



# Homeland Security Department: FY2009 Appropriations

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## Summary

This report describes the FY2009 appropriations for the Department of Homeland Security (DHS). The Administration requested a net appropriation of \$38,849 million in budget authority for FY2009. The House Appropriations Committee reported its version of the FY2009 DHS Appropriations bill on June 24, 2008. The bill was filed on September 18, 2008, as H.R. 6947, and the accompanying report has been numbered H.Rept. 110-862. House-reported H.R. 6947 would have provided a net appropriation of \$41,137 million in budget authority for DHS for FY2009. This amounted to an increase of \$2,288 million, or nearly 6% increase over the President's request. The Senate-reported its version of the bill on June 19, 2008. S. 3181 would have provided \$41,314 million in net budget authority for DHS for FY2009, a \$2,465 million or 6% increase over the President's request.

On September 23, 2008, the House Rules Committee reported H.Res. 1488 for consideration of the Senate amendment to H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. H.R. 2638 was originally introduced as the FY2008 DHS Appropriations Act but was amended to serve as the legislative vehicle for the proposed Continuing Resolution, a Disaster Relief Emergency Supplemental, the Department of Defense FY2009 Appropriations Act, the FY2009 Department of Homeland Security Appropriations Act, and the FY2009 Military Construction and Veterans Assistance Act (see the CRS Appropriations Status table for more information: <http://www.crs.gov/products/appropriations/appover.shtml>). H.R. 2638 was enacted as P.L. 110-329 on September 30, 2008.

Division D of P.L. 110-329 provided a net appropriation of \$41,225 million for DHS for FY2009. This amounted to nearly \$2,376 million more than the President's request for FY2009, \$88 million more than was reported by the House in H.R. 6947, and \$89 million *less* than was reported by the Senate in S. 3181. Net appropriations for major agencies within DHS were as follows: Customs and Border Protection, \$9,821 million; Immigration and Customs Enforcement, 4,989 million; Transportation Security Administration, \$4,367 million; Coast Guard, \$9,361 million; Secret Service, \$1,413 million; National Protection & Programs Directorate, \$1,158 million; Federal Emergency Management Administration (FEMA), \$6,963 million; Science and Technology, \$933 million; and the Domestic Nuclear Detection Office, \$514 million. Additionally, Division B of the Act also contained the following amounts for DHS agencies in emergency supplemental FY2008 funding: \$300 for the Coast Guard, \$7.96 billion for FEMA's Disaster Relief Account, and \$100 million for FEMA to reimburse the American Red Cross.

This report will not be updated.

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## Most Recent Developments

### P.L. 110-329

On September 23, 2008, the House Rules Committee reported H.Res. 1488 for consideration of the Senate amendment to H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. H.R. 2638 was originally introduced as the FY2008 DHS Appropriations Act, but has been amended to serve as the legislative vehicle for the proposed Continuing Resolution, a Disaster Relief Emergency Supplemental, the Department of Defense FY2009 Appropriations Act, the FY2009 Department of Homeland Security Appropriations Act, and the FY2009 Military Construction and Veterans Assistance Act.<sup>1</sup> On September 24, 2008, the House passed H.R. 2638. On September 27, 2008 the Senate passed H.R. 2638. H.R. 2638 was enacted as P.L. 110-329 on September 30, 2008.

Division D of P.L. 110-329 provided a net appropriation of \$41,225 million for DHS for FY2009. This amounts to nearly \$2,376 million more than the President's request for FY2009, \$88 million more than was reported by the House in H.R. 6947, and \$89 million *less* than was reported by the Senate in S. 3181. Net appropriations for major agencies within DHS were as follows: Customs and Border Protection, \$9,821 million; Immigration and Customs Enforcement, 4,989 million; Transportation Security Administration, \$4,367 million; Coast Guard, \$9,361 million; Secret Service, \$1,413 million; National Protection & Programs Directorate, \$1,158 million; Federal Emergency Management Administration (FEMA), \$6,963 million; Science and Technology, \$933 million; and the Domestic Nuclear Detection Office, \$514 million. Additionally, Division B of the Act also contained the following amounts for DHS agencies in emergency supplemental FY2008 funding: \$300 for the Coast Guard, \$7.96 billion for FEMA's Disaster Relief Account, and \$100 million for FEMA to reimburse the American Red Cross.

### House-reported H.R. 6947

The House Appropriations Committee reported its version of the FY2009 DHS Appropriations bill on June 24, 2008. The bill was filed on September 18, 2008, as H.R. 6947, and the accompanying report has been numbered H.Rept. 110-862. House-reported H.R. 6947 would provide a net appropriation of \$41,137 million in budget authority for DHS for FY2009. This would have amounted to an increase of \$2,288 million or nearly 6% increase over the President's request. H.R. 6947 contained net appropriations for major components of the department as follows: \$9,694 million for CBP; \$4,813 million for ICE; \$4,354 million for the TSA; \$9,206 million for the U.S. Coast Guard; \$1,371 million for the Secret Service; \$1,287 for the NPP; \$7,407 million for the FEMA; \$102 million for USCIS; \$887 million for the S&T; and \$544 million for the DNDO.

### Senate-reported S. 3181

The Senate-reported its version of the bill on June 19, 2008. S. 3181 would have provided \$41,314 million in net budget authority for DHS for FY2009, a \$2,465 million or 6% increase

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<sup>1</sup> See the CRS Appropriations Status table for more information <http://www.crs.gov/products/appropriations/appover.shtml>.

over the President’s request. S. 3181 contained net appropriations for major components of the department included as follows: \$9,740 million for CBP; \$4,989 million for ICE; \$4,277 million for the TSA; \$9,216 million for the U.S. Coast Guard; \$1,418 million for the Secret Service; \$1,041 for the NPP; \$7,407 million for the FEMA; \$151 million for USCIS; \$919 million for the S&T; and \$541 million for the DNDO.

### President’s FY2009 Budget Submitted

The President’s budget request for the Department of Homeland Security (DHS) for FY2009 was submitted to Congress on February 4, 2008. The Administration requested \$50,502 million in gross budget authority for FY2009 (including mandatories, fees, and funds). The Administration’s request included gross appropriations of \$46,786 million, and a net appropriation of \$38,849 million in budget authority for FY2009, of which \$37,664 million was discretionary budget authority, and \$1,185 million was mandatory budget authority. The FY2008 enacted net appropriated budget authority for DHS was \$38,747 million (\$49,907 million including supplemental appropriations).

**Table I. Legislative Status of Homeland Security Appropriations**

Subcommittee Markup		House Report 110-862	House Passage	Senate Report 110-396	Senate Passage	Confr. Report	Public Law
House	Senate						
6/11 (vv)	6/18 (vv)	6/24 (vv) <sup>a</sup>	9/24 (370 -58) <sup>b</sup>	6/19 (vv)	9/27 (78-12) <sup>b</sup>	9/24 <sup>c</sup>	110-329

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

- a. The full House Appropriations Committee reported the FY2009 DHS Appropriations bill on June 6, 2008, but the bill was not filed until September 18, 2008.
- b. On September 23, 2008, the House Rules Committee reported H.Res. 1488 for consideration of the Senate amendment to H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. H.R. 2638 was originally introduced as the FY2008 DHS Appropriations Act, but was amended to serve as the legislative vehicle for the proposed Continuing Resolution, a Disaster Relief Emergency Supplemental, the Department of Defense FY2009 Appropriations Act, the FY2009 Department of Homeland Security Appropriations Act, and the FY2009 Military Construction and Veterans Assistance Act.
- c. The conference report for the FY2009 DHS Appropriations Act was submitted as a joint explanatory statement in the Congressional Record.

### Note on Most Recent Data

Data used in this report include data from the President’s Budget Documents, the FY2009 *DHS Congressional Budget Justifications*, the FY2009 *DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, House-reported H.R. 6947 and the accompanying report (H.Rept. 110-862), and the DHS Joint Explanatory Statement as submitted in the Congressional Record on September 24, 2008, and in the House- and Senate- enrolled version of H.R. 2638. Data used in **Table 21** are taken from the *Analytical Perspectives* volume of the FY2009 President’s Budget. These amounts do not correspond to amounts presented in **Tables 4-20**, which were derived from the *FY2009 DHS Congressional Budget Justifications*. Except when discussing total amounts for the bill as a whole, all amounts contained in this report are rounded to the nearest million.

## **Background**

This report describes the President's FY2009 request for funding for DHS programs and activities, as submitted to Congress on February 4, 2008. It compares the enacted FY2008 amounts to the request for FY2009, and tracks legislative action and congressional issues related to the FY2009 DHS appropriations bills with particular attention paid to discretionary funding amounts. The report does not follow specific funding issues related to mandatory funding—such as retirement pay—nor does the report systematically follow any legislation related to the authorization or amendment of DHS programs.

## **Department of Homeland Security**

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

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

Title II contains appropriations for Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the Coast Guard (USCG), and the Secret Service. The U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program was appropriated within Title II through the FY2007 appropriation. The FY2008 appropriation transferred US-VISIT, as proposed by the Administration, to the newly created National Protection & Programs Directorate (NPPD) in Title III. Division E of P.L. 110-161, the DHS Appropriations Act, 2008, enacted this reorganization, which is reflected by the FY2009 request.

Through the FY2007 appropriation, Title III contained appropriations for the Preparedness Directorate, Infrastructure Protection and Information Security (IPIS) and the Federal Emergency Management Administration (FEMA). The President's FY2008 request included a proposal to shift a number of programs and offices to eliminate the Preparedness Directorate, create the NPPD, and move several programs to FEMA. These changes were largely agreed to by Congress in the FY2008 appropriation, reflected by Title III in Division E of P.L. 110-161. The FY2009 request also reflects this reorganization.

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

## 302(a) and 302(b) Allocations

The maximum budget authority for annual appropriations (including DHS) is determined through a two-stage congressional budget process. In the first stage, Congress sets overall spending totals in the annual concurrent resolution on the budget. Subsequently, these amounts are allocated among the appropriations committees, usually through the statement of managers for the conference report on the budget resolution. These amounts are known as the 302(a) allocations. They include discretionary totals available to the House and Senate Committees on Appropriations for enactment in annual appropriations bills through the subcommittees responsible for the development of the bills. In the second stage of the process, the appropriations committees allocate the 302(a) discretionary funds among their subcommittees for each of the appropriations bills. These amounts are known as the 302(b) allocations. These allocations must add up to no more than the 302(a) discretionary allocation and form the basis for enforcing budget discipline, since any bill reported with a total above the ceiling is subject to a point of order. 302(b) allocations may be adjusted during the year as the various appropriations bills progress towards final enactment.

The annual concurrent resolution on the budget sets forth the congressional budget. There is as yet no budget resolution for FY2009. **Table 2** shows DHS' 302(b) allocations for FY2008 and the current appropriations cycle.

**Table 2. FY2009 302(b) Discretionary Allocations for DHS**

(budget authority in billions of dollars)

FY2008 Comparable	FY2009 Request Comparable <sup>a</sup>	FY2009 House Allocation <sup>a</sup>	FY2009 Senate Allocation <sup>a</sup>	FY2009 Enacted Comparable
\$37.6	\$37.6	\$42.1	\$42.3	41.2

**Source:** CRS analysis of the *FY2009 DHS Congressional Budget Justifications*, H.Rept. 110-746, *Report on the Suballocation of Budget Allocations for Fiscal Year 2009*, House Committee on Appropriations, July 8, 2008, and S.Rept. 110-402, *Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution, Fiscal Year 2009*, Senate Committee on Appropriations, June 25, 2008.

- a. Does not include \$2.2 billion in advance Bioshield funding appropriated in FY2004 that becomes available for obligation in FY2009.

## Budget Authority, Obligations, and Outlays

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

Budget authority is established through appropriations acts or direct spending legislation and determines the amounts that are available for federal agencies to spend. The Antideficiency Act<sup>2</sup> prohibits federal agencies from obligating more funds than the budget authority that was enacted by Congress. Budget authority may be indefinite, however, when Congress enacts language providing “such sums as may be necessary” to complete a project or purpose. Budget authority

<sup>2</sup> U.S.C. §§1341, 1342, 1344, 1511-1517.

may be available on a one-year, multi-year, or no-year basis. One-year budget authority is only available for obligation during a specific fiscal year; any unobligated funds at the end of that year are no longer available for spending. Multi-year budget authority specifies a range of time during which funds can be obligated for spending; no-year budget authority is available for obligation for an indefinite period of time.

Obligations are incurred when federal agencies employ personnel, enter into contracts, receive services, and engage in similar transactions in a given fiscal year. Outlays are the funds that are actually spent during the fiscal year.<sup>3</sup> Because multi-year and no-year budget authorities may be obligated over a number of years, outlays do not always match the budget authority enacted in a given year. Additionally, budget authority may be obligated in one fiscal year but spent in a future fiscal year, especially with certain contracts.

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

## **Discretionary and Mandatory Spending**

Gross budget authority, or the total funds available for spending by a federal agency, may be composed of discretionary and mandatory spending. Of the \$46.4 billion gross budget authority requested for DHS in FY2009, 82% is composed of discretionary spending and 18% is composed of mandatory spending.

Discretionary spending is not mandated by existing law and is thus appropriated yearly by Congress through appropriations acts. The Budget Enforcement Act of 1990<sup>4</sup> defines discretionary appropriations as budget authority provided in annual appropriation acts and the outlays derived from that authority, but it excludes appropriations for entitlements. Mandatory spending, also known as direct spending, consists of budget authority and resulting outlays provided in laws other than appropriation acts and is typically not appropriated each year. However, some mandatory entitlement programs must be appropriated each year and are included in the appropriations acts. Within DHS, the Coast Guard retirement pay is an example of appropriated mandatory spending.

## **Offsetting Collections<sup>5</sup>**

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

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<sup>3</sup> Appropriations, outlays, and account balances for government treasury accounts can be viewed in the end of year reports published by the U.S. Treasury titled *Combined Statement of Receipts, Outlays, and Balances of the United States Government*. The DHS portion of the report can be accessed at <http://fins.treas.gov/annualreport/cs2005/c18.pdf>.

<sup>4</sup> P.L. 101-508, Title XIII.

<sup>5</sup> Prepared with assistance from Bill Heniff Jr., Analyst in American National Government.

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

**Table 3** tabulates all of the offsets within the DHS budget as enacted for FY2008 and in the FY2009 request.

**Table 3. FY2009 Request: Moving From Gross Budget Authority to Net Appropriation—Fee Accounts, Offsetting Fees, and Trust and Public Enterprise Accounts**

(budget authority in millions)

Account/Agency	Account Name	FY2008 Enacted	FY2009 Request
<b>DHS gross budget authority (BA)<sup>a</sup></b>		<b>52,915</b>	<b>50,502</b>
(gross discretionary + fees+ mandatory + funds)			
<b>Discretionary fee funded offsets</b>			
ICE	Federal Protective Service	613	616
	Aviation security fees	2,113	2,329
TSA	TWIC	64	9
	Hazmat	18	18
	Registered Traveler	4	10
FEMA/EPR	National Flood Insurance Fund	111	157
CBP	Small airports	7	7
<b>Subtotal discretionary fee funded offsets</b>		<b>2,930</b>	<b>3,146</b>
<b>Mandatory fee funded offsets</b>			
	Immigration inspection	562	570
	Immigration enforcement	3	3
CBP	Land border	27	27
	COBRA	392	411
	APHIS	321	333
	Puerto Rico	98	97
ICE	Immigration inspection	114	118
	SEVIS	56	75
	Breached bond detention fund	64	120

Account/Agency	Account Name	FY2008 Enacted	FY2009 Request
TSA	Aviation security capital fund	250	676
	Checkpoint screening security fund	250	—
	Alien flight school background checks	3	3
USCIS	Immigration examination fee	2,495	2,495
	H1b, and H1b & L fees	44	44
<b>Subtotal mandatory fee funded offsets</b>		<b>4,679</b>	<b>4,972</b>
<b>Mandatory budget authority</b>			
Secret service	Secret service retired pay <sup>b</sup>	210	225
Coast guard	Coast guard retired pay <sup>c</sup>	(1,185)	(1,237)
<b>Subtotal mandatory budget authority</b>		<b>210</b>	<b>225</b>
<b>Trust funds and public enterprise funds</b>			
CBP	Customs unclaimed goods	6	6
FEMA	National Flood Insurance Fund <sup>d</sup>	2,833	3,037
Coast Guard	Boat safety	133	125
	Oil spill recovery	147	149
<b>Subtotal trust and public enterprise funds</b>		<b>3,119</b>	<b>3,317</b>
<b>DHS gross budget authority<sup>a</sup></b>		<b>52,915</b>	<b>50,502</b>
<b>Total offsets</b>		<b>-10,938</b>	<b>-11,660</b>
<b>Rescissions</b>		<b>-262</b>	<b>—</b>
<b>Emergency Supplemental (P.L. 110-116)</b>		<b>-2,900</b>	<b>—</b>
<b>DHS net appropriated BA (Mandatory + Discretionary)</b>		<b>38,817</b>	<b>38,843</b>

**Source:** CRS analysis of the FY2009 President's Budget, and the DHS *FY2009 Budget in Brief*.

**Notes:** Totals may not add due to rounding.

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

# Appropriations for the Department of Homeland Security

## DHS Appropriations Trends

**Table 4** presents DHS Appropriations, as enacted, for FY2003 through the FY2009 request. The appropriation amounts are presented in current dollars and are not adjusted. The amounts shown in **Table 4** represent enacted amounts at the time of the start of the next fiscal year's appropriation cycle (with the exception of FY2009). Thus, the amount shown for FY2003 is the enacted amount shown in the House Committee report attached to the FY2004 DHS Appropriations bill. FY2008 is from the Joint Explanatory Statement for Division E of P.L. 110-161, and FY2009 is from the FY2009 DHS Budget Justifications.

**Table 4. DHS Appropriations, FY2003-FY2009**

(budget authority in millions of dollars)

FY2003	FY2004	FY2005	FY2006	FY2007	FY2008 Enacted	FY2009
29,069 <sup>a</sup>	30,175 <sup>b</sup>	30,554 <sup>c</sup>	31,679	35,311 <sup>d</sup>	38,817 <sup>e</sup>	41,225

**Sources:** FY2003 enacted taken from H.Rept. 108-169; FY2004 enacted taken from H.Rept. 108-541; FY2005 enacted taken from H.Rept. 109-79; FY2006 enacted taken from H.Rept. 109-476; FY2007 appropriation amounts are from the H.Rept. 110-181; and FY2008 enacted amounts are from Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request). FY2009 enacted taken from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate-enrolled version of H.R. 2638

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

- S.Rept. 108-86 reported the FY2003 enacted amount as \$29,287 million. CRS was unable to identify the reason for this discrepancy. For the purposes of this table the House number was used to maintain consistency with other fiscal years.
- Amount does not include \$4,703 million in advance appropriations for Project Bioshield.
- Amount does not include \$2,508 million in advance appropriations for Project Bioshield
- Amount includes \$1,829 million in emergency budget authority that was enacted as a part of the FY2007 DHS Appropriations Act (P.L. 109-295).
- FY2008 Enacted includes emergency funding for DHS enacted by Division E of P.L. 110-161.

## Summary of DHS Appropriations

**Table 5** is a summary table comparing the enacted appropriations for FY2008 and the requested, recommended by the House and Senate, and enacted appropriations for FY2009.

