

Committee on Appropriations
Subcommittee on Homeland Security

FY 2021 Department of Homeland Security Appropriations Bill
Full Committee Markup

MANAGER'S AMENDMENT
Offered by Ms. Roybal-Allard of California
(Roybal-Allard #1)

In the BILL:

On page **19**, line 5, strike "\$7,427,407,000" and insert "\$7,927,407,000".

On page **30**, at the beginning of line 1, insert "(8) within any real property owned by the Sacred Heart Children's Home in Laredo, Texas;" and renumber the following two enumerated items, as appropriate.

On page **59**, line 5, strike "may" and insert "shall".

On page **59** line 7, strike "(a)(1)(G),".

On page **60**, line 24 strike "may" and insert "shall".

On Page **60**, line 24, strike "subsections (f),(g)(1) and" and insert "subsection".

On page **62**, at the end of title III, insert the follow new administration provision:

"SEC. 3___. (a) IN GENERAL.—Subtitle A of title XXII of the Homeland Security Act of 2002 (6 U.S.C. 651 et seq.) is amended by adding at the end the following new section:

"SEC. 2215. CYBERSECURITY ADVISORY COMMITTEE.

"(a) ESTABLISHMENT.—The Secretary shall establish within the Agency a Cybersecurity Advisory Committee (referred to in this section as the 'Advisory Committee').

“(b) DUTIES.—

“(1) IN GENERAL.—The Advisory Committee may advise, consult with, report to, and make recommendations to the Director, as appropriate, on the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

“(2) RECOMMENDATIONS.—

“(A) IN GENERAL.—The Advisory Committee shall develop, at the request of the Director, recommendations for improvements to advance the cybersecurity mission of the Agency and strengthen the cybersecurity of the United States.

“(B) RECOMMENDATIONS OF SUBCOMMITTEES.—Recommendations agreed upon by subcommittees established under subsection (d) for any year shall be approved by the Advisory Committee before the Advisory Committee submits to the Director the annual report under paragraph (4) for that year.

“(3) PERIODIC REPORTS.—The Advisory Committee shall periodically submit to the Director—

“(A) reports on matters identified by the Director; and

“(B) reports on other matters identified by a majority of the members of the Advisory Committee.

“(4) ANNUAL REPORT.—

“(A) IN GENERAL.—The Advisory Committee shall submit to the Director an annual report providing information on the activities, findings, and recommendations of the Advisory Committee, including its subcommittees, for the preceding year.

“(B) PUBLICATION.—Not later than 180 days after the date on which the Director receives an annual report for a year under subparagraph (A), the Director shall publish a public version of the report describing the activities of the Advisory Committee and such

related matters as would be informative to the public during that year, consistent with section 552(b) of title 5, United States Code.

“(5) FEEDBACK.—Not later than 90 days after receiving any recommendation submitted by the Advisory Committee under paragraph (2), (3), or (4), the Director shall respond in writing to the Advisory Committee with feedback on the recommendation. Such a response shall include—

“(A) with respect to any recommendation with which the Director concurs, an action plan to implement the recommendation; and

“(B) with respect to any recommendation with which the Director does not concur, a justification for why the Director does not plan to implement the recommendation.

“(6) CONGRESSIONAL NOTIFICATION.—Not later than 45 days after the date of the President’s budget submission to Congress, the Director shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives a briefing on feedback from the Advisory Committee.

“(c) MEMBERSHIP.—

“(1) APPOINTMENT.—

“(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Director shall appoint the members of the Advisory Committee.

“(B) COMPOSITION.—The membership of the Advisory Committee shall consist of not more than 35 individuals.

“(C) REPRESENTATION.—

“(i) IN GENERAL.—The membership of the Advisory Committee shall be geographically balanced and shall include

representatives of State and local governments and of a broad range of industries, which may include the following:

“(I) Defense.

“(II) Education.

“(III) Financial services and insurance.

