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United States General Accounting Office
Washington, DC 20548

March 31, 2004

The Honorable Martin Olav Sabo
Ranking Minority Member
Subcommittee on Homeland Security
Committee on Appropriations
House of Representatives

Subject: *Budget Issues: Reprogramming of Federal Air Marshal Service Funds in
Fiscal Year 2003*

Dear Mr. Sabo:

On May 15, 2003, and again on July 25, 2003, the Department of Homeland Security (DHS) notified the House and Senate Committees on Appropriations, Subcommittees on Homeland Security, of its intention to reprogram a large amount of funds appropriated to the Transportation Security Administration (TSA) for fiscal year 2003. In an August 2003 letter, you requested that we review the key events leading up to the reprogramming and subsequent revisions as they related to the Federal Air Marshal Service (FAMS). In particular, you asked that we determine (1) whether senior TSA, DHS, and Office of Management and Budget (OMB) officials were informed of the implications of the FAMS funding reductions prior to submission of the reprogramming notices; (2) the programmatic implications of the funding reductions on the FAMS program; (3) whether it was legally necessary to send an impoundment message to the Congress; and whether the Secretary of Homeland Security had delegated to the Under Secretary for Management the authority to transmit reprogramming notifications to the cognizant Appropriations Subcommittees. Finally, you asked us to identify, as appropriate, improvements in budget execution for future consideration. As agreed with your office, we briefed your subcommittee staff on February 27, 2004, and the majority staff on March 3, 2004, on the results of our work.¹ This report transmits the information we provided in those briefings.

To address these objectives, we reviewed relevant documentation on the proposed reprogramming and other documentation on the FAMS program and budget. We interviewed senior DHS, TSA and FAMS officials and their staffs and staff at OMB to discuss the reprogramming process and the reductions in funding for FAMS. We also interviewed DHS and TSA General Counsel staff to obtain their perspectives on questions regarding impoundments and delegation. We conducted our work from

¹ The summary slides used during these briefings are reprinted in enc. III.

August 2003 through February 2004 in accordance with generally accepted government auditing standards. Our scope and methodology is described in more detail at the end of this report.

Background

Reprogramming actions allow agencies to shift funds within an account to fund other requirements within an existing appropriation that were not planned when the appropriation was made.² Unless limited by some provision of law, agencies are implicitly authorized to reprogram funds as part of their general responsibility to manage funds. However, appropriations laws often set limits on reprogramming or require notification of reprogramming under certain conditions or over certain thresholds. The TSA fiscal year 2003 reprogramming met the notification thresholds established by Section 1601 of the Emergency Wartime Supplemental Appropriations Act.³ For the specific reprogramming notification requirements, see enclosure II.

The fiscal year 2003 TSA reprogramming was developed against a backdrop of both rapid program expansion and a changing organizational environment. Among the program expansions affecting TSA were the federalization of passenger and baggage screening functions at airports, establishment of federal airport security directors, deployment of explosives detection equipment for checked baggage, mandatory criminal history checks for employees working in secure airport areas, and working with airlines to strengthen cockpit doors on all passenger aircraft. Further, after the terrorist attacks of September 11, 2001, the President and the Congress decided to rapidly expand FAMS. Within 10 months of the terrorist attacks on the United States, the number of federal air marshals grew from fewer than 50 to thousands.⁴ Beyond these program expansions, two major organizational transitions occurred in a 16-month period. First, in November 2001, TSA was created within the Department of Transportation to centralize federal aviation and other transportation security efforts. Aviation security activities that were formerly the responsibility of the Federal Aviation Administration (FAA), including FAMS, were moved to the newly created TSA. Second, FAMS moved with the rest of TSA to DHS when the department was established on March 1, 2003.⁵

The budget and appropriations environment in fiscal year 2003 and changing mission needs added to the uncertainty of the situation. Like all federal civilian agencies, TSA faced the challenges inherent in operating under a series of continuing resolutions until February 2003—nearly half of the fiscal year. As a new agency with a newly expanded federal role and mission, TSA faced an additional challenge. It had no historical information to assist in estimating costs for efforts such as federalized checkpoints, baggage screening, and the full growth of the FAMS program. Additionally, initial budget estimates for TSA were created before its mission and organizational structure were established. All of this contributed to a situation described by TSA Chief Financial Officer (CFO) staff as a “misalignment” between fiscal year 2003 appropriations and

² In contrast, a “transfer” is when an agency moves funds between appropriation accounts.

³ Pub. L. No. 108-11 § 1601 117 Stat. 559, 584 (2003).

⁴ The exact number of federal air marshals is classified.

⁵ FAMS has since moved from TSA to the Bureau of Immigration and Customs Enforcement within DHS, but this occurred after the period covered in this study.

