

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 11, 1997

RE: Options for INS Reform

We have contained a very brief summary of the major INS reform proposals and provided an outline of the broad options which integrates aspects of the different proposals (as well as other informal suggestions that were made during our meetings) as a think piece for you.

PROPOSAL SUMMARIES

Commission on Immigration Reform. The Commission on Immigration Reform (CIR) proposes significant structural reform to immigration operations. In its final report, the CIR proposed to eliminate the INS and restructure the immigration system into four main operations:

- **Immigration Enforcement:** All immigration enforcement (e.g., Border Patrol, inspectors, investigators) at both the border and the interior would be moved into a newly created Bureau of Immigration Enforcement and the Department of Justice.
- **Immigration Services:** The Department of State would assume responsibility for adjudication of all immigration-related applications, including immigrant, limited duration admissions (e.g., tourist, student visas), asylum/refugees and naturalizations. All immigration functions would fall under the jurisdiction of a new Undersecretary for Citizenship, Immigration and Refugee Admissions.
- **Worksite Enforcement:** All responsibility for enforcement of immigration-related standards for employers would be housed at the Department of Labor. This would include enforcing employer sanctions against employers who fail to verify I-9 forms for work authorization and monitoring compliance with employer attestations to sponsor skill-based immigrants.
- **Immigration Review:** An independent body within the Executive Branch would be created to hear appeals of immigration-related administrative decisions, including removal (e.g., deportation) hearings. Decisions by the appellate body would be binding over the Executive Branch. Only the federal courts and Congress would have the authority to reverse.

Reyes Bill

- The Reyes proposed legislation, "The Border Security Enforcement Act of 1997," would make a significant structural change to INS by separating out the enforcement component and putting it in a newly-created agency within the Department of Justice. The Director of the new Office of Enforcement and Border Affairs would report directly to the Attorney General. All enforcement, including Border Patrol, detention, deportations, inspections, intelligence, and investigations, would be moved to the new agency. INS would continue all remaining non-enforcement functions.

INS' Reorganization Proposal. The INS proposal would reorganize their existing structure and contains various management reforms.

- **Separation of Enforcement and Services:** The INS plan is focused on reengineering their delivery of services and moving toward a customer-service orientation. To this end, the INS plan would create a clearer delineation between enforcement and service functions by physically separating them at the district office level.
- **Infrastructure Improvements:** Significant enhancements to technology including the centralization and automation of INS records will improve both delivery of services and law enforcement needs.
- **Management Reforms:** The INS plan would overhaul career development systems, and address longstanding pay issues in order to improve standards of professionalism within the Service.

OMB Proposal. The OMB proposal, similar to the INS proposal, retains current INS functions within the Service.

- **Separation of Enforcement and Services:** The OMB proposal would reorganize INS and establish only two Executive Associate Commissioners (EACs): one for enforcement and one for services and benefits. The EACs would report directly to the Deputy Commissioner. The Enforcement EAC would be responsible for all of INS' enforcement agents-- which OMB recommends merging into one uniform service and a white collar investigate service (CIR proposal). The EAC for Services would be responsible for regional service centers, foreign operations for refugees/asylees and all existing district office operations.
- **INS Headquarters Reorganization:** Headquarters would be focused on policy, strategic planning and management, budget, and compliance with policy and procedures.

OPTIONS OUTLINE

As the outline reveals, there are many ways that the various proposals could be combined. We have used three very broad categories as a guide to thinking about the issues: reforms within INS; reforms that involve changes within the Department of Justice structure; and reforms that impact other agencies.

I. Reform that would keep all functions within INS.

A. Separate enforcement from services -- from field up to Headquarters.

1. Create two Deputy Commissioners, with two separate lines of authority and chains of command: one with responsibility for enforcement and the other for services.
 - a. Could organize the enforcement side more like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up in the chain of command to Headquarters.
 - i. Would address the concern that the border patrol agents are too isolated from the rest of enforcement, which creates the perception of lack of accountability.
 - ii. Could create a more substantial career path for agents, resulting in lower turnover and greater professionalism.
 - b. Would create a direct line of authority between Headquarters and district offices, providing for greater accountability that many say is lacking under the current system.
 - c. Would allow for the creation of a more regional model for location of enforcement resources (i.e., Southwest Border) and a more community-based model for services.
2. Create two Executive Associate Commissioners-- one for services and one for enforcement-- that report to the Deputy Commissioner. Resulting stovepipe structure for all enforcement and service functions could be same as above.

B. Separate enforcement from services at district office level only.

1. Split enforcement from service functions at the field level, though keep the functions integrated at the regional office level and above.

2. This option is favored by INS.

In addition, under either model, could put the Border Patrol in the chain of command, to address the issue of increasing alienation of the Border Patrol from the rest of INS. Also, could move law enforcement within INS up to the level (training, pay, etc.) of other law enforcement agencies with the DOJ. In addition, under either model could re-cast inspections as an enforcement function.

II. Reform that would keep all functions within the DOJ, but move some out of INS.

A. Move enforcement from INS to Main Justice

1. Would better integrate the Border patrol into the Justice enforcement structure, and may result in improved professionalism and retention.
2. Would require costly changes in salary structure.
3. John Morton from DOJ informed us that Justice is generally reluctant to create another law enforcement sub-agency. Other Justice law enforcement agencies (e.g., FBI, DEA) may also resist.

B. Create a high-level person at the Department of Justice to handle immigration (e.g., an Assistant Attorney General for Immigration).

1. Could help make DOJ more institutionally responsive to immigration issues.
2. INS argues this would actually weaken stature of immigration function since Commissioner now reports directly to the Deputy Attorney General.

C. Consolidate administrative review within EOIR at Justice.

1. Under the current system, there are several discreet administrative review functions being performed by INS and Labor.

III. Reforms that impact other agencies

Any of the following reforms but the first could be done in conjunction with a restructuring within the INS or within DOJ.

A. State Department

1. The creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc.
 - a. Strongly opposed by advocates, INS, and DOJ.
 - b. Strong reservations raised by State Department.
2. State Department to perform all of the refugee applications overseas.
 - a. Strongly opposed by advocates. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).
3. Scale back the Department of State's role in the processing of petitions for non-immigrant visas.
 - a. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns. Instead, INS could control the process, but consult with State for the limited purpose of international checks.

B. Labor Department

1. Empower Labor to sanction employers for I-9 violations, rather than simply referring to INS, where there is little follow through.
 - a. Concern about protections for undocumented workers who report labor violations.
 - b. Concern that fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers.
2. Move labor certification out of the Labor Department to INS (or State, if they are handling naturalization and visas).
 - a. Many criticize Labor for taking too long to process a labor certification, which then forces employers to hire workers with temporary visas until the paperwork is completed.
 - b. Labor believes that the link between employment-based immigration and the labor market supports the continued use of

some sort of labor market test in deciding whether an employer is permitted to import a foreign worker.

3. Consolidate all non-immigrant visa programs and give them all a set of labor standards that the Department of Labor could enforce.
 - a. Could include making legal hiring a labor standard, enforced by the DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)
- C. Create an independent agency to handle all administrative appeals.
 1. According to John Morton, strongly opposed by the DOJ. They do not want to diminish the Executive's adjudicative and policy-making role.
- D. Remove INS from the process of determining employment-based immigration (leaving decision to Labor and State).
- E. Create a permanent office at the White House to handle the various migration issues on a more global policy level.

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 5, 1997

RE: INS Reform Meetings

The following is a summary of the meetings that we have held with various groups and agencies concerning our review of the final recommendations of the Commission on Immigration Reform ("CIR") and other reform proposals.

1. The Immigration and Naturalization Service (INS)
November 13, 1997

INS generally supports reform that would split enforcement functions from service functions at the field level, though they are in favor of keeping the functions integrated at the regional office level. Their proposal is heavily focused on improving the customer services orientation of non-enforcement employees. They also favor putting the Border Patrol in the chain of command, to address the issue of the increasing alienation of the Border Patrol from the rest of INS. The INS is also looking into ways to create pay parity between INS inspectors and inspectors with Customs as the disparity creates negative tension between officers that need to work together on the Border.

At that same meeting, OMB outlined their proposal of a higher level division between enforcement and services. OMB's view is that there is insufficient attention given to either of the two parts, so a more significant split would be a good remedy. OMB also advocates for the establishment of one enforcement officer for the border instead of the current organization of Border Patrol agents, inspectors and investigators.

2. The Department of State
November 19, 1997

The CIR recommended the creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc. The CIR has also recommended that the State Department perform all of the refugee applications overseas. Under the current system, State's immigration role is limited to: (1) issuance of passports; (2) staffing consular offices

abroad; (3) the processing of approximately 6.5 million visas overseas (including six million non-immigrant and ½ million immigrant visas) in conjunction with the INS; (4) an advisory role re: asylum cases adjudicated in the U.S.; and (5) advising the President about world conditions to assist him in determining the annual number of refugees the United States will accept from various regions of the world.

The State Department representatives expressed some interest in exploring the possibility of assuming full responsibility for refugee processing. They seemed to view this as a way to control a fee-based process, and thus boost their consular offices (which are now, according to them, understaffed -- particularly in high growth countries). They also acknowledged the value of "one-stop shopping" for benefits and the consolidation of enforcement. This, in their view, would assist quality control -- primarily reducing fraud. State also agreed that the visa process needs to be more streamlined to reduce some of the duplication between agencies and greater clarification is needed regarding ultimate responsibility for certain decisions where more than one agency plays a role. To this end, State and INS have been involved in an effort called Data-Share, that would create a shared database between agencies. This effort started aggressively, but has stalled.

On the other hand, the State representatives voiced significant skepticism of their ability to assume the responsibilities of a large part of the INS -- particularly since they are in the process of absorbing both the USIA and ACTA. They were also very opposed to the CIR recommendation to make consular decisions reviewable (as part of their assuming greater, system-wide responsibility for the visa process). Finally, though they were in favor of the Administration having an immigration policy that recognized both the domestic and foreign policy aspects of this issue, they expressed a general philosophical view that immigration was more of a domestic issue, and thus was mis-matched with State.

3. Advocacy Groups (e.g., MALDEF, ABA, AILA, etc.)
November 21, 1997 (enforcement) and December 4, 1997 (services)

In general, the advocates believe that the most important reforms we could make would be in the areas of standards and accountability. Specifically, they are concerned that no direct line of authority exists between Headquarters and the District offices, leaving the District Directors as final decision makers on significant matters -- including interpretation of regulations. Further, many of those present advocated for a high level DOJ official to handle immigration (e.g., an Assistant Attorney General for Immigration). Their view is that without such a person, the DOJ is less institutionally responsive to immigration issues. In addition, there was support for the creation of a permanent office at the White House to handle the various migration issues on a more global policy level.

None of the advocates endorsed the CIR recommendations; in fact, they primarily criticized them. However, they did acknowledge some need to separate enforcement functions from services functions. According to the representative from AILA, this needs to be done, at a

minimum, at the district level, but the problem of mixing enforcement and services (to the detriment of services) exists throughout the agency. However, they expressed concern that complete separation between enforcement and services (as in the Reyes bill) may result in even less accountability by enforcement agents who are perceived as fairly independent. There is some belief that the fact that INS workers train in both enforcement and services mitigates the harshness of enforcement. However, there is also concern that promotions are generally only made from the enforcement side (most District Directors are former investigators), and thus that final services-related decisions are being made by enforcement officers.

On the general issue of State's role, the advocates were more comfortable with allowing the Department of Justice to retain control of the service process because of Justice's greater familiarity with and dedication to due process rights -- in contrast to State which frequently opposes administrative review of field decisions. Finally, all were opposed to giving State any enhanced authority in the area of refugees. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).

On the issue of streamlining, the advocates suggested scaling back the Department's role in the processing of petitions for non-immigrant visas. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns, which is simply duplicating processes. It was proposed that INS control the process, but consult with State for the limited purpose of international checks.

On the labor issues, the advocates seemed to generally favor permitting the DOL to sanction employers who fail to check whether their employees are authorized to work. However, they voiced concern about protections for undocumented workers who report labor violations. Also, the advocates expressed the view that the labor certification process for immigrant visas does not work well because it takes way too long, and is not responsive to rapid changes in the labor market. Though they expressed a preference for moving the process out of the Labor Department, they did not present a substantive reform proposal. However, according to Maria and others, there have been a couple of studies on this issue over the past couple of years.

Finally, on the issue of administrative review, the advocates favor a consolidation that would place all review at the INS, but ultimately favor a return to greater federal court review of BIA (or Attorney General) decisions.

4. Department of Labor November 24, 1997

Currently, Labor performs three basic immigration-related functions: (1) adjudication of applications by employers for employment-based visa categories (both temporary and permanent); (2) enforcement of labor standards which are part of the criteria for some employment-based visa categories (temporary and permanent); and (3) referral of findings of I-9 non-compliance (verification of employee work eligibility) to the INS. The CIR recommends

empowering Labor to sanction employers for I-9 violations (rather than just referring them to INS, where there is often no follow-up). The CIR also recommended eliminating Labor's role in the labor certification part of the visa process.

Labor has strong reservations about moving the labor certification process out of their agency (either to State or to INS). Though many criticize Labor for taking too long to process a labor certification (and thus forcing employers to hire workers with temporary visas until the paperwork is completed), they believe that the link between employment-based immigration and the labor market supports the continued use of a some sort of labor market test in deciding whether an employer is permitted to import a foreign worker. Labor believes that if this test is to have any meaning, it must be conducted by the Dept. of Labor.

Labor also believes that adjudication and compliance should be in the same agency. Thus, that Labor should have the authority to impose sanctions on employers for the wide range of violations related to labor standards -- including whether the employer adequately tested the labor market before hiring a foreign worker. Labor also favors consolidating all non-immigrant programs and giving them all a set of labor standards that the Department could enforce. In addition, Labor is in favor of their being permitted to sanction employers for failure to verify whether their employees are authorized to work in the U.S., though they do not want to be responsible for turning over employees who are possibly working illegally to the INS. They are concerned that a fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers. Finally, in the area of employment-based immigration, Labor is in favor of moving from a three-step to a two-step process, which would include removing INS from the process entirely.

5. Michael Meyers
Chief Democratic Counsel, Senate Judiciary Committee
November 25, 1997

According to Meyers, there is little known support on the Hill for the CIR recommendations. Chairman Abraham has stated that he favors a split between enforcement and services, without expanding on what this means. Also, Meyers has received indications from Lamar Smith's staff that though they may be interested in changes to the INS, they are not likely to be interested in dispersing INS functions into different agencies. Meyers also believes that INS is not "mature enough" to be a separate agency, and it is unlikely that there would be much potential support for this type of option. He believes that the functions would best be kept within INS, but acknowledges that any "reform" proposal would need to be sold as dramatic change.

Meyers suggested that a possible option would be a split between enforcement and services within INS that goes all the way up -- would create two Deputy Commissioners, with two separate chains of command: one with responsibility for enforcement and the other for services. He also favors moving INS law enforcement up to the level (training; pay; etc.) of other law enforcement agencies within the DOJ. Meyers suggested that the enforcement side

could be organized like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up to Deputy Commissioner. Under the current INS structure, the Border Patrol is almost completely set apart from the rest of the enforcement staff. Thus, the career ladder ends at a fairly early point, which causes the Border Patrol to lose a lot of good people. Also, they are generally isolated from the rest of enforcement, creating a perception of lack of accountability.

Meyers is very much in favor of the change that would allow the Department of Labor to sanction employers for failing to verify the work eligibility of employees. Though this would likely be disfavored by some Republicans (who tend to prefer the current, impotent system) it might be a good principled stand for us to take, even if the Republicans knock it down. Finally, Meyers also expressed support for the CIR's proposed consolidation of administrative review.

6. Commission on Immigration Reform
November 25, 1997

Several members of the CIR met with us to clarify some of the positions taken in their final report, and to answer our questions. In general, the CIR wanted to propose reforms that eliminated both perceived conflicting responsibilities within the existing structure, that made a greater distinction between legal and illegal immigration, and that made the system more efficient and easier to run and access.

On the enforcement side, the CIR recommended folding INS enforcement functions into Main Justice and upgrading it to a Division, which would require costly changes in salary structure. The CIR also recommended that the inspection function be re-cast as an enforcement function. On the services side, the CIR recommended that State assume responsibility for most of the service functions, with Labor left to enforce labor standards, including non-compliance with I-9 process.

The CIR believes that State has the capacity to handle all of the service functions now performed by the INS. In addition, the CIR views immigration policy ("international migration") increasingly becoming more of a foreign policy issue, thus more compatible with State's mission. They found attractive the idea of State building on its domestic capacity (passport offices). The CIR concluded that moving immigration services to State (a global fee-generating service) would allow them to save their consular offices abroad, which are at risk of being further devalued and de-funded.

The CIR looked at Canada and Australia to determine how this issue is handled in other countries. Both Canada and Australia have a Cabinet-level office that is in charge of migration generally. Their focus, however, is less on enforcement and more on facilitation of the process.

The CIR also recommended an independent appeals process, not located within DOJ or State. In the context of fewer issues being appealable to federal court, this would provide the

needed integrity for the administrative procedure. However, under their proposed system, this would also likely require review of consular decisions, to which State is very opposed.

