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Financial Services and General Government (FSGG): FY2008 Appropriations

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Summary

FY2008 appropriations for Financial Services and General Government (FSGG) agencies were originally proposed in H.R. 2829. The bill included funding for the Department of the Treasury, the Executive Office of the President (EOP), the judiciary, the District of Columbia, and 20 independent agencies. Among the independent agencies funded by the bill are the General Services Administration (GSA), the Office of Personnel Management (OPM), the Small Business Administration (SBA), and the United States Postal Service (USPS).

On June 28, 2007, the House approved $43.8 billion for H.R. 2829, a $3.1 billion increase over FY2007 enacted funding and $101 million above the President's FY2008 request. Discretionary spending in the House bill totaled $21.4 billion, a decrease of $245 million from the President's request, but $1.9 billion more than was enacted in FY2007. The Senate appropriations FSGG subcommittee marked up its version of the bill July 10, and the full committee reported it July 12. The Senate bill recommended $44.2 billion in appropriations, a $3.4 billion increase over FY2007 enacted funding and $414 million above the President's FY2008 request. Discretionary spending in the Senate bill totaled $21.8 billion, approximately $20 million above the President's request and $2.3 billion more than was enacted in FY2007. The Senate took no further action on H.R. 2829. The agencies included in the FSGG appropriations bill were funded from the start of the 2007 fiscal year until December 31, 2007, by a series of continuing resolutions. Under the continuing resolutions, FSGG agencies were generally funded at FY2007 rates, although the District of Columbia had special funding provisions.

FSGG appropriations were ultimately included in a consolidated appropriations bill, H.R. 2764, which was approved by the Senate, as amended, on December 18, and passed by the House on December 19. President Bush signed H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161), on December 26, 2007. The act provides a total of $43.3 billion for FSGG agencies, $2.6 billion more than enacted in FY2007, but $421 million less than requested by the President. Compared with H.R. 2829, the act provides $583 million less than the amount approved by the House, and $829 million less than the amount approved by the Senate. Discretionary spending in the act totals $20.6 billion, which is $1.1 billion more than enacted in FY2007, but $1.1 billion less than the amount requested by the President. Compared with H.R. 2829, discretionary funding in the act is $1.1 billion below the amount approved by the Senate, and $833 million less than the amount approved by the House. Emergency appropriations totaling $1.21 billion were also provided to FSGG agencies through P.L. 110-185.

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On June 28, 2007, the House approved $43.8 billion for agencies funded through the Financial Services and General Government (FSGG) appropriations bill (H.R. 2829), a $3.1 billion increase over FY2007 enacted funding and $101 million above the President's FY2008 request.[1] Discretionary spending in the bill totaled $21.4 billion, a decrease of $245 million from the President's request, but $1.9 billion more than was enacted in FY2007. The Senate appropriations FSGG subcommittee marked up its version of the bill July 10, and the full committee reported it July 12. The Senate bill recommended $44.2 billion in appropriations, a $3.4 billion increase over FY2007 enacted funding and $414 million above the President's FY2008 request.[2] Discretionary spending in the Senate bill totaled $21.8 billion, approximately $20 million above the President's request and $2.3 billion more than was enacted in FY2007. The Senate took no further action on H.R. 2829, and the agencies included in the FSGG appropriations bill were funded until December 31, 2007, by a series of continuing resolutions. Under the continuing resolutions, FSGG agencies were generally funded at FY2007 rates.[3]

FSGG appropriations were ultimately included in a consolidated appropriations bill, H.R. 2764, which passed the Senate, as amended, on December 18, and passed the House on December 19, 2007. President Bush signed H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161), on December 26, 2007. Division D of the act provides a total of $43.3 billion for FSGG agencies, $2.6 billion more than enacted in FY2007, but $421 million less than requested by the President. Compared with H.R. 2829, the act provides $583 million less than approved by the House, and $829 million less than approved by the Senate Appropriations Committee. Discretionary spending in the act totals $20.6 billion, which is $1.1 billion more than enacted in FY2007, but $1.1 billion less than the amount requested by the President. Compared with H.R. 2829, discretionary funding in the act is $1.1 billion below the amount recommended by the Senate Appropriations Committee, and $883 million less than the amount approved by the House. **Table 1** notes the status of H.R. 2829 and the Consolidated Appropriations Act, 2008 (H.R. 2764).

[1] On June 11, the House Appropriations Committee approved $43.9 billion for the Financial Services and General Government (FSGG) appropriations bill, but the bill was sent back to committee before reaching the floor so that earmarks could be added. The amended FSGG bill, with earmarks, was then approved by the Appropriations Committee June 21.

[2] The Senate bill includes funding for the Commodity Futures Trading Commission (CFTC), which is funded through the agriculture appropriations bill (H.R. 3161) in the House.

[3] See the section on the District of Columbia for more information. Section 112 of the continuing resolution provides that the "amounts made available ... for civilian personnel compensation and benefits in each department and agency may be apportioned up to the rate for operations necessary to avoid furloughs." This authority may be used after the department or agency "has taken all necessary actions to reduce or defer non-personnel-related administrative expenses."

Table 1. Status of FY2008 Financial Services and General Government Appropriations

Subcommittee Markup (H.R. 2829)		House Report (H.R. 2829)	House Passage (H.R. 2829)	Senate Report (H.R. 2829)	Senate Passage (H.R. 2829)	Conf. Report (H.R. 2764)	Passage (H.R. 2764)		Public Law (H.R. 2764)
House	Senate						House	Senate	
06/05/07	07/10/07	H.Rept. 110-207 06/11/07	06/28/07	S.Rept. 110-129 07/12/07		12/17/07	12/19/07	12/18/07	P.L. 110-161 12/26/07

Introduction

In early 2007, the House and Senate Committees on Appropriations reorganized their subcommittee structures. Each chamber created a new Subcommittee on Financial Services and General Government (FSGG). In the House, the jurisdiction of the FSGG Subcommittee was formed primarily of agencies that had been under the jurisdiction of the Subcommittee on Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies, commonly referred to as "TTHUD."[4] In addition, the House FSGG Subcommittee was assigned four independent agencies that had been under the jurisdiction of the Science, State, Justice, Commerce, and Related Agencies Subcommittee.[5]

In the Senate, the jurisdiction of the new FSGG Subcommittee was a combination of agencies from the jurisdiction of three previously existing subcommittees. The District of Columbia, which had its own subcommittee in the 109th Congress, was placed under the purview of the FSGG Subcommittee, as were four independent agencies that had been under the jurisdiction of the Commerce, Justice, Science, and Related Agencies Subcommittee.[6] Additionally, most of the agencies that had been under the jurisdiction of the Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies were assigned to the FSGG Subcommittee.[7] As a result of this reorganization, the House and Senate FSGG subcommittees have nearly identical jurisdictions.[8]

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[4] The agencies previously under the jurisdiction of the TTHUD Subcommittee that did not become part of the FSGG subcommittee were the Department of Transportation, the Department of Housing and Urban Development, the Architectural and Transportation Barriers Compliance Board, the Federal Maritime Commission, the National Transportation Safety Board, the Neighborhood Reinvestment Corporation, and the United States Interagency Council on Homelessness.

[5] The agencies are the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and the Small Business Administration (SBA).

[6] The agencies are the FCC, FTC, SEC, and SBA.

[7] The agencies that did not transfer from TTHUD to FSGG were Transportation, HUD, the Architectural and Transportation Barriers Compliance Board, the Federal Maritime Commission, the National Transportation Safety Board, the Neighborhood Reinvestment Corporation, and the United States Interagency Council on Homelessness.

[8] The Commodity Futures Trading Commission (CFTC) is under the jurisdiction of the FSGG Subcommittee in the Senate but not in the House.

Appropriations provisions relating to FSGG agencies are in Division D of the Consolidated Appropriations Act, 2008. Division D provides funding through five titles, each of which is discussed in a separate section of this report.[9] In addition, Division D includes three titles relating to general provisions. The language for government-wide general provisions was proposed by the Administration in the appendix to the FY2008 budget request, and was included in Title VII of Division D.

The House Appropriations Subcommittee on Financial Services and General Government is the primary source of the House funding figures used throughout the report. Senate funding figures are taken from S.Rept. 110-129, which accompanied H.R. 2829. Other sources include the President's FY2008 budget request, the House Appropriations Committee print of P.L. 110-161 and its accompanying explanatory statement, and agency budget materials.

Overview of FY2008 Appropriations

On June 28, 2007, the House approved $43.8 billion for FY2008 appropriations for FSGG agencies. Compared to FY2007 enacted amounts, the House bill, H.R. 2829, would have increased appropriations for each of five titles, with the largest gains proposed for the District of Columbia (+10.8%) and the smallest for the Executive Office of the President (+0.25%). The House bill would have also increased funding for the Department of the Treasury (+5.4%), the Judiciary (+4.7%), and Independent Agencies (+9.7%). Compared to the President's FY2008 request, the House bill would have increased funding for the District of Columbia (+9.5%), the Department of the Treasury (+1.0%), and Independent Agencies (+1.0%). Funding under the House bill would have decreased relative to the President's request for the Judiciary (-3.9%) and the Executive Office of the President (-2.1%).

On July 12, 2007, the Senate Appropriations Committee reported its version of the FSGG appropriations bill. Compared to FY2007 enacted amounts, the Senate bill would have increased funding for each of the five titles, with the largest gains proposed for Independent Agencies (+11.0%) and the smallest for the Executive Office of the President (+0.9%). The Senate bill would have also increased funding for the Department of the Treasury (+5.4%), the Judiciary (+6.0%), and the District of Columbia (+3.8%). Compared to the President's FY2008 request, the Senate bill would have increased funding for the Department of the Treasury (+0.9%), the District of Columbia (+2.7%), and Independent Agencies (+2.0%). Funding under the Senate bill would have decreased relative to the President's request for the Executive Office of the President (-1.5%) and the Judiciary (-2.7%).

No further action on H.R. 2829 was taken by the Senate. The agencies included in the FSGG appropriations bill were funded from the start of FY2007 until December 31, 2007, by a series of continuing resolutions. Under the continuing resolutions, FSGG agencies were generally funded at FY2007 rates, although the District of Columbia had special funding provisions.[10] The FSGG agencies were ultimately funded through H.R. 2764, a consolidated appropriations bill which passed the Senate on December 18, and passed the House, as amended, on December 19. The bill

[9] The Christopher Columbus Fellowship Foundation is funded in Title VI; all other federal agencies are funded in Titles I through V.

[10] See the section of this report on the District of Columbia for more information.

was signed by President Bush on December 26, 2007, becoming P.L. 110-161, the Consolidated Appropriations Act, 2008.

Table 2 lists, by title, the enacted amounts for FY2007, the President's request for FY2008, funding levels approved by the House under H.R. 2829, the amounts reported by the Senate Appropriations Committee under H.R. 2829, and the amounts enacted.

Table 2. Financial Services and General Government Appropriations, by Title, FY2007-FY2008

(in millions of dollars)

Title	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Reported	FY2008 Enacted
Title I: Department of the Treasury	$11,625	$12,137	$12,257	$12,249	$12,263
Title II: Executive Office of the President	720	737	722	727	680
Title III: The Judiciary	5,980	6,511	6,258	6,337	6,246
Title IV: District of Columbia	591	598	655	614	610
Title V: Independent Agencies	21,797	23,718	23,911	24,299	24,840
Total	**$40,713**	**$43,701**	**$43,802**	**$44,226**	**$44,639**

Sources: Budget authority tables provided by House Appropriations Subcommittee on Financial Services and General Government. Columns may not equal the total due to rounding. Figures for Title I, Title V, and Total for FY2008 include $1.49 billion in emergency appropriations provided in P.L. 110-185.

Key Issues

The wide scope of FY2008 FSGG appropriations—which provide funding for two of the three branches of the federal government, a city government, and 20 independent agencies with a range of functions—encompasses a number of potentially controversial issues, some of which are identified below.

- **Department of the Treasury.** Did the proposed budget provide adequate funding for enforcement, taxpayer services, and business systems modernization at the Internal Revenue Service?
- **Executive Office of the President (EOP).** Should Congress accept the President's proposals to (1) consolidate EOP budget accounts into a single appropriation, (2) expand the authority of the EOP to transfer funds among separate appropriations accounts, and (3) centralize funding for administrative services provided throughout the EOP in the Office of Administration?
- **The Judiciary.** What level of funding should Congress provide for judicial security enhancements and other workforce issues, such as pay raises for judges, and the hiring of additional staff and creation of additional judgeships to meet the demands of rising caseloads?

- **Independent Agencies.** Should Congress enact the President's proposed budget for the United States Postal Service (USPS), which is $64 million less than what USPS had requested and $20 million below the amount enacted for FY2007?

Title I: Department of the Treasury[11]

This section examines FY2008 appropriations for the Treasury Department and its operating bureaus, including the Internal Revenue Service (IRS). **Table 3** shows the FY2007 enacted amount, the President's FY2008 request, the FY2008 amount approved by the House, the FY2008 amount recommended by the Senate Appropriations Committee, and the amount enacted for FY2008.

Table 3. Department of the Treasury Appropriations, FY2007 to FY2008

(in millions of dollars)

Program or Account	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Reported	FY2008 Enacted
Departmental Offices	$216	$250	$251	$252	$248
Department-wide Systems and Capital Investments	30	19	19	19	19
Office of Inspector General	17	18	18	18	18
Treasury Inspector General for Tax Administration	133	141	141	141	141
Air Transportation Stabilization Program**Error! Reference source not found.**	—	-4	-4	-4	-4
Community Development Financial Institutions Fund	55	29	100	90	94
Treasury Building and Annex Repair and Restoration	—	—	—	—	—
Financial Crimes Enforcement Network	73	86	83	86	86
Financial Management Service	235	235	234	235	234
Alcohol and Tobacco Tax and Trade Bureau	91	94	94	97	94
Bureau of the Public Debt	178	173	173	173	173
Internal Revenue Service, Total	10,597	11,095	11,147	11,142	10,892
Taxpayer Services	*2,138*	*2,103*	*2,155*	*2,149*	*2,150*
Enforcement	*4,686*	*4,925*	*4,925*	*4,925*	*4,780*
Operations Support	*3,545*	*3,770*	*3,770*	*3,770*	*3,680*

[11] This section was written by (name redacted), Analyst in Industry Economics, Government and Finance Division.

Program or Account	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Reported	FY2008 Enacted
Business Systems Modernization	*213*	*282*	*282*	*282*	*267*
Health Insurance Tax Credit Administration	*15*	*15*	*15*	*15*	*15*
Emergency Appropriations (P.L. 110-185)					266
Total: Department of the Treasury	**$11,625**	**$12,137**	**$12,257**	**$12,249**	**$12,263**

Sources: Budget authority table provided by House Appropriations Subcommittee on Financial Services and General Government..

Department of the Treasury Budget and Key Issues

The Treasury Department performs a variety of governmental functions. Foremost among them are protecting the nation's financial system against a host of illicit activities (e.g., money laundering and terrorist financing), collecting tax revenue, enforcing tax laws, managing and accounting for federal debt, administering the federal government's finances, regulating financial institutions, and producing and distributing coins and currency.

At its most basic level of organization, Treasury consists of departmental offices and operating bureaus. In general, the offices are responsible for formulating and implementing policy initiatives and managing Treasury's operations, while the bureaus perform specific duties assigned to Treasury, mainly through statutory mandates. In the past decade or so, the bureaus have accounted for over 95% of the agency's funding and work force.

With one possible exception, the bureaus can be divided into those engaged in financial management and regulation and those engaged in law enforcement. In recent decades, the Comptroller of the Currency, U.S. Mint, Bureau of Engraving and Printing, Financial Management Service (FMS), Bureau of the Public Debt, Community Development Financial Institutions Fund (CDFI), and Office of Thrift Supervision have undertaken tasks related to the management of the federal government's finances or the supervision and regulation of the U.S. financial system. By contrast, law enforcement has been the central focus of the tasks handled by the Bureau of Alcohol, Tobacco, and Firearms; U.S. Secret Service; Federal Law Enforcement Training Center; U.S. Customs Service; Financial Crimes Enforcement Network (FinCEN); and the Treasury Forfeiture Fund. Since the advent of the Department of Homeland Security in 2002, Treasury's direct involvement in law enforcement has shrunk considerably. The possible exception to this simplified dichotomy is the Internal Revenue Service (IRS), whose main duties encompass both the collection of tax revenue and the enforcement of tax laws and regulations.

Treasury Offices and Bureaus (Excluding the IRS)

Funding for many bureaus comes largely from annual appropriations. Such is the case for the IRS, FMS, Bureau of Public Debt, FinCEN, Alcohol and Tobacco Tax and Trade Bureau, Office of the Inspector General (OIG), Treasury Inspector General for Tax Administration (TIGTA), and the CDFI. But there are some exceptions to this heavy reliance on appropriated funds. The

Treasury Franchise Fund, U.S. Mint, Bureau of Engraving and Printing, Office of the Comptroller of the Currency, and the Office of Thrift Supervision finance their operations largely from the fees they charge for services and products they provide.

In FY2007, Treasury received $11.624 billion in appropriated funds, or 0.4% more than it received in FY2006, after allowing for a rescission of 1%. Most of these funds were used to finance the operations of the IRS, which received $10.597 billion in FY2007. The remaining $1.027 billion was distributed among Treasury's other bureaus and departmental offices in the following amounts: departmental offices (which include the Office of Terrorism and Financial Intelligence, or TFI, and the Office of Foreign Assets Control) received $216 million; department-wide systems and capital investments, $30 million; OIG, $17 million; TIGTA, $133 million; CDFI, $55 million; FinCEN, $73 million; FMS, $235 million; Alcohol and Tobacco Tax and Trade Bureau (ATB), $91 million; and Bureau of the Public Debt, $176 million.

FY2008 Budget Proposal

For FY2008, the Bush Administration asked Congress to approve $12.141 billion in funding for Treasury, or 4.4% more than the amount enacted for FY2007. Once again, most of the requested funding (91%) would have gone to the IRS, which would have received $11.095 billion in appropriated funds. The remaining $1.045 billion would have been distributed among Treasury's other bureaus and departmental offices in the following amounts: departmental offices would have received $250 million; departmental systems and capital investments, $19 million; OIG, $18 million; TIGTA, $141 million; a rescission of about $4 million from the Air Transportation Stabilization program; CDFI, $29 million; no funding for the Treasury building and annex repair and restoration; FinCEN, $86 million; FMS, $235 million; ATB, $94 million; and Bureau of the Public Debt, $177 million. Except for department-wide systems and capital investments and CDFI, all the major accounts would have been funded at the same level as or at higher levels than the amounts enacted for FY2007. (The Air Transportation Stabilization program represented something of an anomaly in this regard, because the Administration asked Congress to rescind about $4 million that had already been appropriated.)

Under the Administration's budget proposal, total full-time equivalent employment at Treasury was projected to rise from 107,734 in FY2006 to 108,965 in FY2008.[12] The projected gain of 1,231 employees would have been spread unevenly among the departmental offices, TIGTA, FinCEN, and the IRS.

Treasury budget documents and congressional testimony by Secretary Henry Paulson indicate that the Treasury Department's proposed budget for FY2008 was intended to support five strategic objectives: (1) promote economic growth, security, and opportunity; (2) strengthen national security; (3) manage the federal government's finances; (4) strengthen financial institutions; and (5) manage Treasury's operations effectively.[13] In evaluating the Administration's budget proposal, one consideration might be the extent to which the proposed budget would likely support or promote these objectives, and whether other approaches might be more desirable.

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[12] U.S. Department of the Treasury, *FY2008 Budget in Brief* (2007), p. 10.

[13] See the written testimony of Treasury Secretary Paulson before the House Appropriations Subcommittee on Financial Services and General Government on March 28, 2007, at http://www.ustreas.gov/press/releases.

The Administration maintained that the budget proposal would promote the first objective, in part, by channeling more resources into Treasury's contribution to international economic policy coordination and the Committee on Foreign Investment in the United States, and by eliminating funding for the Bank Enterprise Awards program, which is administered through the CDFI.[14]

The Administration claimed the proposal would support the second objective largely by increasing funding for TFI and FinCEN. TFI collects and analyzes financial intelligence, formulates and implements measures to combat money laundering, enforces economic sanctions against foreign entities, and conducts criminal investigations of alleged financial crimes. The Administration asked Congress to boost appropriated funds for TFI from $43 million in FY2007 to $56 million in FY2008. Most of the additional money would be used to expand Treasury's capacity to "identify potential national security threats and to enforce U.S. policies to counter those threats," improve the "information technology and physical infrastructure of TFI and its component bureaus and offices," and deepen the involvement of TFI in the "broader Intelligence Community."[15] FinCEN is responsible for protecting the U.S. financial system from a wide range of financial crimes, including money laundering and terrorist financing. Foremost among its main tasks is administering the Bank Secrecy Act (BSA). The Administration asked Congress to increase funding for FinCEN from $73 million in FY2007 to $86 million in FY2008. A portion of the added funds would be used to upgrade an electronic filing system for BSA forms and FinCEN's "critical information technology system," and to enhance its project management capabilities.[16]

In the Administration's view, the budget proposal supported the third objective by boosting IRS's budget for enforcement, taxpayer service, and business systems modernization, and by implementing several new initiatives intended to improve taxpayer compliance. (See the next section for more details.)

As the Administration correctly noted in the documents describing its budget proposal for Treasury, no appropriated funds directly support the fourth objective. This is because funding for the four Treasury bureaus primarily responsible for ensuring and sustaining the health and integrity of the U.S. financial institutions—the Office of the Comptroller, the Office of Thrift Supervision, the U.S. Mint, and the Bureau of Engraving and Printing—comes mostly from fees they charge for the services and products they provide.

To support the fifth objective, the Administration asked Congress to approve funding for the following projects in the following amounts for FY2008: $6 million to launch a pilot project known as the Enterprise Content Management system, $2 million to operate and maintain the Treasury Secure Data Network, and $4 million to improve Treasury's compliance with the requirements of the Federal Information Security Management Act and the agency's "overall security posture."[17]

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[14] Treasury, *FY2008 Budget in Brief*, p. 3.

[15] Ibid., p. 4.

[16] Ibid., pp. 38-39.

[17] Ibid., p. 6.

House-Passed Version of H.R. 2829

On June 28, the House passed a spending measure (H.R. 2829) that would have provided $12.257 billion for the operations of the Treasury Department and its operating bureaus in FY2008. This amount was $120.5 million more than the amount requested by the Administration.

Under the measure, three Treasury accounts would have received more in appropriated funds in FY2008 than the Administration has requested. Specifically, departmental offices would have received $251 million in FY2008 (or $450,000 more than the amount requested by the Administration). Of this amount, $56.5 million would have gone to the Office of Terrorism and Financial Intelligence ($250,000 above the Administration's budget request) and $900,000 to the Office of Financial Education ($200,000 above the Administration's budget request). CDFI would have received $100 million (or $71 million more than the amount requested by the Administration). The House Appropriations Committee recommended that $13.5 million of $100 million be used for administrative costs, and that no less than another $14 million be set aside for the Bank Enterprise Award program.[18] The IRS would have received $11.147 billion (or $52 million more than the amount requested by the Administration).