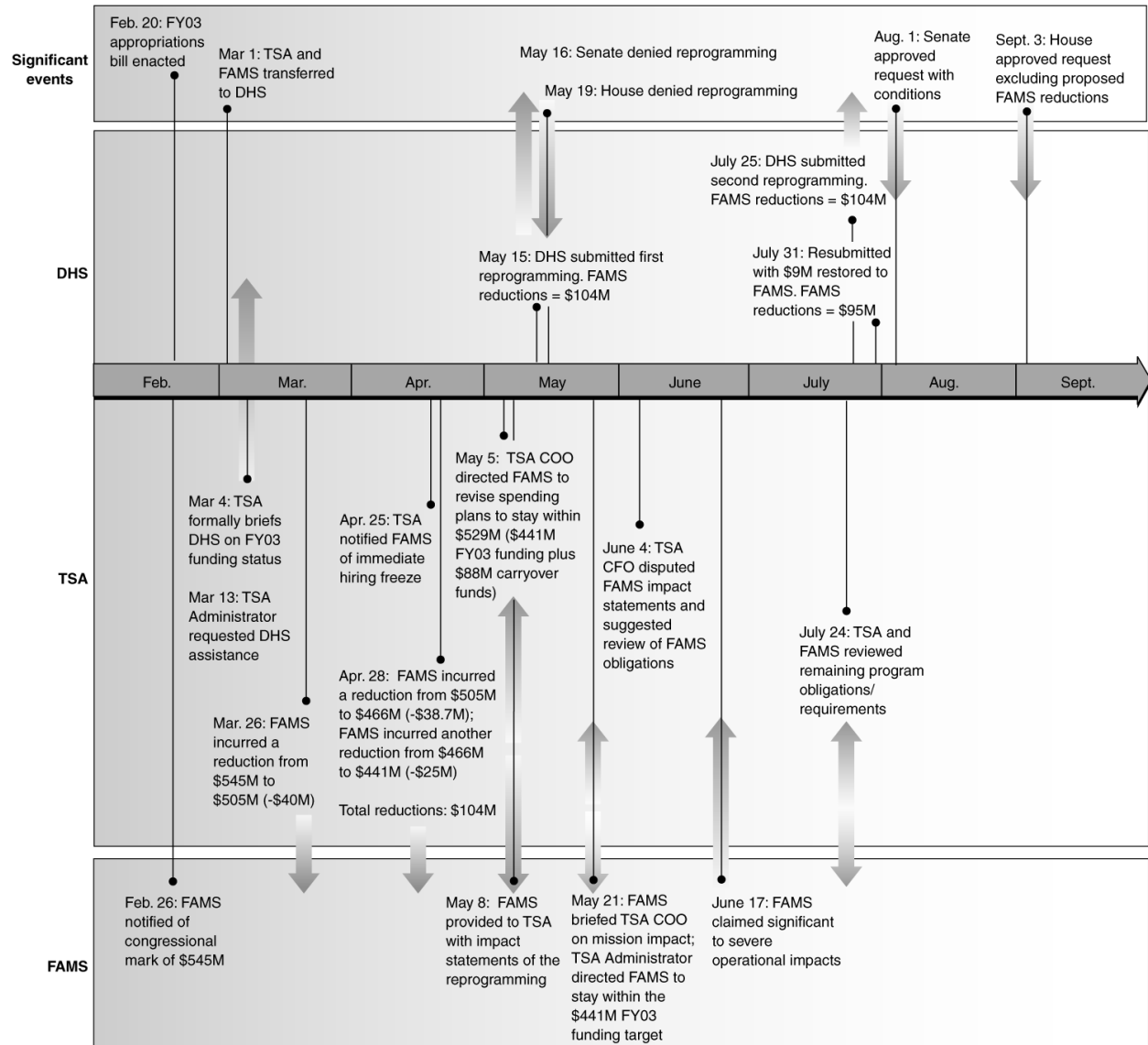
mission needs at the time appropriations were enacted. TSA CFO staff told us that the need for a reprogramming was clear at that time.

Reprogramming Process

On May 15, 2003, DHS formally notified the homeland security appropriations subcommittees of its intention to reprogram \$763.3 million (reducing FAMS funding by \$104 million) among several of its programs within the TSA budget account and to transfer \$150 million from other DHS appropriation accounts. DHS told us that both the Senate and House subcommittees advised DHS that the proposed reprogramming was denied. DHS budget and TSA CFO staff told us that in order to ease the subcommittees' concerns with the May reprogramming, they engaged in discussions with congressional staff. A revised reprogramming was submitted on July 25, 2003, which was then modified again on July 31, 2003. Both subcommittees eventually concurred with this reprogramming, but with caveats. According to the letter sent by the Chairman of the Subcommittee on Homeland Security, Senate Committee on Appropriations, "approval of [the reprogramming] is based on the understanding that this reallocation of appropriated funds will not decrease the number of air marshals currently assigned to domestic and international flights." The Subcommittee on Homeland Security, House Committee on Appropriations, approved of the revised reprogramming, but "denied the proposed reduction of \$95 million from the FAMS program." The May 15 and July 25 reprogramming plans would have reduced fiscal year 2003 funding for FAMS from \$545 million to \$441 million (a difference of \$104 million); the revised July 31 proposal reduced fiscal year 2003 funding to approximately \$450 million (a difference of \$95 million).

The timeline in figure 1 highlights key events in this process.

Figure 1: TSA Reprogramming Timeline for Fiscal Year 2003



Source: GAO summary of TSA and FAMS budget information and memos.

