



CRS Report for Congress

Organizing for Homeland Security: The Homeland Security Council Reconsidered

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Summary

In the immediate aftermath of the terrorist attacks of September 11, 2001, President George W. Bush established the Office of Homeland Security and the Homeland Security Council (HSC). In his June 2002 proposal for a Department of Homeland Security, President Bush appeared to anticipate the continued operation of both of these entities. However, the Homeland Security Act of 2002, which mandated the new department, statutorily rechartered the HSC as an agency within the Executive Office of the President (EOP). Thereafter, the HSC disappeared from the public record, and its status today remains uncertain. Recently, some have called for the merger of the HSC with the National Security Council (NSC).

Background

Among the initial actions taken by President George W. Bush in response to the September 11, 2001, terrorist attacks upon the World Trade Center and the Pentagon was the establishment of two new specialized agencies pursuant to E.O. 13228 of October 8, 2001.¹ These entities were the Office of Homeland Security (OHS), located within the Executive Office of the President (EOP) and headed by a new Assistant to the President for Homeland Security, and the Homeland Security Council (HSC), chaired by the President. Their creation demonstrated the commitment of the Administration to securing the homeland and combating terrorism. Each constituted a specialized coordination mechanism: the OHS for developing and coordinating the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks; and the HSC for advising and assisting the President with respect to all aspects of homeland security. Each would be provided resources for carrying out its responsibilities. Moreover, the HSC would become the progenitor of, and repository for, new Homeland Security Presidential Directives (HSPDs).

¹ 3 C.F.R., 2001 Comp., pp. 796-802.

Unlike the OHS, the HSC was not explicitly located within the EOP. Its basic membership was composed of the Vice President; the Secretaries of Defense, Health and Human Services, and Transportation; the Attorney General; the Director of Central Intelligence; the Directors of the Federal Bureau of Investigation and the Federal Emergency Management Agency; the Assistant to the President for Homeland Security; “and such other officers of the executive branch as the President may from time to time designate.”² Prior to the October 8, 2001, issuance of E.O. 13228, President Bush, as he indicated in an October 5 letter to the Speaker of the House, authorized the transfer of \$195.9 million from the emergency response fund, which had been established by statute for recovery from, and response to, the September 11 terrorist attacks,³ \$25.5 million of which was allocated for the establishment of OHS.⁴ Some portion of these funds directly or indirectly also supported the HSC. The council held its initial meeting on October 29. That same day, the President inaugurated the issuance of HSPDs “that shall record and communicate presidential decisions about the homeland security policies of the United States.” The initial directive concerned the organization and operation of the HSC; the second, also issued on October 29, pertained to combating terrorism through immigration policies;⁵ and the third, issued March 11, 2002, established the Homeland Security Advisory System of five graduated threat conditions to apprise the executive branch and the nation of the risk of a terrorist attack.⁶ Between October 2001 and January 2008, 23 HSPDs were issued, some in security classified status and some concurrently as National Security Presidential Directives, another presidential directives series.⁷

The Council Reconstituted

When the President proposed creating the Department of Homeland Security in June 2002, his plan indicated that he anticipated the continued operation of both the OHS and the HSC. According to the plan, “[t]he White House Office of Homeland Security and the Homeland Security Council will continue to play a key role, advising the President and coordinating a vastly simplified interagency process.”⁸ The President’s plan, as introduced legislatively in the House on June 24, made no provision for a Homeland Security Council. As reported a month later and subsequently approved by the House, the legislation mandated a National Homeland Security Council chaired by the President and composed of the Vice President, eight specified Cabinet Secretaries, the Director of

² Ibid., p. 800.

³ 115 Stat. 220.

⁴ The White House, letter to the Speaker of the House of Representatives, Oct. 5, 2001, Washington, DC (copy in the possession of the author).

⁵ *Weekly Compilation of Presidential Documents*, vol. 37, Nov. 5, 2001, pp. 1568-1573.

⁶ Ibid., vol. 38, Mar. 18, 2002, pp. 394-397.

⁷ While unclassified HSPDs are usually available from the White House website upon issuance and are published in the *Weekly Compilation of Presidential Documents*, they are not published in the *Federal Register* or reproduced in the *Public Papers of the Presidents of the United States*. See CRS Report 98-611, *Presidential Directives: Background and Overview*, by Harold C. Relyea.

⁸ U.S. White House Office, *The Department of Homeland Security* (Washington: June 2002), p. 3.