When asked to recommend changes within the existing system, the CIR suggested that an interim step could be to upgrade of the Commissioner's position within the DOJ, and to create two deputies (one for services, one for enforcement), each with a separate line of authority. This would go a long way toward solving "mission overload," but would not address the problem of duplication of effort and dispersion of responsibility between agencies. Next, they suggested that Labor should be removed of their responsibility for labor certification. Though it is an open question how some other agency or entity would handle this, it is clear that the present system does not work well. Finally, they reiterated their support for allowing Labor to sanction employers for failure to comply with I-9 requirements, and possibly making the hiring of authorized workers a labor standard, enforced by the DOL.

7. Carnegie Endowment
December 1, 1997

The Carnegie Endowment is currently in the process of drafting a report on INS reform that will likely be ready in February 1998. Carnegie was not in favor of the CIR recommendations. However, they do think that more reform is needed, and attention on the CIR report may fuel the ability to make such reforms. In general, they favor reducing the redundancies in the processes, making it smarter, more transparent and more logical. They recognize that a more dramatic proposal that they might favor (possibly creating an independent agency) is not likely to get support on the Hill, and is thus no more realistic than the CIR recommendation.

There are, however, a set of reforms that Carnegie supports. On the labor front, Carnegie would like to see the DOL with the authority to sanction employers for failing to verify whether their employees are authorized to work (I-9 failures), but would like Justice to continue to prosecute employers for knowingly hiring unauthorized workers. They are also in favor of taking the labor certification process from DOL -- possibly to privatize it, which they believe would be more efficient and cheaper. Finally, they expressed interest in making legal hiring a labor standard, enforced by DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)

On creating a more streamlined process, Carnegie is interested in looking at how to eliminate unnecessary steps in the visa process. They have called for more cooperation between agencies, that could possibly include data sharing -- with the appropriate privacy protections. Also, they are concerned that there continues to be a lack of high level policy coordination on the larger immigration questions. This could be rectified through elevating the Commissioner (to an AAG), or through the creation of a more permanent immigration or international migration office somewhere else in the Executive branch, including possibly the White House.

8. Department of Justice -- John Morton
- December 2, 1997

The Attorney General is concerned with accountability within the existing system. Justice has thought about proposing a programmatic and policy split between services and enforcement within the INS that might create better lines of authority, and thus greater accountability. An open question remains as to how the split between enforcement and services would be structured. They seem at this stage to be inclined to consider a split that is more aggressive than the INS proposal to split at the district office level. Justice is also interested in proposals that better integrate the Border Patrol within the rest of the INS enforcement structure, in a way that upgrades the other components (though they have not thought about the police department model). In conjunction with a service/enforcement split, Justice is looking at breaking out of the district model, to (1) a more regional model for enforcement (including detention); and (2) a more community-based model for services (along the lines of the service centers now being piloted by INS).

Though Justice has not seriously considered moving enforcement out of INS and into Main, they are reluctant to create another law enforcement sub-agency within the Department. Also, DOJ is opposed to the creation of an independent agency for administrative review. They do not want to diminish the Executive's adjudicative and policy-making role.

Justice is interested in coordinating, to the extent possible, the DPC review with the Booze-Allen study that has been authorized. If we decide that internal restructuring is where we want to go, we should let INS and DOJ know our suggestions as soon as possible, so that they can use this study to look at areas of reform that we identify, rather than wasting time on those that we clearly oppose.

Finally, the Commissioner is set to propose several changes to the 1996 Immigration Act within the next couple of weeks to the DOJ. There is a question about whether this should proceed on a different track from the INS review process. We believe that a separate track would be advisable at this time.

4 Lawmakers Hope to End Immigration Service

By ERIC SCHMITT

WASHINGTON, Feb. 1 — The four most influential members of Congress on immigration matters are moving toward a plan to abolish the Immigration and Naturalization Service, saying they are angered by a series of scandals and missteps at the troubled agency.

The lawmakers, senior House and Senate Republicans who head powerful subcommittees that oversee the agency's missions and financing, have been galvanized by a Federal advisory panel's recommendation to disband the 107-year-old immigration service and assign its duties to other Government agencies.

A bipartisan bill in the House to transfer all enforcement and inspection responsibilities to a new office in the Justice Department is gaining momentum, and a second, more sweeping, House bill is being written.

Speaker Newt Gingrich of Georgia and Representative Dick Armey of Texas, the majority leader, have in recent months discussed in general terms with their top lieutenants the need to reorganize the agency.

Some senior Clinton Administration officials fear that Republicans are eager to repair frayed relations with immigrant groups who are angry about Republican-backed reductions in benefits to legal immigrants and that Republicans will wage an "I.N.S.-bashing" campaign to energize support in border states like California and Texas before the elections in November.

Clearly, a showdown between Congress and the White House is brewing over the agency's fate. The Administration is expected to strongly oppose any plan to dismantle the agency when the Administration submits its fiscal 1999 budget to Congress on Monday. Instead, the Administration has hired a consulting firm, Booz-Allen & Hamilton, to help revamp the agency.

But senior Republican lawmakers say the agency is collapsing under the weight of its dual conflicting missions: service and enforcement. Immigrants who apply to become citizens are having to wait up to two years in large cities. The I.N.S. reports 112,000 illegal immigrants a year, fewer than half the 275,000 who enter illegally each year or stay after their visas have expired.

"The missions and jobs they're charged with are too big and too important to be botched, and that's what they've done, botched their job," said Representative Harold Rogers, a Kentucky Republican who heads the House Appropriations subcommittee that controls the agency's financing.

"I've reached the end of my rope," Mr. Rogers said in an interview.

He has directed aides to use the



Representative Harold Rogers, a Kentucky Republican shown last week in his Capitol Hill office, has said the operations of the Immigration and Naturalization Service are "too big and too important to be botched."

report issued in September by the advisory panel, the United States Commission on Immigration Reform, as a blueprint to draft legislation to disband the agency.

Some Democrats are also upset. Representative Silvestre Reyes, a Texas Democrat who is a former chief of the United States Border Patrol in El Paso, is sponsoring a bipartisan bill that would leave the agency's service functions intact but create a new office for enforcement.

"The agency has gotten so large

be the best way to go."

Spencer Abraham, a Michigan Republican who heads the Senate Judiciary's immigration subcommittee, has expressed interest in splitting up the immigration service and plans to hold hearings in the next few months on the issue.

Under the Federal commission's plan, the Justice Department, which is the immigration service's parent agency, would continue to control the borders and remove illegal immigrants. The State Department, which now issues visas at American embassies overseas, would handle immigration services and benefits like citizenship requests. The Labor Department would assume a greater role in enforcing rules on the hiring of foreign workers.

Attorney General Janet Reno and the Commissioner of Immigration and Naturalization, Doris M. Meissner, have forcefully argued to Congress and to critics in the Administration that the agency's service and enforcement components must remain under one roof.

"Dismantling the agency now would severely disrupt services we provide to immigrant communities and jeopardize significant improvements in enforcing immigration law," Mrs. Meissner said.

Mrs. Meissner said the agency had made progress in the last few years in tightening the Southern California border with Mexico, as well as in reducing fraudulent claims for asylum and instituting a technological makeover to an antiquated agency. For those reasons, many Demo-

crats, including Senator Edward M. Kennedy of Massachusetts, agree with Mrs. Meissner that the agency should have a chance to work on its problems without Congressional micromanaging.

In addition, most groups that advocate immigration oppose splitting up the agency, fearing that a separate law-enforcement agency might be more prone to abuses against immigrants than the I.N.S. and that services would become even worse than they are now.

"I'd be the last person to suggest keeping the status quo, but I'd be skeptical if these members of Congress have the best interest of immigrants at heart," said Cecilia Munoz, deputy vice president of the National Council of La Raza, an advocacy group in Washington.

Republicans say they are frustrated with the steady drumbeat of agency woes. This week, for example, Federal authorities indicted 20 people involved in a nationwide scheme to falsify the citizenship-testing results of up to 13,000 immigrants in 22 states. Critics of the agency, which participated in the investigation, say the service failed to oversee its testing of contractors adequately.

"The problems are getting worse, not better," said Representative Lamar Smith, a Texas Republican who heads the House Judiciary subcommittee on immigration. "We need to do more than reshuffle organizational boxes. We need to focus on the results we want to achieve."

HUD Asks And Jobs for

By MICHAEL JANOFSK

WASHINGTON, Feb. 1 — The biggest budget request in 10 years for the Department of Housing and Urban Development will ask Congress on Monday to approve increases for programs to increase housing and job opportunities for low-income people in cities across the country.

As part of President Clinton's budget, the department is asking for a \$25 billion for the 1999 fiscal year, an increase of 4 percent over 1998.

But the core of the request is in new spending for programs designed primarily for helping low-income people compete with adjacent areas which have had more success in recent years creating jobs and neighborhoods through economic development. According to the Administration, only 13 percent of the 14 million jobs created in five years were in cities.

"Cities have been at a considerable disadvantage with outlying areas," Housing Secretary Andrew Cuomo said on Friday. "I want to help level the playing field."

A major component of the request is a new \$400 million program, the Community Development Fund, which would provide grants to states and local governments as a way to leverage private loans. The Administration is dictating that the fund would create 20,000 jobs.

In announcing the funding, Mr. Cuomo said it "will provide capital to cities who recognize the need and the possibilities of the cities."

"This is the right way to do it," he added. "It is no out."

Other major components of the budget proposal include \$3 billion for more than 100,000 new vouchers for low-income people, a 40 percent increase, to \$1 billion in programs to fight homelessness.

While acknowledging the tough nature of the budget, Mr. Cuomo said he expected a "reception in Congress as a reward for the department's work."

Astronaut's After Month

CAPE CANAVERAL, Fla. (AP) — Pale and thinner than when he launched 10 months on the Mir space station, David A. Wolf, the United States astronaut, said today that he felt as though it was spinning. "To be honest, I'm hurt," he said. "When I tilt my head, the world goes upside-down." That did not stop him from savoring the pleasures of Earth. He ate pizza and stayed up until 3 a.m. on Monday morning. He was up there, joking about the adverse effects of weight loss.

Budget Plan Would Restore Food Stamps for Legal Immigrants

► Julie A. Fernandes
01/29/98 06:13:39 PM
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Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: INS reform and H1B visas

Elena,

Any reform that we recommend to the H1B program will likely cause employers to raise other issues related to immigration and the Labor Department. The following are a couple of policy issues that we may have to confront as part of this process.

1. Labor Certification

As the Labor folks indicated yesterday, employers use the H1B program as a way to get foreign workers into the country fast -- short application and no labor certification process (as there generally is with the permanent employment-based visa program). Thus, any changes that limit or more closely subscribe the use of the H1B may cause employers to focus on what they believe is wrong with the labor certification process, as presently performed by the Labor Department.

The CIR recommended that the Labor Department no longer perform labor certification prior to the issuance of a permanent employment-based visa, largely because it takes them too long and because the tools that they use do not fairly reflect the dynamics of the labor market. The CIR did not suggest an alternative method for testing the labor market to determine if workers are needed in a particular job category, but suggested, as part of their overall proposal, that State somehow take care of it. The Carnegie folks suggested, informally, that the function could be contracted out to a private entity who could do the labor market tests more quickly and maybe better.

This is an issue that we likely need to focus on as part of the overall INS reform package and as it relates to the H1B program. As you would imagine, any proposal to change the labor certification process is very controversial -- particularly any proposal to eliminate Labor's role in performing a market-test as a predicate to an employment-based permanent visa.

2. Employer Sanctions

The CIR recommended that Labor should be empowered to sanction employers for failure to verify whether their employees are authorized to work. Under the current system, if a Labor Department inspector discovers that an employer is not verifying authorization to work (as demonstrated by their not filling out the I-9 forms), they refer the case to the INS -- Labor has no authority to sanction the employer for this violation. The CIR and others have suggested that Labor have this sanction authority, in part b/c referrals to the INS for this are almost never followed up on.

In preliminary discussions about this, Labor expressed some concern that their increased role in enforcing the immigration laws might chill the reporting of other labor violations by undocumented workers. However, Labor already has a role (by checking for I-9 violations and reporting them to INS) and this increased authority could be understood as enforcing labor laws

(that relate to the labor market), not immigration laws. The chief opponents to this change would likely be Republicans on the Hill who are concerned with businesses not being penalized for hiring illegals at all. This opposition could be significant, but the concept of sanctioning employers for failing to take steps designed to ensure that they hire legal workers is a strong one. Also, this is a good companion to our successful push last year to launch an employer verification pilot program, to improve the system of verifying whether employees are authorized to work.

Aside from the concerns that relate to the Labor Department, there are two areas of policy decision-making that we may want to resolve in conjunction with the INS reform. These are both less pressing, but are likely important to keep an eye on.

1. State Department and Visa Issuance

For employment-based visas issued overseas, there are three players: INS, State and Labor. Many (including the CIR, State and INS) have commented that this current process is duplicative. One suggested reform would be to remove State from doing a separate analysis of the application, and limiting their role to checking to ensure that there were no international or foreign policy restrictions on the applicant (checks with Interpol, etc.). Under the current system, State often readjudicates the visa petition rather than perform a more limited check. State has also identified a need for greater clarity regarding ultimate responsibility for certain decisions (like this one) where more than one agency plays a role.

We may, as part of our proposed reform, want to better clarify State's role as limited to international/foreign policy concerns only.

2. Immigration appeals

Under the current system, administrative review of immigration decisions is conducted by numerous entities located at the various agencies (State, Labor and Justice). In addition, the Bureau of Immigration Appeals (BIA) -- a 15 member panel appointed by the AG -- has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal decisions. Decisions of the Bureau of Immigration Appeals are reviewed by the Attorney General. The CIR recommended the creation of an independent body within the Executive Branch to hear all appeals of immigration-related administrative decisions, including deportation hearings. Decisions by this entity would be binding on the Executive Branch.

We have not yet fully explored whether the existing immigration appeals system needs dramatic reform or, if so, whether we would recommend a solution along the lines of that proposed by the CIR. It is not clear that this question has to be answered in the short term, but we may want to keep it within our sites.

Questions & Answers on INS Reform
March 26, 1998

Q: What is the Administration's plan for reforming the INS?

A: The Administration's plan will make federal immigration activities more effective by separating enforcement and service operations *within* INS -- from headquarters to the field -- while preserving the necessary integrating functions for supporting and coordinating both operations. The key features of the Administration's plan are:

- **Effect an operational split between enforcement and services**, resulting in two distinct, clear lines of authority from the field to headquarters, with an INS Commissioner continuing to be responsible for overall agency operations;
- **Eliminate the current "district" field structure, and replace it with a functional and geography-based organization** that allows for the creation of service offices in areas convenient to their immigrant "customers" and the creation of enforcement offices focus at border areas, ports of entry and significant interior locations;
- **Restructure management operations to ensure an effective "shared support" operation** (e.g., records and data management, technological support, employee relations, and administrative support) that will serve both the enforcement and the service sides of the agency.

The result will be an INS organization with strengthened accountability and improved efficiency and effectiveness that allows each operation to focus on the unique management, knowledge, skills, and abilities of its function.

Q: Everyone agrees that the INS has substantial problems. Why, then, did the Administration reject the CIR recommendation to dismantle the agency?

A: We believe that the CIR recommendation to disband the INS and reallocate its primary responsibilities to the Department of Justice (DOJ) and the Departments of State and Labor would only compound the current problems with the nation's immigration system.

First, such a substantial reallocation of authority could require a six- or seven-year transition, exacerbating existing concerns about long delays in immigration activities. Second and even more important, this reallocation would hinder the coordination and communication necessary to maintain the integrity and efficiency of both immigration enforcement and immigration service operations. To be most effective, all immigration policy and management should remain within one agency at the Justice Department.

Q: How will this reorganization address the frequent complaints about inefficiency and delay at the INS?

A: The Administration's reform plan will untangle the INS's overlapping and frequently confusing organizational structure and replace it with two clear organizational chains of command -- one to accomplish its enforcement mission and the other to provide immigration-related services.

This separation will result in an INS organization with better accountability and improved efficiency that allows each operation to focus on the unique management, knowledge, skills, and abilities of its function. For example, Service Area Directors would have the flexibility to move case processing responsibilities among offices within their area to maximize efficiency. In addition, Service Area Directors would be held accountable for meeting a nationally-established standard for timely processing and courteous service at all of the locations throughout the area's jurisdiction.

Q: How will your plan affect the Border Patrol?

A: The border patrol will perform its current border management functions, including the facilitation of legal traffic across our Nation's borders and the enforcement against illegal entry. However, because the Administration's plan creates an operational chain of command dedicated to immigration enforcement, the Border Patrol will be able to better coordinate their activities with other enforcement offices, including inspections, detention, and removal officers. This will allow a comprehensive focus on illegal immigration problems and create a single point of accountability for performance.

