

# Statement of Ranking Member Yvette D. Clarke (D-NY) as prepared

## Subcommittee on Cybersecurity, Infrastructure Protection & Security Technologies Committee on Homeland Security

### Markup of H.R. 2658 *“The Federal Protective Service Reform and Enhancement Act”*

**July 28, 2011**

With 9,000 Federal buildings under the protection of the Federal Protective Service (FPS), every Congressional district has at least one FPS facility.

It can be a store-front Social Security office, a Veteran’s hospital, a Federal office building, or even a storage facility.

Before I discuss the substance of this bill, I would first like to take care of a few housekeeping matters. First, there is the issue of bipartisanship. Given our mutual commitment to improving security in Federal buildings, I am disappointed that the Minority was first presented the discussion draft of this bill on Friday. Had discussions on this legislation begun early, I really think that many of the changes that Democrats are seeking today might have found their way into base text.

Second, there is the issue of jurisdiction. It is unfortunate that this Committee shares jurisdiction of this bill with the Committee on Transportation and Infrastructure, especially since I think it is fair to say that this Committee has done the lion’s share of oversight work on the FPS issue. It is truly unfortunate that the Speaker has not granted this Committee primary legislative jurisdiction when we are the only Committee showing leadership in this area. Once this bill is reported by this Committee, I hope we can present T&I with legislation that reflects a bipartisan effort to fix FPS.

Now, I would like to turn to the substance of the legislation that we are here to discuss today. Mr. Chairman, after sitting through numerous hearings and reading several GAO reports, the phrase “Houston, we have a problem” keeps reverberating in my head when I think about FPS.

The deficiencies at FPS are so fundamental. At a minimum, FPS needs:

- stability in its workforce;
- uniform and enforceable criteria for training and certifying the contract guard workforce;
- uniform criteria for performance;
- a culture that holds contractors accountable; and
- a dedicated cadre of contract managers.

Meaningful reform at FPS cannot proceed without these necessary changes. Unfortunately, H.R. 2658, as introduced, does little to accomplish any of these critical objectives. Additionally, the bill takes FPS in some new, possibly costly, and problematic directions.

For a fee-funded agency that is struggling to meet its current responsibilities, establishing new duties without providing a new line of revenue risks noncompliance.

For example, the bill would require FPS to provide “technical assistance” and “conduct exercises” with tenants on security procedures. Without additional funding, undertaking these new duties could undermine FPS’ ability to perform its core functions.

Unable to complete these tasks, I suspect that FPS will choose to contract them out.

Moreover, the bill envisions FPS testing security technologies pursuant to a cooperative agreement with TSA and the Science and Technology directorate. Technology testing has never been in FPS's lane.

I suspect that when FPS realizes that it lacks the personnel and expertise to fulfill this new role, it will again call a contractor.

Also troubling is the bill's requirement that FPS create an exclusive "qualified vendor list" and "qualified product list"—each to serve as the only resource used in the selection of vendors and products procured by FPS.

This requirement may serve to inadvertently create a monopoly of accepted and acceptable contractors.

Such a closed system would undermine Federal contracting law's presumption that opportunities to participate in the federal marketplace should be based on "full and open competition."

This seems to be a solution in search of a problem. I am not aware of any oversight testimony urging that FPS adopt a closed procurement system.

On the contrary, our most recent hearing on FPS revealed the need to bring additional accountability and transparency to the FPS procurement system.

Creating a closed vendor lists, without so much as publishing a criteria for selection would seem to run counter to GAO's findings.

Finally, H.R. 2658 would require FPS to create, within 180 days, a prohibited items list.

Let me be clear-- I am not opposed to the creation of such a list. We should prohibit hazardous materials in Federal buildings.

However, I am concerned about the prospect that when FPS fails to issue the list within this timeline, all tenants and visitors will be subject to the "prohibited item list" maintained by TSA.

That's what the bill would require. The TSA list is tailored to risks in aviation.

Do we really want to prevent a Federal employee from bringing his thermos, filled with liquids, in his lunchbag? Are we really worried about a worker bringing an aerosol hairspray can in her bag, when she plans to get in some exercise at the gym on her lunch and needs to fix her hair afterwards?

I could go on and on with examples. Suffice is to say, imposing the TSA list could result in ridiculous outcomes.

Mr. Chairman, I commend you for bringing FPS legislation before the subcommittee. The Democrats on this Subcommittee, myself included, have submitted a number of thoughtful amendments that we believe can make the underlying bill better.

We also believe that H.R. 2658, as introduced, does not take the necessary steps that the GAO has said repeatedly would help fix FPS. I sincerely hope that as this bill moves out of this Subcommittee and through the legislative process, the legislation that this Committee advances reflects our oversight findings and provides the reforms that FPS so desperately needs.