



Federal and Congressional Issues Update

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THE FOLLOWING IS AN UPDATE AND ANALYSIS ON SOME OF THE MAJOR FEDERAL AND CONGRESSIONAL ISSUES THAT NASCO IS TRACKING WHICH AFFECT CONTRACT SECURITY COMPANIES. NASCO IS DIRECTLY INVOLVED IN MANY OF THESE ISSUES:

- I. The Affordable Care Act and the Employer Mandate
- II. Current Federal Labor Issues
- III. Restricting Employer Use of Criminal Background Checks
- IV. Security Company (Officer) Access/Re-Entry to Disaster Areas
- V. Universal FBI Background Checks for Security Officers
- VI. The Use of Contract Security by the Federal Protective Service (FPS)
- VII. The Use of Private Companies to Provide Screening at U.S. Airports
- VIII. Other Federal and Legislative Issues of Interest to the Contract Security Industry

I. The Affordable Care Act and the Employer Mandate

The Employer Mandate (“Shared Responsibility”) requirement, which will take effect on January 1, 2014, provides that employers with 50 or more full-time employees (average of 30 hours a week), including full-time equivalent employees, will be penalized if any full-time employee receives a premium tax credit or cost-sharing reduction to purchase health coverage through an Affordable Health Insurance Exchange (“Exchange”). Generally, an employee is eligible for a cost-sharing subsidy if: (1) an employer does not offer its full-time employees the opportunity to enroll in coverage; or (2) an employer offers its employees the opportunity to enroll in coverage, but the coverage is “unaffordable” or does not provide “minimum value.” Employers are also required to offer coverage to not only full-time employees, but their dependents as well, defined as children up to age 26, but does not include spouses.

In December 2012, the IRS released a 144 page “Notice of Proposed Rulemaking” covering many elements of the Employer Mandate.

If an applicable employer does not offer coverage or offers coverage to less than 95 percent of its full-time employees, it must pay a penalty of \$2,000 for each full-time employee (minus the first 30) if any employee receives a premium tax credit.

If an employer offers coverage to 95 percent or more of its full-time employees, it must nonetheless pay a penalty if one or more full-time employees receive a premium tax credit on the basis of the coverage not being “affordable” or not providing “minimum value.” Coverage is affordable if the employee’s premium obligation for self-only coverage does not exceed 9.5 percent of the employee’s household modified adjusted gross income. A plan will be deemed to provide minimum value if it covers at least 60 percent of the total allowed cost of benefits that the plan is expected to incur. The penalty will be equal to 1/12th of \$3,000 for each full-time

employee who received a premium tax credit for the month. The IRS Rules provides that the amount paid under this scenario cannot exceed the amount the employer would have had to pay if it did not offer coverage.

NASCO is currently in the process of commissioning study (including actuarial analysis of company data) on the financial effects of ACA implementation on contract security companies. Companies could then reference this study and use its data and findings to educate their clients on increases in costs due to the ACA. The study will also explore various plan and coverage options for security companies.

II. Current Federal Labor Issues

There are many labor and employment issues emanating from federal agencies, courts and Congress, that NASCO tracks and analyses. NASCO also is an association member of the U.S. Chamber of Commerce which provides NASCO with excellent information. Below is an update on two current and significant federal labor issues.

a. NLRB Recess Appointments Struck Down by D.C. Circuit

In January 2012, President Obama, without the required advice and consent of the Senate, appointed three new members to the five member NLRB claiming they were constitutionally valid “recess” appointments. This brought the NLRB membership up to 4 (later becoming 3) and thus meeting the 3 member requirement for a quorum to conduct business including the issuing of rulings. The business community (lead by the U.S. Chamber) and GOP members of Congress strongly disagreed that Obama’s recess appointments were constitutional (as the Senate was not in a formal recess but instead a non-working “pro forma’ session). Several employers on the wrong end of NLRB decisions made with the recess appointments raised this issue when appealing their decisions, and on January 25, 2013, in one of these appeals (*Noel Canning*) a three-judge panel of the D.C. Circuit Court of Appeals unanimously ruled that the NLRB recess appointments were not valid. Thus there was no quorum when the decision was made and the decision was invalid. This a potentially huge victory for employers if the D.C. Circuit ruling is mimicked by other Circuits, or more so, reaffirmed in an appeal to the Supreme Court.

