

CRS Report for Congress

Homeland Security Department: FY2008 Appropriations

Updated February 15, 2008

Jennifer E. Lake and Blas Nuñez-Neto, Coordinators,
Sarah A. Lister, Todd Masse, Alison Siskin, and Chad C. Haddal
Domestic Social Policy Division

Keith Bea, Francis X. McCarthy, Harold C. Relyea, Shawn Reese,
and Barbara L. Schwemle
Government and Finance Division

Bartholomew Elias, John Frittelli, Daniel Morgan,
and John D. Moteff
Resources, Science, and Industry Division



Prepared for Members and
Committees of Congress

The annual consideration of appropriations bills (regular, continuing, and supplemental) by Congress is part of a complex set of budget processes that also encompasses the consideration of budget resolutions, revenue and debt-limit legislation, other spending measures, and reconciliation bills. In addition, the operation of programs and the spending of appropriated funds are subject to constraints established in authorizing statutes. Congressional action on the budget for a fiscal year usually begins following the submission of the President's budget at the beginning of each annual session of Congress. Congressional practices governing the consideration of appropriations and other budgetary measures are rooted in the Constitution, the standing rules of the House and Senate, and statutes, such as the Congressional Budget and Impoundment Control Act of 1974.

This report is a guide to one of the regular appropriations bills that Congress considers each year. It is designed to supplement the information provided by the House and Senate Appropriations Subcommittees on Homeland Security. It summarizes the status of the bill, its scope, major issues, funding levels, and related congressional activity, and is updated as events warrant. The report lists the key CRS staff relevant to the issues covered and related CRS products.

Homeland Security Department: FY2008 Appropriations

Summary

This report describes the FY2008 appropriations for the Department of Homeland Security (DHS). The Administration requested a net appropriation of \$35.5 billion in net budget authority for FY2008. The requested net appropriation for major components of the department included the following: \$8,783 million for Customs and Border Protection (CBP); \$4,168 million for Immigration and Customs Enforcement (ICE); \$3,608 million for the Transportation Security Administration (TSA); \$8,457 million for the U.S. Coast Guard; \$1,399 million for the Secret Service; \$1,047 million for the National Protection and Programs Directorate (NPP); \$5,042 million for the Federal Emergency Management Agency (FEMA); \$30 million for US Citizenship and Immigration Services (USCIS); \$799 million for the Science and Technology Directorate (S&T); and \$562 million for the Domestic Nuclear Detection Office (DNDO).

The House passed H.R. 2638 on June 15, 2007. H.R. 2638 included \$37.4 billion in net budget authority for DHS for FY2008. H.R. 2638 contained the following in net budget authority for major components of DHS: \$8,923 million for CBP; \$4,192 million for ICE; \$3,842 million for the TSA; \$8,352 million for the U.S. Coast Guard; \$1,396 million for the Secret Service; \$1,035 million for the NPP; \$7,239 million for FEMA; \$30 million for USCIS; \$777 million for S&T; and \$556 million for the DNDO.

On July 26, 2007, the Senate passed its version of H.R. 2638. The Senate bill included \$40.6 billion in net budget authority, including \$3 billion in emergency funding; not including the emergency funding, Senate-passed H.R. 2638 included \$37.6 billion in net budget authority for DHS for FY2008. The bill contained the following amounts of net budget authority for major components of DHS: \$8,841 million for CBP; \$4,433 million for ICE; \$3,685 million for the TSA; \$8,559 million for the U.S. Coast Guard; \$1,396 million for the Secret Service; \$914 million for the NPP; \$7,019 million for FEMA; \$50 million (plus and additional \$60 million in emergency funding) for USCIS; \$838 million for the S&T; and \$550 million for the DNDO. Senate-passed H.R. 2638 also included a \$3,000 million emergency supplemental appropriation for border-security purposes.

The Consolidated Appropriations Act of 2008 (P.L. 110-161) was signed into law by the President on December 26, 2007. The DHS Appropriations Act of 2008 was included as Division E of P.L. 110-161. The Act provides \$38.7 billion in net budget authority for FY2008. P.L. 110-161 contains the following amounts of net budget authority for major components of DHS: \$9,423 million for CBP; \$4,734 million for ICE; \$4,021 million for the TSA; \$8,521 million for the U.S. Coast Guard; \$1,386 million for the Secret Service; \$1,177 million for the NPP; \$6,807 million for FEMA; \$81 million for USCIS; \$830 million for the S&T; and \$485 million for the DNDO.

This report will not be updated.

Key Policy Staff: Homeland Security

Area of Expertise	Name	Phone	E-mail
Coordinator	Jennifer E. Lake	7-0620	jlake@crs.loc.gov
Coordinator	Blas Nuñez-Neto	7-0622	bnunezneto@crs.loc.gov
Title I, Departmental Management and Operations			
General Management	Harold C. Relyea	7-8679	hrlyea@crs.loc.gov
Intelligence and Analysis	Todd M. Masse	7-2393	tmasse@crs.loc.gov
Personnel Policy	Barbara L. Schwemle	7-8655	bschwemle@crs.loc.gov
Procurement Policy	Elaine Halchin	7-0646	ehalchin@crs.loc.gov
Inspector General	Fred Kaiser	7-8682	fkaiser@crs.loc.gov
Title II, Security, Enforcement, and Investigation			
Coast Guard	John Frittelli	7-7033	jfrittelli@crs.loc.gov
Customs Issues, Inspections	Jennifer E. Lake	7-0620	jlake@crs.loc.gov
Immigration Enforcement	Alison Siskin	7-0260	asiskin@crs.loc.gov
Immigration Inspections, U.S. VISIT, and the Border Patrol	Blas Nuñez-Neto	7-0622	bnunezneto@crs.loc.gov
Secret Service, Federal Protective Service	Shawn Reese	7-0635	sreese@crs.loc.gov
Transportation Security Administration	Bartholomew Elias	7-7771	belias@crs.loc.gov
Title III, Preparedness and Recovery			
FEMA	Keith Bea Fran McCarthy	7-8672 7-9533	kbea@crs.loc.gov fmccarthy@crs.loc.gov
Firefighter Assistance	Lennard G. Kruger	7-7070	lkruger@crs.loc.gov
State and Local Grants	Shawn Reese	7-0635	sreese@crs.loc.gov
Office of Health Affairs MMRS, Disability Coordinator	Sarah Lister	7-7320	slister@crs.loc.gov
Biodefense/Bioshield	Frank Gottron	7-5854	fgottron@crs.loc.gov
Biodefense/BioWatch	Dana Shea	7-6844	dshea@crs.loc.gov
Infrastructure Protection	John D. Moteff	7-1435	jmoteff@crs.loc.gov
Title IV, Research and Development, Training, Assessments, and Services			
Citizenship and Immigration Services	Chad C. Haddal	7-3701	chaddal@crs.loc.gov
Science and Technology, DNDO	Daniel Morgan	7-5849	dmorgan@crs.loc.gov

Contents

Most Recent Developments	1
FY2008 Enacted: Division E — P.L. 110-161	1
Continuing Resolutions	1
First Continuing Resolution (P.L. 110-92)	1
Second Continuing Resolution (P.L. 110-116)	2
Third Continuing Resolution (P.L. 110-137)	2
Senate-Passed H.R. 2638	2
House-Passed H.R. 2638	2
President’s FY2008 Budget Submitted (and Revised)	2
Note on Most Recent Data	3
Background	3
Department of Homeland Security	4
302(a) and 302(b) Allocations	4
Budget Authority, Obligations, and Outlays	5
Discretionary and Mandatory Spending	6
Offsetting Collections	7
Appropriations for the Department of Homeland Security	9
DHS Appropriations Trends	9
Summary of DHS Appropriations	10
Title I: Departmental Management and Operations	14
President’s FY2008 Request	14
House-Passed H.R. 2638	14
Senate-Passed H.R. 2638	14
FY2008 Enacted (P.L. 110-161, Division E)	15
Personnel Issues	17
Analysis and Operations	23
President’s FY2008 Request	24
House-Passed H.R. 2638	25
Senate-Passed H.R. 2638	26
FY2008 Enacted (P.L. 110-161, Division E)	26
Title II: Security Enforcement and Investigations	27
Customs and Border Protection (CBP)	32
President’s FY2008 Request	32
House-Passed H.R. 2638	32
Senate-Passed H.R. 2638	32
FY2008 Enacted (P.L. 110-161, Division E)	32
Issues for Congress	33
SBInet	34
Fencing	35
CBP Staffing	35
Hiring U.S. Border Patrol (USBP) Agents	36
Western Hemisphere Travel Initiative (WHTI)	37
Covered Law Enforcement Officer Status for CBP Officers	37

International Registered Traveler Program and Related Screening Systems	38
Customs-Trade Partnership Against Terrorism (C-TPAT)	38
Container Security Initiative (CSI)	38
Secure Freight Initiative (SFI)	39
Immigration and Customs Enforcement (ICE)	39
President's FY2008 Request	40
House-Passed H.R. 2638	41
Senate-Passed H.R. 2638	42
FY2008 Enacted (P.L. 110-161, Division E)	43
Issues for Congress	44
Office of Investigations/Immigration Functions	44
Detention and Removal Operations	45
Alternatives to Detention	46
Criminal Alien Program (CAP)	46
State and Local Law Enforcement	47
Federal Protective Service	47
President's FY2008 Request	48
House-passed H.R. 2638	48
Senate-passed H.R. 2638	48
FY2008 Enacted (P.L. 110-161, Division E)	48
Transportation Security Administration (TSA)	49
President's FY2008 Request	49
House-passed H.R. 2638	53
Senate-Passed H.R. 2638	55
FY2008 Enacted (P.L. 110-161, Division E)	57
TSA Issues for Congress	58
Screener Workforce Issues	59
Screening Technologies	61
Air Cargo Security	62
TWIC Program Roll-Out	63
Secure Flight	63
Judicial Review of Airline Security Fees	64
United States Coast Guard	64
President's FY2008 Request	65
House-Passed H.R. 2638	65
Senate-Passed H.R. 2638	65
FY2008 Enacted (P.L. 110-161, Division E)	66
Issues for Congress	67
Deepwater	67
Security Mission	68
Specialized Teams	69
Non-homeland Security Missions	70
Rescue-21	70
LORAN-C	71
Bridge Alteration Program	71
U.S. Secret Service	72
President's FY2008 Request	73
House-passed H.R. 2638	73
Senate-passed H.R. 2638	73
FY2008 Enacted (P.L. 110-161, Division E)	74

Title III: Preparedness and Response	74
Federal Emergency Management Agency (FEMA)	77
President's FY2008 Request	77
House Passed H.R. 2638	78
Senate Passed H.R. 2638	78
FY2008 Enacted (P.L. 110-161, Division E)	78
FEMA Issues for Congress	79
Disaster Relief Fund	79
Post-Katrina Reform Act Measures	81
Office of Grant Programs	83
President's Request	85
House-Passed H.R. 2638	85
Senate-Passed H.R. 2638	86
FY2008 Enacted (P.L. 110-161, Division E)	86
Issues for Congress	86
Distribution Methods for State and Local Assistance	86
Reduction in Appropriations for Assistance to Firefighters Program	87
Office of Health Affairs	88
National Protection and Programs Directorate	90
U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT)	90
President's Request	91
House-Passed H.R. 2638	91
Senate-Passed H.R. 2638	91
FY2008 Enacted (P.L. 110-161, Division E)	91
Issues for Congress	92
Administrative Placement Within NPPD	92
10 Fingerprint Entry Versus the Exit Component	92
Infrastructure Protection and Information Security	93
President's FY2008 Request	93
House-Passed H.R. 2638	94
Senate-Passed H.R. 2638	95
FY2008 Enacted (P.L. 110-161, Division E)	95
Issues for Congress	96
Quality of Budget Requests	96
Chemical Facility Regulations	97
Location of Risk Management Funding	97
Title IV: Research and Development, Training, Assessments, and Services	97
U.S. Citizenship and Immigration Services (USCIS)	100
President's FY2008 Request	100
House-Passed H.R. 2638	102
Senate-Passed H.R. 2638	102
FY2008 Enacted (P.L. 110-161, Division E)	103
Issues for Congress	103
Scheduled Fee Increase	103
Adjudication Backlog	104
Federal Law Enforcement Training Center (FLETC)	105
President's Request	105
House-Passed H.R. 2638	105
Senate-Passed H.R. 2638	106
FY2008 Enacted (P.L. 110-161, Division E)	106

Science and Technology (S&T)	106
President's FY2008 Request	106
House-Passed H.R. 2638	106
Senate-Passed H.R. 2638	107
FY2008 Enacted (P.L. 110-161, Division E)	107
Issues for Congress	107
Domestic Nuclear Detection Office	108
President's FY2008 Request	108
House-Passed H.R. 2638	108
Senate-Passed H.R. 2638	108
FY2008 Enacted (P.L. 110-161, Division E)	108
Issues for Congress	109
 FY2008 Related Legislation	 111
Budget Resolution — H.Con.Res. 99/ S.Con.Res. 21	111
 Appendix I. Emergency Funding for Border Security in The Consolidated Appropriations Act, 2008 (P.L. 110-161)	 112
Distribution of FY2008 Emergency Border Security Funding in Division E — Department of Homeland Security of P.L. 110-161	112
CBP FY2008 Emergency Border Security Appropriations	112
ICE FY2008 Emergency Border Security Appropriations	113
U.S. Coast Guard FY2008 Emergency Border Security Appropriations	113
U.S. Visitor and Immigrant Status Indicator Technology (USVISIT) FY2008 Emergency Border Security Appropriations	113
State and Local Programs FY2008 Emergency Border Security Appropriations	114
USCIS FY2008 Emergency Border Security Appropriations	114
FLETC FY2008 Emergency Border Security Appropriations	114
Distribution of FY2008 Emergency Border Security Funding in Division B — Commerce, Justice, Science of P.L. 110-161	114
Department of Justice (DOJ) FY2008 Emergency Border Security Appropriations	114
Distribution of FY2008 Emergency Border Security Funding in Division D — Financial Services	115
General Services Administration (GSA) FY2008 Emergency Border Security Appropriations	115
Courts of Appeals, District Courts and Other Judicial Services, FY2008 Emergency Border Security Appropriations	115
 Appendix II. FY2007 Supplemental Appropriations and Rescissions	 117
P.L. 110-28 (H.R. 2206) — U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007	117
P.L. 110-28	117
H.R. 1591 — U.S. Troop Readiness, Veteran's Health, and Iraq Accountability Act	118
Conference (H.Rept. 110-107)	118
 Appendix III. DHS Appropriations in Context	 120

List of Tables

Table 1. Legislative Status of Homeland Security Appropriations	3
Table 2. FY2007 302(b) Discretionary Allocations for DHS	5
Table 3. FY2008 Request: Moving From Gross Budget Authority to Net Appropriation — Fee Accounts, Offsetting Fees, and Trust and Public Enterprise Accounts	7
Table 4. DHS Appropriations, FY2003-FY2008	9
Table 5. DHS: Summary of Appropriations	11
Table 6. Title I: Department Management and Operations	16
Table 7. Office of Human Capital (OHC) Appropriations	18
Table 8. Title II: Security, Enforcement, and Investigations	28
Table 9. CBP S&E Sub-account Detail	33
Table 10. ICE S&E Sub-account Detail	43
Table 11. TSA Gross Budget Authority by Budget Activity	50
Table 12. Coast Guard Operating (OE) and Acquisition (ACI) Sub-account Detail	66
Table 13. U.S. Secret Service Appropriations	72
Table 14. Title III: Preparedness and Response	75
Table 15. State and Local Homeland Security Programs	84
Table 16. FY2008 Budget Activity for the Infrastructure Protection and Information Security Appropriation	96
Table 17. Title IV: Research and Development, Training, Assessments, and Services	98
Table 18. USCIS Budget Account Detail	101
Table 19. Research and Development Accounts and Activities, FY2007-FY2008	109
Table 20. Federal Homeland Security Funding by Agency, FY2002-FY2008	121

Homeland Security Department: FY2008 Appropriations

Most Recent Developments

FY2008 Enacted: Division E — P.L. 110-161. The Consolidated Appropriations Act of 2008 (P.L. 110-161) was signed into law by the President on December 26, 2007. The DHS Appropriations Act of 2008 was included as Division E of P.L. 110-161. The Act provides \$38.7 billion in net budget authority for FY2008. It should be noted that the totals for FY2008 *include* \$2,710 million in emergency funding for border security purposes. These amounts are shown in the last column of the funding tables in this report, and are described in detail in **Appendix I**. It should also be noted that the funding tables in this report *do not include* \$2,900 million in FY2008 emergency funding for the Federal Emergency Management Administration (FEMA) enacted by P.L. 110-116, The Department of Defense Appropriations Act, 2008.

Continuing Resolutions.¹ The Department of Homeland Security (DHS) had been operating under a continuing resolution (CR) during the period between the end of FY2007 and the passage of P.L. 110-161. Congress had passed three sequential CRs extending budget authority for DHS (and the rest of the federal government) at FY2007 levels.

First Continuing Resolution (P.L. 110-92). The first CR, P.L. 110-92, extended funding from October 1, 2007, through November 16, 2007. In addition to extending funding at FY2007 levels, P.L. 110-92 contained several provisions specifically pertaining to DHS and its component agencies. These provisions are summarized as follows:

- Sec. 131 authorized the Commissioner of Customs and Border Protection (CBP) to obligate funds under the CR to support hiring and training new border patrol agents to sustain the numbers of new border patrol agents hired in the last quarter of FY2007, and would require the Commissioner to report to Congress each time the authority under this section is utilized.
- Sec. 132 authorized the Secretary of DHS to continue to obligate funds to sustain the average monthly number of detention bed spaces in use at detention facilities operated or contracted by DHS, during September of 2007.

¹ For more information, see CRS Report RL30343 *Continuing Resolutions: FY2008 Action and Brief Overview of Recent Practices*, by Sandy Streeter.

- Sec. 133 specified that during the period the CR is in effect, that Sec. 517(b) of P.L. 109-295 will not be in effect (provisions relating to the provision of Secret Service protection to certain individuals, and reimbursement for such protection).

Second Continuing Resolution (P.L. 110-116). The second CR amended the first by changing the expiration date of November 16, 2007, to December 14, 2007. The provisions summarized above remained in effect until December 14, 2007, when Congress enacted the third CR (P.L. 110-137). In addition to extending the authority provided by P.L. 110-92, P.L. 110-116 added a new provision that provided an additional \$2.9 billion in emergency no-year funding to the Federal Emergency Management Agency (FEMA) for disaster relief. This amount *is not included* in the funding tables in this report.

Third Continuing Resolution (P.L. 110-137). Congress passed the third CR on December 14, 2007. P.L. 110-137 would have extended the budget authority provided by P.L. 110-92, through December 21, 2007. However, P.L. 110-161 was passed by Congress December 19, 2007.

Senate-Passed H.R. 2638. On July 26, 2007, the Senate passed H.R. 2638. On July 19, 2007, the Senate had taken up the House bill and substituted its text with Senate-reported S. 1644. Senate-passed H.R. 2638 would have provided a total of \$40.6 billion in net budget authority (including \$3 billion in emergency appropriations) for DHS for FY2008. This is \$5.1 billion, or 14%, more than was requested and \$5.8 billion, or 17%, more than was enacted for FY2007. Not including the emergency funding, the Senate-passed version of H.R. 2638 contains a total of \$37.6 billion in net budget authority for DHS for FY2008. This is \$2.1 billion more than the \$35.5 billion net appropriation requested by the Administration for FY2008 and a \$2.8 billion, or 8%, increase compared with the FY2007-enacted net budget authority of \$34.8 billion. Senate-passed H.R. 2638 also included an additional \$3,000 million emergency funding that was attached during floor debate; this funding would have been used to help secure the southern border with Mexico, and for other purposes.

House-Passed H.R. 2638. On June 15, 2007, the House passed H.R. 2638 which contains a total of \$37.4 billion in net budget authority for DHS for FY2008. This is \$1.9 billion more than the \$35.5 billion net appropriation requested by the Administration for FY2008. Not including supplemental appropriations, the House-passed H.R. 2638 amount of \$37.4 billion is a \$2.6 billion or nearly 8% increase compared with the FY2007 enacted net budget authority of \$34.8 billion (as passed by P.L. 109-295).

President's FY2008 Budget Submitted (and Revised). The President's budget request for DHS for FY2008 was submitted to Congress on February 5, 2007. The Administration requested \$46.4 billion in gross budget authority for FY2008 (including mandatories, fees, and funds). The Administration's request includes gross appropriations of \$42.8 billion, and a net appropriation of \$35.5 billion in budget authority for FY2008, of which \$34.3 billion is discretionary budget authority, and \$1.2 billion is mandatory budget authority. The FY2007 enacted net appropriated budget authority for DHS was \$34.8 billion (\$40.6 billion including

supplemental appropriations). The Administration subsequently amended the FY2008 budget request and submitted these revisions to Congress on November 6, 2007.² The revised FY2008 request included \$43.0 billion in gross budget authority for DHS and \$35.5 billion in net budget authority for DHS for FY2008. The funding tables included in this report reflect the revised budget request totals.

Table 1. Legislative Status of Homeland Security Appropriations

Subcommittee Markup		House Report 110-181	House Passage	Senate Report 110-84	Senate Passage	Confr. Report	Consolidated Appropriations Act, H.R. 2764		Public Law
House	Senate						House	Senate	
5/18 (vv)	6/13 (uc)	6/5 (vv)	6/15 268-150	6/14 29-0	7/26 89-4	— ^a	12/19 272-201	12/18 76-17	110-161

Note: (vv) = voice vote, (uc) = unanimous consent.

- a. Following initial passage of H.R. 2764, the FY2008 State-Foreign Operations bill, became the Consolidated Appropriations Act through an exchange of amendments. To see this exchange of amendments, see [<http://www.congress.gov/cgi-lis/bdquery/z?d110:HR02764:@@X:dbs=n>]. H.R. 2638 was incorporated into H.R. 2764 and was enacted by the President on December 26, 2007.

Note on Most Recent Data. Data used in this report include data from the President's Budget Documents, the FY2008 *DHS Congressional Budget Justifications*, and the FY2008 *DHS Budget in Brief*, the House Report to H.R. 2638, H.Rept. 110-181 as well as the bill itself, Senate Report to S. 1644, S.Rept. 110-84, Senate-passed H.R. 2638, Division E of P.L. 110-161, and the tables published in the Congressional Record of December 17, 2007, in the Explanatory Statement for Division E (pp. H16107-H16121). Data used in **Table 19** are taken from the *Analytical Perspectives* volume of the FY2008 President's Budget. These amounts do not correspond to amounts presented in **Tables 4-18**, which are based on data from tables supplied by the Appropriations Subcommittees and from the *FY2008 DHS Congressional Budget Justifications*. Except when discussing total amounts for the bill as a whole, all amounts contained in this report are rounded to the nearest million.

Background

This report describes the President's FY2008 request for funding for DHS programs and activities, as submitted to Congress on February 5, 2007. It compares the enacted FY2007 amounts to the request for FY2008, and tracks legislative action

² See, The White House, Executive Office of the President, Office of Management and Budget, *Estimate No. 7 110th Congress, 1st Session*, November 5, 2007, accessed at [http://www.whitehouse.gov/omb/budget/amendments/amendment_11_6_07.pdf].

and congressional issues related to the FY2008 DHS appropriations bills with particular attention paid to discretionary funding amounts. The report does not follow specific funding issues related to mandatory funding — such as retirement pay — nor does the report systematically follow any legislation related to the authorization or amendment of DHS programs.

Department of Homeland Security

The Homeland Security Act of 2002 (P.L. 107-296) transferred the functions, relevant funding, and most of the personnel of 22 agencies and offices to the new Department of Homeland Security created by the act. Appropriations measures for DHS have been organized into five titles: Title I Departmental Management and Operations; Title II Security, Enforcement, and Investigations; Title III Preparedness and Recovery; Title IV Research and Development, Training, Assessments, and Services; and Title V general provisions.

Title I contains appropriations for the Office of Management, the Office of the Secretary, the Office of the Chief Financial Officer, Analysis and Operations (A&O), the Office of the Chief Information Officer (CIO), the Office of the Inspector General (OIG), and the Office of the Federal Coordinator for Gulf Coast Rebuilding.

Title II contains appropriations for Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the Coast Guard (USCG), and the Secret Service. The U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program was appropriated within Title II through the FY2007 appropriation. The President's FY2008 request for US-VISIT has proposed moving the program to the proposed National Protection & Programs Directorate (NPPD) in Title III. Both the House and Senate bills have adopted this same organization.

Through the FY2007 appropriation Title III contained appropriations for the Preparedness Directorate, Infrastructure Protection and Information Security (IPIS) and the Federal Emergency Management Administration (FEMA). The President's FY2008 request includes a proposal to shift a number of programs and offices to eliminate the Preparedness Directorate, create the NPPD, and move several programs to FEMA. Title III in the FY2008 request includes appropriations for NPPD, FEMA, and the Office of Health Affairs (OHA).

Title IV contains appropriations for U.S. Citizenship and Immigration Services (USCIS), the Science and Technology Directorate (S&T), and the Federal Law Enforcement Training Center (FLETC).

302(a) and 302(b) Allocations

The maximum budget authority for annual appropriations (including DHS) is determined through a two-stage congressional budget process. In the first stage, Congress sets overall spending totals in the annual concurrent resolution on the budget. Subsequently, these amounts are allocated among the appropriations committees, usually through the statement of managers for the conference report on

the budget resolution. These amounts are known as the 302(a) allocations. They include discretionary totals available to the House and Senate Committees on Appropriations for enactment in annual appropriations bills through the subcommittees responsible for the development of the bills. In the second stage of the process, the appropriations committees allocate the 302(a) discretionary funds among their subcommittees for each of the appropriations bills. These amounts are known as the 302(b) allocations. These allocations must add up to no more than the 302(a) discretionary allocation and form the basis for enforcing budget discipline, since any bill reported with a total above the ceiling is subject to a point of order. 302(b) allocations may be adjusted during the year as the various appropriations bills progress towards final enactment.

The annual concurrent resolution on the budget sets forth the congressional budget. The House passed H.Con.Res. 99 on March 29, 2007 which would have provided \$955 billion in discretionary budget authority for FY2008. The Senate passed S.Con.Res. 21 on March 23, 2007 which would have provided \$942 billion in discretionary budget authority for FY2008. The House and Senate appointed conferees to resolve the differences between the two resolutions and adopted a conference agreement on May 16, 2007. The House and Senate adopted the conference report (H.Rept. 110-153) on May 17, 2007. The conference report provides \$954 billion in discretionary budget authority for FY2008. **Table 2** shows DHS' 302(b) allocations for FY2007 and the current appropriations cycle.

Table 2. FY2007 302(b) Discretionary Allocations for DHS
(budget authority in billions of dollars)

FY2007 Comparable	FY2008 Request Comparable	FY2008 House Allocation	FY2008 Senate Allocation	FY2008 Enacted Comparable
\$34.0	\$35.5	\$36.3	\$36.4	\$38.7

Source: CRS analysis of the *FY2008 DHS Congressional Budget Justifications*; House and Senate Appropriations Subcommittee FY2008 Allocation tables, Division E of P.L. 110-161.

Budget Authority, Obligations, and Outlays

Federal government spending involves a multi-step process that begins with the enactment of a budget authority by Congress in an appropriations act. Federal agencies then obligate funds from the enacted budget authority to pay for their activities. Finally, payments are made to liquidate those obligations; the actual payment amounts are reflected in the budget as outlays.

Budget authority is established through appropriations acts or direct spending legislation and determines the amounts that are available for federal agencies to spend. The Antideficiency Act³ prohibits federal agencies from obligating more funds than the budget authority that was enacted by Congress. Budget authority may

³ 31 U.S.C. §§1341, 1342, 1344, 1511-1517.

be indefinite, however, when Congress enacts language providing “such sums as may be necessary” to complete a project or purpose. Budget authority may be available on a one-year, multi-year, or no-year basis. One-year budget authority is only available for obligation during a specific fiscal year; any unobligated funds at the end of that year are no longer available for spending. Multi-year budget authority specifies a range of time during which funds can be obligated for spending; no-year budget authority is available for obligation for an indefinite period of time.

Obligations are incurred when federal agencies employ personnel, enter into contracts, receive services, and engage in similar transactions in a given fiscal year. Outlays are the funds that are actually spent during the fiscal year.⁴ Because multi-year and no-year budget authorities may be obligated over a number of years, outlays do not always match the budget authority enacted in a given year. Additionally, budget authority may be obligated in one fiscal year but spent in a future fiscal year, especially with certain contracts.

In sum, budget authority allows federal agencies to incur obligations and authorizes payments, or outlays, to be made from the Treasury. Discretionary agencies and programs, and appropriated entitlement programs, are funded each year in appropriations acts.

Discretionary and Mandatory Spending

Gross budget authority, or the total funds available for spending by a federal agency, may be composed of discretionary and mandatory spending. Of the \$46.4 billion gross budget authority requested for DHS in FY2008, 82% is composed of discretionary spending and 18% is composed of mandatory spending.

Discretionary spending is not mandated by existing law and is thus appropriated yearly by Congress through appropriations acts. The Budget Enforcement Act of 1990⁵ defines discretionary appropriations as budget authority provided in annual appropriation acts and the outlays derived from that authority, but it excludes appropriations for entitlements. Mandatory spending, also known as direct spending, consists of budget authority and resulting outlays provided in laws other than appropriation acts and is typically not appropriated each year. However, some mandatory entitlement programs must be appropriated each year and are included in the appropriations acts. Within DHS, the Coast Guard retirement pay is an example of appropriated mandatory spending.

⁴ Appropriations, outlays, and account balances for government treasury accounts can be viewed in the end of year reports published by the U.S. Treasury titled *Combined Statement of Receipts, Outlays, and Balances of the United States Government*. The DHS portion of the report can be accessed at [<http://fms.treas.gov/annualreport/cs2005/c18.pdf>].

⁵ P.L. 101-508, Title XIII.

Offsetting Collections⁶

Offsetting funds are collected by the federal government, either from government accounts or the public, as part of a business-type transaction such as offsets to outlays or collection of a fee. These funds are not counted as revenue. Instead, they are counted as negative outlays. DHS net discretionary budget authority, or the total funds that are appropriated by Congress each year, is composed of discretionary spending minus any fee or fund collections that offset discretionary spending.

Some collections offset a portion of an agency's discretionary budget authority. Other collections offset an agency's mandatory spending. They are typically entitlement programs under which individuals, businesses, or units of government that meet the requirements or qualifications established by law are entitled to receive certain payments if they establish eligibility. The DHS budget features two mandatory entitlement programs: the Secret Service and the Coast Guard retired pay accounts (pensions). Some entitlements are funded by permanent appropriations, others by annual appropriations. The Secret Service retirement pay is a permanent appropriation and as such is not annually appropriated, whereas the Coast Guard retirement pay is annually appropriated. In addition to these entitlements, the DHS budget contains offsetting Trust and Public Enterprise Funds. These funds are not appropriated by Congress they are available for obligation and included in the President's budget to calculate the gross budget authority.

Table 3 tabulates all of the offsets within the DHS budget as enacted for FY2007 and in the FY2008 request.

Table 3. FY2008 Request: Moving From Gross Budget Authority to Net Appropriation — Fee Accounts, Offsetting Fees, and Trust and Public Enterprise Accounts
(budget authority in millions)

Account/Agency	Account Name	FY2007 Enacted	FY2008 Request
DHS gross budget authority^a (gross discretionary + fees+ mandatory + funds)		44,590	46,523
Account level discretionary offset			
ICE	Federal Protective Service	516	613
TSA	Aviation security fees	2,420	2,210
	TWIC	20	27
	Hazmat	19	19
	Registered Traveler	35	35
FEMA/EPR	National flood insurance fund	129	145
CBP	Small airports	7	7

⁶ Prepared with assistance from Bill Heniff Jr., Analyst in American National Government.

Account/Agency	Account Name	FY2007 Enacted	FY2008 Request
Subtotal account level discretionary offsets		3,146	3,056
Agency level discretionary offset			
CBP	Immigration inspection	529	535
	Immigration enforcement	2	3
	Land border	28	30
	COBRA	388	392
	APHIS	214	300
	Puerto Rico	99	117
ICE	Immigration inspection	108	114
	SEVIS	54	56
	Breached bond detention fund	90	64
TSA	Aviation security capital fund	250	250
	Checkpoint screening security fund	—	250
	Alien flight school background checks	2	2
USCIS	Immigration examination fee	1,760	2,495
	H1b, and H1b & L fees	44	44
Subtotal agency level discretionary offsets		3,568	4,652
Mandatory budget authority			
Secret service	Secret service retired pay ^b	200	210
Coast guard	Coast guard retired pay ^c	(1,063)	(1,185)
Subtotal mandatory budget authority		200	210
Trust funds and public enterprise funds			
CBP	Customs unclaimed goods	6	6
FEMA	National Flood Insurance Fund ^d	2,631	2,833
Coast Guard	Boat safety	117	122
	Oil spill recovery	127	147
	Miscellaneous revolving fund	—	—
Subtotal trust and public enterprise funds		2,881	3,108
DHS gross budget authority ^a		44,590	46,523
Total offsets		-9,795	-11,026
DHS net appropriated BA (Mandatory + Discretionary)		34,795	35,497

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: Totals may not add due to rounding.

- a. DHS gross budget authority is the total budget authority available to the Department in a given fiscal year. This amount includes both appropriated and non-appropriated funding.
- b. Secret Service Retired Pay is permanently and indefinitely authorized, and as such is not annually appropriated. Therefore it is offset in **Table 3**.
- c. In contrast to Secret Service Retired Pay, Coast Guard Retired pay must be annually appropriated, and therefore is not offset in **Table 3**.
- d. This fund is comprised of both discretionary and mandatory appropriations; thus its component parts appear twice in this table.

Appropriations for the Department of Homeland Security

DHS Appropriations Trends

Table 4 presents DHS Appropriations, as enacted, for FY2003 through the FY2008. The appropriation amounts are presented in current dollars and are not adjusted. The amounts shown in **Table 4** represent enacted amounts at the time of the start of the next fiscal year's appropriation cycle. Thus, the amount shown for FY2003 is the enacted amount shown in the House Committee report attached to the FY2004 DHS Appropriations bill. FY2008 is from the Joint Explanatory Statement for Division E of P.L. 110-161.

Table 4. DHS Appropriations, FY2003-FY2008
(budget authority in millions of dollars)

FY2003	FY2004	FY2005	FY2006	FY2007	FY2008 Enacted
29,069 ^a	30,175 ^b	30,554 ^c	31,679	35,311 ^d	38,747

Sources: FY2003 enacted taken from H.Rept. 108-169; FY2004 enacted taken from H.Rept. 108-541; FY2005 enacted taken from H.Rept. 109-79; FY2006 enacted taken from H.Rept. 109-476; FY2007 appropriation amounts are from the H.Rept. 110-181; and FY2008 enacted amounts are from Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: Amounts do not include supplemental appropriations or rescissions that were enacted subsequent to the enactment of each appropriations bill.