TSA and FAMS disagree on when and what FAMS was told about the reprogramming, about whether FAMS agreed to a cut, about the ability of FAMS to absorb a cut, about the likely programmatic impact of the proposed cuts, and even about the nature of the hiring freeze imposed on FAMS. Although evidence provided by DHS reflects some of the communication between TSA and FAMS, the documents and data provided to GAO permit us to opine on neither the accuracy of assertions by either TSA or FAMS nor the reasonableness of TSA’s analysis and conclusions and the FAMS counterarguments. What follows is a description derived from interviews, documents, and other testimonial evidence of key points in the process. In cases in which TSA and FAMS disagreed on what happened, both views are given. A more detailed sequence of the reprogramming process is included in enclosure I.

Soon after the enactment of the appropriation act for fiscal year 2003⁶ in February, the TSA CFO informed the DHS CFO that there was a “shortfall” of nearly \$2 billion within TSA and that a reprogramming would be necessary to realign TSA programs and funds. FAMS was only one part of a very large reprogramming and transfer package,⁷ and funding levels for multiple accounts and activities were reviewed during this reprogramming. TSA CFO staff said that during the months leading up to the submission of the reprogramming they were in communication with FAMS and other program offices, requesting spending plans detailing budget activities, funding needs, and explanations of how the offices arrived at their assumptions. TSA CFO staff also noted that they had difficulty obtaining timely information from FAMS; that the budget data supplied by FAMS did not support the accompanying narrative provided on the impacts of proposed budget reductions; and that instead of providing details on obligations, FAMS officials provided projections, which did not incorporate actual spending.

TSA CFO staff told us that their review of spending data that showed FAMS was obligating funds at a slower rate than expected, and that since FAMS was still meeting its mission targets, TSA was comfortable with proposing budget reductions for FAMS. However, they also told us that the data on which they relied were from several legacy financial systems and were of questionable quality, that they did not have access or did not get data on the funds FAMS received from FAA, and that no one in the TSA CFO’s office had time to perform program impact analyses.

Although FAMS memos written to TSA during the development of the reprogramming asserted that there would be “significant to severe” operational impacts if funds were reduced, TSA officials said that FAMS provided TSA with little supporting data to validate these claims. The TSA CFO objected to FAMS’s impact characterizations and said FAMS’s spending estimates were inconsistent. In order to settle the funding questions, the TSA Administrator decided to conduct a program audit of FAMS’s funding and operations. The results of this review revealed that as of late July 2003, there was a projected deficit of approximately \$16 million out of the FAMS \$529 million⁸ budget (\$441 million in fiscal year 2003 funding, plus \$88 million carryover). This deficit was partially alleviated when DHS adjusted the second reprogramming notice to restore approximately \$9 million to FAMS. Consequently, the total reduction in the FAMS budget from its initial fiscal year 2003 funding level was \$95 million, rather than the \$104 million described in the first reprogramming, as shown in table 1.

⁶ Pub. L. No. 108-7, 117 Stat. 11 (2003).

⁷ The May 15 plan totaled \$913 million (\$763.3 million reprogramming plus a \$150 million transfer) and the July 25 plan totaled \$1.16 billion (\$854.8 million reprogramming plus a \$306.5 million transfer).

⁸ The program audit conducted in late July 2003 identified an additional \$300,000 available to FAMS, which brought FAMS’s funding level to \$529.7 million. However, since discussions within TSA and FAMS surrounding the reprogramming commonly referred to a funding level of \$529.4 million, this figure is used in this report.

Table 1: Progression of FAMS Funding Level During Fiscal Year 2003

Dollars in millions			
	Fiscal year funding level	Change	Reprogramming total
February 26: Fiscal year 2003 congressional mark	\$545		
March 26: Reduction based on attrition and other unspecified agency requirements		-\$40	
April 28: Reduction based on personnel compensation and benefits savings		-\$38.7	
April 28: Reduction to cover the cost of other Aviation Operations purposes		-\$25	
Total reductions proposed in May 15 and July 25 reprogrammings			-\$104
Resulting proposed funding level	\$441		
Plus fiscal year 2002 carryover funds		+\$88	
Total funds available to FAMS	\$529		
Adjustment to reprogramming plan		+\$9	
Revised total reductions proposed in final July 31 reprogramming			-\$95
Final total of funds available to FAMS	\$538		

Source: GAO summary of TSA and FAMS budget information and memos.

Degree of Senior Officials’ Awareness of the Implications of FAMS Funding Reductions Is Unknown

The TSA Administrator was made aware of both the FAMS characterization of the anticipated impact of the funding reductions and the TSA CFO’s objections to the FAMS claims. In fact, the TSA Deputy Administrator told us that he and the Administrator approved the reprogramming in early May 2003.

The reprogramming was approved and submitted by DHS. In response to a question regarding the Secretary’s involvement, DHS officials told us that “Secretary Ridge was briefed regarding the fact [that] there were TSA reprogrammings, but was not briefed on the specifics of the impact on FAMS. Instead Department officials relied on TSA for its detailed analysis and evaluation of the FAMS impact.”

In addition, OMB staff cleared the reprogramming. When asked whether the OMB Director was informed of the reprogramming implications for FAMS, an attorney from OMB General Counsel’s office told us that the OMB Director is informed of budget execution matters on an “as needed” basis and that it is not OMB’s policy to say whether the Director was notified of any specific reprogramming. When asked about programmatic impact, OMB staff said that no one in DHS, TSA, or FAMS is able to describe the impact in other than in dollar terms.