**Table 5. DHS: Summary of Appropriations**

(budget authority in millions of dollars)

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
<b>Title I: Departmental Operations</b>								
<b>Subtotal: Title I</b>	<b>983</b>			<b>983</b>	<b>1,185</b>	<b>1,049</b>	<b>1,197</b>	<b>1,086</b>
<b>Title II: Security, Enforcement, and Investigations</b>								
Customs and Border Protection	9,423			9,423	9,487	9,694	9,741	9,821
Immigration and Customs Enforcement	4,735			4,735	4,748	4,813	4,989	4,989
Transportation Security Administration	4,021			4,021	4,065	4,354	4,277	4,367
U.S. Coast Guard	8,632	300 <sup>c</sup>		8,932	9,071	9,206	9,216	9,361
U.S. Secret Service	1,385			1,385	1,414	1,371	1,418	1,413
<b>Net subtotal: Title II</b>	<b>28,195</b>	<b>300</b>		<b>28,495</b>	<b>28,786</b>	<b>29,438</b>	<b>29,641</b>	<b>29,951</b>
Total fee collections	5,025			5,025	5,399	4,973	4,997	4,997
<b>Gross subtotal: Title II</b>	<b>33,220</b>	<b>300</b>		<b>33,520</b>	<b>34,185</b>	<b>34,411</b>	<b>34,638</b>	<b>34,948</b>
<b>Title III: Preparedness and Recovery</b>								
National Protection & Programs Directorate	1,177			1,177	1,286	1,287	1,041	1,158
Office of Health Affairs	117			117	161	134	171	157
Counter Terrorism Fund	—			—	—	—	—	—
Federal Emergency Management Administration	6,806	10,960 <sup>c</sup>		17,766	5,573	7,407	7,328	6,963
<b>Net subtotal: Title III</b>	<b>8,100</b>	<b>10,960<sup>c</sup></b>		<b>19,060</b>	<b>7,020</b>	<b>8,829</b>	<b>8,540</b>	<b>8,278</b>
<b>Title IV: Research and Development, Training, Assessments, and Services</b>								
Citizenship and Immigration Services	81			81	151	102	151	102
Federal Law Enforcement Training	289			289	274	286	324	333

Operational Component	FY2008 Appropriation			FY2009 Appropriation			P.L. 110-329 <sup>b</sup>	
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported		FY2009 Senate-Reported
Center								
Science and Technology	830			830	869	887	919	933
Domestic Nuclear Detection Office	485			485	564	544	541	514
<b>Net subtotal: Title IV</b>	<b>1,685</b>			<b>1,685</b>	<b>1,857</b>	<b>1,819</b>	<b>1,935</b>	<b>1,882</b>
Total fee collections	2,539			2,539	2,539	2,539	2,539	2,539
<b>Gross subtotal: Title IV</b>	<b>4,224</b>			<b>4,224</b>	<b>4,396</b>	<b>4,358</b>	<b>4,474</b>	<b>4,421</b>
<b>Title V: General Provisions</b>								
Rescissions	-216			-216	—	—	—	28 <sup>d</sup>
<b>Department of Homeland Security Appropriation</b>								
<b>Gross DHS budget authority</b>	<b>46,311</b>	<b>11,260<sup>c</sup></b>		<b>57,571</b>	<b>46,786</b>	<b>48,649</b>	<b>48,849</b>	<b>48,761</b>
Total fee collections	-7,564	—		-7,564	-7,938	-7,512	-7,536	-7,536
<b>Net DHS budget authority</b>	<b>38,747</b>	<b>11,260<sup>c</sup></b>		<b>50,007</b>	<b>38,849</b>	<b>41,137</b>	<b>41,314</b>	<b>41,225</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638

**Note:** Tables may not add due to rounding.

- Column “FY2008 Enacted” includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- FY2008 emergency supplemental funding was provided by two Acts: P.L. 110-116, §158, *The Department of Defense Appropriations Act, 2008* provided \$2,900 million in FY2008 emergency supplemental funding for FEMA Disaster Relief; and Division B of P.L. 110-329 also provided \$300 million for Coast Guard Acquisition, Construction, and Improvements, \$7,960 million for FEMA Disaster Relief, and \$100 million for FEMA to reimburse the Red Cross.
- Represents the net of several amounts contained in the Title V General Provisions of House-passed H.R. 2638, including the following: Sec. 547, which would provide an additional \$50 million for REAL ID grants and an additional \$50 million for REAL ID Information Sharing and Verification; Sec. 549, which would rescind \$31 million in undistributed TSA carryover balances; Sec.550, which would rescind \$21 million in A&O unobligated balances; and Sec. 551, which would rescind \$20 million in Coast Guard unobligated balances.

## Title I: Departmental Management and Operations<sup>6</sup>

Title I covers the general administrative expenses of DHS. It includes the Office of the Secretary and Executive Management (OS&EM), which is comprised of the immediate Office of the Secretary and 12 entities that report directly to the Secretary; the Undersecretary for Management (USM) and its components, such as the offices of the Chief Administrative Services Officer, Chief Human Capital Officer, and Chief Procurement Officer; the Office of the Chief Financial Officer (OCFO); the Office of the Chief Information Officer (OCIO); Analysis and Operations Office (AOO); Office of the Federal Coordinator for Gulf Coast Rebuilding (OFCGCR); and Office of the Inspector General (OIG). **Table 6** shows Title I appropriations for FY2008 and congressional action on the request for FY2009.

### President's FY2009 Request

FY2009 requests relative to comparable FY2008 enacted appropriations were as follow: OS&EM, \$127 million, an increase of \$30 million (+31%); USM, \$321 million, an increase of \$176 million (+121%); OCFO, \$56 million, an increase of \$25 million (+81%); OCIO, \$247 million, a decrease of \$48 million (-16%); AOO, \$334 million, an increase of \$28 million (+9%); OFCGCR, \$.25 million, a decrease of approximately \$3 million (-90%); and OIG, \$101 million, a decrease of \$8 million (-7%). The total FY2009 request for Title I was \$1,187 million. This represents an increase of \$201 million (+20%) over the FY2008 enacted level.

Of the amounts requested, the largest increase would occur in the USM, which is seeking \$120 million for the planned consolidation of DHS executive program leadership on the West Campus of the Saint Elizabeth's Hospital grounds in accordance with the DHS National Capital Region Housing Master Plan signed by the Secretary on October 25, 2006. The consolidation includes up to 4.5 million gross square feet of office space at the Saint Elizabeth's site. Other areas of increased USM funding include department-wide program management teams (\$4 million), the department-wide acquisition intern program (\$3 million), and increased counterintelligence and security needs (\$1 million). A small increase in USM funding is being sought to provide added support for the Deputy Under Secretary for Management for the transition process.

Formed in 2002, DHS has not previously been through a presidential transition. Many of its principal components, however, have done so, some several times over. For example, the United States Secret Service began as a Treasury Department bureau in 1865; the Bureau of Immigration, which grew into the Bureau of Immigration and Naturalization and the Immigration and Naturalization Service, was established in the Treasury Department in 1891;<sup>7</sup> the United States Coast Guard was statutorily chartered in 1915;<sup>8</sup> the Bureau of Customs was created in the Treasury Department in 1927;<sup>9</sup> and the Federal Emergency Management Agency was mandated by E.O. 12127 of March 31, 1979.<sup>10</sup> At DHS, the Under Secretary for Management has responsibility for, "before December 1 of any year in which a Presidential election is held, the

<sup>6</sup> Prepared by Harold C. Relyea, Specialist in American National Government, Government and Finance Division.

<sup>7</sup> Stat. 1085.

<sup>8</sup> Stat. 800.

<sup>9</sup> Stat. 1381.

<sup>10</sup> 3 C.F.R., 1979 Comp., pp. 376-377.

development of a transition and succession plan, to be made available to the incoming Secretary and Under Secretary for Management, to guide the transition of management functions to a new Administration.”<sup>11</sup>

On January 10, 2008, in response to a request of the Secretary of Homeland Security, the Homeland Security Advisory Council issued a report by its Administration Transition Task Force. The panel’s recommendations regarding transition preparation addressed seven broad areas: threat awareness, leadership, congressional oversight/action, policy, operations, succession, and training.<sup>12</sup> Details about the implementation of the panel’s recommendations are not available for security reasons, according to DHS.

### **House-reported H.R. 6947**

House-reported H.R. 6947 recommended \$1,049 million for DHS management and operations entities funded in Title I, \$136 less (-12%) than the amount requested. The allocations for entities within the title, as approved by the House, were as follow: OS&EM, \$123 million, a decrease of \$4 million (-3%); USM, -\$190 million, a decrease of \$130 million (-41%); OCFO, \$55 million, a decrease of \$1 million (-2%); OCIO, \$247 million, the same level as requested (0%); AOO, \$324 million, a decrease of \$9 million (-3%); OFCGCR, less than \$1 million, the same level as requested (0%); and OIG, \$101 million, the same level as requested (0%), but increased by a \$15 million proposed transfer of funds from FEMA’s Disaster Relief account, resulting in a recommended total appropriation of \$116 million, an increase of \$15(+15%). A subsequent amendment adopted in committee moved \$6 million (-5%) from the Title I OS&EM account to the Title II ICE salaries and expenses account.

### **Senate-reported S. 3181**

Senate appropriators recommended \$1,197 million for Title I accounts, slightly more (+1%) than the President’s \$1,185 million request. The suggested allocations for the title were as follow: OS&EM, \$123 million, a decrease of \$4 million (-3%); USM, \$310 million, a decrease of about \$9 million (-3%); OCFO, \$56 million, the same level as requested (0%); OCIO, \$274 million, an increase of \$27 million (+11%); AOO, \$318 million, a decrease of \$16 million (-5%); OFCGCR, \$3 million, an increase of \$2 million (+50%); and OIG, \$96 million, a decrease of \$5 million (-5%), but increased by a \$16 million proposed transfer of funds from FEMA’s Disaster Relief account, resulting in a recommended total appropriation of \$112 million, an increase of \$11 million (+11%).

### **P.L. 110-329**

As approved by both houses of Congress and signed by the President, the final bill allocated \$1,086 million for Title I provided \$99 million less (-8%) than the President’s \$1,185 million request. The allocations for the title were as follow: OS&EM, \$123 million, a decrease of \$4 million (-3%); USM, \$191 million, a decrease of \$130 million (-40%); OCFO, \$55 million, a

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<sup>11</sup> 4 U.S.C. §341(a)(9)(B).

<sup>12</sup> U.S. Department of Homeland Security, Homeland Security Advisory Council, *Report of the Administration Transition Task Force* (Washington: January 2008), available at [http://www.dhs.gov/xlibrary/assets/hsac\\_ATTIF\\_Report.pdf](http://www.dhs.gov/xlibrary/assets/hsac_ATTIF_Report.pdf).

decrease of \$1 million (-2%); OCIO, \$272 million, an increase of \$25 million (+10%); AOO, \$327, an decrease of \$7 million (-2%); OFCGCR, almost \$2 million, an increase of almost \$1.75 million (+70%); and OIG, 114 million, an increase of \$13 million (+13%).

**Table 6. Title I: Department Management and Operations**

(budget authority in millions of dollars)

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-reported	FY2009 Senate-reported	
Office of the Secretary and Executive Management	97			97	127	117 <sup>c</sup>	123	123
Office of Screening Coordination and Operations	—			—	—	—	—	—
Office of the Undersecretary for Management	145 <sup>d</sup>			145 <sup>d</sup>	321	190	311	192
Office of the Chief Financial Officer	31			31	56	55	56	55
Office of the Chief Information Officer	295			295	247	247	275	272
Analysis and Operations	306 <sup>e</sup>			306 <sup>e</sup>	334	324	318 <sup>f</sup>	327
Office of the Federal Coordinator for Gulf Coast Rebuilding	3			3	— <sup>g</sup>	— <sup>h</sup>	3	2
Office of the Inspector General	109 <sup>i</sup>			109 <sup>i</sup>	101	116 <sup>i</sup>	112 <sup>k</sup>	115 <sup>l</sup>
<b>Net Budget Authority: Title I</b>	<b>986</b>			<b>986</b>	<b>1,187</b>	<b>1,049</b>	<b>1,197</b>	<b>1,086</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

- a. Column “FY2008 Enacted” includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- c. Includes a \$6 million transfer from OSEM to ICE S&E that was adopted by amendment during the House full committee mark-up.
- d. Includes an unspecified \$5 million reduction per P.L. 110-161.
- e. Per P.L. 110-161 Does not include \$9 million rescission of prior year balances appropriated by P.L. 109-295.
- f. Includes \$3 million rescission of unobligated balances.
- g. \$250,000 was requested for the Office of the Federal Coordinator for Gulf Coast Rebuilding in FY2009; this table only shows millions, however.

- h. The House-reported bill includes \$341,000 for this office.
- i. Includes a \$14 million transfer of funds from FEMA's Disaster Relief account.
- j. Includes a \$15 million transfer of funds from FEMA's Disaster Relief account.
- k. Includes a \$16 million transfer of funds from FEMA's Disaster Relief account.
- l. Includes a \$16 million transfer of funds from FEMA's Disaster Relief account.

## Personnel Issues<sup>13</sup>

The Office of the Chief Human Capital Officer (OCHCO) manages and administers human resources at DHS and includes the Office of Human Capital (OHC). The OCHCO reports to the Under Secretary for Management, and its appropriation is included in that of the Under Secretary. The office “establishes policy and procedures” and “provides oversight, guidance, and leadership for human resources functions, including learning and development.” The OHC designs and implements human resources programs, including their strategy and technology components, and the response to the issues identified in the Federal Human Capital Survey (FHCS).

According to the DHS Justifications, the FY2009 budget requested \$47 million<sup>14</sup> and 86 full-time equivalent (FTE) employees for the OCHCO and the OHC.<sup>15</sup> The requested funding is \$29 million above the \$18 million provided for FY2008. The number of FTEs would increase by 33 over the 53 authorized for FY2008. An appropriation is not requested for the new human resources management system (MAX-HR) that was authorized in P.L. 107-296.<sup>16</sup> The FY2009 request was \$47 million; these figures are included in **Table 7**.

**Table 7** below shows the funding and staff for the OCHCO and the OHC as enacted in FY2008, as requested for FY2009, and as recommended by the House- reported H.R. 6947 and the Senate-reported S. 3181, and as provided in P.L. 110-329.

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<sup>13</sup> Prepared by Barbara L. Schwemle, Analyst in American National Government, Government and Finance Division.

<sup>14</sup> Salaries and benefits (\$11.1 million) and other services (\$28 million) account for some 81% of the total of \$48.1 million. Other services include contractual services with non-federal sources.

<sup>15</sup> FY2009 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of the Chief Human Capital Officer, p. USM-7.

<sup>16</sup> Title VIII, Subtitle E, Section 841 of P.L. 107-296, enacted on November 25, 2002 (116 Stat. 2135, at 2229-2234), established a new human resources management system for DHS. DHS and the Office of Personnel Management (OPM) jointly published final regulations to implement the system in the *Federal Register* on February 1, 2005. (U.S. Department of Homeland Security and U.S. Office of Personnel Management, “Department of Homeland Security Human Resources Management System,” *Federal Register*, vol. 70, no. 20, February 1, 2005, pp. 5271-5347.) The regulations provided new policies on position classification, pay, performance management, adverse actions and appeals, and labor-management relations for DHS employees. The system was expected to cover about 110,000 of the department’s 180,000 employees and be implemented in phases. (See CRS Report RL32261, *DHS’s Max-HR Personnel System: Regulations on Classification, Pay, and Performance Management Compared With Current Law, and Implementation Plans*, by Barbara L. Schwemle; and CRS Report RL32255, *Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law*, by Jon O. Shimabukuro.) However, shortly after the regulations were issued, the National Treasury Employees Union (“NTEU”) and several other labor organizations filed a lawsuit alleging that DHS and OPM exceeded the authority granted to them under the Homeland Security Act. For an analysis of the court decisions on the adverse actions and appeals and labor-management relations policies, see CRS Report RL33052, *Homeland Security and Labor-Management Relations: NTEU v. Chertoff*, by Thomas J. Nicola and Jon O. Shimabukuro. Section 511 of H.R. 1684, the Department of Homeland Security Authorization Act for FY2008, as passed by the House of Representatives, would have repealed the authority for the department’s new personnel system and rendered void any regulations prescribed thereunder. The bill passed the House on a 296-126 (Roll No. 318) vote on May 9, 2007, but no further action has occurred. See, Chris Strohm, “Homeland Security Authorization Bill Falls by the Wayside,” *Government Executive*, September 24, 2008, available at <http://www.govexec.com>. P.L. 110-329, enacted on September 30, 2008, prohibits the use of appropriated funds to implement the new personnel system and its development was halted by DHS effective on October 1, 2008, as discussed later in this section.

**Table 7. Office of the Chief Human Capital Officer and Office of Human Capital Appropriations**

(budget authority in millions of dollars)

Account	FY2008 Enacted	FY2009 Request	House-reported H.R. 6947	Senate-reported S. 3181	P.L. 110-329
Salaries and Expenses CHCO	\$9	\$32	\$29	\$30	\$29
Max-HR System	0	0	0	0	0
Human Resources—Operational Initiatives and HR Management Systems	\$10 <sup>a</sup>	\$15	\$10	\$10	\$10
<b>Total</b>	<b>\$19</b>	<b>\$47</b>	<b>\$39</b>	<b>\$40</b>	<b>\$39</b>
Staffing (full time equivalent, FTE, positions)	53	86	not specified	79	not specified

**Sources:** P.L. 110-161, December 26, 2007; H.Rept. 110-862, pp. 185-186; S.Rept. 110-396, p. 151; and Congressional Record version of the DHS explanatory statement, p. H9813.

**Note:** Tables may not add due to rounding.

- a. According to the explanatory statement accompanying the consolidated appropriations act, DHS is directed to ensure that this appropriation is used for “programs that directly address the shortcomings identified in [the 2006 Federal Human Capital Survey] or in a subsequent DHS survey that the Department plans to conduct.” These programs could include the “planned DHS survey, gap analysis of mission critical occupations, hiring and retention strategies, robust diversity programs, and Department-wide education and training initiatives.” The Secretary must submit a plan for expending the funds prior to their obligation. (*Congressional Record*, daily edition, vol. 153, December 17, 2007, p. H16079.)

### *President's Request*

The justification that accompanied the DHS budget request for FY2009 stated that the increased funding would be used for continued support of the learning and development strategy to train the department's workforce through the Preparedness Center, the Leadership Institute, the Homeland Security Academy, and the Center for Academic and Interagency Outreach. The requested appropriation also would be used to fund the continued modernization of the human resources systems, including eRecruitment and ePerformance, “to implement a prototype pay for performance plan for a limited number of DHS employees,” and to invest in diversity and recruitment and retention programs.<sup>17</sup>

Under the leadership of the OHC, the department will “monitor and evaluate the implementation of the performance management system.” Initiatives related to the diversity of the DHS workforce will include finalizing and implementing the diversity strategy; outreach to colleges, universities, organizations, and professional associations; training on diversity; increased diversity among the department's executives; and improved outreach to veterans.<sup>18</sup>

<sup>17</sup> DHS Justifications, Undersecretary for Management, pp. USM-4-USM-5.

<sup>18</sup> DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of the Chief Human Capital Officer, p. USM-7.

The OHC will conduct an internal survey of DHS employees, analyze the results, and develop a plan to address any concerns. It will determine current and future staffing needs for mission critical occupations, analyze employee turnover and attrition using methods such as exit interviews and surveys, and link the results of that analysis to training and strategies for recruitment and retention.<sup>19</sup> With regard to fostering better results on the FHCS, the office will focus on developing and monitoring policies and programs that will improve the work environment and perceptions of employees. According to its Annual Performance Report for Fiscal Years 2007-2009, DHS has established a target of achieving a 50% favorable response rate on the FHCS.<sup>20</sup>

In FY2009, the OHC will convert 23 contractor positions to federal positions to provide the office with a workforce that is stable and cost effective and “to perform ongoing initiatives and provide depth” in issue areas. Furthermore, according to DHS, the conversions will enable the OHC “to broaden and sustain its diversity, veteran outreach, recruiting and retention, employee morale, service delivery,” and management of human resources lines of business. A challenge that will face the department in FY2009 is the transition to a new Administration.<sup>21</sup> In a February 7, 2008, letter to DHS Secretary Michael Chertoff, Representative Bennie G. Thompson, chairman of the House Committee on Homeland Security, requested that the Secretary “issue a policy directive to prohibit the ‘burrowing in’ of political appointees into non-political career positions within the Department” within 60 days. Representative Thompson stated that he was “sure that [the Secretary] would agree that it would be inappropriate to fill career non-political executive level positions with political appointees absent an open and fully competitive process.”<sup>22</sup> CRS research has not located a publicly available record of any such directive issued by the Secretary.

The OHC will use the savings that accrue from conversion of the contractor positions to fund services such as responding to the FHCS, conducting a survey of employee morale, and responding to its findings. Its contracts will focus “on short term projects to meet surge requirements, one-time infrastructure costs, and areas where expertise is not easily obtained ... or would be more cost effective if provided by contractors.”<sup>23</sup>

### ***House-reported H.R. 6947***

The House report (H.Rept. 110-862) stated that the funding recommended by the House Committee on Appropriations is \$8 million below the President’s request and \$20 million above the FY2008 appropriation. The \$10 million recommended for human resource activities is to be used “to enhance employee morale and create a more satisfying work environment.” The committee recommended that the request to transfer the law enforcement accreditation board from the Federal Law Enforcement Training Center (FLETC) to the OCHCO be denied, that \$2.5 million be provided for new learning initiatives, and that the human resource information technologies be funded at \$17.1 million. With regard to the latter appropriation, the report stated

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<sup>19</sup> Ibid., p. USM-16.