Since Obama made the recess appointments, the employee/union-friendly NLRB has issued over 200 rulings, many departing from past precedent and not good for employers. These include rulings that (1) protected workers from being fired for complaining about workplace conditions on websites such as Facebook, (2) mandated the collection of union dues even after a collective bargaining agreement has expired, (3) compelled an employer to disclose employee witness statements to a union during internal investigations, (4) invalidated a workplace rule restricting employees for discussing ongoing investigations of employee misconduct, (5) invalidated “at will” employment policies and notices, (6) created a duty to bargain with a union before imposing discretionary discipline on an employee even though a first collective bargaining agreement has not been negotiated, (7) restricted a mandatory arbitration policy

based on an expansive view of employee Section 7 rights, (8) invalidated a work rule that requires employees to be courteous to co-workers and not use language which injures the image or reputation of the employer, (9) required an employer to continue pay increases after its labor agreement expired, (10) invalidated a work rule that prohibits employees from "walking off the job and/or leaving the premises during working hours without permission"... and the list goes on.

After the ruling, GOP members of Congress called on the "illegal" NLRB appointees to resign and they also introduced legislation to prohibit funding for NLRB activities that involve Board decisions. Of course, the Administration disagreed and the NLRB noted that the ruling only has precedence in the D.C. Circuit. Other federal Circuits considering similar challenges to 2012 NLRB decisions could rule the appointments were constitutional and uphold the decisions. However, plaintiffs in NLRB appeals have the option of taking their appeals to the D.C. Circuit Court, regardless of where they originated. Plaintiffs will likely start doing this immediately, and this puts pressure on the Administration to appeal the ruling.

The Justice Department has not yet said whether it will appeal the ruling. If it pursues an appeal, it has two options: appealing the decision, which was made by a three-judge panel, to the full circuit court (en banc); or bypassing that step and appealing directly to the Supreme Court. According to D.C. Circuit rules, they may file a petition for panel rehearing or rehearing en banc within 45 days of the decision. The Board has 90 days to seek certiorari before the Supreme Court, but that deadline may be extended by 60 days with the Court's permission. The Supreme Court could potentially rule on the case this session if Justice seeks an expedited appeal process.

If the D.C. Circuit ruling is upheld by the Supreme Court, all the NLRB decisions made with the illegal appointees would be vacated (but they will likely be remanded to be decided when the Board attains a lawful quorum.). Also, without a quorum the NLRB may not take any official action, including promulgating new regulations, engaging in enforcement proceedings, and issuing orders that may be enforced in court. In addition, if the Canning decision is upheld it could lead to a legal challenge of the prior recess appointment of Board Member Craig Becker. If that challenge is successful, that could lead to the invalidation of the NLRB's December 2011 "quickie election" Rule amending election case procedures and the Rule requiring employee rights notice posting.

b. DOL to Release Rule Curtailing "Advice" Exemption to "Persuader" Activities Reporting

In June 2011, the U.S. Department of Labor (DOL) proposed a new Rule that would significantly narrow the DOL's interpretation of the "advice" exemption of the Labor-Management Reporting and Disclosure Act (LMRDA). In a December 2012 Report filed by DOL to the federal Office of Information and Regulatory Affairs, DOL stated that it planned to take issue with the Final Rule in April 2013.

Called "persuader rules," Section 203 of the LMRDA requires employers to file reports with the DOL when they hire consultants or contractors (including attorneys) to persuade employees

about the right to organize and bargain collectively. Section 203(c) has always contained an exception to the reporting requirement for “advice” given to an employer and for the last 50 years, as long as the employer has the discretion to either accept or reject oral or written material submitted by an attorney, then the activities are not reportable under the LMRDA. Only if an attorney (or other consultant or contractor) met directly with employees would the activities become reportable under the longstanding DOL interpretation.

Under the new Rule, the “advice exception” would be limited to advising employers on what they may lawfully say to employees, on their compliance with the law, or on general guidance about NLRB practice or precedent. Reportable activities would now include any actions, conduct, or communications on behalf of an employer that could directly or indirectly persuade workers concerning their right to organize and bargain collectively, regardless of whether the attorney/consultant/contractor has direct contact with workers and regardless of whether the employer accepts or rejects the proposals. Furthermore, the DOL’s new interpretation would specifically require reporting the preparation of persuasive scripts, letters, videos, or other digital media for use by an employer or revisions to an employer’s documents by an attorney or consultant.

