agency should provide a one-stop shop for all movement across the border. Decisions affecting border management issues could be made without the problems currently created by the need to consult with separate management hierarchies. It would permit the empowerment of employees to concentrate on a unified mission rather than finger pointing. Finally, it should result in resources savings by elimination of duplication and overlap, particularly in management structures.

INS and Customs resources combined exceed \$3 billion dollars and nearly 37,000 full-time equivalent work years (FTEs) (see Table 1). The ratio between Customs and INS resources devoted to inspection and control activities is more than two to one. INS' fiscal year 1994 budget includes 3,795 FTEs and \$262.3 million dollars in authorized and user fee accounts for inspection activities.<sup>37</sup> Customs' 1994 budget provides for 8,262 FTEs and \$507 million dollars in authorized and user fee accounts for inspection and control activities.<sup>38</sup>

#### **Recommendation:**

**Congress should enact legislation consolidating all Immigration and Naturalization Service (INS) and U.S. Customs Service (Customs) functions into a**



or at airports), alleging its performance is more effective than INS'.<sup>32</sup> And in Customs' response to the then draft GAO report on border management (cited elsewhere in this report), the Acting Commissioner recommended that certain functions of INS be transferred to Customs.<sup>33</sup> Even if Customs' most recent recommendation were adopted, the problem of a disjointed approach to border management would remain unresolved. Solutions based either on Customs' proposal to assume portions of INS' duties or on renewed cooperation agreements, rely heavily on the personalities of agency management, rather than on a unified strategy for border management.

The challenges posed by changing global business competition and increasing international migration make a unified border management approach imperative. At least one and one-half million persons entered the U.S. illegally in 1991.<sup>34</sup> Put more graphically, one illegal alien entered every twenty-one seconds. The resulting costs for all public services, education, criminal justice and correction programs are estimated at \$7.8 billion in 1992.<sup>35</sup> Customs reported collections of \$16 billion dollars in fiscal year 1991 and is responsible for nearly 10 million entries per year.<sup>36</sup> As global trade increases, Customs faces challenges from managing the changing character of these entries, particularly those involving complex electronic products.

A single, independent border management and control agency would ensure a unified and coordinated approach to the entry of people and goods into the U.S. It would provide the flexibility needed to realign resources to improve enforcement and customer service by speeding legal and decreasing illegal traffic flow. It would improve coordination and sharing of intelligence; eliminate interagency rivalry and ineffective cooperation; and eliminate dual management structures, ineffective strategic planning and poor accountability.

The two other potential solutions offered in previous studies involved (1) transferring jurisdiction, authority, resources and personnel between or among affected agencies and departments, or (2) unifying parts of border control agencies, identifying one as the "lead" but not "single" agency. Neither of these options addresses current or future operational conditions. Few could argue persuasively that all of INS' current functions fit logically into the Department of the Treasury, or that all of Customs' fit logically into the

their parent agencies, and the resultant damage to "continuity and unity of operations."<sup>39</sup> The General Accounting Office attributes Customs' advantage in inspector resources to favorable congressional support, lacking for INS.<sup>40</sup> Customs' inspection function is a central component of its workforce and is experienced in enforcing numerous laws for other agencies. INS' inspectors are a smaller proportion of its overall workforce, but more experience in enforcing immigration laws and enforcement operations between ports.<sup>41</sup> A single agency organization would maximize the use of resources and potentially identify savings.

**Fiscal Impact:**

Creation of a new agency inevitably involves initial start-up costs which we have asked the Office of Management and Budget to estimate. The current combined resources of Customs and INS exceed \$3 billion per year. At that level of funding, the new agency should be able to fund its start-up costs without additional funding.

Treasury has estimated that a direct savings in the \$12 to \$15 million dollar per year range could be anticipated by the reduction of logistical requirements, such as radios, vehicles, other equipment, office space, and management and administration support.<sup>42</sup> In terms of savings related to management and administrative staff for a border consolidation alone, Treasury estimates a consolidation could result in a reduction of up to 150 FTEs. Based upon an average of \$42,000 per employee for salaries and benefits, this would translate into potential savings of \$6.3 million. Other associated overhead costs would be reduced over time. Salaries savings would be dependent upon when employment reductions took place and whether or not they were achieved through attrition.<sup>43</sup>



**single, independent border management agency effective no later than the beginning of fiscal year 1985.** This would allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. The new single agency should be responsible for all aspects of the movement of people and goods into and out of the U.S., and for proposing integrated policies and strategies. The head of the new organization should be nominated by the President with the advice and consent of the Senate.

The Attorney General and the Secretary of the Treasury should direct the current INS and Customs Commissioners respectively to develop a proposed implementation plan no later than January 31, 1994 for joint INS/Customs operations during the transition to the new agency. The President should identify his nominee for the head of the new agency as soon as possible, so that he or she may work with INS and Customs on the transitional action plan and timetable. This transitional organizational structure should be in place no later than April 30, 1994. Additional recommendations concerning future operations between POEs are addressed in a separate portion of this report.

### **Implications:**

Creation of an independent agency to manage all border operations would afford an opportunity to develop a more strategic and integrated vision within the government for addressing the problems of facilitating the entry and assimilation of people, services and goods, and long term world migration pressures. Independence would establish accountability, allow focus on agency mission identification and pursuit and encourage development of coherent administrative systems. It might tend to defuse the seemingly intractable cultural rivalry between the two principal organizations. Resource considerations would be addressed by one agency and one set of congressional committees. It would face serious opposition from virtually every quarter, but could resolve the significant problems no other solution has addressed.

While some advocate separation of Customs and INS law enforcement and service, others argue "only the appearance of duplication" would end, because of the functions' "close relationship to and logical outgrowth from the primary duties and responsibilities of



## INCREASE RESOURCES FOR "REASONABLE" CONTROL OF ILLEGAL ENTRY

### Background:

The Border Patrol critically needs increased resources--both personnel and infrastructure support--to permit it a "reasonable opportunity" to confront and deter illegal entry. As President Clinton said on July 27, 1993:

"..it's certainly plain to anyone with eyes to see that the border patrol is drastically understaffed--breathtakingly understaffed...our borders leak like a sieve. The simple fact is that we must not...surrender our borders...the solution [to the problem of illegal immigration] is to welcome legal immigrants...and turn away those who do not obey the laws. We must say no to illegal immigration so we can continue to say yes to legal immigration."<sup>45</sup>

Operations between ports of entry--along the 8,000 miles of land and coastal borders of the U.S.--are not easily "reinvented" absent a revised national policy on illegal immigration which effectively closes the border. An estimated one and one-half million people enter the U.S. illegally every year.<sup>46</sup> Put more graphically, one illegal alien enters every twenty-one seconds. Estimated illegal immigration costs for all public services, education, criminal justice and correction programs were \$7.8 billion in 1992.<sup>47</sup>

The U.S. land border, particularly its southern flank, is the greatest challenge. An estimated one million illegal aliens cross there each year.<sup>48</sup> Border control has long been an integral component of U.S. efforts to stem the influx of illicit drugs. Terrain and the amount and type of smuggling, particularly of narcotics, differentiate the northern from southern border.<sup>49</sup>

The Immigration Reform and Control Act (IRCA) of 1986 was intended to "solve" the problem of illegal entry by providing for "legalization" of about three million aliens, increased Border Patrol staffing, and penalties against employment of illegal aliens.<sup>50</sup> Only its legalization component was effective because, although IRCA and subsequent legislation authorized increases in INS' Border Patrol resources, Congress did not appropriate funds.<sup>51</sup>

A three-pronged approach is needed to reduce illegal immigration across the land

**Table 1: Fiscal 1993 Resources for Customs and INS<sup>44</sup>**

|                                                                | FISCAL 1993<br>INS | FISCAL 1993<br>Customs | TOTAL           |
|----------------------------------------------------------------|--------------------|------------------------|-----------------|
| Full Time Equivalents                                          | 18,537.00          | 18,419.00              | 36,956.00       |
| Salaries and Expenses                                          | \$977,927,000      | \$1,315,917,000        | \$2,293,844,000 |
| Immigration Exam. Fee Acct.                                    | \$337,415,000      |                        | \$337,415,000   |
| Immigration User Fee Acct.                                     | \$240,948,000      |                        | \$240,948,000   |
| Enforcement Fines                                              | \$12,660,000       |                        | \$12,660,000    |
| Immigration Legalization                                       | \$8,281,000        |                        | \$8,281,000     |
| Breached Bond/Detention<br>Fund                                | \$5,000,000        |                        | \$5,000,000     |
| Land Border Inspection Fee                                     | \$4,000,000        |                        | \$4,000,000     |
| O&M, Air & Marine<br>Interdiction Programs.                    |                    | \$83,242,000           | \$83,242,000    |
| O&M, P-3 Drug Interdiction<br>Programs.                        |                    | \$28,000,000           | \$28,000,000    |
| Procurement, Air & Marine<br>Interdiction Programs.            |                    | \$21,174,000           | \$21,174,000    |
| Facilities, Construction,<br>Improvements, Related<br>Expenses |                    | \$4,600,000            | \$4,600,000     |
| Forfeiture Fund                                                |                    | \$15,000,000           | \$15,000,000    |
| Service at Small Airports                                      |                    | \$1,500,000            | \$1,500,000     |
| Total                                                          | \$1,586,231,000    | \$1,469,433,000        | \$3,055,664,000 |
|                                                                |                    |                        |                 |



San Diego Sector apprehended 2,710 illegal entrants during checkpoint operations.<sup>57</sup> The Border Trade Alliance supports a far greater presence at inland check points, recommending they should be open 100 percent of the time, rather than the current 75 to 80 percent.<sup>58</sup>

The Border Patrol recently undertook a Staffing Requirements Survey intended to calculate the base level of staffing necessary before any apprehension or processing occurs. Previous to this study, apprehension statistics were the sole measure of workload. In undertaking this study, the Border Patrol "realized that it may never be fully staffed, but wanted to end the fiction that it was possible to deliver an acceptable level of border control with limited resources." The results indicate a total of approximately 5,750 personnel were needed: about 4,900 agents and 850 support (including headquarters staffing).<sup>59</sup> At the end of 1992, the Border Patrol had a total of 4,769 personnel (4,060 agents, 698 support).<sup>60</sup>

The Border Patrol's calculations appear conservative. The Sandia study's recommendations would add 1,432 personnel to the southwestern border alone.<sup>61</sup> Sandia believes the Border Patrol has "...insufficient personnel to perform the already assigned tasks; inadequate office space, maintenance facilities, and detention facilities; and the lack of adequate vehicles to conduct present operations. We believe there are critical lower limits, which, if violated, would severely limit the Border Patrol's present level of effectiveness."<sup>62</sup> The National Performance Review team's visit to the San Diego Sector confirmed the urgent need for infrastructure funding. For example, we observed new vehicles sitting in the lot unable to be used because resources to purchase radios or paint them were unavailable, and single agents in vehicles confronting hundreds of attempted violators. Increased use of sensors, low light level television systems, stadium style lighting and mobile night vision will also serve as a Border Patrol force multiplier.<sup>63</sup>

On July 27, 1993, President Clinton announced a \$175.5 million proposed initiative in fiscal 1994 to "strengthen current enforcement programs to combat illegal immigration."<sup>64</sup> That initiative would include \$45.1 million for Border Patrol personnel and technology to allow hiring, training and equipping up to 600 more agents.<sup>65</sup>

The second prong of a three-pronged approach to reducing illegal immigration involves increased efforts to cut off the job supply through an effective employer sanctions



border: (1) increased personnel and infrastructure funding for Border Patrol operations; (2) increased employer sanctions education and enforcement including efforts to develop a tamper-resistant employment authorization document and/or electronic verification system; and (3) increases both in the Government of Mexico's interdiction program as well as the U.S. Government's interior repatriation of Mexican illegal aliens. All require increased resources. During the course of this study, potential reductions in the Customs Air Interdiction Program have been identified which would be sufficient to fund all recommended increases (see elsewhere in this report).

The Border Patrol's 4,000 agents are hard pressed to provide more than a minimal patrol of the land border. The Border Patrol is charged with detecting and interdicting all crossings of U.S. borders between ports of entry. While its primary mission is the interdiction of illegal aliens, it has collateral authority to interdict drug traffic.<sup>52</sup> It arrested more than 1.2 million aliens and seized over \$1.4 billion in narcotics in 1992.<sup>53</sup> More than a million to five million<sup>54</sup> more aliens are estimated to have entered undeterred. A 1993 study prepared for INS by Sandia National Laboratories disproved the theory that significant improvements in border control could be achieved by new or improved technologies. It concluded "the Southwest Border is being overrun, and the use of more [technology] will only identify more targets that can be neither apprehended using current [staff] nor accommodated within existing facilities."<sup>55</sup>

Border Patrol resources are inadequate to its current mission. For example, 49 percent of all illegal alien apprehensions (and presumably entries without apprehension) occur across 66 miles of the U.S. border with Mexico covered by the San Diego Border Patrol Station in California. Its approximately 1,200 agents apprehended over one-half million aliens and nearly \$155 million dollars worth of narcotics.<sup>56</sup> The Border Patrol is on duty in San Diego Sector 24 hours per day, in three shifts. As members of the National Performance Review observed during a June 1993 visit to that sector, illegal entrants stream across the border. Despite their best efforts, agents can apprehend only a small number.

Interior checkpoints are critical to effective operations. Border Patrol personnel at checkpoints detect and apprehend deportable aliens, and alien and narcotics smugglers, who attempt to travel into the interior after evading border detection. In May 1993 alone, the

In 1992, INS instituted a one-year automated Telephone Verification System (TVS) pilot, which allowed prospective employers to call to determine whether individuals who identified themselves as aliens were in fact eligible to work, and had not presented counterfeit documents. Approximately nine percent of persons about whom queries were made were found ineligible for employment.<sup>72</sup> One employer is quoted as having said the TVS "is incredible, it's keeping your company safe." Pilot employers expressed willingness to pay for such a service, as insurance against disruptions caused by enforcement actions.<sup>73</sup> Plans for Phase II of the pilot contemplate use of a "900" number.<sup>74</sup> Others have proposed an alternative, automated verification system to replace the current paper document process, such as a social security number based system.

The third and final prong of the three-pronged effort to deter illegal immigration across the southern border involves increases in Mexico's interdiction program, and in the Border Patrol's interior repatriation program. Some argue NAFTA is an opportunity for the U.S. to pursue with the Government of Mexico its willingness to assist in the control of illegal immigration, by disrupting staging areas and undertaking additional screening. In fiscal 1993, \$350,000 has been allocated to the Department of State to provide funding for the Government of Mexico's Project 057. In this program, the Mexican Government apprehends third country nationals identified as being in Mexico illegally and intending to enter the U.S. illegally. The money provides for their repatriation or removal to a third country.<sup>75</sup>

In previous years, Mexicans apprehended entering the U.S. illegally and agreeing to departure were repatriated at U.S. expense to the interior. This is no longer done. As a result, many aliens merely wait for another opportunity to enter illegally.<sup>76</sup>

#### **Recommendations:**

1. **The President should seek Congressional approval to redirect resources to increase funding for operations to deter illegal immigration across the southern border of the U.S.** Reductions in the Customs Air Interdiction Program would be sufficient to fund all recommendations (see elsewhere in this report).
2. **The Office of Management and Budget should allocate the redirected resources**



program. One aspect of that program must include increased employer education. Another is development of a tamper and fraud proof work document issued to all aliens authorized to work in the U.S. who are not permanent residents. Employers and U.S. law enforcement entities need to be able to distinguish fairly and accurately between those who are, and those who are, not eligible to live and work in the U.S..

The lack of resources to educate employers about the sanction provisions of IRCA, lack of standard documentation and the use of fraudulent documentation all impact negatively on deterrence. Thus an aspect of an improved employer sanctions program involves increased resources for employer education. In April 1991, INS shifted resources from employer education programs to rigorous enforcement, reducing education efforts to a bare minimum.<sup>66</sup> In fiscal year 1987, over 300,000 education contacts were made with 72 full-time equivalents (FTEs); in fiscal 1992, only some 58,000 were recorded, with 18 FTEs.<sup>67</sup> Because immigration law implementation policies and procedures change frequently, and because new employers continuously enter the market place, employer education programs are a constant requirement.

Legally resident aliens over the age of 14 are already required to have proof of registration in their possession. Non-resident aliens authorized to work would present the new Employment Authorization Document (EAD). Thus, a requirement that all who identify themselves to employers as non-citizens produce an INS-issued document would not constitute an additional burden, nor cause discrimination against U.S. citizens. Employers would remain precluded from specifying which document is acceptable except for those who have already identified themselves as non-citizens.<sup>68</sup>

INS argues the dramatic increase in the use of counterfeit documents for employment is a strong indicator that employer sanctions are working.<sup>69</sup> But their widespread availability severely impacts INS' ability to establish that an employer "knowingly hired" (the legal standard) an alien ineligible to work.<sup>70</sup>

The Border Trade Alliance agrees with increases in education and enforcement. It argues increases in education would assist businesses to comply with laws, resulting in a partnership rather than adversarial relationship between the community and law enforcement.<sup>71</sup>



budgets are adversely affected by illegal immigrants, could be instrumental in this effort. Increased enforcement of employer sanctions would likely result in increased detention and deportation of illegal aliens, which could in turn produce a major deterrent to increased illegal immigration. A more secure Employment Authorization Document will alleviate employers' burdens and reduce illegal employment. Increased funding for employer education and enforcement would reduce the "pull" factor into the U.S.

Increased funding of the program to prevent illegal entry of third country nationals from Mexico will increase deterrence.

### **Fiscal Impact**

The President's initiative announced July 27, 1993 would provide for 600 new Border Patrol agents and support training and technology at a cost of \$45.1 million. Estimated cost of the recommended additions of a minimum 1,000 additional Border Patrol agents, support personnel and technology is \$145.5 million in the first year, \$100.5 million in subsequent years.<sup>77</sup> Justice and OMB have been asked to provide estimates on: (1) differences between the President's initiative and (2) estimates on the remaining recommendations, including an FTE estimate for the additional administrative personnel requirements.

from the Customs Air Interdiction Program to the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol to: (1) increase personnel and infrastructure to permit a reasonable opportunity to confront and deter illegal entry, including full staffing of all interior checkpoints, additional personnel, and additional support staff and equipment; and (2) increase funding of the Border Patrol's interior repatriation program.

3. The Office of Management and Budget should allocate the redirected resources from the Customs Air Interdiction Program to the Department of Justice for the Immigration and Naturalization Service to: (1) increase education of U.S. employers about the employer sanctions provisions of the Immigration Reform and Control Act of 1986; (2) increase enforcement of employer sanctions by INS enforcement officers, including the U.S. Border Patrol; and (3) pursue the development of a tamper-resistant employment authorization document.

4. The Office of Management and Budget should allocate additional funding to the Department of State to increase funding for the Government of Mexico's program to deport third-country nationals intending to enter the United States illegally.

#### **Implication:**

Reprogramming resources from the Customs Air Interdiction Program would be vigorously opposed by the Department of the Treasury and concerned Members of Congress. See elsewhere in this report for full analysis.

Increased funding for the Border Patrol may give it a reasonable opportunity to perform assigned functions. Without increased resources, the current one and one half to five million illegal entrants per year are likely to continue for the foreseeable future, impacting most heavily on states with large immigrant populations (California, New York, Texas, New Jersey, Florida, and Illinois). The U.S.--both at the state and federal level--can no longer afford this level of illegal entry. Funds should first be applied to ensure that the Border Patrol has adequately equipped and trained each agent.

Increased public education about employer sanctions could increase deterrence as well as make enforcement efforts more palatable. State and local communities, whose

## REDUCE AND COORDINATE RESOURCES DEDICATED TO AIR INTERDICTION OF DRUGS

### Background

Numerous federal agencies are involved in preventing illegal drugs from entering the U.S. This year, almost \$7.75 billion have been allocated for this effort.<sup>78</sup> The functions of responsible agencies overlap and they have duplicative resources. There is no effective mechanism to evaluate where resources should be directed or to coordinate resource acquisition. Most importantly, the drug interdiction programs have not fulfilled their objective of reducing drug supplies in the U.S. Despite the number of resources dedicated to interdiction, more cocaine and more heroin enters the country than before the first drug strategy was released in 1989.<sup>79</sup> Estimates are that interdiction efforts result in seizures of thirty percent of the drugs being brought into the U.S.<sup>80</sup>

The standard for drug interdiction efforts should be to reduce the available drug supply in the U.S. at the minimum level of expense. This requires coordination of resources and the flexibility to shift strategy and resources to counter the changing methods used by drug smugglers.

The Department of Defense (DOD) is the lead agency for detecting and monitoring (tracking by fixed or mobile radar) drug traffic into the U.S. The Department of Treasury's U.S. Customs Service (Customs) has primary responsibility for enforcing laws against drug smugglers. The Department of Justice's Immigration and Naturalization Service (INS) supports land border drug interdiction through its inspection and Border Patrol functions. The Department of Transportation's U.S. Coast Guard has a primary role when the possible entry is over the water they patrol (12 miles outside the U.S. border.)

The efforts of the INS and Customs at the land border ports of entry are discussed in detail separately in this report. The U.S. Coast Guard's drug enforcement efforts will not be addressed herein because nearly all the resources they devote to drug interdiction also support their maritime missions.<sup>81</sup>

The fiscal year 1989 National Defense Authorization Act gave DOD increased responsibilities in the war on drugs. DOD is now the lead federal agency for the detecting



\$2,356 per hour to operate and four P-3 Slick aircraft which cost \$2,211 per hour to operate. Customs' 1994 estimate for Operation and Maintenance for the P-3 program alone is estimated at \$26.6 million.<sup>84</sup> DOD owned radar platform assets include E-2 Hawkeyes, E-3 AWACS, and numerous aerostats which cost \$2,700, \$8,338 and \$500 an hour respectively to operate.<sup>85</sup>

Clearly, DOD and Customs duplicate each other's resources. Some of the duplication in facilities is due to the fact that DOD became involved in the war on drugs in 1989. Customs first C3I became fully operational in 1988 and the other in 1989. The National Aviation Center became operational in 1990. When DOD entered the war on drugs, their authority to control resources and direct operations of civilian agencies was not clear. This led to separate military and civilian planning, coordinated only to the extent necessary to avoid conflicting operations.<sup>86</sup> Additionally, turf battles and oversight by separate Congressional committees resulted in Customs and DOD overlapping each others' functions and resources.<sup>87</sup> As resources were acquired, there was little coordination among the responsible agencies to ensure that resources were not spent unnecessarily. Without any type of clearinghouse, Customs and DOD unilaterally developed their own acquisition plans, providing little assurance that the requirements used to justify acquisitions were valid.<sup>88</sup>

In the early 1990s, OAMI extended its operations from the border to drug source and transit areas such as Mexico, Central and South America. Customs' strategy has been to use mobile and fixed radar to detect drugs at their source and in transit countries. They then pass the information on to host nations and Drug Enforcement Administration (DEA) agents operating abroad.

In fiscal year 1992, Customs P-3 aircraft flew a total of 5,432 hours with an operating cost of about \$20 million. These led to a total of 23 seizures overseas made by host government officials. Thirteen were stops of aircraft carrying drugs and ten were the result of suspect aircraft either making a drop and returning to the point of departure or off-loading and fleeing the scene.<sup>89</sup>

In addition to Customs' airborne efforts, DOD also uses air and ground-based detecting and monitoring assets to assist host nation air interdiction forces to disrupt the

and monitoring of aerial and maritime transit of illegal drugs from their foreign source to the U.S. border. Since DOD cannot arrest, detain or seize, it "hands off" the information on smugglers to law enforcement agencies.

DOD's 1993 budget for detection and monitoring is \$843.6 million. Some of these funds are used for: (1) operating detection and monitoring platforms (i.e., aircraft, ships and vehicles) in support of counter-drug operations (\$293.1 million); (2) programs that address the flow of illegal drugs at or near the source of production (\$137.3 million); (3) the operation of land and sea based aerostats, which are helium-filled radar balloons (\$59 million); (4) deploying mobile radar systems (\$16.1 million); (5) operating and developing radar facilities (\$43.2 million); (6) enhancing shipboard and aircraft sensors (\$24.2 million); (7) purchasing aircraft (\$35 million); and (8) various other activities of command, control, communications and intelligence (C3I) programs (\$42.3 million). DOD's 1994 budget request includes \$890 million in support of their detection and monitoring mission.<sup>82</sup>

Customs has authority to detain, arrest and seize, and is the lead enforcement agency for drugs at the border. The objective of Customs' Office of Air and Marine Interdiction (OAMI) is to interdict and apprehend smugglers using aircraft and vessels, and to provide assistance to other enforcement efforts of Customs and other agencies.