- a. S.Rept. 108-86 reported the FY2003 enacted amount as \$29,287 million. CRS was unable to identify the reason for this discrepancy. For the purposes of this table the House number was used to maintain consistency with other fiscal years.
- b. Amount does not include \$4,703 million in advance appropriations for Project Bioshield.
- c. Amount does not include \$2,508 million in advance appropriations for Project Bioshield.
- d. Amount includes \$1,829 million in emergency budget authority that was enacted as a part of the FY2007 DHS Appropriations Act (P.L. 109-295).

Summary of DHS Appropriations

Table 5 is a summary table comparing the enacted appropriations for FY2007 and the requested, recommended by the House and Senate, and enacted for FY2008. The Administration requested \$46.4 billion in gross budget authority for FY2008 (including mandatories, fees, and funds). The Administration's request includes gross appropriations of \$43.0 billion and a net appropriation of \$35.5 billion in budget authority for FY2008. The total FY2007 enacted net appropriated budget authority for DHS was \$40.6 billion including supplementals and rescissions. House-passed H.R. 2638 included \$37.4 billion for DHS for FY2008; Senate-passed H.R. 2638 included \$37.6 billion for DHS in FY2008. Senate-passed H.R. 2638 also included an additional \$3,000 million in emergency supplemental appropriations. Division E of P.L. 110-161 provides \$38.7 billion in net appropriated budget authority for FY2008. This amount includes \$2,710 million in emergency funding, but does not include \$2,900 million in supplemental funding for Disaster Relief that was included in P.L. 110-116.

Table 5. DHS: Summary of Appropriations
(budget authority in millions of dollars)

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emergency P.L.110-161
Title I: Departmental Operations									
Subtotal: Title I	1,024	13	-6	1,030	1,092	779	1,104	983	—
Title II: Security, Enforcement, and Investigations									
— Customs and Border Protection	8,036	147	—	8,183	8,765	8,922	8,841	9,423	1,531
— Immigration and Customs Enforcement	3,958	6	—	3,964	4,168	4,192	4,433	4,734	527
— Transportation Security Administration	3,561	402	-2	3,962	3,771	3,843	3,685	4,021	—
— U.S. Coast Guard	8,292	180	-26	8,447	8,457	8,352	8,559	8,522	166
— U.S. Secret Service	1,276	—	—	1,276	1,399	1,396	1,396	1,385	—
Net subtotal: Title II	25,123	735	-28	25,833	26,560	26,705	26,914	28,085	2,224
— Total fee collections	4,779	—	—	4,779	5,025	5,025	5,025	5,025	—
Gross subtotal: Title II	29,902	735	-28	30,612	31,585	31,730	31,939	33,110	2,224
Title III: Preparedness and Recovery									
— National Protection & Programs Directorate	934	24	-1	957	1,161	1,035	914	1,177	275
— Office of Health Affairs	99	8	—	107	118	118	115	117	—
— Counter Terrorism Fund	-16	—	—	-16	—	—	—	—	—
— Federal Emergency Management Administration	5,935	4,887	—	10,821	5,042	7,239	7,017	6,807 ^a	110
Net subtotal: Title III	6,952	4,919	-1	11,869	6,322	8,392	8,046	8,100^a	385

CRS-12

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emergency P.L.110-161
Title IV: Research and Development, Training, Assessments, and Services									
— Citizenship and Immigration Services	182	8	—	190	30	30	50 ^b	81	80
— Federal Law Enforcement Training Center	275	3	—	278	263	263	266	289	21
— Science and Technology	758	5	-1	762	799	777	838	830	—
— Domestic Nuclear Detection Office	481	135	—	616	562	556	550	485	—
Net subtotal: Title IV	1,696	151	-1	1,846	1,654	1,626	1,704	1,685	101
— Total fee collections	1,804	—	—	1,804	2,539	2,539	2,539	2,539	—
Gross subtotal: Title IV	3,500	151	-1	3,650	4,193	4,165	4,243	4,224	101
Title V: General Provisions									
— Rescissions	-[232] ^c	—	-2 ^d	-2	-132	-55	-145 ^e	-106	—
Emergency Supplemental									
— Border Security First Act of 2007 ^f	—	—	—	—	—	—	3,000 ^f	—	—
Department of Homeland Security Appropriation (not including Title V rescissions)									
Gross DHS budget authority	41,378	5,698	-37	47,161	42,965	44,911	48,088	46,311	2,710
— Total fee collections	-6,583	—	—	6,583	-7,465	-7,465	-7,465	-7,564	—
— Border Security Supplemental	—	—	—	—	—	—	-3,000	—	—
Net DHS budget authority	34,795	5,698	-37	40,578^g	35,497	37,446	37,623	38,747	2,710

Source: CRS analysis of the FY2008 President’s Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

CRS-13

Notes: Totals may not add due to rounding. Italicized amounts in parentheses are non-adds. For a more detailed analysis of the supplemental appropriations, refer to **Appendix I**.

- a. Amount *does not* include \$2,900 million in emergency FY2008 funds for Disaster Relief enacted by P.L. 110-161.
- b. Senate-passed H.R. 2638 also includes an additional \$60 million in emergency funding (SA 2518) for USCIS' Employment Eligibility Verification System, that was to be taken from the \$3,000 million emergency appropriation included in Senate-passed H.R. 2638 as a part of the Border Security First Act of 2007.
- c. Rescissions from Title V of P.L. 109-295 are shown here as non-adds, because they have been incorporated into the accounts throughout the tables in this report.
- d. Sec. 6404 of P.L. 110-28 includes 4 rescissions that are not shown in Table 5 because they are of amounts that fall below \$500,000 and would round to less than \$1 million dollars. These 4 rescissions round to a total approximately \$2 million and are presented in aggregate on Table 5 under General Provision Rescissions.
- e. Includes an across-the-board rescission (percentage unspecified) of discretionary budget authority totaling \$100 million to be used for interoperable communications.
- f. Senate-passed H.R. 2638 included a \$3,000 million emergency supplemental appropriation that was attached during floor debate (originally S.Amdt. 2480). This appropriation would have been used to fund the following overall level of resources: 23,000 U.S. Border Patrol Agents; 300 miles of vehicle barriers; 700 miles of fencing; 105 camera and radar towers; four unmanned aerial vehicles; and 45,000 detention beds. The Senate adopted two amendments (S.Amdt 2518 and S.Amdt. 2524) that would have designated portions of the \$3,000 million in emergency funding for specific activities. S.Amdt 2518 would direct \$60 million of the emergency funding for USCIS' Employment Eligibility Verification System, and S.Amdt. 2524 would make \$100 million of the emergency funding available for state and local law enforcement entities for security and related costs associated with the Democratic and Republican National Conventions (\$50 million for Denver, Colorado; and \$50 million for St. Paul Minnesota).
- g. Amount does not match the total listed in the tables to the Joint Explanatory Statement for Division E of P.L. 110-161. Subtotals for agencies and account match, but the final total does not match the sum of the subtotals in the tables. Congressional Record, December 17, 2007, p. H16121.

Title I: Departmental Management and Operations⁷

Title I covers the general administrative expenses of DHS. It includes the Office of the Secretary and Executive Management (OS&EM), which is comprised of the immediate Office of the Secretary and 12 entities that report directly to the Secretary; the Undersecretary for Management (USM) and its components, such as the offices of the Chief Administrative Services Officer, Chief Human Capital Officer, and Chief Procurement Officer; the Office of the Chief Financial Officer (OCFO); the Office of the Chief Information Officer (OCIO); Analysis and Operations Office (AOO); Office of the Federal Coordinator for Gulf Coast Rebuilding (OFCGCR); and Office of the Inspector General (OIG). **Table 6** shows Title I appropriations for FY2007 and congressional action on the request for FY2008.

President's FY2008 Request. FY2008 requests relative to comparable FY2007 enacted appropriations were as follows: OS&EM, \$103 million, an increase of \$10 million (+10%); USM, \$278 million, an increase of \$124 million (+81%); OCFO, \$33 million, an increase of \$7 million (+27%); OCIO, \$261, a decrease of \$88 million (-25%); AOO, \$315 million, an increase of \$15 million (+5%); OFCGCR, \$3 million, the same level as previously provided (0%); and OIG, \$99 million, almost the same level as previously provided. The total FY2008 request for Title I was \$1,092 million. This represents an increase of \$68 million (+6%) over the FY2007 enacted level.

House-Passed H.R. 2638. The House would have provided \$779 million for DHS management and operations entities funded in Title I, \$313 less (-28%) than the amount requested. The allocations for entities within the title, as approved by the House, were as follows: OS&EM, \$85 million, a decrease of \$18 million (-17%); USM, -\$8 million⁸, a decrease of \$270 million (-97%); OCFO, \$30 million, a decrease of \$3 million (-9%); OCIO, \$259 million, a decrease of \$2 million (-1%); AOO, \$302 million, a decrease of \$13 million (-4%); OFCGCR, \$3 million, the same level as requested (0%); and OIG, \$100 million, \$1 million more than requested.

Senate-Passed H.R. 2638. The Senate approved the Title I allocations recommended by the Committee on Appropriations in Senate-reported S. 1644. The Senate approved \$1,104 million for Title I accounts, slightly more than the President's request. The Senate allocations for the title were as follows: OS&EM, \$100 million, a decrease of \$3 million (-2%); USM, \$235 million, a decrease of \$43 million (-15%); OCFO, \$30 million, a decrease of \$3 million (-9%); OCIO, \$321 million, an increase of \$60 million (+23%); AOO, \$306 million, a decrease of \$9 million (-3%); OFCGCR, \$3 million, the same level as requested (0%); and OIG, \$95

⁷ Prepared by Harold C. Relyea, Specialist in American National Government, Government and Finance Division.

⁸ During the House floor debate on H.R. 2638 a number of amendments were adopted reducing funding provided for the Office of the Undersecretary for Management. The sum total of these amendments totaled \$8m less than was initially proposed for that activity. This negative amount (-\$8 million) is not reflected in the tables accompanying the Joint Explanatory Statement to Division E of P.L. 110-161, and therefore is not included in Table 6.

million, a decrease of \$4 million (-4%), but increased by a \$14 million proposed transfer of funds from FEMA's Disaster Relief account, resulting in a recommended total appropriation of \$109 million, an increase of \$10 million (+10%).

FY2008 Enacted (P.L. 110-161, Division E). The amount ultimately appropriated for Title I accounts was \$975 million (\$983 million including \$16 million in transfers in, and an \$8 million rescission), \$2 million less (-2%) than the \$1,097 million requested by the President and \$129 million less (-12%) than the \$1,104 million approved by the Senate, but somewhat more (+21%) than the \$771 million approved by the House. The final allocations for the title were as follows: OS&EM, \$97 million, a decrease of \$6 million (-6%) compared with the requested amount; USM, \$150 million, a decrease of \$128 million (-46%); OCFO, \$31 million, a decrease of \$2 million (-6%); OCIO, \$295 million, an increase of \$34 million (+13%); AOO, \$297 million, a decrease of \$18 million (-6%); OFCGCR, \$3 million, the same level as requested (0%); and OIG, \$109 million, a increase of \$10 million (+10%).

Table 6. Title I: Department Management and Operations
(budget authority in millions of dollars)

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House-Passed	FY2008 Senate-Passed	FY2008 Omnibus	FY2008 Emergency P.L.110-161
Office of the Secretary and Executive Management	94		-1 ^a	93	103	85	100	97	—
Office of Screening Coordination and Operations	—			—	—	—	—	—	—
Office of the Undersecretary for Management	154	1	-5	149	278	— ^b	235	150	—
Office of the Chief Financial Officer	26			26	33	30	30	31	—
Office of the Chief Information Officer	349			349	261	259	321	295	—
Analysis and Operations	300	8		308	315	302	306	297	—
Office of the Federal Coordinator for Gulf Coast Rebuilding	3			3	3	3	3	3	—
Office of the Inspector General	99	4		103	99	100	109 ^c	109 ^c	—
Net Budget Authority: Title I	1,024	13	-6	1,030	1,092	779	1,104	983	—

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: No FY2007 funding for Title I was designated as emergency spending. Totals may not add due to rounding. Amounts in parentheses are non-adds.

a. Rescissions per Sec. 6404 of P.L. 110-28.

b. During the House floor debate on H.R. 2638 a number of amendments were adopted reducing funding provided for the Office of the Undersecretary for Management. The sum total of these amendments totaled \$8m less than was initially proposed for that activity. This negative amount (-\$8 million) is not reflected in the tables accompanying the Joint Explanatory Statement to Division E of P.L. 110-161, and therefore is not included in Table 6.

c. Includes a \$14 million proposed transfer of funds from FEMA's Disaster Relief account.

Personnel Issues.⁹ The activities of the Office of Human Capital (OHC) may be of interest to Congress during the current appropriations cycle. The OHC reports to the Under Secretary for Management, and its appropriation is included in that of the Under Secretary. The OHC appropriation has two parts. The first part, formerly labeled “HR Operations” and now labeled “OHC,” includes funding for the office, which is responsible for the overall management and administration of human capital in DHS. As such, the office establishes policy and procedures and provides oversight, guidance, and leadership for the department’s human resources functions. The second part, formerly labeled “MaxHR” and now labeled “OHC — Operational Initiatives and HR Management System,” includes funding for the OHC organization, which “is responsible for creating, implementing, and operating DHS’ new human resources system,¹⁰ ensuring that organizational goals and individual work performance are linked, and that employees are compensated based on their contributions to agency performance.” The OHC organization also “is responsible for ensuring that DHS recruits, hires, trains, and retains the very best workforce, provides the highest quality leadership development, and creates a performance culture in the workforce to ensure DHS succeeds in its mission.”¹¹ **Table 7** below shows the funding and staff for the OHC as enacted in FY2007, as requested for FY2008, as

⁹ Prepared by Barbara L. Schwemle, Analyst in American National Government, Government and Finance Division.

¹⁰ Title VIII, Subtitle E, Section 841 of P.L. 107-296, enacted on November 25, 2002 (116 Stat. 2135, at 2229-2234), established the new human resources system. DHS and the Office of Personnel Management (OPM) jointly published final regulations to implement the system, which, at the time, was referred to as “Max-HR,” in the *Federal Register* on February 1, 2005. (U.S. Department of Homeland Security and U.S. Office of Personnel Management, “Department of Homeland Security Human Resources Management System,” *Federal Register*, vol. 70, no. 20, February 1, 2005, pp. 5271-5347.) The regulations provided new policies on position classification, pay, performance management, adverse actions and appeals, and labor-management relations for DHS employees. The system was expected to cover about 110,000 of the department’s 180,000 employees and be implemented in phases. (See CRS Report RL32261, *DHS’s MaxHR Personnel System: Regulations on Classification, Pay, and Performance Management Compared With Current Law, and Implementation Plans*, by Barbara L. Schwemle; and CRS Report RL32255, *Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law*, by Jon O. Shimabukuro.) On October 5, 2007, the Merit Systems Protection Board published an interim rule in the *Federal Register* to reconcile its regulations with the OPM and DHS final regulations on adverse actions and appeals under the new personnel system. See U.S. Merit Systems Protection Board, “Interim Regulatory Changes Regarding Department of Homeland Security Personnel System,” *Federal Register*, vol. 72, October 5, 2007, pp. 56883-56889. On January 17, 2008, DHS provided a status report to the U.S. District Court for the District of Columbia stating that the department had not made a decision on whether to revise or abandon the proposed rules on labor management relations under the new personnel system. For an analysis of the court decisions on the adverse actions and appeals and labor management relations policies, see CRS Report RL33052, *Homeland Security and Labor-Management Relations: NTEU v. Chertoff*, by Thomas J. Nicola and Jon O. Shimabukuro.

¹¹ *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management*, p. USM-2.

passed by the House and Senate for FY2008, and as enacted in P.L. 110-161 for FY2008.

Table 7. Office of Human Capital (OHC) Appropriations
(budget authority in millions of dollars)

Account	FY2007 Enacted	FY2008 Request	FY2008 House-Passed	FY2008 Senate-Passed	FY2008 Omnibus	FY2008 Emerg. P.L.110-161
“OHC” (formerly “HR Operations”)	\$9	\$10	\$10	\$9	\$9	—
“OHC — Operational Initiatives and HR Management System” (formerly “MaxHR”)	\$25a	\$15	\$3b	\$5	0	—
Human Resources	—	—	—	—	\$10	—
Total	\$34	\$25	\$13	\$14	\$19	—
Staffing (full time equivalent, FTE, positions)	53	60	53	53	53	—

Sources: P.L. 108-334, Oct. 18, 2004, 118 Stat. 1298; P.L. 109-90, October 18, 2005, 119 Stat. 2064; P.L. 109-295, Oct. 4, 2006, 120 Stat. 1355, at 1356; FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of Human Capital, and Office of Human Capital — Max-HR, pp. USM-39 - USM-44; *Congressional Record*, daily edition, vol. 153, June 15, 2007, p. H6501; H.Rept. 110-181; S.Rept. 110-84; P.L. 110-161, December 26, 2007; and *Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16107.

- a. This amount does not reflect the transfer of \$5 million from “MaxHR” to the Transportation Security Administration as provided by Section 21101 of P.L. 110-5. The numbers in the table are rounded.
- b. This amount is for human resources activities, including a human capital survey. Funding is not provided for MaxHR, as Section 531 of H.R. 2638, as passed by the House, prohibits the use “of the funds provided by this or any other Act” to be “obligated for the development, testing, deployment, or operation of any system related to the MAX-HR project, or any subsequent but related human resources management project, until any pending litigation concerning such activities is resolved, and any legal claim or appeal by either party has been fully resolved.”

As directed by the conference report¹² accompanying P.L. 109-295, the Department of Homeland Security Appropriations Act for FY2007, the Under Secretary for Management submitted an expenditure plan for the DHS Human

¹² U.S. Congress, Conference Committees, 2006, *Making Appropriations for the Department of Homeland Security For the Fiscal Year Ending September 30, 2007, and For Other Purposes*, conference report to accompany H.R. 5441, 109th Cong., 2nd sess., H.Rept. 109-699 (Washington: GPO, 2006), p. 119.

Resources Management System (HRMS) (formerly “MaxHR”) for FY2007 to the House and Senate Committees on Appropriations on February 1, 2007. The report’s cover letter states that in FY2007 the HRMS “will be broadened ... to encompass additional aspects of FY2007 Human Capital Operational Plan (HCOP), including an increased focus on employee recruiting and advanced homeland security related education.”¹³ Among other data, the report states that the contractor Northrop Grumman Information Technology (NGIT) received a contract worth almost \$3 million dollars to provide services through January 31, 2007, related to program management; pay, performance, and classification; and training, communications, and organizational change management at DHS. According to the report, NGIT is being awarded another contract, worth more than \$16 million, to provide services to the department through September 30, 2007, in the same areas identified above and labor relations.¹⁴

The transfer of the Office of Federal Law Enforcement Training Accreditation (FLETA) from the Federal Law Enforcement Training Center (FLETC) to the OHC accounts for the increase of \$1 million and 7 full-time equivalent employees over the FY2007 appropriation for the “OHC” account. Almost 93% of the money requested for FY2008 under this account is for salaries and benefits (\$8 million) and advisory and assistance services (\$2 million) that includes services acquired by contract from non-federal sources.¹⁵ The appropriation will fund continued implementation of the Human Capital Operational Plan for FY2007 to FY2009, development of an employee talent bank for use throughout the department, creation of standards to assess and evaluate learning and development programs, and participation of all new DHS employees in a department-wide orientation program.¹⁶ Some 76% of the money requested for FY2008 under the “OHC — Operational Initiatives and HR Management System” account is for advisory and assistance services (\$11 million). No funding is requested for salaries and benefits.¹⁷ The appropriation will fund continued training of the DHS workforce in pay for performance and a new pay system pilot project that will cover employees in the department who work in the intelligence area. The pilot will be implemented jointly with the Director of National Intelligence who is developing a pilot pay system for employees of the intelligence agencies. It also will fund investment in recruitment and retention programs along with learning and development initiatives to address gaps in skills and competencies,

¹³ Letter to Representative David E. Price, Chairman, House Subcommittee on Homeland Security of the House Committee on Appropriations from Paul A. Schneider, Under Secretary for Management, U.S. Department of Homeland Security, February 1, 2007.

¹⁴ *Report to Congress, Spend Plan for MaxHR, Office of Human Capital, Department of Homeland Security, January 4, 2007*, p. 7. Accompanied the letter cited in footnote 5.

¹⁵ *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of Human Capital*, pp. USM-39 - USM-41.

¹⁶ *FY2008 DHS Justifications, Under Secretary for Management, Strategic Context*, p. USM-3.

¹⁷ *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of Human Capital — Max-HR*, pp. USM-42 - USM-44.

and deployment of career paths and rotations to facilitate the mobility of DHS employees through various leadership positions in the department.¹⁸

In January 2007, the Culture Task Force of the Homeland Security Advisory Council issued a report to the DHS Secretary. Among its recommendations were that DHS staff be referred to as “employees” or “members” of DHS and not as “human capital,” and that “members of the headquarters” be required to visit and listen “to employees and engage and support groups outside the headquarters” and respond within 30 days on actions taken to address their concerns.¹⁹ The task force believes that “there can be no hierarchically imposed ‘single culture’ within the Department,” but that “an overarching and blended culture can be developed that is based on threads of common values, goals, and focus of mission among DHS headquarters and its component organizations.” With regard to developing and sustaining such a culture, the task force advised that “There are organizations in the Private Sector that will deploy and embed within DHS qualified, objective, emotionally and organizationally detached personnel to help develop the leadership’s vision and strategic goals of creating a Homeland Security (rather than DHS) Mission Culture and then monitor, objectively test, and support progress in achieving, continually improving and sustaining an operationally focused, innovation and people rewarding culture.”²⁰ The task force recommended that such contract employees work under the direction of a senior (preferably career) DHS employee and with staff from the department’s component agencies. The morale of employees in the department has come under scrutiny because DHS placed last or almost last for the categories of job satisfaction, leadership, and workplace performance in the 2006 Federal Human Capital Survey administered by the Office of Personnel Management.²¹

Section 511 of H.R. 1684, the Department of Homeland Security Authorization Act for FY2008, as passed by the House, would have repealed the authority for the department’s new personnel system (MaxHR) at 5 U.S.C. Chapter 97 and would render void any regulations prescribed thereunder.²² The House Committee on Homeland Security report that accompanied the bill stated that DHS “employees

¹⁸ *FY2008 DHS Justifications, Under Secretary for Management, Strategic Context*, p. USM-4. On January 23, 2007, 27 employees in General Schedule grades 14 and 15 and representing various components of DHS began a year-long fellowship program designed to prepare them for future leadership positions in the department. The program is intended to establish a common culture at DHS and encourage cooperation among the different agencies that make up the department.

¹⁹ Homeland Security Advisory Council, *Report of the Culture Task Force*, January 2007, pp. 2-3. Section 871 of P.L. 107-296 (116 Stat. 2243) authorized the council, which provides advice and recommendations to the DHS Secretary on homeland security matters. In June 2006, Secretary Chertoff directed the council to establish the task force “to provide observations and recommendations for achieving and maintaining an empowering, energetic, dedicated, mission-focused culture within the Department...”

²⁰ *Ibid.*, pp. 5-6.

²¹ The survey results are available at [<http://www.fhcs2006.opm.gov>], visited January 24, 2008.

²² H.R. 1684 passed the House of Representatives on a 296-126 (Roll No. 318) vote on May 9, 2007.

must be afforded the same protections as other civil service employees.”²³ No further action has occurred on H.R. 1684.

The Senate Committee on Appropriations report that accompanied S. 1644 noted that the DHS regulations governing employee appeal rights and labor relations were struck down in federal court and that other elements of the personnel system have been delayed. For these reasons, the report stated that the committee recommended an appropriation of \$5 million for human capital operational initiatives, formerly “MaxHR,” rather than the requested amount of \$15 million. According to the report, the committee retains the funding for the training accreditation of law enforcement officers with the Federal Law Enforcement Training Center rather than providing it to the Chief Human Capital Officer. Additionally, Section 507 under the General Provisions of H.R. 2638, as passed by the House and the Senate, would have provided that the Center will lead the accreditation process. This language was included in P.L. 110-161, the Consolidated Appropriations Act of 2008.

The Senate report also directed the Secretary to submit an updated Human Capital Operational expenditure plan to the committee within 90 days of the act’s enactment. The plan must include the following elements: definitions for all activities, milestones, and yearly costs for all initiatives; a list of all contract obligations by contractor, year, and purpose; efforts to improve the “dismal results” for the department in the 2006 Federal Human Capital Survey; performance metrics for measuring the attainment of goals for human capital; funds spent in support of employee recruitment, retention, and training; and an analysis of all internship programs within the department designed to recruit young professionals. With regard to these internship programs, the committee report noted that coordination is needed and directs the Chief Human Capital Officer to “review goals for the programs, milestones, needs of the components, and the capacity to accept these employees.”

In a statement of Administration policy on S. 1644, OMB stated its strong opposition “to any effort to reduce, limit, or delay funding for DHS human resources initiatives,” because such “would severely impact support to basic human resource services and development of practices designed to meet the Department’s diverse personnel requirements.”²⁴

P.L. 110-161, the Consolidated Appropriations Act, 2008, does not provide any funding “for MAX-HR or any follow-on personnel system.” A general provision at Section 533 “prohibits the obligation of funds for the development, testing, deployment, or operation of any system related to MAX-HR or any subsequent, but related human resources management project, until pending litigation, legal claims or appeals have been fully resolved.” The law provides \$10 million to an account

²³ U.S. Congress, House Committee on Homeland Security, *Department of Homeland Security Authorization Act for Fiscal Year 2008*, report to accompany H.R. 1684, 110th Cong., 1st sess., H.Rept. 110-122 (Washington: GPO, 2007), p. 83.

²⁴ U.S. Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, S. 1644 — Department of Homeland Security Appropriations Act, 2008*, July 25, 2007, p. 4.

labeled “human resources.” According to the explanatory statement accompanying the omnibus, DHS is directed to ensure that this appropriation is used for “programs that directly address the shortcomings identified in [the 2006 Federal Human Capital Survey] or in a subsequent DHS survey that the Department plans to conduct.” These programs could include the “planned DHS survey, gap analysis of mission critical occupations, hiring and retention strategies, robust diversity programs, and Department-wide education and training initiatives.” The Secretary must submit a plan for expending the funds prior to their obligation.²⁵

Section 538 of the law relates to a general provision that reduces by \$5 million the cumulative amount of the appropriation provided to the Office of the Secretary and Executive Management and the Office of the Under Secretary for Management. The amount reflects management efficiencies and, within 30 days of the act’s enactment, the Secretary must notify the House and Senate Committees on Appropriations “of these efficiency savings by account and within the account, by program, project and activity.”²⁶

The law also includes a general provision at Section 526 that requires the Chief Financial Officer to submit reports on the execution of the budget and staffing, including the number of contract employees by office, within 45 days after the close of each month. The House-passed bill included the general provision at Section 524 and would have provided that within 45 days after the close of each month, the Chief Financial Officer must submit to the House and Senate Committees on Appropriations a monthly budget and staffing report that includes total obligations and on-board versus funded full-time equivalent staffing levels. The provision was included as Section 526 of the Senate-passed bill and provided that the report also would have included the number of contract employees by office. A July 2007 evaluation prepared by the Government Accountability Office found that DHS employees in permanent positions (excluding Senior Executive Service and presidential appointments) left their positions at an attrition rate of 7.1% in 2006. When the 14% to 17% attrition rate for transportation security officers at the Transportation Security Administration was excluded, the department’s average attrition rate was 3.3%. (The average attrition rate for all Cabinet-level departments was roughly 4%.)²⁷

P.L. 110-161 continues four general provisions related to FLETA and FLETC — Section 507 provides that the accreditation board will lead the accreditation process; Section 509 requires the advance approval of the House and Senate Committees on Appropriations before any additional law enforcement training facilities can be purchased, constructed, or leased; Section 510 directs FLETC to “schedule basic and advanced law enforcement training at all four training facilities ... to ensure that these training centers are operated at the highest capacity”; and

²⁵ *Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16079.

²⁶ *Ibid.*, p. H16102.

²⁷ U.S. Government Accountability Office, *Homeland Security, DHS’s Actions to Recruit and Retain Staff and Comply With the Vacancies Reform Act*, GAO Report GAO-07-758 (Washington: July 2007).

Section 529 classifies the functions of the FLETC instructors as inherently governmental.²⁸

Several executive positions related to the overall administration and management of DHS have new incumbents. Michael Jackson resigned his position as Deputy Secretary of Homeland Security effective on October 26, 2007. The department's Under Secretary for Management, Paul Schneider, is serving as the acting deputy secretary. Mr. Schneider had assumed the Under Secretary position on February 1, 2007, and during his confirmation hearing on December 6, 2006, told the members of the Senate Committee on Homeland Security and Governmental Affairs that he would make sure that DHS officials create an effective method of evaluating employees' job performance. Reportedly, Mr. Schneider is assisting with the department's transition to a new Administration by tracking critical jobs with a goal "to make sure that either the No. 1 or No. 2 in each post is a career civil service employee."²⁹ As for the Human Capital Officer (HCO) position, Marta Brito Perez, who assumed the position on September 18, 2006, resigned effective on January 6, 2008. Gregg Pelowski is currently serving as the acting HCO.³⁰

Analysis and Operations³¹

The DHS intelligence mission is outlined in Title II of the Homeland Security Act of 2002 (codified at 6 U.S.C. 121). Organizationally, and from a budget perspective, there have been a number of changes to the information, intelligence analysis, and infrastructure protection functions at DHS. Pursuant to the Homeland Security Act of 2002, the Information Analysis and Infrastructure Protection (IAIP) Directorate was established. The act created an Undersecretary for IAIP to whom two Assistant Secretaries, one each for Information Analysis (IA) and Infrastructure Protection (IP), reported. The act outlined 19 functions for the IAIP Directorate, to include the following, among others:

- To assess, receive, and analyze law enforcement information, intelligence information, and other information from federal, state, and local government agencies, and the private sector to (1) identify and assess the nature and scope of the terrorist threats to the homeland, (2) detect and identify threats of terrorism against the United States, and (3) understand such threats in light of actual and potential vulnerabilities of the homeland;
- To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States;

²⁸ *Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16101.

²⁹ Stephen Barr, "Homeland Security Prepares for Its First Transition, *Washington Post*, January 21, 2008, p. D01.

³⁰ The department's executive positions are listed at [http://www.dhs.gov/xabout/structure/gc_1157655281546.shtm], visited January 24, 2008.

³¹ Prepared by Todd Masse, Specialist in Domestic Intelligence and Counterterrorism, Domestic Social Policy Division.

- To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, and intelligence-related information within the federal government and between the federal government and state and local government agencies and authorities.³²

Secretary Chertoff's Second Stage Review of the Department made numerous changes in the DHS intelligence structure. For example, the erstwhile IAIP disbanded, and the Office of Information Analysis was renamed the Office of Intelligence and Analysis and became a stand alone entity. The Office of Infrastructure Protection was placed within the Directorate for Preparedness. The Assistant Secretary for Intelligence Analysis was also provided the title of the Department's Chief Intelligence Officer.³³ Pursuant to the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53, signed August 3, 2007), a number of amendments to the Homeland Security Act of 2002 (codified at 6 U.S.C. 201) related to homeland security intelligence were made. Among these changes, the law provided statutory standing to the Office of Intelligence and Analysis and the Office of Infrastructure Protection. The Office of Intelligence and Analysis is to be headed by an Under Secretary for Intelligence and Analysis, who will also serve as the Department's Chief Intelligence Officer.³⁴

President's FY2008 Request. The FY2008 request for the Analysis and Operations account was \$315 million, an increase of \$15 million (+5%) over the enacted FY2007 amount. It should be noted that funds included in this account support both the Office of Intelligence and Analysis (OIA) and the Office of Operations Coordination. The Office of Intelligence and Analysis, the successor to the "IA" element of the erstwhile IAIP, has as its primary responsibility the integration and analysis of DHS information, state and local information, and Intelligence Community intelligence into finished intelligence products, such as threat assessments and other indications and warning documents. As a member of the Intelligence Community, the Office of Intelligence and Analysis's budget is classified. The Office of Operations Coordination formally houses the National Operations Center which, among other functions, disseminates OIA assessed threat information, provides domestic situational awareness, and performs incident management on behalf of the Department.

³² See Title II, Subtitle A, Section 201(d), Responsibilities of the Undersecretary (of IAIP), codified at 6 U.S.C. §121. See also Department of Homeland Security, Office of the Inspector General, *Survey of the Information Analysis and Infrastructure Protection Directorate*, Office of Inspections, Evaluations, and Special Reviews, OIG-04-413, February 2004, p. 26.

³³ See DHS Management Directive 8110, *Intelligence Integration and Management*, January 30, 2006.

³⁴ See P.L. 110-53, Title V, "Improving intelligence and information sharing within the federal government, and with State, local and tribal governments," Subtitle D, "Homeland security intelligence offices reorganization."

House-Passed H.R. 2638. The House Appropriations Committee recommended \$302 million, a decrease of \$13 million (4%) from the President's requested amount of \$315 million, and \$2 million above the amount provided in FY2007 (\$300 million). In the report accompanying the legislation, the Committee noted with respect to both the Office of Operations Coordination and the Office of Intelligence and Analysis that they:

...carried over significant unobligated balances at the end of fiscal year 2006, and (have) shown no signs of an increased pace of obligations during the current fiscal year.³⁵

The Committee also expressed concern about the potential movement of the Homeland Security Operations Center (HSOC) (also known as the National Operations Center) and/or its combination with the Transportation Security Operations Center, from its current location at the Nebraska Avenue Complex (NAC) to two possible other locations. The Committee noted that:

...over \$137 million has been appropriated for improvements to the (NAC) since 2004, and a large portion of these funds have gone toward upgrades to the HSOC.... The Committee is concerned by the apparent DHS attitude that costly capital investments are disposable, and will provide no further appropriations for HSOC capital improvements until the Department submits a coherent and cost-effective plan for consolidating its operations centers.³⁶

With respect to DHS support for State and local information and intelligence fusion centers, the Committee "...recommends doubling the requested funding level for establishing DHS presence at these centers in 2008 and directs the (OIA) to review all unobligated balances available...at the start of (FY) 2008 and submit a reprogramming request for those amounts that could be reasonably reallocated to fusion center implementation."³⁷ Moreover, the Committee directed DHS to provide "ongoing quarterly updates...that detail the progress in placing DHS homeland security intelligence professionals in State and local fusion centers."³⁸ Among other elements, the report requires DHS to detail progress on: (1) qualification criteria used by DHS to decide where and how to place DHS intelligence analysts and related

³⁵ See House of Representatives, DHS Appropriations Bill, 2008, H. Report. 110-181, p. 23.