“(IV) Healthcare.

“(V) Manufacturing.

“(VI) Media and entertainment.

“(VII) Chemicals.

“(VIII) Retail.

“(IX) Transportation.

“(X) Energy.

“(XI) Information Technology.

“(XII) Communications.

“(XIII) Public works.

“(XIV) Cybersecurity research community.

“(XV) Privacy policy organizations.

“(XVI) Other relevant fields identified by the Director.

“(ii) PROHIBITION.—Not more than three members may represent any one category under clause (i).

“(2) TERM OF OFFICE.—

“(A) TERMS.—The term of each member of the Advisory Committee shall be two years, except that a member may continue to serve until a successor is appointed.

“(B) REMOVAL.—The Director may review the participation of a member of the Advisory Committee and remove such member any time at the discretion of the Director.

“(C) REAPPOINTMENT.—A member of the Advisory Committee may be reappointed for an unlimited number of terms.

“(3) PROHIBITION ON COMPENSATION.—The members of the Advisory Committee may not receive pay or benefits from the United States Government by reason of their service on the Advisory Committee.

“(4) MEETINGS.—

“(A) IN GENERAL.—The Director shall require the Advisory Committee to meet not less frequently than semiannually, and may convene additional meetings as necessary.

“(B) PUBLIC MEETINGS.—At least one of the meetings referred to in subparagraph (A) shall be open to the public.

“(C) ATTENDANCE.—The Advisory Committee shall maintain a record of the persons present at each meeting.

“(5) MEMBER ACCESS TO CLASSIFIED AND DELIBERATIVE BUDGET INFORMATION.—

“(A) IN GENERAL.—Not later than 60 days after the date on which a member is first appointed to the Advisory Committee and before the member is granted access to any classified and deliberative budget information, the Director shall determine if the member should be restricted from reviewing, discussing, or possessing such information.

“(B) ACCESS.—Access to classified materials shall be managed in accordance with Executive Order No. 13526 of December 29,

2009 (75 Fed. Reg 707), or any subsequent corresponding Executive Order.

“(C) PROTECTIONS.—A member of the Advisory Committee shall protect all classified information in accordance with the applicable requirements for the particular level of classification of such information.

“(D) BUDGET INFORMATION.—A member of the Advisory Committee shall be permitted access, as appropriate, to five-year deliberative budget data, analysis, and any other underlying materials information that is considered during the annual budget development process and shall protect such information in the same manner and with the same regard as agency personnel.

“(6) CHAIRPERSON.—The Advisory Committee shall select, from among the members of the Advisory Committee—

“(A) a member to serve as chairperson of the Advisory Committee; and

“(B) a member to serve as chairperson of each subcommittee of the Advisory Committee established under subsection (d).

“(d) SUBCOMMITTEES.—

“(1) IN GENERAL.—The Director shall establish subcommittees within the Advisory Committee to address cybersecurity issues, which may include the following:

“(A) Information exchange.

“(B) Critical infrastructure.

“(C) Risk management.

“(D) Public and private partnerships.

“(E) State, local, tribal, and territorial governments.

“(F) Citizen engagement.

“(2) MEETINGS AND REPORTING.—Each subcommittee shall meet not less frequently than semiannually, and submit to the Advisory Committee for inclusion in the annual report required under subsection (b)(4) information, including activities, findings, and recommendations, regarding subject matter considered by the subcommittee.

“(3) SUBJECT MATTER EXPERTS.—The chair of the Advisory Committee shall appoint members to subcommittees and shall ensure that each member appointed to a subcommittee has subject matter expertise relevant to the subject matter of the subcommittee.

“(e) NONAPPLICABILITY OF FACCA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee and its subcommittees.

“(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 2214 the following new item:

“2215. Cybersecurity Advisory Committee.”.

On page **79**, line 18, insert “or other emergency” after “enforcement”.