Impact of FAMS Budget Reductions Was Minimal

As the budget reductions were being imposed on FAMS by TSA, FAMS officials stated in memos and other documents that the impact of the reductions could have ranged from significant to severe. The Deputy Assistant Administrator for Aviation Security Law Enforcement⁹ claimed that reducing the program to the \$441 million level would result in a budget shortfall totaling tens of millions of dollars, staff shortages, and a reduction in FAMS coverage of long-haul flights by approximately 90 percent. FAMS officials were also concerned that the budget reductions would not allow FAMS to bring the number of air marshals to its fully anticipated level. They estimated that as a result of the budget reductions, many thousands of domestic missions on which they could have placed air marshals would not be covered.

However, although DHS and TSA reduced FAMS's fiscal year 2003 budget by about 20 percent, the actual impacts of the budget reductions on FAMS operations were not as significant as FAMS officials had estimated. The number of air marshals remained relatively constant over the fiscal year; by the end of the period, the number of air marshals was only 1 percent lower than at the beginning of the year. The number of missions¹⁰ flown monthly by air marshals decreased by about 22 percent during fiscal year 2003, but according to FAMS officials much of this reduction was attributable to factors other than the budget reduction. One factor was the more than 230 percent increase in the number of international missions. FAMS officials told us that international missions significantly reduced the total number of missions conducted, since each additional international mission results in approximately four fewer domestic missions. Another factor was the assignment during the year of 58 air marshals to support Joint Terrorism Task Force functions. In addition, almost 100 air marshals were taken off-line because their background clearances had not been completed. Other factors contributing to the reductions in missions flown included decreases in the average number of days flown by air marshals to address "quality of life" issues and disruptions in flight schedules late in the fiscal year caused by blackouts in the Northeast and Hurricane Isabel.

Senior FAMS officials stated that the eventual fiscal year 2003 operational impacts on the program resulting from the budget reductions were "minimal," but that significant to severe impacts on the program were narrowly avoided. One of these officials said that the impacts were minimal because they took measures to maintain a level of operations consistent with the number of available air marshals. Consequently, they reduced equipment and supply purchases, delayed training activities, and used funds originally intended to establish the FAMS field office structure to support ongoing FAMS operations instead. They said that by midsummer 2003, the budget reductions began to have operational impacts. The number of overnight stays was reduced by 80 percent during an 11-day period in order to reduce travel costs, and air marshals flew mostly regional flights to enable them to return home at the completion of each day's missions.¹¹

⁹ Deputy Assistant Administrator for Aviation Security Law Enforcement was the title of the FAMS Director.

¹⁰ "Missions" includes both domestic and international flights.

¹¹ According to FAMS officials, one mission equals one flight.

The FAMS officials said that these program reductions would have continued for the remainder of the fiscal year, but the restoration of the \$8.7 million in late July 2003 permitted them to restore the level of overnight stays, longer duration flights, and advanced training programs.

Although the reductions in FAMS funding did not have a significant impact on its current level of operations, they contributed to FAMS not reaching anticipated staffing levels. FAMS had intended to increase the number of air marshals to a certain level during fiscal year 2003,¹² but was unable to do so because of funding constraints. During the fiscal year, the number of on-board air marshals differed by 4 to 7 percent from fully anticipated levels. Although more air marshals would result in greater coverage of flights, the reduction in coverage because FAMS was not at fully anticipated levels was not substantial. Because FAMS was operating under a continuing resolution until late February 2003 and was precluded from increasing the number of air marshals during that period, and because it would have taken until June 2003 to achieve fully anticipated staff levels, only a relatively small amount of additional flights would have been covered by air marshals for the remainder of fiscal year 2003 had FAMS received greater funding.¹³

Although the budget reductions had some impact on ongoing operations and FAMS's ability to increase staffing to fully anticipated levels and implement stand-up activities, it is not possible to determine what effect, if any, these impacts had on aviation security. According to FAMS officials, concept of operations allows for varying coverage of flights as long as all high-risk flights are covered. According to FAMS officials, all high-risk flights were covered during fiscal year 2003. Moreover, while the FAMS funding was reduced, funding for other aviation security programs increased as a result of the reprogramming. Consequently, any negative impacts on aviation security that may have resulted from the FAMS reductions may have been offset by positive security impacts in other aviation security programs. In this regard, OMB staff noted that it is not possible to determine the impact of the TSA reprogramming, other than that FAMS funding was reduced.

Legal Issues: No Impoundment or Delegation Problems

You asked us to determine whether a special impoundment message reporting a deferral should have been sent to the Congress. Based on what we learned in our review of this reprogramming, we conclude that DHS was not required to transmit a special impoundment message in accordance with the Impoundment Control Act of 1974. The act requires the President to transmit a special message to the House of Representatives and the Senate whenever there is an impoundment, which is defined as any action or inaction by an officer or employee of the U.S. government that delays or precludes the obligation or expenditure of budget authority provided by the Congress. One type of impoundment is a deferral—a temporary delay in obligating or expending budget authority. There is a distinction between deferrals,¹⁴ which require a special message, and “programmatic” delays, which do not. Programmatic delays typically occur when an

¹² The number of air marshals on-board or anticipated is classified.

¹³ The number of flights covered by air marshals is classified.