Two Treasury accounts would have been funded at lower levels in FY2008 than the Administration wanted. Specifically, FinCEN would have received $83 million, or $2.5 million less than the amount requested by the Administration. The recommended reduction in spending reflected a concern that FinCEN was not ready to undertake a planned border wire transfer initiative.[19] The FMS would have received $234 million, or $768,000 less than the amount requested by the Administration. About $9 million of this amount would have been set aside for "information systems modernization initiatives" and would have been available until September 30, 2010.[20]

Six Treasury accounts would have received the same amount of funding that was recommended in the Administration's budget request. They were department-wide systems and capital investments ($19 million), OIG ($18 million), TIGTA ($140.5 million), the Air Transportation Stabilization program (-$4 million), ATB ($93.5 million), and the Bureau of Public Debt ($173 million).

The version of H.R. 2829 passed by the House would have also required the Treasury Department to prepare an "operating plan" for FY2008 and submit it to the House Appropriations Committee within 60 days of the bill's enactment.[21] The plan was to provide figures on funding and full-time employment for all offices and operating bureaus in FY2007 and FY2008, and detailed information on any "initiative, major procurement, and program at the Department." In addition, the plan was to indicate the number of full-time employees at OFAC working on Cuba sanctions and the number of full-time employees working on sanctions programs targeted at foreign terrorist organizations.[22]

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[18] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, H.Rept. 110-207, 110th Cong. 1st sess. (Washington: GPO, 2007), p. 23.

[19] Ibid., p. 20.

[20] Ibid., p. 21.

[21] Ibid., p. 14.

[22] Ibid., pp. 15-16.

Members of the House adopted by voice vote a controversial amendment that would have prevented the Treasury Department from enforcing a rule adopted in 2005 that effectively restricted sales of U.S. agricultural products to Cuba. The rule would have required payments for such products to be made before a ship left port.

Senate-Reported Version of H.R. 2829

The Senate Appropriations Committee favorably reported an amended version of H.R. 2829 on July 13. It would provide $12.249 billion in appropriated funds for Treasury in FY2008, or $112 million more than the amount requested by the Bush Administration but $8 million less than the amount approved by the House.

Of this amount, the IRS would have received $11.142 billion (or $6 million less than the House version of H.R. 2829); departmental offices, $252 million (or $1 million more than the House bill); department-wide systems and capital investments program, $19 million (the same as the House bill); Office of Inspector General, $18 million (the same as the House bill); TIGTA, $141 million (the same as the House bill); the Air Transportation Stabilization program, -$4 million (the same as the House bill); FinCEN, $86 million (or $3 million more than the House bill); FMS, $235 million (or $1 million more than the House bill); ATB, $97 million (or $3 million more than the House bill); Bureau of the Public Debt, $173 million (the same as the House bill); and CDFI, $90 million (or $10 million less than the House bill).

The committee endorsed the Administration's request to spend $56.2 million (or $11.8 million more than the amount appropriated for FY2007) on the Office Terrorism and Financial Intelligence in FY2008. Among the departments under the direction of the Office, the Office of Foreign Assets Control would have received an additional $1.4 million in funding; the Office of Intelligence Analysis, an additional $2.0 million; and the Office of Terrorist Financing and Financial Crimes, an additional $0.6 million. In its report on H.R. 2829, the committee urged Treasury to "harness [its] unique expertise and assume a stronger leadership role in the [intelligence community] on illicit finance issues."[23] As a step in that direction, the committee directed the Department to work with the Director of National Intelligence to develop a "mission plan for financial intelligence," and to report to the committee on the status of this collaborative effort by September 30, 2008.

Like the House-passed version of H.R. 2829, the version reported by the committee would have appropriated much more money for the CDFI than the amount requested by the Bush Administration. The committee opposed the proposed reductions on the grounds that the programs supported by CDFI "play an important role in providing financial services to underserved communities in both urban and rural communities across the country."[24] Of the $90 million in funding for CDFI approved by the committee, $8 million would have been reserved for "grants, loans, and technical assistance and training programs to benefit Native American, Alaskan Natives, and Native Hawaiian communities."

In marking up the bill on July 12, the committee approved a controversial amendment that would have both limited the ability of Treasury to enforce certain regulations restricting sales of U.S.

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[23] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., July 13, 2007 (Washington: GPO, 2007), p. 12.

[24] Ibid., p. 21.

agricultural products to Cuba and dismantled some of the barriers to traveling there to sell agricultural and medical products. The amendment was broader in scope than a similar one adopted by the House during its consideration of H.R. 2829.

Consolidated Appropriations Act, 2008 (P.L. 110-161)

The Consolidated Appropriations Act includes $11.996 billion in funding for the Treasury Department—or $371 million more than the amount enacted for FY2007 but $141 million less than the amount requested by the Bush Administration. Of the total amount appropriated for Treasury in FY2008, $10.892 billion goes to the IRS ($203 million less than the Administration's budget request), $248 million to departmental offices ($2 million less than requested), $234 million to the FMS ($1 million less than requested), $173 million to the Bureau of Public Debt (the same amount as requested), $141 million to TIGTA (the same as requested), $94 million to ATB (the same as requested), $94 million to CDFI ($65 million above the Administration's request), $86 million to FinCEN (the same as requested), $19 million to department-wide systems and capital investments (the same as requested), $18 million to OIG (the same as requested), and a recapture (or rescission) of $4 million in previously appropriated but unobligated funds for the Air Transportation Stabilization program (the same as requested).

Treasury is receiving $57 million in appropriated funds in FY2008 (or $13 million more than the amount enacted for FY2007) for its programs dealing with terrorism and financial intelligence. The act directs the agency to use $300,000 of this amount to establish within TFI a permanent office to manage TFI's information technology systems. In addition, OFAC is to receive $250,000 to bolster its efforts to reduce OFAC's backlog of Freedom of Information requests.

The act also attached certain conditions to the use of the funds appropriated for CDFI in FY2008. Specifically, Treasury may use up to $13.5 million for general administrative costs, up to $7.5 million for the cost of direct loans, and up to $250,000 for administrative expenses related to the direct loan program. In addition, $8 million is to be used to support programs aimed at Native American, Native Hawaiian, and Native Alaskan communities. The act further directs Treasury to spend a minimum of $20 million on the Black Enterprise Award program.

Internal Revenue Service (IRS)

To help finance its operations and multitude of spending programs, the federal government levies individual and corporate income taxes, social insurance taxes, excise taxes, estate and gift taxes, customs duties, and miscellaneous taxes and fees. The federal agency responsible for administering and collecting these taxes and fees (except for customs duties) is the Internal Revenue Service. In discharging this responsibility, the IRS receives and processes tax returns, related documents, and tax payments; disburses refunds; enforces compliance through audits and other procedures; collects delinquent taxes; and provides a host of services to taxpayers with the aim of enabling them to understand their rights and responsibilities under the federal tax code and resolving problems without litigation. In FY2006, the agency collected $2.537 trillion before refunds, the largest component of which was individual income tax revenue of $1.236 trillion.

The IRS receives funding for its operations from three sources: appropriated funds, user fees, and so-called reimbursables, which are payments the IRS receives from other federal agencies and state governments for services it provides. In FY2006, appropriated funds accounted for 98% of IRS's operating budget, with user fees and reimbursables each adding another 1%.

Appropriated funds are distributed among five accounts:

- (1) **taxpayer services**, which provides resources for pre-filing taxpayer assistance, filing and account services, administrative services for IRS employees, and senior IRS management;
- (2) **enforcement**, which covers the cost of compliance services, research and statistical analysis, and administration of the earned income tax credit;
- (3) **operations support**, which addresses the improvement and maintenance of the agency's information and management systems;
- (4) **business systems modernization (or BSM)**, which provides funds for developing new information systems for tax administration and acquiring the hardware and software needed to integrate them into IRS's operations; and
- (5) **health insurance tax credit administration**, which covers the cost of administering the refundable tax credit for health insurance established by the Trade Adjustment Assistance Reform Act of 2002.

In FY2007, the IRS received $10.597 billion in appropriated funds, or 0.5% more than it received in FY2006. Of this amount, $2.138 billion was designated for taxpayer services, $4.686 billion for enforcement, $3.545 billion for operations support, $213 million for the BSM program, and $15 million for administration of the health insurance tax credit. The IRS was one of the many federal agencies funded in FY2007 under a year-long continuing resolution (H.J.Res. 20; P.L. 110-5) enacted in February 2007. Under the resolution, the "requirements, authorities, conditions, limitations, and other provisions" that governed the use of FY2006 appropriations by all affected agencies also governed their use of FY2007 appropriations. As a result, certain restrictions that applied to funding for IRS operations in FY2006 also applied to the funding for IRS operations in FY2007. Specifically, the IRS could not reorganize or reduce its workforce in FY2007 without the consent of the House and Senate Appropriations Committees. In addition, during FY2007, the IRS was barred from entering the market for tax return preparation software, and from instituting reductions in taxpayer service until TIGTA completes a report on the effects of such reductions on taxpayer compliance.

The Bush Administration asked Congress to appropriate $11.095 billion for IRS operations in FY2008, or 4.7% more than the amount enacted for FY2007. Of this amount, $2.103 billion (1.7% less than FY2006) was for taxpayer services, $4.925 billion (5.1% more than FY2007) for enforcement, $3.770 billion (6.3% more than FY2007) for operations support, $282 million (32.4% more than FY2007) for the BSM program, and $15 million (the same amount as FY2007) for administering the health insurance tax credit. Under the budget proposal, total full-time equivalent employment at the IRS was projected to rise from an estimated 92,404 in FY2007 to 92,814 in FY2008, a gain of 0.4%.[25]

Budget documents indicate that the FY2008 budget proposal for the IRS was intended to support three strategic goals: (1) bolster taxpayer compliance without imposing additional reporting burdens on taxpayers, (2) continue the agency's recent efforts to "increase and improve the delivery of services offered to taxpayers," and (3) invest in information technology designed to "give (IRS) employees the tools they need to administer and improve both taxpayer service and

[25] Ibid., p. 10.

enforcement programs."[26] Guiding the pursuit of these goals was a commitment to "provide quality service to taxpayers while enforcing America's tax laws in a balanced manner."

As part of its budget proposal for the IRS, the Administration also asked Congress to pass a number of legislative proposals.[27] Most were intended to improve taxpayer compliance through actions such as expanded information reporting, mandatory electronic filing for "certain large businesses," and expanded penalties for fraudulent actions by tax preparers and for erroneous refund claims.

In assessing the Administration's FY2008 budget proposal for the IRS, it may be useful to consider the extent to which it supported these objectives and whether or not the proposed budgets for enforcement, taxpayer service, and BSM were adequate in light of the many challenges facing the agency. Foremost among those challenges are improving compliance rates among individuals and businesses without sacrificing recent gains in taxpayer service, generating more reliable estimates of the rates of non-compliance among business taxpayers, increasing the share of tax returns filed electronically, upgrading the agency's computer systems, managing the agency's private tax debt collection program in a way that meets the concerns of critics, and hiring and training sufficient numbers of enforcement agents to replace those who have retired or quit in recent years.

Review of Administration's FY2008 Budget Proposal by the IRS Oversight Board

The IRS Oversight Board came into existence through the IRS Restructuring and Reform Act of 1998. Its primary responsibilities are to oversee IRS's administration of the federal tax code and to ensure that the agency has the resources and management needed to carry out its mission and achieve its strategic objectives. Section 7802 of the Internal Revenue Code (IRC) requires the Board to review and approve the annual budget requests submitted by IRS to the Treasury Department, and to assess whether the annual budget request for the IRS submitted to Congress supports the strategic plans of the agency.

The Board released its assessment of the Administration's FY2008 budget request for the IRS in April 2007.[28] While the Board took a mostly favorable view of the Administration's proposal, it did favor giving the agency a larger budget than the Administration asked for. The Board commended the Administration for seeking a 4.7% increase in the IRS's budget for FY2008 "during a time when discretionary spending is under great constraints and there is stiff competition among federal departments and agencies for resources."[29] It also applauded the Administration for recognizing "the importance of the IRS' mission to the fiscal well-being of our nation and (for) proposing these important and much needed investments at this time." In the Board's view, both its budget proposal and the Administration's were "focused on improving the ability of the IRS to aggressively pursue its strategic goals in order to reduce the tax gap."[30] It saw the Administration's budget proposal as "clearly aligned with the IRS' most recent strategic plan."

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[26] Ibid., p. 55.

[27] Ibid., p. 64.

[28] See IRS Oversight Board, *FY2008 IRS Budget Recommendation: Special Report* (Washington: April 2007).

[29] Ibid., p. 3.

[30] Ibid., p. 7.

At the same time, the Board wanted more funds appropriated for enforcement and infrastructure than the Administration called for. Specifically, the Board called for spending $105 million more on a variety of enforcement initiatives than the Administration's budget request, and $205 million more on projects related to the BSM and newly installed information systems.[31] In the Board's view, these added expenditures were critical to the success of current plans to improve taxpayer compliance and shrink the tax gap.

House-Passed Version of H.R. 2829

The spending measure (H.R. 2829) for financial services and general government passed by the House on June 28 would have provided $11.147 billion in appropriated funds for the IRS in FY2008. This amount was $52 million more than the amount requested by the Administration.

This entire difference lay in recommended funding for taxpayers services. H.R. 2829 would have provided $2.155 billion for such services in FY2008, or $52 million more than the amount requested by the Administration. Of this amount, $8 million would have been for low-income taxpayer clinic grants, up to $4.1 million would have been funneled into the Tax Counseling for the Elderly program, and no less than $179.6 million would have funded the operations of the Taxpayer Advocate Service. In addition, the bill recommended spending $71.5 million for pre-filing services management ($6.2 million more than the Administration requested), $127.5 million for taxpayer communications and education (or $12.8 million more than the Administration requested), $70 million for media and publications ($5.2 million more than requested), and $165.2 million for account management and assistance ($18.3 million more than requested). In its report on H.R. 2829, the House Appropriations Committee noted that the recommended increase in spending on taxpayer services was intended to counter recent reductions in taxpayer services and give the IRS the resources it needed "to strengthen, improve, and expand taxpayer service."[32]

H.R. 2829 also would have provided the IRS with $4.925 billion for enforcement (including $116.7 million to examine ways to improve taxpayer compliance), $3.770 billion for operations support, $282 million for the BSM program, and $15 million for the administration of the health insurance tax credit. The Administration requested the same amounts for each account.

A controversial provision of the bill would have limited funding for the administration of the private tax debt collection (PDC) program to $1 million. Such a limitation would have effectively ended the program, which has been embroiled in controversy since the IRS gained the authority to hire private debt collectors in 2004. During the floor debate on the bill in the House, Representative Jose Serrano, the chairman of the House Appropriations Subcommittee on Financial Services, agreed to drop the provision in the face of opposition from some Republicans. Representative Jim McCreary raised a budget point of order against the provision on the grounds that any measure capping funding for the private tax debt collection program should fall under the jurisdiction of the Ways and Means Committee, and thus should not be considered as part of an appropriations bill.[33] While conceding the point of order, Representative Serrano disagreed that eliminating the program would necessarily result in a loss of revenue.

[31] Ibid., p. 14.

[32] House Appropriations Committee, report to accompany H.R. 2829, p. 25.

[33] Meg Shreve, "Private Debt Collection Survives Appropriation Process," *Tax Notes*, July 2, 2007, p. 7.

Senate-Reported Version of H.R. 2829

The version of H.R. 2829 reported favorably by the Senate Appropriations Committee on July 13 would have provided $11.142 billion in appropriated funds for the IRS in FY2008—or $46 million more than the amount requested by the Bush Administration but about $6 million less than the amount recommended by the House.

Of this amount, $2.149 billion would have been used for taxpayer services ($46 million more than the Administration's budget request but $6 million less than the House bill); $4.925 billion would have gone to enforcement (the same as the Administration's budget request and the House bill); $3.770 billion would have been set aside for operations support (the same as the Administration's budget request and the House bill); $282 million would have been channeled into the BSM (the same as the Administration's budget request and the House bill); and $15 million would have been spent on administering the health insurance tax credit (same as the Administration's request and the House bill).

In its report on H.R. 2829, the committee expressed a variety of concerns about the IRS's readiness to address several key issues. One was the tax gap. The gap is the difference between federal taxes owed and federal taxes paid in a timely manner. According to the latest estimate by IRS, the gross tax gap amounted to $345 billion in 2001. In the committee's view, the IRS "must and can reduce the tax gap if the IRS is given additional resources and is able to improve its operational capabilities (most notably the Business Systems Modernization program)."[34] Yet it could find no strategy in the Administration's budget request for the IRS in FY2008 that would have enabled the agency to achieve the stated goal of raising the voluntary compliance rate for all taxpayers from its estimated level of 83.7% in 2007 to 85% by 2009. So the committee added a provision to H.R. 2829 requiring the IRS to develop such a plan, without specifying a deadline.

Of the $2.149 billion recommended for taxpayer services in the bill, "not less than" $3 million would have been set aside for the tax counseling program for the elderly, "not less than" $9 million for low-income taxpayer clinic grants, and "not less than" $10 million to establish and administer a matching grant program for tax return preparation assistance involving volunteers from local communities. On other matters dealing with appropriations for taxpayer service, the committee directed the IRS, after consulting with the IRS Oversight Board and the National Taxpayer Advocate, to submit to Congress an annual update of its current five-year strategic plan for taxpayer services known as the "Taxpayer Assistance Blueprint." It also expressed disappointment with the slow progress made by the IRS in increasing the number of tax returns that are filed electronically and directed the agency to develop a strategic plan to meet the 80% electronic filing goal it was supposed to reach by 2007. The plan would have been required to be submitted to the House and Senate Appropriations Committees by March 1, 2008.

On matters related to appropriations for enforcement, the committee directed the IRS to submit to the House and Senate Appropriations Committees by March 1, 2008 a "detailed research plan" to correct problems with its National Research Program (NRP).[35] The IRS uses data collected through the NRP to generate estimates of the underreporting of taxable income by individual taxpayers, a major component of the federal tax gap. But the IRS, Government Accountability Office, and TIGTA, among others, have expressed concern about the quality of the data from the

[34] Senate Appropriations Committee, report to accompany H.R. 2829, p. 23.

[35] Ibid., p. 27.

NRP and gaps in its coverage. The committee also expressed concern about the loss of tax revenue arising from the misclassification of workers as independent contractors and directed the IRS to channel more enforcement resources into "industries where misclassification is widespread."[36]

A controversial provision of the bill would have reduced funding to administer the PDC program to $1 million. At such a low level of funding, the IRS could have been forced to suspend the program. One noteworthy aspect of the provision is its wording. The version of H.R. 2829 reported by the House Appropriations Committee contained a similar provision, but it was removed during the House floor debate after facing the threat of a budget point of order tied to a ruling by the Joint Committee on Taxation that cutting funding for the private tax debt collection program would result in a loss of revenue. To avoid a similar outcome, the Senate version was crafted so that the provision would cut direct appropriations for the program but allow the program to fund itself through the delinquent taxes collected as a result of it.[37]

Consolidated Appropriations Act, 2008 (P.L. 110-161)

The consolidated appropriations bill (H.R. 2764) enacted in December 2007 includes $10.892 billion in funding for IRS operations—or $295 million more than the amount enacted for FY2007 but $203 million less than the amount requested by the Administration. Of the total amount of appropriations for the agency in FY2008, $2.150 billion is intended for taxpayer services ($47 million more than the Administration requested), $4.780 billion for enforcement ($145 million less than the Administration requested), $3.680 billion for operations support ($89 million less than the Administration requested), $267 million for BSM ($15 million less than the Administration requested), and $15 million for administering the heath insurance tax credit (the same amount as the Administration requested).

Taxpayer Services . The funding for taxpayer services in FY2008 does not take into account $94.5 million in user fees that the IRS hopes to collect over the course of that year to supplement its budget for taxpayers services. Congress also attached certain conditions to IRS's use of this funding. First, at least $31.2 million must be used to expand IRS's efforts to assist and educate individual and business taxpayers and tax-exempt organizations, and to increase the number of tax returns prepared at Taxpayer Assistance Centers (TACs). Second, the IRS is to spend a minimum of $3 million on the Tax Counseling for the Elderly program. Third, at least $9 million is to be used for low-income taxpayer clinic grants. Fourth, at least $177 million is designated for the operating costs of the Taxpayer Advocate Service (TAS). Fifth, $8 million is to be made available through the end of FY2009 to establish a "matching grant demonstration program for Community Volunteer Income Tax Assistance programs"; the IRS is directed to administer the demonstration program in consultation with the TAS. Moreover, the bill uses blunt language to put the IRS on notice that any proposed reductions in taxpayer service must "be consistent with the budget justification, operating plan, and Taxpayer Assistance Blueprint (TAB)," and that the IRS must prove that the proposed reductions "will not result in a decline in voluntary compliance."

[36] Ibid., p. 28.

[37] Dustin Stamper, "Senate Appropriators Take Another Stab at Private Debt Collection," *Tax Notes*, July 16, 2007, p. 162.

The IRS released its initial TAB in April 2007, in fulfillment of a mandate included in the law providing appropriations for the agency in FY2005. Prepared jointly with the IRS Oversight Board and the National Taxpayer Advocate, the document set forth a five-year plan to revamp the taxpayer services provided by the IRS. Among the concerns addressed in the report are the cost-effectiveness of the services offered at TACs, the challenges facing the agency in improving taxpayer service, and possible methods for measuring its performance in delivering services.

Enforcement. Of the funds appropriated for enforcement in FY2008, $57.252 million are to be transferred to the Interagency Crime and Drug Enforcement program. In addition, the act directs the IRS to work with the National Taxpayer Advocate and the IRS Oversight Board to develop a five-year strategic plan for research that must be submitted to the Senate and House Appropriations Committees by September 30, 2008. It also requires the agency to issue two additional reports to the same committees: one on the factors that influence taxpayer compliance by the end of September 2008, and one on problems with the NRP by March 1, 2008. No limit is imposed on how much the IRS can spend to manage its PDC program in FY2008. But the act does provide IRS with $7.35 million for the purpose of enlarging its workforce for the Automated Collections Systems (ACS) program.

There is reason to believe that such an expansion might enable the IRS to collect delinquent individual tax debt with a much higher return on investment than it does through the PDC program. A recent report by the National Taxpayer Advocate notes that the estimated cost of operating the PDC program in FY2008 is $7.35 million. According to the report, if that amount were used to expand the ACS program, the IRS could collect $146 million in delinquent tax debt, or nearly five times the amount of gross revenue the agency expects the PDC program to collect in FY2008.[38]

One question raised by the budget for enforcement in FY2008 approved by Congress concerns how it will affect several planned initiatives to improve taxpayer compliance—and thus reduce the federal tax gap. The Administration requested $246 million in FY2008 to fund seven such initiatives, including $73 million for increased audits and collection activities aimed at small firms and self-employed individuals, $28 million for an expansion of the Automated Underreporter program, and $41 million to conduct research on the compliance behavior of new groups of taxpayers. But appropriated funds for enforcement are $145 million less than the amount the Administration requested.