Central Intelligence, and such other officials as the President may designate. Joint meetings with the National Security Council were an option. This basic arrangement remained in the Homeland Security Act ultimately adopted by both houses of Congress and signed into law by the President on November 25, 2002.⁹ Title IX of the statute reconstituted the HSC, located it within the EOP, and made it responsible for advising the President on homeland security matters; assessing the objectives, commitments, and risks of the United States in the interest of homeland security and making resulting recommendations to the President; and overseeing and reviewing homeland security policies of the federal government and making resulting recommendations to the President. Still chaired by the President, the council's membership was modified to include the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense, and such other individuals as the President may designate. Joint meetings with the National Security Council were an option.¹⁰

Thereafter, the HSC disappeared from the public record. It does not appear to have complied with requirements for *Federal Register* publication of such basic information as descriptions of its central organization; where, from whom, and how the public may obtain information about it; "statements of the general course and method by which its functions are channeled and determined"; and rules of procedure, substantive rules of general applicability, and statements of general policy.¹¹ No profile of, or descriptive information regarding, the HSC or its members and staff has appeared, to date, in the annual editions of the *United States Government Manual*.¹²

Similar conditions surround HSC resources. In late July 2003, House appropriators, in their report on the Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004, revealed that the Bush Administration had changed the "Office of Homeland Security" account, previously listed for the EOP, to an account for the "Homeland Security Council." The report also questioned the continued role of OHS, saying "it is not clear what work remains that cannot be effectively performed by the Department of Homeland Security." The account change also implied the shift of 66 staff personnel from OHS to the HSC, which the report questioned, "given the existence and support of the Department of Homeland Security." The committee cut the President's request of \$8.3 million for the council to \$4.1 million.¹³ Senate appropriators declined to fund the HSC through the White House Office (WHO) account, as requested, and recommended the \$8.3 million sought by the President for the council in a separate account for the HSC. They indicated that "the Homeland Security Council should be funded as a separate account, which is consistent with the budgetary treatment of its

⁹ 116 Stat. 2135.

¹⁰ 116 Stat. 2258.

¹¹ 5 U.S.C. §552(a).

¹² A profile of the council is available from the White House website at [<http://www.whitehouse.gov/hsc/>].

¹³ U.S. Congress, House Committee on Appropriations, *Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004*, a report to accompany H.R. 2989, 108th Cong., 1st sess., H.Rept. 108-243 (Washington: GPO, 2003), p. 163.

predecessor, the Office of Homeland Security.”¹⁴ The HSC, however, has no statutory authorization to receive appropriations. Conferees on the subsequent Consolidated Appropriations Act, 2004, when providing funds for agencies of the Executive Office of the President, allocated \$7.2 million for the Homeland Security Council in the WHO account.¹⁵ The House agreed to the conference report on December 8 and adjourned; the Senate completed action on the legislation on January 23, 2004, and the President signed the measure the following day.¹⁶

For FY2005, the President again requested funding for the HSC through the WHO account. House appropriators, in recommending almost \$2.5 million for the council, did so in a separate account for the HSC, although the council has no authorization to receive appropriations. They were also unhappy about accounting for another HSC resource, saying,

The Committee is disturbed that White House officials have failed to provide the Committee a definitive request for HSC staffing or budgetary resources for fiscal year 2005. Information providing [sic] for the hearing record states that the fiscal year 2005 budget includes “approximately” 40 full-time equivalent staffyears for direct HSC hires and 26 detailees, for a total of 66 staff. This estimate, although approximate, would be significantly above the level of onboard staff as of May 2004. In future years, the Committee expects the Executive Office of the President to be able to provide budget-quality estimates rather than approximations.¹⁷

Conferees on the subsequent Consolidated Appropriations Act, 2005, concurred on the amount approved by the House for the HSC, but provided the funding through the WHO account.¹⁸

When allocating funds for the WHO for FY2006, the report of the House Committee on Appropriations specified that “[t]he Salaries and Expenses account of the White House Office supports staff and administrative services necessary for the direct support of the President, including costs for the Homeland Security Council.”¹⁹ The Senate counterpart

¹⁴ U.S. Congress, Senate Committee on Appropriations, *Transportation, Treasury and General Government Appropriations Bill, 2004*, a report to accompany S. 1589, 108th Cong., 1st sess., S.Rept. 108-146 (Washington: GPO, 2003), p. 135.