¹⁴ Deferrals are authorized only when they provide for contingencies, achieve savings made possible by changes in requirements or greater efficiency in operations, or as otherwise specifically authorized by law. 2 U.S.C. § 684(b).

agency is taking steps to implement a program even if funds temporarily go unobligated. A withholding of funds pending consideration of reprogramming by congressional committees is generally considered to be based on programmatic considerations and represents a reasonable means of facilitating an agency's authority to reprogram budget authority among activities funded from the same lump-sum appropriation.

TSA delayed obligating funds pending consideration of its reprogramming notification by the appropriate congressional committees, and TSA intended to obligate the FAMS funds for an authorized purpose within its lump-sum appropriation.¹⁵ Thus, we conclude that the agency's delay in obligating funds based on the facts and circumstances presented did not constitute a deferral requiring the transmittal of a special message to the Congress under the Impoundment Control Act.

Furthermore, it was appropriate that the Under Secretary for Management signed the reprogramming notice rather than the Secretary of Homeland Security. There is no statute or other authority that requires the Secretary to sign the department's reprogramming notifications himself. The Homeland Security Act gives the responsibility to the Under Secretary for Management to act for the Secretary in the management and administration of the department, including budget, appropriations, expenditure of funds, accounting, and financial duties.

Improvements in Budget Execution for Future Consideration

The Antideficiency Act requires that an agency head prescribe, by regulation, a system of administrative control of funds that must be approved by OMB.¹⁶ OMB staff said that they are working with DHS on a more formalized apportionment process, which could potentially serve as a framework for a system of administrative control of funds.¹⁷ For fiscal year 2004, the department issued budget execution guidance that included procedures for reprogramming funds. The procedures provide specific guidance on reprogrammings based on congressional criteria, clear expectations of what information is required to justify a proposed reprogramming action, and an early post-appropriations review to determine the need to reprogram funds. Furthermore, the current guidance encourages, but does not require, components to identify separately the obligation and expenditure of earmarked funds and notes that cumulative reprogrammings below reporting thresholds can result in a need to notify the appropriations subcommittees. Although these are all positive developments, DHS could better articulate the consultation and approval process that it will use.

¹⁵ In fiscal year 2003, FAMS was funded within the TSA lump-sum appropriation.

¹⁶ 31 U.S.C. § 1514.

¹⁷ The purpose of such a system is to ensure that when authority to obligate funds is delegated to heads of offices or programs within an agency, managers are prevented from overobligating or overexpending either the amounts available in an appropriation or fund or the amounts apportioned or reappropriated by OMB. This system must be designed to enable the head of the department or agency to identify the person responsible for an obligation or expenditure exceeding an appropriation, apportionment, or reappropriation. It is at the agency's discretion, in this case DHS, to decide how and to whom to delegate authority to subdivide and obligate apportioned funds while also considering the mission, organizational structure, and needs of senior management, consistent with effective and efficient management.

We recommend that the Secretary of Homeland Security (1) articulate the consultation and approval process for reprogrammings and, in particular, state how senior management will communicate final reprogramming decisions to officials of affected programs; (2) require components to identify separately the obligation and expenditure of earmarked funds, which agencies must be able to report; and (3) specify how the department plans to monitor cumulative reprogramming actions below reporting thresholds that can result in a need to notify the appropriations subcommittees.

Agency Comments and Our Evaluation

We provided DHS and the OMB with a draft of this report for review and comment. OMB had no comments. DHS's written comments are reprinted in their entirety in enclosure IV.

In its comments, DHS generally agreed with our observations. However, while recognizing that the scope of our engagement was limited to the reprogramming of FAMS funding, DHS felt that it was important to emphasize that during the period covered by our review there was tremendous uncertainty regarding (1) the availability of funding, (2) new mission requirements, and (3) lack of a baseline funding history.

DHS also suggested five specific changes to our report language as follows:

1. DHS suggested that we state that the fiscal year 2004 Appropriation Conference Report included \$95 million in carryover (the amount in question from the House reprogramming denial) to be available to address TSA Aviation Security needs. The scope of our review only covered fiscal year 2003. This congressional action is outside the scope of our report.
2. DHS suggested that a reference be inserted in our sequence of events in the enclosure that the program audit was completed before the reprogramming package was resubmitted on July 31, and a chart summarizing its findings was presented at meetings with House and Senate Appropriations Committee staff. Although we asked for documentary support, DHS did not provide evidence that this was completed prior to the submission of the July 31 revised reprogramming notification and therefore we have not made that change.
3. DHS also suggested that we change our statement in the second paragraph on page five that "no one in the TSA CFO's office had time to perform program impact analyses." DHS commented that the TSA CFO staff conducted some limited analysis. However, TSA officials told us that their agency did not have the time or the staff to conduct "program impact evaluations." Although justifications for moving funds from FAMS were provided by DHS to us, the data to support these judgments were not.
4. In addition, DHS suggested that we use the term "target strength" rather than "fully authorized level" when describing FAMS staffing levels. We have made changes in the text of our report to reflect "anticipated level," which we believe appropriately characterizes the level of air marshal staffing that FAMS had planned to reach and that the Congress had intended.

5. For the first bullet in the reprogramming sequence for July/August 2003 in the enclosure, DHS suggested that a comment should be added to state the revised reprogramming amount submitted on July 25, 2003, was “at the same level proposed in May.” We have made changes in the text of our report to incorporate this suggestion.