³⁶ Ibid.

³⁷ Ibid., p. 24. Given that DHS's intelligence budget is classified, the amount of funding requested specifically to support the deployment of DHS personnel to fusion centers is not available. The "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007," (P.L. 110-28) provided an additional \$8 million for DHS "Analysis and Operation," to be used for support of the DHS State and Local Fusion Center Program.

³⁸ Ibid. It should be noted that DHS currently has approximately 15 intelligence professionals detailed to 15 fusion centers. According to DHS Chief Intelligence Officer Charles Allen, DHS has plans to embed 35 intelligence officers at fusion centers by the end of FY2008. See House Homeland Security Committee, Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment, hearing on "Information Sharing and Civil Liberties," March 14, 2007.

technology, (2) total Federal expenditures to support each center to date, and (3) the location of each fusion center, both operational and planned.³⁹

Senate-Passed H.R. 2638. The Senate recommended \$306 million, a decrease of \$9 million (2.9%) to the President’s requested level of \$315 million and a \$6 million (2%) increase over the amount provided in FY2007 (\$300 million). The Senate provided that no more than \$5,000 of appropriated funds shall be for official reception and representation expenses. In the Senate report accompanying the bill, the Committee expressed concern about the possible movement of the National Operations Center and “...directs the Office of Operations Coordination to provide a briefing to the Committee justifying this relocation...”⁴⁰ The Committee also required a “DHS Intelligence Expenditure Plan” from the Secretary for the Office of Intelligence and Analysis, that would include, among other items: (1) FY2008 expenditures and staffing allotted for each (OIA) program..., (2) all funded versus on-board positions, including Federal full-time equivalents (FTE), contractors, and reimbursable and non-reimbursable detailees, and (3) an explanation for maintaining contract staff in lieu of government FTE...”⁴¹ Lastly, the Committee included language similar to that provided by the House Appropriations Committee with respect to requiring quarterly reports on the progress DHS is making in “...placing DHS homeland security intelligence professionals in State and local fusion centers.”⁴² Moreover, the Senate provided that the Director of Operations “...shall encourage rotating State and local fire service representation at the National Operations Center.”⁴³

FY2008 Enacted (P.L. 110-161, Division E). According to the Consolidated Appropriations Act, 2008, an amount of \$306 million shall be allocated to Analysis and Operations. This amount represents a decrease of \$9 million (2.9%) of the President’s requested level of \$315 million and a \$6 million (2%) increase over the amount provided in FY2007 (\$300 million). The bill includes a statutory restriction on the obligation of funds for operation of either the National Immigration Information Sharing Office or the National Applications Office until the Secretary “... certifies these programs comply with all existing laws, including all applicable privacy and civil liberties standards, with the certification reviewed by the Government Accountability Office.”⁴⁴ Three other elements related to Analysis and Operations funding were included in the Consolidated Appropriations Act, 2008. First, the Under Secretary for Intelligence and Analysis is “directed to provide the Committees on Appropriations an expenditure plan for the Office of Intelligence and Analysis ... that report is to include an analysis of all new requirements enacted in the 9/11 Act, as well as the estimated costs and available resources to implement those

³⁹ See House of Representatives, DHS Appropriations Bill, 2008, H. Report. 110-181, p. 24.

⁴⁰ See U.S. Senate, DHS Appropriations Bill, 2008, S. Report 110-84, p. 23.

⁴¹ *Ibid.* p. 24.

⁴² *Ibid.*

⁴³ See H.R. 2638 Engrossed Amendment as Agreed to by Senate (EAS), Title I, Analysis and Operations, July 26, 2007.

⁴⁴ See *Congressional Record*, December 17, 2007, p. H16080.

requirements in fiscal year 2008 and subsequent fiscal years.”⁴⁵ Second, while the amount that Congress appropriates for state and local fusion centers remains part of the classified national intelligence program budget, the bill adopted the Senate level of funding for these centers, “... instead of doubling the requested amount as proposed by the House.”⁴⁶ Finally, with respect to the National Operations Center (NOC), the Committees “do not require information about the relocation of the NOC, since the reprogramming proposal to affect such a move was denied by the House. The amended bill rescinds \$8.7 million in unobligated balances from prior-year appropriations made for Analysis and Operations, which is an amount equal to the levels that had been proposed for reallocation to fund the NOC move.”⁴⁷ The Committees also encourage the “rotation of State and local fire service representation”⁴⁸ to the NOC.

Title II: Security Enforcement and Investigations

Title II contains the appropriations for the Bureau of Customs and Border Protection (CBP), the Bureau of Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the US Coast Guard, and the US Secret Service. **Table 8** shows the FY2007 enacted and FY2008 appropriation action for Title II.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

Table 8. Title II: Security, Enforcement, and Investigations
(budget authority in millions of dollars)

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Omnibus	FY2008 Emergency P.L.110-161
Customs & Border Protection									
— Salaries and expenses	5,562	72 ^a	—	5,634	6,592	6,630	6,601	6,803	323
— Automation modernization	451	—	—	451	447	477	477	477	—
— Air and Marine Operations	602	75	—	677	477	477	489	570	94
— Border Security Fencing, Infrastructure, and Technology	1,188	—	—	1,188	1,000	1,089	1,000	1,225	1,053
— Construction	233	—	—	233	250	250	275	348	61
— Fee accounts ^b	1,265	—	—	1,265	1,385	1,385	1,385	1,385	—
Gross total	9,301	147	—	9,449	10,150	10,307	10,226	10,808	1,531
— Offsetting collections	-1,265	—	—	-1,265	-1,385	-1,385	-1,385	-1,385	—
Net total	8,036	147	—	8,183	8,765	8,922	8,841	9,423	1,531
Immigration & Customs Enforcement									
— Salaries and expenses	3,887	6	—	3,893	4,162	4,155	4,402	4,688	516
— Federal Protective Services (FPS)	516	—	—	516	613	613	613	613	—
— Automation & infrastructure modernization	15	—	—	15	—	31	15	31	—
— Construction	56	—	—	56	6	6	16	17	11
— Fee accounts ^c	252	—	—	252	234	234	234	234	—

CRS-29

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Omnibus	FY2008 Emergency P.L.110-161
Gross total	4,727	6	—	4,733	5,015	5,039	5,279	5,581	527
— Offsetting FPS fees	-516	—	—	-516	-613	-613	-613	-613	—
— Offsetting collections	-252	—	—	-252	-234	-234	-234	-234	—
Net total	3,958	6	—	3,964	4,168	4,192	4,433	4,734	527
Transportation Security Administration									
— Aviation security (gross funding)	4,732	397 ^d	—	5,129	5,042	5,199	5,043	4,809	—
— Surface Transportation Security	37	—	—	37	47	41	41	47	—
— Transportation Threat Assessment and Credentialing	40	—	-2 ^e	38	98	64	67	83	—
— Credentialing Fees ^f	76	—	—	76	83	83	83	83	—
— Transportation Security Support	525	—	—	525	525	527	522	524	—
— Federal Air Marshals	714	5	—	719	770	722	722	770	—
— Aviation security capital fund ^g	250	—	—	250	—	—	—	250	—
— Checkpoint screening security fund	—	—	—	—	—	—	—	250	—
— Rescission	-67	—	—	-67	—	—	—	—	—
Gross total	6,307	402	-2	6,707	6,564	6,636	6,478	6,814	—
— Offsetting collections	-2,420	—	—	-2,420	-2,710	-2,710	-2,710	-2,210	—
— Credentialing/Fee accounts	-76	—	—	-76	-83	-83	-83	-83	—
— Aviation security capital fund (mandatory spending)	-250	—	—	-250	—	—	—	-250	—

CRS-30

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Omnibus	FY2008 Emergency P.L.110-161
— Checkpoint screening security fund	—	—	—	—	—	—	—	-250	
Net total	3,561	402	-2	3,962	3,771	3,843	3,685	4,021	—
U.S. Coast Guard									
— Operating expenses	5,478 ^h	120 ⁱ	-26	5,572	5,894	5,885	5,931	5,891	70
— Environmental compliance & restoration	11	—	—	11	12	15	12	13	—
— Reserve training	122	—	—	122	127	127	127	127	—
— Acquisition, construction, & improvements	1,306	30	—	1,336	949 ^j	834 ^j	991 ^j	993 ^j	96
— Alteration of bridges	16	—	—	16	—	16	16	16	—
— Research, development, tests, & evaluation	17	—	—	17	18	18	26	25	—
— Retired pay (mandatory, entitlement)	1,063	30	—	1,093	1,185	1,185	1,185	1,185	—
— Health care fund contribution	279	—	—	279	272	272	272	272	—
Gross total	8,292	180	-26	8,447	8,457	8,352	8,559	8,522	166
U.S. Secret Service									
— Salaries and expenses	961	—	—	961	1,095	1,393	1,392	1,382	—
— Investigations and field operations	311	—	—	311	300	—	—	—	—
— Acquisition, construction, improvements, and related expenses	4	—	—	4	4	4	4	4	—
Gross total	1,276	—	—	1,276	1,399	1,396	1,396	1,385	—

CRS-31

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Omnibus	FY2008 Emergency P.L.110-161
Gross Budget Authority: Title II	29,902	735	-28	30,612	31,585	31,730	31,939	33,110	2,224
Offsetting collections:	-4,779	—	—	-4,779	-5,025	-5,025	-5,025	-5,025	—
Net Budget Authority: Title II	25,123	735	-28	25,833	26,560	26,705	26,914	28,085	2,224

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: Totals may not add due to rounding. Amounts in parentheses are non-adds.

- a. Includes \$3 million transfer to FLETC per P.L. 110-28.
- b. Fees include COBRA, Land Border, Immigration Inspection, Immigration Enforcement, and Puerto Rico.
- c. Fees include Exam, Student Exchange and Visitor Fee, Breached Bond, Immigration User, and Land Border.
- d. Includes transfer of \$7 million per Sec. 21101 of P.L. 110-5, and \$390 million in supplemental appropriations per P.L. 110-28.
- e. Transfer of -\$2 million per Sec. 21101 of P.L. 110-5.
- f. Fees include TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks.
- g. Aviation Security Capital Fund, used for installation of Explosive Detection Systems at airports.
- h. Includes \$90 million transfer from Department of Defense per P.L. 109-289.
- i. \$120 million transfer in emergency FY2007 supplemental funding enacted by P.L.110-28, transfer from Defense, O&M, Navy.
- j. FY2008 request and House-passed H.R. 2638 include a proposed rescission of \$49 million. Senate-passed H.R. 2638 includes a proposed rescission of \$57 million of funds previously appropriated by P.L. 109-90 and P.L. 109-295. Division E of P.L. 110-161 includes a rescission of \$133 million in funds previously appropriated by P.L. 108-334, P.L. 109-90, and P.L. 109-295.

Customs and Border Protection (CBP)⁴⁹

CBP is responsible for security at and between ports-of-entry along the border. Since September 11, 2001, CBP's primary mission is to prevent the entry of terrorists and the instruments of terrorism. CBP's ongoing responsibilities include inspecting people and goods to determine if they are authorized to enter the United States; interdicting terrorists and instruments of terrorism; intercepting illegal narcotics, firearms, and other types of contraband; interdicting unauthorized travelers and immigrants; and enforcing more than 400 laws and regulations at the border on behalf of more than 60 government agencies. CBP is comprised of the inspection functions of the legacy Customs Service, Immigration and Naturalization Service (INS), and the Animal and Plant Health Inspection Service (APHIS); the Office of Air and Marine Interdiction, now known as CBP Air and Marine (CBPAM); and the U.S. Border Patrol (USBP). See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 9** for sub-account-level detail for CBP Salaries and Expenses (S&E) for FY2007 and FY2008.

President's FY2008 Request. The Administration requested an appropriation of \$10,150 million in gross budget authority for CBP for FY2008, amounting to an \$849 million, or 9%, increase over the enacted FY2007 level of \$9,301 million. The Administration requested \$8,765 million in net budget authority for CBP in FY2008, which amounts to a \$729 million, or 9%, increase over the net FY2007 appropriation of \$8,036 million.

House-Passed H.R. 2638. House-passed H.R. 2638 included \$8,922 million in net budget authority for CBP for FY2008, amounting to a \$886 million, or 11%, increase over the FY2007 enacted amount of \$8,036 million (not including supplemental appropriations), and a \$157 million or 1% increase over the FY2008 request.

Senate-Passed H.R. 2638. Senate-passed H.R. 2638 included \$8,841 million in net budget authority for CBP for FY2008, amounting to an \$805 million, or 10%, increase over the FY2007 enacted amount of \$8,036 million (not including supplemental appropriations), and a \$76 million or nearly 1% increase compared to the FY2008 request. The Senate-passed bill also included a \$3,000 million emergency appropriation (adopted by S.Amdt. 2480) that would be used, among other things, by CBP for hiring additional U.S. Border Patrol agents and deploying infrastructure and technology to the border.

FY2008 Enacted (P.L. 110-161, Division E). Division E of P.L. 110-161 provides \$9,423 million in net budget authority for CBP for FY2008. This amounts to an increase of \$658 million, or 7%, over the FY2008 request and an increase of \$1,387 million, or 17%, over the enacted amount for FY2007. P.L. 110-161 also includes \$2,710 million in emergency funding for border security purposes, of which \$1,531 million is provided to CBP (see **Appendix I** for details).

⁴⁹ Prepared by Jennifer E. Lake and Blas Nuñez-Neto, Analysts in Domestic Security, Domestic Social Policy Division.

Table 9. CBP S&E Sub-account Detail
(budget authority in millions of dollars)

Activity	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.110- 161
Headquarters Management and Administration	1,248	1,277	1,277	1,236	1,221	—
Border Security Inspections and Trade Facilitation @ POE	1,860	2,069	2,107	2,101	2,279	271
Inspections, Trade & Travel Facilitation @ POE	1,327	1,622	1,655	1,676	1,854	271
Container Security Initiative (CSI)	139	156	156	156	156	—
Other International Programs	9	9	9	11	11	—
C-TPAT	55	56	61	62	62	—
FAST/Nexus/SENTRI	11	11	11	11	11	—
Inspection and Detection Technology	241	136	136	105	105	—
Systems for Targeting	27	28	28	28	28	—
National Targeting Center	24	24	24	24	24	—
Training at POE	25	25	25	25	25	—
Harbor Maintenance Fee	3	3	3	3	3	—
Border Security and Control Between POE	2,278	3,037	3,037	3,037	3,075	38
Border Security and Control Between POE	2,240	2,984	2,984	2,984	3,022	38
Training Between the POE	38	53	53	53	53	—
Air and Marine Operations - Salaries	176 ^a	208	208	227	227	14
CBP Salaries and Expenses Total:	5,562 ^a	6,591	6,630	6,601	6,803	323

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request)..

Note: Totals may not add due to rounding.

a. Does not include \$75 million in supplemental appropriations provided by P.L. 110-28.

Issues for Congress. Several issues arose during the congressional debate over appropriations for CBP. This issues included, but were not limited to the Secure Border Initiative (SBI), border fencing; staffing levels, the Western Hemisphere Travel Initiative (WHTI), covered law enforcement officer status for CBP Officers, and cargo and container security issues.

SBInet. The Administration requested \$1,000 million for the deployment of SBInet⁵⁰ related technologies and infrastructures in FY2008; however, the Administration's request does not identify how that funding will be apportioned between the fencing, infrastructure, and technology components of the account. According to the DHS budget submission, SBInet will initially focus on the southwest land border between POE and will deploy a mix of personnel, technology, infrastructure, and response assets in order to "provide maximum tactical advantage in each unique border environment."⁵¹ CBP plans to construct an SBInet command center that will provide a common operating picture for all DHS agencies and external stakeholders.

In FY2007, DHS announced that it had awarded a prime integrator contract to Boeing to oversee the deployment of SBInet; P.L.109-295 required that any contract action related to SBI valued at over \$20 million be reviewed by the DHS Inspector General to ensure it adheres to applicable cost requirements, performance objectives, and program milestones. Possible issues for Congress could include whether the contracting associated with SBInet is being carried out responsibly and effectively, and how funding is apportioned between the technology, infrastructure, and fencing components of the account.

H.R. 2638 fully funds the President's request for SBInet, but withholds \$700 million pending the submission of an expenditure plan that would, among other things, identifies: the activities, milestones, and costs associated with implementing the program, including the maximum foreseeable investment and the life-cycle costs; the funding and staffing requirements of the program by activity; how SBInet will address the security needs of the northern border; and, for each segment of the border where fencing or tactical infrastructure will be constructed, an analysis of alternative means of achieving operational control over those areas.

Senate-passed H.R. 2638 would also fully fund the President's request for SBInet; the bill also included a \$3,000 million emergency supplemental appropriation that could be used, among other things, to deploy four unmanned aerial vehicles and 105 camera and radar towers to the border as part of the SBInet initiative. The Senate Committee on Appropriations asserted, however, that "[t]he Department's track record on major development programs is spotty at best" and noted that it "will be closely watching to ensure that SBInet meets performance objectives, is delivered on time, and on budget."⁵²

Division E of P.L. 110-161 expresses concern with the overall coordination of the SBI program and directs DHS to provide a briefing within 120 days of enactment on how the program is being effectively coordinated and how the FY2007 funds that

⁵⁰ SBInet is the technological and infrastructure component of the Secure Border Initiative (SBI), a multifaceted approach to securing the border. In its FY2007 budget submission, DHS asserted that it had "developed a three-pillar approach under the SBI that will focus on controlling the border, building a robust interior enforcement program, and establishing a Temporary Worker Program." *DHS FY2007 Justification*, p. CBP S&E 4.

⁵¹ *DHS FY2008 Justification*, p. CBP BSFIT 3.

⁵² S.Rept. 110-84, p. 37.

were appropriated for the Office of Secure Border Coordination in FY2007 were obligated. The bill would provide \$1,225 million for SBInet, but would withhold \$650 million until an expenditure plan is received and approved.

Fencing. In the 109th Congress, the Secure Fence Act (P.L. 109-367) directed DHS to construct two-layered reinforced fencing and additional physical barriers, roads, lighting, cameras, and sensors along five stretches of the southwest border. CBP has estimated that these stretches of fencing will total roughly 850 miles⁵³ of the southern border. DHS has stated that its FY2008 request, when combined with prior year appropriations, will fund the completion of 370 cumulative miles of fencing along the southern border.⁵⁴ However, DHS has not identified what the actual amount of funding that will be used for border fencing is, or how much it will cost to maintain the fencing in future fiscal years. According to CBP Congressional Affairs, this fencing will be a combination of primary and two layer fencing, will be constructed along areas of the border where DHS determines fencing will provide a tactical advantage, and will be constructed by some mix of private contractors and the National Guard (supervised by the Army Corps of Engineers).⁵⁵ As of FY2007, border fence construction has been included within the Border Security, Fencing, Infrastructure and Technology account. Possible issues for Congress as it considers the issue of border fencing could include whether DHS is complying with the legislative mandates set out in P.L. 109-367, what the total costs associated with building and maintaining the border fencing will be, and oversight of the contracting involved if private contractors are used to build the fencing.

Both the House and Senate passed bills fully funded the President's request for border fencing. Senate-passed H.R. 2638 also included a \$3,000 million emergency supplemental appropriation that could be used, among other things, for constructing 700 miles of fencing along the southern border. P.L. 110-161, the Consolidated Appropriations Act, 2008, strikes the five specific stretches of fencing required by the Secure Fence Act in the 109th Congress and instead requires DHS to construct not less than 700 miles of reinforced fencing at the border. This new language gives DHS discretion as to where this fencing will be constructed, and mandates that 370 miles of fencing be completed by December 31, 2008. The Act also requires DHS to consult with the Secretary of the Interior, the Secretary of Agriculture, states, local governments, Indian tribes, and property owners along the border in order to minimize the potential impact that fencing may have on border communities and the environment.

CBP Staffing. Staffing issues have long been of interest to Congress, and there has been considerable debate concerning the appropriate level of staffing that CBP needs to effectively carry out its mission. CBP's staffing needs include not only Border Patrol Agents (discussed in the following section), but also officers stationed at the nation's ports of entry, import and trade specialists, pilots, and a variety of other positions. In addition to the debate over the appropriate level of staffing, other

⁵³ From CBP Congressional Affairs, September 25, 2006.

⁵⁴ *DHS FY2008 Justification*, p. CBP BSFIT 12.

⁵⁵ From CBP Congressional Affairs, January 26, 2007.

issues such as training resources, infrastructure demands, absorption of new staff, attrition, and hiring are also important. In an effort to address the concerns regarding CBP's staffing, the Security and Accountability for Every (SAFE) Port Act of 2006 (P.L. 109-347), and the conference report to the FY2007 DHS Appropriations bill H.R. 5441, H.Rept. 109-699, required CBP to submit a resource allocation model (RAM) to the Congress no later than January, 23, 2007. This report (the RAM) was required to address staffing levels at all ports of entry, and to provide the complete methodology for aligning staff across mission areas. The House Appropriations Committee noted in its report (H.Rept. 110-181) to the FY2008 DHS Appropriations bill that CBP had yet to submit the staffing model, and that staffing allocation remains a concern for the committee particularly at airports. H.Rept. 110-181 directed CBP to submit its staffing model to the committee by October 15, 2007.

The Explanatory Statement⁵⁶ to Division E of P.L. 110-161 notes that CBP has satisfied the requirements laid out in H.Rept. 110-181 through its briefings and letters regarding the Workload Staffing Model (WSM). Division E of P.L. 110-161 also directs DHS to make every effort to comply with previous congressional mandates concerning increasing the number of Border Patrol agents and CBP officers deployed to the northern border, and directs CBP to provide quarterly hiring briefings on the progress they have made in this regard.

Hiring U.S. Border Patrol (USBP) Agents. The Administration requested an increase of \$481 million to hire 3,000 new USBP agents in order to bring the total number of agents to 17,819 by the end of calendar year 2008.⁵⁷ This would roughly double the size of the USBP from the time the President took office in 2001. One potential issue for Congress may include whether this hiring goal is attainable. In FY2006, Congress appropriated funding for 1,500 additional agents; however, at the end of FY2006 the border patrol had increased by 1,051 agents to 12,319.⁵⁸ This means that DHS fell roughly 30% short of their goal for agents hired in FY2006; additionally, the USBP experienced an attrition rate of 7% in FY2006⁵⁹ making their hiring goals more difficult to attain. The FY2007 appropriation for DHS included an increase of 2,500 agents for the USBP. A potential issue for Congress may involve whether some incentives should be offered to help DHS recruit additional agents or keep existing agents from leaving the agency. House-passed H.R. 2638 fully funded the President's request, but would direct DHS to deploy an additional 500 USBP agents to the northern border in FY2008. Senate-passed H.R. 2638 also fully funds the Administration's request, and directed DHS to ensure that 20% of the increase in agents during FY2008 be assigned to the northern border as per P.L. 108-458. In addition, Senate-passed H.R. 2638 included a \$3,000 million emergency supplemental appropriation that could be used, among other things, to bring the overall USBP workforce to 23,000 agents. Division E of P.L. 110-161 fully funds the President's request.

⁵⁶ Congressional Record, December 17, 2007, p. H16081.

⁵⁷ *DHS FY2008 Justification*, p. CBP S&E 49.

⁵⁸ From CBP Congressional Affairs, February 8, 2007.

⁵⁹ From CBP Congressional Affairs, December 12, 2006.

Western Hemisphere Travel Initiative (WHTI). The Administration requested an increase of \$252.4 million for WHTI. WHTI will require U.S. citizens, and Canadian, Mexican, and some island nation nationals to present a passport, or some other document or combination of documents deemed sufficient to denote identity and citizenship status by the Secretary of Homeland Security, as per P.L. 108-458 §7209. DHS announced that it is requiring all U.S. citizens entering the country at air and sea POE to present passports as of January 18, 2007; the current legislative mandate for expanding the program to all POE is the *earlier* of the following two dates: June 1, 2009 or three months after the Secretaries of Homeland Security and State certify that a number of implementation requirements have been met.⁶⁰

The FY2008 request for WHTI included funding to hire 205 CBP officers and to deploy WHTI pilot programs to 13 POE.⁶¹ Possible issues for Congress may include whether DHS is on track to meet its implementation deadlines, how the WHTI program will interface with existing registered traveler programs (i.e., Nexus and SENTRI), and whether any POE infrastructure modifications or expansions will be required to accommodate WHTI technology. House-passed H.R. 2638 included \$225 million for WHTI, \$27 million less than the President's request. H.R. 2638 also includes language that would withhold \$100 million of this funding until CBP reports on the findings of the 13 WHTI pilot programs that are currently being conducted. This report should include, among other things, the infrastructure and staffing required by POE, confirmation that the radio frequency technology being used has been adequately tested, and updated milestones for implementing the program. Senate-passed H.R. 2638 would fully fund the WHTI program and would push back its implementation date to the *later* of the following two dates: June 1, 2009, or three months after the Secretaries of State and Homeland Security certify that a series of implementation requirements have been met.⁶² H.R. 2764, the Consolidated Appropriations Act, 2008, includes \$225 million for WHTI but withholds \$75 million of this total until the report mentioned above is submitted. The bill would also prohibit DHS from implementing the program before the *later* of the following two dates: June 1, 2009, or three months after the Secretaries of State and Homeland Security certify that a series of implementation requirements have been met.

Covered Law Enforcement Officer Status for CBP Officers. House-passed H.R. 2638 (Sec. 533) included a provision directing DHS to extend federal law enforcement officer status to CBP officers for retirement purposes. Citing concern that CBP is losing valuable officers to other agencies due to the disparity in retirement pay, the House Appropriations Committee directed DHS to offer voluntary conversions of all eligible CBP officer positions to federal law enforcement officer status no later than July 1, 2008. House-passed H.R. 2638 included \$50 million to cover the FY2008 costs associated with this conversion. Senate-passed H.R. 2638

⁶⁰ P.L. 109-295 §546.

⁶¹ *FY2008 DHS Congressional Budget Justification*, pp. CBP S&E 61-62.

⁶² These implementation requirements are specified in 8 U.S.C. 1185 note.

did not include a similar provision. Division E of P.L. 110-161 (Sec. 535), contains language similar to that found in the House bill.

International Registered Traveler Program and Related Screening Systems. Division E of P.L. 110-161 authorizes CBP to develop an international registered traveler program and to enhance the screening of incoming international air passengers, and \$45 million is appropriated to develop the needed technologies and infrastructure to provide for real time screening of incoming international air travelers. In addition, CBP has been provided \$36 million to implement the electronic travel authorization program for visa-waiver countries, and would be directed to coordinate the program's development with the US-VISIT office.

Customs-Trade Partnership Against Terrorism (C-TPAT). The Customs-Trade Partnership Against Terrorism (C-TPAT) is a public-private partnership program aimed at improving supply chain security. DHS requested no funding increases for C-TPAT in the FY2008 budget request. During the debate surrounding both the Dubai Ports issue and the SAFE Port Act (P.L. 109-347), several questions were raised regarding the vigor of the C-TPAT validation process and the pace at which CBP was able to conduct the validations. An issue for Congress might be why no additional funds were requested for C-TPAT given that the SAFE Port Act (P.L. 109-347) requires DHS to launch a pilot program to test 3rd party validations of C-TPAT certified applicants. The SAFE Port Act also now requires CBP to re-validate already validated C-TPAT members once every four years. Senate report S.Rept. 110-84 notes the concerns of GAO and other experts regarding C-TPAT security inspections and validations, and further notes that as of March 1, 2007, CBP has 157 supply chain security specialists (SCSS) on board. Senate-passed H.R. 2638 contained \$62 million for C-TPAT; an additional \$7 million above the request for CBP to hire an additional 50 SCSS to bring the total number of SCSS to 207 FTE. House-passed H.R. 2638 included \$61 million for C-TPAT, \$5 million more than requested for FY2008. Division E of P.L. 110-161 provides \$62 million for C-TPAT, including funding to hire 50 SCSS as included in the Senate-passed version of H.R. 2638.

Container Security Initiative (CSI). CSI is a program by which CBP stations CBP officers in foreign ports to target high-risk containers for inspection before they are loaded on U.S.-bound ships. CSI is operational in 50 ports as of October 2006. Current plans are to have CSI operational in 58 ports by the end of FY2007 and to continue to expand CSI to strategically important ports throughout FY2008. The CBP Budget Justifications indicate a requested increase of nearly \$17 million for the CSI program for FY2008. However, \$15 million of this increase is for the Secure Freight Initiative (SFI) program. The rest of the increase for CSI is for non-programmatic increases (pay and non-pay inflation). An issue for Congress might be why additional funding for CSI was not requested given that DHS anticipates expanding CSI in FY2008 to additional strategically important ports. Questions could also arise concerning the impact (at 6 foreign ports, see below) the first iteration of the SFI will have on CSI operations at SFI pilot ports. SFI represents a change in cargo security strategy from targeting *high-risk* containers for scanning and inspection under CSI, to performing an integrated scan (radiation detection, image, and information risk factors) on *all* U.S.-bound containers. Both House-passed H.R. 2638 and Senate-passed H.R. 2638 would have fully funded the request

for CSI at \$156 million for FY2008. Division E of P.L. 110-161 provides \$156 million for CSI.

Secure Freight Initiative (SFI). The Secure Freight Initiative (SFI) is a DHS program aimed at securing the cargo on its journey from its origin in a foreign country to its final destination in the United States. The first iteration of SFI is being operated by CBP in partnership with the Department of Energy (DOE), and several foreign governments. The current iteration of SFI is being operated as a part of CSI and involves several CSI ports. Under SFI, DHS plans to deploy scanning, imaging, and secure communications equipment to selected ports to develop a so-called integrated scan (radiation detection, image, and information risk factors) of all U.S.-bound containers leaving the port. SFI at Port Qasim, Pakistan; Puerto Cortes, Honduras; and at Southampton in the United Kingdom will be fully operational scanning all U.S.-bound containers from these ports. SFI will gradually be deployed in more limited capacities at Port Salalah, Oman; the Port of Singapore; and at the Port of Busan, South Korea. Additionally, Hong Kong officials have agreed to allow DHS to continue testing the existing integrated cargo inspection system (ICIS) at the port of Hong Kong. Approximately 24.5% of U.S.-bound containers originate from these test ports, including Hong Kong.⁶³

Under a fully operational SFI scenario, *all* U.S.-bound containers from that port would be scanned with the integrated scanning system. This will require additional resources on the part of the host country governments and on the part of CBP. The FY2008 request for CBP includes \$15 million for SFI within the CSI program. Currently under CSI, *high-risk* containers are inspected before they are loaded on U.S.-bound ships, while SFI envisions *all* U.S.-bound containers being subject to the “integrated scan” prior to loading. This SFI strategy raises a number of questions, including issues concerning: workload (switching from a targeted approach to scanning all containers will require more resources); resolving alarms (the more containers that are scanned the more alarms will have to be resolved); equipment (who is operating and providing the equipment); and funding (is \$15 million sufficient to cover the initial phase of the program). As previously mentioned, both House-passed H.R. 2638 and Senate-passed H.R. 2638 would fully fund the request for CSI (which includes \$15 million for SFI) at \$156 million for FY2008. Division E of P.L. 110-161 fully funds the request for CSI and includes an additional \$13 million for the “competitive procurement of commercially available technology” to support SFI and the proposed Global Trade Exchange.

Immigration and Customs Enforcement (ICE)⁶⁴

ICE focuses on enforcement of immigration and customs laws within the United States. ICE develops intelligence to reduce illegal entry into the United States and is responsible for investigating and enforcing violations of the immigration laws

⁶³ Eric Kulisch, “Secure Freight Debuts: DHS to follow automated cargo scanning pilot with private sector data warehouse,” *American Shipper*, vol. 49, no. 2 (February, 2007), p.10.

⁶⁴ Prepared by Alison Siskin, Specialist in Immigration Legislation, Domestic Social Policy Division.

(e.g., alien smuggling, hiring unauthorized alien workers). ICE is also responsible for locating and removing aliens who have overstayed their visas, entered illegally, or have become deportable. In addition, ICE develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling, fraud, forced labor, trade agreement noncompliance, and vehicle and cargo theft. Furthermore, this bureau oversees the building security activities of the Federal Protective Service, formerly of the General Services Administration. The Federal Air Marshals Service (FAMS)⁶⁵ was returned from ICE to TSA pursuant to the reorganization proposal of July 13, 2005. The Office of Air and Marine Interdiction was transferred from ICE to CBP, and therefore the totals for ICE do not include Air and Marine Interdiction funding, which is included under CBP. See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 10** for sub-account-level detail for ICE Salaries and Expenses (S&E) for FY2007 and FY2008.

President's FY2008 Request. The Administration requested \$5,015 million in gross budget authority for ICE in FY2008. This represented a 6% increase over the enacted FY2007 level of \$4,727 million. The Administration requested an appropriation of \$4,168 million in net budget authority for ICE in FY2008, representing a 5% increase over the FY2007 enacted level of \$3,958 million. **Table 10** provides activity-level detail for the Salaries and Expenses account. The request included the following program increases:

- \$7 million (19 FTE) for the Office of Professional Responsibility to investigate allegations of criminal and serious misconduct involving ICE and CBP employees;
- \$11 million (32 FTE) for BEST Task Forces;
- \$5 million (15 FTE) for ICE Mutual Agreement between Government and Employers (IMAGE), an initiative with private employers to improve worksite enforcement;
- \$2 million (4 FTE) for the Trade Transparency Unit to coordinate investigations with foreign governments and law enforcement to combat trade-based money laundering;
- \$5 million (18 FTE) to enhance ICE's anti-gang initiative (Operation Community Shield);
- \$26 million for 287(g) agreements;⁶⁶
- \$16 million (2 FTE) for information technology investments;⁶⁷
- \$31 million (28 FTE) for 600 additional detention beds and support personnel;

⁶⁵ FAMS transferred to ICE from TSA in August of 2003.

⁶⁶ This increase includes money for training 250 state and local law enforcement officers, 350 detention beds and associated staff, and \$8 million for T-1 data transmission lines, computers with IDENT/ENFORCE capabilities and connectivity to ICE databases.

⁶⁷ This increase includes \$11 million for Detention and Removal Operations (DRO) IT modernization; \$2 million for mobile IDENT/ENFORCE devices; and \$2 million for upgrading immigration enforcement systems.

- \$29 million (110 FTE) for the Criminal Alien Program (CAP), which includes the Institutional Removal Program (IRP) and the Criminal Alien Apprehension Program (ACAP);⁶⁸ and
- \$11 million for centralized ticketing operation and additional air transportation (including use of the Justice Prisoners and Alien Transportation System [JPATS]) for alien removals.

House-Passed H.R. 2638. House-passed H.R. 2638 would have appropriated \$4,192 million in net budget authority for ICE, which would have represented an increase of \$24 million over the Administration's requested amount. In addition, House-passed H.R. 2638 would have appropriated \$4,155 million for Salaries and Expenses, \$7 million less than the Administration's request, but this decrease, according to H.Rept. 110-181 would have been due to a reallocation of funds to the "Automatization Modernization" account. **Table 10** provides activity-level detail for the Salaries and Expenses account.