On page **85**, line 23, insert the following new section before the short title:

“Sec. XXX. Not later than 30 days after the date of enactment of this Act, \$20,000,000 from the unobligated balances from the amount described in section 212(b) of division D of Public Law 116–93, shall be transferred to “Countering Weapons of Mass Destruction Office—Procurement, Construction, and Improvements” for electronic health records, and shall remain available until September 30, 2022, in addition to any amounts otherwise available for such purposes: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, and shall be available only if the President subsequently so designates such amount and transmits such designation to the Congress.”

In the REPORT:

On page 9, strike the paragraph titled “*Chief Medical Officer*” and insert the following:

“*Chief Medical Officer (CMO)*.—DHS is directed to comply with the direction in the Explanatory Statement accompanying Public Law 116–93 addressing the review of all medical contracts and development of requirements for medical services. It is the expectation of the Committee that the Chief Medical Officer will have a lead role in the development of any related contract requirements, requests for information and proposals, and reviews of bids and offers for any DHS component to ensure they include the appropriate requirements for medical services, including but not limited to professional healthcare system administration; disease surveillance, reporting, and outbreak response; and measurable performance standards for current and future healthcare record systems.

Additionally, DHS is reminded of the requirement in the Explanatory Statement accompanying Public Law 116–93 concerning a medical strategy. The Committee encourages the Secretary to delegate this effort to the Department’s Chief Medical Officer.”

On page 14, after the paragraph titled “Travel Costs”, insert the following:

“*Travel Restrictions*. – The Committee directs the Secretary to work with the Government of Canada to establish and maintain the following exemptions to the US - Canada non-essential travel restrictions: family reunification and travel to secure property with the appropriate quarantining measures recommended by the Centers of Disease Control and Prevention.”

On page **21**, before the paragraph titled “*Fee Revenue*”, insert the following:

“*Definition of Death in Custody.* – Not later than 60 days after the date of enactment of this Act, CBP shall brief the Committee on the definition of a death “in custody” and a death “not in custody” that will be used in notifications and investigations of any deaths. The Committee expects to be notified of both types of death within 24 hours of the death”

On page **24**, before the paragraph titled “*Polygraph Waivers*”, insert the following:

“*Performance Measures.* – To appropriately assess any request for additional funding requires a clear understanding of the level of activities supported by existing funding within a components base budget. CBP should be able to directly tie their base budget to comprehensive performance measures that capture both outputs and outcomes. Within 60 days of date of enactment of this Act, CBP shall provide a briefing on a plan to incorporate existing and develop new measures that provide Congress with robust description of the activities supported by the agency’s base budget.”

On page **25**, on the tenth line under the paragraph titled “*Staffing Shortages*”, strike “750” and insert “850”.

On page **28**, before the paragraph titled “*Environmental Mitigation*”, insert the following:

“*Coastal Interceptor Vessels.* – The Committee directs CBP to expediate the funding provided in fiscal year 2020 for coastal interceptor vessels. The Committee fully supports the program and encourages continued procurement to include the recapitalization of the current enclosed cabin vessels that are obsolescent and past their life expectancy. CBP shall brief the Committee on the program not later than 30 days after the date of enactment of this Act.

Electronic Health Records.—Public Law 116–93 provided \$30,000,000 for electronic health records within in CBP’s Procurement, Construction, and Improvements account to enable the DHS Chief Medical Office (CMO), in conjunction with CBP, ICE, and other operational components, to develop and establish interim and long-term electronic systems for recording and maintaining information related to the health of individuals in the Department’s custody that would be adaptable to component operational environments and be interoperable with other departmental systems, as appropriate, and with the National Emergency Medical Services Information System. Additionally, the explanatory statement included the requirement for a plan for the design and development of such systems to be provided to the Appropriations Committees within 90 days of the date of enactment of the Act. After a significant delay, the Committees finally received a plan on July 9, 2020. After reviewing the plan, it is evident that funds should be held with the CMO in order to create the electronic health record system that would best serve the longer-term requirements and needs across the whole Department, not just one component.—To ensure a successful investment of appropriated dollars and direction in Public Law 116–93, the Committee includes language directing the transfer of \$20,000,000 from CBP to the Countering Weapons of Mass Destruction Office for execution. The CMO is encouraged to leverage contract staffing across multiple components to avoid duplication of efforts and funding. Additionally, the CMO, in conjunction with impacted components, shall brief the Committee on the efforts across the Department to include the execution of funds on a quarterly basis.”

