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CRS Report for Congress

Financial Services and General Government (FSGG): FY2009 Appropriations

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Prepared for Members and
Committees of Congress

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

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

NOTE: A Web version of this document with active links is available to congressional staff at [http://apps.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=221&from=3&fromId=73].

Financial Services and General Government (FSGG): FY2009 Appropriations

Summary

The Financial Services and General Government (FSGG) appropriations bill includes funding for the Department of the Treasury, the Executive Office of the President (EOP), the judiciary, the District of Columbia, and 22 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 September 30, 2008, the President signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY2009 CR, P.L. 110-329). Division D of the act provides funding for most accounts in the Financial Services and General Government appropriations bill at the same rate appropriated in P.L. 110-161, the Consolidated Appropriations Act, 2008. The FY2009 continuing resolution (CR) provides funds though March 9, 2009.

The President had requested $44.1 billion for FSGG agencies for FY2009, an increase of $550 million over FY2008 enacted appropriations. The House Appropriations Committee recommended $44.27 billion for FSGG agencies and programs for FY2009, an increase of $725 million over FY2008 enacted appropriations and $175 million more than the President's request. The Senate Appropriations Committee recommended FY2009 appropriations of $44.75 billion for the agencies funded in the Senate bill, an increase of $1.1 billion over FY2008 enacted appropriations and $524 million more than the President's request.

FSGG appropriations encompass a number of potentially controversial issues, some of which are identified below.

- **Department of the Treasury.** Is the proposed funding for enforcement, taxpayer services, and business systems modernization at the Internal Revenue Service adequate for lowering the federal tax gap?

- **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 administrative issues, such as pay increases for judges, hiring of additional staff, and creation of additional judgeships to meet the demands of rising caseloads?

This report will be updated to reflect major congressional action.

Key Policy Staff

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Department of the Treasury			
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Executive Office of the President and Funds Appropriated to the President			
Executive Office of the President	Barbara Schwemle	G&F	7-8655
The Judiciary			
Judiciary	Lorraine Tong	G&F	7-5846
Judiciary	Steve Rutkus	G&F	7-7162
District of Columbia			
District of Columbia	Eugene Boyd	G&F	7-8689
Other Independent Agencies			
Generally	Garrett Hatch	G&F	7-7822
Commodity Futures Trading Commission	Mark Jickling	G&F	7-7784
Consumer Product Safety Commission	Bruce Mulock	G&F	7-7775
Election Assistance Commission	Kevin Coleman	G&F	7-7878
E-Government Fund in GSA	Harold Relyea	G&F	7-8679
Federal Communications Commission	Patty Figliola	RSI	7-2508
Federal Deposit Insurance Corporation: OIG	Pauline Smale	G&F	7-7832
Federal Election Commission	R. Sam Garrett	G&F	7-6443
Federal Labor Relations Authority	Gerald Mayer	DSP	7-7815
Federal Trade Commission	Bruce Mulock	G&F	7-7775
General Services Administration	Garrett Hatch	G&F	7-8674
Merit Systems Protection Board	Barbara Schwemle	G&F	7-8655
National Archives and Records Administration	Harold Relyea	G&F	7-8679
National Credit Union Administration	Pauline Smale	G&F	7-7832
Office of Personnel Management	Barbara Schwemle	G&F	7-8655
Office of Special Counsel	Barbara Schwemle	G&F	7-8655
Privacy and Civil Liberties Oversight Board	Harold Relyea	G&F	7-8679
Securities and Exchange Commission	Mark Jickling	G&F	7-7784
Selective Service System	David Burrelli	FDT	7-8033
Small Business Administration	Eric Weiss	G&F	7-6209
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DSP = Domestic Social Policy Division
FDT = Foreign Affairs, Defense, and Trade Division
G&F = Government and Finance Division
RSI = Resources, Science, and Industry Division

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Most Recent Developments

On September 30, 2008, the President signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY2009 CR, P.L. 110-329). Division D of the act provides funding for most accounts in the Financial Services and General Government appropriations bill at the same rate appropriated in P.L. 110-161, the Consolidated Appropriations Act, 2008. The FY2009 continuing resolution (CR) provides funds though March 9, 2009.

The Administration's FY2009 budget request had included $44.10 billion for the agencies and programs funded through the Financial Services and General Government (FSGG) appropriations bill, an increase of $550 million over FY2008 enacted appropriations.[1] The House Appropriations Committee recommended $44.27 billion for FSGG agencies and programs for FY2009, an increase of $725 million over FY2008 enacted appropriations and $175 million more than the President's request.[2] The Senate Appropriations Committee recommended FY2009 appropriations of $44.75 billion for the agencies funded in the Senate bill, an increase of $1.1 billion over FY2008 enacted appropriations and $524 million more than the President's request.[3] **Table 1**, below, will be updated to reflect major congressional action.

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[1] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, FY2009*, committee print, 110th Cong., 2nd sess., (Washington: GPO, 2008).

[2] Ibid.

[3] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations, FY2009*, report to accompany S. 3260, 110th Cong., 2nd sess., S.Rept. 110-417. The Senate bill includes funding for the Commodity Futures Trading Commission (CFTC), which is funded through the Agriculture appropriations bill in the House. Comparisons of Senate FY2009 recommendations to the President's FY2009 budget request and FY2008 enacted appropriations include CFTC funding. Aggregate funding levels cited for FY2008 enacted appropriations and the President's FY2009 request therefore differ between the House and the Senate.

Table 1. Status of FY2009 Financial Services and General Government Appropriations

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Passage		Public Law
House	Senate						House	Senate	
06/17/08	07/09/08	H.Rept. (Draft) 06/25/08		S.Rept. 110-417 07/14/08					

Introduction

The House and Senate Committees on Appropriations reorganized their subcommittee structures in early 2007. 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

[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.

were assigned to the FSGG Subcommittee.[7] As a result of this reorganization, the House and Senate FSGG Subcommittees have nearly identical jurisdictions.[8]

Overview of FY2009 Appropriations

On September 30, 2008, the President signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY2009 CR, P.L. 110-329). Division D of the Act provides funding for most accounts in the Financial Services and General Government appropriations bill at the same rate appropriated in P.L. 110-161, the Consolidated Appropriations Act, 2008. Provisions of the CR that affect specific FSGG accounts are noted in the relevant agency section of this report. The CR provisions relating to the federal civilian employee pay raise are in the General Provisions Government-Wide section. The FY2009 CR provides funds though March 9, 2009.

The Administration's FY2009 budget request had included $44.10 billion for FSGG agencies and programs, an increase of $550 million over FY2008 enacted appropriations.[9] The FY2009 request would have increased funding for the Department of the Treasury by about $200 million, the Executive Office of the President by over $15 million, the judiciary by $475 million, and the District of Columbia by $57 million. Independent agencies, collectively, would have received $197 million less in FY2009 than they are receiving in FY2008. The House Appropriations Committee recommended $44.27 billion for FSGG agencies and programs, an increase of $725 million over FY2008 enacted appropriations, and $175 million more than the President's request. The Senate Appropriations Committee recommended $44.75 billion for the agencies funded in the Senate bill, an increase of $1.1 billion over FY2008 enacted appropriations, and $524 million more than the President's request. **Table 2** lists the enacted amounts for FY2008, and the President's request and the House Appropriations Committee's recommendation for FY2009.

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[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.

[9] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, FY2009*, committee print, 110th Cong., 2nd sess., (Washington: GPO, 2008).

Table 2. Financial Services and General Government Appropriations, FY2008-FY2009
(in millions of dollars)

	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Department of the Treasury	$12,263	$12,463	$12,578	$12,699	
Executive Office of the President	680	696	697	748	
The Judiciary	6,246	6,721	6,525	6,518	
District of Columbia	610	667	712	722	
Independent Agencies	23,748	23,551	23,760	24,064	
Total	**$43,547**	**$44,097**	**$44,272**	**$44,751**	

Source: Budget authority figures, other than FY2009 Senate Committee figures, provided by House Appropriations Subcommittee on Financial Services and General Government. Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

Key Issues

The wide scope of FSGG appropriations — which provide funding for two of the three branches of the federal government, a city government, and 22 independent agencies with a range of functions — encompasses a number of potentially controversial issues, some of which are identified below.

- **Department of the Treasury.** Is the proposed funding for enforcement, taxpayer services, and business systems modernization at the Internal Revenue Service adequate for lowering the federal tax gap?

- **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 administrative issues, such as pay increases for judges, hiring of additional staff, and creation of additional judgeships to meet the demands of rising caseloads?

Department of the Treasury[10]

This section examines FY2009 appropriations for the Treasury Department and its operating bureaus, including the Internal Revenue Service (IRS). **Table 3** shows

[10] This section was written by Gary Guenther, Analyst in Industry Economics, Government and Finance Division.

the enacted amounts for FY2008, as well as the Bush Administration's budget request for FY2009 and congressional action to date on that request.

Table 3. Department of the Treasury Appropriations, FY2008 to FY2009

(in millions of dollars)

Program or Account	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Salaries and Expenses (non-IRS)	$248	$274	$275	$274	
Department-wide Systems and Capital Investments	19	27	27	27	
Office of Inspector General	18	19	19	19	
Treasury Inspector General for Tax Administration	141	146	146	146	
Community Development Financial Institutions Fund	94	29	105	100	
Financial Crimes Enforcement Network	86	91	91	91	
Financial Management Service	299[a]	239	239	239	
Alcohol and Tobacco Tax and Trade Bureau	94	97	97	99	
Bureau of the Public Debt	173	177	177	177	
Payment of Losses in Shipment	1	2	2	2	
Internal Revenue Service, Total	11,095[b]	11,362	11,398	11,525	
Taxpayer Services	*2,150[c]*	*2,150*	*2,210*	*2,213*	
Enforcement	*4,780*	*5,117*	*5,117*	*5,117*	
Operations Support	*3,680[d]*	*3,856*	*3,833*	*3,897*	
Business Systems Modernization	*267*	*223*	*223*	*282*	
Health Insurance Tax Credit Administration	*15*	*15*	*15*	*15*	
Total: Department of the Treasury	**$12,263[e]**	**$12,463**	**$12,578**	**$12,699**	

Source: Budget authority figures, other than FY2009 Senate Committee figures, provided by House Appropriations Subcommittee on Financial Services and General Government. Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

a. Includes $64.2 million emergency appropriation received under the provisions of P.L. 110-185.
b. Includes $202.1 million emergency appropriations received under the provisions of P.L. 110-185.
c. The taxpayer services account received an additional $50.7 million emergency appropriation under the provisions of P.L. 110-185.
d. The operations support account received an additional $151.4 million emergency appropriation under the provisions of P.L. 110-185.
e. The Department of Treasury total includes $266.3 million in emergency appropriations.

Department of the Treasury Budget and Key Issues

The Treasury Department performs a variety of governmental functions. They can be summarized as 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. This 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. By contrast, 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 FY2008, Treasury is receiving $12.263 billion in appropriated funds (including emergency appropriations), or 5% more than it received in FY2007. As usual, most of these funds are being used to finance the operations of the IRS, which is receiving $11.094 billion in FY2008. The remaining $1.169 billion is distributed among Treasury's other appropriations accounts in the following amounts: departmental offices (which includes the Office of Terrorism and Financial Intelligence — or TFI — and the Office of Foreign Assets Control) are receiving $248 million; department-wide systems and capital investments, $19 million; OIG, $18 million; TIGTA, $140 million; CDFI, $94 million; FinCEN, $86 million; FMS, $298 million; Alcohol and Tobacco Tax and Trade Bureau (ATB), $93 million; and Bureau of the Public Debt, $173 million.

FY2009 Budget Proposal. For FY2009, the Bush Administration asked Congress to approve $12.463 billion in funding for Treasury, or 1.6% more than the

amount enacted for FY2008. Under the proposal, the IRS would have received $11.361 billion (or 91% of the total). The remaining $1.102 billion would have been distributed among Treasury's other appropriations accounts in the following amounts: departmental offices would have received $274 million; departmental systems and capital investments, $27 million; OIG, $19 million; TIGTA, $146 million; CDFI, $29 million; FinCEN, $91 million; FMS, $239 million; ATB, $97 million; and Bureau of the Public Debt, $177 million. All major accounts except for FMS and CDFI would have been funded at the same level as or higher levels than the amounts enacted for FY2008.

Under the Administration's budget proposal, total full-time equivalent employment (direct and reimbursable) at Treasury could have risen from an estimated 107,912 in FY2008 to a projected 109,597 in FY2009.[11] Nearly 98% of the gain in full-time jobs of 1,685 would have stemmed from an increase in full-time jobs at the IRS of 1,826 and a decrease in such jobs at the FMS of 179.

According to Treasury's budget documents, its proposed budget for FY2009 was crafted to provide the resources needed to "effectively manage the government's finances, promote economic opportunity through sound fiscal policy, work towards entitlement reform, strengthen trade and investment policies, and maximize voluntary tax compliance."[12] In evaluating the merit of the budget request, Congress may wish to consider the extent to which it would allow the Administration to achieve these objectives.

The following Treasury appropriations accounts (excluding the IRS) would have received the largest increases in funding under the FY2009 budget proposal: department-wide systems and capital investments (44.2%), departmental offices (10.3%), and FinCEN (6.4%).

Additional spending on department-wide systems and capital investments would serve multiple purposes. These include remedying "critical building deficiencies in the Treasury Annex Building," furthering the use of a newly developed computer-based system known as the Enterprise Content Management System, securing the Treasury Secure Data Network, and improving Treasury's performance in meeting the requirements of the Federal Information Security Management Act.[13]

In seeking more funding for Treasury's departmental offices, the Administration is hoping to improve the department's debt management systems and its ability to "perform timely legal reviews" for the Committee on Foreign Investment in the United States, construct an Operations Center to respond to domestic and international financial crises, expand the department's capability to administer

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[11] U.S. Department of the Treasury, *Congressional Justification FY2009* (Washington: 2008), p. 11.

[12] Ibid., p. 3.

[13] Ibid., pp. 7-8.

sanctions against "terrorist groups and their sponsors," and enhance its "internal counterintelligence and security capabilities."[14]

Foremost among FinCEN's functions is administering the Bank Secrecy Act (BSA). The Administration asked Congress to increase funding for FinCEN from $86 million in FY2008 to $91 million in FY2009. Most of the added funds would have been used to improve the agency's management and analysis of BSA data.

For the third straight year, the Administration asked Congress to slash funding for the CDFI in FY2009. The proposed reduction would have totaled 70%. Most of it would have stemmed from ending funding for the Bank Enterprise Award Program and the Native Initiatives programs and cutting funding for the CDFI Program by $34 million.

Congressional Consideration of the President's FY2009 Budget Proposal.

Action in the House. The House Appropriations Committee recommended $12.578 billion in appropriated funds for the Treasury Department in FY2009. This amount was $115 million more than the amount requested by the Bush Administration and $315 million above the amount enacted for Treasury in FY2008. Under the measure, the IRS would have received $11.398 billion; departmental offices, $276 million; department-wide systems and capital investments, $27 million; OIG, $19 million; TIGTA, $146 million; FinCEN, $91 million; FMS, $239 million; ATB, $97 million; Bureau of Public Debt, $177 million; and CDFI, $105 million. Nearly the entire difference between the total amount recommended in the measure and the Administration's budget request lay in proposed funding for the CDFI and the IRS: the measure would have given $76 million more to the former and $37 million more to the latter.

In its report on the measure, the committee directed Treasury to submit an operating plan addressing its expected use of the appropriated funds for each of its offices and bureaus in FY2009 within 60 days of the enactment of an appropriations bill. It also recommended that the department receive $700,000 more than the Administration requested to spend on initiatives to combat predatory lending and improve the financial education of students in elementary and high schools. In addition, the committee endorsed a proposal to spend $62 million (or $300 million more than the Administration requested) on the activities overseen by TFI, without commenting on how the additional funds should be used — though it did specify that at least $300,000 of the $62 million should be used by OFAC to reduce its current backlog of Freedom of Information requests.