Operations Support . The act imposes no specific conditions on how the IRS uses its appropriated funds for operations support. But it does direct the agency to keep Congress informed of any "planned reorganization, job reductions, or increases to offices or activities within the agency, or modifications to any service or enforcement activity" by including them in its operation plan. In addition, the act requires the IRS to give quarterly briefings to the IRS Oversight Board and TIGTA on the status of its information technology systems, and to report to these organizations as soon as possible if any information technology project is likely to experience a cost overrun or a significant delay in its completion.

[38] National Taxpayer Advocate, *2007 Annual Report to Congress: Volume One* (Washington: 2007), p. 414. Available at http://www.irs.gov/pub/irs-utl/arc_2007_vol_1_cover_msps.

Title II: Executive Office of the President and Funds Appropriated to the President[39]

All but three offices in the Executive Office of the President (EOP) are funded in the Financial Services and General Government (FSGG) appropriations bill.[40] **Table 4** shows enacted appropriations for FY2007, and, for FY2008, amounts requested by the Administration, passed by the House, reported by the Senate, and as enacted in P.L. 110-161.

Table 4. Executive Office of the President and Funds Appropriated to the President, FY2007 to FY2008

(in thousands of dollars)

Office	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
The White House (total)	$172,993	$187,370	$177,089	$177,589	$176,505
Compensation of the President	*450*	*450*	*450*	*450*	*450*
The White House Office (salaries and expenses)	*53,616*	*53,156*	*53,156*	*51,656*	*51,656*
Executive Residence, White House (operating expenses)	*12,398*	*12,814*	*12,814*	*12,814*	*12,814*
White House Repair and Restoration	*1,683*	*1,600*	*1,600*	*1,600*	*1,600*
Council of Economic Advisers	*4,032*	*4,118*	*4,118*	*4,118*	*4,118*
Office of Policy Development	*3,487*	*3,482*	*3,482*	*3,482*	*3,482*
Privacy and Civil Liberties Oversight Board[a]	—	—	—	*2,000*	*2,000*
National Security Council	*8,684*	*8,640*	*8,640*	*8,640*	*8,640*
Office of Administration	*88,643*	*103,110*	*92,829*	*92,829*	*91,745*
Office of Management and Budget	76,714	70,866	78,394	78,394	78,000
Federal Drug Control Programs (total)	464,447	473,368	460,436	464,887	421,702
Office of National Drug Control Policy	*26,766*	*23,883*	*26,636*	*25,152*	*26,402*
High Intensity Drug Trafficking Areas Program	*224,730*	*220,000*	*226,000*	*235,000*	*230,000*

[39] This section was written by Barbara Schwemle, Analyst in American National Government, Government and Finance Division.

[40] Of the three exceptions, the Council on Environmental Quality and the Office of Environmental Quality are funded in the House and Senate Interior, Environment, and Related Agencies Appropriations Act. The Office of Science and Technology Policy and the Office of the United States Trade Representative are funded in the House and Senate Commerce, Justice, Science, and Related Agencies Appropriations Act.

Office	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Other Federal Drug Control Programs	*192,951*	*224,485*	*197,800*	*204,735*	*164,300*
Counterdrug Technology Assessment Center	*20,000*	*5,000*	*10,000*	*—*	*1,000*
Unanticipated Needs	990	1,000	1,000	1,000	1,000
Office of the Vice President (salaries and expenses)	4,432	4,432	4,432	4,432	4,432
Official Residence of the Vice President (operating expenses)	322	320	320	320	320
Total: EOP and Funds Appropriated to the President	**$719,898**	**$737,356**	**$721,671**	**$726,622**	**$681,959**

Sources: Budget authority tables provided by House Appropriations Subcommittee on Financial Services and General Government, President's FY2008 budget request, U.S. Executive Office of the President, *Fiscal Year 2008 Congressional Budget Submission* (Washington: February 2007), and S.Rept. 110-129. Columns may not equal the total due to rounding.

a. The FY2007 law, the FY2008 budget request, and the FY2008 House-passed bill included the appropriation for the Privacy and Civil Liberties Oversight Board under the White House Office account and provided funding of $1.5 million. Section 801(a) of P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007, enacted on August 3, 2007, authorizes appropriations for the Board as follows: $5,000,000 (FY2008); $6,650,000 (FY2009); $8,300,000 (FY2010); $10,000,000 (FY2011); and such sums as may be necessary (FY2012 and each subsequent fiscal year).

The Executive Office of the President Budget and Key Issues

The Administration's FY2008 budget requested an appropriation of more than $737 million for the EOP and funds appropriated to the President, a 2.4% increase from the almost $720 million appropriated for FY2007. Within the request, funding for all "White House" accounts, discussed under "Consolidation Proposal" below, would have increased 8.3%, but funding for the Office of Management and Budget (OMB) (-7.6%) and the Office of National Drug Control Policy (ONDCP) (-10.8%) would have decreased. The proposed OMB and ONDCP funding reductions primarily resulted from the transfer of monies to the Office of Administration account for the enterprise services initiative (discussed below).

Unlike the FY2006 and FY2007 budget proposals, when the President requested that the High Intensity Drug Trafficking Areas Program (HIDTAP, under federal drug control programs) funding be transferred to the Department of Justice, the FY2008 budget request continued to include the HIDTAP appropriation under the EOP, but at a level that would have been 2.1% less than the program's FY2007 funding. Under federal drug control as well, significant changes in funding were requested for the Other Federal Drug Control Programs (+16.3%) and the Counterdrug Technology Assessment Center (-75%). Overall, though, federal drug control program funding would have increased 2.7%.

Consolidation Proposal

For the seventh consecutive fiscal year, the President's FY2008 budget proposed to consolidate and financially realign several salaries and expenses accounts that directly support the President into a single annual appropriation, called "The White House." The eight accounts included in the consolidated appropriation were the following:

- Compensation of the President,
- White House Office (WHO),
- Executive Residence at the White House,
- White House Repair and Restoration,
- Office of Administration,
- Office of Policy Development,
- National Security Council, and
- Council of Economic Advisers.[41]

This consolidated appropriation would have totaled more than $187 million in FY2008 for the accounts proposed to be consolidated, an increase of 8.3% from the almost $173 million appropriated in FY2007. Within "The White House Office" account, funding for the Compensation of the President would have remained unchanged; funding for the Executive Residence at the White House (+3.4%), the Council of Economic Advisers (+2.1%), and the Office of Administration (+16.3%) would have increased; and funding for White House salaries and expenses (-0.9%), White House repair and restoration (-4.9%), the Office of Policy Development (-0.1%), and the National Security Council (-0.5%) would have decreased.

The EOP budget submission stated that consolidation "presents the best means for the President to realign or reallocate the resources and staff available in response to changing and emerging needs and priorities."[42] The conference committees on the FY2002 through FY2006 appropriations acts decided to continue with separate appropriations for the EOP accounts to facilitate congressional oversight of their funding and operation. This practice continued for FY2007 under P.L. 110-5, the Revised Continuing Appropriations Resolution.[43] H.R. 2829, as passed by the House and reported in the Senate, and P.L. 110-161 continued with separate appropriations for the EOP accounts.

Transfer Authority Proposal

As in the FY2007 budget proposal, the FY2008 budget requested a general provision in Title VI to continue and expand the authority for the EOP to transfer 10% of the appropriated funds

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[41] U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government Fiscal Year 2008, Appendix* (Washington: GPO, 2007), pp. 963-964. (Hereafter referred to as *FY2008 Budget, Appendix*.)

[42] U.S. Executive Office of the President, *Fiscal Year 2008 Congressional Budget Submission* (Washington: February 2007), p. EOP-14. (Hereafter cited as *EOP Budget Submission*.)

[43] P.L. 110-5, February 15, 2007,121 Stat. 8.

among several accounts under the EOP. The proposal was included under the government-wide general provisions at Section 833 and would have covered the following accounts in FY2008:

- The White House,[44]
- Office of Management and Budget,
- Office of National Drug Control Policy,
- Special Assistance to the President and the Official Residence of the Vice President (transfers would be subject to the approval of the Vice President),
- Council on Environmental Quality and Office of Environmental Quality,
- Office of Science and Technology Policy, and
- Office of the United States Trade Representative.[45]

The OMB Director (or such other officer as the President designates in writing) would have been able to, 15 days after notifying the House and Senate Committees on Appropriations, transfer up to 10% of any such appropriation to any other such appropriation. The transferred funds would have been merged with, and available for, the same time and purposes as the appropriation receiving the funds. Such transfers could not have increased an appropriation by more than 50%. According to the EOP budget submission, the transfer authority would have allowed the President "to address, in a limited way, emerging priorities and shifting demands" and would have provided the President "with flexibility to improve the efficiency of the EOP." The authority was "not intended to be used for new missions or programs, but to address emerging priorities, shifting demands, and administrative efficiencies within the currently funded programs."[46]

P.L. 108-447, the Consolidated Appropriations Act for FY2005 (Section 533, Title V, Division H) authorizes transfers of up to 10% of FY2005 appropriated funds among the accounts for the White House Office, OMB, ONDCP, and the Special Assistance to the President and Official Residence of the Vice President. For FY2006, P.L. 109-115, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Section 725) authorizes transfers of up to 10% among the accounts for the White House and the Special Assistance to the President and Official Residence of the Vice President. Section 201 of H.R. 2829, as passed by the House and reported in the Senate, and, as enacted in P.L. 110-161, continues the current practice.

Enterprise Services Proposal

The FY2008 budget request, like that for FY2007, included an enterprise services initiative to simplify and make more efficient the administration of certain common services that are provided throughout the EOP. Services included in the initiative would have been expanded to include burn bag pickup costs, employee transportation subsidies, and Flexible Spending Account administrative fees. The budgets for these services in the WHO, Executive Residence at the White

[44] The accounts under the White House are Compensation of the President, White House Office, Executive Residence at the White House, White House Repair and Restoration, Office of Administration, Office of Policy Development, National Security Council, and Council of Economic Advisers.

[45] *FY2008 Budget, Appendix*, p. 964.

[46] *EOP Budget Submission*, p. EOP-15.

House, Office of Policy Development, National Security Council, Council of Economic Advisers, OMB, ONDCP, Office of Science and Technology Policy, United States Trade Representative, and the Council on Environmental Quality would have been moved into the Office of Administration (OA). In order to "be consistent with other EOP components," the budgets for health unit services costs, space-related rent costs, and rent-based Federal Protective Service costs in OMB and ONDCP also would have been included in the OA.[47]

House-Passed Bill[48]

H.R. 2829, as passed by the House, would have provided appropriations for the accounts under the EOP and funds appropriated to the President at the levels requested by the President's budget except for the OA, OMB, and the various federal drug control accounts. The House Committee on Appropriations report that accompanied the bill stated that the reduction of $10.3 million in the OA appropriation resulted from keeping the rental payments to GSA for OMB ($7.5 million) and ONDCP ($2.8 million) under the salaries and expenses accounts for these entities. The report noted that "all miscellaneous costs in the Enterprise Services Program" were provided as requested.

The restoration of the $7.5 million to OMB salaries and expenses for the rental payments to GSA accounted for the increase in the agency's appropriation. The committee report expressed continued concern about OMB using the E-Government initiative "to force its management priorities on agencies that would otherwise choose different approaches to serving the public and other government agencies that are better tailored to meet the needs of their customers and meet their statutory requirements." It noted the continuation of the government-wide general provision at Section 737 that prohibited the use of funds for E-Government without prior consultation and approval by the committee and urged OMB and the agencies "to work directly with the individual appropriations subcommittees in advance of recommending e-Government transfers so that approved worthy initiatives can move forward without disruption." The report also directed OMB to report to the committee within 180 days of the act's enactment on the implementation and effectiveness of OMB's guidance to the agencies on reducing fraud and abuse in the federal transit benefit program.

The restoration of the $2.8 million to ONDCP salaries and expenses for the rental payments to GSA accounted for the increase in the agency's appropriation. Included in the House report were directives that ONDCP report to the committee within 90 days of the act's enactment on the aerial eradication program in Columbia and on the update of the November 2004 report listing illicit drug prices and purity. Section 202 of H.R. 2829, as passed by the House, required the President to submit a financial plan to the House and Senate Committees on Appropriations within 30 days of this act's enactment and prior to the initial obligation of ONDCP funds for FY2008. The plan would have been required to be updated every six months and new projects and changes in funding for ongoing projects are subject to prior approval by the Appropriations Committees. HIDTAP would have received an appropriation which was $6 million above the President's request. The committee report specified that the HIDTAs for FY2008 "receive funding at least

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[47] *EOP Budget Submission*, pp. EOP-16 - EOP-17.

[48] On June 26, 2007, OMB issued a *Statement of Administration Policy* on H.R. 2829 that urged the House of Representatives to adopt the President's proposals on consolidation, transfer authority, and Enterprise Services and his request for full funding for the National Youth Anti-Drug Media Campaign. (pp. 3-4.)

equal" to their FY2007 "initial allocation level" and that not less than $2.1 million be used for auditing services and related activities.

The appropriation for the other federal drug control programs account would have been $26.7 million below the President's budget request. According to the committee report, increased funding could not be justified for the National Youth Anti-Drug Media Campaign because an ONDCP study and a GAO review found that "there is no clear evidence that the campaign has resulted in a reduction in drug use among youth." The report directed ONDCP to provide recommendations to the committee within 90 days of the act's enactment "on the development of improved and meaningful measurements of the effectiveness of the media campaign, including [those] that would indicate how the campaign influences youth and parent behavior." The $197.8 million appropriation for the other federal drug control programs would have been allocated as follows:

- Drug Free Communities—$90 million
- Training and technical assistance for drug court professionals—$1 million
- Model Acts—$1 million
- Demonstration programs for chronic hard-drug users under community supervision—$1 million
- National Youth Anti-Drug Media Campaign—$93 million
- United States Anti-Doping Agency—$9.6 million
- World Anti-Doping Agency Dues—$1.7 million
- Performance Measures Development—$500,000

The $5 million increase in the appropriation for the CTAC resulted from the restoration of funding to the Technology Transfer Program which the President's budget had proposed to be terminated.[49] Established in 1990 and reauthorized in 1998, the CTAC is to serve as the central counterdrug technology research and development organization for the United States Government.

The House committee report also addressed two issues under the White House Office account. First, the report noted that the "account had unobligated balances of budget authority in excess of $6,500,000, or more than 10 percent of its appropriation, remaining at the end of fiscal years 2005 and 2006" and stated the expectation that the committee would "be kept fully informed of the reasons for any significant differences between actual and budgeted spending." The report expressed the committee's concern about the Administration's extensive editing of the first report to Congress by the Privacy and Civil Liberties Oversight Board and stated "that the Board must have the authority and independence to thoroughly review, assess, and report accurately on privacy and civil liberties matters." The House-passed bill would have provided $1.5 million for the Board.[50]

[49] H.Rept. 110-207, pp. 36-40.

[50] Ibid., p. 33.

Senate-Reported Bill

H.R. 2829, as reported in the Senate, would have provided appropriations for the accounts under the EOP and funds appropriated to the President at the levels requested by the President's budget except for the WHO, OA, OMB, and the various federal drug control accounts. Unlike the President's budget request, which included funding for the Privacy and Civil Liberties Oversight Board within the WHO account, the Senate Committee on Appropriations report stated that funding for the board would have been provided in a separate account that was funded at $2 million. The committee directed the EOP to include detailed budget information for the board in the FY2009 budget justification and expected the board's annual report "to specifically detail how the additional funds provided have benefited" its work and responsibilities.[51] The reasons for the reduction in the OA appropriation and the increased OMB and ONDCP appropriations were the same as for the House-passed bill. The Senate committee directed the OMB Director to report to Congress by March 1, 2009, on "the extent to which executive departments and agencies that administer directed funding allocate the designated amounts to intended recipients at a level less than the amount specified in any enacted bill or accompanying report describing such directed funding."[52]

ONDCP's appropriation of $25.2 million would have included the restoration of the $2.8 million to ONDCP salaries and expenses for the rental payments to GSA. It also would have included $1.5 million for "an independent study and analysis of ONDCP's organization and management" to be conducted by the National Academy of Public Administration (NAPA).[53] The office would have been required to contract with NAPA for the study within two months after the act's enactment. Like the House-passed bill, H.R. 2829, as reported in the Senate, included the Section 202 provision on submission of a financial plan prior to the obligation of ONDCP funds. In addition, the Senate version of the bill included provisions at Sections 203, 204, and 205 that were not included in the House-passed bill. These provisions related to transfer authority, reprogramming, and budget estimates for ONDCP. According to the Senate report, the committee did not agree with the office's proposal to reorganize 3 of its 12 components. Among the directives included in the Senate report were requirements that the ONDCP Director submit to the House and Senate Committee on Appropriations "quarterly reports on travel expenditures, summarized by office, program, and individual, including dates and purpose of travel" and "quarterly reports on current staffing levels and plans for future hirings ... includ[ing] office, position title, salary, and job classifications of all persons employed by ONDCP, including contractors."[54]

The appropriation for HIDTAP would have been $15 million more than the President requested. The committee report included language similar to that in the House committee report on the funding for existing HIDTAs and directed the ONDCP Director "to ensure that the HIDTA funds are transferred to the appropriate drug control agencies expeditiously." Further, the committee report included specific directions on the allocation and use of HIDTA funds:

[51] S.Rept. 110-129, pp. 35, 38.

[52] Ibid., p. 39.

[53] H.R. 2829, as reported in the Senate, p. 174.

[54] S.Rept. 110-129, p. 41.

> [T]he committee expects the Director of ONDCP to ensure that the entities receiving these limited resources make use of them strictly for implementing the strategy for each HIDTA, taking into consideration local conditions and resource requirements.
>
> The HIDTA funds should not be used to supplant existing support for ongoing Federal, State, or local drug control operations normally funded out of the operating budgets of each agency. ONDCP is directed to hold back all HIDTA funds from a State until such time as a State or locality has met its financial obligation.[55]

The other federal drug control programs account would have been funded at $204.7 million, $19.8 million less than the President's request. Stating views similar to those expressed in the House committee report, the Senate report reflected the committee's concern "about the direction and efficacy" of the National Youth Anti-Drug Media Campaign. The appropriation for other federal drug control programs would have been allocated as follows:

- Drug Free Communities—$90 million
- Training and technical assistance for drug court professionals—$1 million
- Model Acts—$1.5 million
- National Youth Anti-Drug Media Campaign—$100 million
- United States Anti-Doping Agency—$10.3 million
- World Anti-Doping Agency Dues—$1.7 million
- Performance Measures Development—$250,[56]

H.R. 2829, as reported in the Senate, did not provide funding for the CTAC. The committee report stated that "Funding from previous years has remained unexpended despite congressional direction to reinstate CTAC programs as previously existed, and congressional intent with regard to this program has been ignored." It also stated that the "committee is highly disappointed in the director of this program and is troubled by his ideas for research and development that appear to have little or no value." The unexpended balances in the account, according to the committee, were "adequate" to fund the program in FY2008.[57]

With regard to the appropriation for the Official Residence of the Vice President, the Senate report stated the committee's expectation that it "be kept fully apprised by the Vice President's office of any and all renovations and alterations made to the residence by the Navy."[58]

The Senate version of H.R. 2829, as marked up by the Senate Subcommittee on Financial Services and General Government on July 10, 2007, included a provision to reduce the funding for the Office of the Vice President unless the office complied with Executive Order 12958 on Classified National Security Information.[59] The Vice President's Office had sought to be

[55] Ibid., p. 43.

[56] Ibid., p. 44.

[57] Ibid., p. 42.

[58] Ibid., p. 47.

[59] An amendment offered by Senator Sam Brownback to strike this provision from the bill failed by a 4-5 vote on July 10, 2007. During the House debate on H.R. 2829 on June 28, 2007, Representative Rahm Emanuel offered an amendment (H.Amdt. 480) to include a general provision in the bill, at Section 901, to prohibit the use of funds for the care, operation, refurnishing, or improvement of the Vice President's official residence and any expenses of the Vice (continued...)

exempted from the executive order.[60] During markup of the bill on July 12, 2007, the Senate Committee on Appropriations agreed by a 15-14 vote to an amendment offered by Senator Sam Brownback to strike the provision from the bill. The amendment also expressed "the Sense of the Senate that the President should amend Executive Order 12958 to be consistent with the letter from his Counsel dated July 12, 2007" which stated that the Office of the Vice President is exempt from the executive order.[61]

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The law provides an appropriation of $682 million for the accounts under the EOP and funds appropriated to the President. The accounts are funded at the levels recommended in H.R. 2829, as passed by the House and reported in the Senate, except for the WHO, OA, OMB, and the various federal drug control accounts. For the WHO, the law provides funding of $51.7 million and funds the Privacy and Civil Liberties Oversight Board in a separate account at $2 million, as recommended by the Senate. The OA receives an appropriation of $91.7 million, some $1 million less than the House and Senate recommended. The appropriation for OMB totals $78 million, $394,000 less than the House and Senate recommended. Administrative provisions direct OMB to apply appropriations "only to the objects for which appropriations were made" and allocate them "in accordance with the terms and conditions set forth in the relevant explanatory statement," and to "publish in the annual budget submission the specific reasons why [an information technology] project is on" the High Risk or Management Watch lists prepared by OMB. Furthermore, OMB cannot evaluate or determine "if Water Resources Project reviews are in compliance with laws, regulations, and requirements relevant to the Civil Works water resource planning process." The appropriation for the federal drug control accounts totals $421.7 million and is allocated among the specific accounts as follow:

- ONDCP—$26.4 million
- CTC—$1 million
- HIDTA—$230 million
- Other federal drug control programs—$164.3 million

The administrative provisions for these accounts include a requirement that the President submit a financial plan showing ONDCP programs, projects, and activities (Section 202) and specifying that no more than 2% of ONDCP's appropriations may be transferred between appropriated programs with approval in advance from the House and Senate Committees on Appropriations. (Section 203).[62]

(...continued)

President. The amendment failed by a 209-217 (Roll No. 596) vote. See, *Congressional Record*, vol. 153, June 28, 2007, pp. H7365-H7369 and H7402-H7403.

[60] See, William Douglas, "Waxman Blasts Cheney's Refusal to Comply With Order," *Knight Ridder Tribune News Service*, June 21, 2007, p. 1, and Michael Abramowitz, "Cheney Aide Explains Stance on Classified Material," *Washington Post*, June 27, 2007, p. A5. The June 26, 2007, letter from David S. Addington, Chief of Staff, to Senator John Kerry, referred to in *The Washington Post* article is available at http://www.fas.org/sgp/news/2007/06/ovp062607.pdf.

[61] H.R. 2829, as reported in the Senate, p. 178.

[62] *Congressional Record*, daily edition, vol. 153, December 17, 2007, pp. H16050-H16052.