On page 33, after the first full paragraph and immediately preceding the paragraph beginning, “Arrest, Detention, and Removal Data”, insert the following:

“The Committee is concerned that many individuals enrolled in the ATD program will be terminated from the program before their case is fully resolved. Getting timely resolution of these cases is complicated by the historic volume of pending cases on the Executive Office for Immigration Review (EOIR) non-detained docket schedule. The Committee recognizes that the longer an individual remains on ATD while their case is pending before EOIR, the more expensive the ATD program is per enrollee, and the less effective the ATD program is. Prioritizing ATD enrollees’ cases as if

they were on the detained docket could potentially increase the effectiveness of the program, lower the cost per enrollee, and support more individuals in the program overall. The Committee directs ICE and EOIR to develop an analysis of alternatives to improve the timeliness of resolving cases before EOIR for individuals in the ATD program, and further to consider as one such alternative the classification of ATD enrollees as part of the detained docket for purposes of case prioritization. ICE and EOIR are directed to brief the Committee on their findings not later than 180 days after the date of enactment of this Act.”

On page 33, after the paragraphs titled “*Case Management Services*”, insert the following:

Deportation Priorities.— Congress and the Department of State have recognized that a genocide has been committed against Chaldeans and other religious minorities in Iraq. The Committee recommends that ICE refrain from prioritizing the deportation of people who will be subject to violent persecution and death in their countries of origin.

On page 39, in the first paragraph under “Operations and Support”, strike “\$240,036,000” and insert “\$171,416,000”.

On page 44, before the paragraph titled “*Expedited Requests for Transfer*”, insert the following:

Electronic Health Records.—The Committee wishes to ensure that the Coast Guard’s transition to MHS GENESIS includes digital transformation of legacy health records. The Secretary is directed to review the plans for the digital transformation of Coast Guard legacy health records, including timelines and expected costs, and provide a briefing on the results not later than 120 days after the enactment of this Act.”

On page **44**, After the period in the section titled “*Great Lakes Icebreaker Program*”, insert the following:

“The program office will continue to explore ways to enhance icebreaking capacity on the Great Lakes.”

On page **45**, strike the paragraph titled “*National Security Cutter (NSC)*” and insert the following:

“*National Security Cutter (NSC)*.—The bill does not include the proposed rescission of \$70,000,000 of the \$100,500,000 provided in fiscal year 2020 for the acquisition of long lead time materials for the construction of a twelfth National Security Cutter.

On page **62** after the paragraph titled “*Assistance to Firefighter Grants*” insert the following:

Continuing Training Grants.—The total under this heading includes \$8,000,000 for Continuing Training Grants to support competitively awarded training programs to address specific national preparedness gaps such as cybersecurity, economic recovery, housing, and rural and tribal preparedness. Of this amount, not less than \$3,000,000 shall be prioritized to be competitively awarded for FEMA-certified rural and tribal training.

On page **64** strike the paragraph titled “*2017 Hurricane Recovery*”

On page **66** after the paragraph titled “*Public Assistance Project Worksheet Development and Duplicative and Conflicting Administrative Requirement*” insert the following:

“*Recovery from 2017 Hurricanes*.—The Committee continues to be concerned about the overall pace of recovery from the 2017 Hurricanes in Puerto Rico and the US Virgin Islands (USVI), particularly following the recent earthquakes and during the current pandemic. Moving forward, FEMA should make full use of the additional authorities provided in the Bipartisan Balanced Budget Act of 2018

(Public Law 115–123), the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254), and the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Public Law 116–20).