The proposed changes drastically increase the reporting requirements for employers and attorneys/consultants/contractors and significantly amend the reporting forms and instructions under LMRDA Section 203. The DOL estimated that its new rules will triple the number of reports that employers must file and increase the reports filed by firms engaged in persuader activities twelve-fold. By narrowing the advice exception, the DOL would broaden the scope of conduct that could trigger potential criminal liability on the part of employers (and others engaged in persuader activity) who fail to comply.

The newly defined standards, particularly when combined with the LMRDA’s potential criminal sanctions for willful non-reporting, could substantially interfere with an employer’s attorney-client relationship, disrupt an employer’s ability to obtain legal advice when confronted by union activity, and have a chilling effect on employer free speech during such campaigns.

III. Restricting Employer Use of Criminal Background Checks

For almost two years, NASCO has been part of a coalition of business associations, volunteer groups, background screening companies and others seeking to counteract growing federal, state and local efforts to restrict and/or penalize employer use of criminal background checks (and also credit checks). While state and local efforts to make it unlawful for employers to inquire about arrests/convictions on employment applications (“ban the box”) and efforts to make “ex-convicts” a protected class, have been a focus of the coalition, the greatest focus and impetus for the coalition has been trying to, at first, stop/delay/mitigate, and now, rebut/revise/repeal, the April 2012 Equal Employment Opportunity Commission (EEOC) “update” of its Enforcement Guidance on employer use of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964. The new Guidance, created with no public review and comment period, makes it much easier for EEOC investigators and

plaintiff attorneys to go after companies for their criminal background check policies (“screens”), and it both weakens and complicates the use of criminal background checks.

Briefly, the new Guidance says that because blacks and Hispanics are overrepresented in the convict class, the use of criminal background checks has a “disparate impact” on these protected minorities, and thus use of criminal checks is inherently discriminatory. Therefore, if a minority is not hired as a result of his/her criminal record, the employer must show the exclusion was “job related and consistent with business necessity”, factoring in the nature of the crime, the time elapsed, and the nature of the job. While this three part analysis is not new, the Guidance contains many elements that make this analysis narrower, harder to conduct, costly, and more susceptible to investigation. Most noticeably, the Guidance states (1) *“the use of a screen that does not include individualized assessment is more likely to violate Title VII.”* Thus, as a “best practice” an employer should “include an individualized assessment” in its screening policy; and (2) *“if an employer’s exclusionary policy or practice is not job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.”* (This override of state background check laws has garnered the most criticism). The Guidance also effectively prohibits employers from basing employment decisions on arrest records, and states as a “best practice”, employers should not ask about arrests and convictions on an application (a per se national “ban the box” policy).

The Guidance, said one commentator, places employers in “the double-bind of (1) using background checks and risking litigation or even liability for an alleged violation of Title VII or of (2) seriously curtailing or abandoning background checks altogether for fear of violating Title VII and, as a result, risking criminal or inappropriate conduct by employees and negligent hiring lawsuits.” With an activist EEOC that can turn a single discrimination complaint into an expensive company-wide review of all hiring/firing decisions, employers are indeed in a bind.

NASCO is supplying its members with the latest on the implementation of the Guidance and potential legal and other challenges to the Guidance (as well as other state and local efforts to restrict criminal background checks). And, while NASCO is working with the coalition to garner congressional and public support for the EEOC to further revise the Guidance with proper public input, NASCO is also highlighting the greater need and justification for screening security officers over other professions. In this vein, NASCO assisted a NASCO member in being able to testify at a U.S. Commission on Civil Rights hearing on the Guidance. The excellent testimony provided – for the public record -- by this contract security company laid out the numerous reasons why criminal background checks are vital for the contract security industry, and the dangerous repercussions for not conducting thorough background checks. The testimony also highlighted the outrageous nature and costs to businesses of an EEOC investigation.

While legislation to defund EEOC enforcement of the Guidance was passed by the House last Congress, and there is draft legislation circulating that would amend civil rights law to exempt certain background checks, legislation, in any form, is not likely to be passed. However, one possible way that Congress can (indirectly) get the EEOC to back off from investigating

employer use of criminal background checks is to let the much ballyhooed and feared \$100B budget “sequester” go into effect. With many GOP members of Congress desperate for real spending cuts, even though they are concerned that the sequester cuts disproportionately cut defense spending, they also know that GOP alternatives to the sequester are unlikely to be approved by the Democratic Senate or signed into law by President Obama. Thus, the sequester (set to go into effect on March 1) is looking increasingly like the only way they can achieve enforceable spending cuts.