Title III: The Judiciary[63]

As a co-equal branch of government, the judiciary presents its budget to the President, who transmits it to Congress unaltered. **Table 5** shows appropriations for the judiciary as enacted for FY2007, and, for FY2008, amounts requested by the Administration, passed by the House, reported by the Senate, and enacted.

Table 5. The Judiciary Appropriations, FY2007 to FY2008

(in millions of dollars)

Budget Groupings and Accounts	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Supreme Court (total)	$74.0	$78.7	$78.7	$78.7	$78.7
Salaries and Expenses	*62.6*	*66.5*	*66.5*	*66.5*	*66.5*
Building and Grounds	*11.4*	*12.2*	*12.2*	*12.2*	*12.2*
U.S. Court of Appeals for the Federal Circuit	25.3	28.6	28.0	27.4	27.1
U.S. Court of International Trade	15.8	16.7	16.5	16.6	16.6
Courts of Appeals, District Courts, and Other Judicial Services (total)	5,696.4	6,202.5	5,954.0	6,030.5	5,942.5
Salaries and Expenses	*4,476.6*	*4,854.5*	*4,660.6*	*4,710.0*	*4,619.3*
Court Security	*378.7*	*421.8*	*396.5*	*412.7*	*410.0*
Defender Services	*776.3*	*859.8*	*830.5*	*840.6*	*835.6*
Emergency Defender Services	—	—	—	—	*10.5*
Fees of Jurors and Commissioners	*60.9*	*62.4*	*62.4*	*63.1*	*63.1*
Vaccine Injury Compensation Trust Fund	*4.0*	*4.1*	*4.1*	*4.1*	*4.1*
Administrative Office of the U.S. Courts	72.4	78.5	75.7	78.5	76.0
Federal Judicial Center	22.9	24.8	24.0	24.5	24.2

[63] This section was written by Lorraine Tong, Analyst in American National Government, Government and Finance Division.

Budget Groupings and Accounts	**FY2007 Enacted**	**FY2008 Request**	**FY2008 House Passed (H.R. 2829)**	**FY2008 Senate Reported (H.R. 2829)**	**FY2008 Enacted (H.R. 2764)**
United States Sentencing Commission	14.6	16.2	15.5	15.5	15.5
Judicial Retirement Funds	58.3	65.4	65.4	65.4	65.4
Total: The Judiciary	**$5,979.7**	**$6,511.5**	**$6,257.8**	**$6,337.2**	**$6,246.1**

Sources: Budget authority table provided by House Appropriations Subcommittee on Financial Services and General Government, and S.Rept. 110-129. Columns may not equal total due to rounding.

Note: The Administrative Office of the U.S. Courts revised the judiciary's original FY2008 budget request estimate on March 21, 2007, from the total of $6.51 billion to $6.43 billion.

The Judiciary Budget and Key Issues

Appropriations for the judiciary—about two-tenths of 1% (0.2%) of the entire federal budget—are divided into budget groups and accounts. Two accounts that fund the Supreme Court (the salaries and expenses of the Court and the expenditures for the care of its building and grounds) together make up about 1.2% of the total judiciary budget. The structural and mechanical care of the Supreme Court building, and care of its grounds, are the responsibility of the Architect of the Capitol. The rest of the judiciary's budget provides funding for the "lower" federal courts and for related judicial services. The largest account, about 75% of the total budget—the Salaries and Expenses account for the U.S. Courts of Appeals, District Courts, and Other Judicial Services—covers the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the U.S. Court of Federal Claims, bankruptcy judges, magistrate judges, and all other officers and employees of the federal judiciary not specifically provided for by other accounts; it also covers the necessary expenses of the courts. The judiciary budget does not fund three "special courts" in the U.S. court system: the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Appeals for Veterans Claims. Federal courthouse construction also is not funded within the judiciary's budget.

The judiciary also uses non-appropriated funds to offset its appropriations requirement. The majority of these non-appropriated funds are from fee collections, primarily from court filing fees. The fees are used to offset expenses within the Salaries and Expenses account. In some instances, the judiciary also has funds which may carry forward from one year to the next. These funds are considered "unencumbered" because they result from savings from the judiciary's financial plan in areas where budgeted costs did not materialize. According to the judiciary, such savings are usually not under its control (e.g., the judiciary has no control over the confirmation rate of Article III judges and must make its best estimate on the needed funds to budget for judgeships, rent costs based on delivery dates, and technology funding for certain programs).

The judiciary has stated that it will keep Congress apprised throughout the appropriations cycle on changes in the anticipated non-appropriated funds and adjust its budget request accordingly. The judiciary also has "encumbered" funds—no-year authority funds for specific purposes, used when planned expenses are delayed, from one year to the next (e.g., costs associated with space delivery, and certain technology needs and projects).[64]

The judiciary was one of the few entities in the federal government that was not subjected to a hard freeze in the enacted year-long budget continuing resolution for FY2007 (the Revised Continuing Appropriations Resolution, 2007, P.L. 110-5). The FY2007 appropriations for the judiciary essentially maintained on-board staffing levels and addressed the immigration-related caseload. In her March 21, 2007, testimony before the House and Senate Subcommittees on the judiciary's FY2008 budget request, Judge Julia S. Gibbons, chair of the Budget Committee of the Judicial Conference of the United States,[65] said that the judiciary recognized the Administration's and Congress's concerns about overall federal spending and budget deficits. She stated that "every item in our budget request relates to performing the functions entrusted to us under the Constitution. We have no optional programs; everything ultimately contributes to maintaining court operations and preserving the judicial system that is such a critical part of our democracy."[66]

Cost Containment Initiatives

According to Judge Gibbons, the Judicial Conference has endeavored, through cost containment policies, to reduce costs and increase productivity in the federal judiciary for many years. For example, to limit the growth of the court rental fees paid to the General Services Administration (GSA), which currently constitute about 20% of the entire judiciary budget (projected to exceed one billion dollars in FY2008), the conference approved a cap of 4.9% on the average rate of growth for courthouse rent to be paid in FY2009 through FY2016. Through a rent validation project, the judiciary identified GSA rent overcharges totaling $30 million over three years, and recently found an additional $22.5 million in overcharges. It is also working with GSA to change the way courthouse rent is determined and calculated. Restricting the appointment of new magistrate judges and using information technology (e.g., consolidating computer servers) to increase efficiency and cost-effectiveness are among other efforts to contain costs.[67]

Judicial Security

Judicial security—the safe conduct of court proceedings and the security of judges in courtrooms and off-site—continues to be an issue of concern. The 2005 Chicago murders of family members of a federal judge; the Atlanta killings of a state judge, a court reporter, and a sheriff's deputy at a courthouse; and the 2006 sniper shooting of a state judge in the judge's office in Reno spurred efforts to enhance judicial security. Early in the 110th Congress, the chairmen of Senate and House Judiciary Committees introduced companion bills (S. 378 and H.R. 660, respectively), the Court Security Improvement Act of 2007, to strengthen security.[68] The Senate Judiciary

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[64] Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2008 Congressional Budget Summary* (Washington: February 2007), pp. 33-34. Hereafter cited as *Judiciary FY2008 Congressional Budget Summary*.

[65] The Judicial Conference of the United States is the principal policymaking body for the federal courts system. The Chief Justice is the presiding officer of the conference, which comprises the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade.

[66] Statement of Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States, before the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the United States Senate, March 21, 2007, p. 2. Hereafter cited as Judge Gibbons's March 21, 2007, Statement.

[67] Ibid., pp. 3-4.

[68] For more details about legislative proposals to enhance judicial security, including S. 378 and H.R. 660, see CRS (continued...)

Committee approved S. 378 on March 1, 2007 (following a February 2007 hearing on judicial security and independence), and reported the bill on March 29, 2007. On April 19, 2007, the Senate passed S. 378 unanimously. After the House Subcommittee on Crime, Terrorism, and Homeland Security held a hearing, the House Judiciary Committee amended H.R. 660 on June 13, 2007, and reported the bill on July 10, 2007. On that same day, under suspension of the rules, the House approved H.R. 660 by voice vote. As passed in their respective chambers, the Senate and House bills in their key provisions are essentially the same, but differ in a few areas. Legislation in the 109th Congress (P.L. 109-13) appropriated $11.9 million to the U.S. Marshals Service (USMS) to provide intrusion detection systems in the homes of federal judges who requested them. As of October 26, 2007, installations of alarm systems had been completed in 97% of the homes of federal judges who have requested them.[69] According to the judiciary, it has been experiencing problems with perimeter security functions that the Federal Protective Service (FPS) provides the judiciary at court facilities, as well as FPS billing problems. On March 13, 2007, the Judicial Conference endorsed a recommendation to support efforts to transfer to USMS the security functions that FPS currently provides to court facilities, as well as the associated funding for these functions.[70]

Workload

According to Judge Gibbons, the President's FY2008 budget request for $13 billion to bolster border security and immigration enforcement would result in a dramatic increase in the judiciary's caseload. Immigration-related cases now make up 25% of the district courts' criminal caseload. Noting the President's funding for 3,000 additional border patrol agents (by the end of 2008, the goal of achieving the level of 18,000-plus agents will double the number of agents in place in 2001), Judge Gibbons stated that the judiciary "cannot absorb the additional workload generated by the homeland security initiatives within current resource levels." The workload in the judiciary's probation and pretrial services programs also continues to grow—in 2006 there were 113,697 people under supervision, with a projected increase to 114,600 in 2007.[71]

Judgeships

The Judicial Conference voted on March 13, 2007, to ask Congress to create 67 new federal judgeships—15 for the courts of appeals (13 permanent, 2 temporary) and 52 for the district courts (38 permanent, 14 temporary)—to make permanent five temporary judgeships, and to extend another temporary judgeship for five years. According to the judiciary, since the 1990 omnibus judgeship bill, the number of courts of appeals judges has remained the same, while federal appellate court case filings increased by 55% over the same 17-year period. According to the judiciary, the number of district court judgeships increased by 4%, while case filings increased by 29%, over the same period of time.[72]

(...continued)

Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by (name redacted).

[69] U.S. Marshals Service, Office of Congressional Affairs, provided the information to the author on October 26, 2007.

[70] Judge Gibbons's March 21, 2007, Statement, pp. 9-10.

[71] Ibid., pp. 4-5.

[72] U.S. Courts, News Release, *"Federal Judiciary Says New Judgeships Needed,"* March 13, 2007, at http://www.uscourts.gov/Press_Releases/judconf031307.html.

Judicial Pay

Another key issue being discussed is the judiciary's advocacy for a significant increase in judicial pay. John G. Roberts Jr., Chief Justice of the United States, stated in his *2006 End-of-the-Year Report on the Federal Judiciary* that judges' pay has not kept pace with inflation over the years and has led to judges leaving the bench in increasing numbers. According to the Chief Justice, retaining and attracting the best talent to the courts is a serious concern. He stated that failure to raise judicial salaries has reached the level of a "constitutional crisis that threatens to undermine the strength and independence of the federal Judiciary."[73] On June 15, 2007, Senator Patrick J. Leahy, chairman of the Senate Judiciary Committee, introduced S. 1638, the "Federal Judicial Salary Restoration Act of 2007," that would have provided a 50% pay adjustment for justices and judges.[74] Representative John Conyers Jr., chairman of the House Judiciary Committee, introduced a companion bill, H.R. 3753, "Federal Judicial Salary Restoration Act of 2007," on October 4, 2007. The House bill would have provided for a 41.3% pay adjustment to justices and judges. As amended in markup, and ordered to be reported by the respective committees, both bills, S. 1638 and H.R. 3753[75] would authorize pay increases of 28.7% to 28.8%.[76]

On November 14, 2007, Senator Richard J. Durbin introduced S. 2353, the Fair Judicial Compensation Act of 2007, to authorize a 16.5% increase in the annual salaries of the Chief Justice of the United States, Associate Justices of the Supreme Court, courts of appeals judges, district court judges, and judges of the United States Court of International Trade, and to increase fees for bankruptcy trustees. S. 2353 is pending in the Senate Judiciary Committee.

House and Senate Budget Hearings

On March 8, 2007, the House Appropriations Subcommittee on Financial Services and General Government held a hearing on the Supreme Court budget request for FY2007, and heard testimony from Supreme Court Justices Anthony M. Kennedy and Clarence Thomas. Issues raised at the hearing included the Supreme Court building modernization project, workload, technology improvements, judicial security, minority clerk hiring, and televising Supreme Court proceedings. The subcommittee held another hearing on March 21, 2007, to hear testimony on the federal judiciary budget request from Judge Julia S. Gibbons, United States Circuit Judge for the Sixth Circuit Court of Appeals and chair of the Budget Committee of the Judicial Conference of the United States, and James C. Duff, director of the Administrative Office of the U.S. Courts (AOUSC). Among issues raised at the hearing were judicial security, rent paid to GSA, and workload. The Senate Appropriations Subcommittee on Financial Services and General

[73] U.S. Supreme Court, Chief Justice's "2006 Year-End Report on the Federal Judiciary," (Washington, DC: 2007), at http://www.supremecourtus.gov/publicinfo/year-end/2006year-endreport.pdf.

[74] Earlier, on January 8, 2007, Senator Leahy introduced S. 197, legislation to authorize a l.7% salary increase for federal justices and judges for FY2007. The Senate had approved the bill by unanimous consent on the same day, and it was referred to the House Judiciary Committee. On February 2, 2007, S. 197 was referred to the Subcommittee on Courts, the Internet, and Intellectual Property. No further action has been taken.

[75] See http://www.cbo.gov/ftpdocs/89xx/doc8957/hr3753.pdf for the Congressional Budget Office cost estimate for H.R. 3753.

[76] For further details about these bills and judicial pay issues, see CRS Report RL34281, *Judicial Salary: Current Issues and Options for Congress*, by (name redacted); and also CRS Report RS20388, *Salary Linkage: Members of Congress and Certain Federal Executive and Judicial Officials*, by (name redacted), and CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, by (name redac ted).

Government also held a hearing on the FY2008 budget request on March 21, 2007. Judge Gibbons and Director Duff gave testimony at the hearing on the same issues that were discussed at the House hearing.

Judge Gibbons asked the House and Senate subcommittees to fund fully the judiciary's budget request. She stated that, "A funding shortfall for the federal courts could result in a significant loss of existing staff, cutbacks in the level of services provided and a diminution in the administration of justice."

FY2008 Request and Congressional Action [77]

For FY2008, the judiciary requested $6,511.5 million in total appropriations, an 8.9% increase over the $5,979.7 million enacted for FY2007.[78] According to the judiciary, about 82% of the increase would have provided for pay adjustments, inflation, and other adjustments necessary to maintain current services. The FY2008 request included funding for 33,675 full-time-equivalent (FTE)[79] positions—an increase of 2.1% over the estimated 32,972 FTEs for FY2007.

The House-passed bill would have provided $6,257.8 million for the judiciary—a $278.1 million increase over the FY2007 enacted amount, but $253.7 million below the FY2008 request.[80] The Senate committee recommended $6,337.2 million for the judiciary, or $79.4 million above the House-passed level for FY2008.

In report language, the House committee expressed its expectation (as it has in previous years), that the judiciary would submit a financial plan allocating all sources of available funds, including appropriations, fee collections, and carry-over balances, within 90 days of enactment of the appropriations act. The plan would have served as the baseline for determining if reprogramming notification is required. The committee also expressed interest in increasing the number of minorities in clerkship positions and encouraged the judiciary to explore ways to increase outreach to minority law students.[81]

The Senate committee, in report language, reminded the judicial branch that it is also "subject to the same funding constraints facing the executive and legislative branches" and urged the judiciary to "devote its resources primarily to the retention of staff." In addition, the judiciary was "encouraged to contain controllable costs such as travel, construction, and other non-essential expenses."[82]

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[77] Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2008 Congressional Budget Summary* (Washington: February 2007). Hereafter cited as *Judiciary FY2008 Congressional Budget Summary*.

[78] The judiciary revised its request on March 21, 2007, reducing the original budget request from $6.51 billion to $6.43 billion, or an $80.2 million reduction ($79.7 million of this amount is a decrease from the Salaries and Expenses account). (The original FY2008 request had been estimated and submitted prior to the enactment of legislation, P.L. 110-5, to appropriate funds for the judiciary for FY2007.)

[79] AOUSC provided a revised FY2008 request for 33,225 FTEs to the author on March 17, 2007.

[80] The House-passed bill would provide $173.5 million below the revised budget request of $6.43 billion that AOUSC submitted on March 21, 2007.

[81] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., H.Rept. 110-207 (Washington: GPO, 2007), p. 42. Hereafter cited as H.Rept. 110-207.

[82] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., S.Rept. 110-129 (Washington: GPO, 2007), pp. 48. (continued...)

The FY2008 total amount enacted for the federal judiciary was $6,246.1 million, an increase of about $266.4 million (4.5%) over the FY2007 appropriation.

The following are highlights of the FY2008 judiciary budget request, House-passed amounts and Senate committee-reported amounts, and the FY2008 enacted amount.[83]

Supreme Court

For FY2008, the total request for the Supreme Court (salaries and expenses plus buildings and grounds) was $78.7 million, a 6.4 % increase over the FY2007 appropriation of $74.0 million. The total request comprised two accounts: (1) Salaries and Expenses—$66.5 million was requested, an increase of $3.9 million (6.3%) over the $62.6 million enacted for FY2007; and (2) Care of the Building and Grounds—$12.2 million was requested, an increase of $0.8 million (6.8%) over the $11.4 million enacted for FY2007. Most of the requested increase in salaries and expenses would have funded increases in salary and benefit costs, and inflationary fixed costs. An additional six FTE were requested. The House approved the full amount requested for this account. The Senate committee recommended $66.5 million[84] (or $4,000 less than the House amount) for the Salaries and Expenses account, but the Senate also approved the full amount requested for the Care of Buildings and Grounds account. The FY2008 enacted amount was $78.7 million, the full amount requested.

Language in the House committee report directed the Supreme Court to include in its budget justification materials an annual report providing information on technology carry-over balances, descriptions of each expenditure made in the previous fiscal year, and the planned expenditures in the budget year. The House committee also expressed its expectation to be informed of any changes to the scope and projected completion date of the Supreme Court's building modernization project, and it provided that funds in the Care of Buildings and Grounds account remain available until expended.[85] The Senate report language also directed the Court to report to the Senate committee the Court's construction plans and any changes in construction schedules or budgetary requirements as the Court becomes aware of such changes.[86]

U.S. Court of Appeals for the Federal Circuit

This court, consisting of 12 judges, has nationwide jurisdiction and reviews, among other things, lower court rulings in patent, trademark, and copyright cases. The FY2008 request for this account was $28.5 million—a $3.2 million (12.7%) increase over the $25.3 million appropriated for FY2007. The House approved $28.0 million, a $2.7 million increase over the FY2007 enacted amount, but $0.6 million below the request for this account. The Senate committee recommended $27.4 million, or $0.5 million less than the House-passed amount. The FY2008 enacted amount was $27.1 million, a 7.0% increase of $1.8 million over the previous year.

(...continued)

Hereafter cited as S.Rept. 110-129.

[83] Data are rounded, which may result in slight differences when figures are added or subtracted.

[84] According to S.Rept. 110-129 (p. 49), this amount reflects the judiciary's re-estimate of its FY2008 requirements.

[85] H.Rept. 110-207, p. 43.

[86] S.Rept. 110-129, p. 49.

U.S. Court of International Trade

This court has exclusive jurisdiction nationwide over the civil actions against the United States, its agencies and officers, and certain civil actions brought by the United States (import transactions and enforcement of federal customs and international trade laws). The FY2008 request was $16.7 million—a $0.9 million (5.7%) increase over the FY2007 appropriation of $15.8 million that the judiciary budget submission ascribes largely to increases in pay and benefits. The House approved $16.5 million, a $0.7 million increase over the FY2007 enacted amount, but $0.2 million below the request. The Senate committee recommended $16.6 million for this account, or $0.09 million less than the House level. The FY2008 enacted amount was $16.6 million, an increase of $0.8 million (5.1%) over the previous year.

Courts of Appeals, District Courts, and Other Judicial Services

This budget group includes 12 of the 13 courts of appeals and 94 district judicial courts located in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the territories of Guam and the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Totaling about 95% of the judiciary budget, the four accounts in the group—salaries and expenses, court security, defender services, and fees of jurors and commissioners—fund most of the day-to-day activities and operations of the federal circuit and district courts. For this budget group, the FY2008 request was $6,202.5 million, a $506.1 million increase over the FY2007 enacted amount of $5,696.4 million. The House approved $5,954.1 million, an increase of $257.6 million over the FY2007 enacted amount, but $248.5 million below the request.[87] The Senate committee recommended $6,030.5 million, or $76.5 million above the House-passed amount. The FY2008 enacted amount was $5,942.5 million, a $246.1 million (4.3%) increase over the previous year.

In report language, the Senate committee addressed the issue of judicial rent and space needs, acknowledging the efforts that the judiciary and GSA have made to deal with the rent issue. The committee also encouraged the Judicial Conference to ensure that "checks and balances are in place so that future construction requests and projects are subject to highest standards of cost-efficiency." The committee further directed the Administrative Office of the U.S. Courts (AOUSC) to report to the committee, no later than 120 days after enactment of the bill, on steps that have been taken, and are being taken, to achieve more efficient use of space by district and circuit courts. In addition, the AOUSC was directed to "ensure that current and projected funding needs are met first with carryover funds before enhancing any program." The AOUSC was further directed to separately include in future financial plans (for approval by the House and Senate Committees on Appropriations) "all sources of carryover funds and their desired application."[88]

The total of this budget group comprises the following accounts:

[87] On June 27, 2007, during House floor consideration of the bill, an amendment (H.Amdt. 455) was introduced—but withdrawn by unanimous consent—to increase funding for the Court of Appeals, District Courts, and Other Judicial Services account by $10 million. The amendment also would have decreased by the same amount of funding for the District of Columbia courts (which is funded under this bill, but not under Title III, the judiciary account). The intent of the amendment was to increase funding to alleviate the strain of the workload and backlog of cases for the district courts along the U.S.-Mexican border.

[88] S.Rept. 110-129, pp. 51-52.

Salaries and Expenses

The FY2008 request for this account was $4,854.5 million, a $377.9 million increase over the FY2007 level of $4,476.6 million. According to the budget request, this increase was needed for inflationary and other adjustments to maintain the courts' current services. The House approved $4,660.6 million, a $184.0 million increase over the FY2007 enacted amount, but $193.9 million below the request. The Senate committee recommended $4,710.0 million, or $49.4 million above the House-passed amount. The FY2008 enacted amount was $4,619.3 million, an increase of $142.7 million (3.2%) over the previous year.