The Committee appreciates the interagency briefings that have been provided on these recovery efforts and expects those to continue. In addition to updates on the impacts of the recent earthquakes and the current pandemic, the briefings should report on progress in making reimbursements under the Sheltering and Temporary Essential Power (STEP) program in USVI and for electrical power restoration in Puerto Rico. The Committee understands that some contractors and subcontractors are still waiting for reimbursements more than two years after completing associated USVI STEP and Puerto Rico electrical power restoration work. While a number of factors have likely contributed to this delay, a primary factor hindering these payments has been the turnover of key FEMA officials and FEMA’s use of manual drawdowns. Another factor is the delay in determining reasonable costs across the board. Failure to provide timely approval of costs and payments not only puts hardship on service providers, but likely makes those entities less able, or willing, to help respond after future disasters.”

On page 67, at the end of title III, insert the following:

“Section _____. The Committee includes a provision to establish a Cybersecurity Advisory Committee within CISA.”

On page 69, in the paragraph titled “*H-2B Visa Program Oversight*”, strike the following:

“The recommendation includes a new provision that prohibits certain employers from participating in the H–2B visa program if they have a history of violating certain employment-related laws or regulations.”

On page 80, strike the paragraph titled “*Chief Medical Officer*” and insert the following:

“*Chief Medical Officer (CMO)*.—DHS is directed to comply with the direction in the Explanatory Statement accompanying Public Law 116–93

addressing the review of all medical contracts and development of requirements for medical services. It is the expectation of the Committee that the Chief Medical Officer will have a lead role in the development of any related contract requirements, requests for information and proposals, and reviews of bids and offers for any DHS component to ensure they include the appropriate requirements for medical services, including but not limited to professional healthcare system administration; disease surveillance, reporting, and outbreak response; and measurable performance standards for current and future healthcare record systems.

Additionally, DHS is reminded of the requirement in the Explanatory Statement accompanying Public Law 116–93 concerning a medical strategy. The Committee encourages the Secretary to delegate this effort to the Department’s Chief Medical Officer.

Electronic Health Records.—Public Law 116–93 provided \$30,000,000 for electronic health records within in CBP’s Procurement, Construction, and Improvements account to enable the DHS Chief Medical Office (CMO), in conjunction with CBP, ICE, and other operational components, to develop and establish interim and long-term electronic systems for recording and maintaining information related to the health of individuals in the Department’s custody that would be adaptable to component operational environments and be interoperable with other departmental systems, as appropriate, and with the National Emergency Medical Services Information System. Additionally, the explanatory statement included the requirement for a plan for the design and development of such systems to be provided to the Appropriations Committees within 90 days of the date of enactment of the Act. After a significant delay, the Committees finally received a plan on July 9, 2020. After reviewing the plan, it is evident that funds should be held with the CMO in order to create the electronic health record system that would best serve the longer-term requirements and needs across the whole Department, not just one component. To ensure a successful investment of appropriated dollars and direction in Public Law 116–93, the Committee includes language directing the transfer of \$20,000,000 from CBP to the Countering Weapons of Mass Destruction Office for execution. The CMO is encouraged to leverage contract staffing across multiple components to avoid duplication of

efforts and funding. Additionally, the CMO in conjunction with impacted components shall brief the Committee on the efforts across the Department to include the execution of funds on a quarterly basis.

National Technical Nuclear Forensics.—The Committee is interested in the proposal to consolidate this capability at the National Nuclear Security Administration, but some doubts remain regarding the transfer of these activities. The Department is directed to brief the Committee on this proposal before the end of fiscal year 2020.”

On page **84**, insert the following at the appropriate place:

Section _____. The Committee includes a provision directing the transfer of funds for electronic health records.