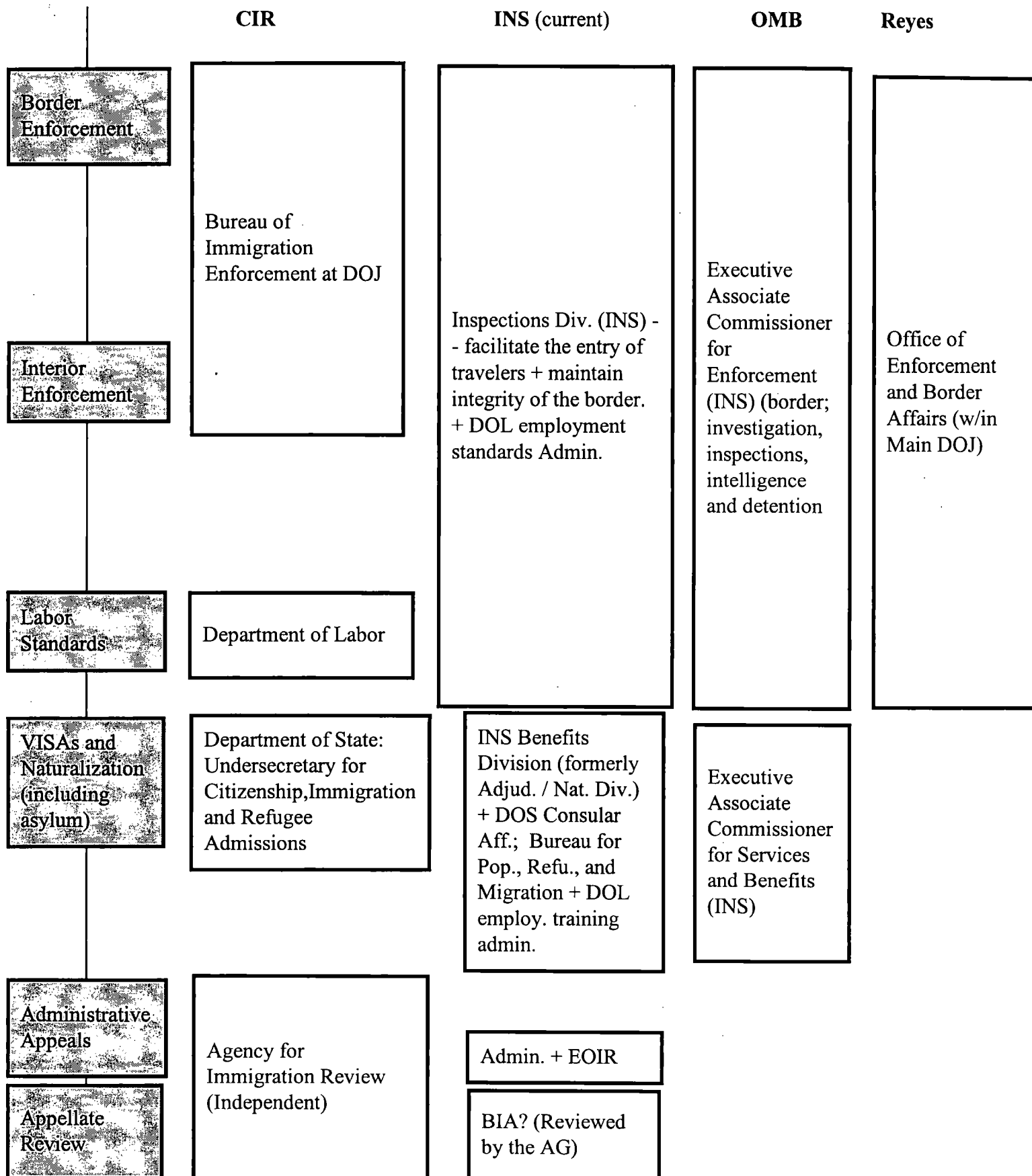
Q: Did the Administration consider Congressman Reyes's proposal to pull enforcement operations out of INS into Main Justice?

A: Consistent with Congressman Reyes's recommendation, our plan consolidates all enforcement operations to create a single point of responsibility and accountability. However, because of the variety of ways in which service officials depend on data collected by enforcement officers, and vice versa, to ensure the integrity and effectiveness of both functions -- as when, for example, a service officer discovers that a person has overstayed their visa and become an illegal alien -- we decided that both operations would work best when housed within a single entity.

Q: Is this proposal any more than just another shuffling of the boxes on an organizational chart?

A: The Administration's plan is a fundamental change in the way the INS conducts business: this restructuring involves a total overhaul of both enforcement and service operations. One of the most dramatic features of this plan is the replacement of the district field structure with separate Enforcement and Service Areas. This clear delineation of functions will address long-standing concerns about lines of authority and responsibility,

consistency of operations, and performance within the INS. It will result in improved enforcement coordination and measurable changes in the way INS provides services to the immigration community.



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INS Reform



REORGANIZING THE IMMIGRATION FUNCTION:

TOWARD A NEW FRAMEWORK FOR ACCOUNTABILITY

DEMETRIOS G. PAPADEMETRIOU, T. ALEXANDER ALEINIKOFF, AND DEBORAH WALLER MEYERS

PRE-PUBLICATION COPY

INTERNATIONAL MIGRATION POLICY PROGRAM
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

**REORGANIZING THE IMMIGRATION FUNCTION:
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REORGANIZING THE IMMIGRATION FUNCTION: TOWARD A NEW FRAMEWORK FOR ACCOUNTABILITY

Executive Summary

Immigration historically has been an important and complex public policy issue, one that has motivated countless studies on the structure, management, and performance of the immigration system. The salience of immigration today is obvious, as is its connection to other major public policy issues.¹ It is curious, then, that the INS has relatively low stature and that there exists no formal structure for coherent immigration policy development within the Executive Branch.

Despite repeated congressional efforts at modifying and reshuffling the immigration function over the last century, the degree to which the problems and challenges remain the same is startling. Previous studies have focused on INS's multiple missions (particularly the tension between service and enforcement), the overlap of INS functions with those of other agencies, and INS management. Options have included raising the profile for immigration policy development, consolidating border agencies, consolidating the DOS and INS visa responsibilities, and improving efficiency and management.

We undertook this study well aware of previous reorganizations and the critical studies they have invariably generated. We neither start from scratch, nor do we simply suggest changes at the margins. We recognize that there are some major problems and major gaps that demand major changes.

We have consolidated into five main areas many of the problems we heard in meetings with representatives of the Administration, the Congress, interest groups, and others who have studied these issues. These are:

- Lack of Policy Coherence
- Inadequate Attention to Customer Service
- Unequal Priority and Attention to Service and Enforcement Missions
- "Mission Overload"
- Lack of Accountability

¹ Examples of intertwined policy issues include welfare, social security, population growth, labor market composition, bilingual education, and national security. A major reason for these connections is that immigration accounts for almost 40% of U.S. population growth and the foreign-born already comprise 10% of the U.S. population. These numbers have important implications for school-age populations, higher education enrollments, the make-up of the workforce, the ratio of workers to retired persons, and social, cultural, and political impacts related to the regions of origin (Latin America and Asia) of the vast majority of these immigrants.

Solutions to these problems must begin with the organizing principle that *the immigration function should be located in an agency whose primary mission is fully consistent with the function's core purposes*. The present placement of the immigration function fails this simple test, in part because of the function's complex and cross-cutting nature. More than any single other reason, *and there are many*, this is the explanation for the imbalance in the conduct of our immigration responsibilities.

Proposals for reform of the immigration function should embody the following three elements:

- A centralized, High-Level Location for Immigration Policy Development
- Improved Service Delivery
- Separation of Service and Enforcement

We outline two reform options which offer the possibility of overcoming long-recognized weaknesses in the performance of the immigration function.

The preferred option is the creation of a new Cabinet-level agency for migration and citizenship affairs (see attached Chart 1). Under this proposal, various functions currently scattered among several federal departments would be consolidated into a single agency. Thus, the new agency would incorporate the current functions of the INS; labor certification from the Labor Department; the visa, passport, refugee, and migration functions of the State Department; and the Office of Refugee Resettlement from the Department of Health and Human Services. Importantly, service and enforcement functions would be separated within the agency. At the local level, separate immigrant service areas and enforcement sectors would be established. The new agency would elevate immigration to a level commensurate with its importance. It would be able to develop comprehensive and coherent migration and citizenship policies, would be held accountable for policies and performance, would establish a single system of records, could serve as a catalyst for cultural change within the immigration bureaucracy, and could attract experienced managers and analysts. The provision of services to immigrants and U.S. citizens will benefit from policy coherence, mission clarity, new managers, and separated service and enforcement functions.

The second-best option would elevate the immigration function within the Department of Justice through a new position of Associate Attorney General for Immigration (see attached Chart 2). The office, which is at a higher level than that of the current INS Commissioner, would be charged with the formulation of immigration policy. It also would supervise immigration enforcement and service functions, which would be folded directly into the Department. As in the first proposal, these functions would operate through separate chains of command. An Associate Attorney General for Immigration would be well placed to call upon and coordinate with other agencies who have immigration-related functions, chairing an inter-agency group on migration issues. Implementation of this option would provide important opportunities for an influx

of new managers and analysts. It would also improve both service and enforcement at the local level by having more focused missions, paying equal attention to both functions, and increasing the pay of officers to that comparable of other agencies in the Justice Department.

We conclude that other options are not up to the task. Simply separating service and enforcement functions within the existing INS could be an important step, but it would not improve policy development and coordination and might not sufficiently close the agency's credibility gap. Nor are we persuaded by the proposal of the Commission on Immigration Reform to disperse INS' functions to other agencies. Such a move would transfer core immigrations functions to agencies that do not view immigration issues as fundamental to their missions. Moreover, rather than improve policymaking, it would be likely to hinder coherent policy development.

REORGANIZING THE IMMIGRATION FUNCTION: TOWARD A NEW FRAMEWORK FOR ACCOUNTABILITY

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I. WHAT IS THIS STUDY ABOUT?

A new era of large-scale immigration calls for new forms of governance and management. As we negotiate these demands it is important to pause and ask ourselves a number of critical questions. First, is U.S. immigration policy consistent with the values and aspirations of Americans—and the long-term economic interests of the country—and are its intentions clear to all who engage the system? Second, are our institutional structures equal to the task of managing the responsibilities implied by large immigration numbers and ever more complex functions? Third, are various components of the immigration function rationally organized into a set of interrelated functions whose whole is clearly larger than the sum of its parts? Fourth, is the system we have in place—both in terms its organization and its location within our public administration apparatus—capable of delivering all the programs we expect of it? Fifth, can the system satisfy Americans that increasing public investments in the immigration function have in fact improved its two main elements: compliance with the law and provision of services in a timely, fair, and courteous manner? Finally, is the system flexible enough to learn from experience, embrace change, and meet the financial and programmatic criteria of accountability that the public has a right to expect?

The first question, critical as it is to a comprehensive evaluation of a country's immigration system, is largely beyond the scope of this effort. The others, however, are very much at the core of this study's purpose: *to examine whether the institutional framework that has been created to manage our immigration function meets fair and reasonable expectations of program integrity and delivery and, if it does not, to offer appropriate alternatives.*

Our starting premise is that immigration can be managed well against a backdrop of laws grounded in a realistic policy vision, an appreciation of immigration's relationship to major domestic policy priorities, and a high degree of clarity about the international objectives and obligations of the United States. Effective *day-to-day management*, in turn, has three primary ingredients: regulations that make sense, are transparent, and are consistently applied; programs that emphasize an uncompromising commitment to accountability; and an institutional culture that understands and internalizes the agency's mission and priorities well while embracing and rewarding personal integrity and professionalism.

In addition, the effective discharge of the immigration function requires strong leadership that adopts an uncompromising stance that favors rules-based procedures, emphasizes program integrity, and holds officials at all levels responsible for upholding the public trust—and whose own actions clearly reflect unmistakable values and priorities. Finally, effective management will be vigilant enough to identify and fix small problems before they become big ones, while adapting constantly to changing real circumstances that may require adjustments in policy and law.

II. SOURCES

This report is based on consideration of material from four types of sources. First, we have reviewed the work of more than a century of study groups, commissions, task forces, congressional committees, blue ribbon panels, and a handful of researchers. Their attempts to come to terms with issues that are remarkably similar to those with which we are grappling today teach us a lesson in modesty, even humility; we found little in today's debates and proposed solutions that has not been recommended before. In fact, both our principal recommendation—to consolidate all immigration functions in an independent agency—and, in the absence of the political will to do so, our “second best” recommendation—to reorganize the immigration function in a fundamental way by incorporating it *directly* within the Department of Justice—have received strong support among study panels going back to the earliest days of the century. These include two of the last three major commissions this country mandated to study this issue—in the late 1970s and the late 1980s.

Second, we have benefited from the observations of many knowledgeable and thoughtful people from a variety of federal agencies—at all levels of responsibility—congressional offices, public sector study groups, and private sector institutions. These individuals—whose affiliations appear in Appendix 1—gave us important critiques of the current structure and extremely well considered explanations of their perspectives and recommendations. Their knowledge and passion has left an indelible mark on our own views of how to approach the immigration function—most compellingly, in the need to address prevailing weaknesses in service delivery.

Third, we have learned a great deal from people whose constituencies have regular contact with the INS. Some of them are the Washington representatives of ethnic and advocacy communities, and their well-reasoned concerns resonate with us as we draft this report. Others are front-line service providers. Among these, we are particularly indebted to the many fine people of the CLINIC (the Catholic Legal Immigration Network, Inc.) service network who responded generously to CLINIC Director Don Kerwin's time-consuming questionnaire about problems with and recommendations about the delivery of immigration services at the local level.

Finally, we have relied on our own knowledge and experience with immigration systems in the United States and abroad. This includes extensive conversations with

senior officials from the Canadian and Australian governments who have thought deeply about these same issues.

III. THE IMMIGRATION FUNCTION

The immigration function is multifaceted and multi-layered. It involves deterrence of unlawful entry, facilitation of lawful entry and residence, naturalization, and termination of unlawful residence. Effective performance of the function requires a large array of skills, including central office policy, program development, program coordination between headquarters and field offices, face-to-face provision of services, and enforcement encounters. Immigration authorities adjudicate applications based on family relationships, verify the unavailability of U.S. workers for certain jobs, and certify the skill levels of and wage offers to prospective foreign workers. They hear claims of asylum-seekers, apprehend unlawful entrants, check employers' compliance with immigration laws and investigate employers suspected of hiring unauthorized workers. They inspect the roughly half a billion persons who cross U.S. borders each year, assess fines against airlines that transport foreigners who lack proper papers, detain criminals and transport tens of thousands of deportable aliens a year, and grant citizenship to large numbers of immigrants (more than a million persons per year in recent years). They grant or deny visas to millions of applicants around the world, and handle tens of millions of requests for extensions of stay, work authorization, stays of deportation, advance permission to reenter the United States, and the replacement of lost "green cards." Simultaneously, immigration authorities are in close contact with a wide variety of state, local, and foreign officials and respond to thousands of communications from members of Congress. Successful performance of these roles requires a complex and integrated records system that can link overseas and domestic units, combine civil and criminal files, be accessible to the federal, state, and local authorities without violating confidentiality rules, and (most recently) verify the immigration documents shown to employers.

The importance and complexity of the function has led to repeated congressional efforts to study, modify, and reshuffle it. Since Congress first began to centralize control over immigration in 1864, the immigration function has been moved from department to department; substantial internal reorganizations have been even more frequent.

In an important sense, there is no single "right answer" to the question of where the immigration function should be located or how it should be organized. The system is big, complex, and asked to do many discrete things. An optimal location and structure for offices that grant benefits, and must thus be accessible and "user-friendly" to customers, may not be the same as those which optimally serve the needs of officers who investigate immigration violations and arrest and detain people. A system of records that maintains accurate and easily accessible files of lawful immigrants may not be the same system that tracks criminal aliens most efficiently. While form should follow function, *flexibility* can also be an important organizational principle when "on-the-

ground” conditions demand it; a picture with neat boxes may be pretty to look at but devilish to implement.

In this study, we identify some major areas in which form appears to impede function, or in which an important function lacks a location. We then ask how the current structure might be modified to enhance policy coherence, public accountability, and customer service. We neither start from scratch, nor do we simply suggest changes at the margins. There are some major problems and gaps that demand major changes.

We begin with a brief history of the development of the existing structure and some recent proposals for structural change. We then identify a number of important systemic problems. Remarkably, we find that the immigration bureaucracy has been plagued by many of the same problems and challenges throughout its history despite numerous congressionally mandated changes and internal restructurings. This finding implies that the issues of the most appropriate location and the most effective organization are larger than simply the politics of the moment, U.S. immigration policies, or an administration’s management of the agency. Finally, after evaluating several possible changes of placement and structural reform, we conclude that the salience of migration and citizenship policy today argues in favor of consolidating virtually all immigration functions in a single, independent, Cabinet-level agency. A second-best, but still fundamental, change would be to elevate the immigration function within the Department of Justice through the creation of an Associate Attorney General for Immigration.

Under either alternative, we recommend the complete separation of service and enforcement functions, each with its own career path, chain of command, and system of accountability for the complete delivery of its function. Both functions, however, would ultimately report to the same high-level administrator who also would be charged with the formulation of immigration policy for the Executive Branch. By doing so, we believe that two of the central weaknesses of the management of immigration as it is presently structured—lack of overall policy coordination and unequal attention to the agency’s two main activities (enforcement and service)—are addressed with clear gains in the overall accountability of each activity and consistency in program delivery. We also believe this structure avoids the losses in overall functional synergy and coherence that would occur with dispersal of the agency’s functions.

IV. HISTORY OF THE IMMIGRATION FUNCTION

A. Location of the Immigration Service

For nearly a century after independence, Congress enacted no general immigration laws and established no federal bureaucracy to oversee immigration. Inspections of arriving immigrants were carried out by state officers; and state courts were responsible for naturalization. In 1864, the position of Commissioner of Immigration was established within the State Department. The Commissioner was

charged with protecting new immigrants from fraud and overseeing their transportation to their final U.S. destination.