<sup>20</sup> U.S. Department of Homeland Security, *Annual Performance Report Fiscal Years 2007-2009* (Washington: DHS, [February 4, 2008]), p. 82.

<sup>21</sup> DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of the Chief Human Capital Officer, pp. 7-8.

<sup>22</sup> Letter from Representative Bennie G. Thompson to the Honorable Michael Chertoff, February 7, 2008.

<sup>23</sup> DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of the Chief Human Capital Officer, pp. 7-8.

that the committee “is troubled that the request to fund this” account under the CHCO instead of under the Chief Information Officer (CIO) “was not clearly detailed in the budget request,” and, for the future

directs that all proposals to move programs and funding from one office to another be clearly outlined in congressional budget justifications and include: the preceding year funding level; a detailed description of the work; a rationale for the movement; and a detailed breakdown of the budget request.<sup>24</sup>

Expressing concern about delays in the department’s hiring process, administered by the OCHCO, the report directed the OCHCO to report to the House and Senate Committees on Appropriations, on a monthly basis on

vacancies requested, by [the] office, that have not been processed; vacancies announced, by [the] office; and the amount of time after a vacancy has closed before a selection list is sent back to the requesting entity.<sup>25</sup>

### ***Senate-reported S. 3181***

According to the Senate report (S.Rept. 110-396), the funding recommended by the Senate Committee on Appropriations was \$6.3 million below the President’s request and \$21.7 million above the FY2008 appropriation. Within the OCHCO’s salaries and expenses account, funding of \$18.8 million was recommended to maintain current services, including a transfer of \$17.1 million from the CIO to the OCHCO for human resources information technology. An additional appropriation of \$5.5 million, and three FTEs, were recommended for implementation of the learning and development strategy. The \$10 million recommended for human resources is to “be spent on programs that directly address the shortcomings identified in [the 2006 Federal Human Capital Survey and the 2007 internal DHS employee survey] or in subsequent surveys.” The programs could include “gap analysis of mission critical occupations, hiring and retention strategies, robust diversity programs, and Department-wide learning and development programs.” Like the House committee, the Senate committee denied the President’s request that \$1.3 million and seven FTEs be transferred from the FLETC to the OCHCO for the law enforcement accreditation board.

### ***P.L. 110-329***

The law provided funding at the level recommended in the House-reported bill. The *Congressional Record* version of the DHS explanatory statement noted that the “Funding has been reduced due to high unobligated balances” in the OCHCO. The statement also directed the OCHCO to “provide monthly reports on the amount of time it takes to fill vacancies within DHS,” as the House report specified.<sup>26</sup>

The law included the following general provisions related to DHS personnel:

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<sup>24</sup> H.Rept. 110-862, p. 19.

<sup>25</sup> Ibid.

<sup>26</sup> *Congressional Record*, daily edition, vol. 154, September 24, 2008, p. H9793.

- Section 519 requires the Chief Financial Officer at DHS to submit a monthly budget and staffing report to the House and Senate Committees on Appropriations. The report must be submitted within 45 days after the close of each month and include information on total obligations, on-board versus funded full-time equivalent staffing levels, and the number of contract employees by office.
- Section 522 prohibits the obligation of funds “for the development, testing, deployment, or operation of any portion of a human resources management system authorized by 5 U.S.C. 9701(a), or by regulations prescribed pursuant to such section.” Collaboration is required between the DHS Secretary and employee representatives in the manner prescribed in 5 U.S.C. 9701(e), on “planning, testing, and development of any portion of a human resources management system ... for persons excluded from the definition of ‘employee.’”
- Section 534 prohibits the use of funds appropriated to the Office of the Secretary and Executive Management for any new hires by DHS that are not verified through the basic pilot program to confirm employment eligibility that is codified at 8 U.S.C. §1324a note.

In the wake of the Section 522 provision, the OCHCO at DHS reportedly issued a memorandum to department employees on October 1, 2008, announcing that development of the human resources management system authorized at Title VIII, Subtitle E of P.L. 107-296 would be halted.<sup>27</sup> The OCHCO reportedly wrote to employees “that no current salary adjustments or bonus decisions will be affected.”<sup>28</sup>

## **Analysis and Operations<sup>29</sup>**

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

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

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<sup>27</sup> Brittany R. Ballenstedt, “Homeland Security Scraps Plan for Personnel System,” *Government Executive*, October 2, 2008, available at <http://www.govexec.com>.

<sup>28</sup> Mary Mosquera, “DHS Drops Potential Pay-for-Performance Plans,” *Federal Computer Week*, October 3, 2008, available at <http://www.fcw.com>.

<sup>29</sup> Prepared by Jennifer E. Lake, Analyst in Domestic Security, Domestic Social Policy Division.

- To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States;
- To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, and intelligence-related information within the federal government and between the federal government and state and local government agencies and authorities.<sup>30</sup>

Secretary Chertoff's Second Stage Review of the Department made numerous changes in the DHS intelligence structure. For example, the erstwhile IAIP disbanded, and the Office of Information Analysis was renamed the Office of Intelligence and Analysis and became a stand alone entity. The Office of Infrastructure Protection was placed within the Directorate for Preparedness. The Assistant Secretary for Intelligence Analysis was also provided the title of the Department's Chief Intelligence Officer.<sup>31</sup> Pursuant to the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53, signed August 3, 2007), a number of amendments to the Homeland Security Act of 2002 (codified at 6 U.S.C. 201) related to homeland security intelligence were made. Among these changes, the law provided statutory standing to the Office of Intelligence and Analysis and the Office of Infrastructure Protection. The Office of Intelligence and Analysis is to be headed by an Under Secretary for Intelligence and Analysis, who will also serve as the Department's Chief Intelligence Officer.<sup>32</sup>

### **President's FY2009 Request**

The FY2009 request for the Analysis and Operations (AOO) account was \$334 million, an increase of \$28 million (+9%) over the enacted FY2008 amount. It should be noted that funds included in this account support both the Office of Intelligence and Analysis (OIA) and the Office of Operations Coordination. The Office of Intelligence and Analysis, the successor to the "IA" element of the erstwhile IAIP, has as its primary responsibility the integration and analysis of information from DHS, state and local stakeholders, and the intelligence community into finished intelligence products such as threat assessments and other indications and warning documents. As a member of the Intelligence Community, the Office of Intelligence and Analysis's budget is classified. The Office of Operations Coordination formally houses the National Operations Center which, among other functions, disseminates OIA assessed threat information, provides domestic situational awareness, and performs incident management on behalf of the Department.

### **House-reported H.R. 6947**

House-reported H.R. 6947 included \$324 million for AOO, amounting to a nearly \$10 million decrease compared to the amount requested for FY2009, and \$18 million more than the FY2008 enacted level of \$306 million. The House report included language reflecting the Committee's

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<sup>30</sup> See Title II, Subtitle A, Section 201(d), Responsibilities of the Undersecretary (of IAIP), codified at 6 U.S.C. §121. See also Department of Homeland Security, Office of the Inspector General, *Survey of the Information Analysis and Infrastructure Protection Directorate*, Office of Inspections, Evaluations, and Special Reviews, OIG-04-413, February 2004, p. 26.

<sup>31</sup> See DHS Management Directive 8110, Intelligence Integration and Management, January 30, 2006.

<sup>32</sup> See P.L. 110-53, Title V, "Improving intelligence and information sharing within the federal government, and with State, local and tribal governments," Subtitle D, "Homeland security intelligence offices reorganization."

continued concern over the National Applications Office and the National Immigration Information Sharing Office (NIISO). The FY2008 DHS Appropriations Act (Division E, P.L. 110-161) required the Secretary to submit and the Government Accountability Office (GAO) to review a certification that the National Applications Office (NAO) and the NIISO comply with all existing laws, including applicable privacy and civil liberties standards. The Department was prohibited from using any related funds from the FY2008 Act until GAO completed its review. The House Committee notes in its report that the Department's NAO submission was incomplete, and that no information was submitted regarding the NIISO. The Committee therefore includes in the FY2009 bill statutory prohibitions on the operations of the NAO and the NIISO until the certification has been reviewed by GAO.

### **Senate-reported S. 3181**

Senate-reported S. 3181 included \$318 million, a decrease of \$16 million (-5%) for the AOO account as compared with the President's request. The Committee, in S.Rept. 110-396, directed the Secretary to submit a detailed expenditure plan for FY2009 within 60 days after enactment of the FY2009 DHS Appropriations Act. Reflecting the Committee's concern with the I&A's reliance on contract staff versus federal full-time equivalents, the reporting requirements were geared to provide the Committee with staffing and expenditure data regarding all of I&A's programs. S.Rept. 110-396 also included language requiring the DHS Chief Intelligence Officer to continue to provide the Appropriations Committees quarterly updates on the Department's progress towards placing DHS intelligence professionals in state and local fusion centers.

### **P.L. 110-329**

P.L. 110-329 included \$327 million for AOO for FY2009, a decrease of \$7 million (-2%) for the AOO account as compared with the President's request, and increase of \$30 million or 10% as compared to the FY2008 enacted amount. The Congressional Record version of the DHS Explanatory Statement, required the Secretary to submit a FY2009 expenditure plan for the Office of Intelligence and Analysis that includes balances carried forward from prior years. In addition, the DHS Explanatory Statement required the Department's Chief Intelligence Officer to continue to provide quarterly updates to the Committees detailing the progress in placing DHS intelligence professionals in state and local fusion centers.

## **Title II: Security Enforcement and Investigations**

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

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

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
<b>Customs &amp; Border Protection</b>								
Salaries and expenses	6,803			6,803	7,309	7,534	7,523 <sup>c</sup>	7,603
Automation modernization	477			477	511	511	511	511
Air and Marine Operations	570			570	528	510	528	528
Border Security Fencing, Infrastructure, and Technology	1,225			1,225	775	775	775	775
Construction	348			348	364	364	403	403
Fee accounts <sup>d</sup>	1,385 <sup>e</sup>			1,385 <sup>e</sup>	1,448	1,448	1,448	1,448
<b>Gross total</b>	<b>10,808</b>			<b>10,808</b>	<b>10,935</b>	<b>11,142</b>	<b>11,189</b>	<b>11,268</b>
Offsetting collections	-1,385			-1,385	-1,448	-1,448	-1,448	-1,448
<b>Net total</b>	<b>9,423</b>			<b>9,423</b>	<b>9,487</b>	<b>9,694</b>	<b>9,741</b>	<b>9,821</b>
<b>Immigration &amp; Customs Enforcement</b>								
Salaries and expenses	4,688			4,688	4,691	4,746	4,932	4,927
Federal Protective Services (FPS)	613			613	616	616	640	640
Automation & infrastructure modernization	31			31	57	57	57	57
Construction	17			17	—	10	—	5
Fee accounts <sup>f</sup>	234			234	299	299	299	299
<b>Gross total</b>	<b>5,581</b>			<b>5,581</b>	<b>5,663</b>	<b>5,728</b>	<b>5,928</b>	<b>5,928</b>
Offsetting FPS fees	-613			-613	-616	-616	-640	-640
Offsetting collections	-234			-234	-299	-299	-299	-299

*Homeland Security Department: FY2009 Appropriations*

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
<b>Net total</b>	<b>4,735</b>			<b>4,735</b>	<b>4,748</b>	<b>4,813</b>	<b>4,989</b>	<b>4,989</b>
<b>Transportation Security Administration</b>								
Aviation security (gross funding)	4,809			4,809	5,290	4,743	4,672	4,755
Surface Transportation Security	47			47	37	50	64	50
Transportation Threat Assessment and Credentialing	83			83	133	109	120	116
Credentialing Fees <sup>g</sup>	83			83	40	40	40	40
Transportation Security Support	524			524	926	950	950	948
Federal Air Marshals	770			770	—	821	799	819
Aviation security capital fund <sup>h</sup>	250			250	676	250	250	250
Checkpoint screening security fund	250			250	—	—	—	—
Rescission	—			—	—	—	-7	—
<b>Gross total</b>	<b>6,814</b>			<b>6,814</b>	<b>7,102</b>	<b>6,964</b>	<b>6,887</b>	<b>6,977</b>
Offsetting collections	-2,210			-2,210	-2,320	-2,320	-2,320	-2,320
Credentialing/Fee accounts	-83			-83	-40	-40	-40	-40
Aviation security capital fund (mandatory spending)	-250			-250	-676	-250	-250	-250
Checkpoint screening security fund	-250			-250	—	—	—	—
<b>Net total</b>	<b>4,022</b>			<b>4,022</b>	<b>4,065</b>	<b>4,354</b>	<b>4,277</b>	<b>4,367</b>
<b>U.S. Coast Guard</b>								
Operating expenses	6,001			6,001	6,213	6,202	6,280	6,195
Environmental compliance & restoration	13			13	12	13	12	13
Reserve training	127			127	131	131	131	131

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
Acquisition, construction, & improvements	993 <sup>i</sup>	300		1,293 <sup>i</sup>	1,205	1,339 <sup>i</sup>	1,267	1,495
Alteration of bridges	16			16	—	12	16	16
Research, development, tests, & evaluation	25			25	16	16	16	18
Retired pay (mandatory, entitlement)	1,185			1,185	1,237	1,237	1,237	1,237
Health care fund contribution	272			272	257	257	257	257
<b>Gross total</b>	<b>8,632</b>	<b>300</b>		<b>8,932</b>	<b>9,071</b>	<b>9,206</b>	<b>9,216</b>	<b>9,361</b>
<b>U.S. Secret Service</b>								
Salaries and expenses	1,382			1,382	1,411	1,367	1,414	1,409
Investigations and field operations	—			—	—	—	—	—
Acquisition, construction, improvements, and related expenses	4			4	4	4	4	4
<b>Gross total</b>	<b>1,385</b>			<b>1,385</b>	<b>1,414</b>	<b>1,371</b>	<b>1,418</b>	<b>1,413</b>
<b>Gross Budget Authority: Title II</b>	<b>33,220</b>	<b>300</b>		<b>33,520</b>	<b>34,185</b>	<b>34,411</b>	<b>34,637</b>	<b>34,948</b>
<b>Offsetting collections:</b>	<b>-5,025</b>			<b>-5,025</b>	<b>-5,399</b>	<b>-4,973</b>	<b>-4,997</b>	<b>-4,997</b>
<b>Net Budget Authority: Title II</b>	<b>28,195</b>	<b>300</b>		<b>28,495</b>	<b>28,786</b>	<b>29,438</b>	<b>29,641</b>	<b>29,951</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate-enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

- a. Column “FY2008 Enacted” includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. The text P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate-enrolled version of H.R. 2638.
- c. Includes \$13 million rescission of unobligated balances.
- d. Fees include COBRA, Land Border, Immigration Inspection, Immigration Enforcement, and Puerto Rico.

- e. The President's FY2009 Budget Request includes a re-estimate of the FY2008 fees.
- f. Fees include Exam, Student Exchange and Visitor Fee, Breached Bond, Immigration User, and Land Border.
- g. Fees include TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks.
- h. Aviation Security Capital Fund, used for installation of Explosive Detection Systems at airports.
- i. FY2008 request and House-passed H.R. 2638 included a proposed rescission of \$49 million. Senate-passed H.R. 2638 included a proposed rescission of \$57 million of funds previously appropriated by P.L. 109-90 and P.L. 109-295. Division E of P.L. 110-161 includes a rescission of \$133 million in funds previously appropriated by P.L. 108-334, P.L. 109-90, and P.L. 109-295.
- j. The House-reported bill includes a rescission of \$20 million in previously appropriated funding for UAVs.

## **Customs and Border Protection (CBP)<sup>33</sup>**

CBP is responsible for security at and between ports-of-entry along the border. Since September 11, 2001, CBP's primary mission is to prevent the entry of terrorists and the instruments of terrorism. CBP's ongoing responsibilities include inspecting people and goods to determine if they are authorized to enter the United States; interdicting terrorists and instruments of terrorism; intercepting illegal narcotics, firearms, and other types of contraband; interdicting unauthorized travelers and immigrants; and enforcing more than 400 laws and regulations at the border on behalf of more than 60 government agencies. CBP is comprised of the inspection functions of the legacy Customs Service, Immigration and Naturalization Service (INS), and the Animal and Plant Health Inspection Service (APHIS); the Office of Air and Marine Interdiction, now known as CBP Air and Marine (CBPAM); and the U.S. Border Patrol (USBP). See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 9** for sub-account-level detail for CBP Salaries and Expenses (S&E) for FY2008 and FY2009.

**President's FY2009 Request .** The Administration requested an appropriation of \$10,935 million in gross budget authority for CBP for FY2009, amounting to a \$127 million (or 1%) increase over the enacted FY2008 level of \$10,808 million. The Administration requested \$9,487 million in net budget authority for CBP in FY2009, which amounts to a \$64 million increase over the net FY2008 appropriation of \$9,423 million.

**House-reported H.R. 6947 .** House-reported H.R. 6947 would have provided \$11,142 million in gross budget authority for CBP for FY2009, amounting to \$207 million (or 2%) more than was requested by the Administration, and a \$334 million or 3% increase over the enacted FY2008 level of \$10,808 million. House-reported H.R. 6947 included \$9,694 million in net budget authority for CBP for FY2009, amounting to a \$207 million increase over the Administration's request, and a \$271 million increase over the FY2008 enacted level of \$9,423 million.

**Senate-reported S. 3181 .** Senate-reported S. 3181 would have provided \$11,189 million in gross budget authority for CBP for FY2009, amounting to \$254 million (or 2%) more than was requested by the Administration, and a \$381 million or 4% increase over the enacted FY2008 level of \$10,808 million. Senate-reported S. 3181 included \$9,741 million in net budget authority for CBP for FY2009, amounting to a \$254 million increase over the Administration's request, and a \$318 million increase over the FY2008 enacted level of \$9,423 million.

**P.L. 110-329 .** The Act provided \$11,268 million in gross budget authority for CBP for FY2009, \$333 million (or 3%) increase over the Administration's request, and a \$460 million (or 4%) increase over the enacted FY2008 level of \$10,808 million. The enacted net appropriation for CBP was \$9,821 million, \$334 million above the Administration's request and \$398 million over the FY2008 enacted level.

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<sup>33</sup> Prepared by Jennifer E. Lake and Blas Nuñez-Neto, Analysts in Domestic Security, Domestic Social Policy Division.

**Table 9. CBP S&E Sub-account Detail**

(budget authority in millions of dollars)

Activity	FY2008 Enacted <sup>a</sup>	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>b</sup>
<b>Headquarters Management and Administration</b>	<b>1,221</b>	<b>1,267</b>	<b>1,267</b>	<b>1,269</b>	<b>1,269</b>
<b>Border Security Inspections and Trade Facilitation @ POE</b>	<b>2,279</b>	<b>2,273</b>	<b>2,496</b>	<b>2,480</b>	<b>2,561</b>
Inspections, Trade & Travel Facilitation @ POE	1,854	1,835	2,061	2,042	2,094
Container Security Initiative (CSI)/ International Cargo Screening (ICS)	156	149	149	149	149
Other International Programs	11	11	11	11	11
C-TPAT	62	64	64	64	64
FAST/NEXUS/SENTRI	11	11	11	11	11
Inspection and Detection Technology	105	117	114	117	146
Systems for Targeting	28	33	33	33	33
National Targeting Center	24	24	24	24	24
Training at POE	25	25	25	25	25
Harbor Maintenance Fee	3	3	3	3	3
<b>Border Security and Control Between POE</b>	<b>3,075</b>	<b>3,515</b>	<b>3,517</b>	<b>3,515</b>	<b>3,501</b>
Border Security and Control Between POE	3,022	3,441	3,442	3,441	3,426
Training Between the POE	53	75	75	75	75
<b>Air and Marine Operations - Salaries</b>	<b>227</b>	<b>254</b>	<b>254</b>	<b>272</b>	<b>272</b>
<b>Rescission</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>-13</b>	<b>—</b>
<b>CBP Salaries and Expenses Total:</b>	<b>6,803</b>	<b>7,309</b>	<b>7,534</b>	<b>7,523</b>	<b>7,603</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

- Column "FY2008 Enacted" includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

## Issues for Congress

Issues that Congress considered during the FY2009 appropriations cycle included funding for and deployment of the border fence and the Secure Border Initiative (SBI); Border Patrol hiring and staffing levels; the Western Hemisphere Travel Initiative (WHTI); the designation of CBP Officers as law enforcement officers for retirement purposes; and the declining request for appropriations for some cargo security initiatives.