Court Security

This account provides for protective guard services, security systems, and equipment for courthouses and other federal facilities to ensure the safety of judicial officers, employees, and visitors. Under this account, a major portion of the funding is transferred to the U.S. Marshals Service (USMS) for administering the Judicial Facility Security Program to pay for court security officers. The FY2008 request was $421.8 million—a $43.1 million (11.4%) increase over the FY2007 appropriation of $378.7 million. This increase was reportedly driven by pay and benefit adjustments and other adjustments needed to maintain current services. Payment to the Federal Protective Service (FPS) is also covered under this account; $74.6 million requested would be an increase of $6.7 million (10%) over the FY2007 appropriation of $67.9 million. The House approved $396.5 million, a $17.8 million increase over the FY2007 enacted amount, but $25.3 million below the request. The Senate committee recommended $412.7 million,[89] or about $16.2 million above the House-passed amount.

The House committee recommendation, as approved by the House, would have provided for inflationary increases, 52 additional court security officers, as well as court security officers and screening equipment at probation and pretrial service offices in leased facilities. Up to $15 million for this account would have remained available until expended. In report language, the House committee expressed concern with "the quality of service" the FPS has provided the judiciary, and encouraged the judiciary to "continue to explore options with other Federal law enforcement agencies that might be able to provide these security services."[90]

In report language, the Senate committee expressed its expectation that USMS will fully cooperate as the judiciary conducts fiduciary and program oversight responsibilities for the Judicial Facility Security Funding.[91] The Senate bill also included Section 307, which would have called on the director of USMS to consult with the director of AOUSC to designate certain courthouses for a pilot program under which the USMS—rather than the Department of Homeland Security (FPS)—would have provided building-specific security services. The AOUSC would have reimbursed the USMS for these services under the pilot.

The FY2008 enacted amount was $410 million, a $31.3 million (8.3%) increase over the previous year.

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[89] According to S.Rept. 110-129 (p. 54), this amount is $2.0 million below the judiciary's re-estimate of FY2008 requirements.

[90] H.Rept. 110-207, p. 45.

[91] S.Rept. 110-129, p. 54.

Defender Services

This account funds the operations of the federal public defender and community defender organizations, and the compensation, reimbursement, and expenses of private practice panel attorneys appointed by the courts to serve as defense counsel to indigent individuals accused of federal crimes. The FY2008 request was $859.8 million—an $83.5 million (10.8 %) increase over the FY2007 appropriation of $776.3 million. The House approved $830.5 million, a $54.2 million increase over the FY2007 enacted amount, or $29.3 million below the request. The Senate committee recommended $840.6 million, or $10.1 million above the House-passed amount. The FY2008 enacted amount was $835.6 million, a $59.3 million (7.6%) increase over the previous year. In addition, as amended, $10.5 million was enacted for emergency funding to address anticipated workload due to increased immigration enforcement along the southwest border.

Fees of Jurors and Commissioners

This account funds the fees and allowances provided to grand and petit jurors, and the compensation of jury and land commissioners. The FY2008 request was $62.4 million—a $1.5 million (2.3%) increase over the FY2007 appropriation of $60.9 million. The increase in the request was due mainly to inflationary costs associated with expenses paid to jurors. The House approved the full amount requested. The Senate committee recommended $63.1 million,[92] or $0.7 million above the request. The FY2008 enacted amount was $63.1 million, a $2.1 million (3.5%) increase over the previous year.

Vaccine injury Compensation Trust Fund

Established to address a perceived crisis in vaccine tort liability claims, the Vaccine Injury Compensation Program is a federal no-fault program that protects the availability of vaccines in the nation. The FY2008 request for this account was $4.1 million, a slight increase of $0.15 million (3.5%) above the FY2007 enacted amount of $4.0 million. Both the House and the Senate committees recommended the requested amount. The FY2008 enacted amount was $4.1 million, the full amount requested.

Administrative Office of the U.S. Courts (AOUSC)

As the central support entity for the judiciary, the AOUSC provides a wide range of administrative, management, program, and information technology services to the U.S. courts. The AOUSC also provides support to the Judicial Conference of the United States, and implements conference policies and applicable federal statutes and regulations. The FY2008 request for this account was $78.5 million—a $6.1 million (8.5%) increase over the FY2007 level of $72.4 million. The increase was reportedly for pay increases and other inflationary adjustments and for the anticipated reduction in non-appropriated funds. The AOUSC also receives non-appropriated funds from fee collections and carry-over balances to supplement its appropriations requirements. The House approved $75.7 million, a $3.3 million increase over the FY2007 enacted amount, but $2.9 million below the request. The Senate committee recommended the full amount requested, or $2.9 million above the House-passed amount. The FY2008 enacted amount was $76.0 million, a $3.7 million (5.1%) increase over the previous year.

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[92] According to S.Rept. 110-129 (p. 53), this amount reflects the judiciary's re-estimate of its FY2008 requirements.

Federal Judicial Center

As the judiciary's research and education entity, the center undertakes research and evaluation of judicial operations for the Judicial Conference committees and the courts. In addition, the center provides judges, court staff, and others with orientation and continuing education and training. The center's FY2008 request was $24.8 million—a $1.9 million (8.6%) increase over the FY2007 appropriation of $22.9 million. The House approved $24.0 million, a $1.1 million increase over the FY2007 enacted amount, but $0.8 million below the request. The Senate committee recommended $24.5 million, or $0.5 million above the House-passed amount. The FY2008 enacted amount was $24.2 million, a $1.3 million (5.7%) increase over the previous year.

United States Sentencing Commission

The commission promulgates sentencing policies, practices, and guidelines for the federal criminal justice system. The FY2008 request was $16.2 million—a $1.6 million (10.9%) increase over the FY2007 appropriation of $14.6 million. The House approved $15.5 million, a $0.9 million increase over the FY2007 enacted amount, but $0.7 million below the request. The Senate committee recommended the House-passed amount. The FY2008 enacted amount was $15.5 million, a $0.9 million (6.0%) increase over the previous year.

Judiciary Retirement Funds

This mandatory account provides for three trust funds that finance payments to retired bankruptcy and magistrate judges, retired Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers. The FY2008 request was $65.4 million—a $7.1 million (12.2%) increase over the FY2007 appropriation of $58.3 million. The House approved and the Senate committee recommended the requested amount. The FY2008 enacted amount was $65.4 million, the full amount requested.

General Provision Changes

According to the budget request submission, the judiciary proposed the following new language under general provisions:

> Section 406: which gives the judiciary the same delegated authority as the executive branch to contract for space alteration projects not exceeding $100,000 (without having to go through GSA involvement).

The judiciary proposed to delete the following provisions:

> Section 402: which requires the judiciary to notify Congress of appropriations transfers and reprogramming requests (change would remove the judiciary's reporting requirement).

> Section 404: which requires the judiciary to provide a separate, detailed financial plan for the Judiciary Information Technology fund (change would remove the judiciary's reporting requirement).[93]

[93] *Judiciary FY2008 Congressional Budget Summary*, p. 7.

Administrative Provisions

The House-passed bill approved the extension of a temporary judgeship in the U.S. District Court for Northern District of Ohio in Section 305. It also approved the following provisions (as in previous years):

> Sec. 301: which permits funding for salaries and expenses for the employment of experts and consultant services as stipulated in law (5 U.S.C. 3109).
>
> Sec. 302: which permits up to five percent of any appropriation made for FY2008 to be transferred between judiciary appropriation accounts provided that no appropriation shall be decreased by more than five percent or increased by more than 10 percent by any such transfer except in certain circumstances. It also provides that such transfers shall be treated as reprogramming of funds and shall not be available for obligation or expenditure except in compliance with procedures set forth in sections 605 and 610.
>
> Sec. 303: which authorizes not to exceed $11,000 for official reception and representation expenses incurred by the Judicial Conference of the United States.
>
> Sec. 304: which requires a financial plan for the judiciary within 90 days of enactment of the act.[94]

The Senate committee recommended Sections 301-304 above, and approved the addition of the following provisions:

> Sec. 305: which provides for a salary adjustment for Justices and judges.
>
> Sec. 306: which grants the judicial branch the same tenant alteration authorities as the executive branch.
>
> Sec. 307: which clarifies that the U. S. Marshals Service has the authority to provide security services at several designated primary courthouses as part of a pilot program.
>
> Sec. 308: which adds Vancouver, Washington as a place of holding court.[95]

As enacted, Sections 301 through 304 (as proposed by both the House and the Senate) were included. The following sections were also enacted:

> Section 305: which authorizes a cost of living adjustment for FY2008 for federal judges (similar to language the Senate proposed).
>
> Section 306: which extends the authority to contract for repairs of less than $100,000 to the judiciary for FY2008 (similar to language the Senate proposed).
>
> Section 307: which authorizes a pilot program to allow the Administrative Office of the U.S. Courts to reimburse the U. S. Marshals Service for some services currently being performed by the Federal Protective Service (similar to language the Senate proposed).

[94] H.Rept. 110-207, p. 47.

[95] S.Rept. 110-129, p. 56.

Section 308: which adds Vancouver as an eligible place of holding court for the Western District of Washington (similar to language the Senate proposed).

Section 309: which extends the term of temporary judgeships in Kansas and Northern Ohio for one year.

Title IV: District of Columbia[96]

The authority for congressional review and approval of the District's budget is derived from the Constitution and the District of Columbia Self-Government and Government Reorganization Act of 1973 (Home Rule Act).[97] The Constitution gives Congress the power to "exercise exclusive Legislation in all Cases whatsoever" pertaining to the District of Columbia. In 1973, Congress granted the city limited home rule authority and empowered citizens of the District to elect a mayor and city council. However, Congress retained the authority to review and approve all District laws, including the District's annual budget. As required by the Home Rule Act, the city council must approve a budget within 50 days after receiving a budget proposal from the mayor. The approved budget must then be transmitted to the President, who forwards it to Congress for its review, modification, and approval.[98] Both the President and Congress may propose financial assistance to the District in the form of special federal payments in support of specific activities or priorities. **Table 6** shows the FY2007 enacted amount, the President's FY2008 request, the amounts requested by the House of Representatives and the Senate, and the amounts enacted.

Table 6. District of Columbia Appropriations, FY2007 to FY2008: Special Federal Payments

(in millions of dollars)

	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Resident Tuition Support	$32.9	$35.1	$35.1	$33.0	$33.0
Emergency Planning and Security	8.5	3.0	3.4	3.4	3.4
District of Columbia Courts	216.7	213.9	256.4	217.3	223.9
Defender Services	43.5	43.5	52.5	43.5	48.0
Court Services and Offender Supervision Agency	179.6	190.3	190.3	190.8	190.3
Public Defender Service	31.1	32.7	32.7	32.7	32.7
Criminal Justice Coordinating Council	1.3	1.3	1.3	1.3	1.3

[96] This section was written by (name redacted), Analyst in American National Government, Government and Finance Division, and David Smole, Specialist in Education Policy, Domestic Social Policy Division.

[97] See Article I, Sec. 8, clause 17 of the U.S. Constitution and Section 446 of P.L. 93-198, 87 Stat. 801.

[98] 87 Stat. 801.

	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Water and Sewer Authority	6.9	12.0	12.0	12.0	8.0
Anacostia Waterfront Initiative	3.0	—	—	—	—[a]
Transportation Assistance	1.0	—	—	—	—
Foster Care Improvements	2.0	—	—	—	—
Office of the Chief Financial Officer	20.0	—	6.1	—	5.5[b]
Executive Office of the Mayor	—	—	—	14.0	5.0
—Anacostia River Water Quality Initiative	—	—	—	*[5.0]*	*[1.0]*
—Public Education Initiative	—	—	—	*[2.2]*	*[2.0]*
—Marriage Initiative	—	—	—	*[1.8]*	—[c]
—Pediatric Health Care Initiative	—	—	—	*[1.0]*	*[1.0]*
—Historic Preservation	—	—	—	*[1.0]*	*[1.0]*
Education Improvements	39.6	40.8	40.8	40.8	40.8
—Public Schools	*[12.8]*	*[13.0]*	*[13.0]*	*[13.0]*	*[13.0]*
—Public Charter Schools	*[12.8]*	*[13.0]*	*[13.0]*	*[13.0]*	*[13.0]*
—Education Vouchers	*[14.0]*	*[14.8]*	*[14.8]*	*[14.8]*	*[14.8]*
Consolidated Laboratory Facility	5.0	10.0	10.0	10.0	5.0
Central Library and Branches	—	10.0	10.0	10.0	9.0
FBI Reimbursement	—	5.0	4.0	5.0	4.0
Special Federal Payments (total)	**$591.1**	**$597.6**	**$654.6**	**$613.7**	**$609.9**

Sources: Budget authority table provided by House Appropriations Subcommittee on Financial Services and General Government and S.Rept. 110-129. Columns may not equal the total due to rounding.

a. This activity will be funded as a $1 million earmark awarded to the Executive Office of the Mayor.

b. The conference report accompanying H.R. 2764 (P.L. 110-161) directs the CFO to award funds to 17 specific organizations and activities: ARISE Foundation—$282,000; Barracks Row—$500,000; Bright Beginnings—$100,000; Catalyst HOPE VI—$132,000; Center for Inspired Teaching—$52,500; Earth Conservation Corps—$282,000; Marriage Development Account—$1,800,000; Eastern Market—$131,000; Everybody Wins—$100,000; Excel Institute—$300,000; Congressional Cemetery—$625,000; Community-based Dental Education—$52,500; International Youth Service and Development Corps—$600,000; MenzFit Career Development—$23,500; Sitar Arts Center—$22,500; Southeastern University—$300,000; STEED Youth Program—$150,000.

c. Marriage Initiative is included as a $1.8 million earmark administered by the CFO.

The District of Columbia Budget and Key Issues

President's Request

The Administration's proposed FY2008 budget included $597.6 million in federal payments to the District of Columbia. The funding request for the courts and criminal justice system (court operations, defender services, offender supervision, and criminal justice coordinating council) totaled $481.7 million, or 80.6%, of the request. The President's budget also included $75.9 million in special federal payments for specific education initiatives, including $35.1 million for college tuition assistance, $13 million for public school enhancements, $13 million for public charter schools, and $14.8 million for the school choice (school voucher) program, which awards grants to eligible students to attend private schools.

In addition to recommending $597.6 million in federal payments to the District of Columbia, the President's budget also contained a number of general provisions, including a number of so-called "social riders." Consistent with provisions in previous appropriations acts, the budget included provisions that would have:

- prohibited the use of federal and District funds to finance or administer a needle exchange program intended to reduce the spread of AIDS and HIV among intravenous drug abusers and their partners;
- provided abortion services except in instances of rape or incest, or when the health of the mother is threatened;
- prohibited the city from decriminalizing the use of marijuana for medical purposes; and
- limited the city's ability to use District funds to lobby for congressional voting representation or statehood.

District Budget

On March 23, 2007, the mayor submitted a proposed budget to the District's city council for consideration and approval. The proposed budget included $597.6 million in special federal payments, which was consistent with the amount included in the President's proposed budget for FY2008.

During the first session of the 110th Congress, the District Delegate to Congress introduced legislation, H.R. 733, that would eliminate congressional review of the District's budget, granting the city budget autonomy over locally raised revenues. For several years, District officials have complained that delays in congressional review and approval of the city's budget have hampered the city's ability to efficiently plan and manage its resources. The bill, which was reported out of the House Subcommittee on the Federal Workforce, the District of Columbia, and Postal Service on June 21, 2007, was forwarded to the House Committee on Oversight and Government Reform. Though the full Committee held a markup session on August 2, 2007, it postponed a vote to report the measure out of committee.

H.R. 2829

The House-passed FSGG bill included $654.6 million in special federal payments for the District of Columbia. This was $63.6 million more than appropriated in FY2007 and $57 million more than requested by the Administration or the District for FY2008. Specifically, the House version of H.R. 2829 recommended substantially increased funding for District of Columbia court operations, defender services, and offender supervision compared to that appropriated for FY2007 or requested by the Administration (see **Table 6**). In addition, the bill included additional federal funds to support enhancements to the public library system.

The Senate Appropriations Committee recommended an appropriation of $613.7 million in special federal payments for the District of Columbia, which is $40.9 million less than approved by the House, but $16.1 more than requested by the Administration or the city. The Committee-passed bill deviated from its House counterpart by recommending $39.1 million less in funding for court operations. The bill, consistent with the FY2007 funding level and the Administration's request, also recommended $43.5 million for defender services, which is $9 million less than the $52.5 million recommended by the House. Like its House counterpart, the Senate measure also included $10 million to support enhancements to the city's public library system. Although placed on the Senate calendar on July 13, 2007, the Senate took no further action on the bill before the end of the first session.

Enacted Appropriations

The Consolidated Appropriations Act includes $609.9 million in federal funding for the District of Columbia. This is $3.8 million less than recommended by the Senate Appropriations Committee, $44.7 million less than recommended by the House, $12.3 million more than requested by the Administration, and $18.8 million more than appropriated in FY2007. The act includes $223.9 million for court operations, which is $6.6 million more than recommended by the Senate and $32.5 million less than approved by the House. It also provides $10.5 million in funds to be administered by the mayor ($5 million) and the chief financial officer (CFO) ($5.5 million). In addition, the act provides $13 million to fund a new public library initiative ($9 million) and to reimburse the FBI for DNA analysis of evidence associated with the District's cold case backlog ($4 million). These activities were not funded in FY2007, but were included in the Administration's budget request and House and Senate versions of H.R. 2829.

P.L. 110-161, like the House and Senate versions of H.R. 2829:

- eliminates funding for transportation assistance and foster care, both of which were funded in FY2007; and
- reduces funding for emergency planning and security activities by $5.1 million, from $8.5 million appropriated in FY2007 to $3.4 million for FY2008.

The act also reduces funding for grants administered by the city's CFO from the $20 million appropriated in FY2007 to $5.5 million in FY2008. The House version of H.R. 2829 recommended an appropriation of $6.1 million in CFO-administered funds whereas the Senate Appropriations Committee version of the bill did not include funding for the CFO to administer such activities. Instead, the Senate version of H.R. 2829 recommended appropriating $14 million to the Executive Office of the Mayor to fund environmental, education, health, and financial initiatives, including a $5 million earmark for the Anacostia River waterfront initiative. P.L. 110-161 includes $1 million for the Executive Office of the Mayor to support an Anacostia water quality initiative. The act continues funding of the resident tuition support for post-secondary education and K-12 school improvement programs. This is consistent with recommendations included in the House and the Senate versions of H.R. 2829. These education initiatives are further discussed below.

District of Columbia General Fund

In addition to appropriating $609.9 million in special federal payments to the District, P.L. 110-161 completed congressional review and approval of the District's General Fund budget for FY2008. The act authorizes the District to spend $9.974 billion for operating expenditures and $1.608 billion for capital construction projects, including $150 million for a consolidated forensic laboratory facility and $42.2 million for baseball stadium construction.

Resident Tuition Support

The District of Columbia Tuition Access Grant (DCTAG) program provides tuition support through grants to institutions of higher education (IHEs) for eligible residents of the District of Columbia, by paying the difference between in-state and out-of-state tuition (up to $10,000) at public IHEs; and up to $2,500 per year for tuition at private non-profit IHEs that are either located in the Washington, DC, metropolitan area, or are Historically Black Colleges and Universities (HBCUs). The DCTAG program is authorized through FY2012; and funding has been provided for the program annually beginning with FY2000. Under P.L. 110-161, $33.0 million is provided for the DCTAG program to remain available until expended. P.L. 110-161 provides that grants awarded to students under the DCTAG program may be prioritized on the basis of their academic merit, their income and need, and other authorized factors.

School Improvement

Each fiscal year since the enactment of the DC School Choice Incentive Act of 2003, under P.L. 108-199, federal funding has been provided to the District of Columbia for three types of school improvement activities: for the improvement of the District of Columbia Public Schools (DCPS); for the expansion of public charter schools; and for opportunity scholarships (school vouchers) under the D.C. School Choice Incentive Program. For FY2008, $40.8 million is provided for school improvement programs in the District of Columbia. Funding in the amount of $13.0 million is provided to DCPS to support the improvement of public education; $13.0 million is provided to the State Education Office to expand quality public charter schools; and $14.8 million is provided to the Secretary of the U.S. Department of Education for the operation of the D.C. School Choice Incentive program (of which $1.8 million may be used to administer and fund assessments). The D.C. School Choice Incentive program enables children from families with incomes not exceeding 185% of the poverty line to apply to receive opportunity scholarships valued at up to $7,500 to cover the costs of tuition, fees, and transportation expenses associated with attending participating private elementary and secondary schools located in the District of Columbia. Scholarship recipients remain eligible to continue to participate in the program in subsequent years, so long as their family income does not exceed 300% of the poverty level. The D.C. School Choice Incentive program has been funded annually beginning with FY2004, and is authorized through FY2008.

General Provisions

P.L. 110-161 includes language that modifies several general provisions included in previous appropriations acts. The act:

- allows the use of District funds for a needle exchange program aimed at reducing the spread of AIDS and HIV among users of illegal drugs; and
- prohibits the city from using federal funds to support or defeat legislation before the Congress or any state legislature.

The provision allowing the use of District funds to support a needle exchange program is consistent with language included in the House and Senate versions of H.R. 2829, but is a departure from previous appropriations acts which prohibited the use of both District and federal funds in support of a needle exchange program.[99] In addition, the explanatory statement accompanying the act encourages the Bush Administration to include federal funding to help the city address its HIV/AIDS health crisis. The provisions allowing the use of District, but not federal, funds for lobbying activities is also consistent with language included in the House and Senate versions of H.R. 2829, but is a departure from language included in previous appropriations statutes which strictly prohibited the city from using both District and federal funds to support lobbying activities aimed at securing congressional voting representation for District residents.

P.L. 110-161 includes language that continues the prohibitions against the use of federal and District funds:

- for abortion services, except in instances where the life or health of the mother was in jeopardy; and
- to regulate or decriminalize the use of marijuana for medical purposes.

The act also continues the $4,000 cap on attorney fees in actions brought under the Individuals with Disabilities Education Act (IDEA). The cap applies to attorneys who represent parties in the actions as well as attorneys representing the District.

Continuing Resolution and D.C. Budget Autonomy

As signed by the President on September 29, 2007, the continuing resolution for FY2008 (H.J.Res. 52, P.L. 110-92) included a provision (Section 128) that temporarily released the District's FY2008 General Fund budget, which is financed with local revenues, from further congressional review and approval.[100] Specifically, the District was allowed to spend local funds at a rate consistent with amounts identified in the District's Fiscal Year 2008 Proposed Budget

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[99] During House floor debate on H.R. 2829 Representative Souder unsuccessfully offered two amendments (H.Amdt. 465 and H.Amdt. 466) that would have prohibited the use of federal and District funds for a needle exchange program.