The report expresses some concern that OFAC is devoting too much staff time to investigating alleged violations of the trade embargo against Cuba and urges the agency to base its decisions on resource allocation on the "most pressing national security threats facing the United States." To underscore this concern, the committee

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[14] U.S. Department of the Treasury, *The Budget in Brief: Fiscal Year 2009* (Washington: 2008), p. 11.

directs Treasury to submit a report within 60 days of the enactment of an appropriations bill describing the steps it is taking to "assess OFAC's allocation of resources."

Action in the Senate. The Senate Appropriations Committee recommended that the Treasury Department receive $12.699 billion for FY2009. That amount is $237 million more than the amount requested by the Administration and $121 million more than the amount recommended by the House Appropriations Committee. Relative to the Administration's budget request, S. 3260 would have granted $71 million more in funding to CDFI and $163 million more in funding to the IRS. Most of the difference in funding between S. 3260 and the appropriations bill approved by the House Appropriations Committee was accounted for by proposed funding for the IRS: S. 3260 would give the IRS an additional $127 million.

Under S. 3260, the IRS would have received $11.525 billion in appropriated funds; departmental offices, $274 million; FMS, $239 million; Bureau of Public Debt, $177 million; TIGTA, $146 million; CDFI, $100 million; ATB, $99 million; FinCEN, $91 million; department-wide systems and capital investments, $27 million; and OIG, $19 million.

In its report, the Senate Appropriations Committee endorsed the Administration's request that Treasury's budget for terrorism and financial intelligence be increased from $56.8 million in FY2008 to $61.7 million in FY2009. More specifically, it recommended that an additional $1.4 million be spent to upgrade OFAC's capacity to administer economic sanctions on "State sponsors of terrorism, such as Iran and Sudan, as well as terrorists, terrorist groups, and their support networks."[15] The committee also directed Treasury to channel an additional $3.4 million into OIA in order to address "current and emerging threats affecting the Department's national security mission" and improve the "Department's coordination of global finance intelligence issues with the intelligence community."

The report also expressed concern about problems with suspicious activity reports (SARs) filed with FinCEN under the Bank Secrecy Act (BSA). These problems were brought to light in a recent TIGTA report. To address the problems, the committee urged the agency to make an effort to improve the "consistency" of SARs. It recommended that FinCEN receive an additional $1.1 million to support its efforts to implement the provisions of the BSA over which it has jurisdiction, and an additional $865,000 to upgrade its capacity to work with "other Financial Intelligence Units around the world regarding international anti-money laundering and terrorist financing."

In addition, the report expressed opposition to the Administration's request to decrease funding for CDFI. It recommended that $8.3 million be set aside in FY2009 for grants, loans, technical assistance, and training programs intended to benefit

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[15] U.S. Congress, Senate Appropriations Committee, *Financial Services and General Government Appropriations Bill, 2009*, report to accompany S. 3260, 110th Cong., 2nd sess., S.Rept 110-417 (Washington: GPO, 2008), p. 9.

"Native American, Alaskan Natives, and Native Hawaiian communities." In the committee's view, the agency should place a higher priority on improving its measurement of the extent to which programs funded through CDFI "leverage other non-Federal funds for CDFIs across the country."[16]

Under the CR, each Treasury departmental office and operating bureau will receive through March 9, 2009, the prorated amount that was appropriated for each in FY2008. Only current programs will be funded until then, or until an FY2009 appropriations measure covering the Treasury Department is enacted.

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 FY2008, appropriated funds account for 97% of IRS's operating budget, user fees for 2%, and reimbursables for the remaining 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

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[16] Ibid., p. 19.

- (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 FY2008, the IRS is receiving $11.095 billion (including emergency appropriations) in appropriated funds, or 4.7% more than it received in FY2007. Of this amount, $2.200 billion is designated for taxpayer services, $4.780 billion for enforcement, $3.831 billion for operations support (including emergency appropriations), $267 million for the BSM program, and $15 million for administration of the health insurance tax credit.

The Bush Administration asked Congress to appropriate $11.362 billion for IRS operations in FY2009, or 2.4% more than the amount enacted for FY2008. Of this amount, $2.150 billion (2% less than FY2008) was to be used for taxpayer services, $5.117 billion (7% more than FY2008) for enforcement, $3.856 billion (0.6% more than FY2008) for operations support, $223 million (17% less than FY2008) for the BSM program, and about $15 million (the same amount as FY2008) for administering the health insurance tax credit. Under the budget proposal, total full-time equivalent employment (direct and reimbursables) at the IRS is projected to rise from an estimated 91,746 in FY2008 to 93,572 in FY2009, a gain of 2%.[17]

Budget documents indicated that the FY2009 budget proposal for the IRS was intended to support three strategic goals: (1) improve service to taxpayers; (2) enhance enforcement of federal tax laws; and (3) modernize the IRS by investing in people, processes, and technology.

In addition, the Administration requested that Congress pass a number of legislative proposals aimed at improving taxpayer compliance and reducing the federal tax gap. The Administration claimed (without providing documentary support) they could raise $36 billion in revenue over the next 10 years.[18] Some proposals would have expanded information reporting; others would have targeted tax compliance by firms of all sizes; and one would have penalized the failure to comply with the requirements for electronic filing of tax and information returns.[19]

In assessing the Administration's budget proposal for the IRS, lawmakers may want to consider whether proposed funding for enforcement, taxpayer service, and the BSM can be judged adequate in light of the difficult 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 detailed and 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 so that it at once respects taxpayer rights and is cost-effective, and hiring

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[17] Ibid., p. 11.

[18] Ibid., p. 60.

[19] Ibid., p. 61.

and training sufficient numbers of enforcement agents to replace those who have retired or quit in recent years.

Congressional Consideration of the Bush Administration's FY2009 Budget Proposal.

Action in the House. The House Appropriations Committee recommended providing the IRS with $11.398 billion in appropriated funds for FY2009, or $304 million more than the amount enacted for FY2008 and $37 million more than the amount requested by the Bush Administration. Of this total, $2.210 billion ($60 million more than the amount requested) was to go to taxpayer services, $5.117 billion (the same amount as requested) to enforcement, $3.833 ($23 million less than requested) to operations support, $223 million (the same amount as requested) to BSM, and $15 million (the same amount as requested) for administration of the health insurance tax credit established by the Trade Act of 2002.

In the report accompanying the bill, the committee specified that the recommended $60 million in funding for taxpayer service above the Administration's budget request was to be used for the following purposes: (1) $47 million to educate taxpayers about their rights and responsibilities before they file, improve the IRS 1-800 help line, and assist taxpayers at walk-in centers around the country; (2) $10.5 million to bolster the capabilities of the IRS Taxpayer Advocate to assist taxpayers who have disputes with the IRS; (3) $1 million to expand the Tax Counseling Program for the Elderly; and (4) $1.5 million to increase grants to Low-Income Taxpayer Clinics.

The bill included a provision that could have become a source of controversy when the full House considers the measure. It would have barred the IRS from using any appropriated funds to "enter into, renew, extend, administer, implement, enforce, or provide oversight of any qualified tax collection contract" under the IRS's private tax debt collection program. The report cited as the major reason for taking this step the repeated statements by senior IRS officials in the past two years that the IRS could collect the same delinquent tax debt targeted by the program at less expense. In its budget request, the Administration noted that it would need $12 million to manage the program in FY2009.

Action in the Senate. The Senate Appropriations Committee recommended that the IRS receive $11.525 billion in FY2009. That amount was $163 million more than the amount requested by the Administration and $127 million more than the amount endorsed by the House Appropriations Committee. Of the amount recommended by the committee, $2.213 billion was allocated to taxpayer services (or $63 million more than the amount requested by the Administration and $3 million more than the amount approved by the House Appropriations Committee); $5.117 billion to enforcement (or the same amount recommended by the Administration and the House Appropriations Committee); $3.897 to operations support (or $40 million more than the amount requested by the Administration and $64 million more than the amount recommended by the House Appropriations Committee); $282 million to the BSM (or $59 million more than the amount recommended by both the Administration and the House Appropriations Committee); and $15 million for the administration of the health care tax credit (or the same amount recommended by both the Administration and the House Appropriations Committee).

In its report on S. 3260 (S.Rept. 110-417), the committee maintained that one of the biggest challenges facing the IRS is reducing the federal tax gap. It also noted that the agency could make significant progress toward that objective if it was "given additional resources and is able to improve its operational capabilities (most notably through the Business Systems Modernization program)."[20] At the same time, the committee expressed the concern that the 16 legislative reforms aimed at reducing the tax gap proposed by the Administration in its budget request for FY2009 would lack the needed forcefulness to make sizable reductions in the gap and would yield a meager return on investment of "slightly more than a penny on the dollar."

Of the recommended funding for taxpayer services, the committee directed the IRS to spend not less than $4 million on the tax counseling for the elderly program, $9 million on grants for low-income taxpayer clinics, and $8 million (to be made available for two years) for the newly created volunteer income tax assistance matching grant program. It also expressed disagreement with the Administration's decision to decrease funding for taxpayer assistance centers and pre-filing taxpayer assistance and education. The committee included language in the bill that would have required the IRS to fund pre-filing assistance and education at an amount not less than the $645 million enacted for this purpose in FY2008.

The committee expressed strong support for the ongoing efforts by the IRS to deepen its understanding of the scope and causes of taxpayer non-compliance through the National Research Program (NRP). In a bid to improve the NRP, the committee directed the IRS in FY2009 to collect information on the "causes of noncompliance, including inadvertent noncompliance, the type of return preparation method (self, volunteer, paid preparer, or IRS preparer), whether the taxpayer was represented during the examination, and the extent to which the taxpayer sought and received IRS services."[21]

Moreover, in recommending that funding for the BSM be increased by about $15 million in FY2009 over the amount enacted for FY2008, the committee endorsed the support for the BSM expressed by the IRS Oversight Board in its report to Congress on the IRS's proposed budget for FY2009 and expressed opposition to the cutback in funding requested by the Administration. It also directed the IRS to spend at least $78 million on the continued development of the Customer Account Data Engine, $35.5 million on Accounts Management Services, and $35 million on Modernized e-File.

As approved by the committee, S. 3260 also contained the same controversial provision dealing with the IRS's private tax debt collection program that was included in the appropriations bill for the IRS approved by the House Appropriations Committee. Specifically, Section 106 of the bill would have barred the IRS from using appropriated funds in FY2009 to "enter into, renew, extend, administer,

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[20] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, report to accompany S. 3260, 110th Cong., 2nd sess., S.Rept. 110-417 (Washington: GPO, 2008), p. 21.

[21] Ibid., p. 27.

implement, enforce, provide oversight of, or make any payment related to any qualified tax collection contract."[22]

Under the continuing resolution, the IRS will be funded through March 6, 2009, at the prorated amount it received ($11.094 billion) in FY2008. The CR gives the agency an additional $68 million under the taxpayer services account to continue meeting its obligations under the Economic Stimulus Act of 2008. As the CR funds current IRS programs only, congressional opponents of the IRS's private tax debt collection program will probably have to wait until sometime in 2009 to attempt to pass legislation that would curtail or end it.

Executive Office of the President and Funds Appropriated to the President[23]

All but three offices in the Executive Office of the President (EOP) are funded in the Financial Services and General Government (FSGG) appropriations bill.[24] **Table 4** shows appropriations enacted for FY2008, amounts requested by the President for FY2009, and amounts recommended by the House and Senate Committees on Appropriations.

Table 4. Executive Office of the President and Funds Appropriated to the President, FY2008 to FY2009

(in thousands of dollars)

Office	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
The White House (total)	$174,505	$190,528	$181,642	$181,942	
Compensation of the President	*450*	*450*	*450*	*450*	
The White House Office (salaries and expenses)	*51,656*	*52,499*	*53,899*	*52,499*	
Executive Residence, White House (operating expenses)	*12,814*	*13,363*	*13,363*	*13,363*	
White House Repair and Restoration	*1,600*	*1,600*	*1,600*	*1,600*	
Council of Economic Advisers	*4,118*	*4,118*	*4,118*	*4,118*	
Office of Policy Development	*3,482*	*3,550*	*3,550*	*5,250*	

[22] Ibid., p. 31.

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

[24] 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	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Privacy and Civil Liberties Oversight Board[a]	*2,000*	—	—	—	
National Security Council	*8,640*	*9,029*	*9,029*	*9,029*	
Office of Administration	*91,745*	*105,919*	*95,633*	*95,633*	
Office of Management and Budget	78,000	72,800	79,972	80,172	
Federal Drug Control Programs (total)	421,702	418,382	422,011	472,150	
Office of National Drug Control Policy	*26,402*	*23,697*	*26,011*	*27,900*	
High Intensity Drug Trafficking Areas Program	*230,000*	*200,000*	*230,000*	*235,000*	
Other Federal Drug Control Programs	*164,300*	*189,685*	*165,000*	*204,250*	
Counterdrug Technology Assessment Center	*1,000*	*5,000*	*1,000*	*5,000*	
Unanticipated Needs	1,000	1,000	1,000	1,000	
Presidential transition administrative support	—	8,000	8,000	8,000	
Office of the Vice President (salaries and expenses)	4,432	4,496	4,496	4,496	
Official Residence of the Vice President (operating expenses)	320	323	323	323	
Total: EOP and Funds Appropriated to the President	**$679,959**	**$695,529**	**$697,444**	**$748,083**	

Sources: Budget authority table provided by the House Appropriations Subcommittee on Financial Services and General Government, President's FY2009 budget request, S.Rept. 110-417, and U.S. Executive Office of the President, *Fiscal Year 2009 Congressional Budget Submission* (Washington: February 2008). Columns may not equal the total due to rounding.

a. The $2 million for the Privacy and Civil Liberties Oversight Board is not included in the White House and EOP totals because the Board has been reconstructed as an independent agency. Section 801(a) of P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007, enacted on August 3, 2007, authorizes the following appropriations for the Board: $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 FY2009 budget requested an appropriation of $695.5 million for the EOP and funds appropriated to the President, a 2.3% increase above the almost $680 million appropriated for FY2008. Within the request, funding for all "White House" accounts, discussed under "Consolidation Proposal" below, would have increased by 9.2%. As for the four accounts under federal drug control programs, increased appropriations were proposed for Other Federal Drug Control Programs (+15.4%) and the Counterdrug Technology Assessment Center (CTAC) (+400%), and reduced funding was proposed for the Office of National Drug Control Policy (-10.2%) and the High Intensity Drug Trafficking Areas Program (-13%).

Consolidation Proposal. For the eighth consecutive fiscal year, the President's FY2009 budget proposed to consolidate and financially realign eight salaries and expenses accounts that directly support the President into a single annual appropriation, called "The White House." The consolidated appropriation would have a full-time equivalent (FTE) level of 904. The accounts that would have been included in the consolidated appropriation were the following (with FTEs noted):

- Compensation of the President,
- White House Office (WHO) — 446,
- Executive Residence at the White House — 95,
- White House Repair and Restoration — 0,
- Office of Administration — 222,
- Office of Policy Development — 35,
- National Security Council — 71, and
- Council of Economic Advisers — 35.[25]

This consolidated appropriation would have totaled $190.5 million in FY2009 for the accounts proposed to be consolidated, an increase of 9.2% from the $174.5 million appropriated in FY2008. The appropriations requested for three of the eight accounts within the White House — Compensation of the President, White House Repair and Restoration, and Council of Economic Advisers — were the same as the FY2008 funding. Increased funding is requested for these five accounts: White House Office (+1.63%), Executive Residence (+4.28%), Office of Policy Development (+1.95%), National Security Council (+4.5%), and Office of Administration (+15.45%). According to the EOP budget submission, the increased appropriations would have "offset payroll inflationary increases and maintain operations at current levels."[26] Additionally, the proposed expansion of the Enterprise Services Initiative (discussed below) underlies some of the increased funding requested for the Office of Administration.

The 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."[27] The conference committees on the FY2002 through FY2007 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 FY2008 under P.L. 110-161, the Consolidated Appropriations Act for FY2008. The House and Senate Committees on Appropriations recommended that separate appropriations for the EOP accounts be continued in FY2009 as well.