Congress adopted legislation in 1875 barring the entry of convicts and prostitutes, and in 1882 it enacted the first of the Chinese exclusion laws. At that time, Congress placed overall management of immigration in the Treasury Department, although enforcement of laws against arriving aliens was delegated to the states. The resulting inconsistencies and inefficiencies led Congress to give the Treasury Department complete control over immigration in 1891.

The Bureau of Immigration was transferred from the Treasury Department to the newly created Department of Commerce and Labor in 1903 because of the latter's focus on enforcing the laws regarding foreign contract labor. With the addition of the naturalization function three years later, the Bureau became the Bureau of Immigration and Naturalization. A Division of Information within the Bureau was charged with helping immigrants settle throughout the country and compiling a list of employment opportunities for them. In 1913, the Department of Commerce and Labor was separated into two departments. The Immigration and Naturalization Bureau went with the new Department of Labor and separated into two bureaus, each headed by a Commissioner. The two bureaus were reconsolidated by an Executive Order in 1933 and renamed the Immigration and Naturalization Service (INS). The INS remained in the Labor Department until 1940 when President Roosevelt's Reorganization Plan transferred it to the Department of Justice as a wartime national security measure. It has remained there since.

B. Initial Development of Various Immigration Functions

Tracing the history of some of the immigration functions over time enhances our understanding of where they are located today and why. This section reviews the development of inspections, visa issuance, border control, administrative review, naturalization, adjudications, labor, and asylum functions

Inspections. In the 1880's state officials performed inspections of arriving aliens. The Federal Government took over inspections at the port of New York in 1890 and at all ports of entry in 1891. By 1899, officers were deployed at foreign ports to inspect for likely medical problems, though they could not prevent departures unless an intending immigrant had a communicable disease. The Immigration Act of 1924 effectively transferred the screening function overseas by requiring that aliens obtain entry visas abroad and by allowing the government to examine aliens for admissibility prior to departure. The function was performed by consuls, thus involving the State Department; also present were advisers from the Immigration Service and the Public Health Service. Today, screening of aliens occurs at ports of entry, through certain INS pre-inspection locations overseas, and through the visa process in consular offices where applicants may be judged inadmissible and denied a visa.

Visa Issuance. Consular officers were charged with issuing visas in 1884. A general requirement that aliens acquire visas was established in 1917. Final decision on visa applications was transferred to the Secretary of State in 1942, because of wartime security concerns. By 1952, INS-approved visa petitions were required by most immigrants, although the State Department retained the function of granting visas overseas. The State Department continues to issue visas overseas, though nationals of some countries do not require visas under the Visa Waiver Pilot Program and much of the clerical work of visa issuance has been transferred to the National Visa Center.

Border Control. Enforcement of immigration laws on the border began with approximately 75 immigration inspectors patrolling the Southern border by horse in 1904. In response to an increase in illegal entry and smuggling, Congress created in 1924 a Border Patrol within the Immigration Bureau with 450 employees deployed along both the Mexican and Canadian borders. By 1930, the Border Patrol had almost doubled in size. It received additional resources during WWII in response to national security concerns. Rising unauthorized entries in the last two decades have led to the Border Patrol's continuing expansion. Since FY1993, the Border Patrol has doubled from approximately 3900 agents to 7800, the vast majority of whom are located on the Southwest border.

Administrative Review. When the Immigration Bureau was in the Labor Department, it included a Board of Special Inquiry and a Board of Review. The former determined the status of detained immigrants, and cases of exclusion and deportation. The latter reviewed appeals from the Board of Special Inquiry and made recommendations to the Secretary of Labor regarding deportation cases. These two functions were transferred along with the INS to the Justice Department and evolved into the Immigration Court and the Board of Immigration Appeals (BIA). The BIA and the Immigration Court were consolidated into the Executive Office of Immigration Review (EOIR) in 1983. Also within EOIR is the Office of the Chief Administrative Hearing Officer, which hears appeals in employer sanctions cases.

Naturalization. Naturalization laws date from the early years of the republic. Initially, any common law court of record was empowered to grant naturalization; federal courts eventually were granted the authority as well, and at one point court clerks provided records of naturalization to the Secretary of State. However, the absence of a federal agency with responsibility for enforcing the naturalization laws led to a lack of uniformity, as courts in various states used their own procedures for process, standards, records, and investigations. In response, 1906 legislation gave administrative supervision to the federal government by combining oversight of the naturalization function with the immigration bureau to form the Bureau of Immigration and Naturalization. Federal courts retained the authority to grant or deny naturalizations. In 1909, naturalization fieldwork was transferred from representatives of the U.S. attorneys to a special corps of examiners in the Bureau.

In 1913, naturalization became a separate bureau within the Department of Labor, but in 1933 it was recombined with the immigration bureau. The naturalization function moved to the Department of Justice along with the rest of the INS in 1940. Due to an increasingly perfunctory role for the courts in naturalization, the Immigration Act of 1990 changed the process to an administrative one under the Attorney General's authority, though courts can still administer the citizenship oath and review denied petitions. Special naturalization offices were opened by the INS in 1995 to handle a large and growing backlog of applications.

Adjudications. In the 1950's, adjudications were primarily handled by staff at INS headquarters, though some work occurred at the district level. Backlogs caused by increased filings during the 1960's led INS to send some cases to inspectors at ports of entry as stand-by work. When backlogs began occurring there too, INS initiated Up-Front Processing at local offices to process walk-in applications and petitions. While efficient for some cases, this process also led to more clerical work for adjudicators, longer waiting lines for applicants, and a perception that cases filed in person received preferential treatment. INS created its first Remote Adjudications Center in 1979 away from the public with staff dedicated only to adjudications. After seeing increased efficiency and higher quality decisions, INS opened additional remote sites. In the 1980's, INS began a Direct Mail Program to further reduce costs and provide better service.

The Adjudications and Nationality Division currently is part of the Examinations Branch of the INS. Among its many duties are immigrant and non-immigrant visa petitions, adjustments of status, green card applications, and waivers of excludability. The work is split between those applications and petitions that require interviews, and thus take place in the district offices, and those that do not and are handled by the Service Centers (which evolved from the Remote Adjudications Centers described above). The Service Centers have proven able to process large volumes of work and eventually will handle initial processing for all applications and petitions.

Foreign Workers. Labor Department involvement in immigration began with the Department's creation in 1913 and has continued to this day. Even prior to the creation of the Department, the Immigration and Naturalization Bureau compiled a list of job opportunities in the United States for arriving immigrants. DOL helped mobilize and import labor during World War I and also was involved in the Bracero programs for agricultural workers that lasted from 1942 to 1964. Through the Employment and Training Administration (ETA), the Department of Labor has been involved in the certification of permanent, as well as some temporary, foreign workers. Additional responsibilities were imposed on the Labor Department following passage of the Immigration Reform and Control Act of 1986 (IRCA), particularly on the Employment Standards Administration (ESA), which was required to check work authorization forms. Additional changes in Labor Department responsibilities have come from legislation enacted in 1989, 1990, and 1991 regarding immigrant nurses and employment-based immigration. A section of the Bureau of International Labor Affairs (ILAB) focuses on

developing immigration policy and conducting research. The Office of the Assistant Secretary for Policy (ASP) usually coordinates Department-wide policy positions, most directly with regard to agricultural and nursing worker issues. The Office of the Solicitor (SOL) provides legal support for all of the Department's immigration-related functions.

Asylum. Even in the late 1800s, Congress understood that aliens who were otherwise excludable or deportable may deserve exemptions if they were political enemies of the government to which they would be returned. Though such exemptions were present in 1950s legislation and in regulations and guidelines issued by the INS and State Department in the 1970s, asylum status formally came into existence with the Refugee Act of 1980. The Act allows the Attorney General to grant asylum to aliens arriving in the United States who prove that they have a well-founded fear of persecution if returned to their countries of origin. Originally handled by INS examiners, asylum cases were transferred to a specially trained corps of asylum officers by 1990 regulations. Asylum officers report directly to INS headquarters and their field offices are totally separate from INS district offices. Later regulations streamlined the process to reduce the backlog and prevent abuse of the program.

V. REORGANIZATION

Structural reform proposals date back to the first decades of the 20th century. Studies consistently have focused on INS' multiple missions (particularly the tension between service and enforcement), the overlap of INS functions with those of other agencies, and INS management. More specifically, they commonly have looked at raising the profile for immigration policy development, consolidating border agencies, consolidating the DOS and INS visa responsibilities, and improving efficiency and management. We attach as Appendix 2 an annotated list of the most important government reports on structural reform from the early 1900s to the present.¹ We discuss below the relevant recommendations of migration-related commissions created by Congress over the past two decades.

¹ One important non-government study on this issue is Milton Morris's 1985 book *Immigration: The Beleaguered Bureaucracy* (Washington, DC: Brookings Institution, 1985). Morris argued for comprehensive reform and a redistribution of responsibilities after finding a fragmented administrative structure, a lack of stature within the government, a lack of clear policy objectives, and varied and contradictory work with many competing interests. He noted the failure of policymakers to make critical policy choices and the failure of Congress to appropriate adequate funds. Morris proposed consolidation of all immigration functions into an independent agency as well as the idea of elevating INS within the Justice Department to enhance its visibility and voice. Other options had included creating an interagency unit and increasing cooperation between the INS and state and local law enforcement. Many of the more modest changes recommended by Morris have since been implemented. They include drastic INS budget increases; quicker installation of automated data processing and storage systems; creation of a strong planning and research unit; a community outreach program; an increased Border Patrol presence along the borders; computer-assisted screening of visa applicants and machine-readable visas; and a high-level task force to recommend improvements in the structure of the immigration bureaucracy and in the distribution of responsibilities.

A. Summary of Recent Proposals

Select Commission on Immigration and Refugee Policy (SCIRP). In 1981, the Select Commission recommended maintaining the basic structure of the immigration system, with responsibility for visa issuance in the State Department and for domestic operations with the INS. Within this structure, however, SCIRP recommended a clear budgetary and organizational separation of the service and enforcement functions of INS. SCIRP also recommended upgrading the Commissioner within the Justice Department to the level of Director and having the Commissioner report directly to the Attorney General.

SCIRP had considered proposals to transfer visa issuance from the State Department to INS or to an independent agency with both domestic and overseas functions. It decided against them, however, for reasons that included sensitivity to departmental jurisdictions and existing expertise (SCIRP members included the Cabinet Secretaries of the agencies that would be affected by such reorganization), as well as personnel and operational disruptions. (Some Commissioners, however, supported the idea of a single immigration agency because of likely improvements in the efficiency, effectiveness, and status of U.S. immigration policy.) SCIRP also considered the idea of dividing INS into two separate agencies (one for service and one for enforcement) or into interior and border agencies, but concluded that efficiency and effectiveness would not improve as both functions include elements of the other and are linked by law and administrative support. According to SCIRP, separating service and enforcement into two separate agencies could increase inconsistency, duplication, and delay.

Commission for the Study of Migration and Cooperative Economic Development (Asencio Commission). This Commission's 1990 report concluded that reorganization of the immigration function was "urgently needed." It recommended creating an independent Agency for Migration Affairs (AMA) that would centralize immigration and refugee issues and give migration a higher profile on the domestic and foreign policy agendas through such means as coordination with other agencies and provision of immigration impact statements. The new agency also would eliminate costly and overlapping activities. AMA would have incorporated the INS (except for Border Patrol and interior enforcement), the Bureau of Consular Affairs (except assistance to Americans abroad), the Bureau of Population, Refugees, and Migration, and the asylum office of the Bureau of Democracy Human Rights and Labor—all located at the State Department.

In effect, the Commission recommended splitting the service and enforcement functions because of its concerns about such issues as competition for resources between the two, lack of coordination and cooperation between programs, conflict between INS district offices and Border Patrol sectors, personnel practices, and confusion about mission and responsibilities. The Commission had considered, but rejected, other proposals such as the appointment of a "Migration Czar," a Migration

Coordinator in the Executive Office of the President, an Undersecretary of State for Migration Affairs, and a separate Cabinet department.

U.S. Commission on Immigration Reform (CIR). In its 1997 final report, CIR recommended a fundamental restructuring of immigration responsibilities according to function. It identified the primary functions as follows: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and administrative appeals. The Commission's proposal would eliminate the INS and parcel out its functions. It would create a Bureau for Immigration Enforcement within the Justice Department for border and interior enforcement; establish an Undersecretary of State for Citizenship, Immigration, and Refugee Admissions within the State Department for benefits adjudication; and transfer enforcement of immigration-related employment standards to the Labor Department. The Commission also recommended creation of an Agency for Immigration Review that would hear independent appeals of administrative decisions.

The Commission identified a number of deficiencies in the structure of the immigration function. These included the large number and potentially conflicting nature of INS' responsibilities, mission overload, overlap with other government agencies, and the lack of a single accountable authority because of diffused responsibilities. The Commission argued that its proposal would increase coherence and consistency in enforcement, improve the environment for adjudication of applications, provide fair review of decisions, increase accountability, improve customer service orientation, and use fees more effectively.

Commissioner Warren Leiden agreed with the majority's views of the problems of the INS and with the need to separate the enforcement and adjudications functions but recommended folding the separated functions into the Department of Justice (along with the appeals function). In the Leiden proposal, each function would have its own leadership with a single, focused chain of command while a senior level office would provide policy and strategic coordination. Commissioner Leiden emphasized that such a change would clarify the mission of each function, allow for clear goals, and establish accountability at a smaller cost in dollars and disruption than the Commission's majority proposal. Further, he noted that the Justice Department has experience and expertise in both the enforcement and adjudications functions and "epitomizes the values of due process and the rule of law."

B. Recent INS Reorganizations

As early as the 1890's, the Commissioner-General of the Bureau of Immigration discussed organizational problems faced by the Bureau such as increasing immigration regulations and restrictions without sufficient means for enforcement. Other issues of concern at that time included separation of the customs and immigration functions, a desire for better emigration statistics, and interest in dispersing immigrants around the country. In addition to the proposals for reform of the immigration function described above and listed in Appendix 2, there have been numerous internal INS

reorganizations, each trying to fix primarily the problems of the last reorganization. This section will focus on the most recent reorganizations.

Until 1954, the INS had District Directors who were under the direct supervision of the Commissioner. In 1954, INS decentralized by creating four regions to supervise the district offices and perform general functions such as accounting and records management. INS hoped to provide faster service and closer supervision, place authority for routine matters in the field, and free the time of headquarters staff from case review, administrative work, and district supervision.

1991 Reorganization. Based on concern about inadequate coordination and oversight in the field, this plan aimed to improve the management and operations of the INS through re-centralization. Among other changes, Executive Associate Commissioner positions were created with responsibility for day-to-day management, so as to allow the Commissioner to focus on oversight and other larger issues. Further, the powers of the heads of the regional offices (who were political appointees at that time and had their own power bases) were reduced. These changes came after many reports critical of INS, such as a General Accounting Office (GAO) report that focused on a lack of clearly defined goals and priorities, inconsistent leadership and weak management systems, and overlapping and inconsistent programs.

1994 Reorganization. Following continued criticisms and the appointment of a new Commissioner, another major reorganization was instituted in 1994. This reorganization restored the power of the regional offices by charging them with responsibility for day-to-day management of the District offices, reduced the number of regions from four to three, separated field operations from programs, and upgraded the function of policy development and strategic planning.

V. PROBLEMS WITH THE CURRENT STRUCTURE

A. Lack of Coherence in Policymaking

Immigration cuts across a number of critical policy issues, from the social security, welfare, and human resources areas, to education and economic competitiveness, law enforcement, and foreign policy. Currently, about 10 percent of the U.S. population is foreign-born (twice the rate of the 1950s) and immigration accounts for about two-fifths of U.S. population and labor market growth. At current immigration rates, about two-thirds of U.S. population growth in the next fifty years will be attributable to immigrants, their children, and their grandchildren.

One might suppose that considering the issue's importance and the lack of a single central location for the routine and ongoing formulation and review of migration policy, the Executive Branch would establish a standing policy group to consider U.S. immigration policies. So too might one expect a coordinated policy effort that examines the impact of migration on a variety of domestic and foreign policy realms. That, however, is not in place.

Various agencies have various pieces of the overall responsibility for immigration. These tend to be viewed narrowly, and they are principally operational: the INS is charged with most day-to-day program delivery tasks; the State Department deals with visa issuance and most refugee policy issues (the program is delivered by the INS and the Department of Health and Human Services); the Department of Labor weighs in on work visa issues and helps enforce workplace immigration rules; the Department of Defense gets involved in high-seas interdictions and off-shore safe havens; and the Department of Health and Human Services manages refugee resettlement programs with the assistance of the states and private service providers. When confronted with a major migration crisis, control and coordination shifts to the National Security Council, which seeks information from and gives direction to the relevant departments.

Major immigration initiatives typically are vetted through the Domestic Policy Council, which in recent years has served more of a coordinating role than a policy formulation function. Routine coordination of agency perspectives on specific issues is handled by a few staff persons at the Office of Management and Budget (OMB). OMB is also responsible for coordinating government-wide responses to congressional requests for an administration position on pending legislation. Impasses at staff level are typically “kicked upstairs” to the relevant agencies’ political appointees. Because of the way in which responsibility for the function is dispersed among agencies, vetting differences typically does not start until it is very late in the process and consensus is often reached at the last moment—leaving both principals and staff exhausted and congressional committees frustrated. The lack of a central location and a formal structure for policy development are thus highly problematic.