Scope and Methodology

To examine the reprogramming process DHS and TSA followed in fiscal year 2003 with specific attention to coordination with the FAMS program, we interviewed senior DHS, TSA, and FAMS officials and their staffs. We also interviewed OMB’s Homeland Security Branch Chief and program examiners to understand their roles in the May and July proposals and to get their perspectives on the actions taken. Although evidence provided by DHS reflects some of the communication between TSA and FAMS, the documents and data provided permit us to opine on neither the accuracy of assertions by either TSA or FAMS nor the reasonableness of TSA’s analysis and conclusions and the FAMS counterarguments.

Most of our information on the development, review, and approval of the reprogramming as it relates to FAMS is based on interviews and other testimonial evidence. To determine what and when information was made available to TSA and DHS officials and to find support for respective claims, we reviewed and summarized FAMS, TSA, and DHS budget information, internal memorandums and correspondence, and briefing documents.

To examine the claims about programmatic implications, we analyzed data provided by DHS, TSA, and FAMS. We also interviewed DHS, TSA, and FAMS officials.

To determine whether a deferral or impoundment notice was necessary and to consider delegation authority, GAO General Counsel staff interviewed DHS and TSA General Counsel staff and reviewed relevant statutes, committee reports, and DHS delegations.

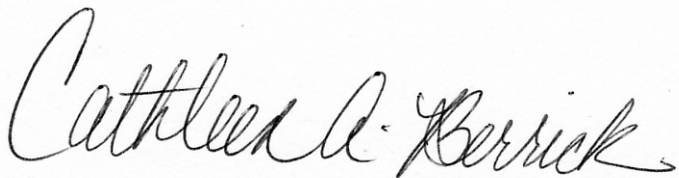
We are sending copies of this report to the Secretary of Homeland Security. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Susan Irving at (202) 512-9142 or irvings@gao.gov or Cathleen Berrick at (202) 512-3404 or berrickc@gao.gov. This report was prepared under the direction of Denise Fantone, Assistant Director, and Jack Schulze, Assistant Director, with the assistance of Carlos Diz, Assistant General Counsel. Other key contributors were Leo Barbour, Jonathan Barker, Joseph Byrns, Leah Nash, and Gladys Toro.

Sincerely yours,



Susan J. Irving
Director, Federal Budget Analysis
Strategic Issues



Cathleen A. Berrick
Director, Homeland Security and Justice Issues

Enclosures - 4

Enclosure I

DHS and TSA Reprogramming Sequence

Note: Unless otherwise indicated, the information below is based on interviews and other testimonial evidence. We were unable to obtain documents that would permit us to substantiate many conflicting assertions, and given the lengthy delay in receiving documents, we were unable to go back to DHS, TSA, or FAMS for clarification and validation while still meeting the requester's needs. The double asterisk (***) indicates that we have documents to support statements, were otherwise able to confirm assertions or facts, or both.

February/March 2003 – Development of Reprogramming and FAMS Cut

- Appropriation enacted on February 20;*** the TSA CFO informed the DHS CFO of a \$1.976 billion “shortfall” within the TSA account. To help mitigate the situation, a reprogramming would be necessary to realign TSA programs and funds.
- FAMS staff reported that on March 26 FAMS incurred a reduction from \$545 million to \$505 million (-\$40 million) for fiscal year 2003.
- FAMS acknowledged that it was asked to do a zero-based review;*** however, no evidence of the review or of the results of the review were provided.

April 2003 – Further Development of Proposal and More FAMS Cuts

- DHS and TSA staff continued to work on developing a reprogramming proposal.
- On April 25 TSA notified FAMS of an immediate hiring freeze.***
- On April 28 FAMS was affected by a second reduction of fiscal year 2003 funding from \$505 million to \$466 million (-\$38.7 million) based on personnel compensation and benefits savings.***
- FAMS reported that on April 28 it incurred a third funding reduction from \$466 million to \$441 million (-\$25 million) to cover the cost of other Aviation Operations purposes.

Early May 2003 – FAMS Claims Severe Impacts

- FAMS claimed that TSA imposed a “hard” hiring freeze effective on May 5, with no authority to backfill for attrition; the TSA CFO disagreed with this characterization of the hiring freeze.
- On May 5 TSA's Chief Operating Officer (COO) directed FAMS in writing to revise spending plans to stay within \$529 million, \$441 million in fiscal year 2003 funding and \$88 million in carryover available to FAMS.***
- On May 8 FAMS projected a \$53 million budget “shortfall” based on the \$529 million funding level.***

Early May 2003 – Reprogramming Sent to Homeland Security Appropriations Subcommittees

- The TSA Deputy Administrator told us that he and the Administrator approved reprogramming.
- TSA CFO briefed DHS and OMB on the final proposal.
- OMB staff cleared the reprogramming; OMB told us that the OMB Director is informed of budget execution matters on an “as needed” basis and that it is not OMB’s policy to comment on specific reprogrammings.
- The reprogramming was submitted by DHS on May 15 with reduction of \$104 million for FAMS.