Of the appropriated amount, \$10 million would have been for special operations under §3131 of the Customs Enforcement Act of 1986; \$11 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; and \$16 million would have been targeted for enforcement of laws against forced child labor. Additionally, H.Rept. 110-181 recommended an increase over FY2007 funding of :

- \$43 million for the Criminal Alien Program (CAP), which includes the Institutional Removal Program (IRP) and the Criminal Alien Apprehension Program (ACAP);
- \$11 million for the Alternatives to Detention program;
- \$7 million for the Office of Professional Responsibility, \$1 million of which should have been used for a third-party compliance review pilot program to ensure that standards are met at detention facilities managed by private contractors;
- \$111 million for Border Enforcement Security (BEST) Task Forces;⁶⁹
- \$32 million for the three ICE programs that support State and local law enforcement: Law Enforcement Support Center (LESC), Forensic Document Laboratory (FDL), and to facilitate agreements under the 287(g) program of the INA; and
- \$4 million for the Trade Transparency Unit.

The report also recommended funding to increase detention space by 950 beds.

⁶⁸ The increase for CAP will fund 22 additional 10-person CAP teams replacing an estimated 360 Special Agents performing CAP duties.

⁶⁹ ICE-led BEST task forces coordinate federal, state, local, tribal, and foreign law enforcement and intelligence entities to disrupt cross-border criminal organization to mitigate border security vulnerabilities. This increase would fund the existing BEST task force in Laredo, TX, and establish six additional task forces.

Senate-Passed H.R. 2638. Senate-passed H.R. 2638 would have appropriated \$4,433 million in net budget authority for ICE, which represented an increase of \$265 million, 6% over the Administration's requested amount. Of the appropriated amount, nearly \$8 million would have been for special operations under §3131 of the Customs Enforcement Act of 1986; \$1 million would have provided compensation awards to informants; \$102,000 would have been used to promote public awareness of the child pornography tipline; \$203,000 would have funded project alert;⁷⁰ \$5 million would have been used to facilitate agreements under §287(g) of the INA; \$11 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; and \$16 million would have been targeted for enforcement of laws against forced child labor.

In addition, Senate-passed H.R. 2638 would have appropriated \$4,402 million for Salaries and Expenses, \$240 million or 6% more than the Administration's request. **Table 10** provides activity-level detail for the Salaries and Expenses account. Additionally, S.Rept. 110-84 recommended an *increase over the Administration's request* of:

- \$147 million for 3,050 additional detention beds and 248 detention and removal positions;
- \$33 million for transportation and removal activities;
- \$2 million, including 4 FTE, to establish an "Office of Policy and Planning" within the Detention and Removal Office (DRO);⁷¹
- \$9 million for Fugitive Operations Teams;⁷²
- \$11 million (146 positions) for additional CAP teams;⁷³
- \$240 million for more than 700 immigration enforcement and detention and removal positions;
- \$3 million including 4 positions for development of an ICE-wide training program for new and mid-career level managers;
- \$3 million (10 FTE) for BEST Task Forces;
- \$10 million (63 positions) for to enhance ICE's anti-gang initiative (Operation Community Shield);
- \$15 million (50 FTE) for worksite enforcement efforts; and
- \$11 million (63 positions) to fully staff the Document and Benefit Fraud Task Forces.

⁷⁰ Project ALERT was launched by the National Center for Missing and Exploited Children in 1992, and consists of retired law enforcement agents who volunteer to provide assistance, as requested, to law enforcement agencies.

⁷¹ The Office of Policy and Planning assesses existing policy for suitability given the growth in detention, ensures adherence to detention standards, and is responsible for the development and modification of new policies as they relate to DRO-wide programs.

⁷² Fugitive Operations Teams would be expanded from the Administration's request of 75 teams to 81 teams.

⁷³ With the additional monies, CAP teams would be expanded from the Administration's request of 22 teams to 30 teams.

FY2008 Enacted (P.L. 110-161, Division E). Congress appropriated \$4,734 million in net budget authority for ICE, which represented an increase of \$566 million, 14% over the Administration's request, and \$776 million, 20% more than the FY2007 appropriation. Of the total appropriated amount, nearly \$8 million is for special operations under §3131 of the Customs Enforcement Act of 1986; \$1 million is to provide compensation awards to informants; \$305,000 is to promote public awareness of the child pornography tipline; \$203,000 is to fund project alert;⁷⁴ \$5 million is to be used to facilitate agreements under §287(g) of the INA; \$11 million is designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; and \$16 million is for the enforcement of laws against forced child labor. Furthermore, of the total amount appropriated, P.L. 110-161 specifies that at least \$2,381 million is to be used for detention and removal operations, and \$200 million is to improve and modernize efforts to identify and remove criminal aliens.

In addition, P.L. 110-161 appropriated \$4,688 million for Salaries and Expenses, \$526 million or 13% more than the Administration's request, and \$801 million or 21% more than the FY2007 appropriation. **Table 10** provides activity-level detail for the Salaries and Expenses account.

Table 10. ICE S&E Sub-account Detail
(budget authority in millions of dollars)

Activity	FY07 Enacted	FY08 Request	FY08 House Passed	FY08 Senate Passed	FY08 Enacted	FY2008 Emerg. P.L.11 0-161
HQ & Administration	274	314	299	317	316	4
Legal Proceeding	187	208	208	208	208	—
Investigations - Domestic	1,285	1,372	1,370	1,411	1,422	50
Investigations - International	105	108	108	108	108	—
Investigations Total:	1,390	1,480	1,478	1,519	1,530	50
Intelligence	51	52	52	52	52	—
DRO-Custody Operations	1,382	1,460	1,451	1,606	1,647	186
DRO-Fugitive Operations	183	186	183	195	219	33
DRO - Criminal Alien Program	137	168	180	179	179	—

⁷⁴ Project ALERT was launched by the National Center for Missing and Exploited Children in 1992, and consists of retired law enforcement agents who volunteer to provide assistance, as requested, to law enforcement agencies.

Activity	FY07 Enacted	FY08 Request	FY08 House Passed	FY08 Senate Passed	FY08 Enacted	FY2008 Emerg. P.L.11 0-161
DRO - Alternatives to Detention	44	44	55	44	54	10
DRO Transportation and Removal Program	238	249	249	283	282	33
DRO Total:	1,984	2,107	2,118	2,306^a	2,381	262
Comprehensive Identification and Removal of Criminal Aliens	—	—	—	—	200	200
ICE Salaries and Expenses:	3,887	4,162	4,155	4,402	4,688	516

Sources: DHS FY2008 Congressional Budget Justifications, p. PBO-55, and the conference report (H.Rept. 109-476) to H.R. 5441. The ICE justifications distributed funding for HQ and Administration throughout the agency's other accounts. In order to be more precise, this table presents the HQ and Administration account as specified in the Performance Budget Overview section of the DHS FY2008 Congressional Budget Justifications. Unspecified supplemental from P.L. 109-234 H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Note: Totals may not add due to rounding.

a. This amount does not include an unspecified amount of emergency funding for additional detention beds from the \$3,000 million emergency funding for border security activities included in the bill.

Issues for Congress. ICE is responsible for many divergent activities due to the breath of the civil and criminal violations of law that fall under ICE's jurisdiction. As a result, the allocation of resources in a manner in which to best achieve their mission is a continuous issue. In addition, part of ICE's mission includes locating and removing deportable aliens, which involves determining the appropriate amount of detention space, as well as which aliens should be detained. Another issue is the ability of ICE to identify criminal aliens while they are incarcerated for their criminal activity so that the aliens can be removed prior to being released into the community. Also, there has been debate concerning the extent to which state and local law enforcement should aid ICE with the identification, detention, and removal of deportable aliens.

Office of Investigations/Immigration Functions. The Office of Investigations (OI) in ICE focuses on a broad array of criminal and civil violation affecting national security such as illegal arms exports, financial crimes, commercial fraud, human trafficking, narcotics smuggling, child pornography/exploitation, worksite enforcement, and immigration fraud. ICE special agents also conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation. The Homeland Security Act of 2002 (P.L. 107-296) abolished the INS and the United States Customs Service, and transferred most of their investigative functions to ICE effective March 1, 2003. There are

investigative advantages to combining the INS and Customs Services, as those who violate immigration laws often are engaged in other criminal enterprises (e.g., alien smuggling rings often launder money). Nonetheless, concerns have been raised that not enough resources have been focused on investigating civil violations of immigration law and that ICE resources have been focused on terrorism and the types of investigations performed by the former Customs Service.⁷⁵ For FY2008, Congress appropriated \$1,530 million for OI, while the President's budget requested \$1,480 million. Comparatively, for OI, House-passed H.R. 2638 would have appropriated \$1,478 million and Senate-passed H.R. 2638 would have appropriated \$1,519 million.

Detention and Removal Operations. Detention and Removal Operations (DRO) in ICE provide custody management of aliens who are in removal proceedings or who have been ordered removed from the United States.⁷⁶ DRO is also responsible for ensuring that aliens ordered removed actually depart from the United States. Many contend that DRO does not have enough detention space to house all those who should be detained. A study done by DOJ's Inspector General found that almost 94% of those detained with final orders of removal were deported, whereas only 11% of those not detained, who were issued final orders of removal, left the country.⁷⁷ Concerns have been raised that decisions on which aliens to release and when to release the aliens may be based on the amount of detention space, not on the merits of individual cases, and that the amount of space may vary by area of the country leading to inequities and disparate policies in different geographic areas. The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5204) authorized, subject to appropriations, an increase in DRO bed space of 8,000 beds for each year, FY2006-FY2010. P.L. 110-161 appropriated \$2,381 million for DRO and an additional \$200 million to "improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment, and who may be deportable, and remove them from the United States once they are judged deportable."

The President's budget requested a total of \$2,107 million for DRO, including an additional \$31 million for 600 detention beds and support personnel, and \$10.8 million for transportation for alien removals. Notably, included in the request is an increase in funding for 350 beds and necessary personnel to carry out 287(g) agreements.⁷⁸ House-passed H.R. 2638 would have appropriated \$2,118 for DRO.

⁷⁵ Based on CRS discussions with ICE personnel in New York City, August 27, 2003.

⁷⁶ For more information on detention issues see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin. Under the INA aliens can be removed for reasons of health, criminal status, economic well-being, national security risks, and others that are specifically defined in the act.

⁷⁷ Department of Justice, Office of the Inspector General, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, Report I-2003-004, February 2003.

⁷⁸ 287(g) agreements allow state and local police forces to undertake some immigration law enforcement functions under ICE's supervision. For more information about the 287(g)

(continued...)

Senate-passed H.R. 2638 contained appropriations for detention beds in Title II and in an emergency supplemental that was attached to the bill during floor-debate. Title II of Senate-passed H.R. 2638 would have appropriated \$2,306 for DRO including increases of \$147 million over the Administration's request for 3,050 additional beds. The emergency supplemental included in Senate-passed H.R. 2638 specified that within two years ICE should have the resources to detain 45,000 aliens per day (i.e., 45,000 detention beds), and would have appropriated \$3,000 million for, among other things, the additional detention beds.

Alternatives to Detention. Due to the cost of detaining aliens, and the fact that many non-detained aliens with final orders of removal do not leave the country, there has been interest in developing alternatives to detention for certain types of aliens who do not require a secure detention setting. In 2004, ICE began a pilot program, the Intensive Supervision Appearance Program, for low-risk, nonviolent offenders.⁷⁹ In addition, ICE uses electronic monitoring devices as another alternative to detention. For FY2008, Congress appropriated \$54 million for alternatives to detention, \$1 million less than House-passed H.R. 2638 would have appropriated, and \$10 million more than President's budget request and would have been appropriated by Senate-passed H.R. 2638.

Criminal Alien Program (CAP). Criminal aliens are aliens who have committed crimes that make them removable. The potential pool of removable criminal aliens is in the hundreds of thousands. Some are incarcerated in federal, state, or local facilities, while others are free across the United States, because they have already served their criminal sentences.⁸⁰ DHS' CAP attempts to locate criminal aliens who have been released after serving their criminal sentences so that the aliens can be removed from the United States. In addition, CAP is directed at identifying criminal aliens in federal, state, and local prisons, and assuring that these aliens are taken into ICE custody at the completion of their criminal sentences. Although federal prisons have a system to notify ICE when there is an alien in custody, notification from state and local prisons and jails is not systematic, and many criminal aliens are released after their criminal sentences are completed rather than taken into ICE custody, making it more difficult to locate the aliens for deportation and raising the concern that the released aliens will commit new crimes. Like ICE, INS had historically failed to identify all removable imprisoned aliens.⁸¹ P.L. 110-161 appropriated \$179 million specifically for CAP and an additional \$200 million

⁷⁸ (...continued)

program, please refer to CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Blas Nuñez-Neto, Michael John Garcia, Karma Ester.

⁷⁹ Department of Homeland Security, U.S. Immigration and Customs Enforcement, "Public Security: ICE Unveils New Alternative to Detention," *Inside ICE*, vol. 1, no. 5, June 21, 2004, available at [<http://www.ice.gov>].

⁸⁰ Stana, *Challenges to Implementing the Immigration Interior Enforcement Strategy*, p. 5.

⁸¹ Of 35,318 criminal aliens released between 1994 and 1999, at least 11,605 went on to commit new crimes. See Governmental Accountability Office, *Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Continues to Need Improvement*, GAO/T-GGD-99-47, February 25, 1999.

to improve and modernize efforts to identify and remove criminal aliens. The Act did not specify that the entire \$200 million was for the CAP; however, it can be assumed that at least some of the money will be used to augment this program. The President's FY2008 budget request included \$168 million for CAP. In comparison, for CAP, House-passed H.R. 2638 would have appropriated \$180 million, and Senate-passed H.R. 2638 would have appropriated \$179 million.

State and Local Law Enforcement.⁸² Currently, the INA provides limited avenues for state enforcement of both its *civil* and criminal provisions. One of the broadest grants of authority for state and local immigration enforcement activity stems from INA §287(g), which authorizes the Attorney General to enter into a written agreement with a state, or any political subdivision to allow an officer or employee of the state or subdivision, to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. The enforcement of immigration by state and local officials has sparked debate among many who question what the proper role of state and local law enforcement officials should be in enforcing federal immigration laws. Many have expressed concern over proper training, finite resources at the local level, possible civil rights violations, and the overall impact on communities. Some localities, for example, even provide “sanctuary” for illegal aliens and will generally promote policies that ensure such aliens will not be turned over to federal authorities. Nonetheless, some observers contend that the federal government has scarce resources to enforce immigration law and that state and local law enforcement entities should be utilized. For FY2008 Congress appropriated \$5 million for §287(g) agreements. The President's budget request included an increase of \$26 million to \$78 million for these agreements. Senate-passed H.R. 2638 would have appropriated \$52 million for §287(g) agreements, while House-passed H.R. 2638 would have appropriated \$32 million for the three ICE programs that support State and local law enforcement: (1) Law Enforcement Support Center (LESC); (2) Forensic Document Laboratory (FDL); and (3) 287(g) agreements.

Federal Protective Service.⁸³ The Federal Protective Service (FPS), within ICE, is responsible for the protection and security of federally owned and leased buildings, property, and personnel. It has two primary missions — basic security and building specific security. Basic security functions include daily monitoring of federal building entry and exit points; building specific security includes investigating specific threats to a federal facility or building. In general, FPS focuses on law enforcement and protection of federal facilities from criminal and terrorist threats.

⁸² This section adapted from CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Blas Nuñez-Neto, Michael John Garcia, and Karma Ester.

⁸³ This section authored by Shawn Reese, Government and Finance Division.

President's FY2008 Request. The Administration requested \$613 million in FY2008 for these missions.⁸⁴ With these funds, the Administration planned for FPS to focus on three objectives or tasks: security policy and standards, building security assessments, and agency compliance with security standards.⁸⁵ Currently, FPS utilizes approximately 15,000 contract security guards and 950 uniformed law enforcement officers. Pursuant to the Administration's request, FPS intended to move these uniformed law enforcement officers into other ICE law enforcement offices or reduce the number through attrition.

House-passed H.R. 2638. The House approved legislation would have prohibited the obligation of FY2008 funds for any activity that would have reduced the number of in-service FPS police officers, unless the FPS director provided information to state and local law enforcement agencies that could be affected by the downsizing. Before reducing the number of FPS uniformed personnel, the director must prepare a report on the number and type of cases handled by FPS in the previous two fiscal years, and give copies of the report to officials in jurisdictions with federal buildings protected by FPS. In addition, the House provision requires that the FPS director negotiate a memorandum of agreement with each state and local law enforcement agency that details how security needs identified in the report will be addressed in the future. Finally, the FPS Director would be required to submit a copy of the report and each memorandum of agreement to the House and Senate Committees of Appropriation 15 days prior to the reduction in the number of FPS police officers.⁸⁶ The report accompanying the House-passed legislation further addresses this issue, noting that the reduction in FPS police officers will impose a "significant" burden on state and local law enforcement agencies.⁸⁷

Senate-passed H.R. 2638. The legislation approved by the Senate required that the DHS Secretary ensure that there are not fewer than 1,200 FPS law enforcement officers protecting federal buildings. In addition, the Senate-passed bill stated that the DHS Secretary and the Director of the Office of Management and Budget adjust security fees, paid by federal agencies for FPS security, to ensure full funding for not fewer than 1,200 FPS officers.⁸⁸

FY2008 Enacted (P.L. 110-161, Division E). Division E of FY2008 Consolidated Appropriations Act requires FPS to maintain not fewer than 1,200 full-time equivalent staff and 900 full-time equivalent police officers "directly" engaged

⁸⁴ OMB, *Budget of the US Government, Fiscal Year 2008*, p. 460.

⁸⁵ *U.S. Immigration and Customs Enforcement, Federal Protective Service, Fiscal Year 2008, Congressional Justification*

⁸⁶ House-passed H.R. 2638, Title II.

⁸⁷ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2008*, report to accompany H.R. 2638, 110th Cong., 1st sess., H.Rept. 110-181 (Washington: GPO, 2007), p. 47.

⁸⁸ Senate-passed H.R. 2638, Title II.

protecting and enforcing laws at federal buildings on a daily basis.⁸⁹ As a result, Congress does not support the Administration's decision to reduce the number of FPS uniformed officers through attrition or reassigning them to other ICE offices.

Transportation Security Administration (TSA)⁹⁰

The TSA was created by the Aviation and Transportation Security Act (ATSA, P.L. 107-71), and it was charged with protecting air, land, and rail transportation systems within the United States to ensure the freedom of movement for people and commerce. In 2002, the TSA was transferred to DHS with the passage of the Homeland Security Act (P.L. 107-296). The TSA's responsibilities include protecting the aviation system against terrorist threats, sabotage, and other acts of violence through the deployment of passenger and baggage screeners; detection systems for explosives, weapons, and other contraband; and other security technologies. The TSA also has certain responsibilities for marine and land modes of transportation including assessing the risk of terrorist attacks to all non-aviation transportation assets, including seaports; issuing regulations to improve security; and enforcing these regulations to ensure the protection of these transportation systems. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities. See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 11** for sub-account-level detail for TSA for FY2007 enacted levels and supplemental appropriations and FY2008 amounts specified in the President's request, the House and Senate bills, and the enacted Division E of P.L. 110-161.

President's FY2008 Request. The proposed funding level for the TSA, a gross total of \$6,564 million, comprises roughly 15% of the gross total DHS budget request. The President's FY2008 request estimates about \$2,793 million in offsetting collections, mostly through the collection of airline passenger security fees, yielding at net total requested amount for TSA of \$3,771 million, which is paid for out of the Treasury general fund. In breaking with prior year requests, the President's FY2008 request does not propose any changes to the existing passenger security fee structure. In prior years, the President sought to increase these fees, however the proposed changes to the fee structure failed to garner much support in Congress.

The proposed FY2008 gross funding level for TSA of \$6,564 is roughly comparable to the FY2007 enacted level of \$6,307. Although, notably absent from the requested amount is the \$250 million in mandatory funding for the Aviation Security Capital Fund that provides grants to airports for constructing in-line explosive detection systems (in-line EDS). Authority for this fund was set to expire at the end of FY2007, but a provision to extend authorization of the fund through 2028 was included in P.L. 110-53.

⁸⁹ P.L. 110-161, Div. E, Title II.

⁹⁰ Prepared by Bart Elias, Specialist in Aviation Safety, Security, and Technology, Resources, Science, and Industry Division.

Funding for aviation security, the Federal Air Marshal Service (FAMS), and aviation-related vetting functions comprises roughly 90% of the total proposed TSA budget. Sub-account level amounts in the President's FY2008 request are presented in **Table 11**. Several aviation security activities, including training, human resources, checkpoint support, and airport management and information technology (IT) support, would see a decrease in funding compared to FY2007 enacted levels under the President's proposal. This appears to be part of an effort to trim overhead costs, largely through improved efficiency. On the other hand, the President has proposed notable increases for Explosives Detection System (EDS) and Explosives Trace Detection (ETD) equipment purchase, installation, and maintenance compared to FY2007 enacted levels. This increase was anticipated, as much of the fielded explosives detection equipment has been in service for more than four years and is reaching useful service life requiring additional maintenance and replacement costs to be factored into the budget process. With regard to screener staffing, the President has proposed a net increase of 955 full-time equivalent screeners (roughly a 2% increase in the screener workforce), largely to support a new travel document screening initiative. The President, however, proposes to trim support staff, resulting in a net decrease of about 351 FTEs across all of the TSA.

Under the President's budget proposal, the Transportation Threat Assessment and Credentialing (TTAC) function would almost be doubled compared to FY2007 enacted levels, with the entire amount of the increase, \$38 million, going toward the Secure Flight development effort. Secure Flight, the long delayed program that would establish a centralized, federally operated system for prescreening airline passengers against terrorist watchlists, is now scheduled to become operational in the summer of 2008. Credentialing fee programs would see a notable increase as the Registered Traveler program continues its nationwide expansion in FY2008, and the Transportation Worker Identification Credential (TWIC) program is scheduled to become fully operational at the nation's seaports in FY2008. The President's budget proposes setting funding for surface transportation security at \$47 million, roughly \$10 million above FY2007 enacted levels. The additional proposed funding would be used to hire additional canine teams and inspectors for rail and mass transit. Under the President's proposal funding for Transportation Security Support functions would remain roughly unchanged from FY2007 enacted levels.

Table 11. TSA Gross Budget Authority by Budget Activity
(budget authority in millions of dollars)

Budget Activity	FY2007 Enacted	FY2007 Supp.	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.110-161
Aviation Security	4,732 ^a	397	5,042	5,199	5,043	4,809	—
Screening Partnership Program (SPP)	149	—	143	147	143	143	—
Passenger & Baggage Screening (PC&B)	2,470	—	2,638	2,589	2,601	2,636	—

Budget Activity	FY2007 Enacted	FY2007 Supp.	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.110- 161
Screening Training & Other	244	—	224	200	200	224	—
Human Resource Services	207	—	182	182	182	182	—
Checkpoint Support	173	25	136	250	136	—	—
EDS/ETD Purchase	141	—	181	—	—	—	—
EDS/ETD Installation	138	—	259	—	—	—	—
EDS/ETD Installation/Purchase	—	285	—	560	529	294	—
EDS/ETD Maintenance and Utilities	222	—	264	264	257	264	—
Operation Integration	23	—	25	25	25	25	—
Regulation and Other Enforcement	218	—	253	224	227	256	—
Airport Management, IT, and Support	666	—	656	652	646	652	—
FFDO & Crew Training	25	—	25	28	25	25	—
Air Cargo Security	55	80	56	73	66	73	—
Airport Perimeter Security	—	—	—	4	4	4	—
Transfer per P.L. 110-5 Sec. 21101	—	7	—	—	—	—	—
Implementing P.L. 110-52	—	—	—	—	—	30	—
Adjustment - S.Amdt. 2461^b	—	—	—	—	3	—	—
Aviation Security Capital Fund	250	—	—	—	—	250	—
Checkpoint Screening Security Fund	—	—	—	—	—	250	—
Federal Air Marshal Service (FAMS)	714	5^d	770	722	722	770	—
Management and Administration	628	—	674	644	644	674	—
Travel and Training	86	—	78	78	78	95	—

Budget Activity	FY2007 Enacted	FY2007 Supp.	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.110- 161
Air-To-Ground Communication	—	—	—	—	—	—	—
Threat Assessment and Credentialing	40	—	98	64	67	83	—
Secure Flight	15	—	74	40	28	50	—
Crew Vetting	15	—	15	15	15	15	—
Other/ TTAC Admin. & Ops.	10	—	10	10	10	10	—
TWIC Appropriation	—	—	—	—	15	8	—
Credentialing Fees	76	—	83	83	83	83	—
Registered Traveler Program Fees	35	—	35	35	35	35	—
TWIC Fees	20	—	27	27	27	27	—
Alien Flight School Fee	2	—	2	2	2	2	—
HAZMAT Commercial Driver Fees	19	—	19	19	19	19	—
Surface Transportation Security	37	—	47	41	41	47	—
Operations and Staffing	24	—	24	24	24	24	—
Rail Security Inspectors and Canines	13	—	22	17	17	22	—
HAZMAT Truck Tracking and Training	—	—	—	—	—	—	—
Transportation Security Support	525	—	525	527	522	524	—
Intelligence	21	—	21	21	21	21	—
Headquarters Administration	294	—	294	296	294	293	—
Information Technology	210	—	209	209	209	209	—
Research and Development ^c	—	—	—	—	—	—	—

Budget Activity	FY2007 Enacted	FY2007 Supp.	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L. 110-161
Adjustment - S. Amdt 2461 ^b	—	—	—	—	-3	—	—
TSA Subtotal	6,374	402	6,564	6,636	6,478	6,814	—
Rescission	-67	—	—	—	—	—	—
TSA Total:	6,307	402	6,564	6,636	6,478	6,814	—

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: Subtotals do not sum to functional area totals and TSA total due to rounding. PC&B: Personnel Compensation and Benefits; EDS: Explosive Detection Systems; ETD: Explosive Trace Detection equipment; IT: Information Technology; FFDO: Federal Flight Deck Officer program; DCA: Washington Reagan National Airport; TWIC: Transportation Worker Identification Credential; HAZMAT: Hazardous Materials.

- a. *Does not* include a \$7 million transfer to Aviation Security provided by P.L. 110-5, nor does the amount include \$390 million in supplemental appropriations provided by P.L. 110-28. In contrast, both H.Rept. 110-181 and S.Rept. 110-84 include the \$7 million transfer (but not the \$390 million in supplemental appropriations) yielding a total FY2007 appropriation for aviation security of \$4,739 that is reported in those documents, \$7 million more than the amount shown on this table. Of this \$7 million, \$2 million was transferred from the Secure Flight program. However, in contrast to references in H.Rept. 110-181 and S.Rept. 110-84, the above table does not indicate this \$2 million reduction in the FY2007 appropriation for Secure Flight.
- b. S.Amdt. 2461, as modified, increases funding for Aviation Security by \$3 million and decreases funding for Transportation Security Support by \$3 million. While debate over the amendment indicated that this money was intended for the "Law Enforcement Officer Reimbursement Program," its impact on specific sub-accounts was not specified. This function would fall under Regulation and Other Enforcement in this table. However, the amount shown in this table for this sub-account has not been adjusted from that specified in S.Rept. 110-84.
- c. Transportation Security Research and Development was moved to the Science and Technology Directorate in FY2006.
- d. P.L. 110-28 required the DHS to provide the appropriations committees a report detailing how these additional funds would be allocated within 30 days of enactment. No allocation to FAMS sub-accounts is shown in this table.

House-passed H.R. 2638. The House bill would provide \$6,636 million for the TSA, with \$5,199 million (78%) designated for aviation security programs. Total TSA funding specified in the House bill is \$235 million more than the Administration request and \$329 million above FY2007 enacted levels, not including FY2007 supplemental funding appropriated in P.L. 110-28 or transfers included in P.L. 110-5.

Aviation security funding specified in the House bill is \$246 million (5%) more than the Administration request, and \$467 million (almost 10%) above the FY2007 enacted levels, not including supplemental funding and transfers. The increased funding above the requested amount is primarily designated for procurement and installation of explosives detection equipment for checked baggage screening,

procurement of screening technologies for passenger checkpoints, and additional canine teams and inspectors for air cargo security. These three programs remain high priorities and each also received supplemental appropriations for FY2007 included in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (P.L. 110-28).

A total of \$560 million is specified for procurement and installation of explosives detection equipment, \$120 million (27%) above the Administration request. While this represents a sizable increase, it should be noted that this, in part, reflects the fact that appropriations measures have assumed that of the authorization of the Aviation Security Capital Fund, set to expire at the end of FY2007, would not be reauthorized. That fund has provided for an additional \$250 million annually in mandatory spending to provide airports with grants to airports for accommodating explosives detection equipment. While appropriations debate has proceeded under the assumption that this fund would not be authorized in FY2008, a provision in P.L. 110-53 extended authorization of the Aviation Security Capital Fund through 2028.

Based on studies of checked baggage explosives detection screening over the next 20 years, the House report (H.Rept. 110-181) expresses considerable concern over the ability to meet long-term spending needs for EDS refurbishing and replacement, next-generation EDS deployment, and modifications to airport infrastructure to accommodate checked baggage screening equipment and operations. The additional funds for EDS procurement and installation specified in the House bill are intended to expedite EDS deployment among all airports, replace aging explosives trace detection (ETD) machines at larger airports, and deploy new ETD machines at any newly federalized small airports and heliports. The House report urges the TSA to further explore consolidating checkpoint and checked baggage screening at smaller airports as a means for improving screening efficiency.

The House bill also specifies \$250 million for checkpoint support, \$114 million (84%) above the requested amount, to pilot testing and deployment of advanced checkpoint technologies such as: whole body imaging systems; liquid explosives detectors; and automated explosives detection systems. The additional funding would also support any additional checkpoint infrastructure requirements to carry out a pilot program for screening airport workers at up to seven airports. Under screener workforce funding, the bill also adds an additional \$5 million for labor costs associated with this pilot. The total appropriation for the screener workforce is, nonetheless, slightly less than the Administration request reflecting partial funding of the requests for travel document checker and behavior detection screener initiatives. The bill, however, lifts the longstanding cap of 45,000 full-time equivalent screeners, although a minority view printed in the House report expressed concern that without the cap "TSA will go back to its old ways of solving screener problems by simply adding more people — a very short-sighted and costly solution."⁹¹ With regard to private, non-TSA screening, the bill provides roughly \$3 million above the requested amount to implement private screening to small airports and heliports that start up commercial air service.

⁹¹ H.Rept. 110-181, p. 197.

The bill provides \$73 million for air cargo security, \$17 million above the President's request. The additional funding is designated for deployment of additional canine teams and air cargo security inspectors. Additionally, the bill includes a general provision (Sec. 516) that would require a doubling of the percent of air cargo screened. The bill also provides \$4 million for airport perimeter security, a program element that was not funded in the President's request.

The Secure Flight program for prescreening passengers against government terrorist watchlists would be funded at \$28 million below the President's request under the House bill, reflecting frustration over the lack of a complete cost estimate for system development and testing, and the prospect that operational testing could slip from FY2008 until early FY2009. The bill continues the longstanding requirement for GAO oversight and DHS certification that specified operational requirements regarding data retention, data security, privacy, and mechanisms for redress are met prior to implementing the system on other than a test basis. The provision also prohibits the use of commercial data or algorithms to evaluate the risk of passengers whose names are not included on any government terrorist watch lists. If the system does not check airline passenger names against the full terrorist watchlist, the bill would require the Assistant Secretary for Transportation Security to certify that checking passengers against a subset of this list does not raise any security risks. All other Transportation Threat Assessment and Credentialing (TTAC) programs would be funded at the levels specified in the President's request. The House bill also provides funding for surface transportation security and the Federal Air Marshal Service at the requested levels and funds the TSA's Transportation Security Support functions at a level roughly equal to the President's request.

Senate-Passed H.R. 2638. The Senate-passed bill provides a total of \$6,478 million to the TSA for FY2008, \$171 million (2.7%) above FY2007 enacted levels excluding supplemental appropriations and transfers, and \$86 million (1%) more than the President's request.

For aviation security, the Senate bill specifies \$5,043 million, \$9 million (about the same) more than the President's request, but \$156 million less than the House bill. Like the House bill, the Senate bill seeks additional funding for explosives detection capabilities for checked baggage and reduced funding for the Secure Flight program. However, the Senate bill does not include the additional funding sought in the House bill for the deployment of checkpoint screening technologies.

Specifically, the Senate bill specifies \$529 million for explosives detection equipment purchase and installation, \$89 million more than the President's request but \$31 million below the amount specified in the House bill. The Senate bill would consolidate maintenance costs for baggage and checkpoint screening technologies as requested in the President's request. However, citing slow procurement decisions and large unobligated balances for acquisition of emerging passenger screening systems and related maintenance costs, the Senate bill would provide \$7 million less than the President's request for screening technologies maintenance and utilities. While the Senate committee noted the persisting threat posed by explosives carried by passengers, it expressed deep concern over the TSA's failure to submit a strategy

for deployment of checkpoint screening technologies as directed by the conference report accompanying last years appropriations act (H.Rept. 109-699) and the large unobligated balance of appropriations for checkpoint technologies. The Senate report (S.Rept. 110-84) funds checkpoint support functions, which includes funding for checkpoint technologies, at the requested funding level, \$114 million less than the amount passed by the House, and withholds \$20 million from TSA's headquarters spending until the Committee receives the strategic plan for checkpoint screening technology deployment.

The Senate committee report specifies that \$15 million of the amount appropriated for screening operations is to be made available for carrying out a pilot test to study various methods for screening airport employees. The report also makes \$59 million available for workers compensation payments, almost \$4 million above last years amount despite concerted efforts by the TSA to reduce costs associated with work-related injuries. The Senate bill would fund screener training at the requested level of \$200 million, \$44 million below FY2007 enacted levels, and directs the TSA to provide a detailed report on its behavioral screening initiatives which it intends to expand to all airports in FY2008, but has provided limited information on to date.

The Senate bill specifies \$66 million for air cargo security, \$10 million above the President's request, but \$7 million below the amount specified in the House bill. These funds, along with the additional \$80 million in FY2007 supplemental funding specified for air cargo security, are intended to be used for deploying additional canine teams, hiring additional cargo inspectors, and procuring cargo screening technologies. The Senate report instructs the TSA to complete the air cargo vulnerability assessments of Category X airports, funded through FY2007 supplemental funding, by March 1, 2008, and develop an action plan for inbound international air cargo addressing recommendations made by the GAO no later than February 5, 2008. Like the House bill, the Senate bill includes a \$4 million appropriation amount for carrying out airport perimeter security pilot programs that was not included in the President's request. An amendment approved by the Senate (S.Amdt. 2461) would shift \$3 million from Transportation Security Support to Aviation Security to provide increased funding for law enforcement reimbursable agreements that provide state and local law enforcement presence at passenger screening checkpoints.