B. Customer Service is Woefully Inadequate

The budget of the INS has increased by 153 percent in the past five years; during the same period, staff levels have grown by 51 percent. Administration requests for fiscal year 1999 seek to increase budget and personnel by an additional 11 and 9 percent respectively (see Appendices 3 and 4). The vast majority of the increase in appropriated funds has gone to enhanced border enforcement, detention and deportation, investigations, land border inspections, and technology improvements. Services—including adjudication of applications, issuance of documentation, and provision of information—are largely funded out of fees paid by persons filing applications with the INS. Fee-based accounts have also grown significantly in recent years due to a dramatic increase in the number of applications. These funds have been used by the INS primarily to hire additional personnel in order to keep up with the increase in applications.

While there have been some noteworthy improvements in service and more are slated for the future—most importantly, a “re-engineered” naturalization process—the day-to-day service to immigrants and U.S. citizens at immigration offices around the country does not appear to have materially improved despite the enormous increase in agency funding. Lines at district offices remain long, telephones go unanswered, filed

get misplaced or lost, information about particular cases and general policies remains difficult to obtain, and the public's experience with INS service personnel continues to be the agency's number one image problem.

Poor service has consequences beyond the frustrations experienced by individual clients. It implicitly sends a message to U.S. citizens and corporate entities that petition for a foreign-born person, as well as to immigrants who seek a service, that their needs and interests are not valued—a message that may eventually impede integration efforts and may also find reflection in public attitudes. Inadequate service also erodes support for the INS and undermines the credibility of agency policy initiatives. Finally, poor service breeds a self-reinforcing culture among agency personnel who, because they receive daily complaints, come to view their customers as adversaries.

In short, attention to service is not an act of altruism. It is crucial to the overall health of the system.

C. Service and Enforcement Functions Receive Unequal Priority and Attention

In recent years, public attention has focused primarily on the problem of illegal immigration; and Congress and the Administration have turned the immigration portfolio strongly toward enforcement. This has only served to accentuate the INS' dominant profile as an enforcement agency. (There have been a few notable counter-examples to this characterization, such as the legalization efforts of the late 1980s, and the recent creation of an asylum corp.)

While the overall diagnosis of the relative neglect of service is clear, its causes are in some dispute. As a result, the proposed remedies vary. Many observers believe that the service problems stem from a fundamental conflict between the agency's core functions of deterring illegal immigration and facilitating legal immigration. In its Final Report, the Commission on Immigration Reform stated this viewpoint forcefully:

Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses. While some argue that enforcement and benefits are complementary functions, we agree with the (Asencio Commission) that placing incompatible service and enforcement functions within one agency creates problems: competition for resources; lack of coordination and cooperation; and personnel practices that both encourage transfer between enforcement and service positions and create confusion regarding mission and responsibilities. Combining responsibility for enforcement and benefits also blurs the distinction between illegal migration and legal admissions.²

² U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*. 1997:148-49.

The combination of enforcement and service functions has also been criticized on the ground that enforcement goals always seem to take precedence over service goals. For instance, money will be made available for expediting removals but not for expediting adjudication of immigrant petitions. Separating the service and enforcement functions is thus looked upon as a means of ensuring that service goals are not short-changed. Another criticism posits that the culture of the agency has bred an “enforcement mentality” that “infects” INS personnel undertaking other tasks. As a result, many adjudicators are thought to begin their tasks with a predisposition to doubt applicants and to deny applications.

Whatever the causes, the current INS structure engenders conflict and confusion in the performance of the agency’s central functions. Those charged with implementing immigration law lack clear guidance on their core missions, how to balance priorities, or how to assign personnel. District Offices bear the brunt of this lack of clarity. They are microcosms of the immigration world: handing out documents, interviewing applicants, interrogating those they arrest, and detaining and transporting deportable aliens. They tend to be located in large cities, but their location is frequently neither convenient for lawful immigrants nor near prime areas for enforcement—such as major transit routes for undocumented aliens. District Directors are responsible for oversight of multiple functions, including adjudication, investigation, detention and deportation, and records maintenance. They are charged with accomplishing the agency’s many priority tasks, as well as responding to day-to-day crises and special cases. Effective management under these circumstances is not impossible; it has, however, proven to be very difficult. Almost invariably, it has been the service side of the agency’s functions that have suffered.

D. The Problem of Agency Overload

The tasks assigned to the INS have grown dramatically in recent years. The basic functions—border inspection, adjudication of a variety of immigrant applications, asylum processing, naturalization, and deportation of unauthorized aliens—have become remarkably complex. They require policies on such diverse areas as the management of the border, arrests and interrogation, detailed regulations on complicated substantive rules of immigration law, a records systems that includes millions of entries, the production of documents requiring the use of ever more advanced technologies, knowledge of political conditions in foreign countries, the maintenance of a 12,000 bed detention program, and appearances before tens of thousands of immigration court proceedings a year.

IRCA greatly expanded the INS’ duties by creating a set of amnesty programs that legalized the status of about 2.8 million undocumented persons and put in place a complicated regime of employer sanctions. The latter function effectively makes the hiring of any person—citizen or alien—anywhere in the United States of concern to the INS.

Legislation in 1996 charged the INS with, among other things, responsibilities relating to immigrants seeking access to social benefits, the deportation of immigrants who may have in the past committed rather minor crimes that as of 1997 make them deportable, the creation of several “verification” pilot programs (to test the authenticity of documents shown to employers to prove the right to work in the United States), the development of a plan for the inspection of every alien departing the United States, the production of documents with “biometric” features, and the establishment of expedited exclusion procedures at the border.

This disparate and complex array of tasks, imposed on an infrastructure long ignored by the Congress and most administrations, has hugely increased the responsibilities of the INS. To quote again from the Commission on Immigration Reform:

Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. Between congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure, and with such failure, further loss of public confidence in the immigration system.³

The assertion that the number of tasks assigned to the INS are more than “any one agency can handle” requires critical evaluation. On the face of it, surely, the INS has no more priorities than the Defense Department, the Department of Justice, Health and Human Services, or the Treasury Department. And a number of other governmental departments have both enforcement and service components: the State Department issues visas and prosecutes visa fraud; the Department of Labor grants labor certifications and enforces wage and hour laws; the Department of Justice enforces the drug laws and gives grants for drug treatment programs; and the Department of Defense plans for war and sponsors humanitarian peace-keeping missions. Indeed, any large institution is likely to perform a range of tasks in pursuit of both enforcement and service values.

Moreover, it is frequently overlooked that combining functions actually produces synergies that serve broader public policy goals. For example, attention to potential for fraud properly balances service goals of completing adjudications as quickly as possible and safeguards the integrity of the system. Indeed, it is difficult to see how, without both sides participating, effective policy could be crafted and carried out on a range of issues—such as the development of documents that both facilitate entry and employment and protect against fraud, or the establishment of an asylum program that can recognize bona fide cases and deter abusive claims.

³ *Id* at 148.

We therefore conclude that the case for dispersing enforcement and service functions among agencies may reflect frustration with INS performance in the service area—which is understandable—rather than a fundamental incompatibility between the agency’s two main functions.

E. The Need for Accountability

The American people have a right to expect far greater accountability from the immigration system than they now get. Accountability has two dimensions. The first dimension—we call it *external* accountability—is based on the public expectation that important governance functions will be consistent and supportive of each other, and that agencies will deliver their principal functions effectively, both by committing resources in a manner consistent with policy priorities and by achieving publicly announced goals. The second dimension—we call it *internal* accountability—demands that agency personnel be held responsible for the effective performance of their duties.

External accountability has suffered in the performance of the immigration function. Policies regularly seem to be in tension—such as the conflict between admissions policies that seek to enhance our competitiveness and those that seek to protect U.S. workers. Furthermore, a strained overall relationship between the executive and legislative branches has made it more difficult to perform the immigration function well. Poor relations between the two branches on immigration issues, in turn, have produced a congressional tendency to micromanage the issue and undervalue the expertise and experience of the agency’s managers and analysts.

Internal accountability is also inadequate in the performance of the immigration function. Policies and practices vary from district to district, headquarters-to-field communication is notoriously poor, and managers are rarely—if ever—held accountable for neglecting the service side of the agency’s work or for tolerating enforcement practices that are at variance with agency policies. These problems have persisted whether INS has adopted a centralized or decentralized organizational structure.

Internal accountability demands that an agency develop rules and deliver programs in a fair and consistent manner, and with the highest commitment to personal integrity and professionalism. Whether in the enforcement or service component of a function, nothing undermines an agency’s credibility and, gradually, its effectiveness than repeated failure in this component of accountability.

VII. PRINCIPLES AND ELEMENTS OF REFORM

The most appropriate placement of any major function is in an agency whose primary mission is fully consistent with the function’s core purposes. The present placement of the immigration function fails this simple test, in part because of the complex and cross-cutting nature of the immigration function—part service, part enforcement, part regulations, intersecting with policy realms and program domains that are close to the missions of many other agencies. More than any other single reason,

and there are many, this is the explanation for the imbalance which characterizes the conduct of our immigration responsibilities. It is also the reason that the INS (and its precursors) shifted location so many times as one or another of its core purposes became paramount. For instance, at the turn of the century, regulating foreign labor inflow was seen as the most important purpose of the immigration function. As a result, the function was located at the Department of Commerce and Labor. When that department was split, immigration was attached to the Department of Labor. In 1940, when national security was the nation's paramount concern, and immigrants from enemy countries were seen as a possible internal threat, the function was moved to the Department of Justice.

As a function changes parent agencies the performance of the function is affected in basic ways. That element of the function that is consistent with the parent agency's mission becomes dominant; other elements atrophy or are *de facto* delegated to agencies whose mission is more consistent with that purpose. This is the genesis of many of the immigration service's current predicaments; it also provides the guideposts for resolving them.

If the immigration function were a relatively inconsequential one, as it was during the first three decades of its location within the Department of Justice (1940-1970), the case for dispersing it among agencies—the proposal of the Commission for Immigration Reform—might be compelling. But even then, the logic of the Commission's proposal would hold true for only part of their implicit conclusion: that police functions are done best by police officers. The other major part of that conclusion—that service functions should be located within the State Department—strains credibility in two significant ways. It requires the belief, first, that placing the immigration service function in the State Department would be consistent with that agency's mission and with the world view and career aspirations of its foreign service professionals and, second, that delivering immigration services would necessarily be improved—and within a reasonable time—by such relocation.

As we have repeatedly stressed, the immigration function is exceedingly important today. It has become an integral part of the country's ability to put into effect some of its highest policy priorities: enhanced economic competitiveness, consistent social and human resources policies, humanitarian aspirations and obligations, law enforcement and national security responsibilities, and a variety of foreign political and economic policy objectives. Structural reform must correspond to and reflect the function's increasing significance. What, then, might be some key elements of reform?

A. *The immigration function must be organized in a manner and at a level that is commensurate with its importance to our society.* The importance of the immigration function, its cross-cutting nature, and the need for coherent policy development and execution argues strongly for the *consolidation* of its component parts and its *elevation* within the executive branch. Consolidation will give the immigration function the common purpose it lacks. It will also allow top management to articulate a

coherent vision of the agency's mission (and make explicit the values that must undergird that mission), and hold agency personnel appropriately accountable. Elevating the function will go a long way toward giving it the attention it deserves within the Executive Branch and will help the agency attract the talent it needs to perform its tasks effectively.

B. *The government must improve the timeliness, fairness, and efficiency with which it delivers services to immigrants and the many U.S. citizens involved in the immigration process.* Structural reform must make improvement of service a top priority. In recent days, Congress and the administration have tended to measure the effectiveness of our immigration policy by such factors as border apprehensions and detention and deportation numbers. It ought also to be measured by declines in waiting times at INS district offices, increases in the timeliness and accuracy of information provided, and the courtesy and efficiency with which the agency's customers are treated.

C. *The service and enforcement sides of the immigration system ought to be totally separated along the full continuum of each function—though staying within a single agency.* To ensure better performance and greater accountability, the enforcement and service functions should be separated. This would mean replacing the current District Office structure with two distinct entities, operating under separate chains of command. We will call them *Enforcement Sectors* and *Service Areas*. These entities need not (and probably should not) be geographically coterminous. Rather, they would be defined by their respective missions. The boundaries of Enforcement Sectors would be drawn to reflect the location of undocumented populations, transit routes, the location of detention facilities and the like. Service Areas would be constructed around the location of their clientele. Under this conception, immigration officers assigned to one division would not be loaned or detailed to the other; nor would line managers have to guess at the best distribution of resources between enforcement and service priorities.

This proposed separation is not a panacea. In a world of limited resources, top managers within each function would still face difficult choices, e.g., whether to devote additional resources to employer sanctions enforcement or increased detention; whether to reduce the backlog of naturalization applications or adjustment of status cases. But at least they will be making these choices among options that are fundamentally of similar character and can be costed and evaluated in fairly similar ways (i.e., overall number of removals, or numbers of cases completed) rather than attempting to weigh enforcement apples against service oranges.

Creating separate lines for the two functions can also address many of the issues of accountability we have identified without sacrificing the important synergies that each function brings to the other (including that of safeguarding the integrity of benefit programs)—as long as they are both situated within a single agency. A single agency allows the immigration function to benefit from the input of those who give

priority to efficient and customer-friendly procedures as well as those whose primary concern is preventing abuse.

VIII. PROPOSALS FOR CHANGE

We are convinced that change is needed. Yet, change must be manageable—and capable of responding effectively to the ills of the current system. Structural change is deeply disruptive both to organizations and the people who work in them. Consequently, proposals must be evaluated not just on the basis of how neat they look in charts, but also on whether the benefits of the proposed change promise to outweigh the costs of getting from here to there. Indeed, because of a general tendency to underestimate the intangible costs of reorganization, we believe that the benefits should *substantially* outweigh its costs before any particular proposal is adopted.

A number of the proposals we discuss below have been made before. This may be good news or bad news. On the one hand, it may reflect a growing consensus on the direction of needed change; on the other hand, it may represent the familiar scenario of good ideas chasing inertia and entrenched interests. We need to stress at the outset that in our view there is no silver bullet here. The immigration function is too complex for there to be a simple structural solution.

A. A New Independent Immigration Agency

The structure best suited to address the concerns and sustain the principles we have identified above is a new, independent agency at the Cabinet level that consolidates the functions currently scattered among a number of federal agencies. A new immigration agency would combine the immigration functions of the Justice Department; the visa, passport, and most refugee and migration functions of the State Department; labor certification from the Labor Department; and refugee resettlement programs from the Department of Health & Human Services.⁴

Simply stated, an independent or Cabinet-level agency would give the immigration function its due. The current structure is plainly inadequate. The Domestic Policy Council, as noted above, serves more to coordinate and cajole than make policy. It does not have the staff or the expertise to perform serious policy analysis and development. OMB, which has access to more resources, is also hamstrung by the parameters of its role and by the fact that its organization reflects that of the government itself—the immigration function is also dispersed among different divisions. The policy branch of the INS is located well down in the Justice Department structure, and the influence of migration-related policy offices at the Departments of State and Labor are generally not viewed as central to their Departments' missions. Much as

⁴ Of course, considering the fact that the departments whose functions have been incorporated within this new agency will continue to be interested in the setting of migration and citizenship policy in some way, they should continue to be prepared to offer their expertise and perspectives on the development of policy by developing or retaining a policy capacity located in the office of each department's top management.

environmental policy took a big step up with the creation of the EPA (established in 1970 by the consolidation of 11 programs dealing with the environment⁵), the creation of an immigration agency would, for the first time, fully focus the resources of the Executive Branch on the important (and difficult) issues of immigration and citizenship. Such an agency would be best able to develop and implement migration and citizenship policy in a coherent fashion and to provide both internal and external accountability.⁶

The INS currently is larger than several Cabinet-level agencies in terms of personnel, while its budget is comparable to that of several others (see Appendices 5 and 6 for the relevant graphs).

Personnel Full Time Equivalents (FTEs) of Selected Federal Agencies and Departments, 1997-1999

	1997	1998 (estimated)	1999 (proposed)
Commerce	32,600	38,300	44,200
INS	25,600	27,800	30,200
State	22,400	22,900	23,200
EPA	17,000	18,000	18,400
Energy	17,300	17,100	16,600
Labor	15,900	16,700	17,000
HUD	11,000	10,400	10,000

Budget Authorities (in billions) of Selected Federal Agencies and Departments, 1997-1999

	1997	1998 (estimated)	1999 (proposed)
EPA	\$6.5	\$7.2	\$7.8
State	\$5.2	\$5.5	\$5.6
Commerce	\$3.8	\$4.1	\$5.0
INS	\$3.2	\$3.8	\$4.2

Combining the responsibilities with the other responsibilities identified above today would produce an agency with a budget approximately the size of the Commerce Department's FY 1998 budget.

Beyond coherent policy development, a new agency offers the following advantages:

⁵ The EPA was created through a Presidential reorganization plan under the reorganization authority in chapter 9 of title 5 in the U.S. Code. The DEA was also created through a Presidential reorganization plan under the same authority but in 1973. Creation of the DEA consolidated all anti-drug functions from the numerous agencies within the Departments of Justice and Treasury. See also the discussion in this study's conclusion.

⁶ This option has been recommended by Morris (1985:141-42) and former INS Commissioner Gene McNary ("No Authority, No Accountability: Don't Abolish the INS. Make it an Independent Agency," 74 Interpreter Releases 1281-89 [August 25, 1997].)