Mid to Late May 2003 – FAMS Continues to Claim Severe Impacts

- After denial of the May 15 reprogramming by both subcommittees, DHS and TSA sought to adjust the reprogramming.
- FAMS briefed the TSA COO on “impact of severe budget reductions”;** briefings and memos on FAMS’s objections to the cutbacks were forwarded to senior TSA officials, including the TSA Administrator.
- The TSA Administrator directed FAMS in writing to stay within \$441 million and take recommended measures to achieve savings.**

June 2003 – Ongoing Dialogue between FAMS and TSA

- The TSA CFO objected to FAMS impact characterizations, saying** that FAMS reductions were reviewed and approved by the TSA Administrator; FAMS staff had indicated that they were “ok” at the \$529 million level; and FAMS spending estimates included inconsistencies, for example, FAMS monthly spending estimates were higher than the average monthly actuals.
- FAMS responded with detailed claims of “significant to severe” operational impacts:** 90 percent reduction of long-haul flights effective on or about July 1, continued “hard” hiring freeze, and a halt in enhancements to the mission scheduler system and a delay in Phase II training.
- The TSA CFO requested a review of FAMS program obligations.

July/August 2003 – Revised Reprogramming Sent to Homeland Security Appropriations Subcommittees, and FAMS Program Audit Conducted

- Revised reprogramming submitted by DHS on July 25 with FAMS reductions at the same level proposed in May.
- Package resubmitted by DHS on July 31 with \$9 million restored (\$95 million reduction for FAMS).
- On August 25, TSA Aviation Operations, COO, and CFO staff finalized a program audit of FAMS obligations and spending. This audit identified**
 - a projected deficit of about \$16 million with proposed reductions in training, mission deployments, and other offsets; and
 - budget execution process issues:
 - the lack of a TSA allotment to FAMS or other agency components,
 - possible FAMS certification of funds without TSA knowledge, and
 - lack of updated FAMS spending plans.

August/September 2003 – Reprogramming Approved

- The Senate approved the reprogramming on the condition that reallocation would not, among other things, “decrease the number of air marshals currently assigned to domestic and international flights.”**
- The House approved the reprogramming, except for the proposed reduction from the FAMS program.**

Date Uncertain – DHS Secretary Briefed on Reprogramming

- According to DHS, “Secretary Ridge was briefed regarding the fact [that] there were TSA reprogrammings, but was not briefed on the specifics of the impact on FAMS. Instead Department officials relied on TSA for its detailed analysis and evaluation of the FAMS impact.”

Enclosure II

Specific Reprogramming Requirements for Agencies under the Jurisdiction of Homeland Security Appropriations Subcommittees

Emergency Wartime Supplemental Appropriations Act, 2003

Pub. L. No. 108-11, 117 STAT. 584 (2003)

SEC. 1601. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2003, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds for any program, project, or activity for which funds have been denied or restricted by Congress; or (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose, unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2003, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for programs, projects, or activities through a reprogramming of funds in excess of \$5,000,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, projects or activities, as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

Enclosure III

Briefing Slides provided to the Staff of the Subcommittee on Homeland Security, House Committee on Appropriations

Reprogramming Process—Summary of Findings

- FY 2003 was marked by changing organizational structure and budget uncertainties including the CR, the need to develop estimates without historical experience, changing mission needs and costs.
- TSA and FAMS disagree on when and what FAMS was told about the reprogramming, about whether FAMS agreed to a cut, about the ability of FAMS to absorb a cut, and about the likely programmatic impact of the proposed cuts, and even about the nature of the hiring freeze imposed on the FAMS.
- Documents and data provided to GAO do not permit GAO to opine on the accuracy of assertions by either TSA or FAMS, on the reasonableness of TSA's analysis and conclusions or of the FAMS counter-arguments.
- The TSA Administrator was made aware of FAMS characterization of the anticipated impact of the funding reductions and the TSA CFO's objections to the FAMS claims.
- According to DHS, "Secretary Ridge was briefed regarding the fact there were TSA reprogrammings, but was not briefed on the specifics of the impact on FAMS. Instead Department officials relied on TSA for its detailed analysis and evaluation of the FAMS impact."
- OMB staff cleared the reprogramming; An OMB attorney told us that the OMB Director is informed of budget execution matters on an "as needed" basis and that it is not OMB's policy to say whether the Director was notified of any specific reprogramming.

Impact on FAMS due to Budget Reductions: Summary of Findings

- Internal Memos from FAMS to TSA during May-June 2003 indicate that FAMS officials said that the reduction in funds from the reprogramming would cause “significant to severe” operational impacts.
- Mitigating steps were taken by FAMS in July and August of 2003, e.g:
 - FAMS temporarily (10 days) went to a regional deployment system to eliminate the need for overnight stays
 - FAMS said they continued to cover all “high risk” flights
 - Standup and other activities were deferred
- In retrospect in February 2004, FAMS officials say that the impact on ongoing operations was “minimal,” but that restoration of the \$8.7 million [late July when the proposed cut was changed from \$104 to \$95 million] was critical to preventing significant impacts.
- Budget reductions did affect FAMS plans to ramp up staffing to fully authorized levels.
- Impact on aviation security as a result of the reductions in FAMS funding cannot be assessed.

Legal Issues: Summary of Findings

- A special impoundment message [deferral] was not required.
 - Delay in obligating funds pending consideration of reprogramming notification by appropriations committees’ is a programmatic delay. Delay was for a reasonable time and TSA intended to obligate the funds for an authorized purpose within its lump-sum appropriation.
- The Under Secretary for Management who signed the reprogramming notice to the Appropriations Subcommittees had authority to do so.
 - No statute requires the Secretary to sign. The Homeland Security Act specifically gives responsibility for management & administration of funds to the Secretary through the Under Secretary for Management.