According to a recent *Federal Times* article, the EEOC would be “particularly hard hit” by the sequester “because payroll and benefits make up a high percentage of the budget”. For the EEOC, the starting point for the sequester is the FY12 budget of \$360M, which was \$7M lower than FY11 (a cut that allegedly caused a 9% loss of agency staff). The sequester calls for an across the board cut of 8.2% for non-defense discretionary funding. The result of sequestration for EEOC’s FY13 budget would be a \$30M budget cut. According to AFGE, “this cut would cripple the agency.”

IV. Security Company (Officer) Access/Re-Entry to Disaster Areas

Since 2009, NASCO has been a member on the DHS Emergency Services Sector Coordinating Council (ESSCC). The ESSCC is the non-federal component of the Emergency Service Sector Committee which is one of the 19 committees that make up the DHS Critical Infrastructure Partnership Advisory Council. Other members on the ESSCC include police, fire, EMS, public works, and emergency management organizations. NASCO is currently working with other ESSCC members (led by the National Sheriffs Association) to promote the adoption by state and local law enforcement bodies of a Joint Standard Operating Procedure (JSOP) that expedites access for Statewide transit and County/community reentry of essential personnel—both public and private— after all hazards incidents. NASCO participated on an ESSCC Disaster Re-Entry Credentialing Working Group, which produced a report to accompany a template national JSOP for possible adoption by States. The Report provides details and recommendations related to the template JSOP including the recommendation that in any re-entry/credentialing program set up, private security be given the second highest access status possible (Tier 1) -- just below the Tier ER access for police, fire and paramedics. The template JSOP is based on a crisis re-entry JSOP program developed in Mississippi and Louisiana after Hurricane Katrina.

An organization’s participation in the various states’ JSOP re-entry/credentialing programs is coordinated through the Emergency Responder -ID Trust Network (ER-ITN) data system. Several NASCO member companies, and many smaller security companies, have already enrolled in the ER-ITN network.

How the program works is that when a disaster is declared by the appropriate local or State authority, the ER-ITN notifies the enrolled security company of the disaster declaration and electronically makes electronic copies of placards and letters of authorization available to the company for distribution and printing, based on disaster tiers and approvals. Fee structures

(per enrollee) are based on factors including localized reentry criteria, number of personnel enrolling for the organization, type or role of the organization, etc. Fees per enrollee are from \$9-\$36 dollars. Registrations are for 1 year. Registration in the system enables entry (assuming State/Local rules are met) anywhere the ER-ITN is in use across the nation.

While Mississippi and Louisiana are currently the only two states who have adopted the JSOP and are in the ER-ITN system, Michigan will be “online” in March 2013 with Alabama likely this summer. Other states actively considering adoption are South Carolina, Oklahoma, Texas, New York, New Jersey, Pennsylvania, Connecticut and Indiana. NASCO is helping coordinate ESSCC outreach to Congress to get members of Congress to support the JSOP’s adoption by their own states and to get FEMA (non-financial) support for the program.

V. Universal FBI Background Checks for Security Officers

For the past several years, NASCO, and individual NASCO members, have worked to expand the ability of employers to obtain FBI checks on security officers as authorized by the 2004 Private Security Officer Employment Authorization Act (PSOEAA).

An obstacle to obtaining expanded FBI checks under the PSOEAA is its requirement that the authorized FBI check to be obtained from a state agency. While NASCO has worked with several states (Colorado, Kentucky, Missouri) to set up PSOEAA FBI check programs, and NASCO also worked with Minnesota to set up a program that conducts PSOEAA checks on officers in states with no statewide security officer regulations, other states do not have the resources or desire to provide, or expand current, security officer FBI background checks. Several years ago, NASCO set out to find a legislative solution to allow for comprehensive and cost-efficient PSOEAA FBI checks without having to go through a state. In March 2012, Reps. Tom Marino (R-PA) and Rep. Pat Meehan (R-PA), working with NASCO, introduced the Private Security Officer Screening Improvement Act (PSOSIA). Co-sponsored later by leading Judiciary Committee Democrat Rep. Bobby Scott (R-VA), the PSOSIA amended the PSOEAA to allow DOJ authorized “screening entities” to conduct FBI checks on private security officers when such checks are not available from the State of employment.