### *Fencing, Infrastructure, and Technology*

The Administration requested \$775 million for the deployment of SBInet<sup>34</sup> related technologies and infrastructures in FY2009, a decrease of \$450 million over the FY2008 enacted level of \$1,225 million (this total included an emergency appropriation of \$1,053 million, however this may be somewhat misleading because the FY2008 request for the account was \$1,000 million). Within the FY2009 request, the Administration is proposing to allocate \$275 million for developing and deploying additional technology and infrastructure solutions to the southwest border. An additional \$410 million is requested for operations and maintenance of the cameras, sensors, and fencing that will have been constructed by the end of calendar year 2008 with prior-year funding.<sup>35</sup> The Administration notes that this will fund the costs associated with operating and maintaining the technologies that have been deployed to the border as part of the SBInet program as well as 370 miles of fencing and 300 miles of vehicle barriers, which are scheduled to be completed by the end of calendar year 2008 with funding appropriated in FY2007 and FY2008. Recent GAO testimony noted that CBP's goal for fencing and vehicle barrier deployment in 2008 "will be challenging because of factors that include difficulties acquiring rights to border land and an inability to estimate costs for installation."<sup>36</sup> GAO also noted that the Border Patrol was not consulted early enough in the process of developing the technology solutions that would be used by SBInet, and that this fact combined with some challenges relating to the integration of the technologies deployed by Boeing led to an eight month delay in the initial pilot program's deployment in Tucson Sector.<sup>37</sup> Oversight of the SBInet program's continuing deployment of technology, fencing, and infrastructure at the border, including whether DHS is on track to meet its goals for fencing and vehicle barriers at the border, will likely be an issue of concern to Congress as it considers the FY2009 request.

The Senate Committee recommended fully funding the President's request, and noted that close oversight of the program was required due to its importance. The House Committee

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<sup>34</sup> SBInet is the technological and infrastructure component of the Secure Border Initiative (SBI), a multifaceted approach to securing the border. In its FY2007 budget submission, DHS asserted that it had "developed a three-pillar approach under the SBI that will focus on controlling the border, building a robust interior enforcement program, and establishing a Temporary Worker Program." *DHS FY2007 Justification*, p. CBP S&E 4.

<sup>35</sup> *DHS FY2009 Justification*, p. CBP BSFIT 11.

<sup>36</sup> Testimony of GAO Director of Homeland Security and Justice Issues Richard Stana, in U.S. Congress, Committee on Appropriations, Subcommittee on Homeland Security, *DHS Has Taken Actions to Strengthen Border Security Programs and Operations, But Challenges Remain*, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess., March 6, 2009. Hereafter referred to as *GAO Border Security Testimony*.

<sup>37</sup> *GAO Border Security Testimony*.

recommended fully funding the President's request, but noted its concern that the rapid growth in border technology "may lead to systems and structures that are expensive, fail to perform as promised, and do not result in a more secure border."<sup>38</sup> The House Committee noted that only 1.7% of funding for fencing, infrastructure, and technology had been expended on the northern border and included \$40 million in its FY2009 appropriation for this purpose. The House Committee also directed that \$30 million be spent on a border interoperability demonstration project to better integrate border security efforts between federal, state, local, and tribal authorities, and that \$50 million be spent on regulatory and environmental assessments to mitigate the environmental damage associated with infrastructure construction. Lastly, the House Committee noted that it was disappointed with the FY2008 expenditure plan for this account, and directs CBP to fully comply with its requirements for the FY2009 expenditure plan.

P.L. 110-329 fully funded the President's request, but withheld \$400 million from obligation until an expenditure plan is submitted and approved by the House and Senate Committees on Appropriations. This spending plan should include 12 specific components, among them: a detailed accounting of the program's implementation to date; a description of how the expenditure plan allocates funding to the highest priority border security needs, addresses northern border security needs, and works towards obtaining operational control of the entire border; certifications by the Chief Procurement Officer and the Chief Information Officer at DHS; an analysis, for each 15 miles of fencing or tactical infrastructure, of how the selected approach compares to other alternative means of achieving operational control; and a review by the Government Accountability Office.<sup>39</sup>

### ***Hiring U.S. Border Patrol (USBP) Agents***

The Administration requested an increase of \$363 million to hire 2,200 new USBP agents in order to bring the total number of agents to 20,019 by the end of FY2009.<sup>40</sup> CBP is also proposing to transfer "up to" 440 veteran agents to the northern border in FY2009; this is the first time that DHS' budget request has complied with the P.L. 108-458 mandate requiring DHS to augment the northern border staffing by 20% of any annual increases each year between FY2006 and FY2010. An issue for Congress may involve whether incentives should be offered to help DHS recruit additional agents or keep existing agents from leaving the agency; in FY2007 the USBP experienced a 10% attrition rate.<sup>41</sup> The Senate Appropriations Committee recommended fully funding the President's request. Additionally, the Senate Committee reiterated its desire that 20% of the overall increase in Border Patrol agents be assigned to the northern border and required a report on the challenges CBP faces in transferring agents to the northern border within 60 days of the bill's enactment. Lastly, the Senate Committee noted that the National Guard was withdrawing its troops from their supporting role at the border in FY2008 and directed CBP, "in the strongest terms possible," to hire the previously funded USBP support personnel in order to allow agents to focus on their border

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<sup>38</sup> House report, pp. 42-43.

<sup>39</sup> H.R. 2638, as Enrolled by the House and the Senate, pp. 83-84.

<sup>40</sup> *DHS FY2008 Justification*, p. CBP S&E 49.

<sup>41</sup> From CBP Congressional Affairs, December 18, 2007.

enforcement responsibilities.<sup>42</sup> The House Committee recommended fully funding the President's request and reiterated its support for transferring additional agents to the northern border in order to comply with the statutory requirements. P.L. 110-329 fully funded the President's request for additional Border Patrol agents and provided funding for up to 75 agents to be transferred to the northern border.

### ***Western Hemisphere Travel Initiative (WHTI)***

The Administration requested an increase of \$107 million for WHTI. WHTI will require U.S. citizens, and Canadian, Mexican, and some island nation nationals to present a passport, or some other document or combination of documents deemed sufficient to denote identity and citizenship status by the Secretary of Homeland Security, as per P.L. 108-458 §7209. DHS has already required all U.S. citizens entering the country at air and sea POE to present passports as of January 18, 2007. P.L. 110-161, the Consolidated Appropriations Act, 2008, prohibited DHS from implementing WHTI, which requires U.S. citizens to provide proof of identity and citizenship at the land border, before the *later* of the following two dates: June 1, 2009, or three months after the Secretaries of State and Homeland Security certify that a series of implementation requirements have been met. Despite this legislation, as of January 31, 2008 DHS has ended the practice of accepting oral declarations of citizenship at the land border and is requiring U.S. citizens to present a passport, some other accepted biometric document, or the combination of a driver's license and a birth certificate, in order to re-enter the country.<sup>43</sup> The FY2009 request for WHTI included funding to hire 89 CBP officers and to deploy radio frequency technologies to the 39 busiest land POE which cover 95% of the incoming traffic at the land border, including "facility modifications and the build out of primary lanes as operationally necessary."<sup>44</sup> Issues for Congress include whether DHS's disregard of the extension enacted by P.L. 110-161 was appropriate, whether the proposed staffing increases and infrastructure modifications are adequate to meet the needs associated with the WHTI program, and whether the program to develop enhanced state driver's licenses that may be used to cross the land-border adequately addresses security concerns.<sup>45</sup>

The Senate Committee fully funded the President's request and directed CBP to provide quarterly briefings on the status of WHTI implementation in FY2009. The House Committee also fully funded the President's request and noted that it remains concerned that the program "may not be fully integrated and ready for enforcement of the WHTI document requirements."<sup>46</sup> The House Committee also directed CBP to provide quarterly briefings on the program's implementation.

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<sup>42</sup> S.Rept. 110-396, pp. 25-26.

<sup>43</sup> Department of Homeland Security, Press Release, *DHS Ends Oral Declarations at Borders, Reminds Travelers of New Procedures on January 31*, January 18, 2008.

<sup>44</sup> *DHS FY2009 Congressional Budget Justifications*, p. CBP S&E 4.

<sup>45</sup> DHS entered into an agreement to with Washington State to develop driver's licenses that would be considered WHTI-compliant. These enhanced driver's licenses (EDL) have been issued as of January 22, 2008 and several other states have expressed interest in developing their own EDLs.

<sup>46</sup> H.Rept. 110-862, p. 33.

### ***Other Travel Programs***

The House Committee voiced its support for the new International Registered Traveler program enacted by the FY2008 Consolidated Appropriations Act, and which has been renamed Global Entry by the Administration. The program will give pre-approved, low-risk travelers (U.S. Citizens and Legal Permanent Residents) expedited clearance into the United States at three airports.<sup>47</sup> The Committee also included \$10 million to expand this program to the 20 busiest international airports. Additionally, the House Committee noted that it provided \$36 million in FY2008 for the Electronic System for Travel Authorization (ESTA), which will be used to screen and process travelers from visa-waiver countries, and directed CBP to submit a report on ESTA's implementation with the FY2010 budget request.

### ***Covered Law Enforcement Officer Status for CBP Officers***

Congress addressed concerns that CBP was losing valuable officers to other agencies due to disparities in retirement pay in FY2008 by extending federal law enforcement officer status to CBP officers for retirement purposes in P.L. 110-161. The FY2009 President's request would have retracted the law enforcement officer status for CBP officers that was enacted in FY2008. During the FY2009 appropriations cycle, the Senate Committee reiterated its strong support for CBP officers' new retirement status and included \$200 million to fully fund the new law enforcement officer retirement program for CBP officers. The House Committee recommended \$217 million for CBP officers' new retirement status, also rejecting the Administration's proposal to repeal the new status. P.L. 110-329 provided CBP with an additional \$200 million above the President's request to cover the costs associated with the new retirement status for CBP officers.

### ***Secure Freight Initiative (SFI)***

The Secure Freight Initiative (SFI) is the next stage in the Department's effort to secure cargo containers in-bound to the U.S. from foreign countries. According to DHS, SFI is now being characterized as a "three-pronged approach to enhance supply chain security."<sup>48</sup> The three prongs of this approach are: the International Container Security project (ICS), the Security Filing (SF); and the Global Trade Exchange (GTX). The ICS is the component of the strategy whereby all U.S.-bound maritime containers are subject to an integrated scan (image and radiation detection) at the participating overseas port before being loaded on the U.S.-bound vessel. ICS is currently in operation at ports in the United Kingdom, Pakistan, and Honduras. According to DHS, operating the ICS at these ports fulfills the requirements set out in P.L. 109-347, the Safe Port Act of 2006. The SF initiative, also referred to as "10+2" by CBP, is the latest effort to collect additional data pertaining to U.S.-bound maritime shipments. The SF initiative will allow CBP to collect additional data earlier in the supply chain to enhance risk assessment capabilities before

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<sup>47</sup> John F. Kennedy International Airport, Washington-Dulles International Airport, and George Bush Intercontinental Airport.

<sup>48</sup> DHS, *FY2009 Congressional Budget Justifications*, p. CBP-SE-26.

cargo is loaded onto U.S.-bound vessels. CBP issued a Notice of Proposed Rulemaking (NPRM) on the SF initiative<sup>49</sup> and is in the process of developing the final rule.

The Global Trade Exchange (GTX) was being proposed as a “private sector owned and operated ... new business model for collecting and fusing disparate international cargo data, providing governments and other parties with greater visibility into that data.”<sup>50</sup> On April 4, 2008, CBP Commissioner Basham announced in remarks given before the National Customs Brokers & Forwarders Association of America that CBP has decided not to go forward with a contract award for the GTX. The Commissioner did not rule out exploring similar concepts in the future.<sup>51</sup> Language in the House Appropriations committee report indicated that CBP has decided not to go ahead with GTX while in the midst of implementing the 10+2 Security Filing initiative. The House Report also noted that Committee remains concerned about the remaining gaps in CBP’s information about in-bound cargo containers and their supply chains, and directs CBP to report to the Committee no later than January 8, 2009 on the information and intelligence CBP collects on these containers.<sup>52</sup>

CBP Congressional Budget Justification materials indicated that the \$149 million request for ICS in FY2009 includes an \$11 million reduction for Secure Freight.<sup>53</sup> It is unclear from the budget materials what this reduction represented, since one of the goals for the fiscal year was to expand the program to at least one additional port and to add more capacity at other designated ports. Both House-reported H.R. 6947 and Senate-reported S. 3181 would have funded ICS/CSI at the requested level for FY2009. P.L. 110-329 fully funded the Administration’s request for ICS/CSI.

It is important to note that CBP is currently describing the Secure Freight Initiative (SFI) as the next phase/iteration or future of the Container Security Initiative (CSI). CSI may also be referred to as a component of the International Container Security (ICS) project. The ICS, as noted above, is the new umbrella name for CBP’s international cargo security initiatives, which also includes CSI and SFI.

### ***Container Security Initiative (CSI)***

CSI is a program by which CBP stations CBP officers in foreign ports to target high-risk containers for inspection before they are loaded on U.S.-bound ships. CSI is operational in 58 ports as of September, 2007. As noted above, the CBP Budget Justifications indicate a requested decrease of nearly \$7 million for the CSI/ICS program for FY2009. This year, the requested \$149 million for FY2009 includes funding for CSI/ICS, SFI, the

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<sup>49</sup> See, CBP, “Customs issues Proposed Rule Requiring Additional Cargo Information,” at [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/archives/2008\\_news\\_releases/jan\\_2008/01022008.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2008_news_releases/jan_2008/01022008.xml).

<sup>50</sup> Ibid. p. CBP-S&E-27.

<sup>51</sup> Remarks by CBP Commissioner Ralph W. Basham before the National Customs Brokers and National Customs Brokers & Forwarders Association of America, April 4, 2008.

<sup>52</sup> H.Rept. 110-826, July 8, 2009.

<sup>53</sup> DHS, *FY2009 Congressional Budget Justification*, CBP-S&E-24, accessed at [http://www.dhs.gov/xlibrary/assets/budget\\_fy2009.pdf](http://www.dhs.gov/xlibrary/assets/budget_fy2009.pdf).

Security Filing (SF), and the proposed Global Trade Exchange(GTX). Given that the request includes less funding for several programs, than has been appropriated for CSI alone in the past couple of years, this indicates a decline in requested funding for CSI. An issue for Congress concerns the reasoning behind the Administration's proposal to apparently decrease funding for CSI given that DHS anticipated expanding CSI/ICS in FY2009 by deploying ICS at one additional site and expanding capacity at other designated ports.

Language in the House Appropriations committee report indicated that the Committee was concerned about CBP staffing levels at CSI and SFI port locations. Among other items of concern, the staffing of senior leadership positions and staff with appropriate language skills were of particular interest to the Committee. The House Report required CBP to report to the Committee no later than January 8, 2009, on the steps that CBP will have taken to improve staffing and host country relations.

## **Immigration and Customs Enforcement (ICE)<sup>54</sup>**

ICE focuses on enforcement of immigration and customs laws within the United States. ICE develops intelligence to reduce illegal entry into the United States and is responsible for investigating and enforcing violations of the immigration laws (e.g., alien smuggling, hiring unauthorized alien workers). ICE is also responsible for locating and removing aliens who have overstayed their visas, entered illegally, or have become deportable. In addition, ICE develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling, fraud, forced labor, trade agreement noncompliance, and vehicle and cargo theft. Furthermore, this bureau oversees the building security activities of the Federal Protective Service, formerly of the General Services Administration. The Federal Air Marshals Service (FAMS)<sup>55</sup> was returned from ICE to TSA pursuant to the reorganization proposal of July 13, 2005. The Office of Air and Marine Interdiction was transferred from ICE to CBP in FY2005, and therefore the totals for ICE do not include Air and Marine Interdiction funding, which is included under CBP. See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 10** for sub-account-level detail for ICE Salaries and Expenses (S&E) for FY2008 and FY2009.

### **President's FY2009 Request**

The Administration requested \$5,663 million in gross budget authority for ICE in FY2009. This represented a 1% increase over the enacted FY2008 level of \$5,581 million. The Administration requested an appropriation of \$4,748 million in net budget authority for ICE in FY2009, representing a small increase over the FY2008 enacted level (including Division E of P.L. 110-161) of \$4,735 million. Notably, Division E of P.L. 110-161 included an appropriation of \$200 million for the comprehensive identification and removal of criminal aliens, which is not included in the FY2009 budget

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<sup>54</sup> Prepared by Alison Siskin, Specialist in Immigration Legislation, Domestic Social Policy Division.

<sup>55</sup> FAMS transferred to ICE from TSA in August of 2003.

request. **Table 10** provides activity-level detail for the Salaries and Expenses account. The request included the following program increases:

- \$46 million (39 FTE) for 725 additional detention beds and support personnel;<sup>56</sup>
- \$12 million (36 FTE) for investigations related to national security and critical infrastructure;
- \$12 million for 287(g) agreements;
- \$12 million to co-locate ICE facilities (i.e., consolidating ICE offices in cities where ICE occupies more than one location);
- \$7 million (19 FTE) for the Office of Professional Responsibility to investigate allegations of criminal and serious misconduct involving ICE employees;
- \$6 million (20 FTE) for the Office of Cyber Crimes Center to increase investigations of cyber crimes related to document fraud, child exploitation, and money laundering;
- \$5 million (14 FTE) for additional positions in the Commercial Fraud, Intellectual Property Rights, and Trade Transparency Units to combat crimes such as trafficking in counterfeit merchandise and pharmaceuticals;
- \$3 million for new Visa Security Units in Istanbul, Turkey and Beirut, Lebanon;
- \$2 million (14 FTE) to consolidate and coordinate ICE training and oversight activities; and
- \$1 million to increase outbound enforcement to prevent arms and strategic technologies from leaving the United States.

### **House-reported H.R. 6947**

House-reported H.R. 6947 would have appropriated \$5,728 million in gross budget authority, \$65 million more than the President's request. House-reported H.R. 6947 would have appropriated \$4,813 in net budget authority for ICE, which would have represented an increase of \$65 million, 1% over the Administration's requested amount. Of the appropriated amount, nearly \$8 million would have been for special operations under §3131 of the Customs Enforcement Act of 1986; \$1 million would have provided compensation awards to informants; \$305,000 would have been used to promote public awareness of the child pornography tipline and anti-child exploitation activities; \$11 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; \$16 million would have been targeted for enforcement of laws against forced child labor; and \$800 million would have been designated to identify aliens convicted of a crime and remove them from the United

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<sup>56</sup> According to the President's request, DHS would also fund 275 new beds through the breach bond fund.

States. According to the House report, the appropriated monies would have included the President's budget requested increases of \$46 million to fund the for detention bed space and support personnel, and \$12 million for investigations related to national security and critical infrastructure.

The House report noted that House-reported H.R. 6947 would have appropriated an additional \$2 million for Office of Professional Responsibility to oversee the comprehensive review of the medical care provided to ICE detainees. In addition, according to the House report, House-reported H.R. 6947 would have appropriated over the President's requested budget:

- \$12 million for criminal gang investigations;
- approximately \$1 for Office of the Principle Legal Advisor;<sup>57</sup> and
- \$7 million for the Alternatives to Detention Program.

In addition, an amendment was adopted during the full Committee mark-up that would have transferred an additional \$6 million from Title I OE&SM account to the ICE salaries and expenses account.

### **Senate-reported S. 3181**

Senate-reported S. 3181 would have appropriated \$5,928 million in gross budget authority for ICE, \$265 million more than the President's request. Senate-reported S. 3181 would have appropriated \$4,989 in net budget authority for ICE, which would have represented an increase of \$241 million, 5% over the Administration's requested amount. Of the appropriated amount, \$2,478 million would have been designated for detention and removal operations; \$160 million would have been allocated to identify and remove criminal aliens; nearly \$8 million would have been for special operations under §3131 of the Customs Enforcement Act of 1986; \$1 million would have provided compensation awards to informants; \$305,000 would have been used to promote public awareness of the child pornography tipline and anti-child exploitation activities; \$5 million would have been used to facilitate agreements under §287(g) of the INA; \$11 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; \$16 million would have been targeted for enforcement of laws against forced child labor; and nearly \$7 million would have been used to fund the Visa Security Program.

According to S.Rept. 110-396, Senate-reported S. 3181 would have fully funded the President's budget request for increases over the FY2008 appropriate amounts for: the ICE Office of Human Capital (\$1 million); the co-location of ICE facilities (\$12 million); national security and critical infrastructure investigations (\$12 million); commercial fraud and intellectual property investigations (\$5 million); outbound enforcement investigations (\$1 million); 287(g) agreements (\$12 million); fugitive operations (\$1 million); and the Criminal Alien Program (\$2 million). In addition, S.Rept. 110-396 recommended an increase over the President's budget requested of:

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<sup>57</sup> Of this, more than half would be used to expand the prosecutions of human rights violators who have entered the United States.