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[25] U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government Fiscal Year 2009, Appendix* (Washington: GPO, 2008), pp. 1055-1056. (Hereafter referred to as *FY2009 Budget, Appendix*.)

[26] U.S. Executive Office of the President, *Fiscal Year 2009 Congressional Budget Submission* (Washington: February 2008), pp. EOP-4 - EOP-5. (Hereafter cited as *EOP Budget Submission*.)

[27] *EOP Budget Submission*, p. EOP-12.

Transfer Authority Proposal. As in the FY2008 budget proposal, the FY2009 budget requested a general provision in Title VII to continue and expand the authority for the EOP to transfer 10% of the appropriated funds among several accounts under the EOP. The proposal was included under the government-wide general provisions at Section 733 and would have covered the following accounts in FY2009:

- The White House[28]
- Office of Management and Budget (OMB)
- Office of National Drug Control Policy
- Special Assistance to the President (Vice 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
- Office of the United States Trade Representative[29]

The OMB Director (or such other officer as the President designates in writing) would have been able, 15 days after notifying the House and Senate Committees on Appropriations, to 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 increase an appropriation by more than 50%. According to the EOP budget submission, the transfer authority would "provide the President with flexibility and improve the efficiency of the EOP" and would "significantly improve the President's flexibility and effectiveness in meeting the needs across 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."[30]

P.L. 108-447, the Consolidated Appropriations Act for FY2005 (Section 533, Title V, Division H) authorized transfers of up to 10% of FY2005 appropriated funds among the accounts for the White House Office, Office of Management and Budget, Office of National Drug Control Policy, the Special Assistance to the President (Vice President), and the 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) authorized transfers of up to 10% among the accounts for the White House, the Special Assistance to the President (Vice President), and the Official Residence of the Vice President. P.L. 110-161, the Consolidated Appropriations Act

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[28] 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.

[29] *FY2009 Budget, Appendix*, p. 1056.

[30] *EOP Budget Submission*, pp. EOP-12 - EOP-13.

for FY2008, at Section 201, continued this practice. The House and Senate Committees on Appropriations recommended that the current practice be continued.

Enterprise Services Proposal. The FY2009 budget request also included a proposal to expand the enterprise services initiative. The initiative was designed "to efficiently manage common services throughout the EOP and to ensure that the management of GSA [General Services Administration] space rent is consistently administered throughout the EOP." It was expected to reduce "redundant processes in administering" Enterprise Services across the EOP. Under the proposal, funding for the rent that the Office of Management and Budget and the Office of National Drug Control Policy (ONDCP) pay to GSA would have been moved into the Enterprise Services fund of the Office of Administration account. Specifically, almost $10.3 million would have been moved to this account: almost $7.2 million from OMB and $3.1 million from ONDCP.

GSA space rent funding for the White House Office, Office of Policy Development, National Security Council, Council of Economic Advisers, Office of Science and Technology Policy, Council on Environmental Quality, and the United States Trade Representative is already included in the Office of Administration's Enterprise Services fund. Services that will be assumed by the fund in FY2009 are transit subsidies, Flexible Savings Account administrative fees, health unit operations, and Federal Protective Service (FPS) rent-based fees.[31]

Neither the House Committee on Appropriations nor Senate Committee on Appropriations recommended adoption of this proposal and both provided that the OMB and ONDCP funding for rental payments to GSA will continue under their respective "Salaries and Expenses" accounts.

Administrative Support for the Presidential Transition. The FY2009 budget included a request for $8 million to fund "an orderly presidential transition." The appropriation would have covered the cost of processing the President's and Vice President's records, under the Presidential Records Act, and other expenses related to the transition to a new administration. There are no FTEs associated with this account. The House and Senate Committees on Appropriations recommended the same funding as the President requested. Division A, Section 133 of P.L. 110-329 provides an appropriation of $8 million for the transition and states that the monies may be transferred to other accounts that fund the offices within the EOP and the Office of the Vice President.

The Vice President. An appropriation of $4.5 million and an FTE level of 24 is requested for the Special Assistance to the President (Vice President) account for FY2009. The funding was 1.44% above the $4.4 million provided for FY2008, while the FTE total remained the same. As for the Official Residence of the Vice President account, an FY2009 appropriation of $323,000, 0.94% above the $320,000 provided for FY2008, was requested. There was one FTE associated with this account for FY2009, the same as in the previous fiscal year. The House and Senate

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[31] *EOP Budget Submission*, p. EOP-13.

Committees on Appropriations recommended the same funding as the President requested.

Office of Management and Budget (OMB). The FY2009 budget requested an appropriation of $72.8 million for OMB, 6.67% less than the $78 million provided for FY2008. The FTE level requested would have remained at 489. The decreased funding request resulted from moving OMB's monies for space rent to the Office of Administration, as discussed above under the "Enterprise Services Initiative." The House and Senate Committees on Appropriations recommended that the OMB funding for rental payments to GSA continue under the "Salaries and Expenses" account. An appropriation of almost $80 million, almost $7.2 million above the President's request, was recommended by the House committee for OMB.

The draft House report included several directives for OMB as follows:

- The incoming Administration was strongly urged to refocus the efforts of the Office of Federal Procurement Policy on oversight.
- OMB and the agencies were directed to "work directly with the pertinent appropriations subcommittees in advance of transferring funds relating to E-Government or Lines of Business."
- Within 60 days of the act's enactment, OMB was to report to the committee "on actions taken to implement GAO's recommendations and improve purchase card internal controls."
- OMB was expected to provide printed copies of the President's budget to Congress.[32]

The Senate committee recommended an appropriation of $80.2 million, almost $7.4 million above the President's request, for OMB. The funding included $200,000 for the printing of paper copies of the President's annual budget request. Section 205 of the Senate bill, as reported, provided that the OMB appropriation support the printing of a sufficient number of copies of the budget for submission to Congress. In the Senate report, the committee urged the President to establish the Task Force on International Cooperation for Clean and Efficient Technologies and reminded OMB of the March 1, 2009, deadline for reporting to Congress 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 specified in any enacted bill or accompanying report." A general provision at Section 751 of the Senate bill as reported would have directed departments and agencies "to include information in the fiscal year 2010 budget justifications ... regarding redirection of congressionally directed funding."[33]

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[32] Draft House report, p. 40.

[33] S.Rept. 110-417, p. 38.

Committee Recommendations

The House and Senate Committees on Appropriations recommended funding at the levels requested by the President for each of the EOP accounts, with the following exceptions (in addition to the OMB funding mentioned above):

White House Office (WHO). An appropriation of $53.9 million, or $1.4 million above the President's request, was recommended for the WHO. The additional funding was for a White House Office on National AIDS Policy. In its draft report that accompanies the House draft bill, the House Committee on Appropriations

> calls on the new Administration to develop and implement a National AIDS Strategy that engages multiple sectors in strategy development, is comprehensive across Federal agencies, sets timelines and assigns responsibility for implementing changes, identifies targets for improved prevention and treatment outcomes and reduced racial disparities, and mandates annual reporting on progress.

Office of Policy Development (OPD). An appropriation of $5.2 million, $1.7 million above the President's request, was recommended by the Senate committee for the OPD. The funding included $1.4 million for OPD "to coordinate a government-wide effort to develop and implement a domestic AIDS strategy, [with] targets for improved prevention and treatment outcomes." OPD was directed to report to the Committee on Appropriations within 180 days of the act's enactment on the Administration's activities to develop the strategy. The appropriation also included $300,000 "to support international symposiums to discuss ways to improve the relationship between faith and science." Participating in the symposiums would have been some "30 internationally-renowned scientists and theologians, equally divided." The symposiums would have been open to the public and would have produced a written record that would have been available on the Internet at [http://www.whitehouse.gov]. The Senate committee also "urges the President to send the Framework Convention on Tobacco Control to the Senate for ratification."[34]

Office of Administration (OA). An appropriation of $95.6 million, almost $10.3 million below the President's request, was recommended by both the House and Senate committees for the OA. The committees recommended that OMB's and ONDCP's funding for rent continue under their respective "Salaries and Expenses" accounts and not be transferred to the OA. In the draft House report, the committee "strongly urges the incoming Administration to establish comprehensive policies and procedures for the preservation of all Presidential records, in keeping with the Presidential Records Act, the Federal Records Act, and other pertinent laws." Furthermore, the committee directed the new Administration to report to the committee by June 30, 2009, on "actions it is taking to implement such policies and procedures ... [and] the estimated costs, by program, activity, and fiscal year, of new systems, staff, or other resources needed to ensure the preservation of electronic

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[34] S.Rept. 110-417, pp. 35-36.

Presidential records."[35] The Senate report stated the committee's support of the efforts of the National Archives and Records Administration (NARA) "to make all appropriate electronic records public regardless of original formatting," and expressed concern about "the lack of information from the White House on the format and volume of records to be transferred for the current administration." The OA was directed "to work closely to meet NARA requirements and deadlines so that a complete record is available."[36] Division A, Section 132 of P.L. 110-329 provides an appropriation of $5.7 million for the electronic mail restoration activities.

Federal Drug Control Programs. The House committee recommended increased appropriations for the ONDCP, and the HIDTA, and decreased appropriations for the CTAC, and Other Federal Drug Control Programs. Funding of $26.0 million ($2.3 million above the President's request) and $230 million ($30 million above the President's request) would have been provided for ONDCP and HIDTA, respectively. Of the ONDCP total, $500,000 was for policy research and evaluation and $3.1 million was for rental payments to GSA that would have remained with the account rather than being transferred to OA. Included in the HIDTA total was almost $12 million in discretionary funding.

Appropriations of $1 million ($4 million below the President's request) and $165 million (almost $25 million below the President's request) would have been provided for the CTAC and the Other Federal Drug Control Programs, respectively. The committee did not explain the reduced funding for the CTAC. The funding 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 — $1.5 million
- National Alliance for Model State Drug Laws — $1,250,000
- National Youth Anti-Drug Media Campaign — $60 million
- United States Anti-Doping Agency — $10.1 million
- World Anti-Doping Agency dues — $1.9 million
- National Drug Control Program performance measures — $250,000

The Senate committee recommended increased appropriations for the ONDCP, the HIDTA, and Other Federal Drug Control Programs. Funding of $27.9 million, $4.2 million above the President's request, was recommended for the ONDCP. Of the total, $3.1 million was for rental payments to GSA that would have remained with the account rather than being transferred to OA, and $500,000 was provided for an independent review of ONDCP's grant-based programs by the National Academy of Public Administration. The study was to be completed by the end of FY2009. The Senate report included the committee's prohibition against the reorganization of three of ONDCP's 12 components.

An appropriation of $235 million, $35 million above the President's request was recommended for the HIDTA. Included in the total is funding of up to $2.1 million

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[35] Draft House report, p. 39.

[36] S.Rept. 110-417, p. 37.

for auditing services and associated activities and up to $250,000 "to ensure the continued operation and maintenance of the Performance Management System." In addition, the committee suggested that $500,000 could be provided for the establishment of new counties "if the need is warranted and the criteria has been met."[37]

The Senate committee recommended an appropriation of $204.2 million, $14.6 million above the President's request, for the Other Federal Drug Control Programs. The funding would have been allocated as the House committee recommends, except as follows:

- Training and technical assistance for drug court professionals — $2 million
- National Youth Anti-Drug Media Campaign — $100 million
- United States Anti-Doping Agency — $9.6 million
- National Drug Control Program performance measures — $500,000

With regard to the Counterdrug Technology Assessment Center (CTAC), the Senate report stated that "the lackluster performance of, and lack of confidence in, the current director" precluded the committee from providing higher levels of funding to this program. The report also expressed the committee's hope that the FY2010 "budget will reinvigorate the CTAC program with additional requested funds and new leadership."[38]

The Judiciary[39]

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 FY2008, as requested for FY2009, and as recommended by the House and Senate Appropriations Committees.

Table 5. The Judiciary Appropriations, FY2008 to FY2009
(in millions of dollars)

Budget Groupings and Accounts	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Supreme Court (total)	$78.7	$88.2	$88.2	$88.2*	
Salaries and Expenses	*66.5*	*69.8*	*69.8*	*69.8**	
Building and Grounds	*12.2*	*18.4*	*18.4*	*18.4*	

[37] Ibid., p. 41.

[38] S.Rept. 110-417, p. 41.

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

Budget Groupings and Accounts	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
U.S. Court of Appeals for the Federal Circuit	27.1	32.4	30.4	31.5	
U.S. Court of International Trade	16.6	19.6	19.6	19.6*	
Courts of Appeals, District Courts, and Other Judicial Services (total)	5,942.5	6,380.9	6,189.5	6,181.4	
Salaries and Expenses	*4,619.3*	*4,963.1*	*4,830.1*	*4,832.8*	
Court Security	*410.0*	*439.9*	*430.0*	*428.0*	
Defender Services	*835.6*	*911.4*	*863.0*	*854.2*	
Emergency Defender Services	*10.5*	—	—	—	
Fees of Jurors and Commissioners	*63.1*	*62.2*	*62.2*	*62.2*	
Vaccine Injury Compensation Trust Fund	*4.1*	*4.3*	*4.3*	*4.3*	
Administrative Office of the U.S. Courts	76.0	82.0	79.0	79.0	
Federal Judicial Center	24.2	25.8	25.7	25.5	
United States Sentencing Commission	15.5	16.3	16.2	16.2	
Judicial Retirement Funds	65.4	76.1	76.1	76.1	
Total: The Judiciary	**$6,246.1**	**$6,721.2**	**$6,524.8**	**$6,517.6**	

Sources: Budget authority figures, other than FY2009 Senate Committee figures, provided by House Appropriations Subcommittee on Financial Services and General Government. Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal total due to rounding.

*This figure is rounded and slightly lower than the FY2009 requested amount (which is also rounded); details are available below under the relevant account).

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 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).[40]

In her March 12, 2008, written testimony submitted to the House and Senate subcommittees on the judiciary's FY2009 budget request, 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,[41] stated, "We recognize the fiscal constraints Congress is facing. Through our cost-containment efforts and information technology innovations we have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice."[42]

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 example, to limit the growth of the court rental fees paid to the General Services Administration (GSA), the judiciary has been working collaboratively with GSA. Through rent validation and rent capping initiatives, Judge Gibbons said that the previously projected rent costs of $1.2 billion for FY2009, has been reduced by $200 million dollars, with a new projection of $1.0 billion (or 17% below the pre-cost containment projection). She cited the

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[40] Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2009 Congressional Budget Summary* (Washington: February 2008), pp. 34-35. Hereafter cited as *Judiciary FY2009 Congressional Budget Summary*.

[41] 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.

[42] 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 12, 2008, p.17. Hereafter cited as *Judge Gibbons's March 12, 2008, Statement*.

identification of GSA rent overcharges, which totaled $30 million over three years, and a more recent finding of an additional $22.5 million in overcharges. The Judicial Conference also approved a cap of 4.9% on the average annual rate of growth for courthouse rent to be paid in FY2009 through FY2016. Under the rent cap, the circuit judicial councils are responsible for keeping their respective circuits within the caps for space needs through managing and prioritizing such needs.[43]

The Judicial Conference, at its September 2007 meeting, approved recommendations to slow the growth in personnel costs throughout the judiciary. Expected savings of up to $300 million from FY2009 through FY2017 would be gained by restricting annual salary step increases, limiting the number of law clerks, and other measures governing the classification and grading of judiciary staff nationwide.

Other cost containment initiatives include using information technology (e.g., consolidating computer servers around the country) to increase efficiency and cost-effectiveness. According to Judge Gibbons, savings and cost avoidances amounting to $55.4 million through FY2012 are expected to be achieved through the consolidation of services for the judiciary's national accounting system in FY2008.

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.[44] The legislation was amended and approved in December 2007, and the president signed the bill into law on January 7, 2008 (P.L. 110-177). Judicial security continues to be an issue of critical importance. As a result of concerns the judiciary raised about perimeter security the Federal Protective Service (FPS) provides, some functions at selected courthouses will be transferred to the U.S. Marshals Service (USMS). Under the Consolidated Appropriations Act, 2008 (P.L. 110-161), Congress authorized USMS to monitor the exterior of seven courthouses and assume control of FPS monitoring equipment in a pilot program. The 18-month pilot will begin in the fourth quarter of FY2008, and an evaluation of the pilot is expected to be provided to congressional subcommittees. The estimated annualized cost of the pilot is $5 million, which would be offset by expected reductions in FPS billings.