OAMI's 1993 budget was approximately \$126 million, not including salaries and expenses. These funds support OAMI assets which include jet interceptors and long-range trackers equipped with radar and infrared detection sensors; high performance helicopters; single and multi-engine support aircraft; airborne detection platforms; and fast utility and blue water type vessels equipped with sophisticated marine radar systems, radios and other electronic support equipment. OAMI runs an Aviation Operations Division; two Aviation Operations Centers, a Surveillance Support Center and Aviation Branches to support their operations.<sup>83</sup>

Customs' budget also funds considerable resources used for detection and monitoring. Customs operates two C3I centers, which, like DOD's C3I facility, locate, identify and track suspect aircraft. Customs also operates a National Aviation Center to administratively support its C3Is.

In addition, Customs owns mobile radar platforms: four P-3 aircraft which cost



available via the ports of entry and over land between the ports of entry.<sup>94</sup> Although drug smugglers adapt to changing interdiction strategies, there is no effective mechanism to shift and balance resources between the various agencies responsible for drug interdiction.

For example, the areas between the ports of entry are the responsibility of the Border Patrol. It patrols the land border and operates highway checkpoints aimed at minimizing the number of illegal aliens and drugs leaving the border region if they get into the country. For years, the Border Patrol has been underfunded. The Immigration Reform and Control Act of 1986 included provisions to increase the number of Border Patrol agents. Since then, Congress has twice ordered increases in Border Patrol personnel, but has failed to provide any additional funding.<sup>95</sup> President Clinton recently said it is "certainly plain to anybody with eyes to see that the border patrol is drastically understaffed - - breathtakingly understaffed."<sup>96</sup>

The challenge for the future of the drug interdiction program is to effectively and efficiently use available resources in accordance with an overall national drug control strategy, to eliminate duplication of effort and resources, and to coordinate future operations and acquisitions to avoid duplication.

#### **Recommendations:**

- 1. Appropriations for drug interdiction operations should come under the aegis of the newly created position of Director of Law Enforcement (DLE).** (Establishing the DLE is addressed elsewhere in this report.)
- 2. The newly created Executive Law Enforcement Council (ELEC) should review existing interdiction programs, activities and assets to determine their overall benefit to the national drug enforcement strategy. The ELEC should provide the DLE recommendations for any changes in deployment of resources which are necessary to respond to the national drug enforcement strategy.** (Establishing the ELEC is addressed elsewhere in this report.)
- 3. The ELEC should, at a minimum, eliminate Customs P-3 program.**
- 4. Appropriations for Customs' Office of Air and Marine Interdiction (OAMI) should come under the aegis of the DLE.**



flow of cocaine from major growing areas.

DEA maintains that the government's interdiction program has been over-funded in relation to the programs' benefit in interdicting drugs overseas since nearly all cocaine seized overseas is the result of investigation, not interdiction. DEA maintains that the "patrolling" done by Customs' aircraft is a waste of resources. They believe that the interdiction program would be better served if Customs flew only based on prior information indicating a need to monitor a certain area. DEA points out that Customs' aircraft may patrol randomly in order to increase flight hours to justify their expensive detection and monitoring equipment.<sup>90</sup>

Customs credits its air interdiction program with successfully eliminating smuggling by general aviation aircraft. During the first eight months of fiscal year 1993, Customs tracked 50 suspected aircraft out of Columbia. None of the aircraft were tracked into the U.S.<sup>91</sup> In the last year and a half, Customs has made only one drug seizure from an aircraft which crossed into the U.S. over the southwest border.<sup>92</sup>

As the air threat on the border has decreased, Customs has been redeploying its air resources to support investigations rather than to detect smuggling. As Customs shifts its focus, it is important that resource allocations for investigative support be coordinated between and among agencies in light of the overall national law enforcement objectives.

Whether or not an interdiction program can be effective in reducing cocaine consumption in this county is debatable. A well quoted Rand Corporation study found that it is extremely difficult to reduce the cocaine consumption in the U.S. by even five percent through more stringent drug interdiction. It identified the adaptability of smugglers, the variety of methods by which cocaine can be brought into the U.S., and the low price of both drugs and labor for smugglers as the obstacles to reducing drug supplies. The total consumption was reduced by more than five percent only when the risk for almost every mode of bringing in the drug was raised. The study found that as more routes became riskier, more total shipments were imported. The study identified the U.S.-Mexico border as an area that presents major problems because it is difficult to control against the entry of individuals, including illegal aliens, who can carry high value shipments of cocaine.<sup>93</sup>

Customs recognizes that drug smugglers are currently smuggling in any conveyance

## **FOSTER FEDERAL-STATE COOPERATIVE INITIATIVES BY THE INTERNAL REVENUE SERVICE**

### **Background**

Joint IRS Federal - state tax agency initiatives can have a major impact on the Internal Revenue Service's ability to collect increased revenues, reduce taxpayer burden, increase compliance, and more effectively use resources. The IRS and state tax agencies, working together, have the potential to promote de-centralization and massively parallel processing in the tax administration arena. Every facet of tax administration, from taxpayer service to collection activity and joint filing of returns could be impacted to provide higher service levels at reduced cost savings.

Cooperative relationships between the IRS and state tax administrations have varied widely from district to district and state to state. The level of cooperation between the two frequently has been determined by the quality of the personal relationship between the state tax administrator and the IRS District Director. As a result, IRS has not fully accepted state tax agencies additional resources in dealing with the challenges of increasing accounts receivable inventories, decreasing audit coverage, and inadequate taxpayer service responsiveness. The further institutionalization of the IRS Federal-state cooperative relationship and the elimination of obstacles to sharing information and resources will help both the Service and state tax agencies accomplish the four goals noted above.

### **Recommendations**

- 1. The IRS should seek legislation to add a new section to the Internal Revenue Code (IRC), modifying the language in H.R. 13, Section 921, Cooperative Agreements. This legislative change would explicitly permit the collection of federal income taxes by state tax agencies. It also would encourage joint audits, taxpayer service programs, and other cooperative initiatives, contingent upon development of taxpayer information safeguards.**
- 2. IRS Section 6103, protecting taxpayer information, should be amended to facilitate the joint filing of data common to both federal and state tax filing**

## **Implications**

Assigning allocation authority for drug interdiction appropriation to the DLE will ensure that the resources dedicated to this effort are consistent with overall national counter-narcotics objectives and priorities. It will allow for allocation of funds based upon the program's relative contribution to reducing drug supplies and provide a mechanism for deploying and allocating resources in response to changing smuggling threats. It will also ensure that future acquisitions reflect valid requirements and collectively support an efficient mix of resources to carry out the interdiction mission.

Giving allocation authority for OAMI to the DLE will ensure that the changes Customs makes in its enforcement support operations are in the overall best interest of the law enforcement community.

## **Fiscal Impact**

Eliminating Custom's P-3 program will save \$26.6 annually.<sup>97</sup>



associated with multiple filing requirements would be substantially decreased. Additional benefits of single filing would be the reduction of duplicate filing costs: (1) intake processing; (2) paper storage; (3) and printing.

3. Reciprocal refund offset authority will increase state tax agency receipts. It is anticipated that this legislative change will yield approximately \$250 million per year to the state governments.

### **Fiscal Impact**

1. \$1 - \$10 billion. This is an informal estimate of the IRS Fed-state savings impact.

requirements. This would be accomplished by not classifying such information as "exclusively" federal tax information. States would then be permitted to use common federal-state data received from the IRS under the joint filing program, consistent with state tax confidentiality laws.

3. IRC Section 6402, Refund Offset, should be amended to authorize states to offset Federal tax refunds to collect past-due, legally enforceable state tax delinquencies. This legislative change would permit state tax agencies to exercise refund offset authority similar to that exercised by IRS. The Service for some time has offset state tax refunds against federal debt obligations.

### **Implications**

1. Five implications flow directly from this legislative change. First, the collection of federal income taxes by state tax agencies will result in increased collections. Low dollar cases which currently do not receive IRS consideration because of their relatively marginal cost-benefit won't be neglected. They will be collected. Second, reductions to the \$30 billion Accounts Receivable Delinquency Inventory (ARDI) will be achieved. The utilization of state collection personnel as resources at collection call sites will make a significant impact on ARDI growth trends. The current ARDI inventory will be reduced and fewer low-dollar cases will be inventoried each year. Third, the parallel processing resources provided by state collection personnel will reduce or eliminate the need to "contract-out" collection activity to the private sector. Fourth, compliance levels will increase as ARDI decreases. More taxpayers are likely to meet their responsibilities to pay if they know they won't fall through the ARDI cracks. Compliance levels also will benefit from the increased sharing of information between IRS and state government agencies. For example, IRS will gain access to state business license and franchise record data. Since many states perform tax checks as conditions to granting licenses, this information will provide IRS with previously unavailable information on non-filers and under-reporters.

2. This legislative change would remove a key obstacle to one-stop submission processing of tax returns. By permitting a common data format, the taxpayer's burden

employers are required to maintain wage information on each individual which reflects differing definitions and calculation of wages from jurisdiction to jurisdiction. Federal and state agencies may also realize administrative cost savings from Simplified Wage Reporting when they begin receiving wage information in a uniform electronic data format. The basic concept underlying WRSP is to have employers submit to one processing entity all of the data they currently submit to multiple agencies (see attached chart). This one entity would in turn be responsible for making data available to the agencies to which the submitted data was intended. By so doing, redundant filing and associated processing may be eliminated.<sup>100</sup>

Implementation of a Simplified Wage Reporting System should make employer reporting of this information easier provided that the following items are considered in the decision making process :

- o ease of wage reporting and fund deposits by the employers (and their payroll processors)
- o usability of information by the receiving agency(s)
- o legal/privacy issues
- o format of information
- o cost sharing to cover expenses

An especially important consideration involves the creation of a uniform wage code to be used for reporting purposes. The value of the system will be significantly augmented by the standardization of wage categories even though it may require states to make one time changes.

## **Recommendations**

**1. All agencies affected by this effort should encourage and support the development of the Simplified Wage Reporting system.** Simplified Wage Reporting will maximize savings to employers, particularly multi-state employers, through reduction in duplication of current efforts. To accomplish this, federal and state jurisdiction must: (1) develop and adopt a uniform wage code; (2) designate a single agency to receive all W-2 and other wage data from employers if cost effective; (3) coordinate filing period due dates; (4) institute a single employer identification number system; and (5) establish uniform filing



## **REDESIGN EMPLOYER WAGE REPORTING TO REDUCE TAX PAYER BURDEN AND PROVIDE A ONE-STOP SIMPLIFIED REPORTING PROCESS**

### **Background**

The federal government requires employers to report wage-related information including: federal government annual Wage and Tax Statements (W-2), Transmittals of Income and Tax Statements (W-3), Employer's Annual Federal Unemployment (FUTA) Tax Returns (form 940), Employer's Quarterly Federal Tax Returns (forms 941, 942, and 943), and Federal Tax Deposits (FTDs). Employers must also submit equivalent wage-related information to state governments and in some cases local governments. These submissions are duplicative and burdensome. Reporting is especially difficult for employers who have work sites in more than one state.

Employer groups, federal government entities, and state tax authorities have suggested a single simplified reporting system. Such a system would serve all federal and state governmental entities with a need for the information. Each business would report information to a single entity/location for distribution to all federal and state entities with the authority to collect it. These would include the Social Security Administration (SSA), the Department of the Treasury, the Department of Labor (DOL), and state and local officials.

In August of 1992, The Internal Revenue Service (IRS), SSA, and DOL sponsored an initiative entitled Wage Reporting Simplification Project (WRSP) that identified several approaches to simplify wage and tax reporting by employers<sup>98</sup>. The goal of a Simplified Wage Reporting System would be to reduce the employer wage reporting burden, while maintaining or improving the effectiveness of government operations.<sup>99</sup> The study concluded that net savings could be maximized by the: (1) development of a uniform wage code; (2) submission of all W-2 and other wage data by employers to a single agency; (3) coordination of filing period due dates; (4) institution of a single employer identification number system; and (5) establishment of uniform filing procedures.

Much of the savings which could be realized by employers from Simplified Wage Reporting would result from development and adoption of a unified wage code. Currently,

and benefits for Levels 1, 2, and 3 are shown on the table. All WRSP levels analyzed have a payback period of less than four years from the assumed start of phase-in operations.<sup>103</sup>

procedures. States willing to participate on this basis should be provided with electronic wage information in return.

**2. IRS and SSA should go forward with their W-2 pilot in Fiscal Year 1994.** The proposed WRSP W-2 pilot would cost IRS and SSA between \$2 and \$3 million dollars. SSA would convert state information reported on paper W-2 forms into an electronic file. SSA would provide this information to 11 states for their use in state tax enforcement efforts in return the states would report on the benefits of the new database.<sup>101</sup>

### **Fiscal Impact**

The cost implications of this issue are complex. The goal of decreasing costs to employers is paramount but the cost of developing and implementing the system may be significant at least initially. The issue of cost sharing among the states and the sponsoring federal agencies must also be determined. Simplified Wage Reporting would reduce the filing burden on employers and could result in significant savings to businesses. The jointly sponsored initiative projects a savings in excess of \$12 billion dollars for employers if Simplified Wage Reporting is implemented as NPR is recommending.<sup>102</sup> Such savings could enhance the competitiveness of American businesses. Federal and state administrative and operating costs may also be reduced.

Specifically, there are three primary measures of the differential between costs and benefits for an alternative WRSP concept are used in this fiscal impact analysis; these are the benefit-to-cost ratio, the net value, and the break-even point. The estimates of these measures from the economic analysis of the three WRSP levels are shown on the attached table. With respect to type of forms and payments processed, Levels 1 and 2 are the same and cover the full potential spectrum of WRSP. These two levels also provide an option for processing other employer tax payments as is presently done in some states. Level 3 is limited to processing of Federal and state data on W-2s, as well as Federal employer tax returns. All three WRSP levels have a benefit/cost ratio greater than 1.00 and positive net values ranging from \$12.9 billion (constant dollars) for Level 1, to \$6.0 billion for Level 2, to \$1.3 billion for Level 3. The assumed economic life used for this analysis is 1994 through 2008, based on the expected equipment life. The estimated cumulative annual costs



## **SUPPORT THE COSTS OF LAND BORDER OPERATIONS WITH USER FEES**

### **Background**

The federal government is losing millions of dollars annually because of inconsistent user fee statutes and policies applied to travelers depending upon whether they enter at land or air Ports of Entry (POEs). Differing statutes and policies apply depending upon whether the Immigration and Naturalization Service (INS) or the Department of State (State) provides the service. Those user fees which are assessed do not cover the full cost. Disagreements between agencies inhibit the institution of programs which could improve customer service and for which user fees could be charged. Current legislation does not permit the use of the funds in the INS Examination Fee or INS User Fee accounts for Border Patrol expenses. The National Performance Review has identified resource requirements for the Border Patrol (see elsewhere in this report) which could be partially offset by some of the fees identified here.

The general policies covering user charges are set out in 31 U.S.C 9701 which provides that any service rendered by a Federal agency, to or for any person, except those engaged in the transaction of official business of the Government, shall be self-sustaining to the fullest extent possible. The Office of Management and Budget (OMB) Circular A-25, User Charges, September 25, 1959, as amended, provides that a charge be imposed to recover the full cost to the government of rendering a service which provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large.<sup>104</sup>

Taxpayers currently bear the much of the burden of INS operations. While most international air travelers pay \$12 per person (\$5 dollars each for INS<sup>105</sup> and Customs inspections; \$2 for Agriculture inspections), with few exceptions, no charges are assessed against land border travelers traveling in either direction across the border. Increased staffing is needed to facilitate the more rapid movement of persons and goods transiting the border without compromising law enforcement. More of the burden should be borne by users of those services, whether occasional or frequent. Applicants applying with INS or

# **Introducing Market Dynamics**

Under the authority provided in P.L. 101-515, INS begin testing the feasibility of a "commuter lane" concept in June 1991, with the Peace Arch Crossing Entry (PACE) program in Blaine, Washington, scheduled to end in September, 1993.<sup>113</sup> The Blaine location was chosen because of increasing traffic flow and severe congestion.<sup>114</sup>

PACE provides for a Dedicated Commuter Lane (DCL), through which only pre-screened, pre-authorized, low-risk individuals traveling in vehicles displaying INS issued \$25 windshield decals can travel. Vehicles need only slow for visual inspection rather than stopping for full INS and U.S. Customs Service (Customs) inspections. Both agencies conduct periodic spot checks of DCL vehicles for identities and customs declarations.<sup>115</sup>

The pilot is also being used to: (1) test alternative approaches to customs and duty collection and immigration enforcement; (2) measure the impact of express lanes on overall border congestion; and (3) determine the degree of public acceptance of a DCL and the fees attached to the concept.<sup>116</sup>

INS and Customs officials agree the Blaine pilot is a "complete success," with less than one tenth percent violations.<sup>117</sup> INS sees PACE as a successful law enforcement tool.<sup>118</sup> Because Inspectors can concentrate on non-screened travelers, Blaine's refusal rate has risen 15 percent.<sup>119</sup> One INS official described the program as the most successful innovation ever undertaken by INS.<sup>120</sup> Fees collected by INS from PACE from June 15, 1991 to February 17, 1993 totalled over \$773,000.<sup>121</sup> DCL has also resulted in a decline in the waiting time for all travelers entering the U.S. INS reports traffic is averaging over 1,000 cars per day, and that the hours were extended in response to PACE users demand.<sup>122</sup> Since the DCL opened, there have been no written or telephone complaints regarding delays or traffic backups, and average waiting time in non-DCL's had been reduced from 29 to 12 minutes.<sup>123</sup> PACE lane users state the DCL saves an average of 45 minutes waiting time.<sup>124</sup>

INS would like to test the DCL concept on the southern border.<sup>125</sup> Customs opposes this. In a November 25, 1991, letter to the INS Commissioner, the Customs Commissioner announced she would "direct the Customs designating officers in [affected districts] to revoke all current [cross] designations...adjust regular primary staffing to ensure the security of the DCL lane...treat [those lanes] as any other including using [stop] procedures."<sup>126</sup>



State should be charged the same fee.

The Federation for American Immigration Reform (FAIR) would support a "modest" border crossing fee, similar to that paid by air travelers. It agrees there are costs associated with doing an adequate job in a time of deficit-cutting austerity. It believes control of borders is not only essential to national physical security, but to fiscal security as well.<sup>106</sup>

State currently has no authority to retain fees. The Land Border Inspection Fee Project and Account, established by the 1991 Appropriations Act for the Department of Justice, authorizes the establishment of pilot projects under which a fee may be charged and collected by INS for inspection services at one or more land border points of entry to study the feasibility of charging fees to enhance services. Such projects may include commuter lanes.<sup>107</sup> This authority expires at the end of fiscal 1993, unless extended. The fiscal 1994 budget, if enacted, would provide for extension of this authority to September 30, 1996.

Both State and INS issue documents to Mexicans and some Canadian citizens or lawful permanent residents who have common nationality who may desire them for entry into the U.S. Applications for INS issued documents are accepted at land border POEs and adjudicated by Immigration Inspectors. Most POEs have insufficient staff to handle the workload on a timely basis. Multiple steps are involved, including a personal interview and a record check. Imposition of fees for these services would provide additional staffing and improve customer service without sacrificing enforcement.<sup>108</sup> Although interviews occur daily, because of insufficient staffing, waits of several months are common for INS issued documents.

INS reports, and State confirms, that based on informal consultations, the Government of Mexico would respond favorably to the possible institution of an application fee for the issuance of Border Crossing Cards (BCCs). Sections 101 and 222 of the Immigration and Nationality Act of 1952 (INA) provide for the issuance of those cards.<sup>109</sup> The Agreement on Passport Visas (Treaty) of 1953 with Mexico would require amendment to allow for the collection of fees.<sup>110</sup> The existing Agreement currently prohibits charging a fee for the initial issuance of a BCC. The Treaty does not specifically preclude charging a fee for replacement cards<sup>111</sup> and is silent as to whether a fee may be charged for the replacement of lost, stolen or mutilated BCCs.<sup>112</sup>

DCL along the southern border is a battle among agencies over responsibilities, not a philosophical difference about the potential of drug smuggling. It implies INS' efforts would remove authority and responsibility from Customs.<sup>136</sup>

The INS Acting Commissioner has informed Customs that INS intends to go forward with the implementation of additional DCLs in Point Roberts, Washington; Detroit, Michigan; and Buffalo, New York before the end of the fiscal year.<sup>137</sup>

Form I-94, Arrival/Departure Record, and Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form are required registration documents for most nonimmigrant aliens, whether arriving by land or air. Fees for inspections of persons arriving aboard a commercial vessel or aircraft are authorized by the INA. No comparable fees exists for land border entries.<sup>138</sup> INS estimates the yearly volume of land border Forms I-94 and I-94W as 900,000, and the estimated cost per issuance as \$6.29 dollars.<sup>139</sup>

Form I-68, Canadian Border Boat Landing Permit, allows previously inspected eligible U.S. and Canadian citizens and residents to enter by small boat without reporting for inspection.<sup>140</sup> INS estimates the yearly volume of Forms I-68 as 66,000, and the estimated cost per issuance as \$15.67 dollars.<sup>141</sup>

Form I-185, Nonresident Alien Canadian Border Crossing Card, is issued to Canadian citizens, or lawful permanent residents who have common nationality, as evidence of long-term waiver of their inadmissibility pursuant to Section 212(d)(3)(b), INA.<sup>142</sup> Form I-175 is the application for this card.<sup>143</sup> INS estimates the yearly volume of Forms I-185 as 2,000, and the estimated cost per issuance as \$30.00 dollars.<sup>144</sup>

State also issues Canadian Border Crossing Cards as well as nonimmigrant visitors' visas for business or pleasure (B-1/B-2) stamped in passports by U.S. diplomatic and consular posts. In fiscal year 1992, State issued a combined total of 3,297 Border Crossing Cards, B-1s, and B-2s to persons eligible Canadian citizens.<sup>145</sup> Data are not readily available on the number of these documents issued to lawful permanent residents of Canada who have common nationality. Nor are data currently available on the cost to State for the issuance of these documents.

Form I-586, Nonresident Alien Mexican Border Crossing Card (BCC), offers the same privileges as a business or pleasure visa (B-1/B-2) stamped in passports and issued by



Customs is concerned about: lack of sophistication in Mexican law enforcement capabilities; drug smugglers' use of the DCL as a more secure means to transport narcotics; and the disparity between Mexican and Canadian government support for the concept.<sup>127</sup>

INS sees primary users of a DCL as the working community, including employees of companies who work in one country and reside in the other, owners of these companies, and health care workers who cross the border on a regular basis. All applicants would be subject to El Paso Intelligence Center (EPIC) and National Crime Information Center (NCIC) data checks. INS believes DCL target users -- business and professional community -- inherently present a low risk profile.<sup>128</sup>

Customs agrees the pilot at Blaine has been a success, but believes that does not guarantee success at other locations, particularly the southern border. It believes the Blaine situation was unique in terms of: low risk travelers; better facility layout and expansion potential; excellent Canadian local government and law enforcement support; and the willingness of the affected population to pay the fees.<sup>129</sup>

Customs would prefer (1) High Occupancy Vehicle (HOV) lanes and (2) increased staffing. Customs believes HOV lane advantages to travelers include: reduced vehicle volume, no cost (no fee), and no administrative burden (no application process).<sup>130</sup> INS sees no increased facilitation in HOV lanes because vehicles would still require inspection stops.<sup>131</sup> It also (1) fears Mexican children would be paid to "fill space" in HOV lane vehicles, and (2) questions Customs' ability to add sufficient staff to implement the concept on a regular basis.<sup>132</sup>

Southern border federal and state law enforcement officials believe a properly monitored DCL would be appropriate, and that the DCL decal could become a status symbol. They advise INS' random compliance check strategy would discourage illegal purpose use of DCLs.<sup>133</sup> They agree with INS' position that users of a DCL who show a legitimate need to cross the border frequently do not meet the profile of a contraband smuggler.<sup>134</sup> It is these officials' belief that INS and Customs are engaged in a "turf battle about who controls the southern border...effective programs such as DCL often fall victim...."<sup>135</sup> A Customs headquarters internal memorandum dated November 13, 1992, supports the comments of southern border law enforcement officials that the concept of the



following recommendations are applicable whether or not such an agency is created, but would require revision to specify which agency head would take the recommended action.