¹⁵ See U.S. Congress, House Committee of Conference, *Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the Fiscal Year Ending September 30, 2004, and for Other Purposes*, conference report to accompany H.R. 2673, 108th Cong., 1st sess., H.Rept. 108-401 (Washington: GPO, 2003), p. 1015; *Congressional Record*, daily edition, vol. 149, Nov. 25, 2003, p. H12409; 118 Stat. 321.

¹⁶ 118 Stat. 3.

¹⁷ U.S. Congress, House Committee on Appropriations, *Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2005*, report to accompany H.R. 5025, 108th Cong., 2nd sess., H.Rept. 108-671 (Washington: GPO, 2004), p. 129.

¹⁸ 118 Stat. 3246.

¹⁹ U.S. Congress, House Committee on Appropriations, *Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriation Bill, 2006*, report to accompany H.R. 3058, 109th Cong., 1st

report, the related conference committee report, and the resulting Transportation, Treasury, Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriation Act, 2006, did not contain such language and otherwise made no reference to the HSC. House appropriators reiterated their 2006 report language in their report on Transportation, Treasury appropriations for FY2007.²⁰ The counterpart Senate report did not contain such language. House appropriators again reiterated this language in their report on the Financial Services and General Government appropriations for FY2008.²¹ Neither the counterpart Senate report nor the subsequent Consolidated Appropriations Act, 2008, contained such language or made any reference to the HSC.

In its July 2004 final report, the National Commission on Terrorist Attacks Upon the United States questioned the continued need for the HSC, saying, “To improve coordination at the White House, we believe the existing Homeland Security Council should soon be merged into a single National Security Council.”²² The executive director of the Project on National Security Reform, a non-partisan study group formed to analyze problems that inhibit interagency coordination, has also suggested such a merger.²³ In January 2008, at the time of presidential homeland security adviser Frances F. Townsend’s departure from the White House, there was press speculation that her HSC staff would be transferred to the National Security Council (NSC) with her deputy supervising that staff in its new status.²⁴ There has been no public indication that such a staff shift has occurred. In mid-October 2008, it was reported that Ms. Townsend had twice attempted to eliminate her homeland security adviser position, initially in the spring of 2004 and again in early 2005, but had relented because the NSC staff was overwhelmed with dealing with warfare in Afghanistan and Iraq and could not assume oversight of domestic security matters.²⁵ In mid-November, speculation appeared in the

¹⁹ (...continued)

sess., H.Rept. 109-153 (Washington: GPO, 2005), p. 133.

²⁰ U.S. Congress, House Committee on Appropriations, *Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriation Bill, 2007*, report to accompany H.R. 5576, 109th Cong., 2nd sess., H.Rept. 109-495 (Washington: GPO, 2006), p. 178.

²¹ U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., H.Rept. 110-207 (Washington: GPO, 2007), p. 33.

²² U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, 2004), p. 406.

²³ James R. Locher III, executive director, Project on National Security, briefing for CRS staff, Mar. 6, 2008, Washington, DC.

²⁴ “Fond Farewell,” *Washington Times*, Jan. 4, 2008, p. A11.

²⁵ Chris Strohm, “Ex-Bush Adviser Cites Need for New Security Apparatus,” *CongressDaily PM*, Oct. 15, 2008, available at [http://www.nationaljournal.com/congressdaily/print_friendly.php?ID=cdp_20081015_8843].

press that transition assistants for President-elect Barack Obama might recommend that the functions of the Homeland Security Council be transferred to another entity.²⁶

The Council Reconsidered

The HSC was statutorily mandated in 2002 as an agency within the Executive Office of the President. It became the recipient of the staff of the OHS when that agency was eclipsed by the new Department of Homeland Security. It has, however, seemingly fallen short of achieving complete agency status due to its (1) seeming failure to publish such basic information as descriptions of its central organization; where, from whom, and how the public may obtain information about it; “statements of the general course and method by which its functions are channeled and determined”; and rules of procedure, substantive rules of general applicability, and statements of general policy;²⁷ (2) omission from the annual volumes of the *United States Government Manual*; and (3) lack of an authorization to receive appropriations as an agency within the EOP. Some have questioned the continued need for the HSC, viewing its functions as being more efficiently and effectively carried out by the National Security Council. Additionally, they maintain that such a merger might result in some economies, if only minimal, and might also provide an opportunity to eliminate what they see as the somewhat redundant HSPD series. The situation may be subject to congressional review, reconsideration, and action.

²⁶ Karen DeYoung, “Naming National Security Team Will Be a Priority for Obama,” *Washington Post*, Nov. 19, 2008, p. A8.

²⁷ 5 U.S.C. §552(a).