- \$26 million for 400 additional detention beds and support personnel to support increased worksite enforcement<sup>58</sup> (total increase of \$74 million);
- \$34 million (108 FTE) for worksite enforcement investigations;
- \$2 million for the Office of Professional Responsibility to investigate allegations of criminal and serious misconduct involving ICE employees (total increase of \$9 million and 39 FTE from FY2008);
- \$5 million (3 FTE) for investigations of cyber crimes (total increase of \$11 million (23 FTE) over FY2008);
- \$3 million (3 FTE) for the Visa Security Program (total increase of \$7 million and 6 FTE from FY2008);
- \$5 million (7 FTE) for Security Advisory Opinion Units;<sup>59</sup>
- \$5 million for textile transshipment enforcement;
- \$3 million (19 FTE) for Field Intelligence Groups;<sup>60</sup>
- \$4 million for Alternatives to Detention; and
- \$160 million for Secure Communities.

#### **P.L. 110-329**

P.L. 110-329 appropriated \$5,928 million in gross budget authority for ICE, which was \$265 million (5%) more than the President's request. P.L. 110-329 appropriated \$4,989 million in net budget authority, 5% or \$241 million more than the President's request. The Act specified that the appropriated amounts are to be used as follows: \$1,000 million to identify and removal criminal aliens;<sup>61</sup> \$22 million to expand a variety of investigative programs; \$100 million for state and local programs; \$127 million for worksite enforcement investigations; \$11 million for the Forensics Document Laboratory; \$34 for the Law Enforcement Support Center (LESC); \$5 million for textile transshipment enforcement; \$63 million for alternatives to detention; \$57 million for Automatization Modernization; and \$16 million for TECS modernization.<sup>62</sup>

P.L. 110-329 provided increases in appropriations over the President's request for the following programs:

- \$150 million for the identification and removal of criminal aliens;

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<sup>58</sup> The total number of funded beds for FY2009 would be 33,400.

<sup>59</sup> These units are part of the Visa Security Program and co-locate ICE officers with Department of State personnel to review visa applications.

<sup>60</sup> Field Intelligence Groups are part of Office of Intelligence.

<sup>61</sup> The Act required that \$850 million of the money to locate and removal criminal aliens be allocated from existing ICE programs.

<sup>62</sup> Treasury Enforcement Communications System (TECS) was created as the accounting system for the former U.S. Customs Service, and is the accounting system used by ICE and CBP. The former Immigration and Naturalization Service used a system known as the Performance Analysis System (PAS). During 2004, ICE and CBP stopped using PAS and switched all their accounting to TECS.

- \$6 million for transnational gang enforcement;
- \$8 million for the visa security program;
- \$3 million for cyber crime investigations;
- \$34 million for worksite enforcement investigations;
- \$3 million for ICE field intelligence groups;
- \$2 for the Law Enforcement Support Center (LESC) to fund the conversion of LESC employees from job category 1802 to job category 1801;
- \$7 million for alternatives to detention;
- \$1 million for ICE training consolidation and integration;
- \$7 million to co-locate ICE field facilities;
- \$0.5 million for the Office of the Principle Legal Advisor; and
- \$5 million for construction, which funds basic and emergency maintenance at ICE-owned detention facilities.

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

Activity	FY2008 Enacted <sup>a</sup>	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>b</sup>
<b>HQ &amp; Administration</b>	<b>316</b>	<b>0</b>	<b>361</b>	<b>377</b>	<b>372</b>
<b>Legal Proceeding</b>	<b>208</b>	<b>241</b>	<b>215</b>	<b>214</b>	<b>215</b>
Investigations - Domestic	1,422	1,679	1,191	1,514	1,519
Investigations - International	108	128	126	134	134
<b>Investigations Total</b>	<b>1,530</b>	<b>1,807</b>	<b>1,317</b>	<b>1,648</b>	<b>1,653</b>
<b>Intelligence</b>	<b>52</b>	<b>62</b>	<b>53</b>	<b>56</b>	<b>56</b>
DRO-Custody Operations	1,647	1,789	1,650	1,721	1,721
DRO-Fugitive Operations	219	238	—	226	226
DRO-Criminal Alien Program	179	204	—	189	189
DRO-Alternatives to Detention	54	58	63	60	63
DRO Transportation and Removal Program	282	290	281	281	281
<b>DRO Total</b>	<b>2,381</b>	<b>2,579</b>	<b>1,994</b>	<b>2,478</b>	<b>2,481</b>
<b>Comprehensive Identification and Removal of Criminal Aliens</b>	<b>200</b>	<b>0</b>	<b>800<sup>c</sup></b>	<b>160</b>	<b>150<sup>d</sup></b>
<b>ICE Salaries and Expenses</b>	<b>4,688</b>	<b>4,691</b>	<b>4,740<sup>e</sup></b>	<b>4,932</b>	<b>4,927</b>

**Sources:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

- a. Column "FY2008 Enacted" includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- c. This amount includes funding for the Criminal Alien Program (CAP), Fugitive Operations, Office of Investigations support to locate criminal aliens, and State and Local Programs including 287(g) agreements. The House-reported bill did not include separate funding for CAP or Fugitive Operations.
- d. P.L. 110-329 appropriated \$1,000 million for the identification and removal of criminal aliens. Of those funds, \$150 million was additional funding not included in the President's budget, and \$850 million was required to be allocated from existing ICE programs.
- e. Does not include \$6 million transferred from Title I OS&EM account to ICE S&E by amendment during the full Committee mark-up of the bill in the House.

## **Issues for Congress**

ICE is responsible for many divergent activities due to the breadth of the civil and criminal violations of law that fall under ICE's jurisdiction. As a result, how ICE resources are allocated in order to best achieve its mission is a continuous issue. In addition, part of ICE's mission includes locating and removing deportable aliens, which involves determining the appropriate amount of detention space as well as which aliens should be detained. Additionally, in recent years there has been debate concerning the extent to which state and local law enforcement should aid ICE with the identification, detention, and removal of deportable aliens.

## ***Office of Investigations/Immigration Functions***

The Office of Investigations (OI) in ICE focuses on a broad array of criminal and civil violations affecting national security such as illegal arms exports, financial crimes, commercial fraud, human trafficking, narcotics smuggling, child pornography/exploitation, worksite enforcement, and immigration fraud. ICE special agents also conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation. The Homeland Security Act of 2002 (P.L. 107-296) abolished the INS and the United States Customs Service, and transferred most of their investigative functions to ICE effective March 1, 2003. There are investigative advantages to combining the INS and Customs Services, as those who violate immigration laws may be engaged in other criminal enterprises (e.g., alien smuggling rings often launder money). Nonetheless, concerns have been raised that not enough resources have been focused on investigating civil violations of immigration law and that ICE resources have been focused on terrorism and the types of investigations

performed by the former Customs Service.<sup>63</sup> The House report noted that the Committee has developed a new investigatory budget structure for ICE in 2009 to provide transparency into the agency's various law enforcement missions. P.L. 110-329 appropriated 1,653 total for OI for FY2009, \$154 million less than the President's budget request of \$1,807 million. Senate-reported S. 3181 would have appropriated \$1,648 million for OI, while the House report would have appropriated \$1,317 million.<sup>64</sup>

### *Detention and Removal Operations*

Detention and Removal Operations (DRO) in ICE provide custody management of the aliens who are in removal proceedings or who have been ordered removed from the United States.<sup>65</sup> DRO is also responsible for ensuring that aliens ordered removed actually depart from the United States. Many contend that DRO does not have enough detention space to house all those who should be detained. A study done by DOJ's Inspector General found that almost 94% of those detained with final orders of removal were deported, whereas only 11% of those not detained, who were issued final orders of removal, left the country.<sup>66</sup> Concerns have been raised that decisions regarding which aliens to release and when to release them may be based on the amount of detention space, not on the merits of individual cases, and that the amount of space may vary by area of the country leading to inequities and disparate policies in different geographic areas. The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5204) authorized, subject to appropriations, an increase in DRO bed space of 8,000 beds for each year, FY2006-FY2010. P.L. 110-329 appropriated \$2,481 million for DRO, including funding 1,400 more detention beds and support personnel than in FY2008, bring the total number of FY2009 detention beds to 33,400. Although P.L. 110-329 appropriated less money than the President's request of \$2,579 for DRO, P.L. 110-329 appropriated an additional \$150 million to identify and removal criminal aliens much of which will be used by DRO. The House-reported bill would have fully funded the President's request of \$2,579 million for DRO including an additional \$46 million for 725 detention beds and support personnel.<sup>67</sup> Senate-reported S. 3181 would have appropriated \$2,478 for DRO, including funding for 400 more detention beds and support personnel, and \$160 million for Secure Communities (a program that identifies and removes incarcerated criminal aliens) than the President's budget request.

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<sup>63</sup> Based on CRS discussions with ICE personnel in New York City, August 27, 2003.

<sup>64</sup> Although House-reported H.R. 6947 and Senate-reported S. 3181 would have appropriated less money than the President's budget request, it is not clear that the President's budget actually requested more money. The President's budget requested no money for HQ and Administration, appearing to fold the funding into program activities. Nonetheless, it is unlikely that there will be no funding for HQ and administration purposes.

<sup>65</sup> For more information on detention issues see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin. Under the INA aliens can be removed for reasons of health, criminal status, economic well-being, national security risks, and others that are specifically defined in the act.

<sup>66</sup> Department of Justice, Office of the Inspector General, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, Report I-2003-004, February 2003.

<sup>67</sup> In addition, DHS would also fund 275 beds through the breach bond fund, increasing the total bed space by 1,000 to 33,000 beds.

Furthermore, there have been concerns raised about the adequacy of medical care received by aliens in detention.<sup>68</sup> House-reported H.R. 6947 would have specified that no funds could be used to continue any contract for detention services with a facility that receives two consecutive less than adequate performance ratings, while S.Rept. 110-396 urged ICE to establish and improve the system for responding to detainee complaints. As in the House report, P.L. 110-329 appropriated an additional \$2 million for the Office of Professional Responsibility to undertake an immediate comprehensive review of the medical care provided to ICE detainees. The Act also directed ICE to immediately implement the Government Accountability Office's recommendation to improve medical services.

### *State and Local Law Enforcement*<sup>69</sup>

Currently, the INA provides limited avenues for state enforcement of both its civil and criminal provisions. One of the broadest grants of authority for state and local immigration enforcement activity stems from INA §287(g), which authorizes the Attorney General to enter into a written agreement with a state, or any political subdivision, to allow state and local law enforcement officers to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. The enforcement of immigration by state and local officials has sparked debate among many who question what the proper role of state and local law enforcement officials should be in enforcing federal immigration laws. Many have expressed concern over proper training, finite resources at the local level, possible civil rights violations, and the overall impact on communities. Nonetheless, some observers contend that the federal government has scarce resources to enforce immigration law and that state and local law enforcement entities should be utilized.

House-reported H.R. 6947 would have specified that no funds may be used to continue a 287(g) agreement if the DHS Inspector General determined that the 287(g) agreement had been violated; or to enter into an agreement with law enforcement (other than at a jail or prison) of a state or subdivision of the state unless the Assistant Secretary of ICE reviewed all requests for 287(g) agreements in that state and prioritizes the agreements that will maximize the identification of criminal aliens convicted of dangerous crimes. In addition, the President's budget request included an increase of \$12 million for these agreements that Senate-reported S. 3181 would have fully funded.

P.L. 110-329 appropriated \$100 million for state and local programs including \$54 million for the 287(g) program and \$5 million for compliance reviews of the 287(g) agreements. P.L. 110-329 directed ICE to prioritize 287(g) agreements that will maximize the identification and removal of deportable criminal aliens.

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<sup>68</sup> For more on the issue of detainee medical care, see CRS Report RL34556, *Health Care for Noncitizens in Immigration Detention*, by Alison Siskin.

<sup>69</sup> This section adapted from CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Blas Nuñez-Neto, Michael John Garcia, and Karma Ester.

### *Federal Protective Service*<sup>70</sup>

The Federal Protective Service (FPS), within ICE, is responsible for the protection and security of federally owned and leased buildings, property, and personnel. It has two primary missions—basic security and building specific security. Basic security functions include daily monitoring of federal building entry and exit points; building specific security includes investigating specific threats to a federal facility or building. In general, FPS focuses on law enforcement and protection of federal facilities from criminal and terrorist threats. The FY2009 President’s request for FPS was \$616 million. House-reported H.R. 6947 would have fully funded the President’s request. Senate-reported S. 3181 would have appropriated \$640 million for FPS. P.L. 110-329 appropriated \$640 million for FPS in FY2009.

In FY2007, the Administration realigned its workforce and reduced the number of FPS law enforcement officers and investigators. Following this realignment and reduction, the Government Accountability Office (GAO) found that FPS’s staff decreased by approximately 20%, from about 1,400 employees at the end of FY2004 to approximately 1,100 employees at the end of FY2007.<sup>71</sup> According to GAO, this reduction in FPS’s staff resulted in the reduction of security at federal facilities and increased the risk of crime or terrorist attacks.<sup>72</sup> Finally, GAO stated that the decision by FPS to eliminate proactive security patrols at federal facilities resulted in FPS law enforcement personnel not being able to conduct security operations. Such operations involve inspecting suspicious vehicles, monitoring suspicious individuals, or detecting and deterring criminal activity in and around federal buildings.<sup>73</sup> Since the Administration’s FY2007 decisions on FPS activities received congressional attention, it may be important to note the Administration’s actions and intentions for FY2008 and FY2009.

In FY2008, the Administration expected to:

- improve methods used to identify and reduce real and perceived threats to federal facilities;
- continue intelligence and information sharing;
- provide law enforcement and security services at National Special Security Events (NSSE); and
- strengthen federal facility security standards.<sup>74</sup>

Finally, in FY2009, the Administration intends for the FPS to:

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<sup>70</sup> Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

<sup>71</sup> U.S. Government Accountability Office, *Homeland Security: The Federal Protective Service Faces Several Challenges That Hamper Its Ability to Protect Federal Facilities* (Washington: June 2008), p. 12.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, p.14.

<sup>74</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Federal Protective Service, Fiscal Year 2009 Congressional Justification, p. 5.

- provide law enforcement and security services at National Special Security Events (NSSE);
- complete risk-based security standards aligned with intelligence;
- continue federal facility security assessments;
- continue to monitor federal agency compliance with security standards;
- improve contract security guard management; and
- continue to strengthen business processes and the Service.<sup>75</sup>

As a result of GAO's findings and congressional interest, P.L. 110-329 required OMB and DHS to fully fund FPS operations through revenue and collections of security fees paid by federal departments and agencies.<sup>76</sup> This security fee collection is intended to ensure that the FPS maintains not fewer than 1,200 full-time equivalent staff and 900 full-time equivalent police officers, inspectors, area commanders, and special agents.<sup>77</sup>

## **Transportation Security Administration (TSA)<sup>78</sup>**

The TSA was created by the Aviation and Transportation Security Act (ATSA, P.L. 107-71), and it was charged with protecting air, land, and rail transportation systems within the United States to ensure the freedom of movement for people and commerce. In 2002, the TSA was transferred to DHS with the passage of the Homeland Security Act (P.L. 107-296). The TSA's responsibilities include protecting the aviation system against terrorist threats, sabotage, and other acts of violence through the deployment of passenger and baggage screeners; detection systems for explosives, weapons, and other contraband; and other security technologies. The TSA also has certain responsibilities for marine and land modes of transportation including assessing the risk of terrorist attacks to all non-aviation transportation assets, including seaports; issuing regulations to improve security; and enforcing these regulations to ensure the protection of these transportation systems. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities. See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 11** for sub-account-level detail for TSA for FY2008 enacted levels and supplemental appropriations and FY2009 amounts specified in the President's request, the House and Senate-reported bills, and enacted levels specified in P.L. 110-329.

### **President's FY2009 Request**

The President's requested funding level for the TSA in FY2009, totaling \$7,102 million, comprises about 14% of the DHS gross budget authority. The President's FY2009 request

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<sup>75</sup> Ibid.

<sup>76</sup> P.L. 110-329, Title II, mandates that OMB "certify in writing" to the Committees of Appropriations of the Senate and the House of Representatives that FPS will be fully funded in FY2009.

<sup>77</sup> P.L. 110-329, Title II.

<sup>78</sup> Prepared by Bart Elias, Specialist in Aviation Safety, Security, and Technology, Resources, Science, and Industry Division.

estimates receipts totaling \$2,360 million in offsetting collections, mostly through the collection of passenger security fees and security fees paid by the airlines. These estimated offsetting collections for FY2009 are \$67 million over FY2008 projected levels, yielding a net total requested amount for TSA of \$4,065 million, to be paid for out of the Treasury General Fund.

New funding initiatives include an additional \$426 million to the Aviation Security Capital Fund (ASCF) for explosives detection equipment purchase and installation. Proposed discretionary funding for the purchase and installation of Explosive Detection Systems (EDS) and Explosive Trace Detection (ETD) equipment would be reduced by \$140 million compared to FY2008 levels, however this reduction would be more than offset by the proposed increase to the ASCF. A proposed increase of \$47 million for Screening Technology (Maintenance and Utilities) reflects increasing costs of checked baggage and checkpoint screening equipment maintenance as these systems age and approach their useful service life. Also, a funding increase of \$32 million is proposed for the Secure Flight program. The Checkpoint Screening Security Fund—a one-time mandatory funding vehicle that provided \$250 million in FY2008 for checkpoint screening technologies—would be replaced by a requested appropriation of \$128 million for Checkpoint Support. The President's FY2009 request provides for 800 additional full-time equivalent (FTE) Transportation Security Officers (TSOs) and other aviation security job functions. These additional slots would mainly be filled by more Behavioral Detection Officers (BDOs, 330 additional FTEs) and additional screeners to conduct random screening of airport workers.

The President's FY2009 request includes a proposal to realign several TSA programs. Most notably, the request proposes to place the Federal Air Marshal Service (FAMS) under the Aviation Security account, rather than maintaining it as a separate entity. The budget also seeks to realign several regulatory functions, including air cargo security, under the Aviation Regulation program, and several law enforcement programs, including airport law enforcement support; canine teams; Visible Intermodal Protective Response (VIPR) teams; and Federal Flight Deck Officers (FFDOs), under the Law Enforcement program. The proposal also seeks to establish a single Human Resource Services within the Aviation Security account, to support both field and headquarters staff. Also, the request proposes that information technology and support for Aviation Security be realigned with the Information Technology function housed within the Transportation Security Support account.

### **House-reported H.R. 6947**

The House committee recommended \$6,964 million for the TSA, \$138 million less than the President's request, but \$77 million more than the Senate-reported bill. Like the Senate-reported bill, the House-reported bill has not adopted many of the realignment proposals offered in the President's request. Specifically, the committee rejected the idea of consolidating air cargo with other aviation regulation activities, and it rejected the concept of placing FAMS under the aviation security program area. However, like the Senate-reported bill, H.R. 6947 concurred with the Administration proposals to consolidate human resources and information technology activities throughout the TSA. Thus, while funding levels for budget activities contained in H.R. 6947 are directly

comparable to the Senate-reported amounts, these amounts are not directly comparable to the President's request for affected budget activities.

House-reported H.R. 6947 requested \$250 million for Checkpoint Support, the same amount provided under the Checkpoint Security Screening Fund in FY2008, and \$122 million above the President's request for FY2009. The committee believed that this additional funding was necessary to expedite testing and deployment of checkpoint explosives screening technologies. The House report expressed concern that only half of large airports have optimized their baggage screening systems to date, and recommended \$294 million for EDS/ETD purchase and installation, in line with the Senate-reported amount. The committee also recommended \$110 million for air cargo security, \$39 million above the FY2008 appropriated level, but \$13 million below the Senate-reported amount.

The House committee recommended \$109 million for Threat Assessment and Credentialing functions, \$24 million below the requested level. The committee recommended \$75 million of this for the Secure Flight program, \$7 million below the request, citing schedule slips in the regulatory process and GAO reviews of the program. With regard to surface transportation security, the House-reported measure specified \$50 million, \$13 million above the President's request, and \$14 million below the Senate-reported amount. The additional funding specified in the House report was intended for the deployment of additional security inspectors.