1. **Congress should enact legislation to permanently authorize the Land Border Inspection Fee Account for the Department of Justice.**
2. **Congress should enact legislation to permanently authorize the Department of State to collect and retain fees which correspond to those collected for land border transit documents issued by the Department of Justice.**
3. **Congress should enact legislation to authorize the use of inspection fees to fund Border Patrol requirements.**
4. **The President should authorize the Department of State to undertake discussions with the Government of Mexico to amend the Agreement on Passport Visas (Treaty) of 1953 with Mexico to allow for the collection of fees.**
5. **The Attorney General should direct the Commissioner of the Immigration and Naturalization Service (INS) to take all necessary action to establish and collect fees for: (1) Form I-94, Arrival/Departure Record; (2) Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form; (3) Form I-68, Canadian Border Boat Landing Permit; (4) Form I-185, Nonresident Alien Canadian Border Crossing Card; (5) Form I-586, Nonresident Alien Mexican Border Crossing Card; and (6) Form I-444, Mexican Border Visitors Permit. The fees charged should fully recover the total cost of providing these services. Those fees should be directed first and foremost to field, not headquarters, operations.**
6. **The Attorney General should direct the Commissioner of the Immigration and Naturalization Service (INS) to take all necessary action to establish and collect exponentially larger fees for the third and subsequent replacement of Form I-586, Nonresident Alien Mexican Border Crossing Card.**
7. **The President should direct the Attorney General and the Secretary of the Treasury to expand the pilot Dedicated Commuter Lane (DCL) program, as planned, to selected northern border sites and to at least one southern border location. A fee which fully recovers the cost of its operations should be charged to users of the DCL.**

U.S. diplomatic and consular posts. Mexican citizens, in contrast to Canadian citizens, require visas to enter the U.S. Current BCCs issued to Mexicans are valid for ten years and allow bearers to visit within 25 miles of the border for up to 72 hours without further documentation. The prior BCCs issued to Mexicans had indefinite validity. The old cards need not be replaced as long as they are not lost, stolen or mutilated. If INS holds to the expiration date in current BCCs, a tremendous volume of work will be generated for southern border POEs.<sup>146</sup> INS views the BCC as an extremely desirable benefit available to Mexicans.<sup>147</sup> Form I-190 is the application for this card.<sup>148</sup>

INS estimates the yearly volume of Forms I-586 as 200,000. Approximately twenty percent of these are replacement applications which require identical adjudicative processes. INS estimates cost per issuance as \$25.91 dollars. Incentives to ensure safeguarding of these important documents are needed.

INS would prefer to charge fees for all BCCs, whether initial, renewal or replacement, to preclude efforts of applicants to elude payment through fraudulent or other means.<sup>149</sup>

State issues Border Crossing Cards as well as B-1/B-2 visas to Mexicans. In fiscal year 1992, State issued a combined total of 794,367 Border Crossing Cards, B-1s, and B-2s to eligible Mexican citizens.<sup>150</sup> Data are not currently available on the cost to State for the issuance of these documents..

Form I-444, Mexican Border Visitors Permit, is issued in conjunction with presentation of Form I-186, Nonresident Alien Mexican Border Crossing Card, or nonimmigrant visitors' visas (B-1/B-2). Issued in lieu of Form I-94, Form I-444 permits travel of Mexican nationals to travel to the five border state area of Arizona, California, Nevada, New Mexico, or Texas for a period not to exceed 30 days.<sup>151</sup> INS estimates the yearly volume of Forms I-444 as 4,980,000, and the estimated cost per issuance as \$3.78 dollars.<sup>152</sup>

### **Recommendations:**

The National Performance Review has recommended the creation of a single, independent border management and control agency (see elsewhere in this report). The



## REDUCE DUPLICATION OF FEDERAL DRUG INTELLIGENCE SYSTEMS AND IMPROVE COMPUTER SECURITY

### Background

In the Intelligence Authorization Act For Fiscal Year 1994, the Permanent Select Committee of Intelligence submitted a report which reads "...the Committee expressed concern over the number of individual, uncoordinated counter-narcotics initiatives within the intelligence community... A principal reason for the lack of coordination is that no single person or organization has a clear mandate to oversee intelligence collection, analysis and reporting on the counter-narcotics effort... Intelligence centers have proliferated in the intelligence community, defense department and law enforcement agencies, with little attempt to ensure that the analytic efforts of these centers are coordinated and responsive to the customers they support."<sup>35</sup>

In a recent General Accounting Office (GAO) report "Federal organizations reported operating 19 counter-narcotics intelligence centers with another, a national center planned for the summer of 1993."<sup>36</sup> Fifteen of the 19 centers are producing time-sensitive intelligence information that law enforcement agencies use primarily to arrest drug traffickers quickly and seize illegal drugs. The other four centers, for example the Drug Enforcement Administration's (DEA's) Intelligence Division, generally produce intelligence about long-term trends in illegal drug trafficking. In addition, 12 of the 19 centers have missions that encompass more than intelligence gathering, processing, and analysis. The seven remaining centers have intelligence gathering, processing and analysis as their sole mission.

The reports reflects that significant duplication exist in the analysis and reporting of drug intelligence data. The primary function of 15 of these centers is to gather and analyze time-sensitive information such as current location and movement of specific drug smuggling activities, and the remaining four centers generally produce information on long-term trends and patterns.

This data is used to determine where to concentrate future drug interdiction resources. Intelligence is very important to successful interdiction. The Office of National



Drug Control Policy (ONDCP) reports that in fiscal 1991 more than 75 percent of the cocaine seized by the U.S. Customs Service (Customs) and 70 percent of cocaine seized by the U.S. Coast Guard resulted from prior intelligence. The types of intelligence collected generally fall into three categories: Tactical intelligence - time-sensitive information for immediate use (e.g., information on the present or imminent location of a drug smuggling aircraft); Operational intelligence - information used to support investigations and prosecutions (e.g., information on specific persons or organizations that are targets of investigations); or Strategic intelligence - information used to support policy and planning decisions (usually at the national level) and generally providing a longer-term focus on patterns and trends.

Vast amounts of varied drug intelligence information are being collected by a wide array of agencies and used to support their differing needs and missions. For example, four intelligence centers analyze air traffic activity along the southwest U.S. border. Each reports on aircraft type, routes, and suspected drugs being transported. Each agency analyzes various types of drug intelligence to support their individual operations. According to a GAO report, as a result of a random sampling of organizations, only one of eight had coordinated with, or notified, other organizations of its efforts during the data gathering and analysis phase. The law enforcement organizations with the primary responsibility for drug intelligence are the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Naturalization Service (INS), Customs, and the U.S. Coast Guard. In addition, the DOD and the Central Intelligence Agency (CIA) also provide drug intelligence support to law enforcement.

The El Paso Intelligence Center (EPIC), managed by the Drug Enforcement Administration (DEA), was established in 1974. EPIC is a multi-agency center which provides complete and accurate intelligence on drug movement by land, sea and air throughout the world. It gathers and analyzes primarily time-sensitive information used in effecting investigations and interdiction of drugs. EPIC's primary mission is tactical intelligence, however, according to officials at EPIC, to varying degrees, EPIC accomplishes operational and strategic intelligence objectives.

The Financial Crimes Information Network (FINCEN), managed by the Department

properties may also be deemed suitable for wildlife programs by the Fish and Wildlife Service. HUD must lease 10 percent of its single family properties to non-profit or state governments for housing for the homeless. VA must sell at least 35 percent of its properties for cash. SBA is required to evaluate the effect of its commercial property sales on local economies.<sup>29</sup>

The federal government has a fragmented approach to managing and disposing of assets targeted for disposition. Over time, authority for managing and disposing of these assets has been given to many agencies, and congressional oversight has been spread among numerous committees.<sup>30</sup>

Significant change is needed government-wide in the acquisition, management and disposition of real estate assets. Too little attention has been paid to developing clear-cut policies and cohesive strategies or to the sharing of innovations and creative solutions.

While numerous reports, studies and draft legislative packages addressing some of these issues may be found throughout Government, many of these documents focus upon individual agency programs and do not address the totality of the asset management and disposition issues Government-wide.

*Using Real Property for the Affordable Housing Disposition Programs.* Each of the following agencies with housing stock have an affordable housing mandate: HUD, Veterans Administration, Resolution Trust Corporation, General Services Administration and the Federal Deposit Insurance Corporation. Affordable housing is not the primary interest or focus of any of these agencies. Other agencies also have acquired housing stock. Another issue paper recommends how the affordable housing program could be strengthened by consolidating the effort in one organization and/or use of a common reference system of available housing stock.<sup>31</sup> Another National Performance Review issue paper has been written on this subject.

*Owned and Leased Space by the Federal Government.* Instead of disposing real property it could be used by the Federal Government. A real property fund would be established for GSA to promote sound real property management. GSA would compete with private industry in leasing space to the Federal Government and could lease space to private industry. Another National Performance Review issue paper has been written on



this subject.

### **Recommendations**

1. **Now that Congress has created a new Department of Treasury Asset Forfeiture Fund and the DOJ and Treasury have memorandums of understanding on cooperation,**<sup>32</sup>**sustained oversight is need by both agencies to see these problems through to resolution.**
2. **Eliminate the DOJ restriction against paying the federal employee personnel costs from their asset forfeiture fund.**
3. **Follow-up on the results of OMB's recently initiated study on the magnitude of the Government-wide problem.** OMB's management side is currently conducting a management study on the magnitude of the problem and modeling potential solutions. Both the General Services Administration and Treasury's Financial Management Services have written papers that should be considered by OMB before final resolution.

### **Implications**

The result of the fragmented asset management approach has been the absence of a government-wide asset inventory policy and the lack of any central control over asset disposition activities as illustrated by the absence of a government-wide inventory of these assets.<sup>33</sup> For forfeiture and seizure: consolidating aspects of the two property management operations should lead to tremendous economies of scale, particularly in the administrative area; and for ensuring that assets would be sold at a fair market value. It also could resolve some of the turf problems between Justice and Treasury.

### **Fiscal Impact**

GAO estimates that consolidation of the seized asset funds would save about \$2.5 million annually in administrative costs by reducing duplication of effort and would lead to additional savings in contractor costs as a result of economies of scale.<sup>34</sup> The fiscal impact worksheets are being developed by Treasury, Justice, and OMB.



began work on the Consolidated Asset Tracking System (CATS), a computerized system of monitoring seized assets. In the DOJ program, the U.S.M.S. assists in the seizures of assets, and on management and disposition of them. Under the Treasury system, a private contractor developed software and other systems which will be turned over to the federal government when the contract expires. Although the agency has made significant progress to resolve these problems there is one new one remaining problem.

A new Department of Treasury Asset Forfeiture Fund, which has been established to handle the new and transferred authority for Treasury Agencies, will become effective in October 1993. It will be the depository of cash and the proceeds of sale of the assets seized by Internal Revenue Service (IRS), Bureau of Alcohol, Tobacco and Firearm (AFT), U. S. Secret Service and the U. S. Customs Service.<sup>21</sup>

Uniformity and consistency of legal administration procedure and interagency cooperation have been cited as the keys to the success and integrity of the asset forfeiture program in Federal Law enforcement.<sup>22</sup> The proposed duplication of administrative functions is a potentially new problem which could create added administrative cost, duplication and procedural differences, possible disparity in due process, and create unneeded competition between agencies.

Another problem is the lack of sufficient USMS personnel to administer the Asset Forfeiture Program effectively, the "custodian" of all DOJ seized assets. . The program has grown exponentially since 1984.<sup>23</sup> Since 1986, properties in the custody by the U.S. Marshal have grown from 3,664 to 31,698 in 1992<sup>24</sup> In spite of the increase in assets and management and disposition responsibility, the U.S. Marshals have not received any increase in staffing for this activity. Although most of the fund's administrative costs attendant to seizure, management and disposition are paid from the proceeds of asset sales, the DOJ policy will not use the Fund to pay government employee salaries. This hampers the US Marshal's in their efforts to effectively manage and control the Fund assets. Personnel and related expenses for the USMS Seized Assets Division, not funded by the Assets Forfeiture Fund are approximately \$28.5 million.<sup>25</sup> The overall operating program costs for the fund a for fiscal 1990 was \$328 million.<sup>26</sup> This is potentially a problem for the new Treasury fund.

While it is important to maintain a check on the asset forfeiture process, especially in the area of due process, there appear to be some areas in which the technique can be expanded. In particular, U.S. Attorneys have suggested that the seizure of assets from illegal aliens engaged in smuggling or any crime for profit would be warranted.

*Foreclosure.* Because of debtor defaults, the government has become one of the largest holders of housing, farm, and commercial real estate. The acquisition, management, and disposition of foreclosed real property has a significant impact on agencies' administrative workload. Presently, it is extremely difficult to assess the magnitude and value of the total holdings and the effectiveness of procedures, strategies, and systems for managing and disposition of real property cross agencies and government-wide. Inefficiencies in the management and disposition of real property can result in higher inventories and associated carrying costs, and a failure to realize the fair value of property sold by the government.<sup>27</sup>

A study of how four government agencies' (FmHA, HUD, SBA, and VA) property management programs operate reported that the following conditions existed in all of the agencies. They are organized to support loan programs, not property management. All four agencies have traditional hierarchial structures, extensive service-oriented field office networks, and detailed procedures for property disposition. The federal budget process constrains the agencies ability to change staffing levels in time to respond to rapid fluctuations in inventory volume. Private sector property management firms typically require fewer employees than the Federal agencies because the private sector asset management employees are not responsible for administering program benefits as well as managing and disposing of properties. All agencies use private contractors to perform specific tasks related to the management and disposition of real property.<sup>28</sup>

Program and legislative constraints slow disposition in some cases. Agency and congressional concerns over the supply of low-income rental housing and family-sized property create unique obstacles to rapid disposition of HUD multi-family properties. FmHA must make properties available to program-eligible applicants before offering the properties to other buyers. Former owners and/or tenants may exercise leaseback/buy-back options on FmHA-acquired farm properties for a period of 180 days. FmHA farm



## IMPROVE MANAGEMENT OF FEDERAL ASSETS TARGETED FOR DISPOSITION

### Background

The Federal Government acquires assets for disposition as a consequence of regulatory or programmatic actions. These assets can be categorized into three primary groups: financial assets, real property and personal property.<sup>15</sup> As of September 30, 1992, 22 agencies maintained their own programs for disposing of \$193 billion in assets targeted for disposition. The largest nine agencies each had assets valued at more than \$600 million. Together, these nine agencies were responsible for more than 99 percent of the total inventory.

#### Nine Largest Agencies Holding Federal Assets

| Name                                          | Percentage Held |
|-----------------------------------------------|-----------------|
| Resolution Trust Corporation (RTC)            | 73.8            |
| Federal Deposit Insurance Corporation (FDIC)  | 16.8            |
| General Services Administration (GSA)         | 3.3             |
| Defense Logistics Agency (DLA)                | 2.1             |
| Department of Veterans Affairs (VA)           | 1.2             |
| Department of Housing and Urban Affairs (HUD) | 0.9             |
| Department of Justice (DOJ)                   | 0.7             |
| U.S. Customs Service                          | 0.6             |
| Other Agencies <sup>16</sup>                  | 0.6             |
| Total                                         | 100.0           |

Financial assets include items such as loans, cash, stocks, partnership shares and bonds which account for 72.3 percent of the total federal assets. Real property includes residential and commercial real estate, farmland, and vacant land which account for 15.4 percent and personal property accounts for 12.3 percent of the total.<sup>17</sup> Assets ready for disposition are normally those acquired through forfeiture, seizure or foreclosure.

*Forfeiture and Seizure.* The Federal Government has had the authority to take



property through forfeiture for more than 200 years. It was not until about 1980, however, that it began to apply the asset forfeiture laws as powerful weapons against organized crime figures. The number and value of seizures grew dramatically. In 1979, the total value of seized property inventories at the Department of Justice and the U. S. Customs Services was \$33 million. By 1992, the inventories were valued at \$1.9 billion. Assets seized now include 16,000 cars; 5,200 real properties; other property (such as planes, boats, jewelry, and antiques) valued at about \$360 million and \$550 million in cash.<sup>18</sup>

On June 28, 1993, the Supreme Court ruled unanimously that the Constitution limits the Government's authority to seize the homes, businesses and other property of criminals and suspects. The Court found that the Eighth Amendment clause that bars "excessive fines" requires that there must be some relationship between the gravity of an offense and the property that is seized.<sup>19</sup>

The Federal Government has a fragmented approach to managing and disposing of assets targeted for disposition. Over time, authority for managing and disposing of federal assets has been given to many agencies and congressional oversight has been spread among numerous committees.<sup>20</sup>

The Department of Justice and Customs Service initially focused more on seizing criminals' holdings than managing seized assets. Due to the mismanagement of assets, the federal government lost revenue. By the late 1980s, both agencies had developed better ways to inventory these assets. Despite serious management problems, the asset forfeiture process has been improving and the use of asset forfeiture as a law enforcement tool has been quite successful. However, a number of problems have emerged.

The federal government currently has two separate Asset Forfeiture Funds. In DOJ, the Executive Office of Asset Forfeiture was created to coordinate the asset forfeiture process from cases arising out of law enforcement activity, as well as the forfeiture process of certain Department of Treasury agencies who were part of the Justice program. Treasury also had its own asset forfeiture program and fund for forfeitures arising out of the Customs law enforcement activities.

Both the DOJ and the Treasury programs have been criticized by the General Accounting Office (GAO) for mismanagement of seized assets. In the late 1980s, DOJ

## FISCAL IMPACT WORKSHEET

ISSUE TITLE: Establish Federal Firearms License User Fees to Cover Costs

### RECOMMENDATION:

The Federal Firearms License Fees should be increased to recover the costs of issuing firearms licenses.

### METHODOLOGY:

It is not possible to determine the amount of increased revenue until BATF completes its analyses. According to BATF, the firearms program budget is about \$29 million. BATF collects about \$2.5 million in firearms license annually. Full cost recovery of the firearms program would mean an increase in revenue of about \$26.5 million a year.

### IMPLEMENTATION APPROACH:

Treasury Department will have to draft legislation for Congressional action.

### FISCAL IMPACT TABLE:

|           | In Millions of Dollars |        |        |        |        |        |
|-----------|------------------------|--------|--------|--------|--------|--------|
|           | 1994                   | 1995   | 1996   | 1997   | 1998   | 1999   |
| Budget    |                        |        |        |        |        |        |
| Authority |                        |        |        |        |        |        |
| Outlay    |                        |        |        |        |        |        |
| Revenue   | \$26.5                 | \$26.5 | \$26.5 | \$26.5 | \$26.5 | \$26.5 |

### CLASSIFICATION INFORMATION:

Function:

Agency: Treasury Department

Bureau: Alcohol, Tobacco, and Firearms

Account:

## **Creating a Quality Management Culture**



BATF officials indicated that most of the type 01 licensees are not actual gun dealers, but individuals who have taken advantage of the minimal license fee to obtain a license either to buy firearms for their own use at up to 50 percent discount from retail, or to make an occasional purchase for resale to acquaintances. These licensees typically do not stock firearms.<sup>10</sup>

There are about 16,000 independent gun dealers who do stock firearms for sale, who are organized in the National Alliance of Stocking Gun Dealers.<sup>11</sup> The position of this Alliance of Stocking Gun Dealers is to increase the retail license fee to the range of \$350-\$500 to per year to eliminate the non-stocking licensees. The Alliance believes that this elimination of licensees will help stem the flow of firearms to the criminal element.<sup>12</sup> The National Rifle Association also believes an increase is justified, but their position is to increase the fee to \$50 per year.<sup>13</sup>

Bureau of Alcohol, Tobacco and Firearms officials indicate that the average cost to issue an original FFL is about \$108. The costs range from \$77 (which includes \$55 for FELC processing and \$22 for a preliminary investigation), to \$314 for FELC processing and a field inspection. An FFL renewal costs about \$17 for FELC processing costs.<sup>14</sup> These costs estimates include only the direct costs of issuing a license and do not take into account other costs of operating BATF's firearms program. The fiscal year 1993 budget for the firearms program is slightly more than \$29 million. Some BATF officials believe that the licensing fee should be increased to \$550 per year to recover the entire costs of the firearms program.

As the statistics suggest, the current fee charged for a retail dealer's federal firearms license does not even cover the cost of processing the license, never mind the cost of a field inspection, after-licensing monitoring of the licensee's activity, or other aspects of the firearms program.. Firearms legislation [S 496] has been introduced in the current session of Congress that would, among other things, raise the FFL license fee to \$750.

### **Recommendations**

1. **Congress should enact legislation to increase firearm dealers license fees. The increase should be market-oriented to recover the costs of issuing a firearms license.**

In essence, it would become a user fee. BATF needs to determine what its licensing costs are, and what the firearms license fee should be to recover its costs. In making its calculations, BATF must consider that increasing the license fee could have the effect of decreasing the number of licensees. BATF should develop a statistically valid analysis of the effect that increased license fees have on the number of licensees.

The main interest groups agree on the need for an increase in the FFL fee; however there is disagreement on what the increase should be. A summary of the proposals are:

- o National Rifle Association - \$50 per year
- o National Alliance of Stocking Gun Dealers - \$350-500 per year
- o S. 496 - \$750 per year
- o BATF - \$550 per year user fee to recover costs

NRA officials appeared receptive to setting the FFL fee at a level that would recover licensing processing costs. These officials also suggested that the FFL be increased to five or even ten years which would decrease the average cost of issuing a license. Any increase higher than that needed to offset BATF costs to issue a license would probably face strong NRA and grassroots opposition.

**Fiscal Impact**

The main purpose of the Congressional and Gun Dealers' proposals for sharp increases in the licensing fee is to reduce the number of licensees. The prime intent of BATF's proposal is to recover its licensing costs . This proposal contains some important reinvention principles. For example, it just makes for good government to pay for the services that are needed. Thus, a user fee is a good idea.

|           | In Millions of Dollars |        |        |        |        |        |
|-----------|------------------------|--------|--------|--------|--------|--------|
|           | 1994                   | 1995   | 1996   | 1997   | 1998   | 1999   |
| Budget    |                        |        |        |        |        |        |
| Authority |                        |        |        |        |        |        |
| Outlay    |                        |        |        |        |        |        |
| Revenue   | \$26.5                 | \$26.5 | \$26.5 | \$26.5 | \$26.5 | \$26.5 |

flexibility to set time fees to cover the typical administrative and manufacturing costs but should also cover future capital equipment purchases.

**Fiscal Impact**

The costs figures are still to be determined.



## ESTABLISH FEDERAL FIREARMS LICENSE FEES TO COVER COSTS

### Background

The Bureau of Alcohol, Tobacco, and Firearms (BATF) has the mission of reducing the criminal use of firearms by effective enforcement of the Federal firearms laws.<sup>153</sup> In furthering this mission, BATF regulates the firearms industry by controlling the issuance of Federal operating licenses and permits. Authority for this regulation is contained in 18 USC § 923 which states that "no person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary [of the Treasury]".<sup>2</sup>

Under authority granted by Title I of the Gun Control Act of 1968, as Amended, the Secretary of the Treasury has delegated to BATF the authority to approve or deny firearms license applications. If applicants file proper applications, pay the prescribed fees, and meet certain qualifications, BATF is required to issue them licenses. The act requires BATF to approve or deny an application for a license within 45 days from the date it is received.<sup>3</sup>

Applications for licenses are processed at BATF's Firearms and Explosives Licensing Center (FELC) in Atlanta, Georgia, and at 37 area offices. FELC employs 25 application examiners who review applications for completeness and accuracy, submit copies of applications to the appropriate area offices, and make the licensing decision. The individual area offices determine, based on internal criteria, which applicants will be inspected prior to the issuance of the license. Between fiscal years 1987 and 1991, the number of new firearms license applications processed annually averaged about 34,600, and the number of applicants inspected averaged about 2,700.<sup>4</sup> BATF records indicate that there are about 283,000 firearms licensees nationally.<sup>5</sup>

There are nine different types of firearms licenses.<sup>6</sup> The most common firearms license is the type 01 Federal Firearms License (FFL), for a dealer in firearms other than destructive devices.<sup>7</sup> As of April 30, 93 there were 249,966 Type 01 FFL's. The fee for a type 01 license is \$30 for three years,<sup>8</sup> which has not been increased since it was established by statute in 1968.<sup>9</sup>

## TURN THE U.S. MINT INTO A BUSINESS-TYPE OPERATION

### Background

The United States Mint is the world's largest coin-producing organization. Circulating coinage is distributed to the Federal Reserve System, and numismatic coins are sold to collectors. The Mint is a subordinate agency of the U.S. Department of Treasury. The Director of the Mint is its Chief Officer who reports to the Treasurer of the United States. The Mint employs 2200 men and women nationwide. Its facilities include a headquarters in Washington, D.C., a Customer Service Center in Lanham, Maryland, and 5 field facilities located throughout the Nation.

The Mint has two primary missions: (1) production of an adequate amount of coins for the Nation's trade and commerce; and (2) safeguarding Treasury's stock of precious metals and other monetary assets. As a secondary mission, the Mint also manufactures and sells a variety of numismatic, commemorative, and bullion coins, as well as national historic medals. The Mint funds its numismatic program through the Public Enterprise Fund, an industrial revolving fund that uses sales proceeds to fund operations. The remaining operations of the Mint, i.e., coinage and protection of strategic metals, are funded through direct appropriations.

Currently the Mint's operation is hindered by its unusual mission which requires a business/market-oriented approach for success. The Mint currently is unable to respond quickly and efficiently to changing circumstances with circulating coins. Unlike many other government entities, the mint has the capability to fund its own operations and actually make a profit. This capability is ignored under the current structure. The Appropriated funds designated for new machinery or training are often used to increase production to accommodate unanticipated coin demand. In addition, Government-wide funding restraints prevent the effective modernization, e.g., new equipment and private sector marketing techniques, of the Mint.