Workload. Judge Gibbons, in written testimony submitted to the House and the Senate on March 12, 2008, noted that Congress provided the judiciary with funding for staff in the past two years to enable the courts to address the workload

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[43] Ibid., pp. 7-8.

[44] For details about the enacted legislation and other legislative proposals to enhance judicial security, see CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine H. Tong.

in the short term, but that the additional judgeships and courthouse are needed. She referred to the increased workload expected from the southwest border due to immigration-related cases, and stressed that the President's request for additional border patrol agents would bring the border patrol, when fully staffed, to a total of about 20,000 — doubling its size since 2001. Judge Gibbons stated that, "The district courts on the southwest border have not received any new district judgeships since 2002" although the Judicial Conference requested additional judgeships in 2003, 2005, and 2007 for a total of 32 judgeships. She also urged Congress to support the additional $110 million included in the President's FY2009 budget to fund fully a new federal courthouse in San Diego, California.[45]

Judge Gibbons summarized the judiciary's projection of the courts' workload, and noted that FY2009 staffing needs are based on 2008 caseload projection. "Our projections indicate that caseload will increase slightly in probation (+1%) and pretrial services (+3%) and increase substantially for bankruptcy filings (+23%). For 2008 we are projecting small declines in appellate (-3%) and criminal (-3%) caseload, and a steeper decline in civil filings (-8%)."[46]

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.[47]

Subsequent to the conference's recommendation, on September 10, 2007, Representative James F. Sensenbrenner, Jr., introduced H.R. 3520, the Federal Judgeship and Administrative Efficiency Act of 2007. Among other things, the bill would authorize the appointment of an additional nine permanent and three temporary federal circuit judges, and an additional 44 permanent and 12 temporary district judges; establish a judicial district in the Virgin Islands; and provide for additional bankruptcy judgeships. In addition, the bill would amend the federal judicial code to divide the Ninth Judicial Circuit into the Ninth Circuit (to be composed of California, Guam, Hawaii, and the Northern Mariana Islands) and the Twelfth Circuit (to be composed of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington). On October 12, 2007, the bill was referred to the Subcommittee on Courts, the Internet, and Intellectual Property, and the Subcommittee on Commercial and Administrative Law. No further action has been taken on H.R. 3520.

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[45] *Judge Gibbons's March 12, 2008, Statement*, pp. 5-6.

[46] Ibid., p.10.

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

On March 13, 2008, Senate Judiciary Committee Chairman Patrick J. Leahy introduced (for himself, and Senators Orrin G. Hatch, Dianne Feinstein, and Charles E. Schumer) S. 2774, the Federal Judgeship Act of 2008. The legislation would provide for the appointment of additional federal circuit and district judges: 12 permanent circuit court judgeships, 38 permanent district court judgeships, and the conversion of five existing temporary judgeships into permanent positions. In addition, 14 temporary district court judgeships, two temporary circuit judgeships, and one existing temporary district court judgeship would be extended. The bill was referred to the Senate Judiciary Committee. On May 15, 2008, the committee ordered S. 2774 reported favorably without amendment by a vote of 15-4.[48]

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."[49] On June 15, 2007, Senator Leahy introduced S. 1638, the "Federal Judicial Salary Restoration Act of 2008," that, before markup, would have provided a 50% pay adjustment for justices and judges.[50] 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, before markup, would have provided for a 41.3% pay adjustment. As amended in markup, and ordered to be reported by the respective committees, both bills, S. 1638 and H.R. 3753,[51] would authorize pay increases of 28.7% to 28.8%.[52]

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

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[48] The Congressional Budget Office cost estimate of S. 2774, released on June 18, 2008, is available at [http://www.cbo.gov/ftpdocs/94xx/doc9470/S2774.pdf].

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

[50] Last year, on January 8, 2007, Senator Leahy introduced S. 197, legislation to authorize a 1.7% 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.

[51] The Congressional Budget Office cost estimate for S. 1638 is at [http://www.cbo.gov/ftpdocs/90xx/doc9092/s1638.pdf]. For the cost estimate for H.R. 3753, see [http://www.cbo.gov/ftpdocs/89xx/doc8957/hr3753.pdf].

[52] For further details about these bills and judicial pay issues, see CRS Report RL34281, *Judicial Salary: Current Issues and Options for Congress*, by Kevin M. Scott; and also CRS Report RS20388, *Salary Linkage: Members of Congress and Certain Federal Executive and Judicial Officials*, and CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, both by Barbara L. Schwemle.

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.

For FY2009, the Senate Appropriations Committee recommended a salary adjustment for justices and judges under Section 310 (S.Rept. 110-417).

House and Senate Budget Hearings

On March 12, 2008, the House Appropriations Subcommittee on Financial Services and General Government held a hearing on the FY2009 federal judiciary budget request. The subcommittee heard testimony from Judge Julia S. Gibbons, 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. Later that same day, the Senate Appropriations Subcommittee on Financial Services and General Government also held a hearing on the FY2009 budget request and heard testimony from Judge Gibbons and Director Duff. The Senate subcommittee heard testimony on some of the same issues that were discussed at the House hearing.

In prepared testimony on the FY2009 judicial budget request, Judge Gibbons stated

> The goal of our fiscal year 2009 request is to maintain staffing levels in the courts at the level Congress funded in fiscal year 2008, as well as to obtain funding for several much needed program enhancements. As I noted earlier in my testimony, we are not requesting additional staff for our clerks or probation offices. We believe the requested funding level represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in relation to the overall budget request submitted by the Administration, I would note that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does. The Judiciary's funding requirements essentially reflect basic operating costs of which more than 80 percent are for personnel and space requirements.[53]

On the following day, the House subcommittee heard Supreme Court Justices Anthony M. Kennedy and Clarence Thomas give testimony on the Supreme Court budget request for FY2009. Issues raised at the hearing included the Supreme Court building modernization project, caseload, minority clerk hiring, and televising Supreme Court proceedings.

FY2009 Request and Congressional Action.[54] For FY2009, the judiciary requested $6.721 billion in total appropriations, a $475 million (7.6%) increase over the $6.246 billion enacted for FY2008. According to the judiciary, about 85.6% of

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[53] *Judge Gibbon's March 12, 2008, Statement*, p. 13.

[54] 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*.

the increase was to provide for pay adjustments, inflation, and other adjustments necessary to maintain current services. The FY2009 request included funding for 33,591 full-time-equivalent (FTE) positions — an increase of 300 FTE positions over the estimated 33,291 FTE positions funded for FY2008.[55] The committee recommended a total of $6.525 billion for FY2009.

The following are highlights of the FY2009 judiciary budget request, FY2008 enacted amount, and the recommendations of the House and Senate Appropriations Committees.[56]

Supreme Court. For FY2009, the total request for the Supreme Court (salaries and expenses plus buildings and grounds) was $88.2 million, a $9.5 million (12.1 %) increase over the FY2008 appropriation of $78.7 million. The total request comprised two accounts: (1) Salaries and Expenses — $69.8 million was requested, an increase of $3.3 million (4.9%) over the $66.5 million enacted for FY2008; and (2) Care of the Building and Grounds — $18.4 million was requested, an increase of $6.2 million (51.2%) over the $12.2 million enacted for FY2008. The increase in the second account included repairs to the roof of the Supreme Court building and exterior property renovation and landscaping. The overall request reflected increases in salary and other inflationary costs. The House committee recommended the full amount requested for both Supreme Court accounts. The Senate committee recommended $69.776 million for Salaries and Expenses ($1,000 less than requested), and the full amount requested for Care and Building Grounds.

U.S. Court of Appeals for the Federal Circuit. This court, consisting of 12 judges, has nationwide jurisdiction and reviews, among other things, certain lower court rulings in patent and trademark, international trade, and federal claims cases. The FY2009 request for this account was $32.4 million — a $5.3 million (19.5%) increase over the $27.1 million appropriated for FY2008. The request included six FTE positions for 12 law clerks, one for each of the judges. According to the budget submission, the need for more law clerks was due to the increase in caseload and the complicated nature of the cases. The House committee recommended $30.4 million. The Senate recommended $31.5 million.

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 FY2009 request was $19.6 million — a $3.0 million (18.0%) increase over the FY2008 appropriation of $16.6 million. The judiciary budget submission ascribed the increase primarily to rent paid to GSA. The House committee recommended $19.590 million. The Senate committee recommended $19.605 million.

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[55] *Judiciary FY2009 Congressional Budget Summary*, p. 5.

[56] Data are rounded, which may result in slight differences when figures are added or subtracted. Percentages are based on data prior to rounding and may result in very minor differences.

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 FY2009 request was $6.381 billion, a $438 million (7.4%) increase over the FY2008 enacted amount of $5.943 billion. The House committee recommended $6.189 billion for this budget group. The Senate committee recommended $6.181 billion.

The total of this budget group comprised the following accounts:

Salaries and Expenses. The FY2009 request for this account was $4.963 billion, a $344 million (7.4%) increase over the FY2008 level of $4.619 billion. According to the budget request, this increase was needed for inflationary and other adjustments to maintain the courts' current services. According to the FY2009 budget submission, the request included $308.8 million for standard pay and other inflationary increases, and other adjustments to maintain FY2008 service levels. The House committee recommended $4.830 billion. The Senate committee recommended $4.833 billion.

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), to pay for court security officers under the Judicial Facility Security Program. The FY2009 request was $439.9 million — a $29.9 million (7.3 %) increase over the FY2008 appropriation of $410.0 million. This increase was reportedly driven by pay and benefit adjustments and other adjustments needed to maintain current services. The FY2009 request to pay the Federal Protective Service (FPS) $72.9 million was also covered under this account. Funding requested included 9 FTE positions for USMS. The House committee recommended $430.0 million. The Senate committee recommended $428.0 million.

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 FY2009 request was $911.4 million — a $65.3 million (7.7 %) increase over the FY2008 appropriation of $846.1 million (which included $10.5 million in emergency funding). The House committee recommended $863.0 million. The Senate committee recommended $854.2 million.

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 FY2009 request was $62.2 million — a $0.9 million (1.4%)

decrease over the FY2008 appropriation of $63.1 million. Both the House and Senate committees recommended the full amount requested.

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 FY2009 request for this account was $4.3 million, a slight increase of $0.2 million (3.8%) above the FY2008 enacted amount of $4.1 million. Both the House and Senate committees recommended 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 FY2009 request for this account was $82.0 million — a $6.0 million (7.8%) increase over the FY2008 level of $76.0 million. The increase was reportedly for pay increases and other inflationary adjustments to maintain FY2008 service levels. The AOUSC also receives non-appropriated funds from fee collections and carry-over balances to supplement its appropriations requirements. Both the House and Senate committees recommended $79.0 million for this account.

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 FY2009 request was $25.8 million — a $1.6 million (6.5%) increase over the FY2008 appropriation of $24.2 million. The House committee recommended $25.7 million. The Senate committee recommended $25.5 million.

United States Sentencing Commission. The commission promulgates sentencing policies, practices, and guidelines for the federal criminal justice system. The FY2009 request was $16.3 million — a $0.8 million (5.0%) increase over the FY2008 appropriation of $15.5 million. Both the House and Senate committees recommended $16.23 million.

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 FY2009 request was $76.1 million — a $10.7 million (16.4%) increase over the FY2008 appropriation of $65.4 million. According to the budget submission, the appropriation requirements were calculated by an enrolled actuary as mandated by law. Both the House and Senate committees recommended the full amount requested.

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

- Sec. 306, which would have granted the judiciary the same tenant alteration authorities as the executive branch.

- Sec. 308, which would have deleted a provision related to establishing Vancouver, Washington, as a place of holding court in the Western District of Washington.

- Sec. 309, which would have deleted a one-year provision extending the temporary judgeships in the Districts of Kansas and the District of Northern Ohio through FY2008.

The House Appropriations Committee recommended the following provisions:

- Sec. 301, which would have continued language to permit funding in the bill for salaries and expenses to employ experts and consultant services (as authorized by 5 U.S.C. 3109).

- Sec. 302, which would have continued language to permit the transfer of up to 5% of any available FY2008 appropriations between judiciary appropriations accounts, provided that no appropriation shall be decreased by more than 5% or increased by more than 10% by any such transfer except in certain circumstances. The language also provides that any such transfer shall be treated as a reprogramming of funds under Section 608 of the bill and shall not be available for obligation or expenditure except in compliance with procedures in that section.

- Sec. 303, which would have continued language to authorize official reception and representation expenses, not to exceed $11,000, incurred by the Judicial Conference of the United States.

- Sec. 304, which would have continued language to require a financial plan for the judiciary within 90 days of enactment of this act.
- Sec. 305, which would enable the judiciary to contract for repairs under $100,000.

- Sec. 306, which would have authorized a court security pilot program.

- Sec. 307, which would have provided equal treatment for federal judges regarding life insurance premiums.

- Sec. 308, which would have allowed the Director of AOUSC to expend funds for the purposes of the Second Chance Act, and directs the AOUSC to report to the committee on the parameters that define eligible expenses before the program is implemented.

- Sec. 309, which would have removed a sunset date from certain procurement authorities.

- Sec. 310, which would have extended temporary judgeships in Ohio and Kansas.

The Senate committee recommended the same provisions the House recommends for Sections 301 through Section 309, but Section 310 differs. The Senate recommended the following:

- Sec. 310, which would have allowed for a salary adjustment for justices and judges.

District of Columbia[57]

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).[58] 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.[59]

Both the President and Congress may propose and approve of financial assistance to the District in the form of special federal payments in support of specific activities or priorities. **Table 6** shows details of the District's federal payments — the FY2008 enacted amounts, the amounts included in the President's FY2009 budget request, and the amounts recommended by the House and Senate Appropriations Committees.

Table 6. District of Columbia Appropriations, FY2008 to FY2009: Special Federal Payments

(in millions of dollars)

	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Resident Tuition Support	$33.0	$35.1	$35.1	$35.1	
Emergency Planning and Security	3.4	15.0	15.3	15.4	

[57] This section was written by Eugene Boyd, Analyst in American National Government, Government and Finance Division, and David Smole, Specialist in Education Policy, Domestic Social Policy Division.

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

[59] 87 Stat. 801.

	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
District of Columbia Courts	223.9	223.9	248.4	251.6	
Defender Services	48.0	48.0	52.5	52.5	
Court Services and Offender Supervision Agency	190.3	202.5	202.5	203.5	
Public Defender Service	32.7	35.7	35.7	35.7	
Criminal Justice Coordinating Council	1.3	1.8	1.8	1.8	
Water and Sewer Authority	8.0	14.0	14.0	16.0	
Anacostia Waterfront Initiative	—[a]	0.0	0.0	0.0	
Office of the Chief Financial Officer	5.5[b]	0.0	4.5	5.0[d]	
Executive Office of the Mayor	5.0	0.0	0.0	3.5	
Anacostia River Water Quality Initiative	*1.0*	*0.0*	*0.0*	*0.0*	
Public Education Initiative	*2.0*	*0.0*	*0.0*	*0.0*	
Marriage Initiative Matching Funds	—[c]	*0.0*	*0.0*	*1.2*	
Marriage Development Accounts	—[c]	*0.0*	*0.0*	*1.2*	
Pediatric Health Care Initiative	*1.0*	*0.0*	*0.0*	*0.0*	
Historic Preservation	*1.0*	*0.0*	*0.0*	*0.0*	
School Improvement	40.8	54.0	54.0	54.0	
Public Schools	*13.0*	*18.0*	*21.2*	*20.0*	
Public Charter Schools	*13.0*	*18.0*	*18.0*	*20.0*	
Education Vouchers	*14.8*	*18.0*	*14.8*	*14.0*	
Jump Start Public School Reform	0.0	20.0	20.0	20.0	
Consolidated Laboratory Facility	5.0	5.0	21.0	21.0	

	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Central Library and Branches	9.0	7.0	7.0	7.0	
FBI Reimbursement	4.0	5.0	0.0	0.0	
Special Federal Payments (total)	**$609.9**	**$667.0**	**$711.8**	**$722.0**	

Sources: Budget authority figures, other than FY2009 Senate Committee figures, provided by House Appropriations Subcommittee on Financial Services and General Government. Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal total due to rounding.

a. This activity will be funded as a $1 million award 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 award administered by the CFO.
d. Includes $3 million for the Children's National Medical Center.