### **Senate-reported S. 3181**

The Senate-reported bill would have set total funding for the TSA at \$6,887 million, \$215 million less than the President's request. The reported bill supported only some of the Administration-proposed functional realignments. Therefore, funding for several of the budget activities in **Table 11** cannot be directly compared. Specifically, the committee agreed with the Administration plan to consolidate human resources and information technology programs throughout the TSA. However, the committee did not go along with the Administration proposals to consolidate law enforcement activities under the aviation security program area, to place the FAMS under aviation security, and to consolidate regulatory enforcement functions, including air cargo security activities.

The committee recommended \$2,692 million for passenger and baggage screening personnel compensation and benefits (PC&B), \$24 million below the requested levels based on FY2008 "payroll underburn" reported to the committee. The committee also recommended a rescission of \$7.3 million of FY2008 funds set aside for pilot programs to screen airport employees that were determined to be in excess of the amount needed to carry out these pilots. The committee recommended \$200 million for checkpoint support, \$72 million above the President's request, but \$50 million less than the amount provided in FY2008 under the Checkpoint Security Screening Fund.

The committee noted that the Administration's proposed passenger security fee increase has not been acted on by congressional authorizing committees, and therefore reported mandatory funding for the Aviation Security Capital Fund at the currently authorized level of \$250 million. The committee, instead, proposed a funding level of \$294 million for EDS/ETD purchase and installation, \$140 million above the President's request.

The committee recommended \$123 million for air cargo security, \$18 million above the amount proposed in the President's request within the aviation regulation and law enforcement program area, under the proposed restructuring scheme. The committee also sought to expand the TSA air cargo screening technology pilots to address the mandate for 100% screening of cargo placed on passenger aircraft, and called for the TSA to issue an expenditure plan detailing efforts to develop covert testing protocols, augment cargo strike teams, and provide details of deployed canine teams and screening technologies. In addition to increased air cargo security funding to meet the 100% screening mandate of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), the committee recommendation included \$20 million across various budget activities to implement regulations and fulfill other mandates of the 9/11 Act. The committee also recommended \$4 million for airport perimeter security pilot projects, which was not included in the President's request but is equal to FY2008 funding for this activity. The committee proposed \$799 million for FAMS, \$13 million above the President's request, and recommends keeping FAMS separate from aviation security, rather than placing it under the aviation security program area as requested. With regard to surface transportation security, the bill sought \$64 million, \$27 million more than the President's request, and seeks additional inspectors and operations staff.

#### **P.L. 110-329**

The Act provided a total of \$6,978 to the TSA, \$91 million above the Senate-reported level and \$14 million above the House-reported level, but \$124 million less than the President's request. Funding for aviation security totaled \$4,735 million, roughly matching the House-reported levels.

As recommended in the House and Senate reports, the Act consolidated Information Technology functions and Human Capital Services across the TSA. Like the House and Senate-reported measures, the Act did not support other realignment and consolidation proposals from the President's request.

The Act included a total of \$544 million for the procurement and installation of checked baggage explosives detection systems, including \$294 million for EDS/ETD purchase and installation and the mandatory \$250 million for the ASCF. This comprises slightly less than half of the spending that has been designated as going towards efforts to implement requirements of the 9/11 Act (P.L. 110-53). These funding initiatives, totaling \$1,119 million, also included \$123 million for Air Cargo Security; \$391 million for specialized screening programs, including travel document checkers, behavior detection officers, bomb appraisal officers, and random screening of airport workers; \$30 million to expand the VIPR teams; almost \$12 million for surface transportation security inspectors; and \$20 million specifically designated for Implementing P.L. 110-53, intended for conducting vulnerability assessments and security training exercises for high-risk surface transportation systems.

Of the \$123 million appropriated for Air Cargo Security, \$18 million was allocated for expanding test programs evaluating air cargo screening technologies, and for auditing freight forwarders, shippers, and distributors participating in the TSA's certified shipper program. The Act also directed the TSA to submit an expenditure plan for air cargo security funds including details of new covert testing protocols, efforts to expand

regulatory inspection strike teams, and data on canine team and air cargo screening technology deployment.

The Act also provided \$250 million for Checkpoint Support to deploy emerging passenger and carry-on screening technologies, with a focus on deploying whole body imaging (WBI) technologies to passenger checkpoints. This amount equals the funding provided in FY2008 under the Checkpoint Screening Security Fund. The Act also provided \$306 million for Screening Technology Maintenance and Utilities for the upkeep of deployed passenger checkpoint and checked baggage screening technologies, including slightly more than \$4 million for the disposal of equipment no longer in service.

The Act provided \$116 million for Transportation Threat Assessment and Credentialing functions, including \$82 million for Secure Flight. The Act, however, prohibited the operational deployment of Secure Flight beyond testing until the DHS certifies and the GAO reports that all statutory conditions pertaining to privacy, data security, data retention, and redress procedures for passengers have been satisfactorily met.

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

Budget Activity	FY2008 Enacted <sup>a</sup>	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>b</sup>
<b>Aviation Security</b>	<b>4,809</b>	<b>5,290</b>	<b>4,733</b>	<b>4,672</b>	<b>4,735</b>
Screening Partnership Program (SPP)	143	151	151	151	151
Passenger & Baggage Screening (PC&B)	2,636	2,716	2,716	2,692	2,716
Screener Training & Other	224	197	197	197	197
Human Resource Services	182	—	—	—	—
Checkpoint Support	—	128	250	200	250
EDS/ETD Purchase/Installation	294	154	294	294	294
Screening Technology	264	311	311	306	306
Operation Integration	25	21	21	21	21
Aviation Regulation (and Other Enforcement)	256	210	246	251	245
Airport Management, IT, and Support	652	373	407	407	402
FFDO & Crew Training	25	—	25	25	25
Air Cargo Security	73	—	110	123	123
Federal Air Marshals Service	— <sup>c</sup>	786	—	—	—
Law Enforcement	—	242	—	—	—
Airport Perimeter Security	4	—	4	4	4

*Homeland Security Department: FY2009 Appropriations*

Budget Activity	FY2008 Enacted <sup>a</sup>	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>b</sup>
<b>Implementing P.L. 110-53</b>	<b>30</b>	—	<b>10</b>	— <sup>d</sup>	<b>20</b>
<b>Aviation Security Capital Fund</b>	<b>250</b>	<b>676</b>	<b>250</b>	<b>250</b>	<b>250</b>
<b>Checkpoint Screening Security Fund</b>	<b>250</b>	—	—	—	—
<b>Federal Air Marshal Service</b>	<b>770</b>	— <sup>c</sup>	<b>822</b>	<b>799</b>	<b>819</b>
Management and Administration	674	—	727	708	725
Travel and Training	95	—	94	91	94
<b>Threat Assessment and Credentialing (TTAC)</b>	<b>83</b>	<b>133</b>	<b>109</b>	<b>120</b>	<b>116</b>
Secure Flight	50	82	75	82	82
Crew Vetting	15	—	—	—	—
Other/ TTAC Admin. & Ops.	10	51	34	37	34
TWIC Appropriation	8	—	—	—	—
<b>Credentialing Fees</b>	<b>83</b>	<b>40</b>	<b>40</b>	<b>40</b>	<b>40</b>
Registered Traveler Program	35	10	10	10	10
TWIC	27	9	9	9	9
Alien Flight School	2	3	3	3	3
HAZMAT Commercial Driver	19	18	18	18	18
<b>Surface Transportation Security</b>	<b>47</b>	<b>37</b>	<b>50</b>	<b>64</b>	<b>50</b>
Operations and Staffing	24	25	25	34	25
Security Inspectors	22	11	25	30	25
<b>Transportation Security Support</b>	<b>524</b>	<b>926</b>	<b>950</b>	<b>950</b>	<b>948</b>
Intelligence	21	22	22	22	22
Headquarters Administration	293	213	237	237	235
Human Capital Services	—	218	218	218	218
Information Technology	209	473	473	473	473
<b>Rescission of Prior Year Funds</b>	<b>-5</b>	—	—	<b>-7</b>	—
<b>TSA Gross Total</b>	<b>6,815</b>	<b>7,102</b>	<b>6,964</b>	<b>6,887</b>	<b>6,978</b>

**Source:** CRS Analysis of the FY2009 DHS Congressional Budget Justifications, the FY2009 DHS Budget in Brief, S. 3181 and the accompanying report S.Rept. and H.R. 6947 and the accompanying report (H.Rept. 110-862).

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

- a. Column "FY2008 Enacted" includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- c. The President's FY2009 request contains a proposal to place FAMS under the Aviation Security Account rather than maintaining it as a separate entity.
- d. Not centralized by Senate, however S.Rept. 110-396 indicates that an additional \$20 million above the President's request was spread across various budget activities for this purpose.

## **TSA Issues for Congress**

Issues considered during in the FY2009 appropriations process included the passenger security fee surcharge proposal, the adequacy of checkpoint technology investment, and the appropriateness of proposed program realignments included in the President's request.

### ***Passenger Security Fee Surcharge***

The Administration requested a four-year temporary passenger surcharge beginning in FY2009 of \$0.50 per flight, not to exceed \$1.00 per one-way trip, in addition to the current passenger security fees of \$2.50 per flight with a cap of \$5.00 per one-way trip. Under the proposal, these additional fees would be deposited in the Aviation Security Capital Fund (ASCF). The surcharge is intended to offset the \$426 million in new budget authority for the Aviation Security Capital Fund that the Administration is seeking. These funds would be used to finance the acquisition and installation of checked baggage explosives detection equipment. The Administration regards this new budget authority it is seeking as being subject to PAYGO rules, and it has recommended the collection of the passenger security fee surcharge as an offsetting collection.

If the increased budget authority for the ASCF is subject to PAYGO rules, as the Administration maintains, then questions regarding the need for, and possibly the adequacy of, the proposed \$0.50 surcharge may be raised during congressional appropriations debate. The Administration projects an increase of \$216 million in offsetting security fee collections in FY2009 compared to FY2008, and it is requesting additional budget authority totaling \$426 million for the ASCF. Current authorization for the ASCF consists of a mandatory appropriation of \$250 million derived solely from passenger security fee collections. In addition, the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) authorizes an additional \$450 million annually through FY2011 for these same purposes, but as a discretionary appropriation and not through the ASCF. Congress may debate whether the direct appropriation is a preferable alternative to supplementing the ASCF as the Administration proposes.

Congress may also debate whether the \$0.50 surcharge is adequate to offset the proposed ASCF funding increase, particularly if economic conditions were to worsen and lead to a slowdown in passenger volume and lower-than-expected security fee revenue.

Authorizing committees in the House and the Senate have not considered legislation to raise the passenger security fees as proposed in the President's request. Therefore, in both the Senate-reported and the House-reported legislation, it was assumed that the ASCF will be funded in FY2009 at the mandatory level currently authorized in law of \$250 million. Both the Senate-reported and House-reported measures, therefore, proposed increased discretionary appropriations levels for EDS/ETD purchase and installation. P.L. 110-329 provided a total of \$544 million for baggage screening explosives detection system purchase, installation, and integration, including \$294 million for EDS/ETD purchase and installation in addition to the \$250 million mandatory ASCF funding, matching the amount specified in both the House and Senate bills.

### *Checkpoint Technology Investment and Deployment*

At the President's requested funding level, the TSA anticipates deploying advanced technology (AT) x-ray systems at 60% of checkpoints at Category X and Category I airports, whole-body imaging (WBI) systems at 15% of checkpoints at such airports, bottle liquids scanners at 65% of checkpoints at such airports, and cast and prosthesis screening systems at 25% of checkpoints at such airports. Additionally, the TSA intends to fund the deployment of additional video cameras and electronic surveillance monitoring systems at checkpoints, and devote \$13.5 million to mitigating various safety hazards at passenger and baggage screening areas.

Congress considered whether the \$128 million requested for Checkpoint Support will be adequate to address advanced screening technology initiatives throughout the aviation system along with these other competing efforts. This may be an area of particular interest given that in FY2008 Congress provided \$250 million for advanced checkpoint technologies through the creation of the Checkpoint Screening Security Fund. As many of these advanced checkpoint screening technologies are now moving beyond the pilot testing phase to full-scale operational deployment, Congress may seek to more closely examine and reevaluate the TSA's existing checkpoint screening technology plan in light of what is now known about the capabilities and limitations of these various technologies as well as the current risk environment. Congress may debate whether the deployment strategy should be modified to either accelerate, or perhaps even scale back, the fielding of various advanced checkpoint screening technologies. The House-reported measure specifies \$250 million for Checkpoint Support, which would maintain this activity at the level provided for under the one-year authorization of the Checkpoint Screening Security Fund in FY2008. The Senate report specified \$200 million for Checkpoint Support, \$50 million below the amount specified in the House report, but \$72 million above the requested level. P.L. 110-329 provided \$250 million for Checkpoint Support, matching the FY2008 funding level of the Checkpoint Screening Security Fund and the amount reported in the House. The Act emphasized the use of these funds to acquire multiple whole body imaging (WBI) technologies including x-ray backscatter and millimeter wave systems, as directed in the Senate report.

### ***Program Consolidation Proposals***

Congress also considered the realignment of functions as proposed in the President's budget request. Most notably, placing air cargo security—which has been a priority issue for legislation and appropriations over the past five year—within the Aviation Regulation function may be of particular concern. Critics may argue that air cargo security should remain a separate function because of its unique characteristics and in recognition of statutory requirements to screen 50% of all cargo placed on passenger aircraft by February 2009 and 100% of such cargo by August of 2010 (see P.L. 110-53, Sec. 1602).

While the TSA's budget justification contended that aligning air cargo security under Aviation Regulation would emphasize the regulatory aspects of the program and provide greater flexibility in assigning regulatory inspectors to air cargo details, these air cargo screening mandates arguably suggest a broader scope to the overall air cargo program. The TSA has maintained that its roles and responsibilities in meeting these statutory requirements will largely be met through promulgating regulations and conducting stepped-up regulatory oversight to ensure air carrier, freight forwarder, and shipper compliance with screening requirements and other security regulations. However, some in Congress view the TSA's role as being much larger, including testing and evaluating screening technologies, the acquisition and deployment of such equipment, and the training and deployment of canine teams to assist in cargo screening operations. The TSA has indicated that it intends to significantly expand canine team involvement in air cargo screening, making these teams available for air cargo screening 42.5% of the time by FY2009 compared to the current availability level of 25%. Since a formal plan for meeting statutory cargo screening requirements has not yet been presented by the TSA, viewing the TSA role in air cargo security and screening as a regulatory function may arguably be taking an overly narrow perspective (see CRS Report RL34390, *Aviation Security: Background and Policy Options for Screening and Securing Air Cargo*, by Bart Elias).

Other proposed realignment options may not be as seemingly controversial, but may nonetheless raise questions during congressional debate. The proposed alignment of the Federal Air Marshal Service (FAMS) into the Aviation Security function may allow better integration of FAMS operations with screening operations and may provide more streamlined career advancement opportunities for screeners to enter FAMS, as the TSA budget justification argues. However, some may question why FAMS, the largest law enforcement unit within the TSA, is not instead aligned with the Law Enforcement program, which could potentially provide better integration with other law enforcement functions, including airport law enforcement presence and the FFDO program.

As noted above, neither the Senate-reported nor the House-reported legislation supported the integration of FAMS into the Aviation Security. The measures also did not support the realignment of air cargo security operations, opting instead to keep Air Cargo Security as a separate program. The committees also did not endorse the Administration proposals to realign other law enforcement and regulatory functions. The committees did, however, agree to realign human resources and information technology functions across the TSA. Realignment of these two functional areas was reflected in the FY2009 appropriations act (P.L. 110-329), but the act did not restructure or realign any other TSA functional areas as proposed in the President's request.

## ***Secure Flight***

The President's request proposed a funding increase of \$32 million for the Secure Flight program in order to achieve initial operational deployment in the second quarter of FY2009, with a goal of fully implementing Secure Flight in early FY2010. This long-delayed and highly controversial initiative to develop a system for government prescreening of airline passengers against terrorist watchlists remains an issue. Prior appropriations acts, including the FY2008 Consolidated Appropriations Act (P.L. 110-161), have imposed restrictions on deploying Secure Flight or any other follow-on prescreening system until the DHS certifies, and the GAO reports to Congress, that specific issues regarding privacy protection, data security and integrity, and redress procedures have been adequately addressed. The Administration has long maintained that this requirement for GAO review and certification of the Secure Flight system constitutes a "legislative veto" of Administration decisions and actions and therefore, in the Administration's view, violates the constitutional framework of separation of powers. Nonetheless, both the Senate-reported and House-reported legislation would keep in place these requirements as well as a general prohibition against the use of commercial information to assess the risk of passengers whose names do not appear on government terrorist watchlists. P.L. 110-329 also included language (See Sec. 512) prohibiting operational deployment of Secure Flight, in other than a test basis, until the DHS certifies and the GAO reports that statutory conditions described in section 522 of P.L. 108-334 pertaining to privacy, data security, data retention, and redress procedures for passengers have been satisfactorily met. The Act further specified that, during Secure Flight testing, the TSA may not delay or deny boarding to passengers on the basis of any system-provided information other than the results of matching names against a government watch list. The Act also prohibited the TSA from expending any appropriations, including prior year appropriations, to develop or test algorithms assigning risk to passengers whose names are not on government watch lists and prohibited the TSA from utilizing information from non-federal databases in the Secure Flight system, except for passenger name record (PNR) data provided by the airlines.

## **United States Coast Guard<sup>79</sup>**

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is the lead agency responsible for the security of U.S. ports, coastal and inland waterways, and territorial waters. The Coast Guard also performs missions that are not related to homeland security, such as maritime search and rescue, marine environmental protection, fisheries enforcement, and aids to navigation. The Coast Guard was transferred from the Department of Transportation to the DHS on March 1, 2003.

### **President's FY2009 Request**

For FY2009, the President requested a total of \$9,071 million for the Coast Guard, which accounts for about 19% of DHS's requested budget. The President requested \$6,213 million for operating expenses (an increase of 4% over FY2008), \$1,205 million for

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<sup>79</sup> Prepared by John Frittelli, Specialist in Transportation, Resources, Science and Industry Division.

acquisition, construction, and improvements (an increase of 21% over FY2008), \$131 million for reserve training (an increase of 3% over FY2008), \$16 million for research, development, tests, and evaluation (a decrease of 36% from FY2008), \$12 million for environmental compliance and restoration (a decrease of 8% from FY2008), and zero funding for the bridge alteration program. **Table 12** provides more detail regarding the Coast Guard's Operating Expenses (OE) account and its Acquisition, Construction, and Improvements (ACI) account.

### **House-reported H.R. 6947**

The House Appropriations Committee recommended a total of \$9,206 million for the Coast Guard, \$135 million more than requested by the President (see **Table 8** for totals by major accounts). The major differences between the President's request and House committee recommendations include rejecting the request for funding for a fourth National Security Cutter, rejecting the requested transfer of \$82 million in personnel funding from the ACI account to the OE account (both are discussed further below) and \$98 million provided for the Coast Guard's new headquarters versus no funding requested by the President.

### **Senate-reported S. 3181**

The Senate Appropriations Committee recommended a total of \$9,216 million for the Coast Guard, \$145 million more than requested by the President (see **Table 8** for totals by major accounts). The largest differences in dollar terms between the President's request and the Senate committee's recommendations concern the acquisition of the response-boat medium and the missionization of C-130J aircraft (both are discussed further below).

### **P.L. 110-329**

P.L. 110-329 provided \$9,361 million for the Coast Guard which includes \$6,195 million for OE and \$1,495 million for ACI<sup>80</sup> (see **Table 8** for totals by major accounts). The Act provided \$64 million more than the President requested for response boats - medium, \$44 million more for the Deepwater program, \$18 million more for shore facilities and aids to navigation, \$30 million for refurbishment of a polar icebreaker vessel, and \$98 million for Coast Guard headquarters relocation (these differences are discussed further below).

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<sup>80</sup> This amount excludes a \$20 million rescission of unobligated balances in the ACI account as per section 551 of P.L. 110-329. Also, Division B of P.L. 110-329, the Disaster Relief and Recovery Supplemental Appropriations Act, 2008 provides \$300 million for the Coast Guard's ACI account for facilities damaged by 2008 natural disasters and flooding.