Some customers of numismatic products have voiced dissatisfaction with Mint responsiveness to their needs. Their specific concerns focused on inadequate marketing



efforts and the Mint's inflexibility in meeting customer requests. The fact that commemorative coins are sometimes produced and delivered after a market for them has evaporated, e.g., the conflict in Kuwait, also was noted.

### **Recommendations**

- 1. Prepare legislation establishing the Mint as an incorporated government enterprise, like the Postal Service.**
- 2. All Mint operations should be governed by a revolving fund. Residual funds from appropriations would be used as a transition to the revolving fund to allow for start-up costs.**
- 3. A five-year sunset provision should be included in the independent federal corporation's enabling legislation. It would evaluate the corporation's operations and prospects for "privatizing" Mint functions, while retaining federal government oversight.**
- 4. Emphasis must be placed on making Mint numismatic operations more market-oriented by providing its customers with greater value, efficiency, convenience and choices. Opportunities for marketing numismatic products, and others similar to those offered by private mints, should be explored on a test-basis during the five year period.**

### **Implications**

This proposal places the Mint on a self-supporting basis with profits remitted to the Federal government. It converts the Mint budget from the appropriations process to a manufacturing/customer-oriented approach. It stabilizes funding for research and development and new technology; provides the ability to support operations (staffing and resources) and the flexibility to make decisions consistent with the demand to maximize profit. It funds in a timely fashion manufacturing production consistent with demand; simplifies financial accounting and reporting; avoids costly and excessive use of overtime to compensate for low FTE ceilings, and reduces costly use of contractor support.

Implicit in this proposal is retention of the capability for the Mint to have the



## **Implications**

Permanent authorization of the Land Border Inspection Fee Account would give INS authority to establish and collect appropriate fees for land border inspection services, and would therefore allow appropriate increases in staff to improve customer service, increase travel facilitation, and improve enforcement.

Unless State is authorized to collect fees comparable to those charged by INS for these land border transit documents, a large number of eligible applicants will seek fee-free documents from State, increasing State's workload while decreasing INS'. State would oppose collecting fees for another agency -- with attendant workload and administrative concerns -- for work it performs.

Offsets for border patrol resource requirements could be achieved if legislation permitted the use of funds for this purpose.

Amendment of the Agreement on Passport Visas (Treaty) of 1953 with Mexico would allow for the collection of fees.

Establishment and collection of appropriate fees for land border inspection services would allow appropriate increases in staff to improve customer service, increase travel facilitation, and improve enforcement. See estimates at Table 1. Collection of fees at sites which do not currently do so may result in cash management problems which the INS Commissioner must address.

Exponentially larger fees for the third and subsequent replacement of Form I-586, Nonresident Alien Mexican Border Crossing Card would act as an incentive to aliens to safeguard these important documents.

Expansion of the pilot Dedicated Commuter Lane (DCL) program, as planned, to selected northern border sites and to at least one southern border location would further test the validity of the concept, and might diffuse Customs' concerns about increased narcotics smuggling. An appropriate fee would defray the costs.

## **Fiscal Impact:**

The initial cost estimates for additional revenues is expected to be about \$900,000. Justice and OMB have been asked to develop more firm estimates and to complete the

fiscal impact worksheet.

degree and other intelligence collection and analytical centers, and to a lesser degree those of the FINCEN.

At the time NDIC was envisioned there was a need to be proactive in the "war on drugs" and the military had acquired an enhanced role in the counter-drug effort. This resulted in its funding being attached to a Department of Defense (DOD) appropriation bill. The President's 1990 National Drug Strategy directed the creation of the NDIC and Congress provided \$10 million funding for the establishment of NDIC in the Fiscal Year 1991 DOD Appropriations Act. Forty million dollars was appropriated in fiscal year 1992, and the budgeted expenditures through fiscal year 1994 is \$50 million. As of the second quarter of fiscal year 1993 about \$18 million had been expended and about \$ 38 million obligated. As of July 1993, there were 92 employees, and it is projected that by end of fiscal year 1993 and 1994, there will be 148 and 211 employees respectively. <sup>39</sup>

It is the opinion of some drug intelligence and budget experts that EPIC could have been upgraded at less cost and have satisfied the same objectives as NDIC. These officials argue that an effective interagency infrastructure is already in place at EPIC. That EPIC has an approved charter, memoranda of understanding with participating agencies, a system for timely collection, analysis, and dissemination of intelligence. Also in place is a management structure for both administrative and intelligence support.

The NDIC officials argue that there is a difference between EPIC and NDIC. There does not appear to be any federal guidance or leadership to facilitate and ensure the coordination, compatibility and sharing of drug-related intelligence, and to identify and eliminate potential duplication. The Director of ONDCP establishes priorities for intelligence functions and encourages agency cooperation in coordinating and sharing intelligence activities, however, he does not have the authority to direct agency intelligence activities. He has only indirect leverage to influence coordination through his budget review and certification responsibilities. The Attorney General, and Secretaries of Treasury and Defense have no direct control over drug intelligence systems outside their respective Departments.



of Treasury, was established in 1990. FINCEN provides both tactical and strategic intelligence on all financial crimes and is not limited to just those that are drug related.

The Counter-narcotics Center (CNC), managed by the Central Intelligence Agency (CIA), was established in 1989. The CNC provides overall guidance and support to the intelligence community (IC) counter-narcotics efforts. It provides the interface between the IC intelligence producers and the consumers, including law enforcement.

The National Drug Intelligence Center (NDIC), managed by the Federal Bureau of Investigation (FBI), is scheduled to become operational in the summer of 1993. The NDIC is a multi-agency organization which will produce strategic (i.e., long-term trends) and organizational studies encompassing domestic, foreign, and international issues and organizations affecting the nations drug control problem.<sup>37</sup> The establishment of NDIC was intended to develop a central entity to consolidate drug intelligence beyond the capability of any single agency. The mission of the NDIC is to collect and consolidate multi-source drug information to produce organizational and strategic intelligence analyses for use by national policymakers, diverse law enforcement entities, to promote information sharing among these entities; and to promote compatibility standards for drug intelligence information collection systems.<sup>38</sup>

The idea of NDIC is to both complement and utilize other intelligence centers, as appropriate. For example, as the NDIC sets priorities it may ask one or more of the centers to contribute relevant intelligence and/or to conduct portions of the analysis. The NDIC will work extensively with EPIC, FINCEN and CNC. These centers will continue to operate separate and apart from the NDIC in pursuit of their individual missions.

Some drug intelligence experts and budget officials have expressed concerns about NDIC. The concerns are: 1) Does NDIC duplicate EPIC 2) What is the added value of NDIC, is the cost justified and could EPIC have been enhanced to meet the same objectives at less cost; 3) Since NDIC's construction was funded under a DOD appropriation bill, how will its future operations be funded; 5) Why was NDIC constructed in Johnstown, Pennsylvania, with a satellite office in McLean, Virginia. Why not the Washington, D.C. area; and 6) Does NDIC's have a clear mission. It is the opinion of some drug intelligence experts that the current proposed mission of NDIC duplicates to EPIC to large

3. This will promote cooperation, coordination and information sharing.
4. Although efficiency will be increased, some agencies will still prefer to have their own system. They may not trust others "having access to their data."

**Fiscal Impact**

Fiscal impact is being finalized.

In a General Accounting Office (GAO) report, dated February 1992, it was reported that DEA is not complying with federal requirements to ensure that sensitive and national security information processed on computer equipment is protected from unauthorized access and disclosure. Computer systems which includes criminal and intelligence data, could possibly endanger lives, undermine ongoing law enforcement investigations, and ultimately, jeopardize the national war on crime and drugs. Such systems should be enhanced to meet applicable computer security requirements.

### **Recommendations**

- 1) The President should give the Director of Law Enforcement (DLE) the authority to manage a national comprehensive consolidated counter-narcotic program.
- 2) The DLE should eliminate the National Drug Intelligence Center (NDIC) and enhance the El Paso Intelligence Center's (EPIC's) to meet current strategic mission. Another use of the NDIC should be considered.
- 3) The DLE should evaluate and reduce the number of drug intelligence centers and systems to minimize unnecessary duplication. The DLE should ensure compatibility and integration of all drug intelligence centers and systems, as practical.
- 4) The DLE should ensure that drug intelligence information is shared among federal, state and local law enforcement agencies, as applicable.
- 5) The DLE should evaluate and improve, as applicable, the security and privacy of drug intelligence systems and information management systems. The DLE should ensure that such systems are being operated in compliance with national computer security requirements for safeguarding sensitive and classified data.
- 6) Develop incentives which ensures and encourages all source data sharing among agencies.

### **Implications**

1. This will serve to enhance systems which are integrated, compatible and uniform.
2. This will reduce duplication and cost, and increase efficiency.



quality-driven efficiencies.<sup>41</sup>

*Tax System Modernization.* Tax System Modernization (TSM) is the IRS' initiative to eliminate burdens caused the taxpayer by manual returns processing and inaccessible information. Current systems are error-prone and slow. The computer hardware is obsolete and inefficient. Access to taxpayer account information is limited.

The TSM is a comprehensive, effort intended to upgrade IRS' information systems so that IRS can provide a level of service on par with the best private-sector financial institutions. IRS expects the modernization program to simplify and speed the input of tax information with the goal of drastically reducing the number and type of errors encountered in current manual processes, provide on-line access to this information for its employees, and establish telecommunications networks connecting IRS offices nationwide for rapid transfer of tax information. The input processing initiatives is a vital part of IRS' modernization because it is expected to save time and money by reducing the need to process, store, retrieve, and handle paper documents.<sup>42</sup>

Elements of this project were initiated in 1986.<sup>43</sup> This project has an estimated cost of about \$23 billion through the year 2008. IRS has developed a basic design concept for modernization, but that was done before they had reassessed their basic business processes. IRS's new business vision affirmed the key TSM features, including on-line access to data, electronic submission of information and imaging on paper returns. However, specific project requirements will have to be updated to support IRS' new business vision.<sup>44</sup>

IRS views modernization as an opportunity to re-define tax administration through advanced technology and new ways of doing business. Hardware, software, job re-design, placement of facilities, and human resources training are all an integral part of the TSM process. The goals of TSM are: increase revenue, reduce taxpayer burden, increase compliance, and use resources more effectively.<sup>45</sup>

*Performance Measurement.* Current performance measurement are focused on IRS' existing way of doing business. These measures need to be updated and focused more on the outputs from TSM listed above.

As part of the performance measurement process, TSM projects are evaluated on how well they accomplish the three TSM goals of increased compliance, reduced burden

## MODERNIZE THE INTERNAL REVENUE SERVICE TO MEET THE CHALLENGES OF THE 21ST CENTURY

### Background

The mission of the Internal Revenue Service (IRS) is to collect the proper amount of tax revenue at the least cost to the public in a manner warranting the highest degree of public confidence. The IRS has a highly decentralized management structure, a budget of \$7.1 billion and 115,000 full time employees. Its basic business structure dates to 1952 and their computer system design technology dates to the 1960s. Annually, more than over \$1 trillion in tax revenues are collected from over 200 million returns processed. The collectible delinquent accounts receivable is estimated to be \$27 billion and growing annually. IRS estimates that taxpayers' returns only identify 82.7 percent of taxes that it should receive. This difference is known as the Tax Gap.

IRS suffers from a fragmented organization, inefficient work processes, antiquated systems, and "stovepipe" mentality-all of which have frustrated the IRS efforts to improve taxpayer service and maximize collections. IRS is reassessing the way its does business, re-engineering major work processes, and rethinking the traditional functional organizational alignment. This could be the most significant IRS change in decades. The new commissioner will have to make decisions that determine what IRS will look like in the next century and will need to exert strong leadership to ensure that the needed changes are implemented.<sup>40</sup>

The IRS has made substantial progress since 1988 in addressing its most pressing issue, modernization. It took steps to alleviate an impending computer capacity problem, appointed a Chief Information Officer and Financial Officer to provide needed leadership, and produced a design plan for modernizing systems, that it periodically updates as new elements of the design take shape.

It has devoted tremendous energy to articulating a new vision for how it will administer the tax code in the 21st century. IRS proposes to combine investments in information technology, and significant work process redesign for achieving the three business plan goals: to improve compliance, improve service to the public and achieve



forms of filing.<sup>47</sup>

### **Recommendations**

For each of the following options IRS has done significant research and in some cases developed staff papers with possible solutions. IRS needs to give management directions that will have both immediate and long term affects.

- 1. The IRS management should support the proposed new Business Vision, including realigning the missions of IRS organizations, reorganizing the distribution of operations and redefining job positions.**
- 2. The IRS should update its performance measures and increase the measurement of outputs directly affecting taxpayers.**
- 3. The IRS needs to develop a comprehensive integrated master plan which includes all of the components: human resources, software, hardware, and quality with a management systems to measure outputs.**

### **Implications**

Today much more work remains to be done to ensure that this project-which is one of the largest of its kind and is expected to cost \$23 billion through the year 2008-is successfully implemented.<sup>48</sup> If TSM is not implemented, the integrity of the IRS operations would be adversely impacted. Tax compliance would decrease and the tax gap would increase.

### **Fiscal Impact**

The IRS' New Business Vision identifies \$16.9 billion in direct TSM life cycle benefits. This amount includes \$3.1 billion in Interest Savings/Revenue and \$13.8 billion in Reduced/Avoided Costs. See District Organization Study "Economic Analysis."



and improved efficiency. No TSM project should be implemented until IRS management can demonstrate that quantitative targets for these three goals can be met. IRS should conduct post-implementation review to measure whether these targets have been achieved.

The progress of a project should be measured by the accomplishment of annual objectives and not exclusively higher-level milestones.

*Human Resources.* TSM envisions totally new work methodologies for IRS. Some of the job skills necessary in this new environment are significantly different from those that currently exist. The human resources required to make TSM a "success" have not been significantly addressed. The training and job restructuring needed to make TSM work should be given a high priority. There needs to be a Human Resources Design Master Plan which integrates TSM human resources needs with the core business system approach to tax administration. IRS Commissioners have given assurances that no one will lose a job as a result of TSM. There is an organizational commitment to retraining "dislocated" employees, yet it is unlikely that all of them can be retrained or have the desire to learn a new skill. There may be critical job skills that cannot be filled internally. Highly skilled individuals are currently readily available with many of the new job skills required to implement TSM.<sup>46</sup> IRS needs to provide its employees with more specifics on how the Service will manage these problems.

Modernizing IRS should reduce taxpayers burden, increase compliance and improve efficiency. Before this can be successfully implemented the following challenge have to be resolved:

1. IRS needs to implement TSM and still maintain current levels of acceptable operations, improve the effectiveness of collections, and diminish the tax gap.
2. These dramatic changes need to be managed without an adverse affect on the Service's effectiveness.
3. Service-wide performance measures need to be developed to be able to monitor and evaluate the progress of modernization and the effectiveness of base operations.

To support the new business vision, IRS is currently studying: restructuring national and field operations; redesigning job positions, training and work place options; establishing "return free filing" for some salaried taxpayers; and expanding alternative

percentage of estimated cargo violations detected since calendar year 1988 has declined.<sup>57</sup> The Customs' core financial management system has a range of weaknesses, including the absence of reliable information on operating costs and the status of accounts receivable, a lack of data integrity in the general ledger, contract payments made without proof of deliver or acceptance of goods and services and weaknesses in its internal controls over the payment of overtime to Customs inspectors.<sup>58</sup> Customs and the trade community must be able to take advantage of the benefits of modern technology. For the commodity trade, it is a competitive issue, for Customs, it is a productivity issue.<sup>59</sup>

The Customs Service has had the same basic organizational structure since 1964. Many changes in mission focus and emphasis have occurred, such as the drug interdiction effort and automation initiatives. Currently, **Customs was prohibited by law from reorganizing or even conducting reorganization studies until the passage of the Supplemental Appropriations Act of 1993.** Now that this prohibition has been removed by Congress, the Customs Service can make constructive improvements and to meet new challenges. The existing outmoded structure is not longer applicable to today's world. For example, the current Customs headquarters functional structure forces top policy makers to focus on functional concerns instead of mission effectiveness and places the responsibility for the integration of cross functional issues in the Commissioners Office. The Commissioner's office then becomes emersed in micro-managing the details of the work which disempower their subordinate managers and undermines their leadership responsibility.<sup>60</sup> A recent GAO review of the Customs Service recommended that it conduct a comprehensive review of the organization to address the system-wide problems they identified.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 authorizes the Customs Service to collect a number of user fees for various services provided to the traveling and trade community.<sup>61</sup> Fees are collected for each ticketed passenger aboard a commercial aircraft or vessel arriving from a place outside the Untied States, except for Canada, Mexico, the Caribbean island.<sup>62</sup> Present law provides that the staffing levels for pre-clearance and commercial clearance cannot be reduced as long as there is a surplus in the COBRA account. And that Customs many not reduce expenditures below the highest



## REINVENT CUSTOMS TO GUARANTEE IT MEETS CUSTOMERS EXPECTATIONS

### Background

The Customs Service is responsible for guarding the nation's borders and enforcing trade laws and policies that protect against the introduction of foreign goods that threaten U.S. health, safety, or economic well-being. U.S. trade now exceeds \$1 trillion annually.<sup>49</sup> Customs is the government's second largest revenue collection agency; collections will be \$21 billion in fiscal year 1994 with less than 18,000 employees.<sup>50</sup> Customs enforces some 600 laws for 60 other agencies and is a primary drug enforcement agency.<sup>51</sup>

Confronted during the 1980s with a doubling of imports, demands to balance its efforts to enforce the trade laws with those of facilitating the flow of cargo, and limited resources, Customs instituted wide-scale automated systems to speed up the flow of goods and target imports for review through the Automated Commercial System.<sup>52</sup> The service has been commended by industry representatives for its very successful automation efforts. However, there are three impediments to the continuation of this improvement process: the current customs law, a reorganization restriction, and user fee exemptions.

**The current customs law is an outmoded legal framework** that promotes excessive paperwork and manual transaction-by-transaction processing.<sup>53</sup> Although Customs has revolutionized many processes, the Tariff Act of 1930 still requires that the Official Notice of Liquidation (finalizing actions on an import) be posted on the Customhouse wall.<sup>54</sup> Customs also mails and electronically transmits "courtesy" notices to importers. Up to 90 percent of the entries are liquidated with no change but Customs is required to manually post almost 10 million entries annually.<sup>55</sup> The law is so archaic that Customs must require vessel master to report the number of cannons and shot on arriving vessels.<sup>56</sup> Customs has worked for three years with a broad spectrum of industry to develop a consensus legislative proposal and this bill needs a strong push from the Administration to get it through Congress.

Customs needs to improve its systems as it did not detect a large percentage of the estimated trade law violations in imported cargo during fiscal year 1991, and the



**processing priorities and providing training.**<sup>68</sup>

**5. Customs should handle entries of imports as if it were a business.** The Secretary of the Treasury could declare that, unless otherwise notified, any entry is deemed liquidated after a specified period. Allow for periodic processing of transactions on a monthly or even annual basis. Customs could adopt periodic payment schemes such as those used by IRS.<sup>69</sup>

**6. Support the two amendments to COBRA currently under consideration by the Congress.** One would eliminate legal exemptions and would provide for air and sea passenger user fee for passengers arriving directly from Canada, Mexico, the Caribbean. The other would eliminate the constraints on Customs ability to reduce unnecessary staff.<sup>70</sup>

**7. The Customs Service should continue developing their Air Passenger Processing and Quality Assurance Program.**<sup>71</sup>

### **Implications**

Customs modernization is critically important to the trade community and the Customs Service. Both are hampered by an outmoded legal framework that promotes paperwork and manual transaction-by-transaction processing. The current framework can be an impediment to the free flow of commerce instead of the means of low cost and highly efficient operations for both customs and the trade community. Enactment of the Customs Modernization Act would eliminate archaic and outdated laws that were applicable when a developing nation was still in the age of the sailing ship.

Enactment of the Customs Modernization Act will allow Customs to promote efficient service to the trade community through fully automated processing and analysis, electronic information exchange, and expert systems targeting risk and compliance. Specifically it allow the electronic transmission of merchandise data and manifest, and allow initiation of modern business methods and elimination of manual processing.

### **Fiscal Impact**

Elimination of the exemptions cited in recommendations would add revenue of \$90 million a year.<sup>72</sup>

amount appropriated for these functions for any reason.<sup>63</sup> This is an important customer service issue.

The Service needs to continue to improve its customer service.<sup>64</sup> The Secretary of the Treasury needs to update the clearing of imports basically unchanged 1930. The COBRA passenger fee exemptions cost the \$90 million per year and the staffing and expenditure restrictions hampers Customs ability to manage their resources.<sup>65</sup>

Another national performance review issue paper recommends the creation of an independent Border Management Control Agency. The following recommendations impact the operational improvements that should be implemented by either the existing or the proposed agency.

### **Recommendations**

1. **Enact the Customs Modernization Act, passed last year by Congress, but vetoed by former President Bush.** This Act would modernize the Customs laws and provide a full statutory basis for a 100 percent electronic international trade system. The Act will result in significant savings to U.S. industry, dramatically improve service to the trade community and allow for full automated processing and analysis, electronic information exchange, and expert systems for targeting high risk shipments. The Act would encourage voluntary importer compliance with new record-keeping requirements and penalties as well as requiring "reasonable care" by importers when entering imports.<sup>66</sup>
2. **Customs should reorganize in concert with an organization structure reinvention effort that can increase flexibility and customer empowerment.** The organizational change prohibition was removed by in July 1993.
3. **Customs should fully implement the corrective actions already initiated: instituting a Trade Enforcement Strategy, revamping selectivity systems, use random sampling to assess compliance, redesign the fines, penalties and forfeiture system, and developing systems and procedures for uniform processing at every port of entry.**<sup>67</sup>
4. **Customs should fully implement the corrective actions already initiated: modify an information resources strategy plan to respond to Customs mission strategies, emphasize the management's role in determining automated data**



also assume insurance responsibilities for all S&Ls.

Over the past 10 years the FDIC has handled over 1400 bank closings. These institutions had over \$275 billion in total assets. Presently, only \$35 billion of these assets remain in the hands of the FDIC.

Since inception RTC has received the assets of 657 failed S&Ls. RTC has sold \$362 billion in assets with \$82 billion remaining as of May 1993. FIRREA authorized RTC to make maximum use of specialized contractors in carrying out its activities. RTC was successful in organizing a diverse staff who focused on the management and disposition of assets.

Many of the assets RTC acquired lacked adequate documentation, were overvalued, and some had environmental contamination. The management and disposition of these assets were hindered by: the vastly different and often inadequate information systems at each acquired institution; RTC's lack of an adequate internal information system; emphasis on selling assets to meet sales goals; and, inconsistent implementation of contracting policies.

RTC has been innovative in creating new sales strategies and quickly moving properties out of the government's portfolio through use of auctions, direct sales, bulk sales, securitization of assets, affordable housing, private/public partnerships, contracting and small investor programs. The knowledge and experience gained by RTC personnel are assets which should not be lost to the government where they promote efficiency.

Under provisions of both FIRREA and the Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991, all individuals assigned to the RTC are employees of the FDIC. As such, all permanent employees assigned to the RTC have return rights to the FDIC. Over 650 RTC-assigned employees already have been returned to work for the FDIC. The Board of Directors has made a commitment to assuring that the process of returning these employees to the FDIC is handled in as equitable, orderly and non-disruptive a fashion as possible with the ultimate goal of minimizing adverse impact on the employees themselves. However, as the workload and staff needs of the FDIC are themselves diminishing in light of improved economic conditions, the process of achieving this goal has been made significantly more difficult,



## **ENSURE THE EFFICIENT MERGER OF THE RESOLUTION TRUST CORPORATION INTO THE FEDERAL DEPOSIT INSURANCE CORPORATION**

### **Background**

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was enacted in response to a major savings and loan (S&L) financial crisis. FIRREA established the Resolution Trust Corporation (RTC) to resolve failed S&Ls with the goal of protecting the S&L depositors and maximizing recoveries.<sup>73</sup> RTC's duties include:

- o managing and resolving all cases involving depository institutions with accounts insured by the former Federal Savings and Loan Insurance Corporation prior to August 1989 and all S&Ls put into conservatorship or receivership between August 1989 and September 1993;
- o conducting RTC operations to maximize the return of value from the sale or other disposition of depository institutions or their assets and minimizing losses to the Government;
- o making efficient use of funds provided by the Resolution Funding Corporation or the Treasury; and
- o maximizing the availability and affordability of residential real property for low and moderate-income individuals.

RTC has a sunset date of December 31, 1996. Remaining assets and liabilities will be transferred to the FSLIC Resolution Fund, which is managed by the Federal Deposit Insurance Corporation (FDIC).<sup>74</sup>

The FDIC is responsible for managing the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund. As manager of these funds the FDIC provides protection to insured depositors' account through its supervisory, resolution and liquidation operations. The agency is responsible for handling the closing of failed banks and for maximizing the value of assets received from these institutions and maximizing the preservation of the availability and affordability of residential real property for low and moderate income individuals. Beginning in October of 1993 the FDIC will

2. **Procurement system.** The RTC's experience with procurement systems should be put to use by the FDIC. An enhanced system should be a benefit to the FDIC's operations.
3. **Asset management/tracking systems.** The Consolidation Coordination Committee should identify the most effective system available to provide the required management reporting and tracking capabilities for the FDIC. Development and merger of the agencies' systems should be considered even before the sunset date to determine the most cost effective approach. The long term goal should be to have a system in place that can be expanded or contracted as necessary to accommodate the volume and type of assets under management. Since FDIC's goals will be furthered by the effectiveness of its asset tracking system, it should use this opportunity to adopt the best system available from any source (public and private).