The District of Columbia Budget and Key Issues

President's Request. The Administration's proposed FY2009 budget included $668.0 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) was $511.9 million, or 76.8%, of the request. The President's budget also requested $109.1 million in special federal payments for specific education initiatives, including $35.1 million for college tuition assistance, $38 million for public school enhancements and reforms, $18 million for public charter schools, and $18 million for the school choice (school voucher) program, which awards grants to eligible students to attend private schools.

In addition to recommending $667million in federal payments to the District of Columbia, the President's budget also contains general provisions, including a number of so-called "social riders." The President's budget request 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;

- prohibited the use of both federal and District funds to provide 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;

- prohibited the use of federal funds to implement the Health Care Benefits Act;

- limited the payment of fees to no more than $4,000 to attorneys representing a party in an action brought against the District under the Individuals with Disabilities Act; and

- limited the city's ability to use District funds to lobby for congressional voting representation or statehood.

House Appropriations Committee. The House Appropriations Committee recommended $711.8 million in special federal assistance to the District of Columbia. This was $101.9 million more than appropriated last year and $44.8 million more than requested by the Administration. The additional funding included assistance for public safety, criminal justice and court operations, and education activities. The committee recommended $15.3 million for emergency planning and security activities — $11.9 million more than appropriated for FY2008, and $300,000 more than requested by the Administration. The committee also recommended $561.9 million for criminal justice and court operations activities, including $16 million more than requested by the Administration for construction of a consolidated bioterrorism and forensic laboratory facility, and $24.5 million more for court operations. The bill would have provided $109 million for education initiatives, including an additional $20 million to support the mayor's public school reform.

Senate Appropriations Committee. The Senate Appropriations Committee recommended $722.0 million in special federal assistance to the District of Columbia. This is $112.1 million more than appropriated last year, $55 million more than requested by the Administration, and $10.2 million more than recommended by the House Appropriations Committee. The additional funding included assistance for public safety, criminal justice and court operations, and education activities. The committee recommended $15.4 million for emergency planning and security activities — $12 million more than appropriated for FY2008, and $400,000 more than requested by the Administration. The committee also recommended $561.9 million for criminal justice and court operations activities, including $21 million for construction of a consolidated bioterrorism and forensic laboratory facility, and $27.7 million more for court operations than requested by the Administration. The Senate bill, like its House counterpart, would have appropriated $109 million for education initiatives, including an additional $20 million to support the mayor's public school reform.

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). Funding has been provided for the DCTAG program annually since FY2000. For FY2009, the Administration proposed an appropriation of $35.1 million for the DCTAG program, of which $1.3 million would have been available for administrative expenses. The House Appropriations Committee and the Senate Appropriations Committee both recommended the appropriation of $35.1 million for the DCTAG program. As in prior years, the proposed appropriations language specified that awards made under the DCTAG program may be prioritized on the basis of a resident's academic merit, the need of eligible students, and other factors as may be authorized.

School Improvement. Since FY2004, a federal payment for school improvement in the District of Columbia has been provided annually to be allocated between the District of Columbia Public Schools (DCPS) for the improvement of public education; the State Education Office (SEO) for the expansion of public charter schools; and the U.S. Department of Education (ED) for the DC School Choice Incentive program (also known as the Opportunity Scholarship program).

The Opportunity Scholarship program was enacted under the D.C. School Choice Incentive Act of 2003 (P.L. 108-199) and is authorized through FY2008. Under the program, the Secretary of Education may award grants to eligible entities for a period of not more than five years to make opportunity scholarships to eligible individuals. The 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. FY2008 (school year 2008-2009) is the final year of the initial grant awarded to the Washington Scholarship Fund.

For FY2009, the Administration has proposed the appropriation of $54 million for school improvement in the District of Columbia. Of this amount, $18 million would have been provided to DCPS for school improvement, $18 million would have been provided to the SEO for public charter schools, and $18 million would have been provided to ED for the Opportunity Scholarship program. Of the $18 million that would have been provided for the Opportunity Scholarship program, $1 million would have been available for the administration and funding of assessments. In addition, the Administration proposed amending the D.C. School Choice Incentive Act of 2003 to establish annual limits on opportunity scholarship awards for school year 2009-2010 in the amounts of $7,500 for kindergarten through grade 8, and $12,000 for grades 9 through 12; and to provide for adjustments to annual award limits in future years by indexing them to the consumer price index for all urban consumers (CPI-U). The Administration also proposed extending the authorization of appropriations for the Opportunity Scholarship program at the amount of $18 million for FY2009, and such sums as may be necessary for FY2010 through FY2013.

The House Appropriations Committee recommended the appropriation of $54 million for school improvement in the District of Columbia — the same amount proposed by the Administration. However, the committee recommended that $21.2

million be provided to DCPS for school improvement, that $18 million be provided to the SEO for public charter schools, and that $14.8 million be provided to ED for the Opportunity Scholarship program, of which $1 million would be available to administer and fund assessments. In S. 3260, the Senate Appropriations Committee also recommended $54 million in funding for school improvement, but with $20 million provided to DCPS to improve public school education, $20 million provided to the SEO to expand public charter schools, and $14 million to ED for the Opportunity Scholarship program, of which $1 million would have been available to administer and fund assessments.

The House Appropriations Committee did not recommend the amendments to the D.C. School Choice Incentive Act of 2003 proposed by the Administration. In S. 3260, the Senate Appropriations Committee recommended that funds provided for the Opportunity Scholarship program may not be used to support the enrollment of students in schools participating in the program unless the school has a valid certificate of occupancy and the teachers of core subjects hold four-year baccalaureate degrees.[60] S. 3260 also specified that after school year 2009-2010, funds for the Opportunity Scholarship program be available only upon the reauthorization of the program by Congress and the adoption of legislation by the District of Columbia approving reauthorization.

Federal Payment to Jump Start Public School Reform. In addition to funding provided for school improvement in the District of Columbia, the Administration proposed, and both the House Appropriations Committee and the Senate Appropriations Committee recommended, the appropriation of $20 million to "jump start" the reform of public education in the District of Columbia. Of the $20 million that would have been made available, $3.5 million would have been provided for the recruiting, development, and training of principals and other school leaders; $7 million would have been provided for the development of optimal school programs, and for intervention in low-performing schools; $7.5 million would have been provided for a student performance data reporting and accountability system, and for parental and community outreach; and $2 million would have been provided for data reporting associated with the DCPS teacher incentive program. Of the total amount appropriated, the lesser of $500,000 or 10% would have been available for transfer from one activity to another.

General Provisions. The House and Senate bills would have

- prohibited the use of federal 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;

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[60] It appears that these provisions are specified in response to concerns identified in U.S. Government Accountability Office, *District of Columbia Opportunity Scholarship Program: Additional Policies and Procedures Would Improve Internal Controls and Program Operations*, GAO-08-9, Nov. 2007.

- prohibited the use of both federal and District funds to provide 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;

- prohibited the use of federal funds to implement the Health Care Benefits Act; and

- prohibited the use of federal funds to lobby for congressional voting representation or statehood.

Section 134 of the CR grants congressional approval of the District of Columbia General Fund budget for FY2009. This allows the District to spend $10 billion in local source revenues and federal grants, including $1.1 billion for capital projects and $8.9 billion for operating expenses. FY2009 special federal payments for the District of Columbia would be frozen at the FY2008 appropriations level. However, there is one exception. Section 135 of the act appropriates $15 million in special federal payments for emergency planning and security activities. This is a significant increase above the $3.4 million appropriated for FY2008, and will most likely be used to cover expenses related to the activities surrounding the inauguration of the next President of the United States.

Independent Agencies

In FY2009, a collection of 22 independent entities are slated to receive funding through the FSGG appropriations bill. **Table 7** lists appropriations as enacted for FY2008, as requested by the President for FY2009, and as recommended by the House and Senate Committees on Appropriations.

Table 7. Independent Agencies Appropriations, FY2008 to FY2009

(in millions of dollars)

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Commodity Futures Trading Commission[a]	$111	$130	$ —	$157	
Consumer Product Safety Commission	80	80	100	95	
Election Assistance Commission	142	17	135	17	
Federal Communications Commission[b]	1	1	1	—	
Federal Deposit Insurance Corporation: Office of Inspector General (by transfer)[c]	(27)	(27)	(27)	(27)	
Federal Election Commission	59	64	64	64	

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Federal Labor Relations Authority	24	23	23	23	
Federal Trade Commission[b]	82	69	70	69	
General Services Administration[d]	175	536	311	674	
Merit Systems Protection Board	40	41	41	41	
Morris K. Udall Foundation	6	1	6	6	
National Archives and Records Administration	400	392	424	430	
National Credit Union Administration	1	1	1	1	
Office of Government Ethics	12	13	13	13	
Office of Personnel Management (total)	21,110	20,358	20,358	20,362	
Salaries and Expenses	*102*	*93*	*93*	*93*	
Government Payments for Annuitants, Employee Health Benefits	*8,884*	*9,533*	*9,533*	*9,533*	
Government Payments for Annuitants, Employee Life Insurance	*41*	*46*	*46*	*46*	
Payment to Civil Service Retirement and Disability Fund	*11,941*	*10,550*	*10,550*	*10,550*	
Office of Special Counsel	17	17	17	17	
Postal Regulatory Commission[e]	—	14	14	14	
Privacy and Civil Liberties Oversight Board[f]	2	2	1	2	
Securities and Exchange Commission[g]	843	871	879	890	
Selective Service System	22	22	22	22	
Small Business Administration	569	659	880	766	
United States Postal Service	118	322	351	351	
United States Tax Court	45	48	48	48	
Total: Independent Agencies	**$23,748**	**$23,551**	**$23,760**	**$24,064**	

Sources: Budget authority figures, other than FY2009 Senate Committee figures, provided by House Appropriations Subcommittee on Financial Services and General Government. Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

a. The CFTC is funded in the House through the Agriculture appropriations bill. CFTC funding is included in total funding only for the Senate Committee column.
b. The amounts listed in Table 7 for the FCC and the FTC represent only 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.
e. FY2009 is the first year the PRC has been funded through the FSGG appropriations bill. Funding for the PRC is discussed in the United States Postal Service section.

f. In FY2008, the PCLOB was considered a component of the Executive Office of the President and was funded through EOP appropriations. The PCLOB has since been established as an independent agency, and the President has requested a separate appropriation for the agency for FY2009.
g. 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.

Commodities 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 agriculture 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. The FY2008 appropriation was $111.3 million.

For FY2009, the Administration requested $130.0 million. The Senate Appropriations Committee recommended $157.0 million, an increase of 24.3% over the Administration's request, and 41.1% over the FY2008 appropriation. The increase was related to concerns over the CFTC's ability to monitor the futures markets, particularly those in energy commodities.

In the House, CFTC appropriations will be included in the agriculture appropriations bill.

Consumer Product Safety Commission (CPSC).[61] 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 FY2009, the Administration requested $80 million in funding for the CPSC, the same amount Congress provided for FY2008, but $16.75 million more than requested last year ($63.25 million). The House Committee on Appropriations recommended $100 million, $20 million above the Administration's request. The committee stated that the additional funding is necessary for the agency to meet the increased responsibilities envisioned by the CPSC reform legislation (discussed

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

below), including the implementation of an Import Safety Initiative, upgrades to information technology and databases, and modernization of CPSC's testing laboratory.[62] In the Senate, the Committee on Appropriations recommended $95 million, $5 million less than its House counterpart, but $15 million above the Administration's request.

Last year, the House approved the Appropriation Committee'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 provided the agency with $80 million.

A steady stream of televison and print media stories throughout 2007 about unsafe imported consumer products generated strong congressional interest concerning the agency. Conferees, concluding months of negotiations over differences between House and Senate CPSC reform bills (H.R. 4040 and S. 2663, respectively), sent what is generally regarded as the strongest consumer protection legislation in decades to the President for his signature. The new law, P.L. 110-314, substantially increases the authority of and funding for the CPSC. Major provisions of the Consumer Product Safety Improvements Act of 2008 include the creation of a publicly accessible consumer complaint database, increased civil penalties that the agency can assess against violators, the protection of whistleblowers who report product safety defects, mandatory testing of toys, and banning certain phthalates in children's products.[63]

Election Assistance Commission (EAC).[64] 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 express 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.

For FY2008, funding for the EAC and election reform programs was provided by the Consolidated Appropriations Act, 2008. The act provided $16.53 million for the EAC, of which $3.25 million was for NIST, and $200,000 was for the high

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[62] See CRS Report RS22821, *Consumer Product Safety Commission: Current Issues*, by Bruce K. Mulock.

[63] For an examination of the issues surrounding the roughly dozen chemicals known as phthalates that are used to make the plastics found in thousands of consumer products, see CRS Report RL34572, *Phthalates in Plastics and Possible Human Health Effects*, by Linda-Jo Schierow and Margaret Mikyung Lee.

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

school mock election program. It also provided $115 million for requirements payments and $10 million for data collection grants to selected states.

The President's budget request for FY2009 included $16.7 million for EAC salaries and expenses. The House Appropriations Committee recommended $18.6 million for EAC salaries and expenses, of which $4 million was to be transferred to NIST, $1.3 million was for the college pollworker training program, and $400,000 was for the high school mock election program. The committee also recommended $110 million for requirements payments to the states, $5 million for voting technology improvement grants, and $1 million for a pilot grant program to conduct pre- and post-election testing for voting systems. The Senate Appropriations Committee recommended $16.7 million for EAC expenses, of which $4 million was to be transferred to NIST for the development of voluntary voting systems guidelines.

Federal Communications Commission (FCC).[65] 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 President signed a budget of $313 million (a direct appropriation of $1 million and the remainder to be collected through regulatory fees).[66]

For FY2009, the Senate committee recommended a budget of $341.875 million, $28.875 million above the FY2008 enacted level and $3 million more than the House recommendation of $338.875 million. While the House committee recommended a direct appropriation of $1 million and the remainder to be collected through regulatory fees, the Senate committee recommended that the entire budget be collected through regulatory fees.

The Senate committee budget would provide funding to support the FCC's continued efforts to facilitate the nationwide transition of broadcast television signals from analog to digital on February 17, 2009 and $3 million for a competitive grant program for state broadband data and development (Section 503).

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[65] This section was written by Patricia Moloney Figliola, Specialist in Internet and Telecommunications Policy, Resources, Science, and Industry Division.

[66] The Consolidated Appropriations Act, 2008 (P.L. 110-161).

The committee expressed continued concern about the declining standards of broadcast television and the impact this decline is having on America's children and the FCC's lack of proper oversight over the USF programs.

The committee would direct the Commission to issue a report to the Committee on Appropriations and the Committee on Commerce, Science, and Transportation within 180 days of enactment on commercial proposals for broadcasting radio or television programs for reception on school buses operated by, or under contract with, local public educational agencies. The study would examine the nature of the material proposed to be broadcast and whether it is age appropriate for the passengers; the amount and nature of commercial advertising to be broadcast; and whether such broadcasts for reception by public school buses are in the public interest.

The committee also expressed concern that emergency personnel and first responders along the northern border have had difficulty securing licenses for the appropriate communications frequency from the Commission. The committee would direct the Commission to work with Canadian officials and applicants to devise a strategy for ensuring that licensing along the northern border proceeds without delay. The committee would direct the Commission, in coordination with the Department of Homeland Security, to issue a report to the Committee on Appropriations no later than 270 days after enactment that evaluates the federal guidance provided to states working to establish interoperable first responder communications networks, describes the degree to which the guidance is coordinated with the Canadian government, and identifies methods to avoid future coordination problems.