[100] Sec. 128 of P.L. 110-92 (121 Stat. 993) 52 states, "Notwithstanding any other provision of this joint resolution, except section 106, the District of Columbia may expend local funds for programs and activities under the heading District of Columbia Funds for such programs and activities under title IV of H.R. 2829 (110th Congress), as passed by the House of Representatives, at the rate set forth under "District of Columbia Funds—Summary of Expenses" as included in the Fiscal Year 2008 Proposed Budget and Financial Plan submitted to the Congress by the District of Columbia on June 7, 2007, as amended on June 29, 2007."

and Financial Plan, which was first submitted to Congress on June 7, 2007. This action was taken in order to allow the city to undertake locally funded activities because Congress had not yet approved the FSGG bill before the end of the city's 2007 fiscal year. The release of the District's General Fund budget was consistent with a legislative proposal (H.R. 733) that would allow the District to forgo congressional review and approval of that portion of its operating and capital budgets financed with local revenues. The city's elected leaders have consistently asserted that Congress has repeatedly delayed passage of the appropriations act for the District well beyond the October 1 start of its fiscal year. City leaders contend that the delay in Congress's approval of the city's budget hinders their ability to manage the District's financial affairs and negatively affects the delivery of public services.[101]

Title V: Independent Agencies

In addition to funding for the Department of the Treasury, the Executive Office of the President, the Judiciary, and the District of Columbia, a collection of 20 independent entities are slated to receive funding through this appropriations bill in FY2008. **Table 7** lists appropriations as enacted for FY2007, and, for FY2008, it lists the amounts requested by the President, approved by the House, reported by the Senate Appropriations Committee, and enacted, for each of the agencies.

Table 7. Independent Agencies Appropriations, FY2007 to FY2008

(in millions of dollars)

Agency	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Reported	FY2008 Enacted
Commodity Futures Trading Commission[a]	—	—	—	$116	—
Consumer Product Safety Commission	63	63	67	70	80
Election Assistance Commission	16	15	316	17	142
Federal Communications Commission[b]	1	1	1	1	1
Federal Deposit Insurance Corporation: Office of Inspector General (by transfer)[c]	(31)	(27)	(27)	(27)	(27)
Federal Election Commission	55	59	59	59	59
Federal Labor Relations Authority	25	24	24	24	24
Federal Trade Commission[b]	59	82	88	77	82
General Services Administration[d]	-38	442	179	738	175
Merit Systems Protection Board	39	40	40	40	40
Morris K. Udall Foundation	4	1	4	6	6

[101] For additional discussion of District of Columbia budget autonomy, see CRS Report RL34032, *District of Columbia Budget Autonomy: An Analysis of H.R. 733, 110th Congress*, by (name redacted) and (name redacted).

Agency	FY2007 Enacted	FY2008 Request	FY2008 House Passed	FY2008 Senate Reported	FY2008 Enacted
National Archives and Records Administration	331	369	388	396	400
National Credit Union Administration	1	1	1	1	1
Office of Government Ethics	11	12	12	12	12
Office of Personnel Management (total)	19,594	21,098	21,110	21,111	21,110
Salaries and Expenses	*112*	*102*	*102*	*102*	*102*
Government Payments for Annuitants, Employees Health Benefits	*8,780*	*8,884*	*8,884*	*8,884*	*8,884*
Government Payments for Annuitants, Employee Life Insurance	*39*	*41*	*41*	*41*	*41*
Payment to Civil Service Retirement and Disability Fund	*10,532*	*11,941*	*11,941*	*11,941*	*11,941*
Office of Special Counsel	16	16	16	16	17
Securities and Exchange Commission[e]	868	875	867	864	843
Selective Service System	25	22	22	22	22
Small Business Administration	572	464	582	568	569
United States Postal Service	109	89	89	118	118
United States Tax Court	48	45	45	45	45
Emergency Appropriations (P.L. 110-185)					1,201
Total: Independent Agencies	**$21,797**	**$23,718**	**$23,911**	**$24,299**[f]	**$24,840**

Sources: Budget authority table provided by House Appropriations Subcommittee on Financial Services and General Government, and S.Rept. 110-129. Columns may not equal the total due to rounding.

a. The Commodity Futures Trading Commission (CFTC) is funded through the FSGG bill in the Senate for FY2008, but in prior fiscal years it was funded through the agriculture and related agencies appropriations bill. In the House, the CFTC remains part of the agriculture appropriations bill (H.R. 3161) for FY2008.

b. The amounts listed in **Table 7** for the FCC and the FTC only represent direct appropriations and do not include fees collected by the agencies that are also used to fund agency activities.

c. Budget authority transferred to FDIC is not included in total appropriations for Title V; it is counted as part of the budget authority in the appropriation account from which it came.

d. Budget authority for GSA is calculated as the net value of appropriations, including limitations on the availability of revenues, plus the redemption of debt payments, minus anticipated revenues from rents paid into Federal Buildings Fund. In FY2007, anticipated revenues exceeded the sum of appropriations plus redemption of debt payments, resulting in negative net obligational authority.

e. The amounts listed in **Table 7** for the SEC include fees collected by the agency. This is not consistent with the treatment of fees for the FCC and the FTC, but it follows the source documents for **Table 7**.

f. The amount listed in **Table 7** for total FY2008 Senate funding of independent agencies includes appropriations for the Commodity Futures Trading Commission (CFTC), which is funded in the Senate bill but not the House bill. According to S.Rept. 110-129, the FY2007 enacted amount for the CFTC was just under $98 million, and the President requested $116 million for the agency for FY2008, which the Senate fully funded.

Commodity Futures Trading Commission (CFTC)

The CFTC is the independent regulatory agency charged with oversight of derivatives markets. The CFTC's functions include oversight of trading on the futures exchanges, registration and supervision of futures industry personnel, prevention of fraud and price manipulation, and investor protection. Although most futures trading is now related to financial variables (interest rates, currency prices, and stock indexes), congressional oversight remains vested in the agricultural committees because of the market's historical origins as an adjunct to agricultural trade.

In the Senate, FY2008 CFTC appropriations were proposed in H.R. 2829. In the House, FY2008 CFTC appropriations were proposed in H.R. 3161, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2008. In the Consolidated Appropriations Act, 2008, the CFTC was funded in Division A, Agriculture and Related Agencies.

Consumer Product Safety Commission (CPSC)[102]

The CPSC is an independent federal regulatory agency whose enabling legislation is the Consumer Product Safety Act of 1972. The Commission's primary responsibilities include protecting the public against unreasonable risks of injury associated with consumer products; developing uniform safety standards for consumer products and minimizing conflicting state and local regulations; and promoting research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

For FY2008, the House passed the Committee on Appropriation's recommendation of $66.8 million, $3.6 million above the Administration's request. Subsequently, the Senate recommended $70 million for CPSC for FY2008. In the end, however, following widespread publicity about unsafe exports from China, particularly dangerously defective toys, the consolidated appropriations bill provides the agency with $80 million.

Consumer groups and others continue to express concerns over the CPSC's staffing level, especially in light of recent news stories about unsafe exports (notably including toys) from China. In 1977, three years after the Commission opened its doors, it had a staff of 900. The staffing level has inexorably declined over the past three decades. The budget for FY2007 culminated a two-year reduction of full-time positions (FTEs) from 471 to 420. The Commission's request for FY2008 anticipated a decrease of an additional 19 FTEs. All indications are that the CPSC will substantially increase its staffing level over the next few years. In the House, H.R. 4040, the Consumer Product Safety Commission Modernization Act, passed

[102] This section was written by Bruce Mulock, Specialist in Business and Government Relations, Government and Finance Division.

unanimously (407-0) in December 2007. That bill provides *authorizations* of $80 million for FY2009, $90 million for FY2010, and $100 million for FY2011.

Election Assistance Commission (EAC)[103]

The EAC provides grant funding to the states to meet the requirements of the Help America Vote Act (HAVA), provides for testing and certification of voting machines, studies election issues, and promulgates voluntary guidelines for voting systems standards and issues voluntary guidance with respect to the requirements in the act. The commission was not given rule-making authority under HAVA, although the law transferred responsibilities for the National Voter Registration Act (NVRA) from the Federal Election Commission to the EAC; these responsibilities include NVRA rule-making authority. The Department of Justice is charged with enforcement responsibility.

The President's FY2008 budget request included $15.5 million for the EAC (with $3.25 million for the National Institute of Standards and Technology, NIST), as well as $4.83 million for protection and advocacy programs and $10.89 million for accessibility grants administered by HHS. H.R. 2829 passed the House on June 28, 2007, with the requested amounts for the EAC and NIST as well as $300 million for requirements payments and $950,000 for high school and college programs. The Senate-reported version eliminated the requirements payments while increasing funding for the EAC to $16.5 million, with $1.05 million for school and college programs. Funding for the EAC and election reform programs ultimately was provided by the Consolidated Appropriations Act, 2008, enacted on December 16, 2007 (P.L. 100-161). The act provides $16.53 million for the EAC, of which $3.25 million is for NIST, and $200,000 is for the high school mock election program. It also provides $115 million for requirements payments and $10 million for data collection grants under the Help America Vote College Program.

Federal Communications Commission (FCC)[104]

The Federal Communications Commission, created in 1934, is an independent agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC is also charged with promoting the safety of life and property through wire and radio communications. The mandate of the FCC under the Communications Act is to make available to all people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communications service. The FCC performs five major functions to fulfill this charge: spectrum allocation, creating rules to promote fair competition and protect consumers where required by market conditions, authorization of service, enhancement of public safety and homeland security, and enforcement. The FCC obtains the majority of its funding through the collection of regulatory fees pursuant to Title I, Section 9, of the Communications Act of 1934; therefore, its direct appropriation is considerably less than its overall budget.

For FY2008, the Consolidated Appropriations Act provides $313 million (a direct appropriation of $1 million and the remainder to be collected through regulatory fees), $21.7 million above FY2007 and the same as the President's budget request.[105] Specifically, the act allows:

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[103] This section was written by Kevin Coleman, Analyst in American National Government, Government and Finance Division.

[104] This section was written by (name redacted), Specialist in Internet and Telecommunications Policy, Resources, Science, and Industry Division.

- up to $4,000 for official reception and representation expenses;
- purchase and hire of motor vehicles;
- special counsel fees;
- collection of $312 million in Section 9 fees;
- the sum appropriated to be reduced as Section 9 fees are collected.

The act further:

- transfers $21,480,000 from the Universal Service Fund to the Office of Inspector General;
- provides $2,500,000 for the digital television consumer education and outreach initiative to prepare for the digital television transition scheduled for February 2009;
- prohibits the FCC from changing rules governing the Universal Service Fund regarding single connection or primary line restrictions as proposed by the Senate; and
- extends the Universal Service Antideficiency Temporary Suspension Act until December 31, 2008.

Federal Deposit Insurance Corporation (FDIC): OIG[106]

The FDIC's Office of the Inspector General is funded from deposit insurance funds; the OIG has no direct support from federal taxpayers. Before FY1998, the amount was approved by the FDIC Board of Directors; the amount is now directly appropriated (through a transfer) to ensure the independence of the OIG.

In FY2007, a budget of $31 million for the OIG was appropriated, and the President requested $27 million for FY2008. The Consolidated Appropriations Act of 2008 provided a budget of $27 million for the OIG, which is a 13% decrease from FY2007.

Federal Election Commission (FEC)[107]

The FEC administers, and enforces civil compliance with, the Federal Election Campaign Act (FECA)[108] through educational outreach, rulemaking, litigation, and advisory opinions. The agency also administers the presidential public financing system.

(...continued)

105 For FY2007, the FCC will receive funding at the FY2006 level, $289 million (a direct appropriation of $1 million and the remainder to be collected through regulatory fees).

106 This section was written by (name redacted), Economic Analyst, Government and Finance Division.

107 This section was written by (name redacted), Analyst in American National Government, Government and Finance Division.

108 2 U.S.C. §431 et seq.

The President's FY2008 budget request included an appropriation of $59.2 million for the FEC, an 8.6% increase above the enacted FY2007 appropriation of $54.5 million. In its FY2008 budget justification document, the FEC emphasized efforts to contain costs by restructuring the agency's internal processes and using technology to improve efficiency.[109] The agency did not request any additional staff despite anticipated "[i]ncreased workloads associated with [2008] Presidential elections."[110] The FEC stated that much of its FY2008 budget request would have been used to cover a $1.6 million rent increase and to fund "mandated pay increases" for employees.[111] The FEC also proposed legislative language that would have allowed the agency to collect fees for educational conferences.[112]

The House-passed version of the FSGG bill provided $59.2 million for FY2008—the same amount the agency requested and the House Appropriations Committee recommended. The committee report did not contain instructions for the FEC. Under a unanimous consent agreement regulating floor consideration of the bill, amendments limiting presidential public campaign financing could have been offered.[113] However, the Legislative Information System and *Congressional Record* show no record of those amendments actually being offered on the floor. In fact, the FEC was the subject of limited discussion during FSGG floor consideration. The version of the bill passed by the House specified minimum and maximum levels of the appropriation to be used for FEC data automation and "reception and representation" expenses.[114]

The FEC portion of the FSGG bill reported by the Senate Appropriations Committee was identical to the language passed by the House. This included the same recommendation of $59.2 million in funding and specified minimum and maximum funding levels for data automation and reception and representation expenses.[115] The report accompanying the bill did not contain instructions for the FEC, but directed the Government Accountability Office (GAO) to report to Congress on two campaign finance matters. First, the committee report directed GAO to provide information on "the 10-year trend in the cost of House and Senate campaigns as well as the percentage of those costs that are incurred due to rising broadcast advertising rates." Second, the report directed GAO to "revisit and update" a previous report on public campaign financing in the states.[116] Both issues were the subject of a June 20, 2007, Senate Rules and Administration Committee hearing.[117]

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[109] See, for example, Federal Election Commission, *Fiscal Year 2008 Performance Budget for the Federal Election Commission*, Congressional Submission, February 5, 2007, at http://www.fec.gov/pages/budget/fy2008/fy2008cbj_final.pdf, pp. 2-3.

[110] Ibid., p. 3.

[111] Ibid., p. 2.

[112] Ibid., p. 4.

[113] See Honorable José Serrano. "Providing for Further Consideration of H.R. 2829, Financial Services and General Government Appropriations Act, 2008." Remarks in the House. *Congressional Record*, daily edition, vol. 153 (June 27, 2007), p. H7296.

[114] H.R. 2829 as passed by the House, Title V.

[115] H.R. 2829 as reported by the Senate Appropriations Committee, Title V.

[116] On the committee report language, see U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., S.Rept. 110-129 (Washington: GPO, 2007), pp. 72-73. The GAO report is *Campaign Finance Reform: Early Experiences of Two States That Offer Full Public Funding for Political Candidates*, GAO-03-453, May 2003.

[117] The Government Printing Office (GPO) website indicates that the committee print for the hearing has not yet been released. For additional information about the hearing, public financing in the states, and potential public financing of congressional campaigns, see CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and* (continued...)

The FY2008 consolidated appropriations law provides $59.2 million for the FEC and specifies minimum and maximum funding levels for data automation and reception and representation expenses.[118] As noted above, all those provisions were included in the FSGG appropriations bill passed by the House and reported by the Senate Appropriations Committee. (The full Senate did not consider the FSGG bill.) The explanatory statement accompanying the consolidated bill contains no instructions for the FEC.[119] It also does not address the Senate Appropriations Committee instructions regarding GAO's research on campaign costs and public financing (discussed above).

Federal Trade Commission (FTC)[120]

The Federal Trade Commission (Commission or FTC) is an independent agency. It seeks to protect consumers and enhance competition by eliminating unfair or deceptive acts or practices in the marketing of goods and services and by ensuring that consumer markets function competitively.

Following the recommendation of the Appropriations Committee, the House approved a total program level of $247.5 million for the FTC for FY2008, an increase of $7.2 million over the Administration's request. More specifically, $139 million is to come from pre-merger filing fees, $20 million from Do-Not-Call fees, and a direct appropriation of $88.5 million. The comparable figures for the Senate-reported version were: a total program level for the agency of $240.2 million (the same as the Administration's request), a figure comprising of $144.6 million from pre-merger filing fees, $19 million from Do-Not-Call fees, and a direct appropriation of $76.6 million. The Consolidated Appropriations Act for FY2008 provides the FTC with a total program level of $243.9 million, with $139 million of that amount to come from pre-merger filing fees, $23 million from Do-Not-Call fees, and $81.9 million as a direct appropriation.

Appropriators, in recent years, have moved away from the practice followed at the turn of the century (FY2000 through FY2002) wherein zero ($0) direct appropriations were required, because the entire program level was covered by a combination of fees and prior-year collections.

General Services Administration (GSA)[121]

The General Services Administration administers federal civilian procurement policies pertaining to the construction and management of federal buildings, disposal of real and personal property, and management of federal property and records. It is also responsible for managing the funding and facilities for former Presidents and presidential transitions. Typically, only about 1% of GSA's total budget is funded by direct appropriations.

(...continued)

Analysis, by (name redacted).

[118] P.L. 110-161; see also U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2008*, committee print, book 1 of 2, 110th Cong., 1st sess., January 2008, 39-564 (Washington: GPO, 2008), p. 825.

[119] See U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2008*, committee print, p. 894, for the explanatory statement.

[120] This section was written by Bruce Mulock, Specialist in Business and Government Relations, Government and Finance Division.

[121] This section was written by (name redacted), Analyst in American National Government, Government and Finance Division.

As indicated in **Table 8**, for FY2008, the President requested $144 million for policy and operations, $47 million for the Office of Inspector General, $3 million for allowances and office staff for former Presidents, and $18 million to be deposited into the Federal Citizen Information Center Fund.

The House approved $135 million for GSA policy and operations, $53 million for the Office of Inspector General, $3 million for allowances and office staff for former Presidents, and $16 million to be deposited into the Federal Citizen Information Center Fund.

The Senate Appropriations Committee recommended $65 million for government-wide policy and $90 million for operating expenses, $53 million for the Office of Inspector General, $3 million for allowances and office staff for former Presidents, and $18 million to be deposited into the Federal Citizen Information Center Fund.

P.L. 110-161 provides $52.9 million for government-wide policy and $85.9 million for operating expenses, $48.4 million for the Office of Inspector General, $2.5 million for allowances and office staff for former Presidents, and $17.3 million to be deposited into the Federal Citizen Information Center Fund.

Federal Buildings Fund (FBF)

Most GSA spending is financed through the Federal Buildings Fund. Rent assessments from agencies paid into the FBF provide the principal source of its funding. Congress may also provide direct funding into the FBF. Congress directs the GSA as to the allocation or limitation on spending of funds from the FBF in provisions found accompanying GSA's annual appropriations.

As indicated in **Table 8**, for FY2008, the President requested that an additional amount of $345 million be deposited in the FBF, and that the total limitation for the FBF be set at $8,091 million. The President's budget further requested that $615 million remain available until expended for new construction projects from the FBF, and $804 million remain available until expended for repairs and alterations.

The House provided that an additional amount of $88 million be deposited in the FBF, and that the total limitation for the FBF be set at $7,835 million. The House further provided that $525 million remain available until expended for new construction projects from the FBF, and $733 million remain available until expended for repairs and alterations.

The Senate Appropriations Committee recommended that an additional amount of $625 million be deposited in the FBF, and that the total limitation for the FBF be set at $8,371 million. The Senate bill further provided that $895 million remain available until expended for new construction projects from the FBF, and $804 million remain available until expended for repairs and alterations.

P.L. 110-161 provides for an additional amount of $84 million to be deposited in the FBF, and sets the total limitation for the FBF at $7,830 million. The enacted legislation further provides that $531 million remain available until expended for new construction projects from the FBF—with $225 million of that amount set aside for "emergency" construction projects relating to homeland security initiatives—and that $722.2 million remain available until expended for repairs and alterations.

Table 8. General Services Administration Appropriations, FY2007 to FY2008

(in millions of dollars)

Fund/Office	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Federal Buildings Fund (FBF)					
Total Limitations on Availability of Revenues (new obligational authority)	$7,555	$8,091	$7,835	$8,371	$7,830
Limitations on Obligation: New Construction Projects	*701*	*615*	*525*	*895*	*531a*
Limitations on Obligation: Repairs and Alterations	*618*	*804*	*733*	*804*	*722*
Limitation on Obligation: Installment Acquisition Payments	*164*	*156*	*156*	*156*	*156*
Limitation on Obligations: Rental of Space	*4,068*	*4,383*	*4,316*	*4,383*	*4,315*
Limitation on Obligations: Building Operations	*2,004*	*2,132*	*2,105*	*2,132*	*2,105*
Direct Appropriations					
Federal Buildings Fund	$94	$344	$88	$625	$84
Electronic Govt (E-Gov) Fund	3	5	3	5	3
General Activities (total)	206	212	207	229	207
Policy and Operations	*0*	*144*	*135*	*0*	*0*
Government-wide Policy	*52*	*0*	*0*	*65*	*53*
Operating Expenses	*83*	*0*	*0*	*90*	*86*
Office of Inspector General	*53*	*47*	*53*	*53*	*48*
Allowances and Office Staff for Former Presidents	*3*	*3*	*3*	*3*	*3*
Federal Citizen Information Center Fund	*15*	*18*	*16*	*18*	*17*
Direct Appropriations Total	**$303**	**$561**	**$298**	**$859**	**$294**

Sources: Budget authority table provided by House Appropriations Subcommittee on Financial Services and General Government, S.Rept. 110-129. Columns may not equal the total due to rounding

a. The explanatory statement that accompanied the Consolidated Appropriations Act, 2008, states that the enacted total of $531 million for this account includes $306 million for new construction projects and an additional $225 million for "emergency construction" related to a homeland security initiative.

Electronic Government Fund (E-Gov Fund)[122]

Originally unveiled in advance of the President's proposed budget for FY2002, the E-Gov Fund and its appropriation have been a somewhat contentious matter between the President and Congress. The President's initial $20 million request was cut to $5 million, which was the amount provided for FY2003, as well. Funding thereafter was held at $3 million for FY2004, FY2005, FY2006, and FY2007. Created to support interagency e-gov initiatives approved by the Director of OMB, the fund and the projects it funds have been subject to close scrutiny by, and accountability to, congressional appropriators. The President requested $5 million for FY2008, but the House approved $3 million, as recommended by the House Appropriations Committee. Senate appropriators recommended $5 million, the requested amount. The Consolidated Appropriations Act, 2008, provides $3 million for the E-Gov Fund.

Independent Agencies Related to Personnel Management

The FY2008 budget included information on the portfolios of each of the agencies involved in personnel management functions: the Federal Labor Relations Authority (FLRA), the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), and the Office of Special Counsel (OSC). **Table 9** shows appropriations as enacted for FY2007, as requested for FY2008, as passed by the House for FY2008, as reported in the Senate for FY2008, and as enacted in P.L. 110-161 for each of these agencies.

Table 9. Independent Agencies Related to Personnel Management Appropriations, FY2007 to FY2008

(in millions of dollars)

Agency	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Federal Labor Relations Authority	$25.4	$23.7	$23.6	$23.7	$23.6
Merit Systems Protection Board (total)	38.7	40.1	40.1	40.1	40.1
Salaries and expenses	*36.1*	*37.5*	*37.5*	*37.5*	*37.5*
Limitation on administrative expenses	*2.6*	*2.6*	*2.6*	*2.6*	*2.6*
Office of Personnel Management (total)	19,593.8	21,097.7	21,109.7	21,111.8	21,110.3
Salaries and Expenses	*111.6*	*101.8*	*101.8*	*101.8*	*101.8*
Limitation on administrative expenses	*112.5*	*111.9*	*123.4*	*124.4*	*123.9*
Office of Inspector General (salaries and expenses)	*2.1*	*1.5*	*1.5*	*1.5*	*1.5*

[122] This section was written by Harold Relyea, Analyst in American National Government, Government and Finance Division.