### **Implications**

The transfer of RTC to FDIC requires careful planning and coordination by the Consolidation Coordination Committee and an openness by the FDIC to adapt and subsume new approaches to carrying out its mission. Retention of qualified personnel, skills, and experience is essential to FDIC's success. Asset disposition involves billions of dollars worth of acquired loans and real estate which the government must manage and/or dispose of. The variety of creative methods of asset disposition developed by RTC may complement existing FDIC methods and some combination of them result in greater recoveries for the government. It is important that the FDIC make maximum use of every available method as the situation dictates.

### **Fiscal Impact**

The fiscal impact of the RTC/FDIC merger is difficult to quantify because it is dependant to a large extent on the volume of property the government acquires due to the closure of financial institutions. The savings to the government from the use of efficient systems could be significant. Each 1% increase in recoveries on \$1 billion of assets translates into an additional \$10 million dollars. For example, a 10% increase represents \$100 million.



particularly with respect to realizing the right mix of grade levels and skills at the right geographic locations. Already the FDIC is reducing its number of employees in the face of this declining workload.

FDIC and RTC have already formed a task force, the Consolidation Coordination Committee, to accomplish the merger. The Consolidation Coordination Committee is composed of officers from RTC and FDIC and is charged with coordinating an orderly merger of assets, responsibilities, and personnel.

The circumstances of the RTC/FDIC merger provide the FDIC with a major reinvention opportunity. The Consolidation Coordination Committee must objectively evaluate systems, personnel, and management philosophies to ensure that the best of RTC's expertise is melded into the FDIC's operations going forward. Committee activities currently underway include:

- Identification and comparison of all RTC/FDIC operating procedures and policies;
- Identification of all RTC electronic data processing systems in relation to FDIC counterparts;
- Program for absorption of RTC responsibilities and employees.

In addition, other types of administrative coordinating activities are ongoing such as in the area of leases and procurement of furniture and fixtures.

## **Recommendations**

**1. Personnel.** The FDIC must use every reasonable means at its disposal to meet its obligations under the law at a time when it is itself undergoing substantial restructuring and downsizing. To do so requires looking at such avenues as early retirement authority, retraining of staff, realignment of work, etc., in addition to any other innovative techniques that may be considered appropriate. FDIC should consider retaining the services of RTC staff with highly specialized skills not duplicated by existing FDIC staff. Because of fluctuations in the volume of assets in need of disposal, the FDIC will always be faced with special management challenges. RTC/FDIC should consider giving managers the latitude to provide special incentives if and when necessary.



**STREAMLINE BANKING INDUSTRY OVERSIGHT**

**THIS ISSUE IS ON HOLD PENDING THE VICE PRESIDENT'S DECISION ON  
THE RECOMMENDATIONS OF THE BANKING OVERSIGHT WORKING  
GROUP THAT MET ON JULY 30, 1993.**

**Now is the Time**

of the government to allow the proliferation of federal law enforcement training facilities. When the proliferation of training facilities is not in the best interests of the government, the Committee directs the Office of Management and Budget not to include funding for them in the President's budget request."

The largest and most consolidated federal training facility is the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia, which is operated by the Department of Treasury. FLETC has three primary facilities which provides instructions to 71 agencies with law enforcement responsibilities. The Federal Bureau of Investigations (FBI), the Drug Enforcement Agency (DEA), the U.S. Postal Service, the Department of Veterans Affairs (i.e., security guards), the Army Criminal Investigative Division, and the Air Force Office of Special Investigation are the only entities in the Federal law enforcement community that do not utilize FLETC facilities to train their personnel in some aspects of their training program.

The FBI Academy at Quantico, Virginia, which is operated by the FBI, falls under the Department of Justice (DOJ). DEA agents currently receive some of their training at the Academy. In 1992, a Justice Training Center contiguous to the FBI Academy was approved for specialized drug enforcement training, under the management and control of DEA. Concerns have been raised regarding the advisability of constructing the DEA facility, particularly if less costly facilities are available or could be modified at less cost. Several studies have been conducted to assess the feasibility of having a separate DEA facility, relocating DEA training programs to an alternate site (e.g., FLETC, Georgia, Fort McClellan, Alabama, etc.) or expanding the FBI Academy to meet DEA's needs.

Some other highly developed facilities provide task-specific, specialized training for certain agencies. The U.S. Secret Service, for instance, has a facility in Laurel, Maryland, where protection related training is conducted. It would not be economical to duplicate those facilities at the FLETC or to prevent further enhancements to those centers in line with the type of training they presently provide. Further, consolidation is not the best approach in every instance due to operational considerations. Some duplication in training resources is necessary due to the vast number of law enforcement officers/agents requiring varied and specialized training and this arrangement fosters development of new concepts



## REDUCE DUPLICATION OF LAW ENFORCEMENT TRAINING FACILITIES

### Background

In recent years, there have been some progress in efforts to economize use of existing federal law enforcement training programs and facilities through consolidated training, but some concerns remain. Several agencies have established their own separate training facilities in addition to those larger and more comprehensive facilities which currently exist. Since there are no legal restrictions on these initiatives, the agencies are free to pursue their goals unchecked. The Immigration and Naturalization Service, Federal Aviation Authority, U.S. Marshall Service (USMC), Drug Enforcement Administration (DEA), and Bureau of Alcohol, Tobacco, and Firearms (BATF) are examples of agencies which have created or plan to establish separate facilities by citing specialized needs.

The Office of National Drug Control Policy (ONDCP) and the Office of Management and Budget (OMB) have raised concerns since 1990 regarding the best means to meet the training needs of all federal drug enforcement officers. A 1978 President's Reorganization Project study suggested that "The law enforcement training programs and facilities of FBI, DEA and FLETC could be combined (BATF [Bureau of Alcohol, Tobacco & Firearms] is currently trained at FLETC) into a coordinated program to ensure that all federal law enforcement personnel received quality professional training that is coordinated with and responsive to national enforcement and prosecutive priorities; to continue, increase and improve the coordination of the training assistance being provided to state and local law enforcement; and to provide for more efficient and effective utilization and development of federal facilities."

The House Appropriations Committee Report (102-618, dated June 25, 1992) on H.R. 5488, the Treasury, Postal Service, and General Government Appropriations Bill, 1993: "directs the Office of Management and Budget to (1) within 30 days of enactment of this legislation submit a report to the House and Senate Appropriations Committees on how many agencies have left or plan to leave FLETC for their law enforcement training since enactment of Public Law 102-141, and (2) determine whether or not it is in the best interest

1. The Director of Law Enforcement (DLE) should establish, under the Executive Law Enforcement Council (ELEC), a senior interagency training advisory committee which represents the law enforcement community to specifically address law enforcement training programs, to include the efficient use of federal training facilities, training priorities and the development of future training curriculum.
2. The ELEC should draft for the Director of Law Enforcement (DLE) a Federal Law Enforcement Facility Training Act for submission to Congress, which would address various aspects of law enforcement training to include defining when the development of a new training facility or the expansion of a facility would be appropriate and establish an approval process.
3. Prior to the establishment of the DLE and the ELEC, the Office of Management and Budget (OMB) should control the funding for new training facilities or expansion of a facility in keeping with the spirit of the House Report on H.R. 5488.
4. FLETC and the FBI Academy should be further developed, as practical to accommodate multi-agency national training needs in lieu of construction of new training facilities.

### **Implications**

1. This will result in a more efficient use of training program, facilities, instructors, and other resources. It would be more efficient and cost effective to add buildings and other training facilities to existing FLETC and FBI training centers than to create new independent training centers.
2. This will afford federal, state and local officers the opportunity to bond (cross-fertilization of ideas) with one another and foster closer working relationships in joint federal, state and local investigations.
3. This will reduce the duplication of federal facilities and other training resources.

### **Fiscal Impact**

Fiscal impact figures are being finalized.



and training techniques, and it encourages excellence. But most importantly, when training is required to support an agency specific operation or event, timeliness of training and availability of resources and facilities become significant issues.

However, too much duplication results in inefficiency in the use of federal resources. When too many agencies build their own training facilities and programs, they tend to over-duplicate what is already available. This undermines the economic goals of a consolidated federal approach to training since there are financial savings which are achieved through economies of scale. When training resources are pooled, a higher level of training can be offered particularly benefitting those who are assigned to smaller agencies that do not have the resources to independently support a comprehensive training program. The interface between federal, state, and local law enforcement officers training at the same facility helps develop bonds and teamwork which they carry through their professional careers. Consolidated training is already occurring to a large degree. For example, there are numerous instances of Treasury agents attending Quantico facilities for highly specialized courses regarding behavioral science, hostage negotiations, bank failure seminars, etc. Continued "cross" utilization of federal facilities in this manner is highly beneficial to the student and is encouraged.

A national cooperative federal training program would allow law enforcement personnel, who have a justifiable need, to train at any federal facility which is equipped to provide that training. This will allow law enforcement personnel in certain geographical areas to receive training at facilities nearest their work station, as needed. For example, law enforcement personnel in the Washington metropolitan would not have to travel to Glynco, Georgia to receive training at FLETC if such training is available locally. Similarly, law enforcement officials whose work station is in the Glynco, Georgia area, should not have to travel to Quantico, Virginia to receive training at the FBI Academy, if such training can be accomplished at FLETC. Lastly, new training facilities should not be built if a facility already exist or can be easily modified to accommodate the requirement. All agencies should share their training personnel and other resources.

## **Recommendations**



expertise in the conduct of BIs. BICS has proven itself efficient and effective in all measurable dimensions, as substantiated by audits by FBI's Inspection Division.

There are a number of issues involving initial BIs and PRIs in the Department of Justice. To summarize, the basic issues are as follows:

1. Lack of timeliness of OPM-conducted initial BIs: Clients have historically complained of significant backlogs in OPM processing of initial BIs and PRIs. Delays in completion of initial BIs have various negative effects on Departmental operations. For components that require completion and adjudication of initial BIs prior to employment, these delays may cause qualified candidates to find jobs elsewhere. A number of weaknesses surrounding the BI process were identified in a report prepared by the Department's Office of the Inspector General (OIG).
2. Costs for OPM- and FBI-conducted initial BIs and PRIs, versus. in-house and private sector contract investigations: An additional problem is the cost of initial BIs and PRIs. OPM full-field initial BIs cost \$2,400 each in Fiscal Year 1992, and FBI PRIs cost up to \$4,500 depending on scope. There are additional charges for expedited OPM investigations. In order to bypass delays and to cut costs, the Drug Enforcement Administration (DEA) and the U.S. Marshals Service (USMS) have obtained from OPM delegations of authority to conduct their own initial BIs. USMS reports that it can conduct an equivalent investigation to OPM's for \$1,800. DEA utilizes a contractual service which conducts the BI for \$1,500. In addition to cost savings, DEA reports that it also receives under its contract a guaranteed turnaround of 30 days. OPM charges an additional \$450 for the expedited service, which is reportedly not consistently within the 30 day requirement. However, despite this successful "empowerment" of DEA, OPM has indicated that it may revoke DEA's authority to conduct initial BIs at the end of Fiscal Year 1993. If these efforts have been successful, DOJ should be looking at expansion of them, possibly to other DOJ components. DOJ has asked OPM for a delegation of authority to use the DEA contractor to conduct INS and EOUSA investigations, but OPM has repeatedly denied this authority.
3. Lack of Competition, Objective Quality Measurement and Customization of Requirements: OPM controls authority for other agencies to conduct investigations (using

## STREAMLINE BACKGROUND INVESTIGATIONS FOR FEDERAL EMPLOYEES

### Background

The Federal government is the largest employer in the United States, with a workforce of 2.9 million full-time civilian employees, 2.1 million military personnel. At a minimum, each tentative selectee for a Federal position is subject to some sort of background investigation (BI) prior to or shortly after entering on duty. In addition, employees already on-board may require more extensive BIs, based on new duties, or may require a periodic reinvestigation (PRI) due to the age of their initial background investigation (BI).

Through regulation, and as a result of various executive orders, the Office of Personnel Management (OPM) has the primary authority to: (1) establish personnel suitability requirements and (2) conduct investigations and authorize appointments "subject to investigations" to the competitive service. Agencies reimburse OPM for conducting BIs. OPM may also delegate authority to agencies to contract out investigations for competitive positions. During the last few years, agencies have become increasingly dependent on using contractors or in-house investigators to conduct investigations because OPM could not meet timeliness standards for either routine or expedited cases, and OPM charges are prohibitive. However, to respond to timeliness concerns, OPM has staffed to higher levels to conduct investigations for agencies, and has indicated that it will revoke some existing delegations of authority for agencies to conduct investigations. Agencies provided written estimates to OPM that they would need 133,281 investigations conducted during Fiscal Year 1993 and 131,006 in Fiscal Year 1994.

Conducting investigations for excepted service positions and contractor personnel in an agency is the responsibility of the agency, but an agency may enter into an agreement with OPM to obtain reimbursable investigative services for these investigations. In DOJ, investigations for excepted service positions are generally conducted by the FBI's in-house investigators, or through the FBI's Background Investigation Contract Services (BICS) pilot project. This program contracts out BIs to former federal investigators with demonstrated



requirements for less sensitive positions were relaxed.

5. Agencies are not sufficiently utilizing previously performed initial BIs and PRIs: Agencies should be strongly encouraged to share BI and PRI information; DOJ utilizes Department of Defense, CIA, and Treasury BI/PRI information wherever possible, to minimize the amount of reinvestigation required if the employee has an adjudicated BI/PRI from another agency. Through no fault of their own, personnel security offices rarely have consistent or dependable information on previously completed initial BIs or PRIs on a given employee. Employees rarely know with certainty what initial BIs or PRIs have been completed, and the central Government-wide database (SII), operated by OPM) has user capacity problems. To use the system, OPM requires information that is not always available (City of Birth) in order to respond to a simple query from outside agencies on previously completed initial BIs, and the system has limited query capacity. Also, although the database is intended to be Government-wide in scope, and has interfaces with DCII, some BI information is not provided by agencies that conduct the BIs. Other agencies also do not consistently respond to direct inquiries on whether initial BIs have been completed.

Generally stated, the entire process of initial BIs and PRIs should be more timely and less costly, and agencies should have more flexibility in meeting personnel security requirements.

### **Recommendations**

1. **The Departments of Justice and the Treasury should, on behalf of all their components, pursue a flexible delegation of authority, using experienced investigators (e.g., retired Federal law enforcement officers) to conduct initial BIs and PRIs. The delegation should be tailored to meet each Department's unique mission and requirements. DOJ plans to conduct a Reinvention Lab to measure cost and quality of initial BIs and PRIs conducted by in-house staff and contractors, which will apply the "reinvention" principles of cross-servicing and competition between two DOJ components that can provide the service. Agency components such as DEA and USMS should be permitted, through this delegation, to cross service other organizations, such as INS and U.S. Attorneys.**



staff or contractors). OPM also competes with the other agencies to provide that service, but does not offer competitive prices. This conflict of interest gives OPM a virtual monopoly on conducting BIs. OPM's investigative organization operates on a revolving fund, and therefore must justify its existence and cover all costs. Having staffed up to improve responsiveness, as mentioned above, there are strong disincentives for OPM to permit other agencies to provide a competitive, less expensive, and sometimes more responsive product.

For example, DEA's authority to conduct BIs through contract services is being revoked by OPM based on a quality assurance issue. However, DEA maintains that the quality of its contract deliverables is very high. In this case, DEA states that the portion of the BI in question was in fact prepared by DEA itself, not the by the contractor, and that the majority of the problems cited by OPM were procedural and not substantive. DEA has corrected the problems. Assistance from OPM in proper procedures would be more productive than revocation of authority. Objectively defined performance measurement for delegated investigations is needed, to encourage competitive alternatives to OPM that maintain quality standards.

OPM itself has had a history of quality problems, partly stemming from the need to supplement reports and investigations prepared by OPM, in order to meet agencies' unique personnel security requirements. Various agencies have developed a myriad of personnel investigation forms, which supplement the Standard Forms used by OPM in its investigations, but which are not used by OPM investigators. The Standard Forms may or may not contain sufficient information to support agency mission requirements.

4. Further potential cost savings may result from additional changes in DOJ policy on scope of PRIs: Cost issues of PRIs were discussed in detail in the above-cited OIG report. Briefly, OIG indicated that DOJ could save money if OPM reinvestigations were conducted for certain employees rather than using FBI reinvestigations, and that PRIs of more limited scope would be less expensive. DOJ has taken steps to implement these recommendations (including negotiations with the FBI to reduce costs), but further limitations on the scope of the investigation could be implemented, with commensurate cost savings.

On a Government-wide basis, cost savings might be achievable if reinvestigation

## **Implications**

The above recommendations will result in less costly and more timely initial BIs and PRIs. Agencies will have more flexibility and control over the ways in which they meet personnel security requirements. Formal authorization of agencies to conduct or contract for initial BIs and PRIs will encourage competition. Components within DOJ that wish to administer contracts can do so, and can potentially cross-service other components in DOJ or other Federal agencies. Use of this competitive model should keep service (e.g., responsiveness) high and keep costs low.

## **Fiscal Impact**

Based on DOJ experience with in-house staff conducting BIs, and with contract support conducting BIs, we conservatively estimate a \$750 - \$1,000 savings on each background investigation conducted under agency authority rather than by OPM. The previously provided estimates on BIs required should be revised in light of the anticipated hiring freezes across the Federal workforce. However, even if only 10% of the originally estimated 131,006 BIs are diverted from OPM to agency authority, savings could amount to approximately \$10 - \$13 million in Fiscal Year 1994.



2. OPM should ensure that quality standards for agency-conducted or contractor-conducted BIs are assessed by an objective party with no vested interest in returning BI "business" back to OPM.
3. OPM should consider the use of contractual and temporarily hired employees to conduct BIs, to permit more flexibility in meeting rising and falling demands for BIs.
4. Congress should enact legislation that authorizes agencies to conduct initial BIs and PRIs, and to obtain contractual services for initial BIs and PRIs pursuant to quality standards to be set and published by OPM.
5. OPM should develop a standard form encompassing the core of required questions to be asked of each applicant/employee, and allow the agency the option of attaching additional forms and/or questions for the investigators that are specific to agency mission.
6. DOJ internal policy should be revised to provide for the minimum investigation required (such as credit checks, name checks with the FBI) combined with employee certification on a new SF-86. If discrepancies are found between the SF-86 and other investigations, adverse action can be taken, which will act as a deterrent for employees in not reporting derogatory information on themselves.
7. The OPM regulation requiring a periodic reinvestigation should be relaxed so that agencies can perform the updates within a 5-10 year window, depending on agency mandates and priorities. OPM should also permit (and DOJ consider any internal policy changes required for) the use of contract investigators for certain excepted service personnel (e.g, non-political U.S. Attorneys' Office personnel). An executive order is needed to override the current regulation.
8. OPM should increase the capacity of its automated BI status system, to increase the number of simultaneous users possible.
9. Through interagency working groups, or through a legislative mandate, agencies should be required to make BI and PRI information available to authorized, cleared personnel security offices throughout the Government. OPM's automated database should be enhanced to only require reasonable requirements for search parameters (i.e., to not require City of Birth).



been adjusted for inflation before assessment, larger penalties would have been assessed. As a result, the amount collected by the Federal Government likely would have been much greater. Inflation adjusting CMPs could provide for a source of increased revenue for the Federal Government.

Congress passed the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) of 1990, P.L. 101-410, because of its interest in knowing the extent of the problem of CMPs that have not been adjusted to keep pace with inflation. FCPIAA established two reporting requirements for CMPs: <sup>81</sup>

- (1) An annual report detailing CMP assessments and collections during the previous fiscal year, and
- (2) An inventory every five years of all CMPs and the amount that they would have to be adjusted by if they were revised to take into consideration inflation.

However, while FCPIAA established a reporting requirement detailing proposed inflation adjustments, it did not provide for the actual inflation adjustment of CMPs.

### **Recommendations**

- 1. Institute a one-time "catch-up" inflation adjustment for all CMPs by submitting legislation to Congress to adjust for the affect of inflation since the time that each CMP was last set or adjusted in the law.**
- 2. Begin submitting inflation adjustment legislation to Congress on an annual basis to revise all CMPs to reflect any inflationary changes over the previous year.**

### **Implications**

1. A one-time "catch-up" inflation adjustment for CMPs would bring penalty values into accord with today's value of money and renew the deterrent effect that the penalties were originally intended to have. Collections would be higher because assessed amounts would increase.
2. By simply beginning annual adjustments of CMPs to take into consideration the previous year's inflation, the Federal Government would ensure for the future that CMPs at least maintain the deterrent value that they have today.

## ADJUST CIVIL MONETARY PENALTIES TO THE INFLATION INDEX

### Background

The Federal Government fails to collect millions of dollars each year because Civil Monetary Penalties (CMPs) assessed by Federal agencies are not regularly adjusted for inflation to maintain their deterrent value for preventing violations of Federal law. CMPs are non-criminal penalties set by law with a fixed or maximum value (e.g., "\$2,500 per day," "\$10,000 per violation," or "10% of gross value, but no more than \$5,000"). Federal agencies assess and collect CMPs to enforce a wide variety of laws in areas such as health and safety, transportation safety, environmental hazards, import and export restrictions, land and resource management, tax law enforcement, and lobbying. A search of the U.S. Code indicates that there are about 500 statute sections containing language on civil penalties.<sup>75</sup>

Each year, Federal agencies make billions of dollars in assessments for violations of Federal law. During Fiscal Year 1992 alone, agencies assessed almost \$2.3 billion in CMPs against individuals and businesses.<sup>76</sup> Yet, because the dollar value of CMPs is set by law and CMPs are rarely updated to reflect the effect inflation, the value of CMPs as a deterrence for violations of Federal law often declines over time.

A recent report published by OMB includes an inventory of CMPs that exist in Federal statute.<sup>77</sup> The report identifies many CMPs that have been on the books for years without being adjusted for inflation, including some that have been unadjusted since as early as 1870.<sup>78</sup> In fact, many older penalties are not currently in use and should be removed from Federal statute. While most CMPs that are actually assessed by agencies have been either defined or adjusted by law since the 1970s, inflation has still robbed many penalties of their deterrent value. For example, a violation of the Clean Air Act that was defined in law in 1977 as a fine of \$25,000 per violation would be worth at least \$55,000 per violation today if it were adjusted for inflation.<sup>79</sup>

Not only does failure to inflation adjust CMPs reduce the deterrence value of penalties, it also robs the Federal Government of an important source of revenue. During FY 1992, collections of CMPs were \$416 million.<sup>80</sup> If all CMPs assessed during 1992 had



## INCREASE INTERNAL REVENUE SERVICE COLLECTIONS THROUGH BETTER COMPLIANCE EFFORTS

### Background

The Internal Revenue Service (IRS) mission is to collect the proper amount of tax at the least cost to the federal government in a manner that warrants confidence in the IRS' integrity, efficiency, and fairness. IRS carries out its mission through its National Office, 7 regional offices, 10 service centers, 22 collection call sites, 63 district offices, and various overseas locations.<sup>82</sup>

Two of the most critical problems facing the Internal Revenue Service are: (1) collecting \$23 billion of delinquent taxes of the 1991 \$111 billion inventory which is collectable; and (2) reducing an estimated \$114 billion tax gap, the difference between the amount of tax reported and the amount that should be due, a compliance issue.<sup>83</sup>

IRS defines the tax gap created by under-reporters and non-filers as the difference between the amount of taxes owed for a given year and the amount paid for that year. According to IRS' estimates, more than half of the gap arises because individuals failed to report income on their tax returns and the rest is due to from non filers.<sup>84</sup>

It is difficult to estimate the tax gap with precision. IRS periodically conducts statistical sample surveys of tax returns to estimate the gap and a separate IRS project showed that tax in excess of withholding or other pre-paid taxes was both owed and significant. At the same time, external sources were advising IRS that the universe of non-filers was growing.<sup>85</sup>

The IRS is continuing to give priority attention to the collection of taxes owed the government. Nationally, IRS reports accounts receivable that are significantly higher than could ever be collected. Yet, because it does not know how many records are valid, there is not an accurate estimate of receivables, nor how much is collectible.<sup>86</sup>

As the estimated tax gap amount increases, concern have been raised with the decline in traditional IRS audit coverage rate. Ten years ago, audit coverage rate for traditional audits was 1.6 percent versus less than 1 percent last year. With the explosion of information reporting requirements in recent year, IRS believes that they can detect



## Fiscal Impact

Because information is not available on use of individual penalties, it would not be possible to calculate the fiscal impact of increased collections associated a one time "catch-up" inflation adjustment that would revise each penalty based on the year in which it was last set by law. However, under the assumption that annual inflation adjustments would be carried out to compensate for inflation during any given year, and assuming that the number and type of assessments holds steady over time, then it would be possible to collect an additional \$193 million in revenue over a five year period (as shown in the table below). Since this option would not go so far as to attempt to adjust for inflation since CMPs were passed into law, it would have a more limited effect in terms of improved deterrence and increased revenues.