The committee included language (sec. 501) to extend FCC's exemption from the Anti-deficiency Act (ADA) until December 31, 2009, and language (sec. 502) that would prohibit the FCC from enacting certain recommendations regarding universal service that were made to it by the Joint Board of FCC members and State Utility Commissioners. The recommendation would limit universal support to one telephone line. This would be harmful to small businesses, especially in rural areas, which need a second line for a fax or for other business purposes.

The continuing resolution provides the FCC with $20,000,000, for consumer education associated with the transition to digital television occurring on February 17, 2009.

Federal Deposit Insurance Corporation (FDIC): OIG.[67] 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.

The Consolidated Appropriations Act of 2008 (P.L. 110-161) provided for a FY2008 budget of $27 million for the OIG, which was a 13% decrease from the

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[67] This section was written by Pauline Smale, Economic Analyst, Government and Finance Division.

FY2007 appropriation of $31 million. The President requested, and both the House and Senate Committees on Appropriations recommended, $27.5 million for FY2009.

Federal Election Commission (FEC).[68] The FEC administers, and enforces civil compliance with, the Federal Election Campaign Act (FECA) and campaign finance regulations. The agency does so through educational outreach, rulemaking, and litigation, and by issuing advisory opinions.[69] The FEC also administers the presidential public financing system.[70] Between January and June 2008, the FEC lacked a quorum necessary to make major policy decisions. With the June 24, 2008, Senate confirmations of five FEC nominees, the agency now stands at full capacity of six commissioners.[71]

The President's FY2009 budget request included an appropriation of $63.6 million for the FEC, a 7.4% increase above the enacted FY2008 appropriation of $59.2 million. The House Appropriations Committee also recommended an appropriation of $63.6 million for FY2009. Although the FEC requested no additional staff in FY2008, the FY2009 budget justification requested funding for 12 additional full-time positions.[72] Most of the FY2009 request emphasized maintaining current services and funding technology upgrades.[73]

Like its House counterpart, the Senate Appropriations Committee recommended $63.6 million in FY2009 funding for the FEC. The Senate committee report also directed the FEC, within 270 days of the appropriations bill's enactment, to provide the committee with an estimate of the feasibility of gathering and making public data about media costs in campaigns.[74] Campaign media costs have been of recent interest to Congress, particularly in the Senate. The topic was the subject of a June 2007 Senate Rules and Administration Committee hearing, and the Senate

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[68] This section was written by Sam Garrett, Analyst in American National Government, Government and Finance Division.

[69] FECA is 2 U.S.C. §431 et seq. The FEC can refer criminal cases to the Justice Department.

[70] The Treasury Department and IRS also have administrative responsibilities for presidential public financing. However, Congress does not appropriate funds for the program. For additional discussion, see CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett.

[71] See CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

[72] On the FY2008 request, see Federal Election Commission, *Fiscal Year 2008 Performance Budget for the Federal Election Commission*, February 5, 2007, at [http://www.fec.gov/pages/budget/fy2008/fy2008cbj_final.pdf], p. 3. On the FY2009 request, see Federal Election Commission, *Fiscal Year 2009 Congressional Budget Justification*, February 4, 2008, at [http://www.fec.gov/pages/budget/fy2009/CJ_final_1_31_08.pdf].

[73] See, for example, Federal Election Commission, *Fiscal Year 2009 Congressional Budget Justification*, pp. 18-24.

[74] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, report to accompany S. 3260, 110th Cong., 2nd sess., S.Rept. 110-471 (Washington: GPO, 2008), p. 78.

Appropriations Committee report on the *FY2008* FSGG appropriations bill directed the Government Accountability Office (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."[75] The FY2009 continuing resolution (P.L. 110-329) contained no changes to the funding levels discussed above and did not otherwise address FEC issues.

In the past, Congress has chosen to use the appropriations process to extend the FEC's Administrative Fine Program (AFP), which was scheduled to expire at the end of 2008. In October 2008, however, President George W. Bush signed a stand-alone bill (H.R. 6296, which became P.L. 110-433) that will extend authority for the program until 2013.[76]

In recent years, FEC appropriations have generally been noncontroversial and subject to limited debate in committee or on the floor. For FY2009, the House Appropriations Committee noted that it had "recently approved a significant reprogramming" of the FEC's FY2008 appropriation and that it intended to "carefully monitor the resource needs of the FEC during the coming months and may consider adjustments to [the agency's] fiscal year 2009 budget in the final appropriations bill."[77] That reprogramming came in response to a significant drop in FEC salary expenses between January and June 2008, when four commissioners and some staff were out of office, and when the agency reportedly had difficulty recruiting career staff.[78] Now that the Commission is back at full operating capacity, provided that career staff recruiting improves, salary needs will presumably return to normal levels. The Senate report did not mention the reprogramming. It also was not addressed in the continuing resolution.

Federal Trade Commission (FTC).[79] The Federal Trade Commission (Commission or FTC) is an independent agency. It seeks to protect consumers and

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[75] The June 2007 hearing also covered congressional public financing legislation; the hearing record has not yet been published. A transcript is available on the Senate Rules and Administration Committee website at [http://rules.senate.gov/hearings/2007/062007correctedTranscript.pdf]. For additional discussion, see CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by R. Sam Garrett. On the FY2008 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.

[76] For additional discussion of the AFP, see CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett, p. 7.

[77] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, committee print, 110th Cong., 2nd sess. (Washington: GPO, 2008), p. 64.

[78] Duane Pugh, director, legislative affairs, FEC, provided information on the reprogramming (telephone consultation with R. Sam Garrett, July 2, 2008).

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

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. For FY2009, the Administration requested a program level for the FTC of $256.2 million, an increase of $12.4 million, or 5%, over the agency's present (FY2008) level of funding. Of the total amount provided, $168 million was to be derived from pre-merger filing fees, $19.3 million from Do-Not-Call fees, and the remaining amount — $68.9 million — was to be provided by a direct appropriation. The request represents an increase of $12.3 million from the FTC's FY2008 budget appropriations level.

The Senate Committee on Appropriations recommended the same program level as requested by the Administration, including the same breakdown of fees and direct appropriation, as noted above. For its part, the House Committee on Appropriations recommended an FTC program level of $259.2 million, $3 million more than the Administration's request. More specifically, the committee assumed $170.5 million from pre-merger filing fees, $21 million from Do-Not-Call fees, and a direct appropriation of $70.2 million. The committee recommendation assumed an increase of $3 million over the Administration's request to provide additional support for consumer protection activities, including subprime lending and other financial services investigations, as well as activities to fight spam, spyware, and Internet fraud and deception.

For FY2008, the Consolidated Appropriations Act provided the FTC with a total program level of $243.9 million. More specifically, $139 million was to come from pre-merger filing fees, and $23 million from Do-Not-Call fees, with a direct appropriation of $81.9 million.

General Services Administration (GSA). 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.

For FY2009, the President requested $56.6 million for government-wide policy and $71.8 million for operating expenses, $54 million for the Office of Inspector General (OIG), $2.9 million for allowances and office staff for former presidents, $8.5 million for presidential transition expenses, and $36.6 million to be deposited into the Federal Citizen Information Center Fund (FCICF). The House Committee on Appropriations recommended $56.2 million for government-wide policy, $71.2 million for operating expenses, $51.8 million for the OIG, $2.9 million for allowances and office staff for former presidents, $8.5 million for presidential transition expenses, and $36.1 million to be deposited into the FCICF. The Senate Appropriations Committee recommended $54.6 million for government-wide policy, $69.3 million for operating expenses, $54 million for the OIG, $2.9 million for allowances and office staff for former presidents, $8.5 million for presidential transition expenses, and $36.6 million for the FCICF. The CR provided $8.25 million for presidential transition expenses, and $2.68 million for allowances and office staff for former presidents.

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.

For FY2009, the President requested that an additional amount of $525 million be deposited in the FBF, which would have been an increase of $441 million from the amount enacted in FY2008. The President further requested that $620 million remain available until expended for new construction projects from the FBF. The House Appropriations Committee recommended that an additional amount of $309 million be deposited in the FBF, and $454 million be made available for new construction, both less than the President's request. The Senate Appropriations Committee recommended that an additional amount of $672 million be deposited in the FBF, and $767 million be made available for new construction, both more than the President's request.

Electronic Government Fund (E-Gov Fund).[80] 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, FY2007, and FY2008. Created to support interagency e-gov initiatives approved by the Director of OMB, the fund and the projects it sustains have been subject to close scrutiny by, and accountability to, congressional appropriators. As he did for FY2008, the President requested $5 million for the fund for FY2009. Noting that, as of March 2008, the e-gov account had a little over $7 million still unspent from prior years, including the entire FY2008 appropriation, House appropriators recommended no additional funding for the account for FY2009. Senate appropriators recommended $1 million for the fund. The consolidated continuing appropriations act temporarily returns the E-Gov Fund to a $3 million appropriation for FY2009.

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 8** shows appropriations as enacted for FY2008, as requested for FY2009, and as recommended by the House and Senate Committees on Appropriations, for each of these agencies.

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

Table 8. Independent Agencies Related to Personnel Management Appropriations, FY2008 to FY2009

(in millions of dollars)

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Federal Labor Relations Authority	$23.6	$22.7	$22.7	$22.7	
Merit Systems Protection Board (total)	40.1	41.4	41.4	41.4	
Salaries and Expenses	*37.5*	*38.8*	*38.8*	38.8	
Limitation on Administrative Expenses	*2.6*	*2.6*	*2.6*	2.6	
Office of Personnel Management (total)	21,110.3	20,357.9	20,358.4	20,362.5	
Salaries and Expenses	*101.8*	*92.8*	*92.8*	*92.8*	
Limitation on Administrative Expenses	*123.9*	*118.1*	*118.1*	*118.1*	
Office of Inspector General (salaries and expenses)	*1.5*	*1.5*	*1.5*	*2.1*	
Office of Inspector General (limitation on administrative expenses)	*17.1*	*16.5*	*17.0*	*20.4*	
Government Payments for Annuitants, Employee Health Benefits[a]	*8,884.0*	*9,533.0*	*9,533.0*	*9,533.0*	
Government Payments for Annuitants, Employee Life Insurance[a]	*41.0*	*46.0*	*46.0*	*46.0*	
Payment to Civil Service Retirement and Disability Fund[a]	*11,941.0*	*10,550.0*	*10,550.0*	*10,550.0*	
Office of Special Counsel	$17.5	$17.5	$17.5	$17.5	

Sources: Budget authority table provided by the House Appropriations Subcommittee on Financial Services and General Government, S.Rept. 110-417, and the President's FY2008 budget request; *FY2009 Budget, Appendix*, pp. 1097-1108, 1179-1180, 1190-1191, and 1215.

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 FY2009 states the FY2009 amounts for these accounts as $9,595.0 million (health benefits), $46 million (life insurance), and $10,172.0 million (retirement) at pp. 129-131. The *FY2009 Budget Appendix*, at pp. 1100-1101, states the same amounts as the budget justification.

Federal Labor Relations Authority (FLRA).[81] The FLRA is an independent federal agency that administers and enforces Title VII of the Civil Service Reform Act of 1978. Title VII 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 that represents

[81] This section was written by Gerald Mayer, Analyst in Public Finance, Domestic Social Policy Division.

employees in their bargaining unit. 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 FY2009 budget proposed an appropriation of $22.7 million for the FLRA, almost $1.0 million below the agency's FY2008 appropriation of $23.6 million. The House recommended an appropriation of $22.7 million for FY2009, which is the same as the President's request. The Senate Committee on Appropriations approved funding of $22.7 million, the same amount as recommended by the House.

Merit Systems Protection Board (MSPB).[82] The President's budget requested an FY2009 appropriation of almost $41.4 million for the MSPB, 3.25% above the FY2008 funding of $40.1 million. The agency's full-time equivalent (FTE) employment level would remain at 236 for FY2009. The House committee recommended the same appropriation as the President requests to provide "funding for mandatory pay raises, increased rent payments, and other non-personnel cost increases." The Senate also recommended the same appropriation as the President requests. MSPB issued 8,105 decisions in FY2007 (actual), and its budget submission projects that 8,400 decisions will be issued in FY2008 (estimate).

The authorization for the agency expired on September 30, 2007. Legislation that would reauthorize the MSPB for three years and 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). The President's budget requested an FY2009 appropriation of $92.8 million for salaries and expenses for OPM, an amount that is 8.8% less than the $101.6 million provided for salaries and expenses for FY2008. This amount included funding of $5.8 million for the Enterprise Human Resources Integration project and more than $1.3 million for the Human Resources Line of Business project. The agency's full-time equivalent (FTE) employment level would have been 4,940 for FY2009, 48 less than the 4,988 for FY2008.

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

Among the initiatives stated in OPM's budget submission are these: a legislative proposal has been submitted to Congress to offer a third benefit option under the Federal Employees' Health Benefits Program (FEHBP) and to broaden the types of health plans offered by the FEHBP, continued development of market-sensitive pay systems, the transitioning of the personnel and payroll records for 1.8 million active federal employees into the modernized, electronically accessible federal retirement system, and improving the federal hiring process, by, among other things, streamlining the application process.

The House committee recommended the same funding as requested by the President for the OPM accounts, except for the "limitation on transfers from the trust funds" account of the Office of Inspector General (OIG), for which the committee recommended an additional $500,000. The Senate committee did likewise, except for the OIG salaries and expenses and "limitation on transfers from the trust funds" accounts for which the committee recommends additional amounts of $598,000, and almost $4 million, respectively. The Senate report stated that the funding "will help restore the OIG's budget to previous levels and permit additional audits and investigations."[83]

Several directives for OPM were included in the draft House report or the Senate report as follows:

- The Government Accountability Office was directed "to assess the impact of the stop work [on a major contract] order on OPM's plans for developing (including testing) and implementing RetireEZ," the program to modernize the federal government's retirement systems.[84] (House draft report and Senate report)

- OPM was directed to continue to make publicly available, "in a consistent and consolidated format, and in a timely manner" data from the Federal Human Capital Survey. (House draft report)

- OPM was encouraged "to develop approaches that agencies can use to attract the best and brightest talent; match employee skills and abilities with specific agency missions and goals; ensure that talented employees are engaged and empowered to use their talent; improve leadership development; and ensure high performance from the workforce." (House draft report)

- OPM was urged to review the findings of a study group on Hispanic employment in the federal government (formed by several agencies, including the Equal Employment Opportunity Commission and the Social Security Administration) "for possible approaches to improve Hispanic recruitment, retention, and advancement government-wide." (House draft report)

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[83] S.Rept. 110-417, p. 103.

[84] Draft House report, p. 85, and S.Rept. 110-417, p. 99.

- OPM was directed to lead an "effort to encourage individual agency human resource offices to ... [recruit from] the talent pool that exists in the U.S. territories."[85] (House draft report)

- Within 45 days after the act's enactment, OPM was directed to report to the committee on time lines, including start and completion dates for activities related to dependent care programs, including a marketing campaign for an open season for enrollment, development of ways to encourage agencies to educate employees about enrollment, outreach to groups with similar interests in dependent care, advertising the availability of tuition assistance to offset enrollment costs, and establishing a link on child care subsidies on the OPM homepage. (Senate report)

- OPM was directed to advise the committee as improvements in the agency's efforts to foster the employment of individuals with disabilities are made. (Senate report)

- Within 120 days after the act's enactment, OPM was directed to report to the committee on the use of the Intergovernmental Personnel Act Mobility Program to alleviate the shortage of nurses and the steps taken to encourage nurses employed by the federal government to teach at accredited colleges of nursing. (Senate report)

- OPM was directed to review federal employment policies and consider whether any changes may be necessary to foster the employment of individuals who are blind. The committee would welcome a report from OPM on this issue that would include the views of federal employee labor organizations. The report was to be submitted by July 15, 2009.[86] (Senate report)

Office of Special Counsel (OSC).[87] The President's budget requested an FY2009 appropriation of $17.5 million for the OSC, the same level of funding that was enacted in FY2008. The agency's full-time equivalent (FTE) employment level would have increased by one, to 111, for FY2009. OSC's budget submission projected a continued increase in the number of prohibited personnel practices cases and disclosure cases received and notes that strategic management and cross-training of employees is being emphasized to ensure the maximum use of agency resources. The House and Senate committees recommended the same funding as the President requests. The draft House report stated that the OSC "must refocus its efforts" to carry out its "fundamental missions of protecting federal employees from prohibited personnel practices, providing a safe channel for whistleblower disclosures, and enforcing the Hatch Act and the Uniformed Services Employment and

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[85] Ibid., pp. 85-86.