The Senate bill specifies \$28 million for the Secure Flight program, \$3 million more than the amount specified in the House bill, but \$25 million less than the President's request. Like the House, the Senate report describes continued frustration with the TSA's inability "to fully articulate the goals, objectives, and requirements for the program" despite 18 months of "rebaselining" the program and years of work to develop a passenger prescreening system. However, the Senate bill includes a provision that would give the TSA authority to transfer the additional \$25 million sought, if the TSA can demonstrate significant improvement in the program, supported by the findings of an ongoing GAO review. Like the House bill, the Senate bill would keep in force the longstanding stipulation that Secure Flight may not be deployed for any purpose other than system testing until the GAO finds that all issues identified in legislation regarding the program have been adequately addressed, and it prohibits the use of commercial databases for vetting airline

passengers. All other Transportation Threat Assessment and Credentialing (TTAC) programs would be funded at the levels specified in the President's request. The Senate bill also matches the amounts specified in the President's request for surface transportation security and transportation security support.

FY2008 Enacted (P.L. 110-161, Division E). Division E of P.L. 110-161 provides \$6,814 million dollars for the TSA, \$413 million more than the President's request and \$112 million above enacted base and supplemental appropriations made in FY2007.

FY2008 appropriations for aviation security total \$4,809 million, which is below both the House-passed and Senate-passed bills. However, those bills did not consider the additional \$250 million in nondiscretionary deposits from passenger security fees to the Checkpoint Screening Security Fund, established under P.L. 110-53. Nor did the original bills consider the reauthorization of Aviation Security Capital Fund, at its nondiscretionary funding level of \$250 million, also from passenger security fees. Adding these sums to discretionary appropriations provided in the Act yields a total of \$5,309 million, which is a slight decrease in funding compared with FY2007 base and supplemental appropriations for aviation security, plus the \$250 million placed in the Aviation Security Capital Fund, which totaled \$5,372 million. The FY2008 appropriations, however, provided the Federal Air Marshal Service (FAMS) with \$770 million, \$56 million more than the FY2007 enacted level, and \$48 million more than the amount specified in the President's request and passed by both the House and the Senate.

Differences in amounts specified for specific budget activities for aviation security compared with the House-passed and Senate-passed bills largely reflect budgetary shifts created by the reauthorization of the Aviation Security Capital Fund and the creation of the Checkpoint Screening Security Fund. Specifically, EDS/ETD installation and purchase received an appropriation of \$294 million, \$266 million less than the House-passed amount and \$235 million less than the Senate-passed amount. This, combined with the \$250 million in collections to be deposited into the Aviation Security Capital Fund, yields a total of \$544 million, which represents a rough compromise between the House-passed and Senate-passed funding levels rather than a sizable budget cut. Similarly, to account for the creation of the Checkpoint Screening Security Fund, Division E of P.L. 110-161 eliminated funding for the Checkpoint Support activity, which the House had proposed to fund at the same level this fund provides for (i.e., \$250 million), whereas the President's request and the Senate had both specified \$136 million for this activity. Thus, the net result on the TSA's budget for checkpoint-related technologies is in line with the House-passed funding amount. The FY2008 appropriations measure provides for slightly higher amounts for screener PC&B and training, largely to support additional hiring and training of Behavioral Detection Officers (BDOs), travel document checkers, and bomb appraisal officers (BAOs).

Air cargo security funding was increased to \$73 million, in line with the House-passed amount. The increase is for additional canine teams, inspectors, development of a certified shipper program, and continued development of cargo screening technologies to meet the requirements of P.L. 110-53 for cargo screening. A general

provision of the Act directs the DHS to research and develop screening methods for cargo, and in the interim, utilize existing checked baggage explosives detection equipment to the greatest extent practicable for screening cargo. The provision also directs the TSA to work with air carriers and airports to increase the proportion of cargo that is screened each quarter and report to Congress on the progress being made. An additional \$30 million was also appropriated for implementing other requirements set forth in P.L. 110-53. This money is to be used to fund a wide array of mandated aviation and surface transportation security activities. With regard to surface transportation security, in general, enacted amounts were identical to those specified in the President's request and passed by both the House and the Senate.

Division E of P.L. 110-161 also included several general provisions related to transportation security. Notably, section 513 continues a longstanding appropriations requirement specifying that the DHS must certify, and the GAO must report to Congress, that all conditions pertaining to privacy protection, data security, and redress have been adequately addressed before Secure Flight or any other successor prescreening program is implemented, other than on a test basis. TSA has indicated that it will finalize plans to implement Secure Flight in FY2008, prompting additional appropriations for this program. Whereas the House and Senate had passed amounts of \$25 and \$28 million, respectively, the enacted appropriation for Secure Flight was set at \$50 million, roughly in line with the President's request. Section 521 specifies that any prior year funds for aviation security that are deobligated or recovered shall be available solely for the purpose of procuring and installing explosives detection systems for checked baggage, carry-ons, or air cargo. Section 542 establishes civil penalties for airport vendors and contractors that fail to collect airport security badges from terminated employees. Section 565 requires the DHS to establish an international registered traveler program within two years. The international registered traveler program is to incorporate technologies such as biometrics and e-passports along with security threat assessments, and it is to complement U.S. VISIT and the Visa Waiver Program. Section 568 appears to have the effect of eliminating the TSA's current acquisition management system, which was based on FAA acquisition management, within six months, bringing the TSA in line with DHS-wide acquisition management regulations and practices. Also, Section 571 specifies that, within 90-days after enactment, participants in the Registered Traveler (RT) program may satisfy checkpoint identification requirements by presenting their biometric RT card in lieu of providing government-issued photo identification. The TSA has required photo identification for RT participants and has indicated to vendors its desire to include photographs on RT cards issued in the future for checkpoint identification purposes.

TSA Issues for Congress. Identified issues for the TSA in the context of the FY2008 appropriations process center primarily on aviation security including screener workforce issues, screening technology, and air cargo security. Additionally, the planned nationwide roll-out of the TWIC program at seaports in FY2008 will likely also be an issue of considerable interest. Other issues have emerged during the FY2008 appropriations debate as the Administration has raised concerns over bill language that would cut funding for the Secure Flight program and would subject TSA decisions regarding airline security fee collections to judicial

review. These provisions, however, were not included in the FY2008 enacted appropriations.

Screeners Workforce Issues. In the past, the total number of full-time equivalent TSOs has been statutorily capped at 45,000 through specific appropriations language. A GAO assessment of the TSA's screener staffing allocation methodology among commercial passenger airports found that the TSA's underlying assumptions should be reassessed.⁹² In particular, the GAO found that many medium and smaller sized airports were staffed at levels either above or below the allocation specified by the staffing methodology. However, at small and medium sized airports, average peak-period passenger wait times in screening queues have consistently met the goal of 10 minutes or less. While the GAO found that all but one major (Category X) airport was staffed at levels consistent with the screener allocation methodology, the average passenger wait times at these airports (12.6 minutes in FY2006) exceeded the target of 10 minutes or less. Among other large airports (Category I), screener staffing was found to be in line with the staffing model at almost 80% of the airports, and average passenger wait times (10.4 minutes in FY2006) were found to be just slightly above the 10-minute target. Observations from these findings include the difficulty in predicting staffing needs at smaller and medium sized airports, where changes in air carrier flight schedules can have a more pronounced impact on screener staffing, and the possible need to more closely examine the persisting difficulties in achieving passenger wait time targets at large airports, particularly among the busiest airports in the country. The joint explanatory statement accompanying Division E of P.L. 110-161 directs the TSA to submit quarterly wait time data for all airports with "above average wait times" and for the 40 busiest airports. In these reports, the TSA is to explain any significant changes in wait times at airports.

While the President's FY2008 budget proposed to eliminate the 45,000 FTE cap for TSOs and add 955 additional screeners, this increase will support the new travel document screening initiative and is not expected to address staffing imbalances or passenger wait time issues. During the FY2008 appropriations debate, screener staffing needs to address these issues may be a topic of particular interest. While neither the House nor the Senate bills retain the longstanding screener cap, a minority view printed in House Rept. 110-181 questioned the removal of this cap, voicing concern that it would lead to poor strategic planning by hiring screeners rather than focusing on technology approaches to streamline screening procedures that could reduce manpower needs. A provision in the Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53) explicitly removes the cap and directs the TSA to hire as many personnel as determined necessary to enhance security and reduce passenger wait times to under 10 minutes.

In addition to screener staffing, workers compensation continues to be a significant expense for the TSA despite initiatives aimed at prevention and intervention strategies to reduce and mitigate workplace injuries. Anticipated costs

⁹² U.S. Government Accountability Office, *TSA's Staffing Allocation Model Is Useful for Allocating Staff among Airports, but Its Assumptions Should Be Systematically Reassessed*, GAO-07-299, February 2007.

of worker compensation claims account for \$59 million (about 2.3%) of the FY2008 Passenger & Baggage Screening (PC&B) amount. Thus, examining the effectiveness of the TSA's initiatives to address workplace injuries may be an issue of particular interest to appropriators. The Senate report (S.Rept. 110-84) specifically identified \$59 million for workers compensation benefits for FY2008, and requests committee briefings on how the TSA's proposed strategies will mitigate on-the-job injuries and associated costs. The final appropriations measure and accompanying joint explanatory statement, however, did not specifically address this issue.

Provisions in original House-passed and Senate-passed versions of the Implementing the 9/11 Commission Recommendations Act of 2007 (H.R. 1) would have placed TSA screeners under the same personnel management system as all other TSA employees, thereby extending to TSA screeners the right to collective bargaining. These provisions, however, were excluded from the Conference Report on the bill (H.Rept. 110-259), which became P.L. 110-53. When the TSA was established in 2001, the Aviation and Transportation Security Act (ATSA, P.L. 107-71) gave the TSA Administrator discretion to implement an alternate personnel system for screeners, which has, to date, barred screeners from collective bargaining. TSA Administrator Kip Hawley had cautioned that the direct cost to the TSA to set up a collective bargaining program for TSA screeners would be \$160 million.⁹³

TSA's application of its performance-based accountability and standards system for employees has been another ongoing issue. In 2006, the TSA initiated a performance-based management system, and under this system compensates screeners and other employees, in part, based on factors related to performance, technical proficiency, level of training and development, and other indicators of job performance.⁹⁴ Senate-passed H.R. 2638 includes a provision that would require the TSA to submit a report to the congressional appropriations and oversight committees that examines performance ratings and pay increases for all positions covered under this system comparing performance and pay increases between managers and non-managers and providing data on attrition among employees covered under this system. This language was not included in Division E of P.L. 110-161.

The President's FY2008 budget estimates fee collections of about \$35 million for the Registered Traveler program's continuation of its initial pilot phase at 10 to 20 airports, with the possibility of nationwide implementation sometime in FY2008 or later. A provision in Senate-passed H.R. 2638 that was included in Division E of P.L. 110-161 (see Section 571) establishes an international registered traveler program, coordinated with the US-VISIT and Visa Waiver programs, that, like the domestic program would be offset by participant fees. Also, the TSA anticipates initial operational deployment of the long delayed Secure Flight program in the summer of 2008. Appropriated funding specified in P.L. 110-161, which is in line with the President's request and well above the House-passed and Senate-passed

⁹³ Thomas Frank, "TSA Union Fight Threatens Anti-terror Bill", *USA Today*, February 28, 2007.

⁹⁴ United States Department of Homeland Security, Transportation Security Administration. Statement of Kip Hawley, Assistant Secretary, Before the Committee on Commerce, Science, and Transportation, United States Senate, January 17, 2006.

amounts, reflect that this milestone is anticipated and funds have been designated accordingly. Meanwhile, the TSA has indicated that it is culling the lists it currently provides to airlines for passenger prescreening to reduce false matches. While all of these initiatives could have an impact on reducing the burden on TSA screening resources, particularly resources dedicated to secondary screening of passengers, evaluating the impact of these initiatives may be an issue of particular interest to appropriators with regard to how they impact appropriations needs for screening resources.

Screening Technologies. Most of the currently deployed baggage explosives detection systems, deployed in the 2002 and 2003 time frame, have been in service for several years and are not as capable as newer, next generation (NextGen) equipment with regard to baggage throughput and explosives detection capability. The TSA is facing an ongoing challenge with regard to maintaining and extending the service life of existing equipment and phasing in replacement next generation systems. In 2006, the TSA developed an Electronic Baggage Screening Program (EBSP) Strategic Plan to optimize screening solutions at the 250 busiest airports with the goal of decreasing life cycle costs for baggage screening technologies. Faced with escalating maintenance costs for baggage screening systems, the effectiveness of this plan and its implementation may be an issue of particular interest for appropriators. Both the House and Senate bills would increase funding for explosives detection equipment procurement and installation above the requested levels. The reauthorization of the Aviation Security Capital Fund and its nondiscretionary funding of \$250 million combined with a discretionary appropriation of \$294 million for EDS and ETD purchase and installation provides a total of \$544 million for the deployment of explosives detection systems. This is \$114 million above the \$440 million for these activities specified in the President's request.

In addition to baggage screening technologies, the TSA is engaged in field testing a host of emerging passenger checkpoint screening technologies designed to improve throughput and address new and emerging security threats. Technologies that are currently being evaluated include advanced x-ray and automated explosives detection systems for carry-on bags; whole body imaging; explosive trace detection portal machines; cast and prosthetic device scanners; and bottled liquid scanners. The effectiveness of these various technologies and how they fit into the TSA's overall strategy for deploying passenger checkpoint technologies may be an issue of particular interest during the FY2008 DHS appropriations debate. While the House bill includes additional funding for checkpoint technologies, the Senate bill would fund this activity at the requested level. The creation of the Checkpoint Screening Security Fund established a nondiscretionary funding source, providing \$250 million for checkpoint screening technologies. This amount was equal to the House-passed amount for checkpoint support. In recognition of this new funding source, a separate funding amount for checkpoint support was not included in Division E of P.L. 110-161.

Division E of P.L. 110-161 also includes a provision, adopted from the Senate-passed bill, that eliminates the statutory framework that has kept TSA acquisition practices under a set of special rules initially set up for the FAA. While the current TSA acquisition system offers greater flexibility than the general federal acquisition

regulations, the rest of DHS currently operates under a separate contracting system. This provision would provide for commonality among acquisition procedures and practices across all of DHS.⁹⁵ This new system would apply to all technology acquisition including screening technologies for passengers, baggage, and cargo, as well as other service and support contracts with the TSA.

Air Cargo Security. At present, the TSA's air cargo security program consists of 325 FTE air cargo security inspectors responsible for ensuring compliance with security regulations throughout the air cargo supply chain. Further, security threat assessments of cargo workers in the cargo supply chain is administered as a fee program (the indirect air cargo fee), and the TSA levies a \$28 charge per assessment. The air cargo security model is predicated on a risk-based system that relies heavily on the industry-wide known shipper program. In FY2008, the TSA anticipates deployment of an Air Cargo Risk Based Targeting (ACRBT) program that will build upon the known shipper program by including freight forwarder management information, a risk-based freight assessment system, and a certified shipper program. Implementation of this initiative may be an issue of particular interest for the appropriations debate.

A provision in P.L. 110-53 requires the TSA to phase-in physical inspections of all cargo placed on passenger airplanes. Under this provision, 50% of all cargo placed on passenger airplanes would have to be inspected within 18 months and 100% of such cargo would have to be inspected within three years of enactment. It is unclear how such a mandate would specifically impact appropriations. This is because the provision does not specifically indicate whether the screening would be a federal function or whether it would be carried out by the airlines as is currently the practice for those cargo items currently inspected. Critics of this measure have argued that the explosives detection technologies needed to meet such a mandate are not yet available. Thus, additional appropriations may be needed to accelerate technology development if this proposal is enacted. Both the House and Senate bills include increased funding for air cargo security activities above the requested amounts. These funds are intended for deploying additional canine units for screening air cargo and increasing the number of air cargo security regulatory compliance inspectors in addition to continued deployment and testing of new air cargo screening technologies.

A general provision in the House bill (Sec. 516) would require a doubling of the amount of cargo placed on passenger aircraft that undergoes inspection. The Administration strongly opposes this provision stating that this objective "...is not achievable with the resources provided and would adversely affect the flow of commerce."⁹⁶ While this specific language was not included in the enacted appropriations measures, Division E of P.L. 110-161 includes a general provision that directs the TSA to work with air carriers and airports to increase the proportion of cargo that is screened each quarter, and report to Congress on the progress being

⁹⁵ Elizabeth Newell, "Senators Seek to Hold TSA to Standard Acquisition Rules," *Government Executive.com*, July 26, 2007.

⁹⁶ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 2638*, June 12, 2007, p. 4.

made. The provision also calls on the DHS to sponsor research and development of screening methods for cargo, and in the interim, to utilize existing checked baggage explosives detection equipment for screening of cargo to the greatest extent practicable.

TWIC Program Roll-Out. On January 25, 2007, TSA issued a final rule implementing the Transportation Worker Identification Credential (TWIC) program for seaport workers.⁹⁷ The TSA began the implementation of TWIC at the Port of Wilmington, DE in October 2007 and as of January 2008, enrollment has begun at 54 ports. Seaport workers will pay a fee of about \$132 to apply for a card which will be valid for five years. Vessel and port facility owners will have to provide card readers after a pilot program is conducted to test the best type of card reader to use. Anticipating full implementation of the TWIC program at U.S. seaports by FY2008, the President's budget expects fee collections to total roughly \$27 million in FY2008, compared to estimated collections of about \$10 million in FY2007. The TSA is also seeking comment on the use of a TWIC card in all modes of transportation. The scope of the program and its application to other transportation modes may be an issue of particular interest during the DHS FY2008 appropriations debate. Expressing concern over progress on the TWIC program and expecting that delays will not permit the program to be self-sustaining based on FY2008 fee collections alone, the House bill includes a \$15 million direct appropriation to be used for carrying out a pilot program to test TWIC card readers at maritime facilities as mandated in the SAFE Ports Act (P.L. 109-347). The Senate bill includes a provision prohibiting the use of FY2008 funds to remove any of the criminal offenses that would disqualify an individual from obtaining a TWIC card that were included in the Implementing the 9/11 Commission Act of 2007 (P.L. 110-53). The Senate bill also includes a provision that would require the TSA to resolve differences with the State of Florida which has already implemented an access control program at Florida seaports (see Senate-passed H.R. 2638, sections 544 and 565). Division E of P.L. 110-161 provides a direct appropriation of \$8 million to cover the proposed local cost share (25%) for the ports participating in the card reader test pilot and for program evaluation. Division E of the Act also directs TSA to resolve differences with the State of Florida or other states that have existing port worker ID programs and does not include the provision in the Senate bill that would have prohibited TSA from modifying the list of criminal offenses disqualifying an applicant from obtaining a card.

Secure Flight. The long delayed and highly controversial initiatives to develop a system for government prescreening of airline passengers against terrorist watchlists remains at issue. The Administration has long maintained that the requirement for GAO review and certification of the Secure Flight system constitutes a "legislative veto" of administration decisions and actions and therefore, in the Administration's view, violates the constitutional framework of separation of powers.⁹⁸ The OMB has also voiced concerns in the current appropriations debate

⁹⁷ See *Federal Register*, vol. 72, no. 16, pp. 3492-3604.

⁹⁸ See, e.g., President George W. Bush, *Statement on H.R. 4567, the Department of Homeland Security Appropriations Act, 2005*, White House Office of the Press Secretary, (continued...)

that cuts to the program included in both the House and Senate bills could further delay the program beyond a target deployment of sometime in 2010.⁹⁹ Division E of P.L. 110-161 provides \$50 million for Secure Flight, roughly in line with the President's request of \$53 million. This amount assumes initial deployment of the system in FY2008. The Act, however, also includes a general provision keeping in force the restrictions on deploying Secure Flight or any other follow-on prescreening system until the DHS certifies, and the GAO reports to Congress, that specific issues regarding privacy protection, data security and integrity, and redress procedures have been adequately addressed.

Judicial Review of Airline Security Fees. In addition to passenger security fees charged, airlines are assessed direct fees for aviation security. At present the TSA has final authority in setting these fees and allocating fees among the various carriers, provided that the total fee collections do not exceed what all passenger airlines combined paid for privately-run security screening of passengers and property in calendar year 2000. Through FY2004, there were also per carrier limits that prevented any single carrier from paying more in fees that what it had spent on screening in calendar year 2000, but these limits no longer apply. Thus the TSA serves as the final authority for determining the proportion of total airline security fee collections, and, by statute, the TSA's determinations are not subject to judicial review. A provision in the House bill (Sec. 539), however, would strike the provision in existing statute that exempts these TSA's setting of these fees from judicial review, allowing airlines to challenge the TSA's fee determination methods in court. The Administration has voiced strong opposition to this provision expressing concern that this would undermine the intent of the statute to allow the TSA to adjust airline security fees to reflect current market share, and would prolong the fee collection process during judicial review.¹⁰⁰ Division E of P.L. 110-161 in general keeps the restriction preventing judicial review of most aviation security fees intact. However, Section 540 of the Act specifies that the additional sums collected from airlines based on a methodology involving GAO determination of air carrier underpayments of prior year Aviation Security Infrastructure Fee (ASIF) amounts, as called for by the 2005 DHS Appropriations Act (P.L. 108-334), are not explicitly exempt from judicial review.

United States Coast Guard¹⁰¹

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is the lead agency responsible for the security of U.S. ports, coastal and inland waterways, and territorial waters. The Coast Guard also

⁹⁸ (...continued)

Washington, DC. October 18, 2004.

⁹⁹ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 2638*, June 12, 2007.

¹⁰⁰ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 2638*, June 12, 2007.

¹⁰¹ Prepared by John Frittelli, Specialist in Transportation, Resources, Science and Industry Division.

performs missions that are not related to homeland security, such as maritime search and rescue, marine environmental protection, fisheries enforcement, and aids to navigation. The Coast Guard was transferred from the Department of Transportation to the DHS on March 1, 2003. The law that created the DHS (P.L. 107-296) directed that the Coast Guard be maintained as a distinct entity within the DHS and that the Commandant of the Coast Guard report directly to the Secretary of DHS.

President's FY2008 Request. For FY2008, the President requested a total of \$8,457 million in net budget authority for the Coast Guard, which is about a 2% increase over the FY2007 enacted level. The President requested \$5,894 million for operating expenses (an increase of 8% over FY2007), \$949 million for acquisition, construction, and improvements (a decrease of 27% from FY2007 enacted level), \$127 million for reserve training (an increase of 4% over FY2007), \$18 million for research, development, tests, and evaluation (an increase of 6% from FY2007), \$12 million for environmental compliance and restoration (an increase of 9% from FY2007), and zero funding for the bridge alteration program which the President proposes transferring to the Maritime Administration in the Department of Transportation. The President also requested \$223 million in FY2008 supplemental funding for the Coast Guard to support its operations in providing security for U.S. Navy vessels, facilities, and port operations in Iraq.¹⁰² **Table 12** provides more detail regarding the Coast Guard's Operating Expenses (OE) account and its Acquisition, Construction, and Improvements (ACI) account. Under the ACI account, the President proposes transferring the funding of the personnel that administer ACI contracts (\$81 million and 652 FTEs) to the OE account.

House-Passed H.R. 2638. H.R. 2638 provided a total of \$8,352 million in net budget authority for the Coast Guard, which is \$102 million less than the President requested. This total included \$5,885 million in operating expenses which is \$9 million less than the President requested and \$834 million in acquisition, construction, and improvements, which is \$115 million less than the President requested. The House provided \$16 million for the bridge alteration program versus the President's request for zero funds.

The House denied the President's request to transfer ACI personnel funding to the OE account, contending that acquisition staffing levels can better be tracked in the ACI account.¹⁰³

Senate-Passed H.R. 2638. The Senate provided \$8,559 million for the Coast Guard which is \$102 million more than the President requested. This total included \$5,931 million in operating expenses which is \$37 million more than the President requested and \$991 million for acquisition, construction, and improvements which is \$42 million more than the President requested. The Senate Committee provided \$16 million for the bridge alteration program versus the President's request for zero funds. The Senate provided \$26 million for research, development, tests, and evaluation versus the President's request for \$18 million.

¹⁰² *The Budget for Fiscal Year 2008 — Appendix*, p. 1164.

¹⁰³ H.Rept. 110-181, p. 67.

The Senate agreed with the President's request to transfer ACI personnel funding to the OE account, contending that by so doing, personnel can be surged to and from ACI projects where needed and provide the flexibility to match competencies to core requirements.¹⁰⁴

FY2008 Enacted (P.L. 110-161, Division E). The Consolidated Appropriations Act, 2008 (P.L. 110-161), provides \$8,522 million for the Coast Guard, which is \$65 million more than the President requested. This total includes \$5,891 million in operating expenses, which is \$3 million less than the President requested and \$993 million in acquisition, construction, and improvements, which is \$44 million more than the President requested. P.L. 110-161 provides \$16 million for the bridge alteration program versus the President's request for zero funds.

P.L. 110-161 allows the Coast Guard to transfer up to 5% of the OE appropriation to the ACI appropriation for personnel costs provided that notice be given to the Committees on Appropriations within 30 days of the transfer.

**Table 12. Coast Guard Operating (OE) and Acquisition (ACI)
Sub-account Detail**

(budget authority in millions of dollars)

	FY2007 Enacted ^a	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.110- 161
Operating Expenses	5,478	5,894	5,885	5,931	5,891	70
Military pay and allowances	2,788	2,959	2,933	2,959	2,922	—
Civilian pay and benefits	569	631	593	633	595	—
Training and recruiting	181	187	186	187	186	—
Operating funds and unit level maintenance	1,011	1,138	1,148	1,138	1,135	—
Centrally managed accounts	202	226	226	230	230	—
Port Security	15	—	45	30	70	—
Intermediate and depot level maintenance	711	754	754	754	754	—

¹⁰⁴ S.Rept. 110-84, p. 69.

	FY2007 Enacted ^a	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.110- 161
Acquisition, Construction, and Improvements	1,306	949	834	991	993	96
Vessels and Critical Infrastructure	27	9	9	9	45	36
Aircraft	15	—	—	—	—	—
Other Equipment	116	114	114	174	173	60
Integrated Deepwater System	1,046	788 ^b	591	770	651	—
Shore facilities and Aids to Navigation	22	38	38	38	41	—
Personnel and Related Support	81	1	83	1	83	—

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

- a. Does not include \$30 million in supplemental appropriations for the ACI account per P.L. 110-28; also does not include a \$120 million transfer from Department of Defense, Navy O&M, nor a \$26 million rescission from the OE account as per P.L. 110-28.
- b. The *DHS FY2008 Budget Justification* requests \$788 million which reflects the cancellation of \$49 million from the FY2006 Appropriations (P.L. 109-90) for the Offshore Patrol Cutter, as stated in the FY2008 Budget Appendix, p. 469.

Issues for Congress. Increased duties in the maritime realm related to homeland security have added to the Coast Guard's obligations and increased the complexity of the issues it faces. Members of Congress have expressed concern with how the agency is operationally responding to these demands, including Coast Guard plans to replace many of its aging vessels and aircraft.

Deepwater. The Deepwater program is a \$24 billion, 25-year acquisition program to replace or modernize 91 cutters, 124 small surface craft, and 244 aircraft. The Coast Guard's management and execution of the program has been strongly criticized and several hearings were held on the program in 2007. For FY2008, the President requested \$788 million for the program. The House provided \$591 million for the program, which is \$197 million less than the President requested, and withholds \$400 million of this amount until the appropriations committees in the House and Senate receive and approve a detailed expenditure plan from the Coast

Guard. The House Report continues to identify a number of concerns with the Deepwater program.¹⁰⁵ The Senate provided \$770 million for Deepwater which is \$18 million less than the President's request and requires the Coast Guard to submit an expenditure plan within 60 days of enactment of the appropriations bill. The Senate also required an independent qualified third party to conduct an "alternative analysis" before the Coast Guard's acquisition of additional major assets not already under contract and before acquisition of a third National Security Cutter. P.L. 110-161 provides \$651 million for Deepwater, which includes rescissions for unmanned aerial vehicles and offshore patrol cutters and is \$137 million less than the President requested. The Act calls for a detailed program expenditure plan from the Coast Guard, and requests the GAO to review this plan. Issues for Congress include the Coast Guard's management of the program, which is the largest and most complex acquisition effort in Coast Guard history, the overall cost of the program, and the program's time-line for acquisition. These issues are discussed in CRS Report RL33753, *Coast Guard Deepwater Program: Background, Oversight Issues, and Options for Congress*, by Ronald O'Rourke.

Security Mission. Some Members of Congress have expressed strong concerns that the Coast Guard does not have enough resources to carry out its homeland security mission. A GAO audit raises this concern with respect to the security of energy tankers.¹⁰⁶ About 22% of the Coast Guard's FY2008 budget request is for its "port, waterways, and coastal security" (PWCS) mission.¹⁰⁷ The DHS Inspector General reports that the resource hours devoted to the PWCS mission has increased by a factor of 13 compared to pre-9/11 levels and that in FY2005 (the most recent year data is available), the PWCS mission consumed almost as many resources as all of its non-homeland security missions combined.¹⁰⁸

For monitoring harbor traffic, the President's FY2008 request included \$12 million to continue procurement plans and analysis for deployment of a nationwide system to identify, track, and communicate with vessels in U.S. harbors, called the Automatic Identification System (AIS). This system is currently operational in several major U.S. ports.¹⁰⁹ A GAO review of this system during an earlier stage of its development recommended that the Coast Guard partner with private and public organizations willing to develop AIS facilities on shore at their own expense, in order

¹⁰⁵ H.Rept. 110-181, pp. 71-75.

¹⁰⁶ GAO, *Maritime Security: Federal Efforts Needed to Address Challenges in Preventing and Responding to Terrorist Attacks on Energy Commodity Tankers*, GAO-08-141, December 2007.

¹⁰⁷ *DHS Budget in Brief*, p. 52.

¹⁰⁸ DHS, Office of Inspector General, *Annual Review of Mission Performance: United States Coast Guard (FY2005)*, OIG-06-50, July 2006. "Resource hours" is measured by the number of flight hours (for aircraft) and underway hours (for vessels) dedicated to a specific mission. Because the marine safety and marine environmental protection missions are personnel intensive rather than asset intensive, these two missions are not included in the Inspector General's analysis.

¹⁰⁹ Coast Guard FY2008 Budget Justification, *Strategic Context*, p. CG-SC-7.

to reduce the cost and speed up development of AIS nationwide.¹¹⁰ In its FY2008 Coast Guard budget review, the GAO reports that the Coast Guard has partnered with private entities in Tampa, Florida and Alaska.¹¹¹ The GAO also reports that this system is being implemented in three phases. The first phase is expected to be completed in September 2007 when the Coast Guard expects to track, but not communicate with, vessels in 55 ports and nine coastal areas. The last phase is planned to be completed in 2014 when the Coast Guard will be able to track ships as far as 2,000 nautical miles from shore and communicate with them when they are within 24 nautical miles from shore.

In the House Report (H.Rept. 110-181), the House committee recommended an additional \$40 million above the President's request for the Coast Guard to carry out new security-related requirements mandated in the SAFE Port Act (P.L. 109-347).¹¹² These additional funds are for establishing interagency port security operational centers, which are centers for federal and local law enforcement to share intelligence, monitor harbor traffic, and coordinate response activities; and for establishing a port security training program.

In the Senate Report (S.Rept. 110-84), the Senate committee also provided additional funds to the Coast Guard to carry out mandates in the SAFE Port Act. Specifically, it provides an additional \$60 million to establish interagency port security operational centers (noting that only three centers currently exist), \$15 million for the security of hazardous materials shipping, and \$15 million to double the frequency of security spot checks at ports, conduct vulnerability assessments at high risk ports, and develop AIS for long range tracking of ships. Senate-passed H.R. 2638 (section 571) required the Coast Guard to report on the progress of establishing an interagency port security operational center at the Port of Charleston.

Division E of P.L. 110-161 provides \$59 million for port and cargo security, which includes \$29 million for small boats and crews for ship escorts and boardings, security zone enforcement, and marine inspectors, and nearly \$5 million for long-range vessel tracking. Division E of the Act provides \$60 million for interagency port security operational centers as proposed by the Senate and specifies what is to be included in the Coast Guard's report on the interagency port security operational center at the Port of Charleston. At a October 4, 2007, Senate Commerce Committee hearing, the Coast Guard testified that it expects these port security operational centers to cost a total of \$260 million to roll out at U.S. high-priority ports.

Specialized Teams. The President's budget proposed establishing a "Deployable Operations Group" (DOG) as a means of coordinating the Coast Guard's various specialized teams, namely the Maritime Security Response Team, Maritime Safety and Security Teams, Tactical Law Enforcement Teams, National

¹¹⁰ GAO, *Maritime Security: Partnering Could Reduce Federal Costs and Facilitate Implementation of Automatic Vessel Identification System*, GAO-04-868, July 2004.

¹¹¹ GAO, *Coast Guard: Observations on the Fiscal Year 2008 Budget, Performance, Reorganization, and Related Challenges*, April 18, 2007, GAO-07-489T, p. 27.

¹¹² H.Rept. 110-181, p. 65.

Strike Force, and Port Security Units.¹¹³ The DOG is intended to facilitate cross-training and standardization of tactics, procedures, and equipment among these teams and enable the Coast Guard to improve its “all hazards ... all threats” response capability.¹¹⁴ The GAO reports that this reorganization will affect approximately 2,500 personnel and while it has not reviewed this reorganization specifically, it notes that obtaining “buy-in” from the affected personnel may be a challenge.¹¹⁵

The Senate Committee required the Coast Guard to submit a detailed report on its reorganization plans within 90 days of enactment and required the GAO to review this report.¹¹⁶

Non-homeland Security Missions. Some Members of Congress have expressed concern that with the Coast Guard’s emphasis on its maritime security mission, the agency may have difficulty sustaining its traditional, non-homeland security missions, such as fisheries enforcement or marine environmental protection.¹¹⁷ The latest annual review of the Coast Guard’s mission performance by the DHS Inspector General found that in FY2005 the Coast Guard’s resource hours for its non-homeland security missions increased for the first time since September 11, 2001, due in large part to its response to Hurricane Katrina.¹¹⁸ The IG reports that in FY2005, the Coast Guard’s total non-homeland security resource hours were within 3% of pre-9/11 levels. The GAO reports that over the past five years, Coast Guard performance trends show that increased homeland security activities have not prevented the agency from meeting its non-homeland security mission goals.¹¹⁹

Rescue-21. During the FY2007 appropriations process, Congress expressed strong concern with the Coast Guard’s management of the Rescue 21 program, the Coast Guard’s new coastal zone communications network that is key to its search and rescue mission. Last fiscal year, Congress provided \$40 million to continue deployment of the new system, which began in 2002, and requested that the Coast Guard brief the Committees on Appropriations on a quarterly basis. A GAO audit of the program found a tripling of project cost from the original estimate, a likely further cost increase in the near future, and further delays in project completion,

¹¹³ Coast Guard FY2008 Budget Justification, *Operating Expenses*, p. CG-OE-32.