### Inflation Adjusted Collections of Civil Monetary Penalties

(Dollars in Millions)

|                                                    | FY<br>1992 | FY<br>1994 | FY<br>1995 | FY<br>1996 | FY<br>1997 | FY<br>1998 | Cumulative<br>FY '94-98 |
|----------------------------------------------------|------------|------------|------------|------------|------------|------------|-------------------------|
| Steady-State Collections<br>(See Note)             | \$416      | \$416      | \$416      | \$416      | \$416      | \$416      | \$2,080                 |
| GDP Deflator                                       | N/A        | 2.9%       | 3.0%       | 3.0%       | 3.0%       | 3.0%       | N/A                     |
| Increased Collections From<br>Inflation Adjustment | N/A        | \$12       | \$25       | \$38       | \$52       | \$66       | \$193                   |
| Total Collections After<br>Inflation Adjustment    | \$416      | \$428      | \$441      | \$454      | \$468      | \$482      | \$2,273                 |

Note: Projections assume that out-year collections remain at least at the level of FY 1992 collections. Evidence from prior annual reporting suggests collections may increase over time due in part to increased CMP assessments.

more incentives and dynamics into the joint Federal and State compliance problems.

### **Recommendations**

1. **Continue the Compliance 2000 pilots for improving compliance for voluntary compliers, unintentional non-compliers and intentional non-compliers; and explore the Treasury's method of measuring budgetary results to obtain funding for additional collections.**
2. **As staff reductions are accomplished through Tax System Modernization, IRS should be allowed to reuse these resources for compliance activities that produce increased collections, as long as IRS has an acceptable measurement system to determine that these resources are actually increasing collections.** IRS collection managers have stated that every staff year assigned to collections increase collections by \$529,000.<sup>90</sup>
3. **Foster Federal-State Cooperation to increase collections.** Decentralize IRS processing power and encourage parallel processing with state tax agencies. Share the collection burden by sharing information and workloads with state tax authorities. For example, the permitted sharing of information would give IRS access to state agency licensing and franchise records. Many states require a "satisfactory" state tax check before granting licenses to do business. The receipt of information regarding the state tax status of license applicants offers IRS the capability to identify substantial numbers of non-filers and under reporters who currently are not readily identifiable. Another National Performance Review Issue paper deals with the legal changes required to accomplish complete Federal-State Initiatives.

### **Implications**

The tax gap represents a significant opportunity for increasing revenue without raising tax rates. A combination of legislation, management changes, and resources growth could increase compliance. It is estimated that this immediate sharing of tax information alone would increase revenues by \$1 billion per year, if the federal and state governments could reduce tax refunds for delinquent tax payments due to the other taxing authority.

income and deduction errors and find non-filers for a large segment of the population without a traditional audit.<sup>87</sup>

In addition to the Tax System Modernization effort, IRS is developing a new compliance strategy. Their experiences have shown that the traditional enforcement approach alone cannot sustain a desirable level of compliance. This strategy is called Compliance 2000.

Compliance 2000 is a mission-based approach to tax administration designed to improve voluntary compliance. It seeks organizational solutions that remove barriers to compliance while minimizing burden on taxpayers. Voluntary compliance will be maximized by: maintaining current compliance through burden reduction; using nonenforcement activities, such as education and assistance, with taxpayers who are trying to comply; and using more aggressive enforcement techniques with taxpayers who won't comply.<sup>88</sup>

Many changes are already in various stages of implementation throughout the IRS. The three approach to the Compliance 2000 philosophy are now included in the IRS' Strategic and Annual Business Plans, and are now driving the decisions and actions of executives and managers. In addition, a number of research and analysis efforts are already underway.<sup>89</sup>

IRS has made significant efforts in reinventing its approaches for reducing the tax gap and increase collections. The agency believes that these efforts would be enhanced by changes in the budget process. Specifically they believe that the existing Office of Management and Budget practice of measuring results and projecting revenues only for incremental increased to direct enforcement programs fosters a narrow focus on short-term revenue gains versus long terms improvements in voluntary compliance that produce gains "year-in, year-out." OMB, Treasury, and IRS need to measure non-enforcement as well as enforcement revenue gains. Parameters and performance output measures should be developed and agreed upon for whatever additional funding is provided.

Another National Performance Issue Paper has been developed for fostering IRS Federal-State Cooperative Initiatives. IRS has not fully utilized state tax agencies as a resource in dealing with the joint challenges of increasing compliance. This will inject



There are a large number of benefits from sharing information with States. If states had on-line access to IRS accounts, they could collect the amount due at the same time state tax collections are made from license applicants.

### **Fiscal Impact**

Increased collections would result from the multiplicity of improvements in IRS collection activity, including IRS - state cooperative initiatives, legislative changes, federal tax payments by credit card, and others. Actions to decrease the big tax gap through the framework of Compliance 2000 would materially increase the \$25 billion annually collected as a direct result of enforcement activities. Precise estimates of the impact of these proposals depend on their specific design. IRS collects over \$1 trillion in tax revenue annually. A one percent increase in compliance would increase collections by \$10 billion.

agencies are not required to collect the taxpayer identification numbers or issue 1099's, if the contractor is paid within 120 days. As a result, agencies that follow the regulations do not issue 1099's to these contractors.

### **Recommendations**

1. **Fix Responsibility.** Most agency heads are not aware of their reporting responsibilities under Section 6050M or Section 6041 of the Internal Revenue Code. P.L. 99-514. To remedy this condition, each should be required to make annual assurances to IRS that this requirement is being fully met. The agency's Chief Finance Officer should sign the assurance as well.
2. **Strengthen consequences for non-compliance.** For many executives and managers, compliance is a low priority because there are no consequences attached to non-compliance. Neither the agency nor its leadership is penalized for failing to comply. A direct link must be made between compliance and individual performance to overcome this obstacle. Agency executives and managers with responsibilities in the financial management contracts area must be held accountable. Compliance with Sections 6041/6041A reporting requirements must be included in their Senior Executive Service (SES)/Performance Measurement Review System (PMRS) performance standards. A change in agency behavior will not result, unless the consequences of non-compliance are directly reflected in the performance appraisals of its financial executives and managers.
3. **Encourage closer coordination between procurement and financial management/accounting functions to ensure compliance.** The lack of coordination between an agency's procurement or contracting function and its financial management or accounting function is a significant obstacle to compliance as well. Information required by Section 6041/6041A in many instances is not provided to the contracting personnel by the accounting side of the house for compilation and reporting. Agencies must act to bring these functions closer together.

The Office of Management and Budget, Office of Federal Procurement Policy (OFPP), should contract to work with IRS in educating agency procurement personnel. Upon receipt of IRS proposed changes to the Federal Acquisition Regulations, OFPP should

## INCREASE FEDERAL AGENCIES COMPLIANCE WITH EMPLOYMENT TAX REPORTING REQUIREMENTS (FORM 1099)

### Background<sup>91</sup>

When a business classifies a worker as an employee, the business must withhold income and social security (including Medicare) taxes from the employee's pay and send the taxes to the federal government. The business should report withheld taxes on a wage and tax statement, known as a Form W-2. If a business classifies a worker as an independent contractor, the business need not withhold taxes but must report annual payments of \$600 or more to IRS on an information return. A business also need not issue an information return for an incorporated independent contractor. IRS then matches information returns and wage statements (provided by businesses) with tax returns (provided by taxpayers) to determine whether workers: (1) filed required returns and; (2) accurately reported earned income. The ability to match information returns for independent contractors against tax return information is essential to the identification of non-filers and under-reporters who seek to avoid their tax liability. An IRS study for tax year 1974 showed that independent contractors voluntarily reported 74 percent of their income,<sup>92</sup> while employees reported over 99 percent of the income reported on W-2's.

Federal government agencies, like businesses, are required to report annual payments of \$600 or more to IRS on information returns.<sup>93</sup> However, preliminary surveys by the IRS indicate this requirement is not being met. A recent test of GSA's compliance with the information reporting requirement yielded a 50 percent compliance rate. State, Commerce, HUD, NASA and several other agencies surveyed showed few if any information returns were issued to IRS for tax year 1992. Treasury itself is not exempt from this problem.

Non-compliance with this requirement appears to be the rule among Federal agencies. The result of this failure is that billions of dollars of income maybe unreported or under-reported by independent contractors and ultimately untaxed. Since the Federal agencies are not providing IRS with the necessary information returns, the IRS cannot identify the magnitude of unreported income.

A significant part of the problem may lie with IRS regulations. These state that



## AUTHORIZE FEDERAL TAX PAYMENTS BY CREDIT CARD

### Background

Tax payments by credit card have been proposed on several occasions. Congress passed legislation last year that contained such provisions, but the legislation was vetoed by President Bush for other reasons. Most recently, the Tax Simplification Act of 1993 (H.R. 13), introduced in January, contains a provision for the Internal Revenue Service (IRS) to accept tax payments by credit cards.<sup>94</sup> The proposed statute gives the Secretary of the Treasury authority to accept credit cards if doing so is economically beneficial.

According to Treasury officials, there are benefits to IRS accepting credit card payments. The main benefit are, according to these officials, (1) a largely intangible one - better customer service and (2) expanding the number of taxpayers who can use electronic filing.<sup>95</sup>

There are also other tangible benefits possible from the proposed credit card initiative. The program has the potential of increasing the amount and improving the timeliness of collections by making it easier for taxpayers to pay. The program also could facilitate tax payment under IRS' electronic filing program. Currently, taxpayers who file returns electronically and owe additional taxes must send their payments to IRS separately. In addition, the use of credit cards could also help reduce the incidence of bad checks. The processing of bad checks is an extremely costly and labor-intensive effort, and any reduction in the number of such checks would be very helpful.<sup>96</sup>

Some concerns have been raised, however, about the use of credit cards to pay federal taxes. One issue is treatment of the discount fees typically incurred on traditional credit charge transactions. A merchant accepting a credit card pays a discount fee, which reduces the amount of the proceeds from sales made by credit card. The potential problem is that credit card issuers prohibit merchants from passing the discount fees on to customers and IRS typically does not discount taxes (other than in circumstances involving an offer in compromise), which it would be doing if it paid the discount fee.<sup>4</sup>

Treasury officials however, stated that the Customs Service currently allows

establish a regulatory review case with the Federal Acquisition Regulatory Council.

The Treasury Department's Financial Management Service (FMS), in cooperation with OMB's Office of Federal Financial Management, should take the lead in training agency financial management executives and managers. When vulnerabilities, like Section 6041/6041A non-compliance are identified, FMS should tailor educational programs specifically designed for troubled agencies. FMS also should establish a regular schedule of continuing education opportunities, focused on financial management concerns, for government financial executives and managers. The training should be mandatory for those with non-financial management backgrounds who assume responsibilities in this area.

### **Implications**

Federal agencies compliance with Section 6041/6041A will provide IRS the necessary information to match information returns with independent contractor tax returns. Mismatches will identify non-filers and under-reporters of income received from Federal agency payments. The tax derived from this undisclosed and under-reported income will substantially reduce the tax gap.

### **Fiscal Impact**

Full federal agency compliance with Section 6041/6041A of the Internal Revenue Code is likely to result in revenue gains to the Treasury of from \$3 - \$5 billion each year.

with credit card companies and financial institutions. Once agreements are reached IRS should move quickly to implement the credit card legislation.

### **Implications**

There has been some opposition to the credit card tax payment because of concerns about encouraging more consumer indebtedness. IRS officials do not see this as a valid concern. IRS views payment of taxes as an option for taxpayers to use who do not have the money to pay their taxes. Thus, there would be no overall increase in indebtedness, since taxpayers would either owe IRS or the credit card companies.

### **Fiscal Impact**

Fiscal impact estimates for credit card tax payments are included in the \$10 - \$40 billion informal estimate resulting from overall improvements in IRS collections. Neither OMB, Treasury, or IRS could provide definitive estimates of the fiscal impact of the proposed credit card program. No one can estimate the number of taxpayers who would choose this payment option. We believe that this program needs to be sold on the basis of its improved customer service, and not just as a cost savings measure.



individuals to use credit cards to pay duties with Treasury's Financial Management Service (FMS) absorbing any processing costs, so there is no cost to Customs for this service.<sup>5</sup> IRS could also consider joining FMS' Plastic Card Collection Network, where FMS has made arrangements with banks that allow federal agencies to accept credit cards for sales without discounting them. Under the FMS arrangement, the federal government maintains non-interest-bearing accounts at the banks instead of paying discount fees.<sup>6</sup>

Probably the single most important issue involves the treatment of federal taxes paid with a credit card in bankruptcy proceedings. Under current law, federal taxes are generally not dischargeable in bankruptcy, while consumer indebtedness owed on credit cards is subject to discharge. Officials representing Visa and MasterCard have expressed reservations about allowing credit card tax payments unless federal tax debts paid with a credit or debit card remain a non-dischargeable item in bankruptcy. Their position is that a program allowing federal taxes to be paid using credit and debit cards should not create new risk for either IRS or the credit card system.<sup>7</sup> This issue could be mitigated either through negotiation with the credit card companies or through a change in legislation.<sup>8</sup> While the credit card companies indicated they were interested in pursuing litigative relief for their concerns, they did not oppose the legislation in H.R. 11 even though it did not address the issue.

Two other concerns had been raised about taxpayer privacy and credit card billing disputes. IRS officials believe the concerns should not present any impediments to credit card use for taxes.<sup>9</sup> IRS has already has a pilot program that uses private collection agencies to collect overdue taxes, so use of credit cards would not be any new departure for IRS. Treasury officials believe that additional IRS guidance will resolve the differences between the Tax Code and the Truth in Lending Act ( 15 USC 1666) in settling billing disputes. Credit card errors are governed by the Truth in Lending Act.

## **Recommendation**

**1. Congress should enact legislation authorizing federal tax payment by credit card.** IRS needs to coordinate with FMS to determine the best method to resolve any outstanding issues. Once the issues are resolved Treasury should negotiate agreements

transaction receives a unique tracer number.

Today, nearly 30 million Americans receive salary and benefit payments which are sent electronically to a personal checking or savings account. While participation is voluntary, it is now the primary method of salary payment for 84 percent of all federal workers.<sup>7</sup> Since 1982, the last time Treasury closed a Regional Finance Center, check volume has declined by more than 88 million a year, which is more payments than two of the centers annually process.<sup>8</sup>

In 1991, FMS started an automation project updating its existing obsolete technology, incompatible equipment, outdated and nonstandard software, and labor-intensive operations. All of the current FMS disbursement operations systems will be assumed by the new system allowing agencies to submit certified payment requests electronically.<sup>9</sup> The cost of modernizing the current disbursement system equipment is almost \$90 million.<sup>10</sup>

The Treasury has been reluctant give other agencies disbursing authority. They believe that if disbursement authority now residing in the Treasury were to be delegated to other agencies, each major federal agency would begin operating independently, and this could result in inconsistent fiscal policies, procedures, and/or direction. The Treasury's partners--the financial community, the Federal Reserve Banking System, and the Postal Service, would be forced to deal with many different government organizations thus complicating their operations and reducing their efficiency.<sup>11</sup>

The President's fiscal 1993 budget submission to the Congress pledged to continue refining the disbursement mechanisms: "The costs of disbursements will be lessened through electronic funds transfer and other disbursement alternatives. Treasury will work with OMB and agency Chief Financial Officers to examine federal disbursements strategies and costs, including non-electronic payments to employees."<sup>12</sup>

Electronic payments is preferable to check payments due to lower cost and higher security, reliability, and convenience for recipients. The costs of preparing a check payment is \$.36 compared to six cents for an electronic payment. The electronic payments are directly deposited into the recipient's bank account, eliminating much of the paper needed to transfer payment between the check issuer, the financial institutions and payee.<sup>13</sup>

Although the number of checks needing printing has dropped significantly since



## **MODERNIZE THE FINANCIAL MANAGEMENT SYSTEMS USING TECHNOLOGY TO REDUCE COST AND INCREASE CUSTOMER SATISFACTION**

### **Background**

The Treasury's Financial Management Service (FMS) is responsible for the management of the federal government's cash position, making \$1 trillion in disbursements, collecting \$1.4 trillion in receipts, and providing central accounting and reporting of these financial activities for most government funds. FMS only makes about 80 percent of the federal government payments. Twenty four additional executive, legislative and judicial branch agencies make their own payments.

The Treasury must be able to accurately monitor the \$10 billion daily federal cash-flow.<sup>1</sup> In fiscal 1992, this operation cost \$324 million and employed more than 2,000 employees.<sup>2</sup> Annually, the FMS' seven Regional Financial Centers print and mail about 440 million Treasury checks and process 350 million electronic fund transfer payments directly to recipient's bank accounts.<sup>3</sup> This part of the FMS operations cost about \$193 million in fiscal 1993.<sup>4</sup> Philadelphia is the largest center and Washington D. C. is the smallest<sup>5</sup>.

FMS' principal activity is its seven disbursement centers. The centers receive verified payment information from agencies, make the disbursement and then prepare a monthly bank reconciliation for each agency. Forty years ago this was primarily a manual check-issuing operation. The department verified the mathematical accuracy of each page of requested payments and verified the signature of the agency official certifying the accuracy of the payment request.

Since the early-1980s, the Treasury and the Office of Management and Budget (OMB) have encouraged federal agencies to use electronic fund transfer payment mechanisms. The requesting agency's automated systems confirm the mathematical accuracy of the payment requests and the agency certifying officer confirms the accuracy of an entire tape. Nearly all agency payments are made via computer tapes, and 46 percent of these are electronic fund transfer.<sup>6</sup> These tapes have the data fields for the Treasury's automated check processing format and/or the Federal Reserve requirements for electronic fund transfer. The payment center adds its identification number and each



government programs with static or shrinking budgets. Congress, for its part, faces the daunting task of allocating limited resources in ways which maximize the effectiveness of agencies while minimizing their costs -- particularly overhead costs. Each year the federal government spends in excess of \$250 million to produce, deliver, and account for more than a billion payments totaling \$1.4 trillion.<sup>22</sup>

### **Recommendations**

1. **The Treasury Regional disbursing operations should be consolidated further.**  
The number of paper check disbursements has dropped radically since 1982 and the number of electronic payments has increased.
2. **The Treasury's Financial Management Service should continue to upgrade technology rapidly to ensure that Federal Program Agencies have the option to electronically send payment data when cost efficient.** Money and data can now be moved efficiently electronically. This would allow them to eliminate current process time lags, improve the efficiency of the payment process, and be an immediate costs savings to the Government.
3. **Create an FMS Revolving Fund, using existing reimbursable service charges for automated system improvements.** This would speed up the utilization of the new electronic technology in the current Five-Year Information Resources Management Plan.
4. **The underlying assumptions of FMS' long term system development project needs to incorporate the above stated recommendations.** The preceding recommendations all affect the way FMS will be conducting business.
5. **Lower impact recommendations:**
  - a. **Mandate electronic disbursements for all Agency payroll payments.**
  - b. **As an incentive to convert, the individual agencies should be charged the postage costs incurred by FMS for mailing the checks.**
  - c. **All agencies should be required to convert to the electronic payment system this year.** Annually, millions of dollars are paid to GSA by checks rather than using the available electronic On-Line Payment and Collection

1982, the last time it consolidated Finance Centers, the Treasury has not taken advantage of these changes to streamline its business structure, improve customer service and decrease costs. The Treasury still sends computerized disbursement tapes by couriers between cities. About twenty per cent of all federal payments are made by other departments, yet it insists that only the Treasury is should be making all Government disbursements.

The Treasury has been a leader in automating the government payments and using electronic payments through the Federal Reserve. They believe that they can make their own disbursements more efficiently and cheaper by utilizing the current computerized environment. In 1991 FMS embarked on a major automation effort to improve their existing way of doing business.

They believe that their Centralized Payment concept has great potential for consolidating monthly beneficiary payments from different agencies, will improve customer service, and significantly lower costs. They have been working with Federal agencies to address the following existing problems in the payment process:

1. The government loses about \$100 million annually to payments to deceased or unentitled beneficiaries.<sup>14</sup>
2. In 1991, the Social Security Administration made 480.8 million payments to beneficiaries -- 61 percent of FMS payments, only half were by electronic transfer.<sup>15</sup>
3. In 1991, the Department of Veterans Affairs made 45 million FMS payments-- percent of FMS payments, only 42 percent were by electronic transfer.<sup>16</sup> The Department is a dissatisfied customer of FMS' Regional Finance Centers. FMS can fulfill its responsibilities by accepting an oversight role while allowing the VA to merge payment processing into its financial management operations.<sup>17</sup> They have a need of any and all services now provided by the banking community which would enhance Veteran's ability to reduce or prevent accounts receivable.<sup>18</sup> A 1993 VA contractor study concludes that the private sector has the capability of providing greatly improved check disbursing services,<sup>19</sup> at a higher cost.<sup>20</sup>
4. In 1991, the Office of Personnel Management made 26,6 million payments--3 percent of FMS payments, 63 percent were electronic transfer.<sup>21</sup>

Today, federal executives are required to manage many complex and essential



## REPEAL SECTION 5010 OF THE INTERNAL REVENUE CODE TO ELIMINATE THE TAX CREDIT (WINE AND FLAVORS)

### Background

Before 1980, all ingredients including wine, flavors, and distilled spirits were taxed individually before being combined into a final product. These various alcohol products were (and are) taxed at substantially different tax rates. To ensure that no tax advantage was gained by using wine and flavors in a distilled spirits product, a rectification tax existed that made the tax rate on all spirits substantially the same. The Distilled Spirits Tax Revision Act of 1979 changed the taxes so they are levied on the final product. Congress amended the Internal Revenue Code (26 U.S.C. 5010) in 1980 to again tax spirits, wine and flavors individually. However, a rectification tax was not re-imposed. As a result, spirits containing wine and/or flavors were taxed at a rate substantially lower than the same product would have been taxed before 1980.<sup>25</sup>

The resulting tax credit allows distilled spirits producers to derive up to 50 percent of the alcohol content of their beverage from lower-taxed wine and up to 2.5 percent of the alcohol from lower-taxed flavors, leaving a required minimum of 47.5 percent of the alcohol derived from distilled spirits.<sup>26</sup> Section 5010 reduces the effective tax rate for distilled spirits products containing wine and flavors substantially below the \$13.50 per proof-gallon tax rate for distilled spirits, to as low as \$9.14 per proof-gallon.<sup>27</sup>

Congress enacted 26 U.S.C. 5010 to restore the tax status of wines and flavors in distilled products to that which had existed prior to 1980. Rather than restore the tax status of wines and flavors which had existed prior to 1980, however, the enactment of Section 5010 actually created new tax advantages for formulating a distilled spirits product with wines and flavors, so that, even with the tax increase of 1985, the total taxes on certain products have not attained the level that existed prior to 1980.<sup>28</sup>

As a result of this tax advantage, the use of wines and flavors has increased dramatically since the enactment of Section 5010<sup>29</sup> and the loss of tax revenue has increased correspondingly.<sup>30</sup> The current structure has created an incentive to use wines and flavors to provide the flavoring for a distilled spirit simply to take advantage of the tax credit.<sup>31</sup>



System.

- d. **Eliminate the practice of sending salary payments to disbursing agents.**  
Every two weeks, the Washington Disbursing Centers has to identify and distribute 16,877 payroll checks to 4,301 federal disbursing agents. Some checks have to be sent by registered mail. This special service is inefficient and a violation of internal controls, especially for small offices.
- e. **FMS should develop a standardized electronic vendor payment process for the Government.**
- f. **For employees being paid salaries by electronic transfer, offer automatic conversion of banking information when retiring or transferring between federal agencies.**

### **Implications**

There are rather large potential savings and benefits from further automation and centralization. Estimated savings range from several thousands of dollars for smaller agencies to potential savings on the order of tens of millions of dollars for one of the larger high volume agencies. The total potential savings for the FMS automation project System 90 life-cycle exceeds \$150 million.<sup>23</sup>

### **Fiscal Impact**

1. If Agencies required nearly 100% EFT participation of their employees by 1996, the government would save a significant amount of money in paper check processing costs, alone.
2. The potential exists for saving approximately \$61 million annually in postage costs when all check payments are converted to EFT.<sup>24</sup>

manufacturers since BATF agents do not have the authority to inspect distilled spirits in other countries to verify that wine or flavors have actually been added to imported products that claim the tax credit.<sup>14</sup>

One unanticipated side effect of the credit has been the tax advantage enjoyed by Canadian whiskeys over whiskeys produced in the United States. Canada allows a larger percentage of wine and/or flavor than does the United States. If Canadian whiskey is produced with the maximum wine and flavor content allowable under Canadian law, it is eligible for \$0.97 credit per proof gallon versus a maximum of \$.34 per proof gallon for U.S. produced whiskeys. During recent years, Canadian whiskey has increased its share of the U.S. market, possibly because to this price advantage.<sup>15</sup>

### **Recommendations**

1. **Congress should repeal the wine and flavorings tax credit (section 5010 of the Internal Revenue code).** The tax credit results in major loss of revenue, is economically inefficient, and is difficult to enforce.