Agency	FY2007 Enacted	FY2008 Request	FY2008 House Passed (H.R. 2829)	FY2008 Senate Reported (H.R. 2829)	FY2008 Enacted (H.R. 2764)
Office of Inspector General (limitation on administrative expenses)	*16.3*	*16.5*	*17.0*	*17.1*	*17.1*
Government Payments for Annuitants, Employees Health Benefits[a]	*8,780.3*	*8,884.0*	*8,884.0*	*8,884.0*	*8,884.0*
Government Payments for Annuitants, Employee Life Insurance[a]	*39.0*	*41.0*	*41.0*	*41.0*	*41.0*
Payment to Civil Service Retirement and Disability Fund[a]	*10,532.0*	*11,941.0*	*11,941.0*	*11,941.0*	*11,941.0*
Office of Special Counsel	15.5	16.4	16.4	16.4	17.5

Sources: Budget authority table provided by House Appropriations Subcommittee on Financial Services and General Government, S.Rept. 110-129, and the President's FY2008 budget request. Columns may not equal the total due to rounding.

a. The annual appropriations act provides "such sums as may be necessary" for the health benefits, life insurance, and retirement accounts. The Office of Personnel Management's *Congressional Budget Justification* for FY2008 states the FY2008 amounts for these accounts as $9,138 million (health benefits), $41 million (life insurance), and $10,523 million (retirement) at pp. 87-89. These are the same amounts that are stated in the *FY2008 Budget Appendix* at pp. 1003-1004.

Federal Labor Relations Authority (FLRA)[123]

The FLRA is an independent federal agency that administers and enforces Title VII of the Civil Service Reform Act of 1978. Title VII, on Federal Service Labor-Management Relations, gives federal employees the right to join or form a union and to bargain collectively over the terms and conditions of employment. Employees also have the right not to join a union. The statute excludes specific agencies (e.g., the Federal Bureau of Investigation and the Central Intelligence Agency) and gives the President the authority to exclude other agencies for reasons of national security.

The FLRA consists of a three-member authority, the Office of General Counsel, and the Federal Services Impasses Panel (FSIP). The authority resolves disputes over the composition of bargaining units, charges of unfair labor practices, objections to representation elections, and other matters. The General Counsel's office conducts representation elections, investigates charges of unfair labor practices, and manages the FLRA's regional offices. The FSIP resolves labor negotiation impasses between federal agencies and labor organizations.

The President's FY2008 budget proposed an appropriation of $23.7 million for the FLRA, almost $1.7 million below the agency's FY2007 appropriation of $25.4 million.124 The House

[123] This section was written by (name redacted), Analyst in Public Finance, Domestic Social Policy Division.

[124] In its budget submission, the agency reported a decline of 32% in the workload at its seven regional offices between 2001 and 2004, and anticipated that the trend may increase.

recommended an appropriation of $23.6 million, which is $77,000 below the President's request. The amount proposed by the Senate Appropriations Committee is the same as the Administration's request of $23.7 million, and $77,000 more than the amount approved by the House. The amount agreed to by Congress in the Consolidated Appropriations Act was $23.6 million. The amount appropriated for FY2008 is $1.7 million less than the amount enacted for FY2007.

Merit Systems Protection Board (MSPB)[125]

The President's budget requested, H.R. 2829, as passed by the House and reported in the Senate, and P.L. 110-161 provided for an FY2008 appropriation of just over $40 million for the MSPB. The authorization for the agency expires on September 30, 2007. In its budget submission, MSPB projected a 2.4% increase in decisions issued for cases related to retirement, adverse action appeals, and reduction-in-force appeals in FY2008. The House committee report states that the funding to be provided to the agency covers "mandatory pay raises, training, information technology improvements, and increased rent payments." According to the Senate committee report, the trust fund transfer would provide "appropriate funding for MSPB to continue as arbitrator for the additional appeals cases" from the Departments of Defense and Homeland Security.[126]

Legislation that would reauthorize the MSPB for three years and includes provisions to enhance the agency's reporting requirements is currently pending in the Senate and the House of Representatives. Senator Daniel Akaka and Representative Danny Davis introduced the Federal Merit System Reauthorization Act of 2007, S. 2057 and H.R. 3551, on September 17, 2007, and it was referred to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform.

Office of Personnel Management (OPM)[127]

The President's budget requested, and H.R. 2829, as passed by the House and reported in the Senate, and P.L. 110-161 all provided an FY2008 appropriation of almost $102 million for salaries and expenses for OPM. This amount includes funding of almost $6 million for the Enterprise Human Resources Integration project, more than $1.3 million for the Human Resources Line of Business project, $340,000 for the E-payroll project, and $170,000 for the E-training program. Among the initiatives that OPM stated that it will undertake for FY2008 are these: demonstration projects on pay-for-performance "to replace the current General Schedule ... with a modern classification, pay, and performance management system that is both results-driven and market-based"; continued development of the "prescription drug audit program, which includes audits of pharmacy benefit managers" by the OPM Inspector General; and legislation to make technical changes in the retirement annuities of individuals with part-time service under the

[125] This section was written by Barbara Schwemle, Analyst in American National Government, Government and Finance Division.

[126] S.Rept. 110-129, p. 86.

[127] This section was written by Barbara Schwemle, Analyst in American National Government, Government and Finance Division.

Civil Service Retirement System (CSRS) and to transition employees working in non-foreign areas (e.g., Alaska and Hawaii) from non-foreign cost of living allowances to locality pay.[128]

The House committee report noted that an increased amount ($1 million) is authorized to be transferred from trust funds, $26.5 million of which is for retirement systems modernization. The committee directed OPM to provide the committee with quarterly reports on the program's implementation beginning on January 31, 2008. With regard to the Federal Human Capital Survey, the committee report directed OPM to "continue to make agencies' survey data publicly available in a consistent and consolidated format, and in a timely manner."

The committee report also urged OPM to work with the authorizing committees "to consider changes in law to bring Federal prevailing rate [blue collar] employees currently working in the Narragansett Bay, Rhode Island Wage Area within the coverage of the Boston, Massachusetts Wage Area" and to report progress made on this issue to Congress within 90 days of the act's enactment. The report noted that white-collar federal employees in Southeastern Massachusetts and Rhode Island are included in the Boston Wage Area and that "[t]here is no reason for different treatment between the two categories of employees." According to the committee report, the additional funding ($500,000) provided to the Office of Inspector General (OIG) at OPM through trust fund transfer was intended "to maintain audit and investigative staff at the current level and avoid deterioration of the OIG's audit capabilities."

Several directives were included in the Senate committee report as follow:

- OPM must report to the committee within 120 days after the act's enactment "on its human resources products and services," including actions taken to address agency concerns about choice and flexibility, and "indicating which products and services OPM has identified as not reasonably available from private sector providers." Within the same time period, OMB must report to the committee "on how the human resources products and services that OPM provides to Federal agencies meet established standards, and on the demonstrable steps OPM has taken to avoid any potential conflicts between [its] role[s] as a human resources IT products and services provider and ... the designated lead agency of the Human Resources Line of Business."
- OPM must work with and through the Chief Human Capital Officers Council to ensure that the results of the survey on federal dependent care programs are used by agencies to assess their current and future needs with regard to dependent care and to determine ways to communicate with employees about the availability of dependent care programs. Agencies, in reviewing their workplace flexibilities, are to "determine whether opportunities exist to use flexible work options to address any recruitment and retention challenges."[129]

The Senate report also addressed two issues included in the House report. With regard to the Narragansett Bay, Rhode Island, wage area, the committee directed the FPRAC to make this wage area "the immediate order of business" as the employees within the wage area "have waited 3 years for the FPRAC to address their concerns." As for retirement systems modernization, the committee report noted the February 2008 date for operations to commence and "encourages

[128] *FY2008 Budget Appendix*, pp. 1080 (FLRA), 1091 (MSPB), 1115 (OSC), and 999, 1002, and 1007 (OPM).

[129] S.Rept. 110-129, p. 95.

OPM to continue to work cooperatively with GAO to minimize potential risks and project delays."[130] The explanatory statement that accompanied the consolidated appropriations act that was enacted as P.L. 110-161, directs OPM to report to the House and Senate Committees on Appropriations by April 30, 2008, on the wage area criteria being developed by a working group of the FPRAC. Further, the statement directs OPM to submit a report to the House and Senate Committees on Appropriations and GAO by February 20, 2008, on the test results for, the status of efforts to resolve any defects in, and a reliable cost estimate for the retirement modernization system. GAO must provide comments on the OPM report to the appropriations committees.[131]

H.R. 2829, as reported in the Senate, would have provided limitations on administrative expenses of $124.4 million under salaries and expenses and $17.1 million under the OIG which are greater than those requested in the President's budget. These funds would have been for the retirement and insurance programs, including retirement systems modernization, and to "help restore the OIG's budget to previous levels," respectively.[132] With regard to these limitations on administrative expenses, P.L. 110-161 authorizes the transfer of $123.9 million under salaries and expenses and $17.1 million under the OIG. Almost $27 million of the former amount funds the automation of the system for keeping retirement records. The OIG amount supports audits and investigations.[133]

The Government Managers Coalition, comprising the Senior Executives Association, the Federal Managers Association, the Professional Managers Association, the Federal Aviation Administration Managers Association, and the National Council of Social Security Management Associations, has suggested that unused sick leave be made creditable service for retirement for federal employees under the Federal Employees Retirement System (FERS). An analysis by the Congressional Research Service and a study by OPM found that employees under FERS are using more sick leave than federal employees covered by the Civil Service Retirement System, under which unused sick leave is creditable service for retirement.[134] Reportedly, legislation on sick leave is expected to be introduced in the second session of the 110th Congress.[135]

Office of Special Counsel (OSC)[136]

The President's budget requested, and H.R. 2829, as passed by the House and reported in the Senate, provided an FY2008 appropriation of $16.4 million for the OSC. OSC projected a continued increase in the number of prohibited personnel practice cases and disclosure cases received in its budget submission. Noting the investigations recently undertaken by the OSC, the House committee report urged the agency "to carefully evaluate the need for additional appropriations" and formally request from OMB any additional funds necessary through a budget

[130] Ibid., pp. 95-96.

[131] *Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16056.

[132] S.Rept. 110-129, pp. 96-97.

[133] *Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16056.

[134] See CRS Report RL32596, *Sick Leave: Usage Rates and Leave Balances for Employees in Major Federal Retirement Systems*, by (name redacted).

[135] Stephen Losey, "Deal Reached on Bill to Compensate Feds for Unused Sick Leave," *Federal Times*, January 29, 2008.

[136] This section was written by Barbara Schwemle, Analyst in American National Government, Government and Finance Division.

amendment.[137] During House consideration of H.R. 2829 on June 27, 2007, Representative Tom Davis offered an amendment (H.Amdt. 460) to decrease OSC's appropriation by $1 million. The amendment was not agreed to by a 146-279 (Roll No. 587) vote on June 28, 2007.[138] P.L. 110-161 provides an appropriation of $17.5 million to the OSC, $1.1 million more than the House and Senate proposed. The explanatory statement accompanying the Consolidated Appropriations Act states that the additional funding is "to assist OSC with computer forensics in connection with its Special Task Force investigations."[139]

The Senate committee report urged the OSC "to work with whistleblower advocacy organizations to promote the highest level of confidence in the Whistleblower Protection Act and the OSC," reiterated the House committee language related to the need for additional appropriations, and specified that the agency's FTE total "should not be below 102 or above 116."[140] According to the report, the staffing should range from 70 to 75 FTEs at headquarters, 6 to 8 FTEs at the Midwest field office, 9 to 11 FTEs at the Dallas field office, 8 to 10 FTEs at the Oakland field office, and 9 to 12 FTEs at the District of Columbia field office. OSC was directed to communicate with the Committee 45 days in advance of any organizational change that would affect these staffing numbers.

On October 10, 2007, the legal director of the Government Accountability Project and the executive directors of Public Employees for Environmental Responsibility and the Project on Government Oversight sent letters to the chairman and ranking members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform; the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia and the House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia; and the Senate and House Appropriations Subcommittees on Financial Services and General Government, urging them to deny the Special Counsel's request for an additional appropriation of $3 million for FY2008, until an investigation of the Special Counsel being conducted by OPM's inspector general is completed. The OSC requested the additional amount to fund investigations of allegations that the White House conducted political briefings at federal agencies in violation of the Hatch Act. Among the concerns expressed in the letter were that "there is no guarantee that any additional monies provided to OSC would be used for [the] intended purpose" and "OSC simply cannot take on any more responsibilities without further abandoning its primary constituency: government whistleblowers."[141]

The Federal Merit System Reauthorization Act of 2007, S. 2057 and H.R. 3551, is currently pending in the Senate Committee on Homeland Security and Governmental Affairs and House Committee on Oversight and Government Reform. The legislation, introduced by Senator Daniel Akaka and Representative Danny Davis, would reauthorize the OSC for three years and includes

[137] H.Rept. 110-207, pp. 59, 71, 76-77, 79.

[138] See, *Congressional Record*, daily edition, vol. 153, June 27, 2007, pp. H7321-H7322 and June 28, 2007, pp. H7396-H7397. See also, Shawn Zeller, "Investigative Drama: Special Counsel's Crusade," *CQ Weekly*, August 6, 2007, p. 2353.

[139] *Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16056.

[140] S.Rept. 110-129, pp. 99-100.

[141] Letter from Tom Devine, Jeff Ruch, and Danielle Brian to Senators Joseph Lieberman and Susan Collins, Representatives Henry Waxman and Tom Davis, Senators Daniel Akaka and George Voinovich, Representatives Danny Davis and Kenny Marchant, Senators Richard Durbin and Sam Brownback, and Representatives Jose Serrano and Ralph Regula. The letter is available on the Internet at http://www.whistleblower.org.

provisions to enhance the agency's reporting requirements. The OSC has revised its policies governing requests and appeals under the Freedom of Information Act and access to agency records under the Privacy Act.[142]

National Archives and Records Administration (NARA)[143]

The custodian of the historically valuable records of the federal government since NARA's establishment in 1934, NARA also prescribes policy and provides both guidance and management assistance concerning the entire life cycle of federal records. It also administers the presidential libraries system; publishes the laws, regulations, and presidential and other documents; and assists the Information Security Oversight Office (ISOO), which manages federal security classification and declassification policy; the Public Interest Declassification Board; and the National Historical Publications and Records Commission (NHPRC), which makes grants nationwide to help nonprofit organizations identify, preserve, and provide access to materials that document American history.

As indicated in **Table 7**, the President's FY2008 request for NARA was almost $369 million, which was about $37 million more than was appropriated for FY2007. Of this requested amount, almost $313 million was sought for operating expenses, an increase of $34 million over the FY2007 appropriation for this account. For the electronic records archive, $58 million was sought, a $13 million increase over the previous fiscal year allocation; for repairs and restoration, a little less than $9 million was sought, which was slightly below the FY2007 appropriation; and for the NHPRC, no appropriation was requested, which was the President's request for FY2007, although Congress allocated $7 million. NARA's FY2007 budget justification indicated that no funding for the NHPRC grants program was sought in order to focus funding on operations that directly affect management, access, and the preservation of federal records.

The House approved the amounts recommended by appropriators for NARA, totaling a little more than $388 million, which was almost $20 million more than the President's request. Of this amount, $315 million was provided for operating expenses, an increase of a little more than $2 over the requested amount; $58 million was allocated for the electronic records archive, which was the same as the requested amount; and $16 million was appropriated for repairs and restoration, which was almost twice the amount requested. While no funds had been requested for the NHPRC grants program, the House approved $10 million as recommended by appropriators, allocating $8 million for grants and $2 for NHPRC operating expenses.

The Senate Appropriation Committee recommended $396 million for NARA, about $8 million more than the House-approved allotment and about $27 million more than the amount requested. Of the amount recommended by Senate appropriators, almost $314 million was provided for operating expenses, an increase of about $1 million over the requested amount; $58 million was allocated for the electronic records archive, which was the same as the requested amount, and a little more than $25 million was recommended for repairs and restoration, which was

[142] U.S. Office of Special Counsel, "Freedom of Information Act; Implementation," *Federal Register*, vol. 72, no. 142, July 25, 2007, pp. 40711-40716. U.S. Office of Special Counsel, "Privacy Act; Implementation," *Federal Register*, vol. 72, no. 192, October 4, 2007, pp. 56617-56618.

[143] This section was written by Harold Relyea, Analyst in American National Government, Government and Finance Division.

approximately $16 million more than the amount requested. While the President had not requested any funds for the NHPRC, Senate appropriators recommended $10 million.

In the Consolidated Appropriations Act, 2008, NARA receives a little over $400 million, which is approximately $31 million more than the President's request, about $12 million more than the House-approved appropriation, and $4 million more than the total amount recommended by Senate appropriators. Of the amount appropriated, $315 million is provided for operating expenses; $58 million is allocated for the electronic records archive; $28.6 million is appropriated for repairs and restoration; and $9.5 million is provided for the NHPRC.

National Credit Union Administration (NCUA)[144]

The NCUA is an independent federal agency funded entirely by the credit unions that the agency charters, insures, and regulates. Two entities managed by the NCUA are addressed by the Financial Services and General Government bill. One of these, the Development Revolving Loan Fund (CDRLF), makes low-interest loans and technical assistance grants to low-income credit unions. In FY2007, the CDRLF received an appropriation of $941,000, and the President requested $950,000 for FY2008. The Consolidated Appropriations Act provides $975,000 for FY2008.

The other entity managed by NCUA, the Central Liquidity Facility (CLF), provides a source of seasonal and emergency liquidity for credit unions. The CLF can finance loans using its assets, and it can also borrow from the Federal Financing Bank. Provisions in the appropriations bill set a borrowing limit for the CLF each fiscal year. Congress also determines the level of CLF operating expenses, which are not funded through appropriations, but by earned income. For FY2007, Congress approved a $1.5 billion limitation on direct loans from the CLF, and the President requested the same amount for FY2008. The Consolidated Appropriations Act of 2008 provides a $1.5 billion limitation for FY2008.

Securities and Exchange Commission (SEC)[145]

The SEC administers and enforces federal securities laws to protect investors from fraud, to ensure that sellers of corporate securities disclose accurate financial information, and to maintain fair and orderly trading markets. The SEC's budget is set through the normal appropriations process, but funds for the agency come from fees on sales of stock, new issues of stocks and bonds, corporate mergers, and other securities market transactions. When the fees are collected, they go to a special offsetting account available to appropriators, not to the Treasury's general fund. The SEC is required to adjust the fee rates periodically in order to make the amount collected approximately equal to the agency's budget.

For FY2008, the Administration requested $905.3 million, an increase of 1.4% over FY2007. Of that amount, $875 million was to come from current-year offsetting fee collections, and the remaining $30.3 million from prior-year unobligated balances. In FY2007, the enacted budget authority was $892.6 million, of which $25.0 million was prior-year unobligated balances. There was no direct appropriation from the general fund.

[144] This section was written by (name redacted), Economic Analyst, Government and Finance Division.

[145] This section was written by (name redacted), Specialist in Public Finance, Government and Finance Division.

The House Appropriations Committee recommended, and the House approved, $908.4 million, $15.9 million (1.8%) above the FY2007 budget, and $3.1 million (0.3%) above the Administration's FY2008 request. Of that amount, $867.0 million would have come from current-year fee collections and $41.4 from prior year balances. The Senate Appropriations Committee approved $905.3 million, with an identical $41.4 million to come from prior year fee collections. The Consolidated Appropriations Act of 2008 provides $906.0 million, $0.7 million, or 0.08% above the Administration's original request. Of that amount, $63.3 million is to come from prior year unobligated balances, and the remainder from current-year collections. There will be no direct appropriation from the general fund.

Selective Service System (SSS)[146]

The SSS is an independent federal agency operating with permanent authorization under the Military Selective Service Act (50 U.S.C. App.§451 et seq.). It is not part of the Department of Defense, but its mission is to serve the emergency manpower needs of the military by conscripting personnel when directed by Congress and the President.[147] All males ages 18 through 25 and living in the United States are required to register with the SSS. The induction of men into the military via Selective Service (i.e., the draft) terminated in 1972. In January 1980, President Carter asked Congress to authorize standby *draft registration* of both men and women. Congress approved funds for male-only registration in June 1980.

Since 1972, Congress has not renewed any President's authority to begin inducting (i.e., drafting) anyone into the armed services. Recent efforts to provide the President with induction authority have been rejected.[148]

Funding of the Selective Service has remained relatively stable over the last decade. For FY2008, the enacted amount, $22 million, is the same as the House approved, the Senate reported, and the President requested. FY2008 funding is about $3 million less than the FY2007 appropriation.

Small Business Administration (SBA)[149]

The SBA is an independent federal agency created by the Small Business Act of 1953.[150] Although the agency administers a number of programs intended to assist small firms, arguably its three most important functions are: (1) to guarantee—principally through the agency's Section 7(a) general business loan program—business loans made by banks and other financial institutions; (2) to make long-term, low-interest disaster loans to small businesses, nonprofits, and households that are victims of hurricanes, earthquakes, other physical disasters, and acts of terrorism; and (3) to serve as an advocate for small business within the federal government.

The Consolidated Appropriations Act provides a budget of $569 million for the SBA in FY2008. The Senate Appropriations Committee had recommended $568 million in new budget authority

[146] This section was written by David Burrelli, Specialist in National Defense, Foreign Affairs, Defense, and Trade Division.

[147] See http://www.sss.gov/.

[148] See H.R. 163, October 5, 2004, failed by Yeas and Nays: (2/3 required): 2 - 402 (Roll no. 494).

[149] This section was written by (name redacted), Analyst in Economics, Government and Finance Division.

[150] P.L. 83-163, as amended. 62 Stat. 262.

compared to the House's approval of $582 million for FY2008.[151] The Senate Committee recommended amount was $4 million below the FY2007 enacted amount and $104 million more than the Administration requested. The Senate Committee had recommended, and the House agreed, to appropriate $2 million for business loan subsidies. The original House-passed bill included $82 million for this purpose; the Administration requested no funds for business loan subsidies.

The act includes $344 million for the salaries and expenses account. The Senate Appropriations Committee had recommended $412 million for salaries and expenses, compared to $347 million originally approved by the House, and $310 million requested by the Administration.

The Senate Appropriations Committee recommended agreeing with the House-passed bill and the Administration request that there be no new budget authority for the disaster loan program in FY2008. In FY2007, the program received $113 million. According to the act, up to $156 million in unused budget authority that carried over from previous years could be used to operate the program in FY2008.

Lending authority stays the same for all loan programs.