¹¹⁴ For additional information on the Coast Guard’s security mission, see CRS Report RS21125, *Homeland Security: Coast Guard Operations — Background and Issues for Congress*, by Ronald O’Rourke.

¹¹⁵ GAO, *Coast Guard: Observations on the Fiscal Year 2008 Budget, Performance, Reorganization, and Related Challenges*, April 18, 2007, GAO-07-489T, p. 18.

¹¹⁶ S.Rept. 110-84, p. 69.

¹¹⁷ For information on Coast Guard environmental protection issues, see CRS Report RS22145, *Environmental Activities of the U.S. Coast Guard*, by Mark Reisch and Jonathan L. Ramseur.

¹¹⁸ DHS, Office of Inspector General, *Annual Review of Mission Performance: United States Coast Guard (FY2005)*, OIG-06-50, July 2006.

¹¹⁹ GAO, *Coast Guard: Observations on the Fiscal Year 2008 Budget, Performance, Reorganization, and Related Challenges*, April 18, 2007, GAO-07-489T, p. 2.

which is already five years behind schedule.¹²⁰ The President's FY2008 budget requested \$81 million for Rescue 21: for system installation at seven locations, infrastructure preparation at 12 locations, and full-rate production of the ground support system through design at ten locations.¹²¹ The Senate agreed with the President's request of \$81 million for Rescue-21. P.L. 110-161 provides \$80 million, expresses concern for the number of outages that have been recorded with the system, and requests the Coast Guard to provide quarterly briefings on its plans to address the outages.

The GAO's FY2008 Coast Guard budget review notes that while Rescue-21 was originally intended to limit gaps to 2% of coverage area, that target has now expanded to a less than 10% coverage gap.¹²²

LORAN-C. As in the FY2007 request, the FY2008 request proposed terminating the LORAN (Long-Range Aids to Navigation) -C system which helps boaters (including commercial fishermen) and pilots determine their location using radio signals. The Coast Guard has argued that this system is no longer needed in light of GPS (Global Positioning System) technology which is more precise than LORAN. In FY2007, Congress funded continuation of the LORAN-C system and required the Coast Guard, among other things, to first notify the public before terminating the system. On January 8, 2007, DHS and the Department of Transportation issued a Federal Register notice seeking public comment on whether to decommission LORAN, maintain it, or upgrade it.¹²³ Proponents of maintaining the ground-based LORAN system argue that it is valuable as a backup to the satellite-based GPS system. They argue that terrain can sometimes block the line of sight needed for GPS.

In the House Report (H.Rept. 110-181) and the Senate Report (S.Rept. 110-84), the committees deny the President's request to terminate LORAN-C. The committees note that a team of officials from DHS and DOT evaluated the system in late 2006 and concluded that LORAN-C should be maintained as a back up system. P.L. 110-161 also denies the request to terminate LORAN-C and notes that an Administration policy decision on the future of LORAN-C is expected to be completed by March 1, 2008.

Bridge Alteration Program. The President's FY2008 request proposes transferring the Bridge Alteration Program (a program to alter or remove bridges that are obstructing navigation) from the Coast Guard to the Maritime Administration, which is housed in the Department of Transportation. Consistent with prior requests, the President requests no new funding for this program. In FY2007, Congress appropriated \$16 million. In the House Report (H.Rept. 110-181) and the Senate

¹²⁰ GAO, *United States Coast Guard: Improvements Needed in Management and Oversight of Rescue System Acquisition*, GAO-06-623, May 2006.

¹²¹ *DHS Budget-in-Brief*, p. 55.

¹²² GAO, *Coast Guard: Observations on the Fiscal Year 2008 Budget, Performance, Reorganization, and Related Challenges*, April 18, 2007, GAO-07-489T, p. 3.

¹²³ *Federal Register*, vol. 72, no. 4, January 8, 2007, pp. 796-797.

Report (S.Rept. 110-84), the committees denied the President's request to transfer the program to the DOT¹²⁴ and both committees recommended \$16 million for the program. P.L. 110-161 concurs with the House and Senate committees.

U.S. Secret Service

The U.S. Secret Service (USSS) has two broad missions — criminal investigations and protection.¹²⁵ Criminal investigations activities encompass financial crimes, identity theft, counterfeiting, computer fraud, and computer-based attacks on the nation's financial, banking, and telecommunications infrastructure, among other areas. The protection mission is the most prominent, covering the President, Vice President, their families, and candidates for those offices, along with the White House and the Vice President's residence (through the Service's Uniformed Division). Protective duties extend to foreign missions in the District of Columbia and to designated individuals, such as the DHS Secretary and visiting foreign dignitaries. Separate from these specific mandated assignments, the Secret Service is responsible for security activities at National Special Security Events (NSSEs), which include the major party quadrennial national conventions as well as international conferences and events held in the United States.¹²⁶ The NSSE designation by the President gives the Secret Service authority to organize and coordinate security arrangements involving various law enforcement units from other federal agencies and state and local governments, as well as from the National Guard. **Table 13** displays sub-account detail for Secret Service funding.

Table 13. U.S. Secret Service Appropriations
(budget authority in millions of dollars)

Programs and Activities	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.11 0-161
Protection of persons and facilities	\$651	697	694	694	694	—
Protective intelligence activities	\$56	58	58	58	58	—
National Special Security Events	\$1	1	1	1	1	—
Presidential candidate nominee protection	\$18	85	85	85	85	—

¹²⁴ H.Rept. 110-181, p. 67 and S.Rept. 110-84, p. 76.

¹²⁵ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2008, Appendix*, United States Secret Service, pp. 450 - 452; and *United States Secret Service, Fiscal Year 2008, Congressional Justification*.

¹²⁶ Congress appropriated \$100 million for the FY2008 presidential nominating conventions in Division B, Title II of P.L. 110-161.

Programs and Activities	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L.11 0-161
White House mail screening	\$16	27	16	27	16	—
Management and administration	\$169	176	176	176	176	—
Rowley Training Center	\$50	52	52	52	52	—
Domestic field operations	\$236	220	226	220	220	—
International field operations	\$23	28	28	28	28	—
Electronic crimes program	\$44	45	49	45	45	—
Forensic support grants for the National Center for Missing and Exploited Children (NCMEC)	\$8	8	8	8	8	—
Acquisition, construction, and improvements	\$4	4	4	4	4	—
Total	\$1,276	1,399	1,396	1,396	1,385	—

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

President's FY2008 Request. For FY2008, the President's budget submission requested an appropriation of \$1,399 million for the protection and criminal investigation missions of the Secret Service.¹²⁷ This reflected an increase of \$123 million or nearly 10% over the FY2007 total of \$1,276 million for the Service.

House-passed H.R. 2638. For FY2008, the House proposed an appropriation of \$1,396 million for the protection and criminal investigation missions of the Secret Service.¹²⁸ This reflected an increase of \$120 million or 9% over the FY2007 total of \$1,276 million for the Service.

Senate-passed H.R. 2638. For FY2008, the Senate proposed an appropriation of \$1,396 million for the protection and criminal investigation missions

¹²⁷ OMB, *Budget of the US Government, Fiscal Year 2008*, p. 451.

¹²⁸ H.R. 2638 (FY2008 DHS appropriations), Title II.

of the Secret Service.¹²⁹ This reflected an increase of \$120 million or 9% over the FY2007 total of \$1,276 million for the Service.

FY2008 Enacted (P.L. 110-161, Division E). For FY2008, Congress appropriated \$1,385 million for the protection and criminal investigation missions of the Secret Service.¹³⁰ This reflects an increase of \$109 million or nearly 9% over the FY2007 total of \$1,276 million for the Service.

Title III: Preparedness and Response

Title III includes appropriations for the Federal Emergency Management Agency (FEMA), the National Protection and Programs Directorate (NPPD), and the Office of Health Affairs (OHA). Congress expanded FEMA's authorities and responsibilities in the Post-Katrina Emergency Reform Act (P.L. 109-295) and explicitly kept certain DHS functions out of the "new FEMA."¹³¹ In response to these statutory exclusions, DHS officials created the NPPD to house functions not transferred to FEMA, and the OHA was established for the Office of the Chief Medical Officer. **Table 14** provides account-level appropriations detail for Title III.

¹²⁹ H.R. 2638 (FY2008 DHS appropriations), Title II.

¹³⁰ P.L. 110-161, Division E, Title II.

¹³¹ P.L. 109-295, 120 Stat. 1400.

Table 14. Title III: Preparedness and Response
(budget authority in millions of dollars)

Operational Component	FY2007 Appropriation				FY2008 Appropriation				FY2008 Emergency P.L.110- 161
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	
National Protection & Programs Directorate									
— Administration	38			38	46	40	30	47	—
— Infrastructure Protection and Information Security	534	24	-1	557	653	533	522	655	—
— US-VISIT	362			362	462	462	362	475	275
Net total	934	24	-1	957	1,161	1,035	914	1,177	275
Office of Health Affairs	99	8		107	118	118	115	117	—
Counter Terrorism Fund	-16	—		-16	—	—	—	—	—
Federal Emergency Management Agency									
— Management and Administration	535	14		549	716	685	727	724	—
— Office of Grant Programs	3,387	297		3,684	2,196	4,307	4,136	4,228	110
— U.S. Fire Administration	41	—		41	43	43	43	43	—
— Public health programs	34	—		34	—	—	—	—	—
— Disaster relief	1,487	4,256 ^a		5,743	1,652	1,700	1,639	1,324 ^b	—
— Flood map modernization fund	199	—		199	195	230	200	220	—
— National flood insurance fund (NFIF) ^c	—	—		—	—	—	—	—	—
— National flood mitigation ^d	—	—		—	—	—	—	—	—

CRS-76

Operational Component	FY2007 Appropriation				FY2008 Appropriation				FY2008 Emergency P.L.110- 161
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	
— Pre-disaster mitigation fund	100	—		100	100	120	120	114	—
— Emergency food and shelter	151	—		151	140	153	153	153	—
— Disaster assistance direct loan account	1	320		321	1	1	1	1	
Net total	5,935	4,887		10,821	5,042	7,239	7,017	6,807^b	<i>110</i>
Net budget authority subtotal: Title III	6,952	4,919	-1	11,869	6,322	8,392	8,046	8,100^b	385

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: No FY2007 funding for Title III was designated as emergency spending. Totals may not add due to rounding. Amounts in parentheses are non-adds. Amounts in italics and brackets show what the FY2008 request would look like if it had followed the FY2007 DHS account structure. For a more detailed analysis of the supplemental appropriations, please refer to **Appendix I**.

a. Per P.L. 110-28, includes a \$4,110 million emergency supplemental appropriation, a transfer to the DHS OIG of \$4 million, and a transfer from the Small Business Administration Disaster loan program of \$150 million.

b. *Does not* include \$2,900 million in FY2008 emergency supplemental funding for Disaster Relief enacted by P.L. 110-28.

c. Funds derived from premium payments or transfers from the U.S. Treasury.

d. Funds derived from NFIF transfers.

Federal Emergency Management Agency (FEMA)¹³²

In the aftermath of Hurricane Katrina, Congress passed the Post-Katrina Emergency Management Reform Act (Title VI of P.L. 109-295, the FY2007 appropriations legislation) to address shortcomings identified in the reports published by congressional committees and the White House. Based on those reports and oversight hearings on many aspects of FEMA's performance during the hurricane season of 2005, the Post-Katrina Act expanded FEMA's responsibilities within the Department of Homeland Security and the agency's program authorities relevant to preparing for and responding to major disaster events.¹³³ The FY2008 appropriations legislation, based upon the Administration's request, represents the first opportunity of policymakers to fund the "new FEMA" and its efforts to implement many provisions of the Post-Katrina Reform Act. It also provides Congress its first opportunity to weigh in on the priorities it wished to see addressed within the budget.

President's FY2008 Request. The President's FY2008 request of \$5,042 million for FEMA more than doubles the FY2007 enacted level of \$2,464 million. This dramatic increase reflects the intent of Congress, through the Post-Katrina Act, to increase FEMA's authority, move disaster preparedness programs back within FEMA from the DHS Preparedness Directorate, and ensure that resources and personnel are able to respond to catastrophes. The transfer of the majority of the preparedness grant programs to FEMA accounts for \$2,196 million of the increase. Taking the Post-Katrina Act reorganization into account, the adjusted FY2007 enacted level for FEMA is \$5,935 million. Another significant increase is in the Operations and Support section of FEMA's budget which would be increased by \$668 million to support the preparedness changes as well as other Post-Katrina Act measures. Other changes proposed by the Administration for FY2008 include the following:

- A \$4 million decrease in the Flood Map Modernization Fund from \$199 million in FY2007 to \$195 million in FY2008.
- FEMA's budget no longer includes funding for the National Disaster Medical System (NDMS), which was transferred to the Department of Health and Human Services pursuant to the Post-Katrina Act.¹³⁴ NDMS had been funded at \$34 million for several years, as the sole program in FEMA's "Public Health Programs" account.

¹³² Prepared by Keith Bea, Specialist in American National Government and Fran McCarthy, Analyst in American National Government, Government and Finance Division.

¹³³ For more information, see CRS Report, CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, Keith Bea, Coordinator.

¹³⁴ See the legislative history for the 109th Congress in CRS Report RL33589, *The Pandemic and All-Hazards Preparedness Act (P.L. 109-417): Provisions and Changes to Preexisting Law*, by Sarah A. Lister and Frank Gottron.

- An \$11 million reduction in the Emergency Food and Shelter Program (Title III of the McKinney-Vento Homeless Assistance Act) from \$151 million to \$140 million.
- Decreased funding from \$47 million in FY2007 to \$43 million in FY2008 for the U.S. Fire Administration (this was the amount enacted for FY 08).

House Passed H.R. 2638. The House approved an appropriations total that exceeds the request by \$2,197 million, most of which derives from increased funding sought for the state and local programs account. The House-passed version of H.R. 2638 proposed \$4,307 million for state and local programs, which is \$623 million more than the FY2007 appropriated amount of \$3,684 million. Other areas in which the House sought funding over the request are

- \$20 million more for the pre-disaster mitigation fund,
- \$35 million more for the flood map modernization project, and
- \$13 million more for the emergency food and shelter program.

Also, the House approved funding for disaster relief as well as management and administration at levels comparable to the request. The total amount approved by the House for FEMA is \$7,239 million; the Administration request totaled \$5,043 million.

Senate Passed H.R. 2638. The Senate-approved version appropriated \$7,017 million, almost \$2 billion more in funding for FEMA than requested. Similar to the action taken by the House, the increase primarily rests in the state and local programs account. The Senate approved version of the legislation proposes an appropriation of \$4,136 million for state and local programs, \$452 million more than the FY2007 appropriation of \$3,684 million (including supplemental appropriations). The other accounts for which the Senate recommended funding levels different from that requested include

- a roughly \$5 million increase for flood map modernization,
- funding for emergency food and shelter at \$153 million (\$13 million more than the request), and
- \$20 million more than requested for the pre-disaster mitigation fund.

FY2008 Enacted (P.L. 110-161, Division E). P.L. 110-161 appropriated \$6,807 million for FEMA. This total is less than what was approved by the Senate (\$7,019 million) and the House (\$7,239 million), but is considerably larger than the President's request (\$5,043 million). The FEMA appropriation included increases for a number of assistance programs, including

- \$220 million for flood map modernization (\$25 million more than the President's request);
- \$114 million for pre-disaster mitigation (\$14 million more than the President's request); and

- \$153 million for the emergency food and shelter program (\$13 million more than the President's request).

FEMA Issues for Congress. The problematic response to Hurricane Katrina and the slow recovery from the storm (as well as Hurricanes Rita and Wilma) continue to be issues for Members of the 110th Congress. Members of Congress have expressed concern with the delay in filling personnel vacancies in the agency, delays in the final release of planning documents and guidance papers, delays in reports mandated by P.L. 109-295, and continued reliance on outdated or inefficient systems and technology. Issues that have been or might yet be discussed by Congress are reviewed below.

Disaster Relief Fund. The Disaster Relief Fund (DRF) usually accounts for the great majority of FEMA's spending. It is the DRF that funds the assistance made available under the Robert T. Stafford Disaster Relief Act (the Stafford Act).¹³⁵

Congress appropriates supplemental funding for the DRF when annual appropriations are not adequate for the DRF obligations needed to pay for recovery projects associated with disasters from previous years (notably the reconstruction of Gulf Coast states), current disaster activity for emergency response costs, and hazard mitigation efforts to reduce the impact of disasters in future years.¹³⁶ Funds for the Gulf Coast hurricane season of 2005 have been included in five supplemental appropriations statutes (P.L. 109-61, P.L. 109-62, P.L. 109-148, P.L. 109-234, and P.L. 110-28).

The issue before Congress concerns the use of supplemental appropriations legislation to meet climbing costs of emergency assistance instead of requesting sufficient funds at the start of the process. For example, in FY2007 the Administration requested \$1,500 million initially for the DRF; supplemental requests added billions more. The request for FY2008 exceeds that for the previous fiscal year by \$200 million, to \$1,700 million. The Senate set the mark for the DRF at about \$1,640 million. The final amount enacted was \$1,324 million. While this is a significant *amount* within the context of FEMA's budget, the actual amount is slightly below FEMA's historical average of DRF spending (excluding outliers such as Hurricane Katrina and the World Trade Center attacks). The smaller amount below requested levels for the DRF was arrived at in the context of the recent DOD Appropriations Act of November 11, 2007 (P.L. 110-116), which added \$2.9 billion to the DRF in funding that is available until expended.¹³⁷

¹³⁵ Additional information on the statutory and funding history of the DRF is presented in CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

¹³⁶ Historical information on supplemental appropriations is presented in CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data FY 1989 to FY 2005*, by Justin Murray, and Keith Bea.

¹³⁷ For further information on DRF appropriations, see CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data* by Justin Murray and Keith Bea, pg. 11.

The Senate Committee report addressed the accountability issue for the DRF by requiring that FEMA “provide a detailed estimate” of DRF funding needed through September 30, 2008 (not only the end of the fiscal year but toward the end of the hurricane season). The Committee also called upon agency officials “to firmly establish measurable thresholds for transparent decision making regarding federal fiscal expenditures for disaster response.”¹³⁸ The Omnibus Act also requests from FEMA “a list of all contracts that were awarded on a sole source or limited competition basis” as well as an estimate “of when available appropriations will be exhausted, assuming an average disaster season.”¹³⁹

Congress also may be concerned about accountability for DRF expenditures, in particular when relevant programmatic expertise resides in an agency other than FEMA. An example is the Crisis Counseling Assistance and Training Program (CCP), authorized by the Stafford Act, which provides professional counseling services to victims of a major disaster in order to relieve mental health problems. FEMA and the Substance Abuse and Mental Health Services Administration (SAMHSA) in the Department of Health and Human Services (HHS) share administrative duties for CCP. Though the program is funded through the DRF, it is not clear which agency bears primary or ultimate responsibility for the program, which has been associated with fiscal and programmatic challenges.¹⁴⁰ Similarly, questions have been raised about FEMA’s administration of the temporary housing program, also funded through the DRF.¹⁴¹

In past years Congress has authorized or directed the transfer of money from the DRF to other FEMA accounts to address identified needs or shortcomings. Some may contend that the dispersion of money from the DRF reduces the amount needed for disaster relief activities; others perceive the DRF to be an appropriate source of funds to meet special needs related to the mission of the agency. For example, the Office of Inspector General (OIG) has received funds in this manner to conduct audits and investigations into the use of DRF funds. The Senate version of the legislation continues this tradition with the transfer of \$14 million to the OIG. The Omnibus Act approved an even larger amount, \$16 million, to be transferred to the OIG. The bill also allows for the transfer of up to \$48 million to fill agency personnel vacancies and provide further opportunities to enhance the skills of the workforce. The House did not include similar language. The House Appropriations Committee noted its disapproval of the planned transfer of \$48 million “to convert temporary disaster employees into permanent positions.”¹⁴² The Omnibus Act

¹³⁸ U.S. Congress, Senate Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2008*, 110th Cong., 1st Sess., S.Rept. 110-84 (Washington: 2007), p. 104.

¹³⁹ H.R. 2764, pg. 222.

¹⁴⁰ See CRS Report RL33738, *Gulf Coast Hurricanes: Addressing Survivors’ Mental Health and Substance Abuse Treatment Needs*, by Ramya Sundararaman, Sarah A. Lister, and Erin D. Williams.

¹⁴¹ See CRS Report RL34087, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Options*, by Francis X. McCarthy.

¹⁴² U.S. Congress, House Committee on Appropriations, *Department of Homeland Security* (continued...)

approved the \$48 million figure for 250 positions along with an additional \$12 million for “activities related” to the Stafford Act. However, of the previous \$60 million, the bill stipulates that “\$30 million shall not be available for transfer for management and administration functions until the Federal Emergency Management Agency submits an expenditure plan to the Committee on Appropriations of the Senate and the House regarding the 250 positions.”¹⁴³

Post-Katrina Reform Act Measures. In addition to the significant resources needed for FEMA to administer preparedness grants, there are provisions in the Post-Katrina Reform Act that, in seeking to improve the performance of FEMA, necessarily expand the Agency’s coverage and areas of responsibility. Many of these changes carry potentially large costs depending on the frequency and scope of future disaster activity. However, they also hold the potential for vastly improved service to disaster victims and their communities. Some of the areas for potentially increased costs include the following.

- Federal contributions for the Hazard Mitigation Grant Program (HMGP) for approximately the past five years has been set at 7.5% of the total aid provided in a state after it receives a major disaster declaration. The Post-Katrina Act modifies the HMGP provision to provide 15% (for disasters with total damages under \$2 billion), 10% (for disasters with damages between \$2 billion and \$10 billion), and 7.5% (for disasters between \$10 billion and \$35.3 billion). The House Committee report noted that HMGP assistance has been “greatly underutilized” after Hurricane Katrina and directs FEMA to report on needed policy changes and plans to direct funding as needed.¹⁴⁴ Also related to mitigation, the Senate Committee report makes reference to the recent finding that mitigation activities result in cost savings and encourages incentives for such actions. The Senate-approved version of the legislation includes a provision that exempts certain hazard mitigation projects associated with Hurricanes Katrina and Rita from pre-certification requirements. This emphasis by the respective Committees is reflected in the increased funding for both map modernization and the pre-disaster mitigation fund.
- The Public Assistance (PA) program authority has been expanded in several ways that could result in increased federal disaster spending. First, the list of eligible applicants, previously defined by those that provided “essential services of a governmental nature to the general public,” can now be expanded by the President. Also, under this

¹⁴² (...continued)

Appropriations Bill, 2008, 110th Cong., 1st Sess., H.Rept. 110-181 (Washington: 2007), p. 108.

¹⁴³ H.R. 2764, pg. 221.

¹⁴⁴ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2008*, 110th Cong., 1st Sess., H.Rept. 110-181 (Washington: 2007), p. 113.

2006 amendment, services do not necessarily have to be available only to the general public. Second, the PA program statutory authority establishes eligibility for some facilities previously identified in regulations. Third, education facilities can apply directly for Stafford Act assistance without first pursuing a Small Business Administration loan. Finally, the post-Katrina Act includes a Pilot Program for Public Assistance that seeks to provide incentives to state and local governments to be more involved in the PA work such as debris removal and repair projects. While one intent of the provision is to reduce costs, the incentives provided could result in an increase in the Federal cost share for participating areas as well as reimbursement for base wages for local hires employed by the state and local governments to accomplish this work.

- Public Assistance costs will also increase the amounts paid out from the Disaster Relief Fund as a result of P.L. 110-28, which waived the state and local cost-share for Gulf Coast states that had infrastructure damage due to Hurricanes Katrina, Wilma, Dennis, and Rita. Other cost-shares for disaster-related costs were also waived in that legislation but will not amount to the significant increases in federal costs inherent in large infrastructure repair projects.
- Another area of accelerated FEMA involvement that could increase costs concerns expedited federal assistance. This may take the form of earlier, and greater, technical assistance provided to a state for precautionary evacuation measures as well as help with logistics and communications.
- There are several administrative and service improvement provisions in the Post-Katrina Act likely to result in increased outreach and greater expenditures, including efforts to identify and assist the disabled and disaster victims with limited English proficiency, assist in the reunification of families following a disaster event, and provide increased transportation assistance to victims. Another deficiency identified in the wake of Hurricane Katrina concerned the information systems used by FEMA. The Senate Committee report included expectations that the agency is to adopt “cutting edge technology” and ensure that technology is used effectively. To achieve this goal, the Senate Committee included \$6 million to be awarded competitively for this purpose. While the Omnibus Act does not specifically address this issue, it may be a part of the additional Stafford Act funding that is transferred from the DRF as previously noted. The Explanatory Statement by Congress does reference a direction to FEMA to fund a program “at no less than

\$6,000,000, based on competitive award, the completion of the Document Management and Records Tracking System.”¹⁴⁵

- The Post-Katrina Act authorizes case management to be an eligible cost. Given the importance of this service and the potential caseload that could require some of this assistance, higher costs will likely be associated with providing this new form of assistance to major disaster victims.
- The surplus trailers (manufactured housing) used by FEMA to provide temporary shelters to disaster victims remains a point of concern for some policymakers. The Post-Katrina Act addressed concerns that the temporary housing provisions of the Stafford Act required emendation. The House Committee report includes language that directs the agency to examine the feasibility of making surplus housing units available to homeless veterans.¹⁴⁶ The Senate-passed version also addresses the issue by including a requirement that the FEMA Administrator provide training to agency officials, including lawyers, on health concerns of disaster victims, and by requiring that reports be prepared and programs established to address the health concerns associated with FEMA trailers. The Congress’ Explanatory Statement for the Omnibus Act states that “the Committees on Appropriations direct the Inspector General to report to the Committees on Appropriations, the Senate Committee on Homeland Security and Governmental Affairs, and the House Transportation and Infrastructure Committee regarding FEMA’s decision-making regarding formaldehyde in trailers.”¹⁴⁷
- Concern with preparedness for a catastrophic disaster led to the inclusion in the Senate bill of a mandate that West Virginia and Pennsylvania officials be consulted with regard to evacuations from the National Capital Region.

Office of Grant Programs

The Office of Grant Programs within FEMA is responsible for facilitating and coordinating DHS state and local programs. The office administers formula and discretionary grant programs to further state and local homeland security capabilities. As a result of the reorganization mandated by the Post-Katrina Emergency

¹⁴⁵ “Explanatory Statement Submitted by Mr. Obey, Chairman of the House Committee on Appropriations, Regarding the Consolidated Appropriations Amendment of the House of Representatives to the Senate Amendment to H.R. 2764”, House of Representatives, *Congressional Record*, December 17, 2007, H-16094, at [<http://www.Congress.gov/cgi-lis/query/CPPr110:./temp/~r110XMMUPu>], visited on January 31, 2008.

¹⁴⁶ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2008*, report to accompany H.R. 2638, 110th Cong., 1st Sess., June 8, 2007, (Washington: GPO, 2007), p. 97.

¹⁴⁷ Ibid, Obey, Congressional Record, December 17, 2007, pg. H16094.

Management Reform Act of 2006 (P.L. 109-295), the work of the Office of Grant Programs has been separated from FEMA training activities. FEMA's National Integration Center within the agency's National Preparedness Directorate administers training, exercises, and technical assistance for states and localities. **Table 15** provides information on appropriations for state and local homeland security grant programs.

Table 15. State and Local Homeland Security Programs
(budget authority in millions of dollars)

Program	FY2007 Enacted^a	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg.
State Homeland Security Grant Program (SHSGP)	525	250 ^b	550	525	950	60
Urban Area Security Initiative (UASI)	770	800 ^c	850	820	820	—
Law Enforcement Terrorism Prevention Program (LETPP)	375	—	400	375	—	—
Port Security Program	320	210	400	400	400	—
Transit Security Program	275	175	400	400	400	—
Intercity Bus Security Program	12	12	11	12	12	—
Trucking Industry Security Program	12	9	10	16	16	—
Emergency Operation Centers	—	—	—	—	15	—
Buffer Zone Protection	50	50	100	50	50	—
Assistance to Firefighters (FIRE)	662	300	805	705	750	—
Emergency Management Performance Grants (EMPG)	250	200	300	300	300	—
Citizen Corps Programs (CCP)	15	15	17	15	15	—
Metropolitan Medical Response System (MMRS)	33	—	50	33	41	—

Program	FY2007 Enacted ^a	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg.
Training, Technical Assistance, Exercises, and Evaluation	300	175	293	295	299	
Commercial Equipment Direct Assistance Grants	50	—	20	40	25	
Interoperable Communications Grants	—	—	50	100	50	
Real ID Grants	—	—	50	—	50	50
Regional Catastrophic Preparedness Grants	35	—	—	50	35	
Total	3,684	2,196	4,307	4,136	4228	110

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Note: Totals may not add due to rounding.

- a. Includes FY2007 supplemental funding.
- b. Of the \$250 million requested for SHSGP, \$63 million would be allocated for law enforcement terrorism prevention activities.
- c. Of the \$800 million requested for UASI, \$200 million would be allocated for law enforcement terrorism prevention activities.

President's Request. The President's FY2008 requested \$2,196 million for state and local programs; \$1,191 million less than the FY2007 appropriated amount of \$3,387 million. The Administration did not request funding for the Law Enforcement Terrorism Prevention Program (LETPP); instead it requested that \$63 million of the \$250 million sought for SHSGP and \$200 million of the \$800 million for UASI be used for law enforcement terrorism prevention activities.¹⁴⁸ If funded as proposed, this shift could have resulted in the availability of fewer funds for the states — \$188 million in FY2008 (versus \$525 million in FY2007) for SHSGP activities, and \$600 million (versus \$770 million in FY2007) for high threat urban areas seeking to fund UASI activities.

House-Passed H.R. 2638. The House-passed appropriation of \$4,307 million for state and local programs was \$920 million more than the FY2007 appropriated amount of \$3,387 million. The House would have provided funding for

¹⁴⁸ U.S. Office of Management and Budget, *Fiscal Year 2008 Budget of the United States Government*, (Washington: GPO, 2007), Appendix, p. 480.

LETPP (\$400 million) even though the Administration had requested no line item funding for the program. Additionally, contrary to the Administration request, the House proposed funding for the Metropolitan Medical Response System (\$50 million), Commercial Equipment Direct Assistance Grants (\$20 million), Interoperable Communications Grants (\$50 million), and Real ID Grants (\$50 million).

Senate-Passed H.R. 2638. The Senate approved an appropriation of \$4,136 million for state and local programs, \$749 million more than the FY2007 appropriation of \$3,387 million. Like the House, the Senate would have funded LETPP (\$375 million) even though the Administration had requested no line item funding for the program, and would also have funded the Metropolitan Medical Response System (\$33 million), Commercial Equipment Direct Assistance Grants (\$40 million), Regional Catastrophic Preparedness Grants (\$50 million), and Interoperable Communications Grants (\$100 million).

FY2008 Enacted (P.L. 110-161, Division E). Congress appropriated \$4,228 million for state and local programs, \$544 million more than the FY2007 appropriation of \$3,684 million. There is no separate line item for LETPP; however, in accordance with the Implementing Recommendations of the 9-11 Commission Act (P.L. 110-53), grant recipients are to obligate no less than 25% of their State Homeland Security Grant Program and Urban Area Security Initiative allocations on law enforcement terrorism prevention activities. In addition, Congress appropriated \$15 million for Emergency Operation Centers (EOC), even though neither the House nor the Senate had proposed funding for EOCs.¹⁴⁹

\$60 million in emergency funding — included in the \$950 million for State Homeland Security Grant Program — is for Operation Stonegarden. Operation Stonegarden assists state and local law enforcement border security operations in four Southwestern states.¹⁵⁰ The remaining \$50 million of emergency funding is for the Real ID program.

Issues for Congress. Two issues appear to have dominated congressional debate on the FY2008 request for homeland security grant funds — the method by which funds are allocated among the states and the proposed reduction in Assistance to Firefighters Grant Program (FIRE) appropriations. These issues are discussed below.

Distribution Methods for State and Local Assistance. For years, since publication of the final report of the National Commission on Terrorist Attacks Upon the United States (often referred to as the 9/11 Commission), Members of Congress have debated the formula or process to be used in distributing federal homeland security grant funds. The 9/11 Commission recommended that funds should be

¹⁴⁹ P.L. 110-161, Div. E, Title III.

¹⁵⁰ U.S. Department of Homeland Security, Office of the Press Secretary, “DHS Expands Operation Stonegarden to Bolster Border Security Efforts,” available at [<http://test.rwb.gov.edgesuite.net/dhspublic/display?content=5332>], visited January 24, 2008.

distributed based on threat and risk assessments. While debate has ensued on this recommendation, certain program funds have been distributed pursuant to the formula set out in Section 1014 of the USA Patriot Act (P.L. 107-56). This statute guaranteed each state a minimum of 0.75% of total appropriations for domestic preparedness programs.

The Administration requested that FY2008 funds for only the Emergency Management Performance Grants (EMPG) and Citizen Corps Programs (CCP) be distributed pursuant to the Section 1014 formula. Additionally, the Administration proposed that SHSGP be a discretionary program, but guaranteed each state a minimum of 0.25% of total appropriations. Certain Members of Congress did not agree with this proposal. Neither the House-passed nor Senate-passed versions of H.R. 2638 included provisions to alter the funding distribution method because the issue was included in debate on other legislation, H.R. 1 and S. 4. With enactment of this legislation (P.L. 110-53, Implementing the 9/11 Commission Recommendations Act of 2007), FY2008 funding allocations will be based upon a different formula. The minimum allocation for each state for SHSGP grants will be 0.375% of total SHSGP and UASI appropriations in FY2008, with the floor eventually reduced to 0.35% of the total SHSGP and UASI appropriations in FY2012.¹⁵¹ While some may contend that this agreement resolves the debate that has been the focus of congressional attention for years, others might argue that SHSGP would not be a discretionary program if there is a guaranteed minimum amount for states each fiscal year.

Reduction in Appropriations for Assistance to Firefighters Program. Administration budget proposals have typically recommended significant cuts for fire grants, as well as zero funding for SAFER grants. Opponents of the cuts have argued that the reduced levels are inadequate to meet the needs of fire departments, while the Administration has argued that reduced levels are sufficient to enhance critical capabilities in the event of a terrorist attack or major disaster. For FY2008, the Administration proposed \$300 million for fire grants in FY2008, a 45% cut from the FY2007 level. No funding was proposed for SAFER grants. The total request for Assistance to Firefighters Grants (AFG) was 55% below the FY2007 level for fire and SAFER grants combined. The FY2008 budget proposal eliminated grants for wellness/fitness activities and modifications to facilities for firefighter safety. The budget justification requested funding for “applications that enhance the most critical capabilities of local response to fire-related hazards in the event of a terrorist attack or major disaster.” The budget justification also stated that the requested level of funding is “an appropriate level of funding given the availability of significant amounts of funding for first responder preparedness missions from other DHS grant programs which are better coordinated with state and local homeland security strategies and, unlike AFG, are allocated on the basis of risk.”