### **Implications**

BATF has proposed repealing section 5010 before. The main beneficiaries of this credit are a few large distillers. There are some distillers however, who would support this repeal, as they do not use the credit and are at a competitive disadvantage to those who do.<sup>16</sup>

### **Fiscal Impact**

Repeal of Section 5010 of the Internal Revenue code to eliminate the wine and flavoring tax credit would achieve approximate revenue increases of \$100 million annually. Revenue increases savings would begin immediately after the implementation date of the statutory change. Although Section 5010 is complex and difficult to administer, it is not resource intensive. Resource savings would probably be 1.5 staff years or less.

These additional ingredients can increase the cost of a distilled spirits product by 200 percent or more, but these added costs are more that offset by the tax credit. An example provided by the Bureau of Alcohol, Tobacco, and Firearms illustrates how the tax credit lowers the total production cost (including taxes). A 42-proof cordial's material costs would increase from 27 cents to 81 cents per gallon by adding 50 percent wine. However, the tax credit would reduce the tax expense by \$2.28, thereby lowering the cordial's total cost by \$1.74 per gallon.<sup>32</sup>

Another example is gin, which can obtain its flavor naturally though the fermentation process as the spirit is created, or it can obtain it artificially by adding juniper berry flavor to a neutral distilled spirit. The natural method is the easiest and cheapest method of production, but because of the tax credit, distillers choose to use the latter method. In addition to the government losing tax revenues this is a wasteful and inefficient use of natural resources that would not otherwise occur.<sup>33</sup>

BATF officials stated in interviews that there are many other examples where ingredients are added to obtain the tax benefits, rather than in response to product requirements, market demand, or cost.<sup>34</sup> Since enactment of the credit, production eligible for the tax has outpaced original projections as have the federal revenue losses, which now total about \$67 million annually for domestic products alone, meaning the estimated loss of revenue has been exceeded by over 500 percent.<sup>11</sup> There are no available statistics on the amount of credits taken for imported products, however, BATF estimates the total to be about \$33 million.

In addition to the revenue loss and economic inefficiencies due to the credit, BATF also has some problems administering section 5010.<sup>12</sup> Because it is cheaper for manufacturers to use distilled spirits and a trace of wine or flavors, and than claim the credit without actually using the lower-taxed wine and flavors, it is important that BATF ensure compliance with the provisions of the credit. But BATF is often unable to verify compliance with this tax credit without extensive investigation. For example, laboratory tests cannot determine the source of the alcohol in the product. Therefore, a thorough inspection of the company's records is required to determine exactly what ingredients were used to make the product.<sup>13</sup> Inspections are not even possible in the case of foreign



## FISCAL IMPACT WORKSHEET

ISSUE TITLE: Repeal Section 5010 of the IRS Code to Eliminate Tax Credit of Wines and Flavors

### RECOMMENDATION:

Congress should repeal the wine and flavorings tax credit (Section 5010 of the Internal Revenue Code).

### METHODOLOGY:

BATF statistics show that the tax credit for domestic producers is about \$67 million per year. The amount of tax credit claimed by foreign producers is not available, however, based on the amount of imported products eligible for the credit, BATF estimates the tax credit claimed on imported goods is about \$33 million per year.

### IMPLEMENTATION APPROACH:

Treasury Department will have to prepare draft legislation for Congress to enact to repeal the tax credit.

### FISCAL IMPACT TABLE:

| In Millions of Dollars |       |       |       |       |       |       |
|------------------------|-------|-------|-------|-------|-------|-------|
|                        | 1994  | 1995  | 1996  | 1997  | 1998  | 1999  |
| Budget                 |       |       |       |       |       |       |
| Authority              |       |       |       |       |       |       |
| Outlay                 |       |       |       |       |       |       |
| Revenue                | \$100 | \$100 | \$100 | \$100 | \$100 | \$100 |
| Change                 |       |       |       |       |       |       |
| in FTE's               | -1.5  | -1.5  | -1.5  | -1.5  | -1.5  | -1.5  |

### CLASSIFICATION INFORMATION:

Function:

Agency: Treasury Department

Bureau: Alcohol, Tobacco, and Firearms

| Fiscal Year | Cost Savings Through<br>Repeal of Section 5010 | Compliance Savings |
|-------------|------------------------------------------------|--------------------|
| 1994        | \$ 100,000,000                                 | \$ 100,000         |
| 1995        | \$ 100,000,000                                 | \$ 100,000         |
| 1996        | \$ 100,000,000                                 | \$ 100,000         |
| 1997        | \$ 100,000,000                                 | \$ 100,000         |
| 1998        | \$ 100,000,000                                 | \$ 100,000         |
| 1999        | \$ 100,000,000                                 | \$ 100,000         |
| TOTAL       | \$ 600,000,000                                 | \$ 600,000         |

## **AMEND OR REPEAL SECTION 5121 OF THE INTERNAL REVENUE CODE REQUIRING SPECIAL OCCUPATIONAL TAXES ON RETAIL ALCOHOL DEALERS**

### **Background**

Section 5121 of the Internal Revenue Code of 1986 requires retail dealers in distilled spirits, wines, and beer to pay an annual special tax for each place where they conduct business. Upon proper payment, the Secretary of the Treasury issues to the dealer a stamp as evidence of payment of the tax.<sup>17</sup>

The Bureau of Alcohol, Tobacco, and Firearms (BATF) administers these special occupational taxes (SOT) imposed on all businesses that manufacture or sell alcohol. SOT rates range from \$250 for alcohol retailers to \$1,000 for manufacturers and other businesses. According to BATF, about 90 percent of the \$117 million collected for SOT in fiscal year 1992 was from alcohol retailers.<sup>18</sup>

BATF assumed responsibility for collecting SOT from IRS in July 1987. Because BATF estimated (on the basis of surveys and a 1986 General Accounting Office report) that about 40 percent of the alcohol retailers were not paying their occupational taxes, a vigorous enforcement effort was started, that has raised the compliance rate from 64 percent to 82 percent. The enforcement effort along with an increase in the SOT contributed to the significant increase in SOT collections from \$26 million in fiscal year 1987 to \$128 million in fiscal year 1988.<sup>19</sup> Some of the noncompliant retailers identified were not aware of the tax and, because they had not paid for many years, owed substantial sums (including penalty and interest). The rise in the SOT and the increased level of enforcement led to numerous complaints from alcohol retailers to Congress.<sup>20</sup>

BATF has identified about 453,000 of the 550,000 estimated retailers liable for paying the SOT.<sup>21</sup> The lists of eligible taxpayers must be continually updated as companies start or go out of business.<sup>22</sup> Alcohol retailers subject to the current SOT range from high volume liquor stores to small "mom and pop" grocery stores. Other businesses that sell alcohol (such as private clubs, limousines with a bar or that serve champagne, and florists that deliver wine and flowers) are also liable for the special occupational tax. Even with its vigorous enforcement program, BATF has had problems identifying all of the alcohol



Account:

| Changes in Administrative Costs |       |       |       |       |       |
|---------------------------------|-------|-------|-------|-------|-------|
| In Thousands of Dollars         |       |       |       |       |       |
|                                 | 1994  | 1995  | 1996  | 1997  | 1998  |
| Salaries and Expenses           | \$100 | \$100 | \$100 | \$100 | \$100 |

of SOT as part of the state license renewal process, and would receive a portion of SOT revenue.<sup>19</sup>

### **Recommendations**

- 1. Congress should amend Section 5121 of the Internal Revenue Code to prohibit the sale by wholesalers dealers of distilled spirits, wines, and beer to a retail dealer who has not paid the annual special (occupational) tax imposed by section 5121 on retail dealers in distilled spirits, wines and beer.** The amended legislation should make it unlawful for a wholesale dealer to sell distilled spirits, wines or beer to a retail dealer without evidence that the retail dealer has paid the special occupational tax. This option would probably face strong grass-roots opposition from both wholesale and retail dealers.
- 2. Congress should pass legislation to concurrently: (1) increase the excise taxes on alcohol to equal the amount collected from the SOT on retail dealers, wholesalers, and manufacturers of distilled spirits, beer, and wines, and (2) repeal the SOT.** This proposal would (1) reduce the cost and burden of BATF's monitoring and collection efforts; (2) ease the tax burden on small business; and (3) tie the amount of tax paid to the amount of business conducted.
- 3. The BATF should request that states help in collecting SOT,** and in return for their assistance states would be authorized to retain a portion of the total SOT collected in their states to reimburse them for their assistance. One revenue neutral proposal involves allocating to the states the amount of SOT retailer revenue collected in excess of amounts BATF would be likely to collect without state involvement.

### **Fiscal Impact**

If compliance can be increased to near 90 percent (full compliance is practically impossible to attain) it is estimated that revenues from SOT fees would increase about \$9 million annually. However, revenues could be less depending on the number of businesses who decide to stop selling alcoholic beverages because of the tax. A number of small business and businesses who conduct only a few transactions involving alcoholic products elected to stop selling alcoholic beverages after the 1988 SOT hike and the increased BATF

retailers subject to the tax and collecting amounts due from them.<sup>23</sup>

Historically, the SOT has suffered low compliance at the retail level.<sup>24</sup> Retailers do not require a federal license, and pay no alcohol excise tax, so record-keeping at the federal level is incomplete. These factors, coupled with a SOT rate of only \$250/year for retailers, contributed to the low retail compliance of about 82 percent.<sup>25</sup> In contrast, at the wholesale and production stages, compliance has always been close to 100 percent.<sup>26</sup>

The universe of 550,000 retail dealers selling alcohol beverages makes it practically impossible for BATF agents to effectively monitor compliance with the law.<sup>27</sup> In contrast to the large number of retailers, there are only about 10,000 wholesale liquor dealers.<sup>28</sup> This much smaller universe makes it easier for BATF agents to monitor compliance with the law.<sup>29</sup> These factors led to a proposal in the 1991 budget to shift collection point of the SOT from retailers to wholesalers and producers. Producers and distributors resisted strongly, as it stood to increase their SOT tax burden significantly--an average of about 3,000 percent. OMB and Treasury staff reached agreement on an alternative approach to improve compliance and increase revenues that would be more acceptable to the alcohol industry. The revised proposal instead would require distributors to obtain proof of SOT compliance before selling alcoholic beverages to their retail customers. However, this proposal has not been implemented.<sup>30</sup> BATF officials estimate that this proposal would increase retailer compliance to over 90 percent resulting in additional 40,000 retailers paying SOT.<sup>15</sup>

Another proposal would be to eliminate the SOT and increase the excise taxes on alcohol. Treasury and BATF officials indicated that only a very small increase in the excise taxes would be required to make up for the loss in SOT revenue.<sup>16</sup> BATF officials estimated that an average increase of about 1.5 percent over the current alcoholic beverage excise tax would bring in the same revenue while more directly tying the amount of tax paid by any licensee to the amount of business conducted.<sup>17</sup> Although this proposal would not lead to increased revenue it would: (1) reduce the cost and burden of BATF's monitoring and collection efforts, and (2) ease the tax burden on small businesses.<sup>18</sup>

A third option would be to enlist the aid of states to help identify alcohol retailers and collect the SOT. States participating in the program would require evidence payment



## FISCAL IMPACT WORKSHEET

ISSUE TITLE: Amend or Repeal Section 5121 of the IRS Code Requiring Special Occupational Taxes on Retail Alcohol Dealers

### RECOMMENDATION:

Congress should amend Section 5121 to prohibit the sale by wholesale dealers of distilled spirits, wines, and beer to retail dealers who have not paid the annual special occupational tax.

### METHODOLOGY:

BATF estimates that this change will result in an additional 40,000 retailers paying the special occupational tax, amounting to a revenue increase of \$10 million annually..

$$40,000 \times \$250 = \$10,000,000$$

The 40,000 retailers identified through this legislative change would be assessed penalties and interest for failure to previously pay their tax. A BATF analysis estimated that an average the average liability would be \$710 (\$500 back taxes and \$200 penalties and interest). Based on prior experience, BATF estimates that 60% of this potential revenue would be collected. Many liabilities will be subject to (a) compromise due to doubt as to liability or doubt as to collectibility, (2) waiver or abatement of penalties due to reasonable cause, or (3) being declared currently not collectible.

$$40,000 \times \$710 = \$28,400,000$$

$$60\% \times \$28,400,000 = \$17,040,000$$

### IMPLEMENTATION APPROACH:

Treasury Department will have to draft proposed legislation for Congress to amend Section 5121.

compliance. In addition, there would be some additional revenues from interest and penalty payments collected in the first two years from newly identified retailers who have not paid their SOT in prior years.

| Fiscal Year | Estimated Annual Revenue Increase From License Fees | Estimated Annual Revenue Increase From Interest and Penalties | Compliance Savings |
|-------------|-----------------------------------------------------|---------------------------------------------------------------|--------------------|
| 1994        | \$ 10,000,000                                       | \$ 10,000,000                                                 | \$                 |
| 1995        | \$ 10,000,000                                       | \$ 7,040,000                                                  | \$                 |
| 1996        | \$ 10,000,000                                       | \$                                                            | \$                 |
| 1997        | \$ 10,000,000                                       | \$                                                            | \$                 |
| 1998        | \$ 10,000,000                                       | \$                                                            | \$                 |
| 1999        | \$ 10,000,000                                       | \$                                                            | \$                 |
| TOTAL       | \$ 60,000,000                                       | \$ 17,040,000                                                 | \$                 |

This option is revenue neutral, however BATF estimates that non-personnel savings of about \$800 thousand annually could be achieved by the decrease in the extent of compliance needed.

Fiscal implications are not clear, since we don't know what portion of the taxes collected that states would be reimbursed. If the proposal to allocate to the states the additional revenue collected (including penalties and interest), then this option is revenue neutral.

## STREAMLINE THE U.S. SAVINGS BOND PROGRAM

### Background

The Savings Bonds Division is a \$22 million, 233<sup>20</sup> person organization which primarily promotes the sale and retention of savings bonds through an extensive field office network. The administrative costs of this program are born by the Bureau of Public Debt which issues, accounts for, prints and mails each savings bonds. Except that Treasury's Regional Disbursing Centers individually prints and then mails savings bond to Federal employees. Treasury and OMB have a continuing effort to streamline elements of the savings bond program.<sup>21</sup>

Although sales have been steadily increasing, there is no evidence linking the efforts of the Division sales representatives to sales levels. The 30 percent increase in sales from 1991 to 1992 can be attributed to the guaranteed interest rate on savings bonds which was higher than the prevailing rate on Treasury securities or bank accounts.<sup>22</sup> However, Treasury recently lowered the guaranteed savings bond interest rate from 6% to 4%, saving an estimated \$2.5 billion in interest costs during the next five years.<sup>23</sup>

The Savings Bond Division has a field staff of 182 employees who primarily canvas private sector employees to increase payroll savings. Essentially, savings bonds sell by themselves, offering an attractive guaranteed interest rate and the interest earned is exempt from state and local taxes.<sup>24</sup> There is currently no performance system to determine effectiveness of this sales technique. Sales marketing efforts should be directed toward the over the counter market which is a more cost effective selling mechanism.<sup>25</sup>

The sales cost for selling savings bonds should be reduced by increasing volunteer efforts and reducing the paid sales staff.<sup>26</sup> The current Savings Bond Division should be eliminated and a small staff transferred over to the Bureau of Public Debt to serve as liaison with banks and companies because most of the sales are attributed to the Payroll Savings Program and financial institutions network.<sup>27</sup>

As we move away from field sales and encourage employees to promote sales to private sector employees, we recommend that companies receive material recognition for



FISCAL IMPACT TABLE:

|           | In Millions of Dollars |      |      |      |      |      |
|-----------|------------------------|------|------|------|------|------|
|           | 1994                   | 1995 | 1996 | 1997 | 1998 | 1999 |
| Budget    |                        |      |      |      |      |      |
| Authority |                        |      |      |      |      |      |
| Outlay    |                        |      |      |      |      |      |
| Revenue   | \$20                   | \$17 | \$10 | \$10 | \$10 | \$10 |

CLASSIFICATION INFORMATION:

Function:

Agency: Treasury Department

Bureau: Alcohol, Tobacco, and Firearms

Account:

liaison with these contacts. The proposal represents the most cost effective method of offering administrative support to promote savings bonds.<sup>28</sup>

There are several recommendations that would make the purchase of savings bonds more attractive to the potential customers. Implementation of these recommendations would increase the volume of saving bond sales.

### **Fiscal Impact**

Extensively downsizing the Division over a five-year period would result in total savings of \$12 million a year, and eliminate up to 185 positions. The recommendation for book entry would eliminate the printing and mailing costs of each bond, and the decrease the workload in the of the Treasury's Regional Disbursing Centers.

their participation in promoting savings. The recognition initiative could parallel the Malcolm Baldrige Award in its level of prestige. It could be called the Savings Bonds Hall of Champions, and be given to the recipient organization's Chief Executive Officer by either the President or the Vice President. The volunteers from the companies would be used to market bonds and virtually eliminating the need for salaried Federal workers.

### **Recommendations**

1. To better carry out its mission for promoting the sales and retention of savings bonds, the Division should be consolidated with the Bureau of Public Debt and direct its marketing emphasis to more cost effective over the counter market and larger denomination bond sales.
2. All other Government Debt is sold by book entry. Under this concept, the Government doesn't send the savings certificate to the purchaser, but maintains a record of the sale in its computer system. The Department should explore the sale of savings bonds through an automated process.
3. The Department should have a methodology for determining which promotional methods work and are cost effective, and redeploy its resources into these areas.
4. The sale of savings bonds should be defined in terms of its goal of providing for cost effective Federal debt financing.
5. The sale of savings bonds should de-emphasize its promotion of smaller denomination bonds in order to better meet its objective of reducing the administrative cost of the public debt to the Treasury, but still making bonds to the small saver.
6. The \$15,000 limit on savings bond sales should be raised.
7. Give taxpayers the option of receiving refunds in the form of savings bonds.

### **Implications**

The consolidation option substantially reduces a division with an outdated mission. However, because most of the sales are attributed to the payroll savings program and the financial institutions network, it is important to retain some level of staffing to serve as a



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40. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 13.
41. Ibid.
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**Section III**  
**The Department of the Treasury**  
**Reinvention Activities**



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- o Think Tank (TTT)- analyzes and develops recommendations for improvement opportunities, and
- o Change Agent (CAT) - works with Bureaus and Departmental Offices to implement improvement opportunities, solicit ideas from employees and customers, and stimulate efforts to help encourage participation.

Very early in the process, Treasury recognized the need for this two tier approach to reinvention. The TTT would initially focus on feeding ideas to the NPR Teams and analyzing and commenting on recommendations developed by the NPR Teams. At the same time, the CAT would focus on developing a reinvention process unique to Treasury that would have a commitment to a long-term, permanent culture of change and improvement.

## **MOTIVATING PARTICIPATION**

A cornerstone of Treasury's reinvention effort is the involvement of employees at all levels. On June 7, 1993, Secretary Bentsen sent a letter to all employees announcing our reinvention efforts and asking for employees' suggestions. As part of this letter, the Secretary announced an 800 telephone number for ideas.

On June 17, 1993 the Vice President held a Town Hall meeting at the Department of the Treasury. Employees representing the full range of Treasury personnel attended the Town Hall to express their ideas and concerns to the Vice President. Treasury made and distributed a tape to all Bureaus for those employees who could not directly attend the Town Hall. During the Town Hall, idea cards were distributed to the attendees.

Individual bureaus are conducting their own town hall meetings and focus groups to continue to collect employee ideas on what needs to be improved and how best to implement improvements.

As a result of all these efforts, the TRT has received thousands of employee suggestions and comments.

## **INDIVIDUAL BUREAU REINVENTION STRATEGIES**

In July, the TRT began working with the bureaus to assess their current state of

## **TREASURY REINVENTION ACTIVITIES**

### **INTRODUCTION**

Reinvention is changing the way we do business to better serve our customers. The Department of Treasury has been on the forefront of the quality improvement revolution, by launching specific initiatives to establish better performance measures, customer-orientation, and quality improvement processes. With reinvention, we are breaking down barriers between management and employees; between bureaus in the Department of Treasury; and between the government and the private sector.

In response to the Vice President's letter of April 2, 1993, to the Secretary of the Treasury, the Secretary created a Treasury Reinvention Team (TRT) to: support the Administration's "Reinvention of Government" and the National Performance Review (NPR); serve as liaison to the NPR; identify Treasury-wide improvement needs; create a more unified and efficient organization through information partnerships and change-oriented culture. As part of these functions, the TRT is also responsible for monitoring and facilitating the six labs established within five bureaus in Treasury.

### **STRUCTURE OF TREASURY REINVENTION**

Treasury reinvention efforts are structured to facilitate the implementation of quality changes and the elimination of barriers at all levels of Treasury. The basic structure consists of a Steering Committee, a Coordination Group and a Treasury Reinvention Team.

The Steering Committee consists of top Treasury executives, all of whom are deeply committed to the theory and process of reinvention and continuous improvement.

The Coordination Group serves as the focal point for the Department's response to the Reinvention concept and coordinates the activities of the groups that make up the Treasury Reinvention Team.

The TRT is comprised of experienced, career staff employees and managers drawn from most of Treasury's Bureaus and Departmental Offices. The team is working in two sub-groups:



- o Bureau of Engraving and Printing (BEP) (two labs)--
  1. plans to improve its acquisition processes which will result in better customer services delivery. BEP is currently working with the Department to determine which procurement regulations can be alleviated within Treasury to enable expedited procurement procedures.
  2. plans to improve services to disabled customers, including the sight impaired. Public satisfaction should increase, the number of taxpayers able to take and enjoy the tour should increase and the perception of responsiveness to the need of customers should improve. This lab is currently in the construction stages.
- o Financial Management Service (FMS) --is responding to its customers, members of Congress, and citizens who have voiced concerns with the time it takes to process and settle a claim for payment of funds to recipients whose checks have been lost or stolen. FMS has initiated a review of the check claims process to reduce delays, targeting the time it takes to settle a claim from an average processing time of 62 to 14 days.

## **FUTURE PLANS**

As part of the ongoing reinvention of Treasury systems, the TRT will continue working with the Bureaus to identify and expand opportunities for forming information partnerships. In addition to sharing data bases, these partnerships across Bureau lines will share best practices and solve departmentwide problems. Mechanisms are being established to facilitate implementation of NPR recommendations, reinvention labs, and longer term improvement efforts and to evaluate the results.

readiness for reinvention, recognizing that some organizations, such as IRS, have been involved in reinvention for several years.

The TRT is currently working with all the Bureaus and Departmental Offices to develop strategies for long-term reinvention efforts to implement immediate improvements in response to employees suggestions, and to identify and overcome barriers to reinvention.

## **REINVENTION LABORATORIES**

The Treasury has established six labs in five Bureaus.

- o Internal Revenue Service--is currently engaged in a major effort to re-engineer its work processes. The Helena District Office was selected as a lab to test innovative methods of work management, including multi-functional work groups (eliminating functional boundaries), reduced management layers, cross-functional positions, peer evaluations and greater reliance on customer oriented performance measures. Expected benefits of the lab are one stop service for taxpayers, increased tax compliance and reduced operating costs. The Helena lab embodies many of the management and operational concepts IRS has envisioned to move it into the next century.
- o Office of Thrift Supervision--plans to re-engineer its process for approving corporate applications, to improve efficiency by reducing processing time and costs to the thrift industry without sacrificing the quality of the reviews. Although OTS has currently met the required standard time frames to process applications, their immediate goal is to reduce that time frame and establish a new standard. The decrease in operational costs will be passed on to the thrift industry in the form of lower fees. Additionally, workers will be relieved from unnecessary paperwork and various layers of review.
- o U.S. Customs--will improve its air passenger processing. Customs receives more complaints from air passengers than from any other group it services. This lab involves the placement in three airports of Passenger Service Representatives (PSR's) who are empowered to coordinate closely with all levels of Customs airport supervisors, airline management and airport facility management to resolve problems of individual travelers on-the-spot. The PSR's will increase the level, quality and timeliness of service to airline passengers.