Reprogramming Process Issues: The Future

- DHS has taken steps to improve budget execution, specifically with the development and issuance of FY 2004 guidance detailing procedures for reporting plans and usage, as well as reprogramming requirements. The procedures, which include (1) specific guidance based on congressional criteria, (2) clear expectations on what information is required to justify a proposed reprogramming action, and (3) an early post-appropriations review to determine the need to reprogram, are all positive developments.
- In addition, DHS could better articulate:
 - The consultation and approval process to be used for reprogramming proposals, including how final reprogramming decisions will be communicated to the affected programs.
 - Guidance on tracking earmarked funds—instead of leaving it to individual components, require that transactions involving earmarked funds be separately identified through unique codes.
 - How the Department will identify when, as the result of cumulative reprogrammings below reporting thresholds, there is a need for a reprogramming notification.
- OMB said they were working with the Department on a more formalized apportionment process.

Enclosure IV

Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

Susan J. Irving
Director, Federal Budget Analysis Strategic Issues

Norm Rabkin
Managing Director, Homeland Security and Justice Issues
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Re: GAO Draft Report: Budget Issues: Reprogramming of Federal Air Marshal Service Funds, GAO-04-577R, (450254)

Dear Ms. Irving, et. al:

On March 17, 2004, the General Accounting Office (GAO) presented the Department of Homeland Security (DHS) with its draft report, *Budget Issues: Reprogramming of Federal Air Marshal Service Funds*, GAO-04-577R. As described in the report, GAO was asked to assess the following:

1. Whether senior Transportation Security Agency (TSA), DHS, and Office of Management and Budget (OMB) officials were informed of the implications of the Federal Air Marshal Service (FAMS) funding reductions prior to the submission of the reprogramming notices;
2. The programmatic implications of the funding reductions on the FAMS program;
3. Whether or not it was legally necessary to send an impoundment message to the Congress and whether the Secretary of DHS had delegated to the Under Secretary for Management the authority to transmit reprogramming notifications to the cognizant Appropriations Subcommittees.
4. Provide recommendations, as appropriate, for improvements in budget execution for future consideration.

The Department of Homeland Security generally agrees with GAO's reporting of circumstances associated with the Reprogramming of the FAMS Funds. We also agree with the GAO suggestions for future consideration when DHS communicates and interfaces with our organizational elements regarding reprogramming and tracking earmarked funds.

www.dhs.gov

There are, however, a few issues in your report that we would like to reiterate for emphasis. While we recognize that the scope of your engagement was limited to the reprogramming of FAMS funds, it is important to remember that during the period of review there was tremendous uncertainty regarding 1) the availability of funding, 2) new mission requirements, and 3) a lack of a baseline funding history upon which to draw to make important determinations with finite resources. On March 1, 2003, like other DHS organizational elements, TSA was folded into the new Department at the same time it inherited a new expanded role and mission, and just one month after receiving its full funding for a fiscal year that was nearly half completed. After a limited analysis, it became apparent that it would be necessary for TSA to realign funds to ensure that we at DHS met our mission in a prudent manner. As you know, the FAMS reprogramming was just one aspect of a larger reprogramming package.

The Department appreciates GAO's recognition of our efforts to improve our budget execution process by issuing fiscal year guidance detailing procedures for reporting plans and usage, as well as reprogramming requirements. We also agree with the essence of GAO's suggestions regarding the tracking of earmarked funds with special codes and will incorporate this into our FY 2005 Budget Execution guidance. In addition, we are taking this requirement into consideration in the development of new financial management systems. The new policy will emphasize clarity, transparency, consistency, and open intra-agency communication.

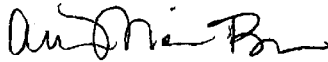
Lastly, we request that the following changes be incorporated into your final report.


- We suggest that an additional statement be made on page 3 and an additional bullet on page 14 that the FY 2004 Appropriation Conference Report included \$95 million in carryover (the amount in question from the House reprogramming denial) to be available to address TSA Aviation Security needs.
- The audit (Program review – noted as July 24 on the timeline on page 4) was completed before the resubmitted package, and a PowerPoint chart was presented at meetings with House and Senate Appropriations Committee staff before the July 31 resubmission.
- On page 5, the last sentence of the 2nd paragraph is not a true characterization. The TSA Chief Financial Officer's staff conducted some limited analysis and follow-up questions were asked of the FAMS. However, a Full Impact Analysis could not be conducted as no follow-up information was provided by the FAMS at that time.
- On page 7, first paragraph, we suggest using the term "target strength" in lieu of "fully authorized level."
- Regarding the 1st bullet in July/August 2003 on page 13: a comment should be added to state the revised reprogramming amount submitted on July 25, 2003, was "at the same level proposed in May."

Ms. Susan J. Irving, et. al
Page 3

Thank you for the opportunity to comment on this report and for your continued support of the Department and its critical mission. If you have any questions regarding this matter, I am available to meet or discuss with you or your staff.

Sincerely,



 Anna F. Dixon
DHS GAO Liaison

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