- A new agency would attract talented executives at an assistant secretary rank and also mid-level managers and analysts with a range of governmental experience. An infusion of new management and analytical talent would aid policy development, engender greater accountability, and stand the best chance of changing institutional “culture.”
- A new agency would separate enforcement and service functions most completely and with less obstruction from entrenched institutional interests.
- A single, new agency could establish most easily a data base that would create a single file for an individual as he or she moves through the immigration process—from the filing of a visa petition and admission to naturalization and the issuance of a U.S. passport.

Some might argue that creation of a new federal agency is not a politically viable option in these times. Committees of Congress charged with oversight of the immigration function have expressed exasperation with current INS operations. Thus, it has been suggested, they will be reluctant to “reward” what they view as ineffective management with the elevation of the function to Cabinet level. We believe that this would be a shortsighted approach to the current problems. Other high-immigration countries such as Australia and Canada have established departments that deal with immigration and citizenship. An appropriately funded and staffed agency could address the “mission overload” currently attributed to the INS. Large federal agencies are capable of carrying out a variety of tasks, provided that they have the appropriate leadership, management and resources. We believe that consolidation, integration, and elevation of functions are crucial steps in effective planning and program implementation.

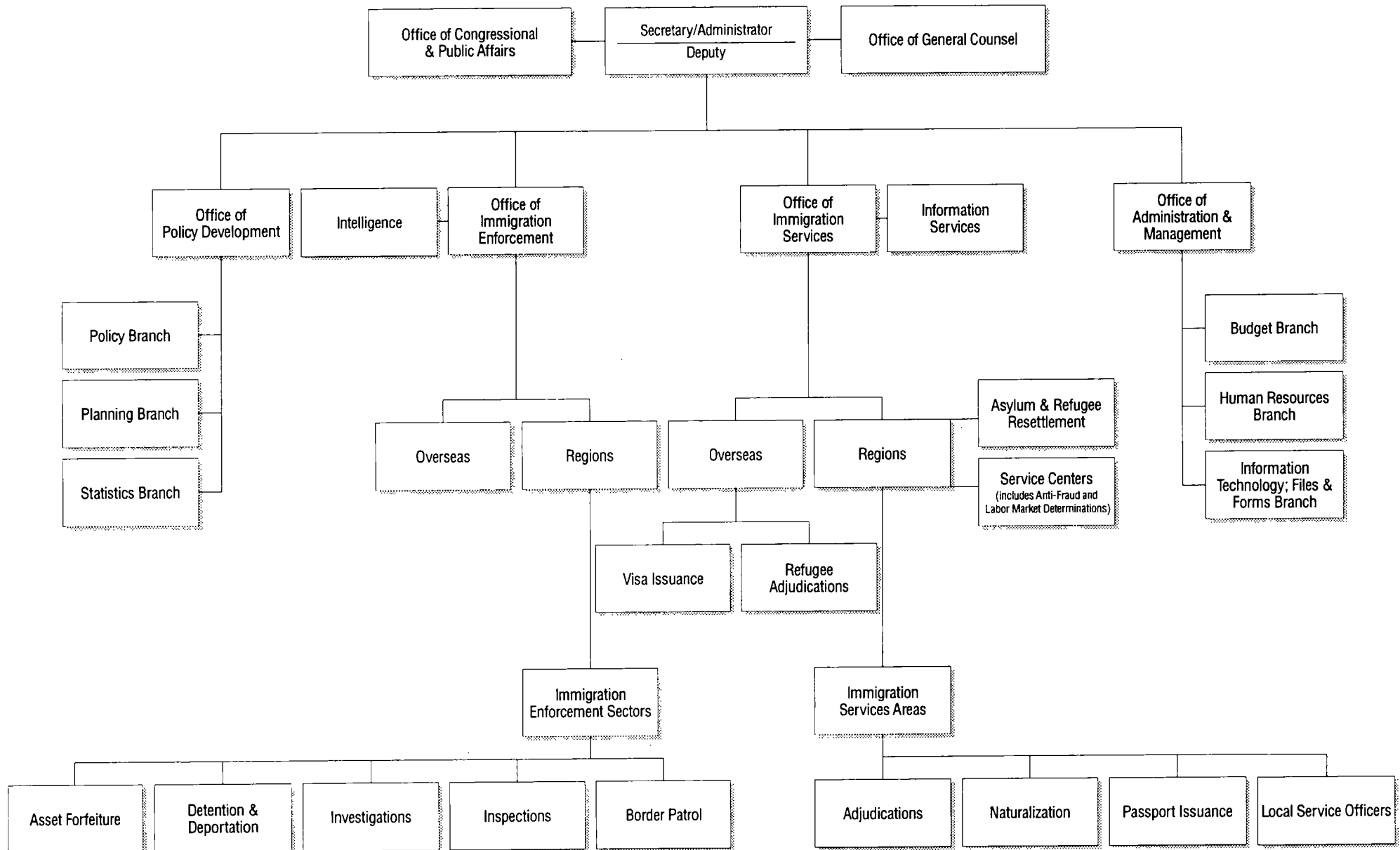
This proposal is also consistent with the need to propose “manageable change.” The various functions currently scattered among the Executive Branch departments are fairly discrete; their transfer to a new agency would not undermine the missions of the departments in which they are currently located. Furthermore, consolidation would reduce the government’s transactions costs in both policy development and implementation.

Finally, it might fairly be asked how change at the top levels of the executive branch will produce the needed changes at the lower levels—in the day-to-day interactions of government officials and the public. The answer, we believe, is that we are proposing change all along the way: at the top (in the formulation of coherent immigration policy), at the middle (with many new managers and a new emphasis on accountability), and in the field (with the separation of service and enforcement functions).

The following page contains a sample organizational chart for an independent immigration agency.

Chart 1

Option 1: Department/Administration of Migration and Citizenship



B. Elevate the Immigration Function Within the Department of Justice

The INS is *in* but not really *of* the Department of Justice. Traditionally, the Department has exercised supervisory authority over the INS, but it has frequently ignored the agency's day-to-day functioning unless an issue has hit the front page of the newspapers or has come to the attention of a congressional office. More importantly, there is no office at the Justice Department specifically charged with immigration policy development. Such matters have been handled—when handled at all—by staff members of the Associate or Deputy Attorney General. Until 1993, the general attitude of most Attorneys General toward the INS has been one of benign neglect.

This uneasy bureaucratic relationship does not well serve the formulation and implementation of immigration policy. The Department of Justice clearly has the clout to serve as a major forum for policymaking, but it rarely exercises such authority. The office of the INS Commissioner does not occupy a position high enough in the Executive Branch to fill such a role effectively—the Commissioner ranks at about the Assistant Attorney General level. (And although the INS is now larger than the FBI, both in terms of personnel and budget, the Commissioner has a lower rank than the FBI Director.⁷)

Immigration policy development needs a higher level bureaucratic home. If our first preference—a new, independent immigration agency—is not in the cards, then policymaking should be elevated within the Department of Justice. Arguably, this option could be carried out simply by the creation of an Office of Immigration Policy within the Justice Department, perhaps akin to the Office of Tax Policy in the Treasury Department (which has no day-to-day oversight of the IRS.) But we think more is needed. We would propose the elevation of the immigration function within the Department of Justice through the creation of an Office of the Associate Attorney General for Immigration (AAGI). The AAGI would be charged with the formulation of immigration policy and also the supervision of immigration enforcement and service functions. In short, the functions currently performed by the INS would be folded into the Department of Justice.

Though less desirable than an independent, Cabinet-level agency, this change would still offer a number of advantages over the current structure. First, an Associate Attorney General—a position that ranks substantially higher than an INS Commissioner—would be better able to call upon and coordinate policies and services with sister agencies that have immigration-related responsibilities. To make clear the importance we attach to this aspect of the overall role, we propose that the Associate Attorney General for Immigration chair a standing inter-agency group on migration issues. Departmental policymakers would also be better situated than the INS is now to get the attention of, and to persuade, the White House on important immigration issues.

⁷ Appendices 7 and 8 show that INS' budget and personnel now exceed that of both the FBI and EDA.

In keeping with our analysis above, we would recommend the separation of the enforcement and service functions into different divisions established fully within the Department of Justice. Each would be headed by an Assistant Attorney General and would report to the AAGI.

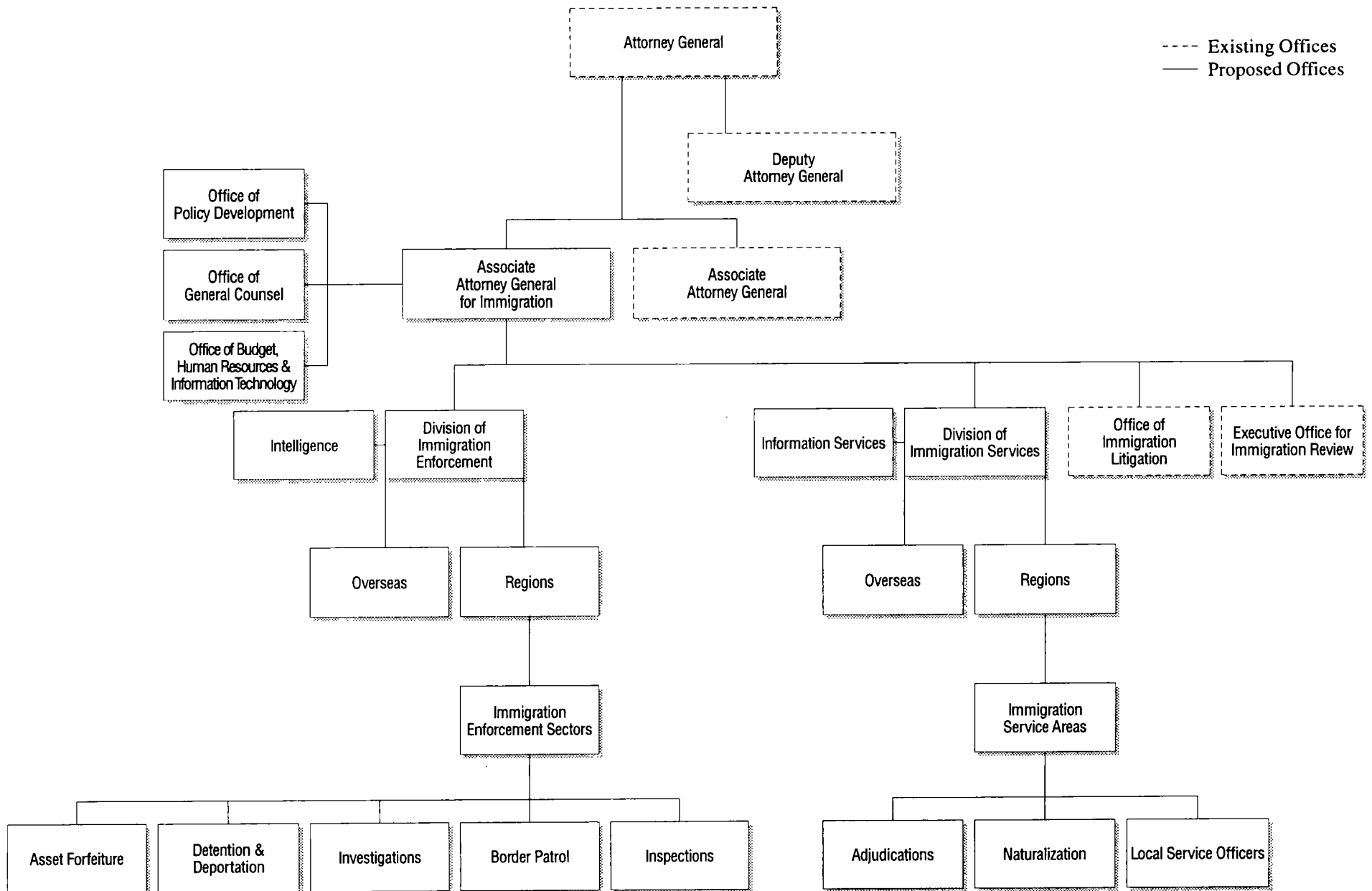
Folding these functions within the Department of Justice would permit the upgrading of pay and benefits for immigration officers—an issue which may not generate much interest outside of an agency but one that is crucial to an organization's *esprit de corps* and motivation. As noted by the Commission on Immigration Reform, “[a]t present INS personnel performing the same functions as FBI or Drug Enforcement Agency personnel are often at a lower-pay grade.”⁸ It also would provide a modest opportunity for an influx of new talent at mid-level management and analytical positions in the new Offices. (The establishment of the Executive Office for Immigration Review, for example, produced an important upgrading of the immigration court and the Board of Immigration Appeals.) Finally, placing these functions directly within the Justice Department might also spark needed “cultural” change in the manner in which immigration laws are implemented and enforced, while creating substantial cost savings and efficiencies by eliminating several levels of overlapping bureaucracy that exist within the current INS/DOJ structure.

We supply a possible organizational chart for this proposal on the next page.

⁸ CIR 1997:155.

Chart 2

Option 2: Elevation of Immigration within the Department of Justice



C. Reorganization of the INS

A more modest proposal—but one consistent with some of the principles identified above—would be to separate enforcement and service responsibilities within the existing INS. This change would mean the end of the current District Office structure and its replacement with the geographically-based Enforcement Sectors and Immigrant Service Areas described above.

There are two major drawbacks to this proposal. First, it does nothing to elevate and coordinate immigration policymaking within the Executive Branch. Second, by primarily reorganizing the boxes at the local level, it is unlikely to provide opportunities for an upgrading of the pay and benefits of immigration officers or for bringing in new “blood” in the form of new managers and analysts.⁹

D. Dispersal of INS Functions

The Commission on Immigration Reform proposed the dissolution of the INS and the parceling out of its functions to the Labor Department, State Department and Justice Department. The Commission’s motivation was to find a way to overcome the “mission overload” of the INS and to reallocate tasks to agencies that already had experience with related responsibilities. The aim of these recommendations was to improve the overall performance of immigration functions. But we believe that, if adopted, they would likely have the opposite result.

The American people have recently invested billions of new dollars in the INS. As a result, the Service has undertaken massive hiring and training efforts, improved its data systems, and established measurable performance goals. Breaking up the agency at this point would derail these on-going reform efforts before they have had a chance to succeed. It would also mean assigning functions to Departments whose defined missions are far removed from immigration and whose own immigration-related units have never been seen as core departmental programs. The Commission’s recommendation runs directly counter to both of our recommendations.¹⁰

⁹ Another proposal worth considering independently of the final placement of the overall function is the establishment within the INS of a national detention and deportation program. Currently, the detention of an inadmissible or deportable alien is largely a function of the availability of local detention space. Whether or not an alien apprehended in Los Angeles, Chicago or New York is detained should depend on national criteria. A national program could also better monitor and supervise conditions of detention.

¹⁰ A recommendation of the Commission in which we concur is the proposal to transfer employer sanctions enforcement from the INS to the Department of Labor. Under the current system, both agencies check I-9s, although DOL conducts many more such inspections as part of its general auditing of employers for compliance with labor laws. Enforcement, however, resides with the INS: DOL refers suspected violation to the Service for further action. The INS does not view such work as a core task; its investigators would rather work significant criminal cases than fine employers. And the Labor Department is generally unsatisfied with the response it receives from the INS in referred cases (indeed, in most cases it gets no response from INS).

E. Where We Come Out

We conclude that our first proposal deserves most serious consideration: creation of a new Cabinet-level agency for immigration. Absent the will to do so, our second proposal—establishment within the Department of Justice of an Office of Associate Attorney General for Immigration—might accomplish many, though not all, of the same goals. While further work remains to be done in fleshing out both proposals, our second proposal is clearly a second best solution because it leaves the immigration function—and therefore immigration policymaking—fragmented.

For example, the development of policy on the admission of temporary skilled workers (such as computer programmers) involves the expertise of the Labor and State Departments and the INS. The distinct and separate missions of these agencies have in the past made coordination difficult. Currently, the resolution of differences must occur at the White House level by staff that lacks the preparation and expertise to do so. Similarly, the admission of an immigrant on an employment-based visa also requires the input of the Labor Department (which must issue a “labor certification”), the INS (which must approve a visa petition), and the State Department (which must grant a visa). Although in recent years coordination and cooperation among the agencies may have improved, those attempting to navigate the system still must confront different attitudes, separate forms and records systems, and different administrative procedures and avenues of appeal. There is little doubt that environmental policymaking and policy implementation was significantly enhanced by the consolidation of functions brought about by the creation of the EPA.

IX. CONCLUSION

Twenty-seven years ago, President Nixon proposed establishing a new agency charged with administering U.S. environmental laws. His reasoning is worth quoting at length here because it parallels closely our own reasoning for calling for a new, Cabinet-level immigration agency.

In proposing that the environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed.¹¹

We believe that circumstances call for another exception to the extreme skepticism with which proposals for creating new federal agencies are received. If the immigration function is central to sound public policy across a variety of policy domains; if consistency and accountability in program delivery is as weak as many observers argue; if the service function is as much of a stepchild within the INS as even the agency's friends acknowledge; and if re-arranging organizational boxes within the agency—however, radically—will satisfy neither the agency's critics nor its friends; then, creating a new, Cabinet-level agency, and giving it the authority, resources, and support it requires to do its job properly becomes a compelling choice.