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

(budget authority in millions of dollars)

	<b>FY2008 Enacted<sup>a</sup></b>	<b>FY2009 Request</b>	<b>FY2009 House- Reported</b>	<b>FY2009 Senate- Reported</b>	<b>P.L. 110- 329<sup>b</sup></b>
<b>Operating Expenses</b>	<b>6,001</b>	<b>6,213</b>	<b>6,202</b>	<b>6,280</b>	<b>6,195</b>
Military pay and allowances	2,939	3,077	3,058	3,121	3,062
Civilian pay and benefits	604	693	646	691	645
Training and recruiting	189	196	195	199	196
Operating funds and unit level maintenance	1,164	1,170	1,177	1,182	1,177
Centrally managed accounts	233	263	259	267	262
Port/vessel security and environmental response	—	—	29	—	24
Aviation mission hour gap	—	—	10	—	5
Intermediate and depot level maintenance	762	815	828	820	824
DOD Transfer	110	—	—	—	—
<b>Acquisition, Construction, and Improvements</b>	<b>988<sup>a</sup></b>	<b>1,205</b>	<b>1,339</b>	<b>1,267</b>	<b>1,495</b>
Vessels and Critical Infrastructure	45	69	69	113	113
Aircraft	—	—	(20) <sup>c</sup>	—	—
Other Equipment	173	95	95	89	89
Integrated Deepwater System	651	990	934	1,014	1,034
Shore facilities and Aids to Navigation	41	50	68	50	68
Personnel and Related Support	83	1	96	1	93
Coast Guard HQ	—	—	98	—	98

**Source:** CRS Analysis of the FY2009 DHS Congressional Budget Justifications, the FY2009 DHS Budget in Brief, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

- Column "FY2008 Enacted" includes emergency funding for DHS enacted by Division E of P.L. 110-161, but does not include \$300 million for Acquisitions, Construction, and Improvements as enacted by Division B of P.L. 110-329.
- The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- The House-reported bill includes a rescission of \$20 million in previously appropriated funding for UAVs.

## **Issues for Congress**

Increased duties in the maritime realm related to homeland security have added to the Coast Guard's obligations and increased the complexity of the issues it faces. Members of Congress have expressed concern with how the agency is operationally responding to these demands, including Coast Guard plans to replace many of its aging vessels and aircraft.<sup>81</sup>

## **Deepwater**

The Deepwater program is a \$24 billion, 25-year acquisition program to replace or modernize 91 cutters, 124 small surface craft, and 244 aircraft. The Coast Guard's management and execution of the program has been strongly criticized and several hearings were held on the program in 2007. The GAO and DHS IG have been very active in reviewing Deepwater and in 2007 the Coast Guard decided to phase out an outside system integrator (a team led by Lockheed Martin and Northrup Grumman) to execute the program. For FY2009, the President requested \$990 million for the program (to be made available through the end of FY2013) which includes \$541 million for vessels and \$231 million for aircraft. The FY2009 request includes \$9 million to add 65 new positions for the new Acquisition Directorate that will be responsible for major acquisition projects; most notably the Deepwater program. For FY2008 (P.L. 110-161), Congress appropriated \$651 million for Deepwater which included rescissions for unmanned aerial vehicles and offshore patrol cutters and was \$137 million less than the President requested. Last fiscal year, Congress called for a detailed program expenditure plan from the Coast Guard, and requested that the GAO review the plan.

Senate-reported S. 3181 largely concurs with the President's budget request for Deepwater except that the Senate committee recommended \$24 million for the missionization of three C-130J aircraft while the President's request did not include these funds. The House report denied the President's request of \$3 million for Unmanned Aerial Vehicles (UAVs) under the Deepwater program and instead funded these under the Coast Guard's Research, Test, and Evaluation account. The House committee also reduced the President's request for National Security Cutters by \$54 million because it believes the construction of the fourth cutter will be delayed and because a GAO review raises concerns about the transparency of the contractor's cost and performance schedules. P.L. 110-329 provided \$1,034 million for Deepwater and designates \$245 million for aircraft and \$571 million for surface ships. The Act withheld \$350 million of this amount until the appropriations committees receives and approves an expenditure plan. The Act provided \$13 million for missionization of three C-130J aircraft, \$3 million for UAVs, and \$354 million for National Security Cutters as the President requested.

The President requested and the Senate-reported bill concurs that \$82 million and 652 FTEs be transferred from the ACI appropriation to the OE appropriation in order to increase oversight and management of major acquisition projects, such as Deepwater.

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<sup>81</sup> On the missions versus resources issue, see also GAO testimony on the Coast Guard's FY2009 Budget Request before the Senate Committee on Commerce, Science, and Transportation, March 6, 2008, GAO-08-494T.

House-reported H.R. 6947 denied this transfer, at least until the GAO completes its review of the potential benefits of this proposal. P.L. 110-329 allowed the Coast Guard to transfer up to 5% of its OE appropriation to the ACI appropriation for personnel compensation and benefits if the agency gives notice to the appropriations committees.

Issues for Congress include the Coast Guard's management of the program, which is the largest and most complex acquisition effort in Coast Guard history, the overall cost of the program, and the program's time-line for acquisition. These issues are discussed in CRS Report RL33753, *Coast Guard Deepwater Acquisition Programs: Background, Oversight Issues, and Options for Congress*, by Ronald O'Rourke.

## **Response-Boat Medium**

The President requested and House-reported H.R. 6947 concurred to provide \$64 million to order fourteen 45-foot response boats to replace existing 41-foot utility boats. The Senate committee, however, recommended an additional \$44 million so that an additional 22 response boats can be ordered. The Congressional Record version of the DHS explanatory statement concurred with the Senate committee's recommendation, providing a total of \$108 million to purchase a total of 36 boats.<sup>82</sup>

## **Security Mission**

Some Members of Congress have expressed strong concerns that the Coast Guard does not have enough resources to carry out its homeland security mission. A GAO audit raised this concern with respect to the security of energy tankers,<sup>83</sup> and at a Senate hearing the GAO testified that Coast Guard resources were being challenged by a number of security requirements.<sup>84</sup> About 28% of the Coast Guard's FY2009 budget request was for its "port, waterways, and coastal security" (PWCS) mission.<sup>85</sup>

For monitoring harbor traffic, the President's FY2009 request included \$26 million to continue deployment of a nationwide system to detect, identify, track, and communicate with ships in U.S. harbors, called the Automatic Identification System (AIS). This system is currently able to track ships, but not to communicate with them, in 55 ports and nine coastal waterways.<sup>86</sup> Tracking receivers are installed on land as well as on sea buoys, aircraft, and satellites. The FY2009 funding request is for extending tracking capability out to 50 nautical miles from shore and being able to communicate with ships out to 24 nautical miles from shore for Coast Guard sectors Hampton Roads, Delaware Bay, and Mobile.<sup>87</sup> By FY2014, the Coast Guard expects to extend this capability to all remaining Coast Guard sectors. The House report agreed with the President's request regarding AIS

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<sup>82</sup> CR, September 24, 2008, p. H9800.

<sup>83</sup> GAO, *Maritime Security: Federal Efforts Needed to Address Challenges in Preventing and Responding to Terrorist Attacks on Energy Commodity Tankers*, GAO-08-141, December 2007.

<sup>84</sup> GAO, *Coast Guard: Deepwater Program Management Initiatives and Key Homeland Security Missions*, March 5, 2008, GAO-08-531T, see specifically pp. 12-16.

<sup>85</sup> *DHS Budget in Brief*, p. 58.

<sup>86</sup> *DHS Budget in Brief*, p. 57.

<sup>87</sup> Coast Guard FY2009 Budget Justification, p. CG-AC&I-122.

deployment but the Senate report reduced the President's request by \$6 million, noting that the agency has carryover funds available from prior years and that it is unlikely that the Coast Guard will achieve its acquisition schedule in FY2009 based on recent history. The final bill agreed with the Senate report.

The Senate report requested quarterly briefings by the Coast Guard on the status and development of interagency operations centers (IOCs). IOCs are fusion centers to be located in each Coast Guard sector that are intended to facilitate intelligence sharing and coordinated responses among federal and state or local law enforcement to harbor security-related incidents. AIS is a key technology for the functioning of the IOCs.

The Senate report (S.Rept. 110-396) stated that the President's budget requests a \$15 million reduction in Coast Guard port presence and coastal security.<sup>88</sup> The committee report recommended that this reduction be denied and instead used to add 170 billets for marine inspectors, armed boat crew escorts, security boardings, and dangerous cargo terminal inspections.

An unresolved issue is the usefulness of tracking smaller vessels, such as recreational boats, to counter the threat posed by suicide bombers or smugglers. There are too many smaller boats for the Coast Guard to track and recreational boaters oppose tracking because of cost and privacy concerns. Based on a recent DHS strategy report, it appears the Coast Guard has no immediate plans to require smaller vessels be outfitted with AIS transponders but will continue to pursue methods to identify small craft.<sup>89</sup>

## **Non-Homeland Security Missions**

Some Members of Congress have expressed concern that with the Coast Guard's emphasis on its maritime security mission, the agency may have difficulty sustaining its traditional, non-homeland security missions such as fisheries enforcement or marine environmental protection.<sup>90</sup> In the wake of an oil spill by a container ship (the *Cosco Busan*) in San Francisco Bay on November 7, 2007, the Coast Guard was criticized for delays in its rulemaking requiring oil spill response plans for non-tank vessels.<sup>91</sup>

## **Marine Safety**

A congressional hearing was held on August 2, 2007 to examine the performance of the Coast Guard's Marine Safety Program.<sup>92</sup> Witnesses from the maritime industry complained about Coast Guard delays in documenting mariners and vessels and a lack of technical expertise and experience by Coast Guard marine inspectors. In response to

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<sup>88</sup> S.Rept. 110-396, p. 79.

<sup>89</sup> DHS, *Small Vessel Security Strategy*, April 2008.

<sup>90</sup> For information on Coast Guard environmental protection issues, see CRS Report RS22145, *Environmental Activities of the U.S. Coast Guard*, by Jonathan L. Ramseur.

<sup>91</sup> For further information, see CRS Report RL33705, *Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress*, by Jonathan L. Ramseur.

<sup>92</sup> House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, "Challenges Facing the Coast Guard's Marine Safety Program," August 2, 2007.

these criticisms, the Commandant announced a plan to increase civilian positions in the marine safety program and strengthen their career paths to foster professional continuity in this area.<sup>93</sup> The FY2009 budget request noted that “the Coast Guard is encountering serious stakeholder concern about our capacity to conduct marine inspections, investigations, and rulemaking.”<sup>94</sup> The budget requested an additional \$20 million in operating expenses in order to: add 276 marine inspector positions; respond to an increase in LNG vessel calls; conduct examinations of 5,200 towing vessels mandated in the FY2004 Coast Guard Authorization Act; review non-tank vessel oil spill response plans; and conduct oversight of ballast water management.<sup>95</sup> The FY2009 budget also requested \$2.6 million to fund 25 rulemaking projects involving safety, security, and environmental protection.

Senate-reported S. 3181 recommended an additional \$4 million to fund 67 more watchstanders than the President requested, citing a Coast Guard report on the *Cosco Busan* oil spill as justification for the increase.<sup>96</sup> Watchstanders monitor harbor ship traffic and provide relevant navigation-related information to ship captains and pilots transiting harbors.<sup>97</sup> The House report recommended an additional \$29 million above the President’s request for watchstanders, boats, marine inspection staff, and for additional oil spill and environmental response exercises and requests a report from the Coast Guard detailing how it intends to allocate these funds.<sup>98</sup>

## **Rescue-21**

During the FY2007 appropriations process, Congress expressed strong concern with the Coast Guard’s management of the Rescue 21 program, the Coast Guard’s new coastal zone communications network that is key to its search and rescue mission and which replaces its National Distress and Response System. A 2006 GAO audit of the program found a tripling of project cost from the original estimate and likely further delays in project completion, which was already five years behind schedule.<sup>99</sup> The GAO’s FY2008 Coast Guard budget review noted that while Rescue-21 was originally intended to limit gaps to 2% of coverage area, that target has now expanded to a less than 10% coverage gap.<sup>100</sup> In the FY2008 Appropriations Act (P.L. 110-161), Congress expressed concern for the number of outages that have been recorded with the system, and requested that the Coast Guard provide quarterly briefings on its plans to address the outages.

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<sup>93</sup> U.S. Coast Guard, “Enhancing the Coast Guard’s Marine Safety Program,” September 25, 2007.

<sup>94</sup> Coast Guard FY2009 Budget Justification, p. CG-SC-5.

<sup>95</sup> Coast Guard FY2009 Budget Justification, p. CG-OE-52 and *DHS Budget in Brief*, p. 60-61.

<sup>96</sup> S.Rept. 110-396, p. 78.

<sup>97</sup> For further information on the *Cosco Busan* oil spill and the role of watchstanders in ship navigation, see CRS Report RL34365, *Ship Navigation in Harbors: Safety Issues*.

<sup>98</sup> H.Rept. 110-826, p. 77.

<sup>99</sup> GAO, *United States Coast Guard: Improvements Needed in Management and Oversight of Rescue System Acquisition*, GAO-06-623, May 2006.

<sup>100</sup> GAO, *Coast Guard: Observations on the Fiscal Year 2008 Budget, Performance, Reorganization, and Related Challenges*, April 18, 2007, GAO-07-489T, p. 3.

The President's FY2009 budget requested \$88 million for Rescue 21 for further deployment of the system's infrastructure at seven Coast Guard sectors<sup>101</sup> and additional watchstanders at 15 sectors receiving the most rescue traffic.<sup>102</sup> The Senate and House committees agreed with this request as does the final bill. The Senate report stated that the overall acquisition cost is now estimated to be \$1,066 million, an increase of \$366 million, and the completion date has been extended six years to 2017.<sup>103</sup>

## **LORAN-C**

The LORAN (Long-Range Aids to Navigation) -C system helps boaters (including commercial fishermen) and airplane pilots determine their location using radio signals from 24 tower stations in the United States. The Coast Guard has argued that this system is no longer needed in light of GPS (Global Positioning System) technology which is more precise than LORAN, and in recent budget submissions requested that the LORAN-C system be terminated. In FY2007, Congress funded continuation of the LORAN-C system and required the Coast Guard, among other things, to first notify the public before terminating the system. On January 8, 2007, DHS and the Department of Transportation issued a Federal Register notice seeking public comment on whether to decommission LORAN, maintain it, or upgrade it.<sup>104</sup> Proponents of maintaining the ground-based LORAN system argue that it is valuable as a backup to the satellite-based GPS system. They argue that terrain can sometimes block the line of sight needed for GPS. For FY2008, Congress denied the Administration's request to terminate LORAN-C and noted that an Administration policy decision on the future of LORAN-C was expected to be completed by March 1, 2008. On February 7, 2008, the DHS announced that an enhanced LORAN system (eLoran) will be used as a backup system to GPS. The President's FY2009 budget requested that the administration of the eLoran system be transferred to the National Preparedness and Programs Directorate (NPPD) of DHS (a transfer equating to \$35 million) while the Coast Guard continues to operate the system on a reimbursable basis.<sup>105</sup> Both the Senate and House Appropriations Committees denied the President's request to transfer these funds to NPPD.

## **Bridge Alteration Program**

The bridge alteration program is a program to alter or remove road or railroad bridges that are obstructing navigation. Consistent with prior requests, the President requested no new funding for this program. In FY2008, Congress appropriated \$16 million. For FY2009, Senate-reported S. 3181 recommended \$16 million while House-reported H.R. 6947 recommended \$12 million for this program. P.L. 110-329 provided \$16 million.

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<sup>101</sup> Coast Guard FY2009 Budget Justification, p. CG-AC&I-128.

<sup>102</sup> Coast Guard FY2009 Budget Justification, p. CG-OE-33 and 34.

<sup>103</sup> S.Rept. 110-396, p. 88.

<sup>104</sup> *Federal Register*, vol. 72, no. 4, January 8, 2007, pp. 796-797.

<sup>105</sup> Coast Guard FY2009 Budget Justification, p. CG-OE-18 and 19.

## Arctic Activity

With the melting of arctic sea ice, it is predicted that a Trans-Arctic commercial shipping lane could soon develop in addition to other increased commercial activity in the region. The Coast Guard is currently testing how its vessels, aircraft, and personnel operate in the arctic. Three polar icebreaker ships are operated by the Coast Guard (one of them, the Polar Star, is in caretaker status) but funded from the National Science Foundation's (NSF) budget.<sup>106</sup> In light of additional polar activities that may extend beyond scientific research, the House committee directed the Coast Guard to negotiate with the NSF to return the budget of the polar icebreakers to the Coast Guard.<sup>107</sup> The Congressional Record version of the DHS explanatory statement provided \$30 million to reactivate the Polar Star for 7 to 10 years of service life and directs the Coast Guard to follow the House committee's direction regarding the budget for icebreakers.<sup>108</sup>

## U.S. Secret Service<sup>109</sup>

The U.S. Secret Service (USSS) has two broad missions—criminal investigations and protection.<sup>110</sup> Criminal investigation activities encompass financial crimes, identity theft, counterfeiting, computer fraud, and computer-based attacks on the nation's financial, banking, and telecommunications infrastructure, among other areas. The protection mission is the most prominent, covering the President, Vice President, their families, and candidates for those offices, along with the White House and the Vice President's residence (through the Service's Uniformed Division). Protective duties also extend to foreign missions in the District of Columbia and to designated individuals, such as the DHS Secretary and visiting foreign dignitaries. Aside from these specific mandated assignments, the Secret Service is responsible for security activities at National Special Security Events (NSSEs), which include the major party quadrennial national conventions as well as international conferences and events held in the United States.<sup>111</sup> The NSSE designation by the President gives the Secret Service authority to organize and coordinate security arrangements involving various law enforcement units from other federal agencies and state and local governments, as well as from the National Guard. **Table 13** displays sub-account detail for Secret Service funding.

President's FY2009 Request . For FY2009, the President's budget submission requested an appropriation of \$1,414 million for the protection and criminal investigation missions

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<sup>106</sup> For further discussion of the U.S. icebreaker fleet, see CRS Report RL34391, *Coast Guard Polar Icebreaker Modernization: Background, Issues, and Options for Congress*, by Ronald O'Rourke.

<sup>107</sup> H.Rept. 110-826, pp. 81-82.

<sup>108</sup> Congressional Record, September 24, 2008, p. H9800.

<sup>109</sup> Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

<sup>110</sup> U.S. Office of Management and Budget, *United States Secret Service, Fiscal Year 2009, Congressional Justification*.

<sup>111</sup> Congress appropriated \$100 million for the FY2008 presidential nominating conventions in Division B, Title II of P.L. 110-161.

of the Secret Service.<sup>112</sup> This reflected an increase of \$29 million, or nearly 2%, over the FY2008 total of \$1,385 million for the Service.

House-reported H.R. 6947 . For FY2009, the House-reported version of H.R. 6947 proposed a total appropriation of \$1,371 million for the Secret Service.<sup>113</sup> This reflected a decrease of \$14 million or nearly 1% less than the FY2008 total of \$1,385 million for the Service. One area the House proposed to reduce funding for is White House mail screening. According to the House report, “No funding is provided for the processing of mail at the White House, since this activity is an administrative duty that should be requested and financed through the routine expenses of the Executive Office of the President.”<sup>114</sup>

Senate-reported S. 3181 . For FY2009, Senate-reported S. 3181 proposed a total appropriation of \$1,418 million for the Secret Service.<sup>115</sup> This reflected an increase of \$33 million, or nearly 2%, more than the FY2008 total of \$1,385 million for the Service. The Senate committee, unlike the House committee, included funds for White House mail screening.

P.L. 110-329 . For FY2009, Congress appropriated a total appropriation of \$1,413 million for the Secret Service.<sup>116</sup> This reflects an increase of \$27 million, or nearly 2%, more than the FY2008 total of \$1,385 million for the Service. This appropriation also included \$34 million for White House mail screening.

**Table 13. U.S. Secret Service Appropriations**

(budget authority in millions of dollars)

<b>Programs and Activities</b>	<b>FY2008 Enacted<sup>a</sup></b>	<b>FY2009 Request</b>	<b>FY2009 House- Reported</b>	<b>FY2009 Senate- Reported</b>	<b>P.L. 110- 329<sup>b</sup></b>
Protection of persons and facilities	694	710	703	710	706
Protective intelligence activities	58	60	60	60	60
National Special Security Events	1	1	1	1	1
Presidential candidate nominee protection	85	41	41	41	41
White House mail screening	16	37	—	31	34
Management and administration	176	182	182	182	182
Rowley Training Center	52	53	53	53	53
Domestic field operations	220	243	242	242	242
International field operations	26	28	28	30	30

<sup>112</sup> OMB, *Budget of the US Government, Fiscal Year 2009*, p. 482.

<sup>113</sup> H.Rept. 110-826, p. 91.

<sup>114</sup> *Ibid.*, p. 92.

<sup>115</sup> S. 3181, Title II.