On June 5, 2007, the House Appropriations Committee recommended an appropriation of \$570 million for fire grants and \$230 million for the Staffing for Adequate Fire and Emergency Response Firefighters (SAFER) program. The

¹⁵¹ P.L. 110-53, Title I, Sec. 101, “Sec. 2004,(e)(1)(A).”

Committee directed FEMA to: continue providing funds directly to local fire departments; include the U.S. Fire Administration during the grant administration process; maintain an all-hazards focus; and, not limit the list of eligible activities. The Committee also expressed concern that large numbers of fire grant applications never reach the peer review stage. The Committee report directed the Government Accountability Office (GAO) to review the application and award process for fire and SAFER grants, and directed FEMA to peer review all grant applications that meet basic eligibility requirements. On June 15, 2007, the House passed H.R. 2638, including an amendment adding \$5 million to the SAFER account. Thus, the final House-passed bill provided \$570 million for fire grants and \$235 million for SAFER.

On June 14, 2007, the Senate Appropriations Committee approved its version of the FY2008 appropriations bill for the Department of Homeland Security. As reported, the bill would provide \$560 million for fire grants and \$140 million for SAFER. The Senate Committee directed DHS to continue the present practice of funding applications according to local priorities, as well as those established by the United States Fire Administration. The Committee further directed DHS to continue to direct funding to fire departments and to the peer review process. Additionally, the Committee directed that \$3 million be available for foam firefighter equipment in remote areas. On July 26, 2007, the Senate-passed version of H.R. 2638 included an amendment adding \$5 million to the SAFER account. Thus, the final Senate-passed bill provided \$560 million for fire grants and \$145 million for SAFER.

Division E of P.L. 110-161 provided \$560 million for fire grants and \$190 million for SAFER grants, a total of \$750 million for firefighter assistance in FY2008. As stated in the Joint Explanatory Statement accompanying P.L. 110-161, \$3 million was made available for foam firefighter equipment used in remote areas, to be competitively awarded. GAO was directed to review the application and award process for fire and SAFER grants, and FEMA was directed to peer review all grant applications that meet criteria established by FEMA and the fire service.

Office of Health Affairs¹⁵²

The Post-Katrina Act codified the position of Chief Medical Officer (CMO) within DHS.¹⁵³ The Administration budget request for FY2008 proposed the creation of a new Office of Health Affairs (OHA) within DHS, to be headed by the CMO, who would report to the Secretary through the Deputy Secretary, and have the title of Assistant Secretary for Health Affairs and Chief Medical Officer. According to the *FY2008 DHS Congressional Budget Justification*,¹⁵⁴ the OHA would consist of three main divisions: (1) Weapons of Mass Destruction (WMD) and Biodefense; (2) Medical Readiness; and (3) Component Services. The WMD and Biodefense Division would lead the department's biodefense activities, including the BioShield and BioWatch programs, which would be transferred from the Science and

¹⁵² Prepared by Sarah A. Lister, Specialist in Public Health and Epidemiology, Domestic Social Policy Division.

¹⁵³ 6 U.S.C. § 321e.

¹⁵⁴ *FY2008 DHS Congressional Justification*, pp. OHA 2-3.

Technology Directorate (S&T), and the National Biosurveillance Integration System (NBIS), which would be transferred from the former Preparedness Directorate. The Medical Readiness division would oversee contingency planning, first responder readiness, WMD incident management support, medical readiness grant coordination, and assistance to the FEMA Administrator in emergency and disaster response. The Component Services division would oversee the department's occupational health and safety programs. The proposed structure has been established, and Dr. Jeffrey Runge was confirmed as the first DHS Assistant Secretary for Health Affairs on December 19, 2007.¹⁵⁵

The Administration requested \$118 million for OHA for FY2008. This included a funding increase of \$17 million, in addition to \$100 million for the following transfers:

- \$5 million from the former Preparedness Directorate, for the Office of the Chief Medical Officer;
- \$82 million from the S&T Directorate, for BioWatch Operations and the Biological Warning and Incident Characterization (BWIC) programs;
- \$3 million from the S&T Directorate, for the Rapidly Deployable Chemical Defense System (RDCDS);
- \$1 million from the S&T Directorate for personnel support for BioWatch, BWIC, and RDCDS;
- \$8 million from the former Preparedness Directorate for NBIS; and
- \$1 million from the former Preparedness Directorate for personnel support for NBIS.¹⁵⁶

House-passed H.R. 2638 recommended \$118 million for OHA, but directed that \$2 million of the amount requested for BioWatch Operations be used instead to enter into a grant or contract with the National Academy of Sciences (NAS) to evaluate the effectiveness of the program.

Senate-passed H.R. 2638 recommended \$115 million for OHA, including the full amount requested for BioWatch Operations, but \$3 million less than requested for salaries and expenses.

The enacted FY2008 appropriation provided \$117 million for OHA, including \$24 million — slightly more than was requested — for salaries and expenses, and up to \$2 million for an NAS evaluation of the BioWatch program.

¹⁵⁵ See DHS, Office of Health Affairs, at [http://www.dhs.gov/xabout/structure/editorial_0880.shtm].

¹⁵⁶ Ibid. Numbers do not add due to rounding.

National Protection and Programs Directorate¹⁵⁷

The National Protection and Programs (NPP) Directorate is a new directorate formed by the Secretary for Homeland Security in response to the Post-Katrina Emergency Management Reform Act of 2006. This act deconstructed the Preparedness Directorate by transferring preparedness activities and responsibilities back to a new reconstructed Federal Emergency Management Agency (FEMA). The act required the Office of Grants and Training (which runs the agency's Homeland Security Grants Program), the U.S. Fire Administration, the Chemical Stockpile Emergency Preparedness Division, the Radiological Emergency Preparedness Program, and the Office of the National Capital Region Coordination, be transferred from the Preparedness Directorate to the new FEMA, as well. The remaining functions of the old Preparedness Directorate, primarily related to critical infrastructure protection, and grouped under the Infrastructure Protection and Information Security Program, were not transferred. The Secretary, under his own authority, transferred the Office of the Chief Medical Officer to a new Office of Health Affairs.

Additional elements were also added to the new NPP. The Post-Katrina Emergency Management Reform Act established the Office of Emergency Communications, combining within it a number of disparate programs from other parts of the department aimed at facilitating communications between first responders and policy makers during times of crisis. The act placed the Office of Emergency Communications under the Assistant Secretary for Cybersecurity and Communications, who now reports to the Under Secretary for National Protection and Programs. In addition, the Secretary, under his own authority, transferred the US-VISIT program to this new directorate. Also under his own authority, the Secretary established an Office of Intergovernmental Affairs to act as liaison between state and local officials and the Directorate, and elevated the Risk Management Division of the Office of Infrastructure Protection into a separate Office of Risk Management and Analysis, reporting directly to the proposed Under Secretary.

U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT)¹⁵⁸

Until FY2006, US-VISIT was coordinated out of the Directorate of Border and Transportation Security (BTS). DHS Secretary Chertoff's second stage review, among other things, eliminated BTS and proposed placing US-VISIT within a new Screening Coordination Office (SCO) that would have combined a number of screening programs within DHS¹⁵⁹ and that would have reported directly to the

¹⁵⁷ Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division.

¹⁵⁸ Prepared by Blas Nuñez-Neto, Analyst in Domestic Security, Domestic Social Policy Division.

¹⁵⁹ Programs proposed for transfer to the Screening Coordination Office included the US Visitor and Immigrant Status Indicator Project (US-VISIT); Free and Secure Trade (FAST) (continued...)

Secretary. The appropriators did not provide funding for the SCO, however, and US-VISIT became a stand-alone office within Title II of the DHS appropriation in FY2006.¹⁶⁰ In FY2008, DHS is proposing to move US-VISIT into a new entity, the National Protection Programs Directorate (NPPD). In its Section 872 letter, DHS states that it is relocating US-VISIT to the NPPD “to support coordination for the program’s protection mission and to strengthen DHS management oversight.”¹⁶¹

President’s Request. The Administration requested \$462 million for US-VISIT in FY2008, an increase of \$100 million over the FY2007 enacted level. Included in the Administration’s request is an increase of \$146 million to convert the entry system to 10 fingerprint capability, and a decrease of \$31 million for pilot programs to test the exit component of the system.¹⁶²

House-Passed H.R. 2638. The House fully funded the Administration’s request for US-VISIT in FY2008, including the \$228 million requested to implement 10 finger-print capability for entry purposes. The House also withheld \$232 million from the overall appropriation for US-VISIT pending the submission, and approval by the Committee, of an expenditure plan. This plan should include a complete schedule for the full implementation of a biometric exit component within five years, or a certification that a cost-effective solution is not technically feasible in five years.

Senate-Passed H.R. 2638. The Senate recommended an appropriation of \$362 million for US-VISIT in FY2008, \$100 million less than the President requested. The Senate committee noted that DHS has large unobligated balances for the US-VISIT program in making its recommendation. The Senate also withheld \$100 million from obligation pending the receipt of a comprehensive expenditure plan for the US-VISIT program.

FY2008 Enacted (P.L. 110-161, Division E). H.R. 2764 provides \$475 million for the US-VISIT system, including \$275 million in emergency funding. The \$13 million provided above the President’s request is included in order to expedite the implementation and deployment of an air and sea exit component. The bill withholds \$125 million from obligation until an expenditure plan has been reviewed by GAO and approved by the Committees on Appropriations. DHS is also required to provide quarterly briefings on the implementation of the US-VISIT system, including their coordination with WHTI, SBI, and other DHS efforts related to border security and the interdiction of terrorist travel.

¹⁵⁹ (...continued)

and NEXUS/SENTRI, from CBP; and Secure Flight, Transportation Worker Identification Credential (TWIC), Registered Traveler, Hazardous Materials (HAZMAT) background checks, and the Alien Flight School background checks program from TSA

¹⁶⁰ H.Rept. 109-241.

¹⁶¹ U.S. Department of Homeland Security, letter from Secretary Michael Chertoff to the Honorable Joseph I. Lieberman, Chairman, Committee on Homeland Security and Government Affairs, U.S. Senate, Washington, DC, January 18, 2007, p. 8.

¹⁶² *DHS FY2008 Justification*, p. US-VISIT 3.

Issues for Congress. There are a number of issues that Congress may face relating to the implementation of the US-VISIT system and its proposed transfer to the NPPD. These issues may include whether the Administration's decrease in funding for the exit component and focus on expanding the entry component of the system is appropriate, whether U.S. Visit should be placed administratively within the NPPD or whether there is some other configuration within DHS that is better suited to US-VISIT's mission, and whether the current POE infrastructure can support the added communication load that a 10 fingerprint system would likely require.

Administrative Placement Within NPPD. Some question whether the administrative placement of US-VISIT within the proposed NPPD is appropriate.¹⁶³ Most of the other DHS components that would comprise the NPPD focus on infrastructure protection and government-wide coordination and were previously located within the Office of Infrastructure Protection at DHS. While an argument could be made that US-VISIT supports the protection of critical infrastructure by preventing terrorists from entering the country, a counter-argument could be made that US-VISIT's primary role is immigration-related and relates to screening individuals as they enter the country. Some observers, including the GAO, have noted that the US-VISIT program would benefit from stronger management oversight, especially in light of the program's continuing inability to formulate a strategic plan.¹⁶⁴ However, there is some doubt concerning whether the NPPD would be the best fit within DHS for US-VISIT given the seeming disparity between US-VISIT and the other proposed components of the NPPD. A possible issue for Congress could include whether US-VISIT should be placed administratively within the NPPD or whether there are other administrative placements that would be more appropriate. Possible options, should Congress decide against placing US-VISIT within the NPPD, could include leaving US-VISIT as a stand-alone entity within DHS reporting directly to the Undersecretary, or placing it within CBP to bolster US-VISIT's immigration control aspects. Both the House and Senate passed bills would leave US-VISIT within the NPPD.

10 Fingerprint Entry Versus the Exit Component. In its FY2008 request, DHS appears to be moving toward implementing a 10 fingerprint entry component to the US-VISIT system rather than electing to implement the system's exit component. In congressional testimony, DHS acknowledged that it has stopped actively testing technologies associated with the exit component of the system,¹⁶⁵ and the FY2008 request includes a reduction of \$31 million for exit pilot programs. Instead, DHS appears to be focusing on expanding the entry component of the system to include 10 fingerprint enrollment and interoperability with other federal government fingerprint databases. Possible issues for Congress may include whether

¹⁶³ For example, H.R. 1684, as amended during committee markup, would prohibit this transfer until DHS submits a plan for implementing the US-VISIT program's exit component at all ports of entry.

¹⁶⁴ *GAO Testimony, February 2007*, p. 19.

¹⁶⁵ U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Terrorism, Technology, and Homeland Security, *US-VISIT: Challenges and Strategies for Securing the U.S. Border*, 110th Cong., 1st Sess., January 31, 2007.

these goals are mutually exclusive, and whether DHS should continue to work on the exit component of the system as it expands the entry component. H.R. 2638 fully funded the Administration's request for the implementation of a 10 fingerprint entry capability. However, the House Committee on Appropriations voiced concern over the "lack of a clear plan, with timelines and milestone goals, for addressing an exit strategy."¹⁶⁶ The House also noted that, while the implementation of the exit component at the land border may not be feasible with current technology, "the failure to exploit the foundation for air exit solutions is incomprehensible — as are current plans to terminate the existing air pilots, rather than use them to fill a gap until a permanent solution can be found."¹⁶⁷ Senate-passed H.R. 2638 also fully funded the Administration's request for the implementation of 10 fingerprint entry capability. However, the Senate Committee on Appropriations "is deeply disappointed that the Department has achieved no tangible progress on instituting an 'exit' capacity in over 4 years."¹⁶⁸ Senate-passed H.R. 2638 would withhold \$100 million from obligation pending the committee's approval of a comprehensive US-VISIT plan. P.L. 110-161 supports the move toward a 10 fingerprint entry-system and directs US-VISIT to oversee and manage the efforts to provide real-time interoperability between the DHS Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (IAFIS). The conference report names this effort "Unique Identity" and places US-VISIT in charge of its implementation. The conferees express their disappointment with the lack of an exit solution for the US-VISIT system, and note that they are providing \$13 million in FY2008 to implement an exit solution at air and sea POE by the end of 2008. They also direct DHS to assess the feasibility of an exit solution at land POE and report on its findings.

Infrastructure Protection and Information Security¹⁶⁹

Within DHS, those activities which coordinate the national effort to identify the nation's most critical infrastructure assets and to prioritize risk reduction activities at those sites are located in the Infrastructure Protection and Information Security (IPIS) Program. For the most part, these activities were left in place following the reorganizations mentioned above. One notable exception was the transfer of the Biosurveillance program/project activity (PPA) to the new Office of Health Affairs. In addition, funding for the new Office of Emergency Communications (OEC) falls within this program.

President's FY2008 Request. The President's request for the FY2008 IPIS program was \$653 million. While many of the activities of the IPIS program were left in place, the President's request did make some changes that make it difficult to compare the FY2008 requested figures with the FY2007 enacted figures presented in the President's budget. In the FY2008 budget request, a number of IPIS

¹⁶⁶ H.Rept. 110-181, p. 89.

¹⁶⁷ H.Rept. 110-181, p. 89.

¹⁶⁸ S.Rept. 110-84, p. 86.

¹⁶⁹ Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division.

program/project activities (PPAs—Critical Infrastructure Outreach and Partnerships, Critical Infrastructure Identification and Evaluation, National Infrastructure Simulation and Analysis Center, and Protective Actions) were combined into a single PPA called Infrastructure Protection (IP). In addition, the President's request transferred certain expenses (such as facility rents and information technology support), previously paid for by each PPA, to the NPPD's Management and Administration account, while proposing that each sub-program pick up their own related salaries and benefits. Salaries and benefits were previously paid for in an IPIS Management and Administration PPA. Tracking these transfers is beyond the scope of this document. The FY2007 enacted figures noted below in **Table 16** are based on House and Senate reports accompanying their respective appropriation bills. Presumably, these FY2007 enacted figures reflect the changes made in the new FY2008 budget categories.

The President's budget identified 6 programmatic increases totaling approximately \$38 million. The largest of these was \$15 million to expand the Chemical Site Security Program (within the IP PPA) to support development, implementation, and oversight of the new regulations being promulgated on selected sites that handle certain amounts of selected hazardous chemicals. The other relatively large increase was \$11 million to accelerate activities associated with the Department's Wireless Priority Service responsibility (within the NS/EP PPA). The budget also identified 3 areas where program reductions were made, with \$30 million in various IP PPA activities being scaled back. These included, among others, reductions in management and implementation of the National Infrastructure Protection Plan (made possible according to DHS by completion of Sector Specific Plans), deferral of some capabilities of the Automated Critical Asset Management System, reductions in the Bomb Prevention Program and some Infrastructure Planning, Training and Exercise Programs. **Table 16** provides PPA-level detail for IPIS.

House-Passed H.R. 2638. The House appropriated \$533 million for the IPIS program, providing more funds for Infrastructure Protection (IP) and the Office of Emergency Communications (OEC) than requested, and less funds for Computer Security (CS) and National Security/Emergency Preparedness Telecommunications (NS/EP). Within the IP PPA, the House provided \$20 million more than requested for continued management and implementation of the National Infrastructure Protection Plan. It did not accept the argument that the release of the Sector Specific Plans could allow for a reduction in effort. The increase included \$3 million for greater administrative and logistical support for the Sector Coordinating Councils, through which DHS interacts with the private sector on critical infrastructure protection. The House also provided \$10 million more than requested for the National Infrastructure Simulation and Analysis Center. Within the OEC PPA, the House provided \$8 million more than requested for interoperability integration and technical assistance to State and local entities. Regarding the reduction made in the NS/EP request, the House did not feel that DHS had justified the large increase requested for a Next Generation Network so soon after the anticipated successful completion of the current Wireless Priority Service program. The House provided \$18 million, instead of the \$52 million requested. The House bill also contained provisions that would preclude federal regulations from preempting stronger state and local regulations governing security at chemical facilities.

Senate-Passed H.R. 2638. Senate-passed H.R. 2638 would provide \$522 million for IPIS. Similar to the House, the Senate Committee on Appropriations recommended additional funding for IP and OEC, while recommending less for CS and NS/EP than requested. Within the IP PPA, the Committee recommended increases for implementing security regulations at chemical facilities (+ \$15 million) and for the National Infrastructure Simulation and Analysis Center (+ \$9 million). Within the OEC PPA, the Committee recommended an increase of \$12 million for the Interoperable Communications Integration and Technical Assistance program. Similar to the House, the Senate Appropriations Committee recommended less funding than requested for the Next Generation Network, within the NS/EP PPA (recommending \$30 million instead of the \$52 million requested). In addition, during floor debate, the Senate agreed to Amendment 2468 which specified that \$10 million shall be provided to the Office of Bombing Prevention and not more than \$26 million should be provided for the Next Generation Network (reducing it further than the Committee recommendation). The full Senate also agreed to Amendment 2502, amending the Homeland Security Act, authorizing the Secretary to regulate the sale of ammonium nitrate. The amendment also authorized \$2 million to implement this authority, to be funded through the IPIS program. Ammonium nitrate is an ingredient used in fertilizers that can also be used to make homemade bombs like that used in the Oklahoma City bombing. The Senate also agreed to S.Amdt. 2465, which provides an additional \$5 million to firefighter assistance grants by reducing the amount provided to IPIS by \$5 million. Senate-passed H.R. 2638 thus includes \$522 million for IPIS.

FY2008 Enacted (P.L. 110-161, Division E). The Consolidated Appropriations Act, 2008, provided \$655 million for the IPIS program. This included the additional \$115 million the Administration requested for Cyber Security as part of an amended budget request dated November 6, 2007, and reversed earlier recommendations by both chambers to appropriate less than what was requested for that program. The \$115 million increase represents a down payment on a larger cyber security initiative expected to be announced later this calendar year. The Act also provided \$50 million for implementing the chemical facility security regulations, another \$10 million above what the Senate recommended, and double the Administration's request. The Act provided \$20 million for the National Infrastructure Simulation and Analysis Center, an increase of about \$4 million above the requested level, but not as great an increase as proposed by either chamber. The Act provided \$31 million for NIPP implementation, an increase of \$8 million above the request, but less than what the House recommended. The Act split the difference between the House and the Senate regarding the the NS/EP Next Generation Network project, appropriating \$21 million. While both chambers had recommended increasing funding for the Office of Emergency Communications, the Act appropriated the amount requested by the Administration.

Table 16. FY2008 Budget Activity for the Infrastructure Protection and Information Security Appropriation
(budget authority in millions of dollars)

Program Project Activity	FY07 Total	FY08 Req.	FY08 House	FY08 Senate	FY08 Enacted	FY2008 Emerg. P.L. 110-161
M/A	55	—	—	—	—	—
IP	250	240	272	256	273	—
CS	92	213	87	92	210	—
NS/EP	143	165	129	128	136	—
OEC	17	36	46	46	36	—
Undistributed reduction	—	—	—	-5	—	—
Total	557	653	533	522	655	—

M/A=Management and Administration; IP=Infrastructure Protection; CS=Computer Security; NS/EP=National Security/Emergency Preparedness Telecommunications; OEC=Office of Emergency Communications.

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Note: Totals may not add due to rounding.

a. FY2007 enacted figures reflect changes in the expenditures covered in the FY2008 budget request, making FY2007 and FY2008 figures comparable. They do not represent the actual enacted figure for the IPIS program at the time of enactment.

Issues for Congress. Some IPIS-related issues that were of interest to Congress include the quality of the budget requests; chemical facility regulations; and the location of risk management funding.

Quality of Budget Requests. The consolidation of some of the IPIS PPAs may make some activities less visible and give the Secretary more discretion to transfer funds within the IPIS budget. Both the House and the Senate Appropriations Committee criticized the level of detail and clarity of the NPPD budget justification document and the apparent transfer of funds without their knowledge. The Senate Appropriations Committee went further to say that the consolidation appeared to be an effort to obfuscate. Both went on to specify lower-level line-item funding for individual program areas within the IP and NS/EP PPAs. The Senate Appropriations Committee also cut the NPPD's request for its Management and Administration account by \$16 million and withheld half (\$15 million) of its recommended funding from obligation until the Committee receives and approves an expenditure plan that

has been reviewed by the Government Accountability Office. The Act reiterated congressional concerns but reduced the fenced off funds to \$5 million.

Chemical Facility Regulations. Both the House and the Senate Appropriations Committee were concerned about the chemical facility security regulations developed by DHS which preempt State and local regulations. The House bill included language that specifically prevents federal regulations from precluding or preempting stronger State and local regulations. The Senate Appropriations Committee included similar language, unless “there is an actual conflict” between Section 550 of the Department of Homeland Security Appropriations Act of 2007 (P.L. 109-295), the provision of federal law authorizing DHS to regulate security at chemical facilities, and the State law. The Senate language seems to be in response to the White House Statement of Policy regarding H.R. 2638, which “strongly opposes” the House language. One rationale given by the White House for opposing the House language is that it would prevent the Department from preempting State or local laws that “actually conflict with and/or impede the Federal regulatory requirements....” The White House also stated that the language would weaken the Department’s ability to protect information transmitted to the Department for regulatory purposes from disclosure, although it does not elaborate on how this would do so. Industry has expressed concern that some state-level freedom of information statutes are too accommodating to making information available to the public. The Act included the Senate provision.

Location of Risk Management Funding. As part of the reorganization of the National Protection and Programs Directorate, the Secretary elevated the Division of Risk Management to the Office of Risk Management and Analysis. The Director of the new Office reports directly to the Undersecretary for National Protection and Programs. The President’s request included \$9 million for this Office, stating that the funds were reflected in each of the IPIS PPAs and the NPPD’s Management and Administration account. The House version of the appropriations bill would fund this Office out of the NPPD’s Management and Administration account. The Senate Appropriations Committee did not make a comparable recommendation. The Act provided \$9 million for the Office from the NPPD’s Management and Administration account.

Title IV: Research and Development, Training, Assessments, and Services

Title IV includes appropriations for U.S. Citizenship and Immigration Services (USCIS), the Federal Law Enforcement Training Center (FLETC), the Science and Technology Directorate (S&T), and the Domestic Nuclear Detection Office (DNDO). **Table 17** provides account-level details of Title IV appropriations.

Table 17. Title IV: Research and Development, Training, Assessments, and Services
(budget authority in millions of dollars)

Operational Component	FY2007 Appropriation				FY2008 Appropriation				
	FY2007 Enacted	FY2007 Supp.	FY2007 Resc.	FY2007 Total	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L. 110-161
Citizenship and Immigration Services									
Total available budget authority	1,986	8		1,994	2,569	2,569	2,589	2,620	—
— Offsetting fees ^a	-1,804	—		-1,804	-2,539	-2,539	-2,539	-2,539	—
Net subtotal (Direct appropriation)	182	8		190	30	30	50^b	81	80
Federal Law Enforcement Training Center	275	3		278	263	263	266	289	21
Science and Technology									
— Management and Administration	134	—	-1	133	143	131	141	139	—
— Research, Development, Acquisition, and Operations	624	5		629	656	646	697	692	—
Net Subtotal	758	5	-1	762	799	777	838	830	—
Domestic Nuclear Detection Office									
— Management and Administration	30	—		30	34	31	32	32	—
— Research, Development, Acquisition, and Operations	273	35		308	320	317	336	324	—
— Systems Acquisition	178	100		278	208	208	182	130	—
Net Subtotal	481	135		616	562	556	550	485	—
Gross budget authority: Title IV	3,500	151	-1	3,650	4,193	4,165	4,243	4,224	101
— Offsetting collections: Title IV	-1,804	—		-1,804	-2,539	-2,539	-2,539	-2,539	—
Net budget authority: Title IV	1,696	151	-1	1,846	1,654	1,626	1,704	1,685	101

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

CRS-99

Notes: Amounts in parentheses are non-adds. Totals may not add due to rounding.

- a. Fees include Immigration Examination Fund; H-1b Visa Fee; and the Fraud Prevention and Detection fee.
- b. Senate-passed H.R. 2638 also includes an additional \$60 million in emergency funding (not shown in **Table 17**) for USCIS' Employment Eligibility Verification System, that is to be taken from the \$3,000 million emergency appropriation included in Senate-passed H.R. 2638 as a part of the Border Security First Act of 2007.

U.S. Citizenship and Immigration Services (USCIS)¹⁷⁰

There are three major activities that dominate the work of the U.S. Citizenship and Immigration Services (USCIS): the adjudication of immigration petitions (including nonimmigrant change of status petitions, relative petitions, employment-based petitions, work authorizations, and travel documents); the adjudication of naturalization petitions for legal permanent residents to become citizens; and the consideration of refugee and asylum claims, and related humanitarian and international concerns.¹⁷¹ USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits largely through monies generated by the Examinations Fee Account.¹⁷² **Table 17** shows FY2007 appropriations and congressional actions in response to the FY2008 request.

President's FY2008 Request. USCIS is a fee driven agency. As part of the former Immigration and Naturalization Service (INS), USCIS was directed to transform its revenue structure with the creation of the Examinations Fee Account.¹⁷³ Although the agency has received direct appropriations in the last decade, these appropriations have been largely directed towards specific projects such as backlog reduction initiatives. The vast majority of the agency's revenues, however, come from the adjudication fees of immigration benefit applications and petitions. In the President's FY2008 budget request, the agency requested \$30 million in direct appropriations. The remaining \$2,539 million of the appropriations requested would be funded by revenues from collected fees.

As **Table 18** below shows, the requested USCIS budget for FY2008 is approximately \$2,569 million. This requested amount constitutes an increase of \$583 million or 29% over the enacted appropriation amount from FY2007. The requested direct appropriation of \$30 million would be designated for the Employer Eligibility Verification Program (EEV),¹⁷⁴ while all other program and operations would be fee funded. Of the requested funds for FY2008, \$1,981 million, or roughly 77%, would fund the USCIS adjudication services. A plurality of these adjudication funds would go towards pay and expenses with an allocation of \$764 million, while

¹⁷⁰ Prepared by Chad C. Haddal, Analyst in Immigration Policy, Domestic Social Policy Division.

¹⁷¹ CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

¹⁷² §286 of the Immigration and Nationality Act, 8 U.S.C. §1356.

¹⁷³ There are two other fee accounts at USCIS, known as the H-1B Nonimmigrant Petitioner Account and the Fraud Prevention and Detection Account. The revenues in these accounts are drawn from separate fees that are statutorily determined (P.L. 106-311 and P.L. 109-13, respectively). USCIS receives 5% of the H-1B Nonimmigrant Petitioner Account revenues and 33% of the Fraud Detection and Prevention Account revenues. In FY2006, the USCIS shares of revenues in these accounts were approximately \$13 million and \$16 million respectively, and these funds combined for roughly 3% of the USCIS budget (U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2008 Congressional Budget Justifications*).

¹⁷⁴ EEV is also known as E-Verify.

district operating expenses would receive \$552 million and service center operating expenses would be allocated \$354 million, respectively. Business transformation initiatives for modernizing systems and improving agency information sharing and efficiency would receive \$139 million. The President's budget request also includes requested funding levels of \$162 million for information and customer services, \$375 million for administration, and \$21 million for the Systematic Alien Verification for Entitlements (SAVE) Program.

Table 18. USCIS Budget Account Detail
(budget authority in millions of dollars)

Program/Project Activity	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed ^a	FY2008 Enacted	FY2008 Emerg. P.L. 110-161
<i>Appropriations</i>						
Appropriations	182^b	30	30	110	81	80
Business Transformation	47	—	—	—	—	—
SAVE	21	—	—	—	—	—
EEV	114	30	30	90 ^c	60	60
FBI Background Check	—	—	—	20	21	20
<i>Fee Accounts</i>						
Adjudication Services	1,419	1,981	1,981	1,981	1,981	—
Pay & Benefits	625	764	764	764	764	—
District Operating Expenses	385	552	552	552	552	—
Service Center Operating Expenses	267	355	355	355	355	—
Asylum/Refugee Operating Expenses	75	91	91	91	91	—
Records Operating Expenses	67	81	81	81	81	—
Business Transformation		139	139	139	139	—
Information and Customer Services	144	162	162	162	162	—
Administration	241	375	375	375	375	—
SAVE	—	21	21	21	22	—
Total USCIS Funding	1,986	2,569	2,569	2,649^c	2,620	80

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

- a. The table does not include a proposed appropriation of \$523,000 to benefit parole programs. Thus, the total proposed appropriation in Senate-passed H.R. 2638 is \$110,523,000.
- b. The Table does not include a supplemental appropriation of \$8 million for FY2007 included in P.L. 110-28.
- c. Includes an additional \$60 million in emergency funding (SA 2518) for USCIS's Employment Eligibility Verification System, which is to be taken from the \$3,000 million emergency appropriation included in Senate-passed H.R. 2638 as a part of the Border Security First Act of 2007.

House-Passed H.R. 2638. The appropriations bills on homeland security offer different funding proposals in the two congressional chambers. The House-passed version of the USCIS appropriations is identical to the agency's request, but H.Rept. 110-181 expressed some concerns that committee members had regarding USCIS fees and operations. The report expressed concern regarding the potential hardship the fee increase may create for some applicants, and Members directed USCIS to review its fees on a more regular basis.¹⁷⁵ Moreover, the report would require USCIS to submit a report to the committee with the FY2009 budget request on whether the fee increase resulted in service improvements, including reductions in USCIS adjudication times and FBI backlogs. Finally, the House Members expressed continuing support for USCIS' business and information technology transformation and internal security improvements, while urging the immediate publication of the final regulation rule on U-Visas.¹⁷⁶

Senate-Passed H.R. 2638. In the course of considering the DHS budget, the Senate chose to adopt H.R. 2638 and employ the language of S. 1644 in the nature of a substitute. Although similar to the President's budget request in most respects, the Senate appropriations proposal would supplement the agency's request of \$30 million for the EEV program with an additional \$80.5 million in direct appropriations. Of these funds, \$20 million would be appropriated for FBI background checks, and \$523,000 would be for benefit parole programs.¹⁷⁷ In the S.Rept. 110-84, the committee members expressed their concern about the FBI backlogs for background checks submitted by USCIS and the length of time it currently takes to process security background checks. Additionally, the committee would require that the Secretary of Homeland Security and the Attorney General

¹⁷⁵ H.Rept. 110-181 also directs USCIS to ensure that all its ongoing base operations are fully funded by fees prior to initiating any new initiatives.

¹⁷⁶ The U-Visa is a nonimmigrant visa designed for issuance to victims of domestic violence and other heinous crimes. It was originally enacted in the Victims of Trafficking and Violence Protection Act of 2000. (P.L.106-386)

¹⁷⁷ According to S.Rept. 110-84, on March 31, 2007, the Secretary of Homeland Security transferred this amount of funds to the Cuban-Haitian Entrant Program, the Moscow Refugee Program, and the Humanitarian Parole Program within USCIS from U.S. Immigration and Customs Enforcement's Office of Investigations (International). The Senate Report recommends that this transfer become permanent.

submit a plan to comprehensively deal with the FBI backlogs, and it would require USCIS to submit quarterly reports on the status of USCIS application processing and its backlog reduction plan.

In addition to the FBI-related funding, the Senate also adopted two amendments during floor debates that relate to USCIS funding. First, the Senate stipulated in S.Amdt 2518 that a further \$60 million be made available in direct appropriations for the EEV program. These funds would be drawn from the supplemental funds provided for under the border security measures of S.Amdt. 2480 to H.R. 2638. These funds would be used to ensure that state and local programs have sufficient access to and coordination with the EEV system and that the system has sufficient capacity for the registration and inquiries of employers in states with EEV registration requirements. Also the funds would be used for the development of privacy and security policies and protection. Secondly, S.Amdt. 2526 stipulated that not less than \$1 million of USCIS funding be set aside for a benefits fraud assessment of the H-1B Visa Program.

FY2008 Enacted (P.L. 110-161, Division E). Division E of P.L. 110-161 differs from the House-passed and Senate-passed versions of H.R. 2638 in several ways. First, it provides a direct appropriation of \$60 million for the EEV program. Additionally, the Act includes the \$21 million direct appropriation to reduce the FBI name check backlog that was originally included in Senate-passed H.R. 2638. The Act also includes the Senate-proposed appropriation of \$523,000 for benefit parole programs, as well as an appropriation of \$450,000 for USCIS to expand its immigration services programs in areas with large populations of underserved immigrant populations. The latter appropriation was not included in either version of H.R. 2638. The total amount of direct appropriations for USCIS from Division E of P.L. 110-161 is \$80.9 million.