[86] S.Rept. 110-417, pp.99-101.

[87] Ibid.

Reemployment Rights Act."[88] In its report, the Senate committee "strongly urges the OSC to work with whistleblower advocacy organizations to promote the highest level of confidence in the Whistleblower Protection Act and the OSC" and acknowledges that the agency's caseload continues to grow.[89]

The authorization for the agency expired on September 30, 2007. 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 provisions to enhance the agency's reporting requirements.

National Archives and Records Administration (NARA).[90] As indicated in **Table 7**, the President's FY2009 request for NARA was $392 million, which was about $8 million less than the $400 million appropriated for FY2008. Of this requested amount, almost $328 million was sought for operating expenses, an increase of $13 million over the FY2008 appropriation for this account. For the electronic records archive, $67 million was sought, a $9 million increase over the previous fiscal year allocation; for repairs and restoration, a little more than $9 million was sought, which is much below the FY2008 appropriation of over $28 million; and for the NHPRC, no appropriation was requested, which was the President's request for the previous two fiscal years, although Congress allocated $7 million for FY2007 and over $9 million for FY2008.

The President's budget also attempted to deny funding for the recently created Office of Government Information Services (OGIS) established within NARA by amendments to the Freedom of Information Act (FOIA), which were signed into law by the President on December 31, 2007.[91] The OGIS was established to (1) review agency compliance with FOIA policies, (2) recommend policy changes to Congress and the President, and (3) offer mediation services between FOIA requesters and agencies as a non-exclusive alternative to litigation. The OGIS is authorized to issue advisory opinions if mediation fails to resolve a dispute. The President's budget proposed no funding for the OGIS and having the Department of Justice carry out the responsibilities of the office using funds from its general administration account.[92] Amending language would have to be included in appropriations legislation in order to fully effectuate this proposed arrangement.

House appropriators recommended almost $424 million for NARA for FY2009, an increase of almost $32 million over the requested amount. Of this recommended

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[88] Draft House report, p. 89.

[89] S.Rept. 110-417, p. 105.

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

[91] 121 Stat. 2524.

[92] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009 — Appendix* (Washington: GPO, 2008), p. 239.

amount, $330 million was proposed for operating expenses, an increase of a little more than $2 million above the budget request. Specified allocations from this account included slightly more than half a million dollars to increase archivist staff, $1 million for the OGIS, and over half a million dollars for review and declassification of U.S. government records on the Nazi and Japanese Imperial governments. Other allocations from the recommended amount for NARA included $67 million for the electronic records archive, almost $27 million for repairs and restoration, and $12 for the NHPRC. Appropriators indicated they were "greatly concerned about the preservation of official Presidential records, including the revelations that the White House cannot account for hundreds of days of e-mails processed between 2003 and 2005. They urged NARA "to continue to work diligently to ensure that the records of the outgoing Administration are located and preserved" and "to work with the incoming Administration to establish and implement policies and procedures to ensure the preservation of electronic Presidential records."[93]

Senate appropriators recommended almost $430 million for NARA, about $38 million more than the President's request and $6 million more than the amount recommended by House appropriators. Of this recommended $430 million, almost $331 was proposed for operating expenses, with $1 million allocated for the continuance of public research hours at NARA and $1 million for the OGIS. Other allocations from the recommended amount for NARA included $67 million for the electronic records archive, a little more than $33 million for repairs and restoration, and $10.5 million for the NHPRC.

The consolidated continuing appropriations act temporarily returns NARA funding to its FY2008 funding level of $400 million for FY2009.

National Credit Union Administration (NCUA).[94] 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. The Consolidated Appropriations Act of 2008 (P.L. 110-161) appropriated $975,000 for FY2008. The President requested, and both the House and Senate Committees on Appropriations recommended, $1 million for FY2009.

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. The Consolidated Appropriations Act of 2008 (P.L. 110-161) provided a $1.5 billion limitation on

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[93] Draft House report, p. 80.

[94] This section was written by Pauline Smale, Economic Analyst, Government and Finance Division.

direct loans from the CLF for FY2008. The President requests, and both committees recommend, that the $1.5 billion cap remain unchanged for FY2009. P.L. 110-329 increases the cap to the amount authorized by the Federal Credit Union Act (12 U.S.C. 1795f(a)(4)(A)) of 12 times the subscribed capital stock and surplus of the CLF. This increase would equate to a cap of about $41 billion.

Privacy and Civil Liberties Oversight Board (PCLOB).[95] Originally established by the Intelligence Reform and Terrorism Prevention Act of 2004 as an agency within the Executive Office of the President (EOP),[96] the PCLOB was reconstituted as an independent agency within the executive branch by the Implementing Recommendations of the 9/11 Commission Act of 2007.[97] The board assumed its new status on January 30, 2008; its FY2009 appropriation will be its first funding as an independent agency.[98] Among its responsibilities, the five-member board is to (1) ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the nation against terrorism; (2) review the implementation of laws, regulations, and executive branch policies related to efforts to protect the nation from terrorism, including the implementation of information sharing guidelines; and (3) analyze and review actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties. The board advises the President and the heads of executive branch departments and agencies on issues concerning, and findings pertaining to, privacy and civil liberties. The board provides annual reports to Congress detailing its activities during the year, and board members appear and testify before congressional committees upon request.

As indicated in **Table 7**, the President's FY2009 request for the PCLOB was $2 million, which was the same amount appropriated for the board for FY2008 when it was an EOP agency. House appropriators recommended $1 million for the PCLOB for FY2009. In their report, appropriators expressed strong support for the mission of the board, and indicated they would "consider additional funding as necessary at the appropriate time." They noted that the board has not been fully reconstituted as an independent agency and, therefore, "the new entity's funding requirements have not been firmly established or justified to the Committee [on Appropriations]." The board was urged, "once reconstituted, to present the Committee with a detailed budget justification as quickly as possible."[99]

Senate appropriators recommended $2 million for the PCLOB, the amount requested by the President.

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[95] This section was written by Harold C. Relyea, Specialist in American National Government, Government and Finance Division.

[96] 118 Stat. 3638 at 3684.

[97] 121 Stat. 266 at 352.

[98] See CRS Report RL34385, *Privacy and Civil Liberties Oversight Board: New Independent Agency Status*, by Harold C. Relyea.

[99] H.Rept. 110- , p. 90.

The consolidated continuing appropriations act temporarily returns PCLOB funding to its FY2008 funding level of $2 million for FY2009.

Securities and Exchange Commission (SEC).[100] 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 that are imposed 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 SEC received $906.0 million, of which $63.3 million was to come from prior year unobligated balances, and the remainder from current-year collections. There was no direct appropriation from the general fund.

For FY2009, the President requested $913.0 million for the SEC, an increase of 0.8% over FY2008. The House Appropriations Committee recommended $928.0 million, 2.4% above the FY2008 appropriation and 1.6% above the Administration's FY2009 request. Of this amount, $879.4 million was to come from current year fee collections, the remaining $48.6 million from unobligated balances from prior year collections. There would have been no direct appropriation from the general fund.

The Senate Appropriations Committee recommended $938.0 million for FY2009, or 2.7% over the Administration's request. Of the amount, $890 million would have come from new fee collections, and the remaining $48 million from prior year balances. There would have been no direct appropriation from the general fund.

Selective Service System (SSS).[101] 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.[102] 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.

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[100] This section was written by Mark Jickling, Specialist in Public Finance, Government and Finance Division.

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

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

Since 1972, Congress has not renewed any President's authority to begin inducting (i.e., drafting) anyone into the armed services. In 2004, an effort to provide the President with induction authority was rejected.[103]

Funding of the Selective Service has remained relatively stable over the last decade. For FY2008, the enacted amount, $22 million, was the same as the House approved, the Senate reported, and the President requested. For FY2009, the President again requested, and the House and Senate Appropriations Committees recommended, $22 million.

Small Business Administration (SBA).[104] The SBA is an independent federal agency created by the Small Business Act of 1953. Although the agency administers a number of programs intended to assist small firms, arguably its three most important functions are to guarantee — principally through the agency's Section 7(a) general business loan program — business loans made by banks and other financial institutions; to make long-term, low-interest loans to small businesses, nonprofits, and households that are victims of hurricanes, earthquakes, other physical disasters, and acts of terrorism; and to serve as an advocate for small business within the federal government.

The Senate Appropriations committee recommended $765.8 million in new budget authority compared to the House Appropriations Committee recommendation of $880.3 million and the Administration's request of $658.5 million. The Senate committee's recommendation would have been an increase of $196.8 million over FY2008's enacted $569.0 million.

The Senate and House committees would have both reduced the Administration's request of $174.4 million for the disaster loan program to $160.1 million by eliminating $14.3 million in direct loan subsidies; in FY2008 the disaster loan program received no new funding. Excluding the disaster loan program account, the Senate committee recommended $605.7 million and the House committee recommended $720.2 million for the SBA for FY2009, compared to the Administration's request of $484.1 million. The Senate committee's recommendation would have increased the SBA non-disaster budget by $36.7 million.

Lending authority would stay the same for all loan programs.

United States Postal Service (USPS).[105] The U.S. Postal Service generates nearly all of its funding — about $75 billion annually — by charging users of the

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

[104] This section was written by Eric Weiss, Analyst in Economics, Government and Finance Division.

[105] 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 Kevin Kosar.

mail for the costs of the services it provides.[106] However, Congress does provide an annual appropriation to compensate the USPS for revenue it forgoes in providing free mailing privileges to the blind[107] and overseas voters.[108] Appropriations for these purposes were authorized by the Revenue Forgone Reform Act of 1993 (RFRA).[109] This act also authorized Congress to provide the USPS with a $29 million annual reimbursement until 2035 to pay for the costs of postal services provided at below-cost rates to not-for-profit organizations in the early 1990s.[110] Funds appropriated to the USPS are deposited in the Postal Service Fund, a revolving fund at the U.S. Department of the Treasury.

The Postal Accountability and Enhancement Act (PAEA), which was enacted on December 20, 2006, first affected the postal appropriations process for FY2009.[111] While the PAEA did not authorize any additional appropriations to the Postal Service Fund, it did alter the budget submission process for the USPS's Office of Inspector General (USPSOIG) and the Postal Rate Commission (PRC). In the past, the USPSOIG and the PRC submitted their budget requests to the USPS's Board of Governors. Accordingly, past presidential budgets did not include funding proposals for the USPSOIG and the PRC. Under the PAEA, both the USPSOIG and the PRC — which the PAEA renamed the Postal Regulatory Commission — must submit their budget requests to Congress and to the Office of Management and Budget (120 Stat. 3240-3241), and they are to be paid from the off-budget Postal Service Fund. The law further requires USPSOIG's budget submission to be treated as part of USPS's total budget, while the PRC's budget, like the budgets of other independent regulators, is treated separately.

For FY2009, the USPS requested a $117.7 million appropriation to the Postal Service Fund.[112] Of this amount, $88.7 million would be for revenue forgone, and $29 million would be for the annual RFRA reimbursement. This amount is $0.2 million less than USPS's FY2008 appropriation (P.L. 110-161, Title V).

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[106] U.S. Postal Service, *United States Postal Service Annual Report 2007* (Washington: USPS, 2007), p. 3.

[107] 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), available at [http://www.usps.com/cpim/ftp/pubs/pub347.pdf].

[108] 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*, by Kevin J. Coleman.

[109] 107 Stat. 1267, 39 U.S.C. 2401(c)-(d).

[110] See CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by Kevin R. Kosar.

[111] P.L. 109-435; 120 Stat. 3198. On PAEA's major provisions, see CRS Report RS22573, *The Postal Accountability and Enhancement Act*, by Kevin R. Kosar.

[112] USPS, "Fiscal Year 2009 Appropriation Request," Dec. 11, 2007, available at [http://www.usps.com/financials/_pdf/Appropriations2009_Final.pdf].

The USPSOIG requested a $241.3 million appropriation,[113] and the PRC requested a $14 million appropriation.[114]

The President's FY2009 budget proposes a $321.4 million total appropriation to USPS. It includes an $82.8 million appropriation to USPS for revenue forgone, no funds for the annual RFRA reimbursement,[115] and a $239.4 million transfer of funds from the Postal Service Fund to the USPSOIG. Separately, the President's budget proposes a $14.0 million "transfer of funds" from the USPS's Postal Fund to the PRC.[116]

The House Committee on Appropriations recommends a total appropriation of $351.2 million, which includes $111.8 for USPS — $82.8 million for revenue forgone, $29 million for the RFRA reimbursement — and $239.4 million for the USPSOIG. Separately, the committee recommends a $14.0 million transfer of funds from the Postal Service Fund to the PRC. The committee also approved an amendment offered by Representative Jack Kingston that would require the USPS to provide a "report on the cost effectiveness of and fuel consumption of a five-day delivery system and the efficiency and consumer demand of Saturday delivery services."

On July 10, 2008, the Senate Committee on Appropriations reported S. 3260 (S.Rept.110-417), which would provide funding in the same amounts as the House's proposal: $111.8 million for USPS, and $14.0 million and $239.4 million in transfers from the USPS's Postal Fund for the PRC and the USPSOIG. In its report, the committee declared that it

> believes that 6-day mail delivery is one of the most important services provided by the Federal Government to its citizens. Especially in rural and small town America, this critical postal service is the linchpin that serves to bind the Nation together.[117]

The committee also encouraged the USPS

> to expedite its efforts to assess service needs, reestablish postal facilities, improve mail delivery, and enhance product and service offerings to customers in New Orleans and other Louisiana communities affected by Hurricanes Katrina

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[113] U.S. Postal Service Office of Inspector General, *FY 2009 Budget* (Washington: 2008), p. 1.

[114] Postal Regulatory Commission, *Performance Budget Plan Fiscal Year 2009* (Washington: PRC, 2008), p. 3.

[115] The Administration also did not propose funds for the annual RFRA reimbursement in its FY2005, FY2006, FY2007, and FY2008 budgets. Congress, however, has provided $29 million for the annual RFRA reimbursement each fiscal year since FY1994.

[116] The USPS's budget request did not include this transfer of funds because the PRC is a regulatory agency that is independent of USPS.

[117] U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, 110th Cong., 2nd sess., S.Rept. 110-417 (Washington: GPO, 2008), p. 115.

> and Rita .... to seek additional savings resulting from lower [paper] waste disposal costs which accompany increased [paper] recycling .... [and] to routinely examine the cost, feasibility, and mission compatibility of other opportunities to fulfill its commitment to minimize the agency's impact on every aspect of the environment and demonstrate its commitment to environmental stewardship.[118]

Additionally, the committee directed the USPS

> not to proceed with the Sioux City, Iowa AMP until after the [Government Accountability Office (GAO)] has reported to Congress and the Committee has had an opportunity to review GAO's findings .... [and] to keep the Committee promptly and regularly informed on its [mail biohazard] treatment processes and to consult with the Committee on its future plans for securing mail irradiation services, including costs.[119]

Congress's decision to enact a continuing resolution presented, as the U.S. Government Accountability Office (GAO) put it, a "conundrum" for the USPOIG and the PRC.[120] As mentioned above, Section 603 of the PAEA requires the USPOIG and the PRC to receive their funding through congressional appropriation. Additionally, the law makes these agencies' expenditures "subject to the availability of the amounts appropriated." A continuing resolution would extend the past year's appropriation law (P.L. 110-161), which did not provide an appropriation for either the USPOIG or the PRC. (Again, under the pre-PAEA law, the USPS's Board of Governors funded the USPOIG and the PRC.) Thus, the enactment of a continuing resolution might have required the USPOIG and the PRC to shut down operations on October 1, 2008, the start of FY2009.