X. A POSTSCRIPT ON THE ROLE OF CONGRESS

For years, members of Congress have expressed frustration over the Executive Branch's performance of the immigration function. That frustration has now reached a point where key members are saying that "something drastic" must be done. Our suggestion is—to rework the old adage—"if it's broke, don't break it worse." We support careful restructuring efforts that respond directly to real problems. We do not support wholesale change either for change's sake or as a way to vent unhappiness with an agency's leadership.

Change at the INS cannot effectively be brought about by micro-management of the agency by congressional committees. Congressional oversight is a vital responsibility, but directions on day-to-day operations (such as how to deploy border patrol agents or in which county jails to locate INS investigators) distract both the Congress and the agency from the big picture. Similarly, limiting the number of political appointees at the INS to four—as is now the case—is a shortsighted measure with long-term adverse consequences. The Service needs an influx of talented managers and policymakers, both from inside and outside government. It is not good government to arbitrarily restrict the pool from which talent may be drawn.

Furthermore, the Appropriations Committees ought to rethink current rules on reprogramming. At present, the INS must return to the Committees for authority to

¹¹ Richard Nixon, Public Papers of the President, July 9, 1970, p. 582.

spend any additional resources resulting from an increase in the number of persons filing applications and paying fees—even if the proposed expenditure is simply for processing the higher number of applications. These efforts are time consuming and needlessly delay the ability of the agency to meet customer demand for services.

Finally, Congress must recognize its responsibility for many of the “conflicting roles” under which immigration authorities labor. A decade ago, Milton Morris noted:

Because the government’s objectives with respect to the enforcement of immigration policy are varied and sometimes contradictory, the work of the immigration bureaucracy is considerably more difficult than it might otherwise be. Although this problem was recognized *as long ago as 1903* in the annual report of the Bureau of Immigration, little has been done to change the situation. Instead immigration policy has evolved to reflect a wide array of competing interests, and in consequence enforcement responsibilities have multiplied and central purposes have become blurred.¹²

These words remain true today. Witness some recent examples: Congress insists on the removal of illegal aliens but affirms “family unity” programs that permit the continued residence of undocumented family members of lawful residents; Congress seeks to deter the entry of unauthorized workers but adopts legislation granting permanent resident status to any Nicaraguan or Cuban who entered the United States before December 1, 1995; Congress enacts severe inadmissibility grounds for persons who have lived unlawfully in the United States and subsequently return home but it has long permitted undocumented aliens residing in the United States who had not departed to adjust their status to that of permanent resident alien.¹³

Performance under even the most perfect structure will be rendered less effective when administrators are faced with conflicting legislative mandates. The separation of functions is not an appropriate response to this problem. It simply makes coordination and policy coherence that much more difficult.

¹²Morris 1985:92 (emphasis added).

¹³ This anomaly was taken care of by the sunseting of INA §245(i).

Appendix 1

LIST OF CONSULTED ORGANIZATIONS

American Bar Association

American Immigration Lawyers Association

Catholic Legal Immigration Network

Council of Jewish Federations

Domestic Policy Council (the White House)

Immigration and Naturalization Service

Immigration and Refugee Services of America

Lutheran Immigration and Refugee Services

National Asian Pacific American Legal Consortium

National Council of La Raza

National Immigration Forum

Office of Congressman Mollohan

Office of Congressman Reyes

Office of Congressman Rogers

Office of Congressman Smith

Office of Congressman Watts

Office of Senator Abraham

Office of Senator Kennedy

Swartz and Associates

Union of Needle Trades, Industrial and Textile Employees

U.S. Catholic Conference

U.S. Commission on Immigration Reform

U.S. Department of Labor

U.S. Department of State

Appendix 2

SELECTED GOVERNMENT REPORTS ON STRUCTURAL REFORM

1912 *President's Commission on Economy and Efficiency* proposed abolishing the revenue cutter service and dividing its responsibilities among other services and agencies.

1930 *House Interstate and Foreign Commerce Committee* proposed a border patrol in the Treasury Department that would include the relevant functions of the Bureau of Immigration and the Bureau of Customs.

1931 *Wickersham Commission Report* found that there is an internal conflict when the same agency that adjudicates applications also has to deport aliens and concluded that the functions should be separated.

1932 *President Hoover's Reorganization Plan* proposed merging the border patrol forces of Customs and Immigration and transferring them to the Coast Guard in the Treasury Department.

1937 *Byrd Committee Report* (a reprint of a Brookings Study) proposed a joint study of the Bureau of Customs and the INS to examine possibilities of local consolidation and local interchanges of personnel and work.

1940 *Bureau of the Budget* recommended consolidating the patrolling and inspections functions of Customs and Immigration.

1948 *Customs Management Improvement Survey* recommended the establishment of a Border Enforcement Agency (combining the relevant INS and Customs functions).

1949 *Hoover Commission on the Organization of the Executive Branch of the Government* proposed transferring the State Department's visa function to the Justice Department.

1950 *Senate Judiciary Committee Report* recommended consolidating Customs and Immigration functions in certain instances and noted the duplication of DOS's and INS's visa function but felt that the visa process should be separate from the immigration process.

1953 *President's Commission on Immigration and Naturalization (Perlman Commission)* suggested consolidating the State Department and Justice Department immigration functions into a new independent agency and also recommended having formal administrative review of denials of visas by consular officers.

1957 *Commission on Government Security (Wright Commission)* repeated the recommendation of transferring the visa function from the State Department to the Justice Department (except for diplomatic and official visas) so that the INS would have the responsibility from application to entry and allowing offices and personnel overseas for the visa function.

1962 *Citizens Task Force* recommended that Immigration, Customs, Public Health, and Agriculture be authorized to perform the services of all agencies for the preliminary screening process.

1964 *Stover Report on Customs Mission Organization* endorsed recommendations of Citizens Task Force.

1968 *Bureau of the Budget Study* on inspection at ports of entry recommended improvements in interagency cooperation, including cross-designating inspectors and testing one-stop inspections. It also suggested consideration of a single agency for all passenger and baggage inspections currently engaged in by four agencies and cited a need for improvements in the management of INS activities.

1973 *Nixon Reorganization Plan # 2* consolidated all anti-drug functions into a new agency, the DEA, and also would have transferred INS inspectors to Customs to improve the detection of illegal aliens and processing of persons entering U.S. The plan was passed but with the understanding that the INS part would be repealed by separate legislation because of opposition by INS labor unions. Also, a GAO study recommended that OMB and the four relevant cabinet agencies implement single agency management of port-of-entry inspections.

1974 *OMB Report* proposed a single-agency management strategy along the border (House Government Operations Committee Report on Border Law Enforcement and Problems of Customs-INS Coordination). This proposal came about as a result of resumption of Customs redeployment of patrol officers along the border and reports of friction between them and other law enforcement agencies.

1977 *Office of Drug Abuse Policy* report recommended merging all of Customs and INS into a new multi-purpose border management agency that would do inspections at ports-of-entry and also patrol in between them.

1978 *President's Reorganization Project*, based on findings that INS's service and enforcement missions were incompatible, recommended creation of a border management agency consolidating the INS inspection and patrol functions into Customs (Treasury Department) and also transferring the visa function from the State Department to the INS (Justice Department). The Carter Administration held off on submitting its plan because of criticism from Hispanic groups and INS labor unions. In particular, the Hispanic groups were concerned that the changes would undercut the authority of the first Mexican American head of INS and that the Department of Treasury would lack INS's sensitivity

to dealing with Mexicans and immigration problems. Further, the union feared losing members to an independent union in Treasury and diluting the already limited effort at stopping illegals. The State Department reportedly opposed the plan too because it “would allow a police agency to make decisions that...should more properly be handled as foreign policy and concerns.”

1980 Report of the U.S. Commission on Civil Rights recommended a separation of INS’s service and enforcement functions, as well as transfer of the enforcement function to a new border management agency in the Treasury Department. Further, they recommended that the immigration laws specify that the Secretary of State has visa-issuing authority and suggested creation of an independent board for visa appeals.

1981 Report of the Select Commission on Immigration and Refugee Policy recommended maintaining the current system of divided responsibility, though separating the service and enforcement functions within the INS, upgrading the level of the Commissioner to Director, and creating an Article I immigration court. A 1980 staff report noted that if a new immigration system were to be set up, they would recommend a new independent agency, but that there were too many jurisdictional and practical problems such as personnel that would preclude serious consideration of such an option.

1981 Report of the Attorney General’s Task Force on Violent Crime recommended consideration of transferring the Border Patrol to the Department of Treasury.

1982 Proposal for FY 1984 budget included an OMB attempt, based on a Customs proposal, to transfer INS’s primary inspections function to Customs. INS and DOJ appealed and tried to argue for consolidation within Justice. The Administration dropped the plan and restored INS resources in the budget.

1983 Grace Commission Task Forces on the Departments of Treasury and Justice proposed consolidation of Customs-INS border inspection. The same recommendation was made by the Cabinet Council on Management and Administration.

1986 President’s Commission on Organized Crime recommended improvements in border interdiction and intelligence.

1988 Omnibus Antidrug Abuse Act and Coast Guard and National Border Coordination Revitalization Act proposed merging Customs, Coast Guard, and/or INS into a new Treasury Office of Enforcement and Border Affairs and setting up a Southwest Border InterAgency Task Force. The President’s Council on Management Improvement Project 2000 Report on Border Management also called for consolidating border inspection operations.

1990 Report of the Commission for the Study of International Migration and Cooperative Economic Development recommended an Agency for Migration Affairs that would centralize immigration and refugee issues and give migration a higher profile on the

domestic and foreign policy agendas. AMA would include INS (except for Border Patrol and interior enforcement), the Bureau of Consular Affairs (except assistance to Americans abroad), the Bureau of Population, Refugees, and Migration, and the asylum office at the State Department.

1991 *General Accounting Office* [GAO] report on immigration management concluded that strong leadership and management reforms were needed to address service problems. It found INS lacked clearly defined priorities, control over regional commissioners, and reliable financial information. They also found poor internal communications, budget management, and resource allocation.

1993 *National Performance Review* recommendations included improving the coordination and structure of Federal law enforcement agencies, improving border management, and reinventing the INS's organization and management.

1993 *Report of the General Accounting Office* on Customs and INS stated that the dual management structure for border inspections should be ended. GAO considered three options: improving coordination within existing framework of joint staffing of primary lanes at port-of-entry; establishing one agency as the lead for primary inspections; and creating a border management agency by merging Border Patrol and Inspections with Customs. Rejecting all three, they proposed an independent immigration and customs agency which would have a focused mission and accountability.

1997 *Report of the U.S. Commission on Immigration Reform* recommended a Bureau for Immigration Enforcement within the Justice Department for border and interior enforcement; an Undersecretary of State for Citizenship, Immigration, and Refugee Admissions within the State Department with responsibility for benefit adjudication; an Agency for Immigration Review for independent appeals of administrative decisions; and a transfer of the immigration-related employment standards enforcement to the Labor Department. This fundamental restructuring of the immigration responsibilities according to function, which would eliminate the INS in its present form, was meant to address INS's mission overload, conflicting responsibilities, and poor performance of its responsibilities.

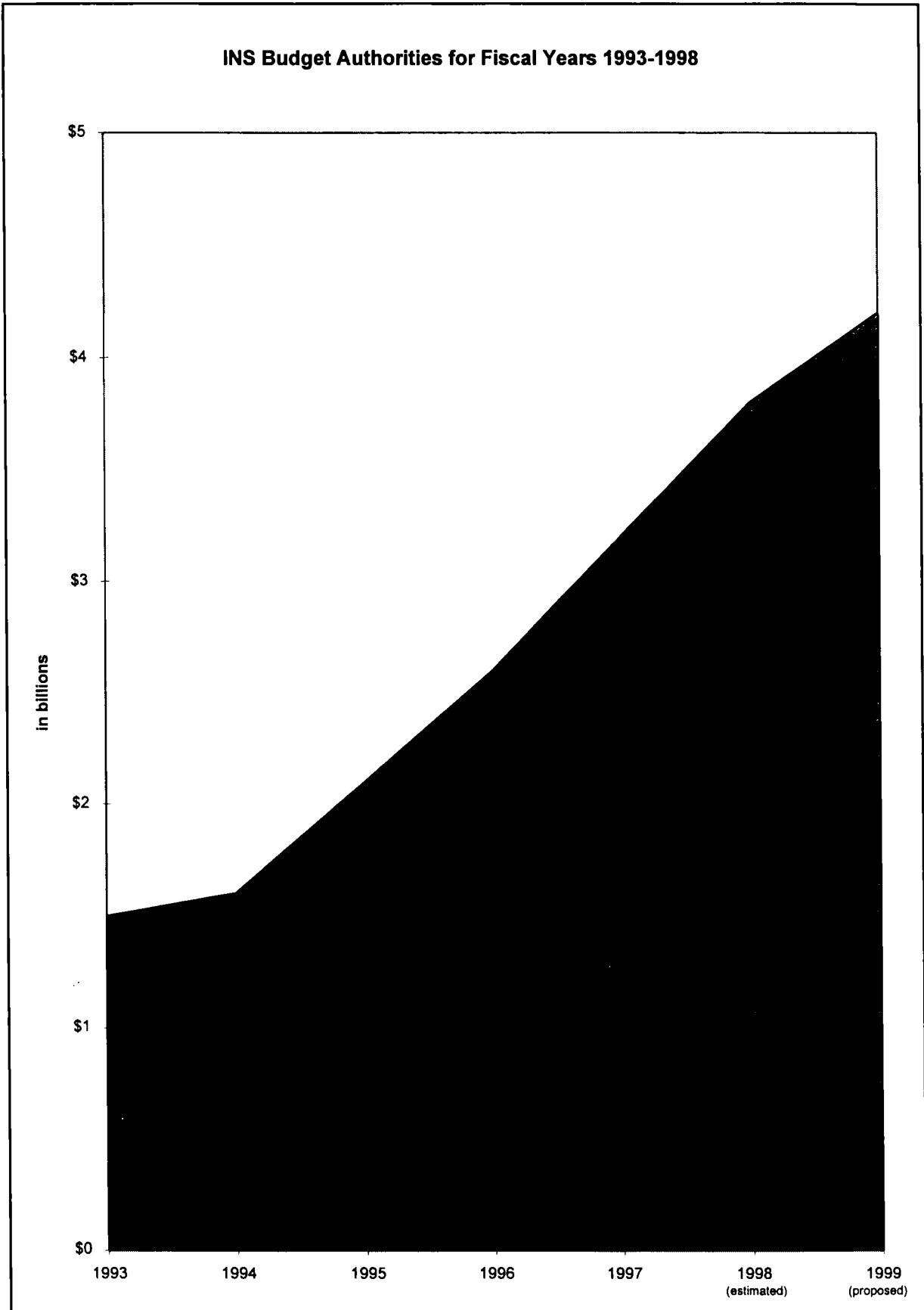
National Academy of Public Administration report studied INS's strategic planning, priorities, performance measures, budget formulation, and budget execution. It found that with increasing demands to control the flow of illegal aliens and serve those seeking citizenship, the Immigration and Naturalization Service must rethink and redesign its budgeting process.

General Accounting Office [GAO] report following up on INS's management problems found that INS had made a good deal of progress but that much work remained. GAO recognized development of a strategic plan, improved resource allocation and priorities management, and an improved organizational structure. However, they noted that clear guidance for policy implementation and clear channels of communication continue to be

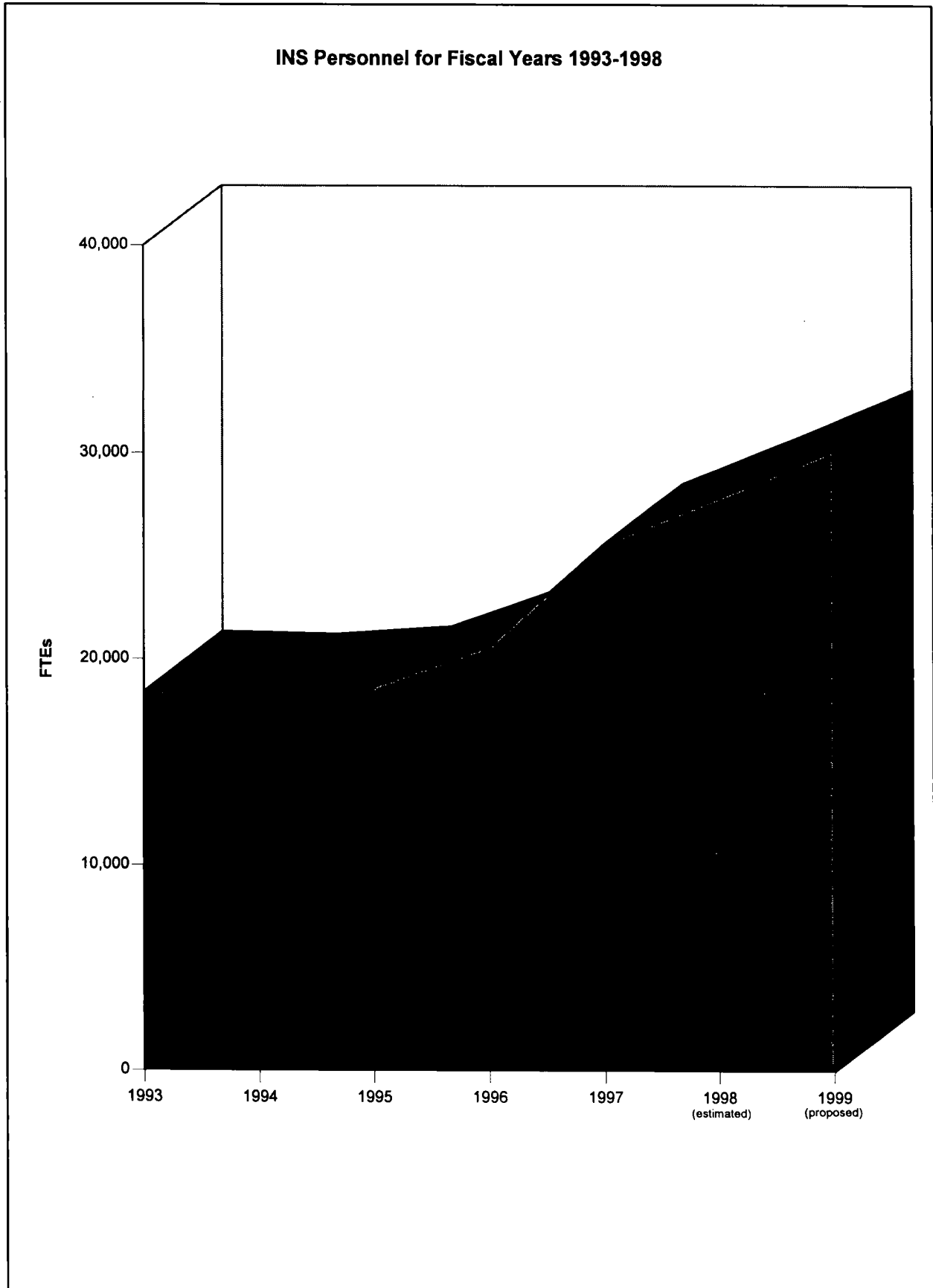
needed. In particular, GAO recommended further clarification of the role of EACs, milestones for issuance of manuals, a strategy to periodically evaluate the planning process, and lessening the risks of a new financial management system.