Issues for Congress. The 110th Congress may face a number of issues relating to legal immigration and USCIS' role in the process during the FY2008 appropriations cycle. These issues may include whether the Administration's proposed fee increases for visa applicants should be implemented or whether there are alternatives to fee increases that could be considered, whether USCIS is effectively dealing with their adjudication backlog, and whether the proposed fee structure would provide sufficient funding to cover the elimination of the USCIS backlog.

Scheduled Fee Increase. On May 30, 2007, USCIS published a new fee schedule for immigration adjudications and benefits set to take effect on July 30, 2007. These fee adjustments would constitute the first fee revision since October 26, 2005, and would increase application fees by a weighted average of 96% for each benefit.¹⁷⁸ USCIS officials claim the fee increase is necessary to maintain proper

¹⁷⁸ This weighted average does not include the increases to the biometric fee. When combined with the biometric fee, the weighted average application fee increase would be reduced to 86%. (U.S. Department of Homeland Security, "U.S. Citizenship and Immigration Services, Adjustment of the Immigration and Naturalization Benefit (continued...)

service levels and to avoid the accumulation of backlogs.¹⁷⁹ Congressional reactions to these proposed fees have been strong and divergent. Some opponents of the fees have called for congressional action to prevent the new fees from being implemented. Although generally not opposed to the increased revenue for USCIS, the fee increase opponents want USCIS to implement a sliding scale fee structure or request direct appropriations to offset the benefit costs for lower income families.¹⁸⁰ Fee increase supporters contend that the proposed fee structure would help deter possible public charges from applying for immigration benefits. These fee proponents further contend that the immigration benefits these individuals receive are a “good deal” by world standards, even under the proposed fee structure.¹⁸¹

Adjudication Backlog. The fee increase has also raised issues and questions concerning the adjudications backlog that USCIS has worked towards reducing. USCIS Director Emilio T. Gonzalez has stated that the current backlog of applications for immigration benefits has been significantly reduced, and that the share of the backlog due to factors under the control of USCIS was approximately 65,000.¹⁸² Critics continue to be concerned, however, about the more than 1 million additional applications that have been pending for more than six months that USCIS does not count in its backlog figures, and that the seriousness of the USCIS backlog is masked by changes in the agency’s backlog definition.¹⁸³ Critics are also concerned about delays that are allegedly caused by the FBI’s National Name Check Program.¹⁸⁴ Since FY2002, Congress has appropriated \$574 million towards backlog reduction efforts at USCIS, including \$494 million in direct appropriations.

¹⁷⁸ (...continued)

Application and Petition Fee Schedule; Proposed Rule,” *Federal Register*, vol. 72, no. 21 (February 1, 2007), p. 4888)

¹⁷⁹ *Ibid*, p. 4892.

¹⁸⁰ For example, in the House Chamber, Representatives Gutierrez and Shakowsky introduced H.R. 1379, which would prevent USCIS from increasing the citizenship application fees to levels above application processing costs.

¹⁸¹ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110th Cong., 1st sess., February 14, 2007

¹⁸² *Ibid*.

¹⁸³ The DHS Inspector General has expressed concern that the changing backlog definitions “will not resolve the long-standing processing and IT problems that contributed to the backlog in the first place. (U.S. Department of Homeland Security, Office of the Inspector General, *USCIS Faces Challenges in Modernizing Information Technology*, OIG-05-41 (September 2005), p. 28) The USCIS Ombudsman also criticized the definition changes, saying that “these definitional changes hide the true problem and the need for change” (U.S. Department of Homeland Security, Citizenship and Immigration Service Ombudsman, *Annual Report 2006*, June 29, 2006, p. 9).

¹⁸⁴ For example, see S.Amdt. 1228 to S. 1348.

It has been the stated goal of President George W. Bush to reduce the application processing time for immigration to a six month standard.¹⁸⁵ Some argue that in order for USCIS to be able to accomplish this goal, it needs a fee structure that more accurately reflects the cost of processing immigration benefit applications. USCIS claims that the proposed fees are more aligned with the agency's adjudication costs.¹⁸⁶ Some additionally believe that the fee increases would be necessary in order for USCIS to handle any potential future increases in applications. Since USCIS is fee funded, any passage of comprehensive immigration reform legislation that includes either earned legalization or a temporary worker program would likely result in a significant increase in the number of incoming applications.

Federal Law Enforcement Training Center (FLETC)¹⁸⁷

The Federal Law Enforcement Training Center provides training on all phases of law enforcement instruction, from firearms and high speed vehicle pursuit to legal case instruction and defendant interview techniques for 81 federal entities with law enforcement responsibilities, state and local law enforcement agencies, and international law enforcement agencies. Training policies, programs, and standards are developed by an interagency Board of Directors, and focus on providing training that develops the skills and knowledge needed to perform law enforcement functions safely, effectively, and professionally. FLETC maintains four training sites throughout the United States and has a workforce of more than 1,000 employees.

President's Request. The overall request for FLETC in FY2008 is \$263 million, a decrease of \$12 million from the FY2007 appropriation. The Administration is proposing the creation of a FLETC Fund to replace the Salaries and Expenses account within FLETC. For FY2008, the fund would be capitalized with \$220 million in a no year revolving fund that would allow for the development of a reimbursable cost module. The new fund would include funding for 1,077 positions including an increase of seven new instructors to support the Secure Border Initiative (SBI) at CBP. As part of SBI, FLETC estimates it will need to provide basic training for 4,350 USBP agents in order to add a net total of 3,000 agents to the USBP workforce.¹⁸⁸

House-Passed H.R. 2638. The House fully funded the Administration's FY2008 request for FLETC. However, the House did not approve the Administration's proposal to replace the salaries and expenses account within

¹⁸⁵ Remarks by the President at INS Naturalization Ceremony (July 10, 2001), at [<http://www.whitehouse.gov/news/releases/2001/07/20010710-1.html>], visited March 9, 2007.

¹⁸⁶ U.S. Department of Homeland Security, "U.S. Citizenship and Immigration Services, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule," *Federal Register*, vol. 72, no. 21 (February 1, 2007), pp. 4893-4894.

¹⁸⁷ Prepared by Blas Nuñez-Neto, Analyst in Domestic Security, Domestic Social Policy Division.

¹⁸⁸ *DHS FY2008 Congressional Budget Justification*, pp. FLETC Fund 3-6.

FLETC with a no-year revolving fund, asserting that “the current funding mechanisms utilized for FLETC appear to be working well.”¹⁸⁹

Senate-Passed H.R. 2638. The Senate recommended \$266 million for FLETC in FY2008, \$3 million more than the Administration requested. Included in the recommendation is \$1 million for the construction of a detention training facility within the Artesia, new Mexico FLETC.

FY2008 Enacted (P.L. 110-161, Division E). P.L. 110-161 provides \$289 million for FLETC; however, it rejects the Administration’s FLETC fund proposal. The Act extends FLETC’s rehired annuitant authority through December 31, 2010.

Science and Technology (S&T)¹⁹⁰

The Directorate of Science and Technology is the primary DHS organization for research and development. Headed by an Under Secretary for Science and Technology, it performs R&D in several laboratories of its own; funds R&D performed by universities, industry, the national laboratories, and other government agencies; and manages operational systems. See **Table 19** for details of the directorate’s appropriation.

President’s FY2008 Request. The Administration requested a total of \$799 million for S&T for FY2008. This was 18% less than the FY2007 appropriation of \$973 million, but about half of the proposed reduction was in operational programs that were transferred from S&T to other parts of the department (Biowatch and related programs from the Biological and Chemical program and Safecom from the Command, Control, and Interoperability program). Including these transfers and a \$125 million rescission of unobligated balances, the FY2007 enacted amount was \$758 million (not including supplementals and rescissions included in P.L. 110-5 or P.L. 110-28). A proposed \$41 million reduction in the Explosives program was due to the completion of efforts to develop a prototype for protecting commercial aircraft against shoulder-launched missiles. A proposed \$51 million reduction in the Infrastructure and Geophysical program was largely the result of reducing funding for local and regional initiatives previously established or funded at congressional direction.

House-Passed H.R. 2638. The House, citing unfilled staff positions in the S&T Directorate, provided \$12 million less than the request for Management and Administration. It rejected the \$14 million request for procurement of third-generation BioWatch units in the Biological and Chemical program. It provided \$10 million more than the request for University Programs and instructed the S&T Directorate to report by February 1, 2008, on how it selects university Centers of Excellence, determines the research topics for Centers, and evaluates the quality of their work. The House provided no funding for the Analysis, Dissemination,

¹⁸⁹ H.Rept. 110-181, p. 117.

¹⁹⁰ Prepared by Daniel Morgan, Analyst in Science & Technology, Resources, Science, and Industry Division.

Visualization, Insight, and Semantic Enhancement (ADVISE) program, a data-mining tool, and prohibited obligation of funds for ADVISE until DHS completed a privacy impact assessment.¹⁹¹ Several other smaller changes added up to a net decrease of \$10 million in Research, Development, Acquisition, and Operations.

Senate-Passed H.R. 2638. The Senate provided an increase of \$41 million in Research, Development, Acquisition, and Operations over the request for FY2008. Within this total, reductions relative to the request included \$13 million from the Biological and Chemical program, \$14 million from Innovation, and zero funding for ADVISE. Increases included \$18 million for Explosives to counter car bombs and other improvised explosive devices, \$40 million for Infrastructure and Geophysical earmarked for the Southeast Region Research Initiative and the Regional Technology Integration initiative, and \$15 million for Laboratory Facilities earmarked for Pacific Northwest National Laboratory. The Senate provided a reduction of \$2 million in Management and Administration.

FY2008 Enacted (P.L. 110-161, Division E). The final appropriation included an increase of \$35 million in Research, Development, Acquisition, and Operations and a reduction of \$4 million in Management and Administration. The Chemical and Biological program received \$21 million less than requested, including \$8 million less for third-generation BioWatch procurement. Innovation received \$27 million less, and the explanatory statement directed S&T to provide a plan for how the program's funds will be allocated. University Programs received \$11 million more than the request, and the explanatory statement called for a briefing similar to the report called for by the House. Explosives received \$14 million more, including \$15 million to counter car bombs and IEDs. The final appropriation included the Senate earmarks for \$55 million. It provided no funding for ADVISE or its follow-ons or successors.

Issues for Congress. During the FY2008 appropriations cycle, Congress and others were highly critical of the S&T Directorate's performance. Among the fundamental issues facing Congress are questions about the directorate's mission, its organization, its priorities and how they are set, its financial management, and the transparency of its operations. A reorganization in late 2006 aligned the directorate's management structure with the presentation of its budget (with a division director responsible for each italicized program in **Table 19**). The directorate's university centers of excellence are to be realigned to match the new organization, with new centers being established for some topics and other topics being merged. After several years of criticism for failing to spend funds that were appropriated, the directorate reports progress in more rapidly obligating its FY2007 funding.

¹⁹¹ The assessment was published after passage of the House bill but before passage of the Senate bill. DHS Privacy Office, *Review of the Analysis, Dissemination, Visualization, Insight and Semantic Enhancement (ADVISE) Program*, July 11, 2007.

Domestic Nuclear Detection Office¹⁹²

The Domestic Nuclear Detection Office (DNDO) is the primary DHS organization for combating the threat of nuclear attack. It is responsible for all DHS nuclear detection research, development, testing, evaluation, acquisition, and operational support. See **Table 19** for details of the appropriation for DNDO.

President's FY2008 Request. The Administration requested a total of \$562 million for DNDO for FY2008. This was a 17% increase from the FY2007 appropriation. A proposed \$47 million increase in Research, Development, and Operations would focus primarily on the Transformational R&D program, whose goal is to identify, develop, and demonstrate technologies that fill major gaps in the nuclear detection architecture. A proposed \$30 million increase in Systems Acquisition would go to begin implementation of the Securing the Cities initiative in the New York City area.

House-Passed H.R. 2638. The House provided the requested amount for Systems Acquisition. A reduction of \$40 million, including a reduction of \$20 million in the Securing the Cities initiative, was recommended by the House committee but was reversed by a floor amendment. The House reduced Management and Administration and Research, Development, and Operations by \$3 million each. The House report directed DNDO not to procure Advanced Spectroscopic Portal (ASP) systems until it certifies that they are more effective than traditional radiation portal monitors.

Senate-Passed H.R. 2638. Compared with the request, the Senate provided a reduction of \$2 million in Management and Administration, an increase of \$16 million in Research, Development, and Operations, and a reduction of \$26 million in Systems Acquisition. The largest change relative to the request was a shift of \$29 million from Systems Acquisition to Research, Development, and Operations. Of this amount, \$20 million would be spent on screening general aviation aircraft for illicit nuclear materials. A floor amendment increased funding for the Securing the Cities initiative to the requested amount: \$30 million in Systems Acquisition and \$10 million in Research, Development, and Operations. The Senate bill would prohibit obligation of funds for full-scale procurement of ASP monitors until DHS provides the report and certification called for by the FY2007 conference report (H.Rept. 109-699).

FY2008 Enacted (P.L. 110-161, Division E). The final appropriation provided \$90 million less than the request for Systems Acquisition. As in previous years, it prohibited full-scale procurement of ASP monitors until their performance has been certified by the Secretary. Recognizing "the difficulty the Secretary faces" in making this certification, it provided funds for the National Academy of Sciences "to assist the Secretary in his certification decisions." It also required the certification to be made separately for primary and secondary deployments. The final

¹⁹² Prepared by Daniel Morgan, Analyst in Science and Technology, Resources, Science, and Industry Division.

appropriation included the requested amount for Securing the Cities and \$13 million related to screening of general aviation aircraft.

Issues for Congress. Congressional attention has focused on criticism of a cost-benefit analysis that DNDO conducted to support its decision to purchase and deploy next-generation ASP technology for radiation portal monitors.¹⁹³ With DNDO funding increasing and S&T funding decreasing, the relative role of the two organizations also remains an issue of congressional interest. The DNDO was funded in the S&T account in FY2006, and before that year, nuclear and radiological R&D were the responsibility of the S&T Directorate. In the FY2007 appropriations cycle, the House committee report expressed dissatisfaction with the transfer of DNDO out of S&T and directed S&T to work with DNDO and support its R&D-related needs (H.Rept. 109-476). Meanwhile, the Senate committee report for FY2007 directed DNDO to work with S&T rather than start a duplicative university grant program (S.Rept. 109-273).

Table 19. Research and Development Accounts and Activities, FY2007-FY2008

(budget authority in millions of dollars)

	FY2007 Enacted ^a	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L. 110-161
Science and Technology Directorate	973 ^b	799	777	838	830	—
Management and Administration ^c	135	143	131	141	139	—
R&D, Acquisition, and Operations	838	656	646	697	692	—
<i>Borders and Maritime Security</i>	33	26	26	25	25	—
<i>Chemical and Biological</i>	314	229	215	216	208	—
<i>Command, Control, and Interoperability ^d</i>	63	64	61	62	57	—
<i>Explosives</i>	105	64	64	82	78	—
<i>Human Factors</i>	7	13	13	7	14	—
<i>Infrastructure and Geophysical</i>	75	24	24	64	65	—
<i>Innovation</i>	38	60	52	46	33	—

¹⁹³ See, for example, Government Accountability Office, *Combating Nuclear Smuggling: DHS's Decision to Procure and Deploy the Next Generation of Radiation Detection Equipment Is Not Supported by Its Cost-Benefit Analysis*, GAO-07-581T, testimony before the House Committee on Homeland Security, March 14, 2007.

	FY2007 Enacted ^a	FY2008 Request	FY2008 House Passed	FY2008 Senate Passed	FY2008 Enacted	FY2008 Emerg. P.L. 110-161
<i>Laboratory Facilities</i>	106	89	89	104	104	—
<i>Test and Evaluation, Standards</i>	25	26	29	24	29	—
<i>Transition</i>	24	25	26	24	25	—
<i>University Programs</i>	49	39	49	39	49	—
<i>Homeland Security Institute</i>	—	—	—	5	5	—
Domestic Nuclear Detection Office	481	562	556	550	485	—
Management and Administration	30	34	31	32	32	—
Research, Development, and Operations	273	320	317	336	324	—
Systems Acquisition	178	208	208	182	130	—
U.S. Coast Guard Research, Development, Testing, and Evaluation	17	18	18	26	25	—
Subtotal DHS R&D:	1,471	1,379	1,351	1,414	1,340	—
Rescission of unobligated funds from prior years	-125	—	—	—	—	—
Total DHS R&D:	1,346	1,379	1,351	1,414	1,340	—

Source: CRS analysis of the FY2008 President's Budget, and the DHS *Budget in Brief*, H.Rept. 110-181, and S.Rept. 110-84, Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request).

Notes: This table shows all DHS research and development activities, combining accounts from the Directorate of Science and Technology, the Domestic Nuclear Detection Office, and the U.S. Coast Guard to show the department's overall R&D budget. Totals may not add because of rounding.

- Programs in the S&T Directorate have been realigned since the enactment of the FY2007 appropriation. For comparability, FY2007 funding is shown here in the new structure.
- Including a rescission of \$125 million, and the transfers outlined in notes c & d (below), the FY2007 amount is \$758 million.
- Biowatch and related programs will be transferred from the S&T Directorate to the Office of Health Affairs in FY2008. The enacted FY2007 funding for these programs in S&T consisted of \$1 million in the Management and Administration account plus \$84 million in the Chemical and Biological program of the R&D, Acquisition, and Operations account.
- Safecom will be transferred from the S&T Directorate to the National Protection and Programs Directorate in FY2008. Its enacted FY2007 funding in S&T was \$5 million in the Command, Control, and Interoperability program of the R&D, Acquisition, and Operations account.

FY2008 Related Legislation

Budget Resolution — H.Con.Res. 99/ S.Con.Res. 21

The annual concurrent resolution on the budget sets forth the congressional budget. The House introduced H.Con.Res. 99 on March 23, 2007 and passed the budget resolution on March 29, 2007. H.Con.Res. 99 would provide \$955 billion in discretionary budget authority for FY2008. The Senate introduced S.Con.Res. 21 on March 16, 2007 and passed the budget resolution on March 23, 2007. S.Con.Res. 21 would provide \$942 billion in discretionary budget authority for FY2008. The House and Senate appointed conferees to resolve the differences between the two resolutions and adopted a conference agreement on May 16, 2007. The House and Senate adopted the conference report (H.Rept. 110-153) on May 17, 2007. The conference report provides \$954 billion in discretionary budget authority for FY2008.

There is currently no separate functional category for Homeland Security in the budget resolution. However, homeland security budget authority amounts are identified within each major functional category, though these amounts are typically not available until the publication of the committee reports that accompany the budget resolutions.

Appendix I. Emergency Funding for Border Security in The Consolidated Appropriations Act, 2008 (P.L. 110-161)

This Appendix describes the distribution of \$3,000 million (\$3.0 billion) in emergency funds for border security throughout the Consolidated Appropriations Act, 2008 (P.L. 110-161).¹⁹⁴ Division E of P.L. 110-161 includes \$2,710 million (\$2.7 billion) in emergency funding for border security purposes. This funding is disbursed throughout several DHS funding accounts, including Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT); State and Local Programs (S&L); the U.S. Coast Guard, US Citizenship and Immigration Services (USCIS); and the Federal Law Enforcement Training Center (FLETC). P.L. 110-161 also includes another \$40 million in Division B — Commerce, Justice, Science, and the remaining \$250 million is included in Division D — Financial Services.

Distribution of FY2008 Emergency Border Security Funding in Division E — Department of Homeland Security of P.L. 110- 161

As noted above, \$2,710 million (\$2.7 billion) in emergency funding was distributed among several accounts in Division E of P.L. 110-161. The funds are distributed as follows: \$1,531 million (\$1.5 billion) for CBP; \$527 million for ICE; \$166 million for the U.S. Coast Guard; \$275 million for USVISIT; \$110 million for S&L programs; \$80 million for USCIS; and \$21 million for FLETC.

CBP FY2008 Emergency Border Security Appropriations. The \$1,531 million (\$1.5 billion) in FY2008 emergency funding for CBP is disbursed as follows, by account and amount:

- Salaries and Expenses: \$323 million
 - \$40 million for the Model Ports of Entry program and includes funding to hire at least 200 additional CBP officers at the 20 U.S. international airports with the highest number of foreign visitors arriving annually;
 - \$45 million for terrorist prevention system enhancements for passenger screening — to develop system infrastructure needed to support a real-time capability to process advanced passenger information for passengers intending to fly to the U.S.;
 - \$36 million to implement the electronic travel authorization program for visa waiver countries;
 - \$150 million for the Western Hemisphere Travel Initiative (WHTI);

¹⁹⁴ Figures in this memorandum are rounded to the nearest million.

- \$25 million for a ground transportation vehicle contract (Border Patrol);
 - \$13 million for Border Patrol vehicles;
 - \$14 million for Air and Marine Personnel Compensation and Benefits for 82 positions to support the establishment of 11 new marine enforcement units.
- Border Security Fencing, Infrastructure, and Technology (BSFIT): \$1,053 million
 - \$1,053 million (\$1.1 billion) for development and deployment of systems and technology.
 - Air and Marine Interdiction, Operations, Maintenance, and Procurement:
 - \$94 million for procurement.
 - Construction: \$61 million:
 - \$61 million for Border Patrol Construction.

ICE FY2008 Emergency Border Security Appropriations. The \$527 million in FY2008 emergency funding for ICE is disbursed as follows, by account and amount:

- Salaries and Expenses: \$516 million
 - \$4 million for ICE vehicle replacements;
 - \$50 million for domestic investigations;
 - \$186 million for custody operations;
 - \$33 million for fugitive operations;
 - \$10 million for alternatives to detention;
 - \$33 million for transportation and removal;
 - \$200 million for the comprehensive identification and removal of criminal aliens.
- Construction: \$11 million
 - \$11 million for construction.

U.S. Coast Guard FY2008 Emergency Border Security Appropriations. The \$166 million in FY2008 emergency funding for the U.S. Coast Guard is disbursed as follows, by account and amount:

- Operating Expenses: \$70 million
 - \$70 million for port and maritime security enhancements.
- Acquisition, Construction, and Improvements: \$96 million
 - \$36 million for medium response boat replacement;
 - \$60 million for interagency operational centers for port security.

U.S. Visitor and Immigrant Status Indicator Technology (USVISIT) FY2008 Emergency Border Security Appropriations. The \$275 million in

FY2008 emergency funding for US-VISIT is provided in the main US-VISIT account.

State and Local Programs FY2008 Emergency Border Security Appropriations. The \$110 million in FY2008 emergency funding for State and Local Programs is disbursed as follows:

- \$60 million for Law Enforcement Terrorism Prevention Grants — Operation Stonegarden¹⁹⁵;
- \$50 million for REAL ID¹⁹⁶ grants.

USCIS FY2008 Emergency Border Security Appropriations. The \$80 million in FY2008 emergency funding for USCIS is disbursed as follows:

- \$60 million for the E-Verify¹⁹⁷ program;
- \$20 million for the FBI background check backlog.

FLETC FY2008 Emergency Border Security Appropriations. The \$21 million in FY2008 emergency funding for FLETC is disbursed as follows, by amount and account:

- Salaries and Expenses: \$17 million
 - \$17 million for law enforcement training
- Acquisition, Construction, Improvements, and Related Expenses: \$4 million
 - \$4 million for construction.

Distribution of FY2008 Emergency Border Security Funding in Division B — Commerce, Justice, Science of P.L. 110-161

Division B — the Commerce, Justice, Science portion of P.L. 110-161 — contains border security-related emergency funding to provide additional resources that will be required as a result of an anticipated increase in immigration enforcement actions.

Department of Justice (DOJ) FY2008 Emergency Border Security Appropriations. The \$40 million in FY2008 emergency funding for DOJ is disbursed as follows, by amount and account:

¹⁹⁵ Operation Stonegarden provides funds (awarded on a competitive basis) to state and local law enforcement in counties along the land border in support of ongoing law enforcement operations along the border.

¹⁹⁶ Grants to assist states in implementing the requirements of the REAL ID Act of 2005 regarding the issuance of state driver's licenses and state identification cards.

¹⁹⁷ The E-Verify program was previously referred to as the Employment Eligibility Verification program and is administered by USCIS.

- General Administration — Salaries and Expenses: \$8 million
 - \$8 million for the Executive Office for Immigration Review (EOIR) to provide additional attorneys and judges for the Board of Immigration Appeals
- Legal Activities — Salaries and Expenses, General Legal Activities: \$10 million
 - \$10 million for the Civil Division Office of Immigration Litigation to provide 86 additional attorneys to address appeals resulting from increased immigration enforcement action
- Legal Activities - Salaries and Expenses, United States Attorneys: \$7 million
 - \$7 million for United States Attorneys for criminal and civil litigation resulting from increased immigration enforcement actions.
- US Marshals Service - Salaries and Expenses: \$15 million.
 - \$15 million for prisoner transportation, defendant productions and courthouse security resulting from increased immigration-related Federal court proceedings.

Distribution of FY2008 Emergency Border Security Funding in Division D — Financial Services

Division D — the Financial Services portion of P.L. 110-161 — contains border security-related emergency funding to provide additional resources that will be required as a result of an anticipated increase in immigration enforcement actions. This funding is found within the General Services Administration (GSA), and within the Judiciary, Courts of Appeals, District Courts and Other Judicial Services.

General Services Administration (GSA) FY2008 Emergency Border Security Appropriations. There is \$225 million in emergency border security funding included in the Construction and Acquisition account of the Federal Buildings Fund under the GSA:

- Federal Buildings Fund — Construction and Acquisition: \$225 million
 - \$225 million to expedite construction at select land ports of entry, including one of the nation’s most congested sites.

Courts of Appeals, District Courts and Other Judicial Services, FY2008 Emergency Border Security Appropriations. P.L. 110-161 provides \$25 million in emergency funding for border security initiatives within Courts of Appeals, District Courts and Other Judicial Services:

- Salaries and Expenses: \$15 million
 - \$15 million to address the understaffed workload associated with increased immigration enforcement along the Southwest border
- Defender Services: \$11 million
 - \$11 million to address the expected increased workload of attorneys appointed to represent persons under the Criminal Justice Act of 1964 as a result of increased immigration enforcement along the Southwest border.

Appendix II. FY2007 Supplemental Appropriations and Rescissions

P.L. 110-28 (H.R. 2206) — U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007¹⁹⁸

Following the failure of the House to override the President's veto of H.R. 1591, the House introduced two new bills that would provide supplemental appropriations for FY2007 H.R. 2206, and H.R. 2207. The House passed H.R. 2206 on May 10, 2007. On May 17, 2007, the Senate adopted an amendment in the nature of a substitute (S.Amdt. 1126) which contained no specific funding figures.¹⁹⁹ On May 24, 2007, the House adopted two amendments to the Senate amendment which were adopted by the Senate later that day. P.L. 110-28 was signed into law by the President on May 25, 2007.

P.L. 110-28. P.L. 110-28 provides a total of \$5,190 million for DHS agencies and accounts. Provisions providing funding for DHS are contained in Titles II, III, IV, and V. Title II provides an additional \$3,400 million for the FEMA disaster relief. Title III provides the following amounts:

- Analysis and Operations — \$8 million;
- CBP Salaries and Expenses — \$72 million;
- CBP AMO Operations and Procurement — \$75 million;
- FLETC — \$3 million;
- ICE Salaries and Expenses — \$6 million;
- TSA Aviation Security — \$390 million;
- TSA Federal Air Marshals — \$5 million;
- NPPD Office of Health Affairs — \$8 million;
- NPPD IPIS — \$24 million;
- FEMA Management and Administration — \$14 million;
- FEMA State and Local Programs — \$247 million;
- FEMA Emergency Management Performance Grants — \$50 million;
- USCIS — \$8 million;
- S&T Research, Development, Acquisition, and Operations — \$5 million;
- DNDO Research, Development, and Operations — \$35 million; and
- DNDO Systems Acquisition — \$100 million.

¹⁹⁸ For more detailed information concerning H.R. 2206 see CRS Report RL33900, *FY2007 Supplemental Appropriations for Defense, Foreign Affairs, and Other Purposes*, by Stephen Daggett, Amy Belasco, Pat Towell, Susan B. Epstein, Connie Veillette, Curt Tarnoff, Rhoda Margesson, and Bart Elias.

¹⁹⁹ See CRS summary of S.Amdt. 1126 to H.R. 2206 at [<http://www.congress.gov/cgi-lis/bdquery/z?d110:HR02206:@@D&summ2=m&:dbs=n:>].

Title IV of H.R. 2206 provides a total of \$710 million to DHS. Of this amount, \$4 million is for the DHS OIG and \$706 million is for FEMA disaster relief. Section 6401 of Title V of H.R. 2206 makes up to \$30 million in unobligated USCG Retired Pay balances available until expended. Section 5404(a) of Title IV of H.R. 2206 rescinds funds from several different DHS accounts totaling approximately \$31 million. Section 5404(b) provides additional appropriations of \$30 million to the USCG Acquisition, Construction, and Improvements account, and \$1 million to the Office of the Under Secretary for Management.

H.R. 1591 — U.S. Troop Readiness, Veteran's Health, and Iraq Accountability Act²⁰⁰

H.R. 1591 was introduced in the House on March 20, 2007, and was passed by the House on March 23, 2007. The Senate passed its version of H.R. 1591 on March 29, 2007. The conference agreement was passed by the House on April 25, 2007, and by the Senate on April 26, 2007. The President vetoed the bill on May 1, 2007. On May 2, 2007 the House failed to override the President's veto by a vote of 222-203. The following section describes the amount that would have been provided for DHS in the conference version of the bill.

Conference (H.Rept. 110-107). Titles I, II, and IV of the conference version of H.R. 1591 included funding provisions pertaining to DHS accounts. The conference version of H.R. 1591 would have provided a total of \$6,851 million for DHS. This amount was \$141 million more than was recommended by House-passed H.R. 1591, and \$541 million more than was recommended by Senate-passed H.R. 1591. Title I would have provided the following amounts:

- Analysis and Operations — \$15 million;
- CBP Salaries and Expenses — \$110 million;
- CBP AMO Operations and Procurement — \$120 million;
- FLETC — \$5 million;
- ICE Salaries and Expenses — \$10 million;
- TSA Aviation Security — \$970 million;
- TSA Federal Air Marshals — \$8 million;
- Office of Health Affairs — \$15 million;
- NPPD IPIS — \$37 million;
- FEMA Management and Administration — \$25 million;
- FEMA State and Local Programs — \$553 million;
- FEMA Emergency Management Performance Grants — \$100 million;
- USCIS — \$10 million;
- DNDO Research, Development, and Operations — \$39 million; and
- DNDO Systems Acquisition — \$224 million.

²⁰⁰ For more detailed information concerning H.R. 1591 see CRS Report RL33900, *FY2007 Supplemental Appropriations for Defense, Foreign Affairs, and Other Purposes*, by Stephen Daggett, Amy Belasco, Pat Towell, Susan B. Epstein, Connie Veillette, Curt Tarnoff, Rhoda Margesson, and Bart Elias.

Title II of the conference adopted version of H.R. 1591 would have provided a total of \$4,610 million to DHS. Of this amount, \$4 million was for the DHS OIG and \$4,606 million was for FEMA disaster relief. Section 4404(a) of Title IV of the conference version of H.R. 1591 would have rescinded funds from several different DHS accounts totaling approximately \$31 million. Section 4404(b) would have provided additional appropriations of \$30 million to the USCG Acquisition, Construction, and Improvements account, and \$1 million to the Office of the Under Secretary for Management.

Appendix III. DHS Appropriations in Context

Federal-Wide Homeland Security Funding

Since the terrorist attacks of September 11, 2001, there has been an increasing interest in the levels of funding available for homeland security efforts. The Office of Management and Budget, as originally directed by the FY1998 National Defense Authorization Act, has published an annual report to Congress on combating terrorism. Beginning with the June 24, 2002 edition of this report, homeland security was included as a part of the analysis. In subsequent years, this homeland security funding analysis has become more refined, as distinctions (and account lines) between homeland and non-homeland security activities have become more precise. This means that while **Table 20** is presented in such a way as to allow year to year comparisons, they may in fact not be strictly comparable due to the increasing specificity of the analysis, as outlined above.

With regard to DHS funding, it is important to note that DHS funding does not comprise all federal spending on homeland security efforts. In fact, while the largest component of federal spending on homeland security is contained within DHS, the DHS homeland security request for FY2008 accounts for approximately 49% of total federal funding for homeland security. The Department of Defense comprises the next highest proportion at 29% of all federal spending on homeland security. The Department of Health and Human Services at 7.2%, the Department of Justice at 5.5% and the Department of Energy at 3.0% round out the top five agencies in spending on homeland security. These five agencies collectively account for nearly 94% of all federal spending on homeland security. It is also important to note that not all DHS funding is classified as pertaining to homeland security activities. The legacy agencies that became a part of DHS also conduct activities that are not homeland security related. Therefore, while the FY2008 request included total *homeland security* budget authority of \$29.7 billion for DHS, the requested *total gross budget authority* was \$43.0 billion. The same is true of the other agencies listed in the table.

**Table 20. Federal Homeland Security Funding by Agency,
FY2002-FY2008**

(budget authority in millions of dollars)

Department	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008 Req.	FY2008 as % of total
Department of Homeland Security (DHS)	17,380	23,063	22,923	24,549	26,571	28,689	29,667	48.6%
Department of Defense (DOD) ^a	16,126	15,413	15,595	17,188	17,510	16,538	17,461	28.6%
Department of Health and Human Services (HHS)	1,913	4,144	4,062	4,229	4,352	4,313	4,424	7.2%
Department of Justice (DOJ)	2,143	2,349	2,180	2,767	3,026	3,185	3,331	5.5%
Department of Energy (DOE)	1,220	1,408	1,364	1,562	1,702	1,697	1,834	3.0%
Department of State (DOS)	477	634	696	824	1,108	1,240	1,406	2.3%
Department of Agriculture (AG)	553	410	411	596	597	523	719	1.2%
Department of Transportation (DOT)	1,419	383	284	219	181	179	200	0.3%
National Science Foundation (NSF)	260	285	340	342	344	344	375	0.6%
Other Agencies	2,357	1,329	1,550	2,107	1,727	1,612	1,689	2.8%
Total Federal Budget Authority	43,848	49,418	49,405	54,383	57,118	58,319	61,105	100%

Source: CRS analysis of data contained in “Section 3. Homeland Security Funding Analysis,” and Appendix K of the Analytical Perspectives volume of the FY2008 President’s Budget (for FY2006- FY2008); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2006 President’s Budget (for FY2004); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2005 President’s Budget (for FY2003) and Office of Management and Budget, *2003 Report to Congress on Combating Terrorism*, Sept. 2003, p. 10; CRS analysis of FY2002-2006 re-estimates of DoD homeland security funding provided by OMB, March 17, 2005.

Notes: Totals may not add due to rounding. FY totals shown in this table include enacted supplemental funding. Year to year comparisons using particularly FY2002 may not be directly comparable, because as time has gone on agencies have been able to distinguish homeland security and non-homeland security activities with greater specificity