While the PSOSIA did not advance last year, its introduction demonstrated NASCO’s commitment to higher standards and the need for better screening for security officers. More so, the PSOSIA and the effort put into it, was instrumental in getting positive consideration by key Senate Democrats (Senators Schumer and Leahy) to add security officers to a similar bill that was advancing in the Senate that would provide for non-state, previously authorized, FBI checks for child care providers and volunteers. (Of note, Schumer had already added to that bill a provision to authorize FBI checks for electronic life safety and security systems industry employees.) In the end though, the bill did not make it to the Senate floor.

This Congress, Senator Schumer is seeking to re-introduce the bill with security officers a part of the original bill (along with the other two groups). He is facing opposition though from employee/criminal advocates, and there are also issues with the FBI, which prefers that employment-related FBI checks be processed through the States. The State information bureaus might also raise objections (which is somewhat ironic). NASCO and NASCO members are working closely with Senator Schumer's staff to support a bill that includes security officers and to make sure that any such bill does not negatively impact the stringent checks authorized by the PSOEAA.

VI. The Use of Contract Security by the Federal Protective Service (FPS)

a. FPS work with the NASCO Government Security Contractors Caucus

Over the past year, NASCO, and the NASCO Caucus, have made significant strides in establishing a closer working relationship with FPS in order to bring about needed changes and improvements to the FPS Protective Security Officer Program (PSOP). With the full support of FPS Director Patterson and encouragement from FPS' overseers in Congress, NASCO and the NASCO Caucus has been meeting regularly with FPS officials from various divisions on a range of PSOP issues. While some contract and acquisitions issues have been raised so far (e.g. at the urging of Caucus members FPS changed its policies so that seniority lists would always be made available in the procurement process), most of the work with FPS has centered on PSO training and certification.

Currently, NASCO and the FPS Training Division have established three working groups. The first group, "Train the Trainer", is focused on training and certifying contractor instructors to better standardize PSO training (and outcomes). FPS seeks to leverage the expertise of contractor instructors and develop with the Caucus a trainer certification program. In addition, at the Caucus' urging, FPS is exploring turning over current FPS- provided PSO training (most significantly the 16 hour x-ray/magnetometer training called the "National Weapons Detection Training Program" or NWDTP) to contractor trainers. To this end, FPS, with Caucus input, is now putting the final touches on (and making the necessary contract modifications) to set up a "pilot program" in which contractor instructors will attend the NWDTP Instructor training program and then upon successful completion, the contractor instructors will provide the NWDTP training to PSO's, under the modified FPS contracts. The contractor instructor training should start this spring. The second working group will review all issues related to weapons qualifications for PSO's with the goal being to improve and standardize the training and the certification and recertification of the training and instructors. The third working group will strategically review all current PSO training lesson plans to capture best practices and create a standardized lesson plan, approved by both FPS and the NASCO Caucus, for training PSO's across the nation.

b. FPS Congressional Legislation and Oversight

During the last Congress, there was a good bit of action related to FPS. NASCO testified at a House FPS hearing and provided substantive input on both a House and Senate FPS Reform/Authorization bill, each which received Committee consideration. GAO also released several reports on FPS often highlighting issues with the then Contract Guard Program. The Senate bill, sponsored by Senate Homeland Security and Government Affairs Committee Chairman Lieberman and Ranking Member Collins, was passed by the Committee. The House bill, sponsored by House Cybersecurity and Infrastructure Subcommittee Chairman Lungren was passed by the Subcommittee. In their final forms, neither bill would have really done much to affect the FPS Protective Security Officer Program as opposed to a House Democrat FPS bill that called for the federalization of some PSO's).

This Congress, the above mentioned Chairmen/bill authors both no longer are in Congress. Their replacements (discussed later in this report) are not well versed on FPS matters, and with higher priorities, it is not likely that new FPS Reform legislation or any serious FPS-related congressional action will occur soon. Of course, the protection of federal buildings will continue to be an issue of interest for the Homeland Security Committees, and Democrats (spurred on by the AFGE) will continue to call for federalizing FPS security officers, but unless there is a serious incident involving contract security officers at a federal facility, Congress is likely to lay off FPS. NASCO will continue to meet with Homeland Security staff to brief them on the progress of the work being undertaken by FPS and the NASCO Government Security Contractors Caucus to improve the FPS Protective Security Officer Program (PSOP).