**Fiscal Impact Figures  
Have Not Been Finalized**



**Section IV**  
**Fiscal Impact Summary**

## **ISSUE 01: IMPROVE COORDINATION AND STRUCTURE OF FEDERAL LAW ENFORCEMENT**

### **REBUTTAL PAPER BY TREASURY**

#### **National Performance Review (NPR) Recommendations**

- 1. The President should establish a Director of Law Enforcement (DLE) modeled after the Director of Central Intelligence (DCI).** The Attorney General should serve a dual role as the DLE and head of the Department of Justice. The DLE should be the chief law enforcement officer of the federal government and the primary adviser to the President on national law enforcement matters. The DLE should also be the central policy and priority setting authority with respect to all federal law enforcement activities, and be responsible for establishing and implementing a national strategy on law enforcement. In addition, the DLE should review and approve all federal law enforcement resource allocations and program funds in accordance with the Administration's priorities.
- 2. The President should establish an Executive Law Enforcement Council (ELEC), chaired by the DLE.** The ELEC should include representatives of the Departments of Justice, Treasury, State, Transportation, Defense, and the Central Intelligence Agency, the Border Agency and the Office of National Drug Control Policy. The ELEC should advise the DLE on all federal law enforcement matters. Such matters should include clarification of jurisdictional responsibilities among agencies, resolution of interagency conflicts, development of policies to ensure coordination and information sharing among agencies, development of a uniform statistical reporting system to ensure accurate law enforcement data, recommendations on the structure and alignment of law enforcement agencies, development of a performance measurement system which rewards interagency team efforts, development of programs to enhance federal support to state and local law enforcement, and development of standards to evaluate each agency's contribution to the DLE's priorities.
- 3. The President should initiate a realignment of federal law enforcement, as follows:**

**Section V**  
**Rebuttal Papers by Treasury**



off shotguns and other gangster type weapons) was enacted in 1934. To this day, the NFA remains a tax statute in the Internal Revenue Code and continues to be the principal Federal statute addressing the manufacture, possession, and transfer of machine guns, sawed-off shotguns, silencers, destructive devices, and similar gangster-type weapons.

Treasury bureaus also provide support for each other in important ways that would be lost under this NPR proposal and position paper ISSUE 02. Secret Service depends on the experience and training of Treasury law enforcement officers (particularly those from BATF and U.S. Customs) to assist in its Presidential election campaign protective duties every four years. Without this support, the protective function could be jeopardized.

There is a long history of cooperation among law enforcement bureaus. Customs has been the surrogate agency at the border responsible for enforcing the laws and regulations of 60 Federal agencies. The Federal Law Enforcement Training Center has successfully cooperated with 70 Federal law enforcement entities to conduct training programs, suggesting that it should be possible for Federal law enforcement organizations to cooperate without requiring a consolidation of their functions. The Internal Revenue Service routinely coordinates investigations and prosecutions with the Department of Justice.

NPR asserts that there is overlap between federal law enforcement and State and local jurisdiction, but this is not supported. Treasury has supported the law enforcement activities of state and local agencies through asset forfeiture sharing, criminal intelligence sharing, joint investigative initiatives, and training. NPR describes and criticizes these activities as an overlap and an inefficient use of resources. We view this interaction as critical to the overall success of law enforcement throughout the country.

As an example, BATF provides expert and unique assistance with state and local law enforcement agencies in arson investigations. BATF will send its National Response Team to major fires to assist local authorities in the investigation. The BATF staff provides technical expertise, but does not take charge of the scene.

It was never envisioned that by federalizing crimes such as receipt of firearms or explosives by convicted felons, or by making it unlawful to deal in these items without a federal license, that the federal government could solve the violent crime problem in the U.S. To the contrary, Congress recognized that most problems of crime and violence must

(a) Transfer the law enforcement functions, authorities and related resources of the Bureau of Alcohol, Tobacco and Firearms (BATF) from the Department of Treasury to the Department of Justice and merge then into the Federal Bureau of Investigation (FBI);

(b) Transfer the compliance (e.g., regulatory and revenue) functions, authorities and related resources of BATF to the Internal Revenue Service (IRS); and

(c) Merge (e.g., as a Division) the Drug Enforcement Administration (DEA) into the Federal Bureau of Investigation (FBI).

### **TREASURY POSITION**

#### **1. Cooperation and Coordination of Law Enforcement**

The major problems cited by NPR regarding the current configuration of law enforcement functions were the lack of coordination and cooperation between the law enforcement entities, and the ambiguous nature of federal law enforcement agency missions.

NPR states that lack of coordination and cooperation among the federal agencies continues to be a problem despite coordination and task force efforts, such as ONDCP and OCDETF. The solution proposed by the NPR team, however, would not eliminate competition or guarantee cooperation in the law enforcement areas.

The proposal attempts to consolidate certain non-financial law enforcement under Justice, but does not address other law enforcement entities within Justice (e.g., the U.S. Marshals Service) or entities outside Justice (e.g., the Department of Commerce (export control laws), the U.S. Park Police, statutory Inspectors' General Offices, or numerous other law enforcement agencies).

Separating certain enforcement functions from their regulatory functions at Treasury, would further complicate certain types of investigations. An example is the benefits derived from coupling BATF's firearms enforcement duties with its regulation of firearms and explosives. BATF and its predecessor units within the IRS had a long history of combined regulatory, taxing and law enforcement functions dating back to prohibition. BATF and its predecessors have enforced federal firearms statutes since the National Firearms Act (NFA) (imposing tax and registration requirements on machine guns, sawed-



more responsive to citizen needs. Later, this thinking led to the breakup of the Department of Health, Education and Welfare. More recently, the Vice President has criticized the two most centralized agencies in government, the General Services Administration and the Office of Personnel Management, as being unresponsive and inflexible to change. In a Washington Post article dated July 21, 1993, Vice President Gore cited the over 1,000 pounds of government personnel regulations one has to follow "to hire, fire, or promote a government employee."

Accordingly, we question this major move toward centralization of the budgetary process for law enforcement. It removes accountability over very large sums of money. It provides a process which will be cumbersome and difficult regarding the oversight responsibilities of both the executive and legislative branches. This could seriously impact the role of what NPR identified, in discussions with Treasury representatives, as the "minor" players (e.g., Fish and Wildlife, Environmental Protection Agency, Agriculture, etc.) and their responsibility to enforce laws which protect the health, safety, and well being of the American public.

Coordination and development of strategic direction could be achieved through the creation of the (ELEC), chaired by the Attorney General. However, it is imperative that budget decisions remain at the agency level to ensure law enforcement efforts and resources are responsive to the priority areas as established by the Council. The United States government structure within the democratic framework is based on a system of effective checks and balances. As such, a centralized budget process would negate these principles.

### **3. Law Enforcement Missions:**

Law enforcement agencies are criticized for exceeding their original missions. The reason we now have over 70 federal agencies involved in federal law enforcement is because one agency can not do it all. Crime has not remained stagnant, and law enforcement has responded accordingly. The Congress has authorized, funded, and supported the expansion of missions and law enforcement authorities to be more responsive to this changing and increasing criminal threat. The effectiveness of our efforts are reflected in the ever increasing burden on the judicial and prison systems.



ultimately be resolved on the State and local level. The federal role was intended to be one of cooperative support with federal resources and federal expertise, and the federal ability to address crimes that affect interstate commerce that assists local law enforcement.

As a result, Batf's law enforcement operations are built around supporting State and local efforts. In fact, BATF establishes its operating plans around crime impact programs that call for local BATF offices to establish work plans to assist state and local agencies in efforts to address the most pressing crime problems in their communities. The hallmark of BATF law enforcement strategy has been community based, as opposed to Washington driven enforcement efforts. Successful enforcement of the federal firearms, explosives and arson statutes recognizes that in most instances, local interests are paramount, and the federal role is to assist, not control. Traditionally, the FBI mission has always focused on crimes which are of primary federal interest.

The U.S. Secret Service relies on cooperation with state and local agencies. These agencies provide support to Secret Service protective operations during visits of Secret Service protectees. State and local agencies, as well as other Federal agencies, provide support to Secret Service investigations of counterfeiting and fraud.

## **2. Director of Law Enforcement (DLE) & Centralization of Law Enforcement Budget Approval:**

The proposal to have law enforcement budgets reviewed and approved by the DLE instead of the individual agencies would adversely impact the integrity of the process. This concept is contrary to conventional wisdom on government reorganizations. Most re-invention efforts emphasize decentralizing operations, including authority and power to better serve our citizens. Centralizing is only advocated in policy making. Placement of budget authority to a central point seriously limits management's ability to carry out operational initiatives and use their resources as effectively as possible which transcends the activity of policy making. This theme is stated in both "Putting People First," written by the President and Vice President, and "Reinventing Government."

In law enforcement, the centralized structure problems goes back at least as far as the Kennedy Administration when there was an effort to decentralize BATF to make it

fact, many underworld leaders have gone to prison on Federal tax charges, rather than for other crimes. Some of the famous names from past history, whose convictions were brought about by CI, include Al Capone, Frank Nitti, "Dutch" Shultz. More recently, CID has been involved in the convictions of Leona Helmsley, Pete Rose, and Jim Baker. In addition, they have been involved with targets such as BCCI, John Gotti, and other major organized crime figures.

The NPR believes that the IRS has gone beyond their mission by their increased focus on money laundering investigations. It is important to note that money laundering is not solely involved with drug related offenses. Money laundering activities are primarily to evade the payment of taxes which is in total support of the mission.

#### **Implementation Problems:**

There are a number of foreseeable implementation problems associated with this proposal.

- o The NPR proposal causes concern over their understanding of the actual functions of BATF, their investigative approach and techniques used, the synergy between the various operational components and the specialized expertise required to effectively carry out their mission. For example, no National Firearms Act (NFA) criminal case can be made without tax certifications from BATF personnel responsible for the tax and registration requirements of the NFA.
- o It is unclear who would oversee the orderly transition and implementation of the BATF/FBI merger and ensure that pending cases (investigations) do not get lost in the shuffle?
- o The NPR recommends that the ELEC would coordinate for the Departments of State, Transportation, Defense, and the CIA. These are not mentioned earlier. There is no analysis. There is no mention of the Park Police, the Postal Service, Bureau of Prisons, Inspector General Offices, Office of Criminal Investigation (EPA), National Marine Fishery Services and Office of Export Enforcement (Commerce), Naval Investigative Service and U.S. Marshals Service. More



With specific regard to BATF, it was created to not only collect revenue and regulate the alcohol, tobacco and firearms industries to ensure compliance with most federal statutes relating to these industries, it was separated from IRS in 1972, in large measure in recognition of this expanded law enforcement mission. Since its creation in 1972, BATF has had these jurisdictions. Enforcement activities are critical to both regulation and tax collection. The enforcement and compliance operations work closely together and refer cases to each other. Through enforcement, BATF is able to maintain high compliance with regulations, laws, and tax codes.

BATF jurisdiction over firearms laws makes BATF a key federal agency for dealing with gangs and drug cases involving firearms. In fact, no other federal law enforcement agency has primary firearms jurisdiction. BATF mission has involved violent and criminal misuse of firearms by gangs and other criminal conspiracies. Within its first year, BATF had already initiated its first nationwide gang investigation. Since enactment of the National Firearms Act in 1934, which addresses "gangster type" weapons, the firearms laws have been used as an effective tool to target narcotics traffickers and criminal gangs who otherwise might escape federal prosecution for their illegal activities. BATF's resources have increased to fit the growing crime problem, but its mission has not changed.

BATF has expanded some programs at the direction of Congress. For example, in 1982, Congress passed the Anti-Arson Act which gave BATF jurisdiction over arson cases. Since that time BATF has been recognized as the world authority in arson investigations. Note that BATF took on this function because Congress gave BATF the jurisdiction, not because BATF identified new responsibilities and took them on.

While not a recommendation of the NPR, the background paper criticizes the involvement of multiple agencies in investigating money laundering activities. The mission of the IRS's Criminal Investigation (CI) function is to ensure voluntary compliance with the internal revenue laws by conducting investigations of suspected tax offenders. CI activities are directed to enforce Titles 26 and 31.

The CI special agent maintains continuing expertise in detecting and investigating financial crimes. The ability of CI to secure indictments for tax violations against otherwise untouchable criminals has been a potent weapon in the fight against crime. In



## **ISSUE 02: CREATE AN INDEPENDENT BORDER MANAGEMENT AGENCY**

### **REBUTTAL PAPER BY TREASURY**

#### **National Performance Review (NPR) Recommendations**

**1. Congress should enact legislation consolidating all Immigration and Naturalization Service (INS) and U.S. Customs Service (Customs) functions into a single, independent border management agency effective no later than the beginning of fiscal year 1985.** This would allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. The new single agency should be responsible for all aspects of the movement of people and goods into and out of the U.S., and for proposing integrated policies and strategies. The head of the new organization should be nominated by the President with the advice and consent of the Senate.

The Attorney General and the Secretary of the Treasury should direct the current INS and Customs Commissioners respectively to develop a proposed implementation plan no later than January 31, 1994 for joint INS/Customs operations during the transition to the new agency. The President should identify his nominee for the head of the new agency as soon as possible, so that he or she may work with INS and Customs on the transitional action plan and timetable. This transitional organizational structure should be in place no later than April 30, 1994. Additional recommendations concerning future operations between ports of entry are addressed in a separate portion of this report.

#### **TREASURY COMMENTS**

##### **Proposal would remove Customs and INS from cabinet level oversight**

To a greater extent than existing independent agencies, Customs and INS perform functions that are inextricably tied to the missions of other organizations. Customs in particular performs functions that are tied to the revenue collection and trade policy responsibilities of the Treasury Department. Customs is the federal government's second

comprehensive analysis must be performed to ensure that all law enforcement entities are accurately presented.

**Treasury Recommendations:**

The Department is supportive of better coordination between law enforcement entities, but objects to complete centralization of all enforcement operations. As an alternative, Treasury recommends the following:

1. The President should issue an executive order to establish an ELEC chaired by the Attorney General.
2. The Departments of Treasury and Justice represent the strength of the law enforcement community, and should be co-equals in the major decision-making process of the affected law enforcement missions.
3. A representative from the Office of the Vice President should be included as a permanent member of the ELEC. The inclusion of a member, at this level, will ensure that the appropriate resolution of issues that arise out of "healthy competition" will be made in alignment with national law enforcement priorities.
4. The ELEC should be tasked to review the current law enforcement structure and make recommendations to ensure a greater coordination of effort, a reduction of duplication, and increased information sharing and partnership among federal law enforcement entities. This could best be achieved through the development of a comprehensive national law enforcement strategy.

Congress if the proposed merger of Customs and INS in an independent agency goes forward. Historically, oversight of the Customs Service has been vested in Ways and Means, and Senate Finance. Oversight of INS has been vested in the Judiciary Committees. Although it is common for multiple committees of Congress to have an interest in the affairs of a particular agency, only one committee in each chamber can actually have primacy in terms of oversight and authorizing legislation.

Additionally, it can be anticipated that the affected appropriations subcommittees will oppose loss of control over the funding for these bureaus.



largest revenue agency. Customs officials makes legal and policy decisions that have a significant effect on revenues and that frequently have implications for administration of revenue collection programs of other Treasury bureaus. Because of its historical and current revenue function, Customs should not be separated from the federal government's finance ministry, the Treasury Department.

Customs also takes actions with respect to enforcement of international trade laws that determine the effectiveness of U.S. trade policy as a whole. Frequently, Customs makes decisions that significantly affect the interests of foreign governments. Consequently, decisions on such matters are taken in consultation with Treasury's office of general counsel and Treasury trade policy offices, and disagreements are resolved by a cabinet or sub-cabinet level official prior to action being taken. Separation of Customs from this support and oversight structure would create a significant potential for uncoordinated actions in a sensitive area.

Separation of Customs and INS from their cabinet departments and merging them in an independent agency would appear to place them directly under the supervision of the White House. Both of these agencies perform complex and controversial work that requires closer policy oversight than the proposal provides. Because of the complex and controversial nature of this work, oversight should not be provided directly by the Executive Office of the President.

**Proposal combines functions that are fundamentally different.**

The proposal elevates form over substance. Although both Customs and INS perform some of their functions at the border, the substance of their missions is quite different. Moreover, Customs has significantly regulatory, audit, and quasi-judicial functions not performed at the border that relate to interpretation and enforcement of trade and revenue laws. INS performs, away from the border, a quasi-judicial function to determine the legal status of non-citizens who have entered the country. When the operations of the two bureaus away from the border are examined, the substantive differences between them become marked.

The substantive difference is likely to be reflected in jurisdictional problems in

Mexican Northern Border Response Force (NBRF) and USSOUTHCOM (DoD area of operation) transit zone and Andean Ridge initiatives. Customs supports all of DoD's initiatives out of the USSOUTHCOM.

c) **Domestic enforcement support.** Customs maintains a fleet of 66 fixed and rotary-wing aircraft dedicated to providing air investigative support to Customs enforcement offices, and to other federal, state, and local law enforcement agencies.

The NPR would like to see Customs air interdiction resources redeployed from its foreign interdiction support mission and its domestic enforcement support area to the domestic/border operations only. Currently, Customs actively supports interdiction activities at the border and deploys the majority of its resources in this arena. Customs has increased its airmobile and surveillance capabilities between the designated ports of entry to provide needed support to the Border Patrol of the Immigration and Naturalization Service.

Additionally, the NPR believes that Customs by "thickening the border by introducing foreign operations in Mexico, Central America and South America, has strayed far from its mission as a border enforcement agency."

The Customs Service has two categories of statutory authority to conduct air enforcement operations outside of the United States. The first category is under 21 U.S.C. 1501 et seq., whereby the President has designated Customs one of the "lead agencies" for air interdiction of drugs under the National Drug Control Strategy. Customs designation as the lead agency in air interdiction and its statutory mandate to enforce laws often violated outside of the United States clearly vest Customs with statutory authority to conduct air operations beyond the geographic borders of the United States.

- **National Drug Control Program Act, 21 U.S.C. 1501 et. seq.** Since its 1988 enactment, this Act has authorized the Office of National Drug Control Policy to promulgate a National Drug Control Strategy which designates federal agencies as "lead agencies" when conducting "a major supply reduction activity which is in the area of principal responsibility" of the agency. 21 U.S.C.1504(d). The Strategy for 1990 expressly designates Customs and the U.S. Coast Guard as lead agencies in the area of air interdiction. National Drug Control Strategy (NDCS), January 1990, p.71.

Since at least 1990, the NDCS has contemplated Customs air interdiction operations



**ISSUE 04: REDUCE AND COORDINATE RESOURCES DEDICATED TO AIR  
INTERDICTION OF DRUGS**

**REBUTTAL PAPER BY TREASURY**

**National Performance Review (NPR) Recommendations**

1. **The function of the Customs Service Office of Air and Marine Interdiction (OAMI) should be transferred to the newly created border agency.**
2. **OAMI should redirect its resources to the U.S. borders to bring its efforts in line with its mission.**
3. **Appropriation for the OAMI should come under the aegis of the Director of Law Enforcement (DLE).**

**TREASURY POSITION**

Treasury disagrees with the entire premise of the recommendations of the NPR position paper. The NPR paper isolates the Customs air interdiction program as a target for cuts and re-deployment of remaining resources as opposed to a review of all law enforcement programs, and neglects other aspects of the government's response to the supply side of the drug war. In addition, the paper misrepresents the facts regarding the role of the United States Customs Service as an established lead agency for all aspects of supply side drug interdiction according to determinations made by the Office of National Drug Control Policy.

The NPR has concerns over Customs three-pronged approach to air interdiction activities. Customs approach to air interdiction includes the following:

a) **Domestic/border operations.** Customs air interdiction assets are frequently called upon to launch on suspect aircraft penetrating U.S. airspace.

b) **Foreign interdiction support.** In the early 1990's Customs mission was expanded to combat drug smuggling activities by those using general aviation aircraft and flying from foreign countries into the U.S. Customs air interdiction aircraft and personnel are "forward deployed" to locations in Mexico, Honduras, and Panama, to support the



would occur in the Caribbean and the Gulf of Mexico to fill the radar gap which would otherwise hamper surveillance. NDCS 1990, pp. 66-67; NDCS 1992, p. 104.

The second category is comprised of the various statutes that Customs enforces relating to the importation of drugs and other contraband into the United States.

**Pub. L. 99-570, Section 3002 -- Findings.** Congress determined that the national drug strategy should include increased emphasis on the interdiction of drug smugglers at the borders, by land, air, and sea; and should provide for coordination of Customs with Department of Defense and other federal agencies to enhance aircraft, ship, radar, command, control, communications, and intelligence (C3I) systems to "mount a comprehensive attack on the narcotics traffickers who threaten the United States."

**Customs Statutory Responsibilities in Air Interdiction, 19 U.S.C. 1590 -- Aviation Smuggling.** Prohibits transfer of merchandise between sea vessels and aircraft on the high seas and in Customs waters and considers acts occurring up to 250 miles outside the territorial sea for evidentiary purposes.

**19 U.S.C. 1701 et. seq. -- Anti-Smuggling Act.** Customs enforcement areas may lie beyond the United States and are a matter for Presidential determination. Customs can seize any aircraft outfitted for the purpose of aiding the introduction of merchandise contrary to law.

**21 U.S.C. 951 et. seq. -- Controlled Substances Import and Export Act.** Authorizes the seizure and forfeiture of conveyances used in the illegal importation and exportation of controlled substances.

**49 U.S.C. App. 781 et. seq. -- Contraband Seizure Act.** Aircraft, vehicles and vessels transporting, concealing or facilitating the transportation of "contraband articles" are subject to seizure and forfeiture.

**49 U.S.C. 1472(b) -- Federal Aviation Act.** Customs can seize aircraft which are in knowing and willful violation of the Federal Aviation Act.

**19 U.S.C. 1589a -- Enforcement Authority of Customs Officers.** Authorization of Customs officers to enforce the laws is not restricted to the territorial United States, which is particularly important in those cases where the violations occur outside the United States. Section 1589a also authorizes Customs officers to perform any law enforcement duties

activities of the Customs air interdiction program.

In addition, the NPR is dealing with intelligence in a vacuum. The link between intelligence and interdiction is the ultimate "successful marriage" in the war on drugs. The two should be inextricably linked. If there was indisputable intelligence regarding a smuggling attempt by general aviation aircraft, but no interdiction assets to respond, that intelligence would be useless. Resources and capabilities to respond to intelligence fed through the complex detection and monitoring network are critical to drug interdiction success.

The NPR paper correctly states that the standard for drug interdiction efforts should be to reduce available drug supply in the United States. The sole purpose of the air interdiction program and all other federal drug supply reduction efforts has been to achieve a decrease in the imported drugs available for use by persons residing or arriving in the United States. The Customs air interdiction program has closed the quickest and most direct avenue for the drug smuggler.

Contrary to the NPR position paper, the Customs air interdiction program maintains a flexible posture as the smuggling threat shifts. For example, in responding to an increased amount of smuggling activity in and around Puerto Rico and the U.S. Virgin Islands, Customs expanded its aviation unit in Puerto Rico. Personnel from Houston and New Orleans were reassigned to respond to the new threat without the need to acquire additional new personnel.

Customs continually reviews the air interdiction program to make it as responsive to the drug strategy as possible. Currently, Customs is working to increase flexibility and provide an optimum response to the air smuggling threat by the standardization of resource and acquisitions, organizational restructuring, and consolidation of coordination functions performed by the C3I's.

**Recommendation:**

If the NPR wants to address the issue of drug supply interdiction, it should be focusing on the efforts of all the federal agencies and programs which make up this issue.



**MEXICO, CENTRAL AMERICA, ANDEAN RIDGE  
INTERDICTION SUPPORT SEIZURES**

|                    | Cocaine            | Aircraft  | Vehicles  | Arrests    |
|--------------------|--------------------|-----------|-----------|------------|
| <b>FY 92</b>       | <b>172,039 lbs</b> | <b>33</b> | <b>59</b> | <b>196</b> |
| <b>Oct-Apr.'93</b> | <b>27,881 lbs</b>  | <b>14</b> | <b>16</b> | <b>58</b>  |

The NPR states that "most drug law enforcement officials agree that air smuggling is no longer a threat." This statement is inaccurate and very misleading. While it is true that the Customs Air Interdiction Program has led to the virtual closing of the "air bridge" for drug smuggling, the threat remains.

Treasury, as well as the Office of National Drug Control Policy, want **to continue to keep the "air bridge" closed** to drug smugglers. According to the "Interagency Detection and Monitoring (D&M) Performance Assessment (classified) less than one percent of all **smuggling flights** departing in FY 92 and FY 93 have attempted to deliver their illegal cargo directly into the United States because of the air interdiction defense system in place. The majority of these flights proceeded to transshipment points in foreign locations in order to ship the drugs, via alternative and more vulnerable methods of transportation i.e. land vehicle and sea-going vessels, to the United States.

The NPR paper quotes David Westrate, Assistant Administrator for the Drug Enforcement Administration as saying that "the overall impact of USCS' extended efforts is debatable since DEA reports that 75 percent of overseas seizures are the result of prior law enforcement intelligence, not interdiction." The paper provides no supporting information to show the relevancy of this quote to the air interdiction program. This figure relates to the seizures of drugs at world-wide locations, including Asia and Europe, and is not tied specifically to smuggling by general aviation aircraft. Therefore, there is no link to the



This could be done in conjunction with the recommendation forwarded in ISSUE 01 which calls for the creation of the Executive Law Enforcement Council.