To avert this situation, Congress included two provisions in the continuing resolution (P.L. 110-329) that fund the USPOIG and the PRC for the duration of the continuing resolution:

> SEC. 140. Notwithstanding section 101, amounts are provided to carry out section 504(d) of title 39, United States Code, as amended by section 603(a) of the Postal Accountability and Enhancement Act (Public Law 109 — 435), at a rate for operations of $14,043,000, to be derived by transfer from the Postal Service Fund;" and
>
> SEC. 141. Notwithstanding section 101, amounts are provided to carry out section 8G(f)(6) of the Inspector General Act of 1978 (5 U.S.C. App.), as added by section 603(b)(3) of the Postal Accountability and Enhancement Act (Public Law 109 — 435), at a rate for operations of $233,440,000, to be derived by transfer from the Postal Service Fund.

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[118] Ibid., p. 116.

[119] Ibid., pp. 116-117.

[120] U.S. Government Accountability Office, "Decision: United States Postal Service Office of Inspector General — Implementation of Postal Accountability and Enhancement Act Section 603, Part 1," B-317022, Sept. 25, 2008, p. 5.

United States Tax Courts (USTC).[121] A court of record under Article I of the Constitution, the United States Tax Court is an independent judicial body that 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, and the House and Senate Appropriations Committees recommended, $48.5 million for USTC for FY2009, an increase of $3.2 million over the agency's FY2008 enacted appropriation.

General Provisions Government-Wide[122]

The Financial Services and General Government appropriations language includes general provisions which apply either government-wide or to specific agencies or programs. There also may 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 were included in the FY2009 Budget, Appendix.[123] Most of the provisions continue language that has appeared under the General Provisions title for several years. For various reasons, Congress has opted to reiterate the language rather than making the provisions permanent. Presented below are some of the government-wide general provisions that were included in P.L. 110-161, the Consolidated Appropriations Act for FY2008, but that were not included in the FY2009 budget proposal. (The section numbers refer to the provisions as they appeared in P.L. 110-161.) The recommendations of the House and Senate Committees on Appropriations with regard to the provisions are stated.

- Section 709, which would have prohibited payment to political appointees who are filling positions for which they have been nominated, but not confirmed.

- Section 717, which would have prohibited the payment of any employee who prohibits, threatens, prevents, or otherwise penalizes another employee from communicating with Congress. Section 714 of the draft House bill and the Senate bill as reported.

- Section 718, which would have prohibited 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

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[121] This section was written by Garrett Hatch, Analyst in American National Government, Government and Finance Division.

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

[123] *FY2009 Budget, Appendix*, pp. 9-16.

psychological stress in some participants; (3) does not require prior employee notification of the contents and methods to be used in the training and written end of course evaluation; (4) contains any methods or contents 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. Section 715 of the draft House bill and the Senate bill as reported.

- Section 719, which would have prohibited the use of appropriated funds to implement or enforce employee non-disclosure agreements if they do not contain whistleblower protection clauses. Section 716 of the draft House bill and the Senate bill as reported.

- Section 722, which would have required the approval of the Committees on Appropriations for the release of any "non-public" information, such as mailing or telephone lists, to any person or any organization outside the federal government. Section 719 of the draft House bill and the Senate bill as reported.

- Section 733, which stated 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. Section 729 of the draft House bill and the Senate bill as reported.

- Section 735, which would have prohibited 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. Section 731 of the draft House bill and the Senate bill as reported.

- Section 737, which would have required agencies to provide information on e-government initiatives, including lines of business, in their FY2009 budget justifications. Section 733 of the draft House bill and the Senate bill as reported.

- Section 738, which would have required 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. Section 734 of the Senate bill as reported.

- Section 739, which would have prohibited 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% 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. Section 734 of the draft House bill and Section 736 of the Senate bill as reported.

- Section 742, which would have precluded contravention of the Privacy Act. Section 739 of the draft House bill and section 740 of the Senate bill as reported.

- Section 744, which would have required OMB to submit a crosscut budget report on restoration activities for the Great Lakes. Section 741 of the draft House bill and Section 742 of the Senate bill as reported.

- Section 745, which would have prohibited funds to be used for federal contracts with expatriated entities. Section 742 of the draft House bill and Section 743 of the Senate bill as reported.

- Section 747, which would have prohibited the expenditure of funds on public-private competitions under OMB Circular A-76 or direct conversions related to the Human Resources Line of Business initiative until 60 days after OMB submits a report to the House and Senate Committees on Appropriations addressing issues of concern. Section 745 of the Senate bill as reported.

- Section 748, which would have required OMB to establish a pilot program to develop and implement an inventory to track the cost and size of service contracts, particularly those that have been performed poorly, in at least three cabinet-level departments. Section 746 of the Senate bill as reported.

The FY2009 budget proposed a new Section 734 to provide a 2.9% pay (annual and locality pay combined) adjustment for federal civilian employees. The draft House bill included the provision at Section 737(a), and the Senate bill, as reported, included the provision at Section 738(a) and would have provided a 3.9% pay adjustment.

Division A, Section 142(a) of P.L. 110-329 provides a 3.9% pay adjustment for federal civilian employees, including employees in the Department of Homeland Security. The pay increase will become effective on the first day of the first applicable pay period beginning after January 1, 2009. The pay adjustment for blue-collar workers in most locations is no less than the increase received by white-collar General Schedule (GS) employees in that location. Blue-collar workers in Alaska, Hawaii, and certain other non-foreign areas receive a pay adjustment that is no less than the increase received by GS employees in the Rest of the United States (RUS) pay area (Section 142(b)). The law provides that the pay raise will be paid from the appropriations for salaries and expenses made to each department and agency for FY2009 (Section 142(c)). These provisions apply notwithstanding any other provision of the joint resolution (Section 142(d)).

The President will allocate the pay raise between an annual (basic) adjustment and a locality pay adjustment. (Individuals who are paid under the schedules for

senior-level (SL) and scientific or professional (ST), and Senior Executive Service (SES) positions do not receive locality pay.) Because he did not submit an alternative plan to Congress on the annual adjustment, that portion of the pay increase must be 2.9%. Any alternative plan on the locality pay adjustment must be submitted to Congress by the President by November 30, 2008. The Federal Salary Council, in its October 14, 2008, report to the Pay Agent recommended "that funds allocated for locality pay raises be distributed so that locations with the largest pay gaps receive the largest increases and that employees in each locality pay area receive at least some portion of the locality pay funds, after payment of an across-the-board increase of at least 2.9%."[124] OPM advised CRS on October 3, 2008, that the allocation of the increase may not be publicly available until the President's executive order on pay, which has generally been issued at the end of December each year.

Among new general provisions that were recommended by the House or Senate Committees on Appropriations were these:

- Public or private institutions of higher education could have provided, to federal or District of Columbia employees who are current or former students, student loan repayments or forbearance of such a repayment. Section 744 of the draft House bill and Section 747 of the Senate bill as reported.

- OPM, or any other agency, would have been prohibited from using funds to implement regulations that would change competitive areas under reductions-in-force affecting federal employees. Section 745 of the draft House bill and Section 749 of the Senate bill as reported.

- Funds would have been prohibited from being used to implement the provisions on Regulatory Policy Officers in Executive Order 13422.[125] Section 746 of the draft House bill.

- The federal government would have been expected to conduct its business "in an environmentally, economically, fiscally sound and scientifically defensible manner" in carrying out Executive Order 13423.[126] Section 747 of the draft House bill.

- Federal employees would have maintained their federal salary when called up to active duty in the National Guard and Reserve, with their agencies making up the difference between their military pay and their federal salary. Section 750 of the Senate bill as reported.

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[124] U.S. Federal Salary Council, Memorandum for the President's Pay Agent, *Level of Comparability Payments for January 2010 and Other Matters Pertaining to the Locality Pay Program*, October 14, 2008, pp. 10-11.

[125] For an analysis of the Executive Order, see CRS Report RL33862, *Changes to the OMB Regulatory Review Process by Executive Order 13422*, by Curtis W. Copeland. See also, CRS Report RL34354, *Congressional Influence on Rulemaking and Regulation Through Appropriations Restrictions*, by Curtis W. Copeland.

[126] Draft House report, p. 108.

- Each executive branch department and agency would have been required to submit a report to the OMB Director that would state the total size of its workforce, including the number of civilian, military, and contract workers as of December 31, 2008. The report would have to be submitted within 120 days after the act's enactment. The OMB Director would have been required to submit a "comprehensive statement" to the Senate Committee on Appropriations on the workforce data of the departments and agencies and aggregate totals of civilian, military, and contract workers, within 180 days after the act's enactment. Section 753 of the Senate bill as reported.

Competitive Sourcing[127]

Section 736 of S. 3260, which had language identical to that found in Section 734 of the FY2009 House bill, would have expanded the applicability of Section 739(a)(1) (Division D) of P.L. 110-161, the Consolidated Appropriations Act of 2008, to all public-private competitions. Section 739(a)(1) of the act, which would have established certain requirements for public-private competitions, applied only to competitions that involve more than 10 federal government employees. A summary of Section 739 may be found in CRS Report RL32833, *Competitive Sourcing Statutes and Statutory Provisions*.

With one exception, which is noted below, Section 735 of S. 3260 and Section 735 of the House bill included the same language. Section 735, by replacing the language found in Section 739(b) (Division D) of P.L. 110-161, would have elaborated on the guidelines for insourcing new functions and agency functions performed by the private sector sources. In this context, the term "insourcing" referred to considering using federal employees "to perform new functions and functions that are performed by contractors and could be performed by Federal employees."[128] Public-private competitions that involve work performed by contractors are rare. Most public-private competitions involve work performed by agency employees. Opponents of the proposed revision may maintain that the feasability, and hence the implications, of Section 735 are unclear. The requirement to consider using federal employees for new functions and for functions currently

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[127] This section was written by L. Elaine Halchin, Analyst in American National Government, Government and Finance Division.

[128] The term "new functions" is not defined in the House bill. However, Circular A-76 includes a definition for "new requirement," and the term "new functions" might be a synonym for "new requirement." A new requirement is "[a]n agency's newly established need for a commercial product or service that is not performed by (1) the agency with government personnel; (2) a fee-for-service agreement with a public reimbursable source; or (3) a contract with the private sector. An activity that is performed by the agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, is not considered a new requirement. New ways of performing existing work are not new requirements." (U.S. Office of Management and Budget, *Circular No. A-76 (Revised)*, May 29, 2003, available at [http://www.whitehouse.gov/omb/circulars/a076/a76_rev2003.pdf], p. D-7.)

being performed by contractors might be affected by, for example, the availability of resources. That is, an agency might not have sufficient personnel to staff the new function, and it might not be able to obtain additional personnel. Potential critics may argue that if a function under consideration for insourcing is currently being performed by contractor personnel and an A-76 competition is required, an agency might not have sufficient resources to perform the tasks associated with a public-private competition. Section 735 was similar to Section 324 of P.L. 110-181, and a summary of Section 324 may be found in CRS Report RL32833, *Competitive Sourcing Statutes and Statutory Provisions*.

In Section 735 of S. 3260, the deadline for the Government Accountability Office to submit a report to congressional committees regarding the implementation of insourcing guidelines was 210 days after the date of enactment. In the House bill, the deadline was 120 days after the date of enactment.

If enacted, Section 737 of S. 3260, which had language identical to that found in Section 736 of the House bill, would have prohibited using funds appropriated by this or any other act for the announcement or commencement of a public-private competition or study that involves activities currently being performed by federal employees. In its report on this bill, the House Committee on Appropriations explained that the "one-year moratorium on new A-76 studies" would have provided "the new [presidential] Administration ... an opportunity to review and develop Federal workforce policies." In the absence of additional information, the meaning of "Federal workforce policies" is unclear in this context. Nevertheless, a moratorium could provide, for example, an opportunity for reviewing the definition of "inherently governmental"; gathering data on the disposition of federal employees whose work was outsourced as a result of public-private competitions; or conducting an independent study of the savings and costs associated with public-private competitions. Opponents of this provision may assert that the moratorium might adversely affect the amount of savings that results from completed competitions.

Cuba Sanctions[129]

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 has ever been enacted. The Bush Administration has regularly threatened to veto legislation if it included any 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 language that would have eased Cuba sanctions, but ultimately Congress dropped these provisions in the Consolidated Appropriations Act for FY2008 (P.L. 110-161).

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[129] 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*, and CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by Mark P. Sullivan.

In 2008, the draft House Appropriations Committee version of the Financial Services and General Government Appropriations bill for FY2009 contains three provisions in Title VI that would ease restrictions on the sale of U.S. agricultural exports and on family travel. Section 621 would prohibit funds in the act from being used to administer, implement, or enforce new language in the Cuban embargo regulations added on February 25, 2005 (31 CFR Part 515.533) that requires that U.S. agricultural exports must be paid for before they leave U.S. ports. With regard to family travel, Section 622 would allow for such travel once a year (instead of the current restriction of once every three years), while Section 623 would expand such travel by a person to visit an aunt, uncle, niece, nephew, or first cousin (instead of the current restriction limiting such travel to visit a spouse, child, grandchild, parent, grandparent, or sibling). The committee's draft report to the bill requires the Treasury Department's Office of Foreign Assets Control (OFAC) to provide detailed information on OFAC's Cuba-related licensing and enforcement actions.

The Senate version of the FY2009 Financial Services and General Government Appropriations bill, S. 3260, as reported by the Senate Appropriations Committee on July 14, 2008 (S.Rept. 110-417), includes three provisions easing Cuba sanctions. Section 618 (identical to Section 621 in the House version of the bill) would prohibit funds in the act from being used to restrict payment terms for the sale of agricultural goods to Cuba. Section 619 would ease restrictions on travel relating to the commercial sale of agricultural and medical goods to Cuba by allowing for such travel under a *general* license (as opposed to the current practice that requires a *specific* license). Section 620 would prohibit funds from being used to administer, implement, or enforce family travel restrictions that were imposed by the Bush Administration in June 2004.

Ultimately none of these Cuba provisions in S. 3260 or the House draft bill were included in the Consolidated Appropriations Act for FY2009 (P.L. 110-329).

Background on U.S. Sanctions. 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 OFAC.

Restrictions on travel have been a key and often contentious component of U.S. efforts to isolate the Cuban government by denying it access to U.S. currency. The regulations do not ban travel itself, but place restrictions on any financial transactions related to travel to Cuba. Over the years, there have been numerous changes to the CACR regarding family travel. In March 2003, the regulations were eased to allow such travel to visit relatives within three degrees of relationship to the traveler (e.g., great-grandparents and second cousins). In June 2004, however, the restrictions were tightened to allow family travel only to visit immediate family once every three years for a period not to exceed 14 days. Permission from OFAC is required through a *specific* license, which OFAC reviews and grants on a case-by-case basis. Previously, OFAC allowed family travel under a *general* license, which meant that there was no need to obtain special permission from OFAC.

Under U.S. sanctions, some U.S. commercial agricultural exports to Cuba have been allowed since 2001 pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000, or TSRA (Title IX of P.L. 106-387). However, there are numerous restrictions and licensing requirements for these exports. For instance, exporters are denied access to U.S. private commercial financing or credit, and all transactions must be paid for in cash in advance or with financing from third countries. As noted above, the Administration tightened sanctions on Cuba in February 2005 by further restricting how U.S. agricultural exporters may be paid for their product. 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 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 to this "clarification" 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."[130]

Since 2001, Cuba has purchased more than $2.4 billion in agricultural products from the United States. Overall U.S. exports to Cuba rose from about $7 million in 2001 to $404 million in 2004. U.S. exports to Cuba declined in 2005 and 2006 to $369 million and $340 million, respectively, but increased to $447 million in 2007. In the first seven months of 2008, U.S. agricultural exports to Cuba rose to $476 million, already surpassing the amount exported in 2007, in part because of the rise in food prices.[131] Moreover, U.S. food exports to Cuba are expected to rise considerably in the remainder of 2008 because of increased Cuban needs in the aftermath of several hurricanes and tropical storms that severely damaged Cuba's agricultural sector.

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

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