Border Security and Enforcement Act of 1997 (HR 2588), proposed by Congressman Reyes, would establish the Office of Enforcement and Border Affairs within the Department of Justice and include Border Patrol, detention and deportation, intelligence, investigations, and inspections.

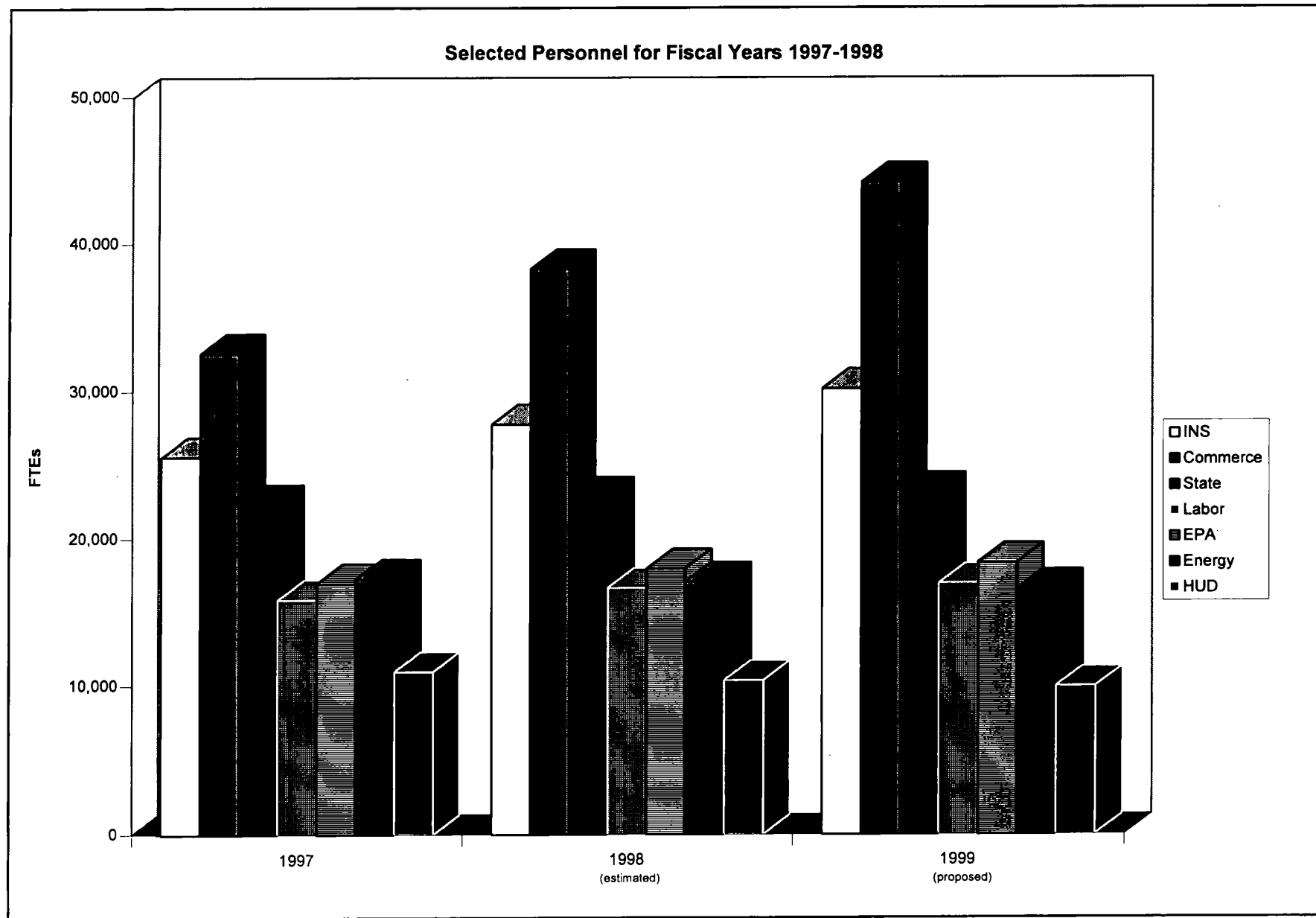
Appendix 3



Appendix 4

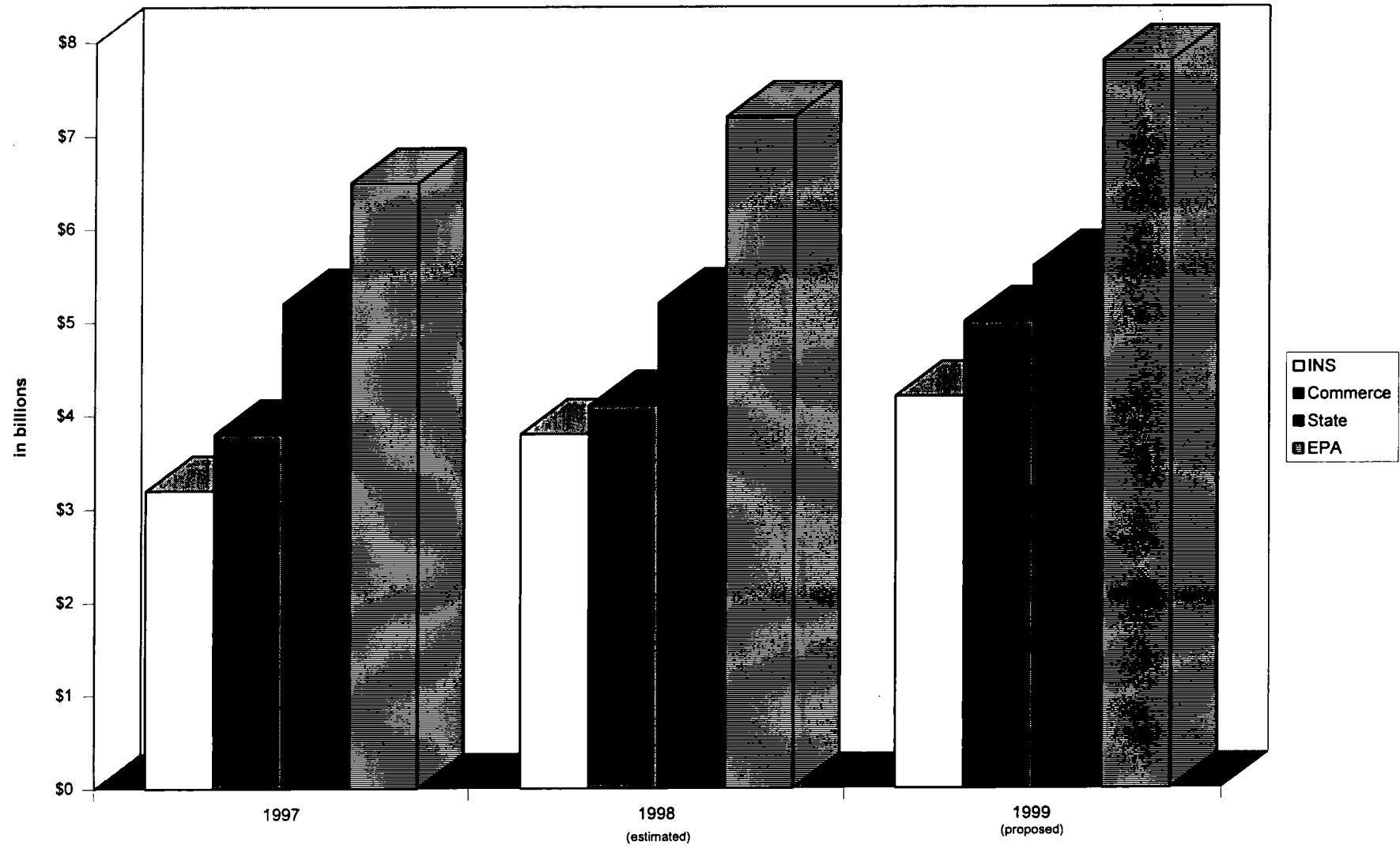


Appendix 5

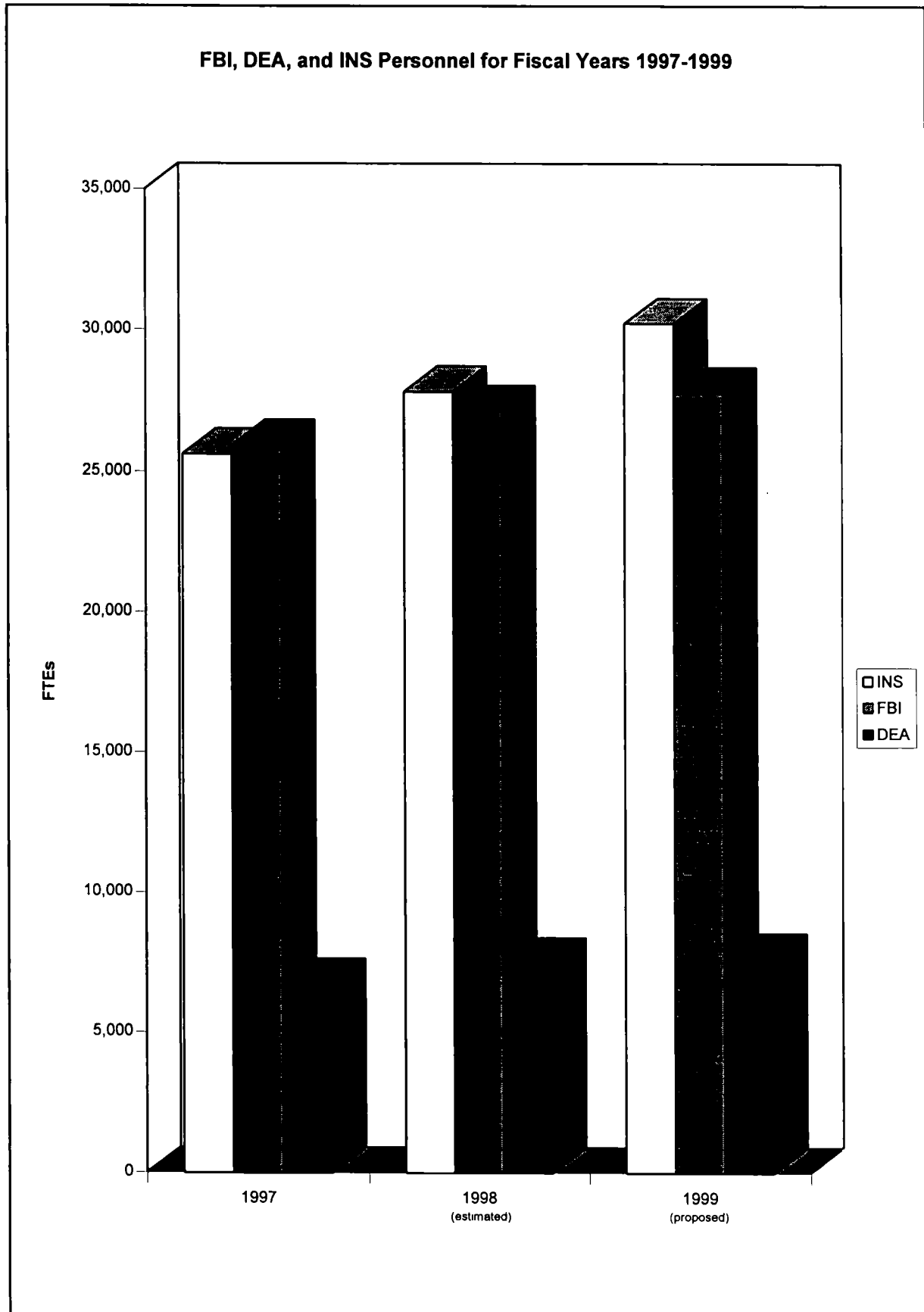


Appendix 6

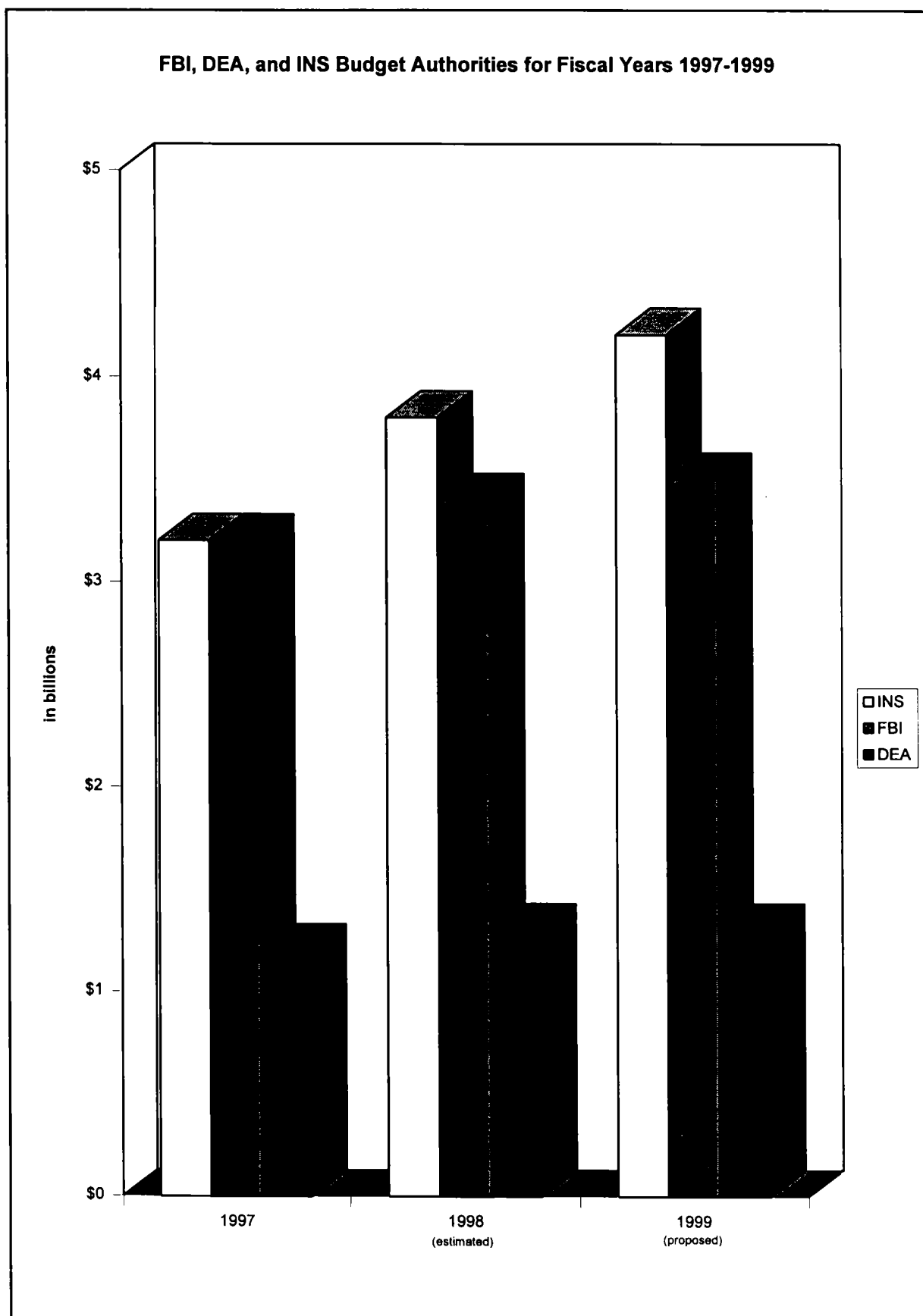
Selected Budget Authorities for Fiscal Years 1997-1998



Appendix 7



Appendix 8



INS ORGANIZATION CHART

Appendix 9