Also, the GAO is expected to release yet another report later this year that will focus on the FPSPSOP. GAO is looking at the training and certification processes for PSO's, how other federal agencies manage contract security, and "best practices" from other agencies and the private sector that could be applicable to the FPS PSO Program. NASCO and NASCO Caucus met with GAO back in August when the report was in its planning stages. GAO recently said it wants to "circle back" with NASCO about this study next month.

VII. The Use of Private Companies to Provide Screening at U.S. Airports

2012 was a good year (on paper) for the "Screening Partnership Program" (SPP), a TSA run program that allows airports to opt out of using federal screeners and instead use qualified private screening companies for passenger and baggage screening. There are currently 16 airports that are part of the program, with the largest being San Francisco and Kansas City. However, 2013 has not been a good year so far.

In early 2012, after several years of TSA openly defying congressional SPP supporters (namely House Transportation and Infrastructure Committee Chairman John Mica, and House Homeland Security Transportation Security Subcommittee Chairman Mike Rogers) by delaying consideration of and then rejecting airport SPP applications for reasons not contained in the

SPP statutory language, SPP supporters reacted by getting the statutory language changed. On an FAA Authorization bill passed by Congress, an amendment was added that put time limits on and defined criteria for the SPP application process. Soon after, Rep. Rogers held a hearing on the SPP that sharply criticized TSA for its management of and bias against the SPP. At the hearing, airport executives went on the record supporting private screeners, and NASCO provided testimony that spelled out in detail the various substantive and economic reasons for using private screeners and also provided an opportunity to confront the AFGE for its lies about the SPP. Then, in the summer, with the new application process in force, TSA approved the SPP applications for Orlando Sanford Airport (which had previously been rejected) and Sacramento Airport. Said Rep. Mica of the approvals, "Transitioning to the private-federal model...will allow TSA to focus on security and not on personnel management, and it will result in better customer service for passengers, improved security services, and more cost-effective security operations." Later that summer, Rep. Rogers held a blistering hearing on TSA screener misconduct and released a staff report that recommended that "TSA should begin an immediate shift toward partnering with the private sector for passenger screening and other security operations." Also, Senator Rand Paul (R-KY) introduced a bill that would mandate that TSA contract for private screeners (chosen by the airport and who are qualified) at practically all airports. Things were looking up for the SPP.

However, the New Year has not been kind to the SPP. In just one month, Rep. Mica had his term-limit waiver request to stay on as Chairman of Transportation and Infrastructure denied (expected) but he also opted out of taking over the Aviation Subcommittee. Rep. Rogers, after narrowly losing out on becoming the Full Committee Chairman, unexpectedly gave up the Transportation Security Subcommittee to take a Chairmanship of a Subcommittee on the Armed Services Committee. (More on this below). The GAO, after a year of "work" on study request from Rep. Mica to do a comparison of SPP airports and non-SPP airports, produced a report that was severely lacking in depth and left unchecked questionable TSA assertions on costs and its ability to monitor private screener performance and obtain federal screener data. The report rehashed previously flawed analyses of the SPP and was short on good comparative data. To no surprise, the report was seized upon by SPP opponents to make the case that there were no apparent advantages to private screening. Some good news was that finally, after taking over half a year, TSA announced it would soon be putting out the Orlando and Sacramento airport screening bids. However, less than a week later, Sacramento withdrew its SPP application "buckling under labor opposition" spearheaded by the AFGE with the "neutral" TSA also lending a hand. It is now not known when the Orlando solicitation will be released.

NASCO continues to fully support the SPP and the use of private screeners at airports, and has already discussed the program with new House Homeland Security Committee Chairman Mike McCaul (R-TX). McCaul expressed his support for the use of private screeners at U.S. airports as he believes that DHS agencies should be run more like a business. He is also very aware of the inherent problems and inefficiencies in the federal workforce and shares the widely held concern about TSA being both the regulator and operator of airport security. Also, Senator Rand Paul announced his plans to re-introduce his airport screening privatization bill again this year (and if he is elected President in 2016, things should be looking up for the SPP!)