United States Postal Service (USPS)[152]

The U.S. Postal Service generates nearly all of its funding—about $73 billion annually—by charging users of the mail for the costs of the services it provides.[153] However, Congress does provide an annual appropriation to compensate USPS for revenue it forgoes in providing free mailing privileges to the blind[154] and overseas voters.[155] Appropriations for these purposes were authorized by the Revenue Forgone Reform Act of 1993 (RFRA).[156] This act also authorized Congress to reimburse USPS $29 million each year until 2035 for postal services provided at below-cost rates to not-for-profit organizations in the early 1990s.[157]

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[151] The House later approved an additional $62 million for "small business development and entrepreneurship initiatives." The explanatory that accompanied P.L. 110-161 identified these funds as congressionally directed spending items and earmarks.

[152] This section was written by Kevin Kosar, Analyst in American National Government, Government and Finance Division. Also see CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by (name redacted).

[153] *United States Postal Service Annual Report 2006* (Washington: USPS, 2006), p. 3.

[154] 84 Stat. 757; 39 U.S.C. §3403. See also USPS, *Mailing Free Matter for Blind and Visually Handicapped Persons: Questions and Answers*, Publication 347 (Washington: USPS, May 2005), at http://www.usps.com/cpim/ftp/pubs/pub347.pdf.

[155] Members of the armed forces and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (42 U.S.C.§1973ff-ff-6). See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues*, coordinated by (name redacted).

[156] 107 Stat. 1267, 39 U.S.C. §2401(c)-(d). See also CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by (name redacted).

[157] See CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by (name red acted).

In its FY2008 budget submission, USPS requested a $153.4 million appropriation.[158] Of this amount, $29 million would be for the annual reimbursement under RFRA; $83.5 million would be for revenue forgone; and $40.9 million would be for reconciliation adjustments for underestimated revenue forgone in FY2005 and FY2006.

In its FY2008 budget, the Administration proposed a total appropriation of $88.9 million,[159] $20 million less than was enacted for FY2007. Of this, $64.5 million would have been for revenue forgone in FY2008, and $24.4 million would have been for a reconciliation adjustment for underestimated revenue forgone in FY2005. The Administration's FY2008 budget not only recommended less revenue forgone funding than USPS requested, but also would have eliminated the $29 million annual reimbursement authorized by RFRA.[160] Additionally, the Administration's budget would not have permitted any of the $88.9 million appropriation to be obligated until October 1, 2008, which is in FY2009. (Since FY1994, Congress has made the RFRA reimbursement portion of the USPS appropriation available for obligation in the upcoming fiscal year and delayed the availability of the revenue forgone portion of the appropriation to the following fiscal year.)

On June 11, 2007, the House Appropriations Committee considered a bill (H.R. 2829; H.Rept. 110-207) that recommended a USPS appropriation of $117.9 million. Of this amount, $29 million would have been for the RFRA reimbursement and $88.9 million would have been for revenue forgone. As in previous years, the committee recommended making the RFRA reimbursement available for obligation in the upcoming fiscal year (FY2008) and the revenue forgone payment available in the following fiscal year (FY2009). Before approving the bill, however, the committee approved an amendment offered by the chairman of the committee that struck the $29 million RFRA reimbursement funds.

On June 21, the House Appropriations Committee approved a version of the bill that did not include the $29 million RFRA reimbursement payment. In its report on the bill, the committee did not state why it had not approved the $29 million RFRA reimbursement payment. The committee did express its concerns over USPS's possible closure of postal facilities in the Bronx borough of New York City, Pasadena, California, and elsewhere. The committee also expressed its concerns over the quality of mail delivery service in Chicago, Illinois, and directed USPS to report to Congress on USPS efforts to "take into consideration the views of local postal management in the development of appropriate staffing levels to ensure that postal customers receive the quality mail service that they expect and deserve."

The Senate Appropriations Committee recommended a postal appropriation of $117.9 million, $29 million more than the $88.9 million recommended by the Administration and approved by the House. Of this amount, $29 million would have been for the RFRA reimbursement and $88.9 million would have been for revenue forgone. As in the past, the committee would have the RFRA reimbursement paid to USPS in the upcoming fiscal year (FY2008) and the revenue forgone payment would have become available to USPS in the following fiscal year (FY2009). The Senate Committee report expressed concern regarding mail delivery delays in Chicago and

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[158] USPS, "Fiscal Year 2008 Appropriation Request," December 6, 2006, at http://www.usps.com/financials/_pdf/Appropriations-2008_Public.pdf.

[159] Office of Management and Budget, *President's Budget FY2008—Appendix* (Washington: GPO, 2007), p. 1116.

[160] The Administration also proposed termination of the annual reimbursement in FY2005, FY2006, and FY2007, but Congress chose to provide the funding, as it has each year since FY1994.

the consolidation of mail facilities.[161] It directed USPS to not implement consolidation decisions affecting facilities in Sioux City, Iowa, Aberdeen, South Dakota, and Alexandria, Louisiana, until it "implements the recommendations of the GAO[162] and develops a mechanism to evaluate potential and actual impacts on delivery." The Committee also urged USPS to "take into consideration the views of local postal management in the development of appropriate staffing levels to ensure that postal customers receive the quality mail service that they expect and deserve." Finally, the Committee commended USPS on its issuance of a "Forever Stamp," and directed GAO to produce a study of USPS's screening of mail addressed to federal agencies for biological threats.

Ultimately, Congress included $29 million for the RFRA reimbursement, appropriating a total of $117.9 million for USPS for FY2008 (P.L. 110-161, Title V).

United States Tax Courts (USTC)[163]

A court of record under Article I of the Constitution, the United States Tax Court is now an independent judicial body in the legislative branch and has jurisdiction over various tax matters as set forth in Title 26 of the *United States Code*. The court is headquartered in Washington, DC, but its judges conduct trials in many cities across the country.

The President requested $45.3 million for FY2008, about $2.3 million below the USTC's FY2007 appropriation. The House approved $45.1 million for the USTC for FY2008, and the Senate Appropriations Committee recommended $45.3 million, the same as the President's request. The Consolidated Appropriations Act provides $45.3 million for FY2008.

General Provisions Government-Wide[164]

The Financial Services and General Government appropriations language includes general provisions which apply either government-wide or to specific agencies or programs. There are also be general provisions at the end of an individual title within the appropriations act which relate only to agencies and accounts within that specific title. The Administration's proposed language for government-wide general provisions was included in the FY2008 Budget, Appendix.[165] Most of the provisions continue language that has appeared under the General Provisions title for several years. For various reasons, Congress has determined that reiterating the language is preferable to making the provisions permanent. Presented below are some of the government-wide general provisions that were included in P.L. 109-115, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and

[161] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriation Bill*, 2008, 110th Cong., 1st sess., S.Rept. 110-129 (Washington: GPO, 2007), pp. 106-108.

[162] U.S. Government Accountability Office, *U.S. Postal Service: Mail Processing Realignment Efforts Underway Need Better Integration and Explanation*, GAO-07-717 (Washington: GAO, 2007).

[163] This section was written by (name redacted), Analyst in American National Government, Government and Finance Division.

[164] This section was written by Barbara Schwemle, Analyst in American National Government, Government and Finance Division.

[165] *FY2008 Budget, Appendix,* pp. 9-12.

Independent Agencies Appropriations Bill for FY2006,[166] but that are not included in the FY2008 budget proposal. (The section numbers refer to the provisions as they appeared in P.L. 109-115. H.R. 5576, the FY2007 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Bill, as passed by the House and reported in the Senate, was not enacted.) Inclusion of the provisions in H.R. 2829, as passed by the House and reported in the Senate, and in P.L. 110-161 is noted.[167]

- Section 809, which prohibits payment to political appointees who are filling positions for which they have been nominated, but not confirmed. Included as Section 709 of the bill as passed by the House and reported in the Senate, and of P.L. 110-161.
- Section 819, which prohibits the obligation or expenditure of appropriated funds for employee training that (1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties; (2) contains elements likely to induce high levels of emotional response or psychological stress in some participants; (3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation; (4) contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems; or (5) is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace. Included as Section 718 of the bill as passed by the House and reported in the Senate, and of P.L. 110-161.
- Section 820, which prohibits the use of appropriated funds to implement or enforce employee non-disclosure agreements if they do not contain whistleblower protection clauses. Included as Section 719 of the bill as passed by the House and reported in the Senate, and of P.L. 110-161.
- Section 823, which requires that the Committees on Appropriations approve the release of any "non-public" information, such as mailing or telephone lists, to any person or any organization outside the federal government. Included as Section 722 of the bill as passed by the House and reported in the Senate, and of P.L. 110-161.
- Section 834, which states that Congress recognizes the United States Anti-Doping Agency as the official anti-doping agency for Olympic, Pan American, and Paralympic sports in the United States. Included as Section 733 of the bill as passed by the House and reported in the Senate, and of P.L. 110-161.
- Section 836, which prohibits the use of appropriated funds to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program or to implement OPM's proposed regulations limiting the detail of executive branch employees to the legislative branch. Included as Section 735 of the bill as passed by the House and reported in the Senate, and of P.L. 110-161.
- Section 837, which would have required agencies to report to Congress on the amount of the acquisitions made from entities that manufacture the articles,

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[166] P.L. 109-115, November 30, 2005, 119 Stat. 2495-2507.

[167] The general provisions included in P.L. 110-161 are listed in the *Congressional Record*, daily edition, vol. 153, December 17, 2007, pp. H16064-H16065.

materials, or supplies outside the United States. This provision is not included in the bill as passed by the House or reported in the Senate, or as enacted in P.L. 110-161.

- Section 839, which requires appropriate executive department and agency heads either to transfer funds to, or reimburse, the Federal Aviation Administration to ensure the uninterrupted, continuous operation of the Midway Atoll airfield. This provision is not included in the bill as passed by the House, but is included as Section 737 of the bill as reported in the Senate, and is included as Section 738 of P.L. 110-161.
- Section 840, which would have provided certain requirements for conducting a public-private competition for the performance of an activity that is not inherently governmental for executive agencies with less than 100 full-time employees. This provision is not included in the bill as passed by the House or reported in the Senate, or as enacted in P.L. 110-161.
- Section 842, which prohibits the use of funds to convert an activity or function of an executive agency to contractor performance if more than 10 federal employees perform the activity, unless the analysis reveals that savings would exceed 10 percent of the most efficient organization's personnel-related costs for performance of the activity or function by federal employees, or $10 million, whichever is lesser. Included as Section 738 of the bill as passed by the House and Section 739 of the bill as reported in the Senate, and as enacted in P.L. 110-161.
- Section 845, which precludes contravention of the Privacy Act. Included as Section 741 of the bill as passed by the House and Section 742 of the bill as reported in the Senate, and as enacted in P.L. 110-161. The law also includes a provision on reviews by agency Inspectors General of privacy and data protection policies and procedures.

The FY2008 budget proposed a new Section 834 to provide a 3.0% pay (annual and locality pay combined) adjustment for federal civilian employees. Section 739 of H.R. 2829 as passed by the House, and Section 740 of the bill as reported in the Senate, and as enacted in P.L. 110-161, provides a 3.5% pay adjustment for federal civilian employees, including employees in the Department of Homeland Security and employees in the Department of Defense (DOD) who are represented by a labor organization. DOD employees who are eligible to be represented by a labor organization, but are not so represented, will receive the pay adjustment unless pay for their positions is adjusted under 5 U.S.C. §9902.[168] Since the inception of locality pay in 1994, pay areas with the largest pay gaps receive the largest locality pay increases. Applying that principle, and under Executive Order 13454 issued by President Bush on January 4, 2008, federal white-collar employees received net (annual and locality) pay adjustments of 4.49% in the Washington, DC pay area and 2.99% in the "Rest of the United States" pay area in January 2008.[169]

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[168] *The Statement of Administration Policy* on H.R. 2829 issued by OMB on June 27, 2007, expressed strong opposition to the 3.5% pay adjustment, stating that it "would cost agencies over $600 million in FY2008 and would not target any specific recruitment or retention challenges." The statement also urged that the provision related to a pay adjustment for DHS and DOD employees be deleted, saying that it "backs away from the concept of pay-for-performance and is ambiguous as to how the increase would be applied." (p. 4.)

[169] U.S. President (Bush), "Adjustments of Certain Rates of Pay," Executive Order 13454, *Federal Register*, vol. 73, January 8, 2008, pp. 1480-1492.

A new provision, included as Section 743 of the bill as passed by the House, and as Section 744 of P.L. 110-161 (but not included in the bill as reported in the Senate), requires the Office of Management and Budget to submit a report on budget information relating to activities to restore the health of the Great Lakes ecosystem. Another new provision, included as Section 746 of the bill as reported in the Senate, and as enacted in P.L. 110-161 (but not included in the bill as passed by the House), requires the home pages of departments and agencies to provide a direct link to their respective Inspectors General (IG), and requires the IG websites to post any public report or audit and to include a direct link through which employees can anonymously report waste, fraud, and abuse. P.L. 110-161 also includes a new provision at Section 747 that provides that none of the funds available under the act or any other act can be used to conduct a public-private competition or a direct conversion under OMB Circular A-76, or any successor directive, related to the Human Resources Lines of Business (LOB) initiative until a reporting requirement is met. Funds cannot be used until 60 days after the Director of OMB submits a report to the Senate and House Committees on Appropriations on the use of public-private competitions and direct conversions as part of the Human Resources LOB. The law describes the information to be included in the report and requires that a copy of the report be submitted to GAO.

Section 901 of the House-passed bill also would have prohibited the use of funds to implement Executive Order 13422 related to the authority of the President over executive agency rulemaking.[170] During markup of the bill by the Senate Appropriations Committee, an amendment, offered by Senator Richard Durbin and agreed to by voice vote, struck this provision from the Senate version of the bill. The provisions is not included in P.L. 110-161.

Competitive Sourcing[171]

Although the Bush Administration coined the term "competitive sourcing" in 2001, public-private competition began in 1966, with the publication of Office of Management and Budget (OMB) Circular A-76. Circular A-76 provides policy and guidance for conducting competitions involving government employees and contractors. For many years, OMB continued to be the exclusive source of guidance on public-private competitions. The late 1990s witnessed a notable change, with the advent of competitive sourcing legislation, and, in particular, the passage of bills containing competitive sourcing provisions.[172]

Section 739(a) of the Consolidated Appropriations Act, 2008, (P.L. 110-161) prohibits the use of funds for converting an agency activity involving 11 or more federal employees to contractor performance unless certain conditions are met. Public-private competitions that meet this size criterion will have to include a staffing plan known as a most efficient organization (MEO); show that the cost of contractor performance would result in a savings of at least $10 million or 10% of the MEO's personnel costs, whichever amount is lesser; and not provide a contractor with an advantage by permitting the company to provide health and retirement benefits to the employees performing the government activity that are less than what federal employees receive.[173] The first

[170] See *Congressional Record*, daily edition, vol. 153, June 27, 2007, pp. H7322-H7323. For an analysis of the Executive Order, see CRS Report RL33862, *Changes to the OMB Regulatory Review Process by Executive Order 13422*, by (name redacted).

[171] This section was written by (name redacted), Analyst in American National Government, Government and Finance Division.

[172] See CRS Report RL32833, *Competitive Sourcing Statutes and Statutory Provisions*, by (name redacted).

[173] A most efficient organization is the staffing plan of the agency tender, which is the government's response to a (continued...)

two conditions appear designed to address two distinctions between standard competitions and streamlined competitions. Under Circular A-76, agencies are required to develop an MEO and apply the conversion differential (that is, $10 million or 10% of the MEO's personnel costs) for standard competitions. (An agency is required to use a standard competition when a public-private competition involves more than 65 full-time equivalents (FTEs).[174]) In streamlined competitions, an agency may develop an MEO but is not required to do so, and the conversion differential is not calculated.[175] (An agency may use a streamlined or a standard competition when a public-private competition involves 65 or fewer FTEs.) The third condition may be seen as an effort to ensure that a contractor does not gain a cost advantage in competitions by paying less for benefits than the government does, thus lowering the cost of his or her proposal. Alternatively, others may see this condition as a restriction on the ability of a contractor to prepare a competitive proposal. Certain organizations and procurement activities, such as the Department of Defense and depot maintenance contracts, are exempt from Section 739(a).

Although Circular A-76 does not appear to prohibit conducting a public-private competition for work that is being performed by a contractor, some of the language in the circular seems to emphasize holding competitions for work being performed by federal employees. For example, the circular's policy statement says, in part: "The longstanding policy of the federal government has been to rely on the private sector for needed commercial services.... Identify all activities performed by government personnel as either commercial or inherently governmental.... Perform inherently governmental activities with government personnel.... Use a streamlined or standard competition to determine if government personnel should perform a commercial activity."[176] Section 739(b) notes that the circular does not prevent holding competitions for working being performed by contractors, and it also requires that Circular A-76 include procedures and policies for these types of competitions.

Section 739(c) allows a protest to be filed for any competition (that is, streamlined as well as standard) conducted under Circular A-76, and for any decision made without benefit of an A-76 competition to convert an agency function from employee performance to contractor performance. This section also permits an individual selected by a majority of the affected employees to represent the employees in a protest involving an A-76 competition or a decision to outsource work without a competition. The ATO retains the authority to file a protest on behalf of the employees. Section 739(c) permits the ATO or the individual selected by the employees to represent them to intervene in a civil action brought before the U.S. Court of Federal Claims or a U.S. district court by an interested party from the private sector. Additionally, this section permits protests and civil actions that challenge the selection of a provider (that is, government employees or a contractor) at the conclusion of a competition.

Currently, an ATO is not required to file a protest: he or she "shall file a protest in connection with ... [a] public-private competition unless the [agency tender] official determines that there is

(...continued)

solicitation.

[174] A full-time equivalent (FTE) is "[t]he staffing of Federal civilian employee positions, expressed in terms of annual productive work hours (1,776 [hours]) rather than annual available hours that includes non-productive hours (2,080 hours)." (U.S. Office of Management and Budget, *Circular No. A-76 (Revised)*, May 29, 2003, p. D-5.)

[175] Ibid., pp. B-4 and C-2.

[176] Ibid., p. 1.

no reasonable basis for the protest."[177] Some have been concerned that agency employees' interests may not be adequately represented since an ATO determines unilaterally whether there is a basis for a protest. Hence, supporters of this view might argue that another individual, such as a union representative, would be a better choice for representing the affected employees. In response, the private sector might argue that allowing the ATO to file a protest is sufficient protection for agency employees. Additionally, contractors might note that their employees cannot band together and select someone to represent them in a protest.

The final substantive provision in this section prohibits the use of funds made available by this act for certain purposes. That is, none of the funds appropriated by this act can be used by OMB for directing or requiring an agency to take any action related to a public-private competition, or a direct conversion of a government activity from one sector to another. Similarly, none of the funds can be used by another agency to take an action that was directed or required by OMB. This section applies to FY2008 and succeeding fiscal years.

Cuba Sanctions[178]

Since the early 1960s, U.S. policy toward Communist Cuba has consisted largely of efforts to isolate the island nation through comprehensive economic sanctions, including prohibitions on U.S. financial transactions—the Cuban Assets Control Regulations (CACR)—that are administered by the Treasury Department's Office of Foreign Assets Control (OFAC). Restrictions on travel have been a key and often contentious component of U.S. efforts to isolate the Cuban government. The regulations do not ban travel itself, but place restrictions on any financial transactions related to travel to Cuba. Pursuant to the CACR, certain categories of travelers may travel to Cuba under a *general* license, which means that there is no need to obtain special permission from OFAC. In addition, a variety of travelers may be eligible to apply for *specific* licenses, which are reviewed and granted by OFAC on a case by case basis. This includes travelers engaging in family visits; educational, religious or humanitarian activities; or activities related to the marketing, sale, delivery or servicing of authorized exports to Cuba.

Some U.S. commercial agricultural exports to Cuba have been allowed since 2001 under the terms of the Trade Sanctions Reform and Export Enhancement Act of 2000 or TSRA, but with numerous restrictions and licensing requirements. Exporters are denied access to U.S. private commercial financing or credit, and all transactions must be conducted in cash in advance or with financing from third countries. U.S. exports to Cuba since 2001 have been valued at over $1.9 billion, the overwhelming majority in agricultural products. U.S. exports to Cuba rose from $146 million in 2002 to a high of $404 million in 2004, and then declined to $369 million in 2005 and $340 million in 2006. In the first 11 months of 2007, U.S. exports amounted to $377 million, the majority in agricultural products.[179]

In February 2005, the Administration tightened sanctions against Cuba by further restricting how U.S. agricultural exporters may be paid for their sales. OFAC amended the CACR to clarify that the term "payment of cash in advance" for U.S. agricultural sales to Cuba means that the payment

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[177] 31 U.S.C. §3351(2); Sec. 326(b)(1) of P.L. 108-375.

[178] This section was written by Mark Sullivan, Specialist in Latin American Affairs, Foreign Affairs, Defense, and Trade Division. For additional information, see CRS Report RL33819, *Cuba: Issues for the 110th Congress*, by (name re dacted).

[179] World Trade Atlas. Department of Commerce Statistics.

is to be received prior to the shipment of the goods. This differs from the practice of being paid before the actual delivery of the goods, a practice that had been utilized by most U.S. agricultural exporters to Cuba since such sales were legalized in late 2001. U.S. agricultural exporters and some Members of Congress strongly objected on the grounds that the action constituted a new sanction that violated the intent of TSRA, and could jeopardize millions of dollars in U.S. agricultural sales to Cuba. OFAC Director Robert Werner maintained that the clarification "conforms to the common understanding of the term in international trade."[180]

Since 2000, either one or both houses have approved provisions in the annual Treasury Department appropriations bill that would ease U.S. economic sanctions on Cuba (especially on travel and on U.S. agricultural exports) but none of these provisions have ever been enacted. The Administration regularly threatened to veto legislation if it included provision weakening sanctions on Cuba.

In 2007, both the House-passed and Senate Appropriations Committee-reported versions of the FY2008 Financial Services and General Government appropriations bill, H.R. 2829, contained a provision that would have prevented Treasury Department funds from being used to implement the February 2005 regulation that requires the payment of cash in advance prior to the shipment of U.S. agricultural goods to Cuba. The House adopted the provision, contained in Section 903 of the bill, during June 28, 2007 floor consideration when it approved H.Amdt. 467 (Moran, Kansas) by voice vote. In the Senate version, the provision was included in Section 619 of the bill. The Senate version also contained a provision, in Section 620, that would have authorized travel to Cuba under a general license for the marketing and sale of agricultural and medical goods. The Administration's statement of policy on the bill maintained that the President would veto the measure if it contained a provision weakening current restrictions against Cuba.[181]

Ultimately, Congress dropped these provisions easing Cuba sanctions in the Consolidated Appropriations Act for FY2008 (P.L. 110-161).

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[180] U.S. Department of the Treasury, Testimony of Robert Werner, Director, OFAC, before the House Committee on Agriculture, March 16, 2005.

[181] Executive Office of the President, Office of Management and Budget, "Statement of Administration Policy, H.R. 2829—Financial Series and General Government Appropriations Act, 2008," p. 1.

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