VIII. Other Federal and Legislative Issues of Interest to the Contract Security Industry

a. Liability Immunity for Reporting Suspicious Activity

During the last Congress, legislation (the “See Something Say Something Act”) was introduced in both the House and Senate that expands the current legal immunity for “good faith” reporting of suspicious activity (that could be related to an act of terrorism). Currently such immunity is only available in the passenger transportation sector, and the bill would expand it to all reporting of such suspicious activity to authorities. Given the role of security officers in reporting suspicious activity, and the very real possibility that litigation could be brought against a security officer and his employer for a mistaken report, NASCO strongly supported this legislation and formally endorsed it last Congress. The bill was passed out of Committee in the House, but did not advance in the Senate. It is expected to be re-introduced this Congress and NASCO will push for its enactment.

b. DOJ Bureau of Justice Statistics Proposed “National Private Security Survey”

Several years ago, BJS starting laying the groundwork for establishing a comprehensive database on private security that would include stats and information on types of services provided, types of clients, number of employees, billable hours, licensing and liability coverage, pre-employment screening and training, salary and turnover, use of force policies, weapons, and technology. The focus would be on contract private security. A “literature review” and a survey was developed (with the assistance of NASCO members) in FY ’10, but an FY ’11 funding freeze, iced the survey, and FY ’12 and FY’13 funding cuts put in deep freeze. New projects are always the first to be shelved when there is a cut back. While BJS still thinks the survey is worthwhile, but with no funding on the horizon, it is very dormant at this time.

c. Federal and Congressional Efforts to Boost School Security

In mid-January, President Obama unveiled his plan to reduce gun violence and make schools safer with a mix of proposals involving executive actions and legislation. While many school districts across the country are turning to highly trained contract private security to cost-effectively increase school security, in the Obama plan there is absolutely no mention of the use of private security. The school safety-related proposals call for redirecting current grant programs and providing new federal funding to hire more police/school resource officers, train school personnel, and develop security plans. President Obama wants to add an additional \$4 billion into the DOJ Community Oriented Policing Services (COPS) grant program, and many GOP members of Congress are objecting to this massive cost and are wary of spending federal dollars to essentially subsidize state and local law enforcement agencies with budget problems.

d. Significant Changes on the Congressional Homeland Security Committees

As mentioned already, on both the House and Senate Homeland Security Committees there has been significant change and turnover from the 112th Congress to the 113th Congress.

On the House side, Rep. Peter King (R-NY), who has been the top Republican on the Committee for seven years (the last two as Chairman) had to give up the gavel pursuant to GOP House term-limit rules. The new Chairman is Rep. Mike McCaul (R-TX). As noted above, NASCO has already met with Mr. McCaul and some of his staff and McCaul expressed support for the use contract security by DHS agencies.

Also, as referred to above, there has been a change of leadership on two key House Homeland Security Subcommittees. On the Cybersecurity and Infrastructure Protection SC, which oversees the Federal Protective Service, last Congress' Chairman, Rep. Dan Lungren, lost his re-election battle, and this Congress, the Subcommittee will be headed by Rep. Patrick Meehan (R-PA). While Lungren was a friend of NASCO and a vocal supporter of the industry, NASCO has a good relationship with Rep. Meehan and his staff, and Rep. Meehan (an original co-sponsor of the PSOSIA) was the featured speaker at the NASCO industry breakfast at the ASIS Seminar last September. On the Subcommittee on Transportation Security, the very friendly Mike Rogers (R-AL) has been replaced by freshman Rep. Richard Hudson (R-NC). Fortunately, Rogers's old staff, which is close to NASCO, is remaining on the Transportation Security. There were no major leadership changes on the Dem side of the House Homeland Security Committee. Overall, 16 of the 31 members on the Committee are new to it, including 12 freshmen.

On the Senate Homeland Security and Government Affairs Committee, there is both a new Chairman (Sen. Tom Carper D-DE) and a new Ranking Member (Sen. Tom Coburn R-OK). Gone are Committee legends Sen. Joe Lieberman (I/D-CA), who retired, and Sen. Susan Collins (R-ME) who left the Committee as a result of GOP Senate committee term-limits. Lieberman and Collins had been the only two chairmen of the Committee since its addition of Homeland Security, and they helped stand up DHS. While new Chairman Carper will dutifully attend to the major homeland security issues (Border security, Cybersecurity, Immigration) it's unlikely he will delve into issues that affect contract security (e.g. FPS) with the focus of his predecessor.