<sup>116</sup> P.L. 110-329, Title II.

*Homeland Security Department: FY2009 Appropriations*

<b>Programs and Activities</b>	<b>FY2008 Enacted<sup>a</sup></b>	<b>FY2009 Request</b>	<b>FY2009 House- Reported</b>	<b>FY2009 Senate- Reported</b>	<b>P.L. 110- 329<sup>b</sup></b>
Electronic crimes program	45	48	48	56	52
Forensic support grants for the National Center for Missing and Exploited Children (NCMEC)	8	8	8	8	8
Acquisition, construction, and improvements	4	4	4	4	4
<b>Total</b>	<b>1,385</b>	<b>1,415</b>	<b>1,370</b>	<b>1,418</b>	<b>1,413</b>

**Sources:** CRS Analysis of the FY2009 DHS Congressional Budget Justifications, the FY2009 DHS Budget in Brief, S. 3181 and the accompanying report S.Rept. 110-396, House-reported bill (H.R. 6947) and the accompanying report (H.Rept. 110-862)—provided to CRS by the Homeland Security Subcommittee of the House Appropriations Committee on July 8, 2008—and P.L. 110-329.

- a. Column “FY2008 Enacted” includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

Secret Service Issues for Congress . Federal funding for National Special Security Events (NSSE) costs incurred by federal, state, and local entities is one issue Congress may wish to address. In FY2009, Congress appropriated \$1 million for NSSE costs within the Secret Service.<sup>117</sup> This appropriation is used to fund the Secret Service’s development and implementation of security operations at NSSEs, however, it can not be used to reimburse state and local law enforcement’s NSSE costs—specifically the overtime costs incurred by state and local governments. Congress appropriated a total of \$100 million for the 2008 presidential nominating conventions’ security through the Department of Justice’s (DOJ) Office of Justice Programs. The DOJ appropriation was used for security and related costs incurred by state and local governments, including overtime, associated with these two NSSEs.<sup>118</sup>

One issue that Congress may address concerns whether this amount is sufficient to cover multiple or unexpected NSSE costs, although the Secret Service has never requested supplemental funding to support NSSE operations. In addition to the NSSE funding through the Secret Service and DOJ, state and local jurisdictions can use DHS grants, such as the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI), for NSSE-related security activities. However, the grant approval process for these programs is not flexible, so the programs have limited application to NSSEs in that states and localities would need to include SHSGP and UASI funding for NSSE security in their grant applications. For unexpected NSSEs, states and localities are unable to plan ahead and therefore cannot use SHSGP or UASI funds to cover these unexpected security costs. DHS does authorize states and localities to reprogram SHSGP and UASI funding with the DHS Secretary’s approval; however, that may result in states and localities not funding other planned homeland security

<sup>117</sup> P.L. 110-329, Title II.

<sup>118</sup> P.L. 110-161, Div. B, Title II.

activities. An issue that Congress may wish to consider could include whether more coordination of NSSE funding is needed at the federal level; currently the Secret Service, DOJ, and the Office of Grant Programs each have separate funding streams that can be used to fund different components of NSSEs but there is no overarching coordinating mechanism in place to oversee this funding.

## **Title III: Preparedness and Response**

Title III includes appropriations for the Federal Emergency Management Agency (FEMA), the National Protection and Programs Directorate (NPPD), and the Office of Health Affairs (OHA). Congress expanded FEMA's authorities and responsibilities in the Post-Katrina Emergency Reform Act (P.L. 109-295) and explicitly kept certain DHS functions out of the "new FEMA."<sup>119</sup> In response to these statutory exclusions, DHS officials created the NPPD to house functions not transferred to FEMA, and the OHA was established for the Office of the Chief Medical Officer. **Table 14** provides account-level appropriations detail for Title III.

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<sup>119</sup> P.L. 109-295, 120 Stat. 1400.

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

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
<b>National Protection &amp; Programs Directorate</b>								
Administration	47			47	55	50	53	51
Infrastructure Protection and Information Security	655			655	841	847	809	807
US-VISIT	475			475	390	390	180	300
<b>Net total</b>	<b>1,177</b>			<b>1,177</b>	<b>1,286</b>	<b>1,287</b>	<b>1,041</b>	<b>1,158</b>
<b>Office of Health Affairs</b>	<b>117</b>			<b>117</b>	<b>161<sup>c</sup></b>	<b>134</b>	<b>171</b>	<b>157</b>
<b>Counter Terrorism Fund</b>	<b>—</b>			<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>
<b>Federal Emergency Management Agency</b>								
Management and Administration	724			724	957	912	893	943
Office of Grant Programs	3,478			3,478	1,900	3,371	3,329	3,421
Firefighter Assistance Grants	750			750	300	800	750	775
U.S. Fire Administration	43			43	—	45	43	45
Public health programs	—			—	—	—	—	—
Disaster relief	1,324 <sup>d</sup>	10,960 <sup>e</sup>		12,284	1,900	1,794 <sup>f</sup>	1,841 <sup>g</sup>	1,278
Disaster readiness and support activities	—			—	200	—	—	—
Flood map modernization fund	220			220	150	220	185	220
National flood insurance fund (NFIF) <sup>h</sup>	—			—	—	—	—	—
National flood mitigation <sup>i</sup>	—			—	—	—	—	—
Pre-disaster mitigation fund	114			114	75	75	100	90

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
Emergency food and shelter	153			153	100	200	153	200
Disaster assistance direct loan account	1			1	1	—	— <sup>i</sup>	—
Radiological Emergency Preparedness	-1			-1	-1	-1	-1	-1
Rescission	—			—	-9 <sup>k</sup>	-9 <sup>k</sup>	-9 <sup>k</sup>	-9 <sup>k</sup>
<b>Net total</b>	<b>6,806<sup>d</sup></b>	<b>10,960<sup>e</sup></b>		<b>17,766</b>	<b>5,573</b>	<b>7,407</b>	<b>7,328</b>	<b>6,963</b>
<b>Net budget authority subtotal: Title III</b>	<b>8,100<sup>d</sup></b>	<b>10,960<sup>e</sup></b>		<b>19,060</b>	<b>7,020</b>	<b>8,829</b>	<b>8,540</b>	<b>8,278</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate-enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

- a. Column “FY2008 Enacted” includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- c. Does not include an additional \$27 million requested in the President’s budget amendment transmitted to Congress on June 9<sup>th</sup>, 2008.
- d. Does not include \$2,900 million in FY2008 emergency supplemental funding for Disaster Relief enacted by P.L. 110-116.
- e. Includes the following FY2008 emergency supplemental funding: \$2,900 million for Disaster Relief as provided by P.L. 110-116, §158; and \$7,960 million for Disaster Relief and \$100 million for reimbursements to the Red Cross as provided by Division B of P.L. 110-329.
- f. Reflects transfers of \$91 million to FEMA Management and Administration, and \$15 million to DHS OIG.
- g. Reflects transfers of \$43 million to FEMA Management and Administration, and \$16 million to DHS OIG.
- h. Funds derived from premium payments or transfers from the U.S. Treasury.
- i. Funds derived from NFIF transfers.
- j. The Senate includes \$580,000 (or \$1 million) under FEMA Management and Administration for this activity.
- k. Rescission of \$9 million in unobligated previously appropriated funds for Cerro Grande fire claims.

## **Federal Emergency Management Agency (FEMA)<sup>120</sup>**

In the aftermath of Hurricane Katrina, Congress passed the Post-Katrina Emergency Management Reform Act (Title VI of P.L. 109-295, the FY2007 DHS appropriations legislation) to address shortcomings identified in the reports published by congressional committees and the White House. Based on those reports and oversight hearings on many aspects of FEMA's performance during the hurricane season of 2005, the Post-Katrina Act expanded FEMA's responsibilities within the Department of Homeland Security and the agency's program authorities relevant to preparing for and responding to major disaster events.<sup>121</sup> While Congress has shown interest in FEMA's plans to implement a strategic approach to disaster housing and other disaster response, recovery, and mitigation capabilities reflected in the provisions of the Post-Katrina Reform Act, the FY2009 request placed its greatest emphasis on expanding the FEMA workforce as shown in the increase for Management and Administration. How closely FEMA's expanded capacity addresses areas of congressional interest formed part of the discussion during the 2009 budget season for the Agency. **Table 14** provides account-level funding details for FY2008 and FY2009.

### **President's FY2009 Request**

FEMA's budget request of \$5,573 million for FY2009 was \$4,153 million below the FY2008 level. Most of this difference is in the Disaster Relief Fund account which, during FY2008, received two emergency supplemental appropriations of \$2,900 million and \$2,400 million respectively. The other substantial reductions were in the Office of Grant Programs which would have received a cut of \$1,598 million under the request. There were also program areas within FEMA's request that were below the FY2008 level for programs, such as the Flood Map Modernization fund and the Emergency Food and Shelter Program (EFSP).

FEMA's FY2009 budget request contained an increase of \$233 million to the Management and Administration account. Parts of this increase were dedicated to a series of improvements in information technology and logistical support. However, most of the increase (\$184 million) would have gone to adding 118 new positions in FEMA as well as transitioning 149 CORE (Cadre On-call Response Employees) positions into permanent slots. The CORE's are the multi-year temporary positions at FEMA dedicated to disaster-related work.

### **House-reported H.R. 6947**

H.R. 6947 recommended \$7,407 million for FEMA in FY2009, surpassing the Administration's requested level by 32% (\$1,834 million). As in the previous year, the majority of increases over the Administration request would have come from consistently

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<sup>120</sup> Prepared by Keith Bea, Specialist in American National Government and Fran McCarthy, Analyst in American National Government, Government and Finance Division.

<sup>121</sup> For more information, see CRS Report, CRS Report RL33729, *Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions*, by Keith Bea et al.

higher funding levels for nearly all of the state and local grant programs. The FY2009 mark of \$7,407 million was also greater than the actual FY2008 (\$6,806 million).

### **Senate-reported S. 3181**

The Senate FEMA mark for FY2009 was \$7,328 million which represented an increase of \$1,755 million over the President's request. The Senate bill also increased grants to states above the proposed Administration levels. The Senate mark also exceeded the enacted level for the previous fiscal year by 31%.

### **P.L. 110-329**

P.L. 110-329 funded FEMA at \$6,963 million. This represented an increase of nearly \$1,400 million above the President's request for FEMA's budget and 25% (\$157 million) over the FY2008 enacted level.

## **FEMA Issues for Congress**

FY20007 and the early stages of FY2008 were relatively quiet hurricane seasons; that changed dramatically in the late summer of 2008. During the quiescent period earlier in the year, Congress looked to FEMA for an assessment of priority areas, matched with suggested resource levels, that would improve FEMA's preparedness for, response to, and recovery from major disaster events. Most prominent among the issues that have drawn the interest of Congress is the quality and safety of FEMA's temporary housing that has been provided to disaster victims.<sup>122</sup> With regard to a more effective immediate response to a major disaster, Congress has sought to improve FEMA's logistics chain that supports that response. An overarching theme of all these issues is the quality and depth of the FEMA work force and whether it is commensurate, in size and skill, with its missions.

Additionally, for FY2009, Congress expressed support for two programs slated for cuts in the request, Emergency Food and Shelter and Flood Map Modernization. Congress instead recommended increased funding levels far over the Administration request.

### **Disaster Relief Fund**

There were areas of agreement between the House and Senate measures and the Administration request. The Disaster Relief Fund (DRF) funds disaster response, recovery, and mitigation work following Presidentially declared disasters; the House and Senate concurred with the \$1,900 million amount requested by the administration. While this represented a reduction of \$2,400 million from last year's level, it also reflected an unobligated balance in the DRF as well as an earlier supplemental bill which contained \$897 million for the DRF account.<sup>123</sup>

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<sup>122</sup> For more information, see CRS Report RL34087, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, by Francis X. McCarthy.

<sup>123</sup> P.L. 110-252-122 Stat. 2351.

Neither the House nor the Senate committees endorsed the concept of a separate Disaster Readiness and Support Account in the FEMA budget. The Senate agreed to fund up to \$250 million out of the DRF for those purposes without establishing a new account. The House also declined to create a separate account, but directed that this spending remain within the Disaster Relief Fund account since it supports future disaster activity.

There were two transfers recommended from the DRF by both the House and Senate. First, the House and Senate recommended a transfer of \$106 million to FEMA's Management and Administration account. Second, the committees also recommended the transfer of DRF funds to the Office of Inspector General for audits and investigations related to disasters. The House bill would have transferred \$15 million while the Senate bill set the amount to be transferred at \$16 million.

P.L. 110-329 provided \$1,400 million (approximately \$1,278 after accounting for transfers from the Fund as noted in **Table 14**) for DRF in FY2009. This amount for the DRF was a reduction from the Administration request and the House and Senate recommendations. However, Division B of P.L. 110-329, The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, contained an additional \$7,960 million for the DRF in FY2008 emergency supplemental funding. Taken together, these amounts were intended to assure adequate funding for the busy disaster season of 2008 that included the Midwest floods and Hurricanes Gustav and Ike.

The FY2009 appropriation transferred \$106 million from the Fund to FEMA's Management and Administration account. In addition, \$16 million will be transferred from the DRF to the Department of Homeland Security Office of Inspector General for audits and investigations related to disasters. Also, with regard to disasters, Section 539 of the bill instructed FEMA to submit to the appropriate committees of Congress and to publish on the FEMA website a report on the damage assessment information used to make determinations regarding disaster declarations.

### **Emergency Food and Shelter (EFS) Program**

The Administration request for the EFS program, which provides funding to homeless assistance providers across the nation on a formula basis, sought a \$53 million reduction to \$100 million. Instead, the House chose to increase the program to \$200 million, double the requested level. As a statement by the Chairman of the Homeland Security appropriations subcommittee explained:

Additional resources for this program are especially critical now, as more and more people turn to food banks and other community support organizations to meet their basic needs. This is the largest single appropriation for this program in its 25 year history.<sup>124</sup>

The Senate also disagreed with the President's request to decrease the EFS account to \$100 million, recommending instead the account be returned to the 2008 number. P.L.

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<sup>124</sup> Opening Statement, Chairman David Price, Subcommittee Markup: FY2009 Homeland Security Appropriations Act, June 11, 2008, at <http://appropriations.house.gov/pdf/PriceSubMarkup06-11-08.pdf>.

110-329 provided \$200 million for the EFS program, which represents the largest amount the program has ever received.

### **Flood Map Modernization**

The President's FY2009 budget level for Flood Map Modernization was \$150 million. The Senate approved an amount—\$185 million, that was \$35 million above the Administration's request. The House also chose to increase the amount of funds available for this program to \$220 million, the FY2008 funding level, which represents an increase of 46% above the Administration's request. P.L. 110-329 provided \$220 million to fund Flood Map Modernization for FY2009.

### **FEMA Management and Administration—Work Force**

Consistent with the Post-Katrina Act, the most substantial increase in the Administration's FEMA budget request for FY2009 is in the expansion of the work force. FEMA requested an increase of \$184 million to support an additional 118 new permanent positions for the Agency and to transition 149 temporary positions (known as CORE appointments) into permanent slots. The CORE positions have traditionally been used by FEMA to accomplish ongoing disaster tasks at the regional and headquarters levels (such as closing out old disasters or working in the telephone and online registration centers). CORE personnel appointments can serve for a maximum of up to four years and receive benefits similar to a career employee (e.g., health benefits).

The CORE position's status stands in contrast to the Disaster Assistance Employees (DAEs). The DAEs are the temporary employees, usually working on renewable 30 to 90 day appointments (without benefits), who are recruited, trained, and hired in large numbers to provide the staff support across a disaster. DAEs are often aligned into cadres of expertise. For example, there is a Public Assistance (PA) Cadre that employs engineers and other program experts to help manage the PA program in the field. Similarly there are DAEs trained to work in Individual Assistance, Mitigation, Congressional Affairs, Community Relations, and other functional areas during a disaster response and recovery operation. The DAEs work on an as needed basis, often with interruptions in service based on the level of disaster activity. COREs are also separate and distinct from private contractor employees and consultants who may also work in a supporting role within different FEMA program areas.

Since CORE appointments have been multi-year rather than measured in months, the CORE employees have acquired organizational experience and programmatic skills that the Agency wants to retain. The retention of quality employees has been a recurring challenge for FEMA since the lack of continuity is disruptive to FEMA's state and local partners in the consistent interpretation of program policy and overall customer service.

FEMA described the additional employees requested in the FY2009 budget as "enhancements" in several areas of the agency and mentions the improvement of plans for many programs. In the past, Congress has been supportive of FEMA expanding its base of employees and their skill levels, particularly at the regional level to "help state

and local governments prepare for and respond to disasters.”<sup>125</sup> Congress may also wish to see greater specificity on how these new positions will be apportioned throughout the agency and whether those choices correspond to congressional direction and interest. The funding for more permanent staff reflects an attempt to address some general concerns that both chambers have raised.

The House Appropriations Committee recommended that \$90.6 million be transferred from the DRF account to support the conversion of temporary disaster employees to full time, permanent positions. While supporting the effort to supplement the permanent work force, the House committee noted that the funds will not be available until the Agency submits an implementation plan. The Committee also noted that the transfer is not at the full level requested by DHS/FEMA because “previous funding provided for this effort has been reprogrammed by FEMA.”<sup>126</sup>

The Senate Appropriations Committee recommended that \$43.5 million be transferred for position conversion. The Senate Committee wanted FEMA to improve customer service and is concerned about employee turnover, stating that the agency is overly reliant on temporary employees for projects related to public assistance. According to the Senate report, this reliance has created a lack of consistent decision making and has compromised the accuracy of information provided to state and local governments. To address these concerns, the Senate proposed an increase in the number of permanent personnel devoted to Public Assistance in particular.

P.L. 110-329 transferred \$106 million from the Disaster Relief Fund to the Management and Administration account. While the legislative language did not specify what purpose this funding would be used for, this increased the account up to \$943 million, well above the House and Senate levels and only \$14 million below the original Administration request. The appropriations statute also noted that the funds will “not be available for transfer” until the Agency submits an implementation plan to the Appropriations Committees.

## **Pre-Disaster Mitigation**

Pre-Disaster Mitigation is a competitive grant program that provides awards on an annual basis and is not directly linked to disaster declarations. The House Committee agreed with the reduced level of funding for the Pre-Disaster Mitigation (PDM) program suggested in the FY2009 budget. In FY2008 the Congress chose to increase funding in this account, but this year the House Committee acceded to the \$39 million reduction in the President’s budget.<sup>127</sup> The Senate Committee disagreed with the Administration and House Committee position for the PDM fund and recommended an increase from the \$75

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<sup>125</sup> U.S. House of Representative, Committee on Appropriations, “*FY2008 Omnibus Summary: Homeland Security Committee*,” <http://appropriations.house.gov/pdf/HomelandOmnibus.pdf>.

<sup>126</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2009*, report to accompany H.R. 6947, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 110-862, pg. 109.

<sup>127</sup> For additional information on this program see CRS Report RL34537, *FEMA’s Pre-Disaster Mitigation Program: Overview and Issues*, by Francis X. McCarthy.

million requested to \$100 million to provide grants to states and localities for hazard mitigation planning and implementation mitigation projects.

In explaining its reduced mark for the PDM program the House noted its support for similar mitigation programs, including \$90 million for programs targeting flood loss properties, funded through the National Flood Insurance Program (NFIP). The House also pointed to its support of the Hazard Mitigation Grant Program (HMGP). This program is triggered under disaster declarations, is funded by the DRF account, and supports similar projects and activities. The House Committee has requested that FEMA report to the Committee within six months with a mitigation strategy showing how each mitigation program contributes to achieving mitigation goals. The House bill also earmarks the PDM program for the second time. The listed earmarks (51 projects) in the bill total just under \$25 million, or close to a third of the funds available for the PDM competitive grant program. In that vein, the Senate report language directs FEMA to “operate this program competitively.”<sup>128</sup>

The FY2009 bill appropriated \$90 million for the PDM program. In addition to an appropriation for PDM, Section 553 of the law extended authorization for the program through September 30, 2009.

## **Gulf Coast Hurricane Recovery Issues**

Thousands of disaster victims from the Gulf Coast hurricane season of 2005 remain in temporary housing—some in rental units, and some in manufactured housing in the Gulf region. At the hearing of the House Appropriations Subcommittee on the FY2009 budget, Members expressed interest in FEMA’s implementation, or lack thereof, of new housing authorities provided to the agency in the Post-Katrina Emergency Management Reform Act (P.L. 109-295).<sup>129</sup> Congress has been particularly interested in the problem of the levels of formaldehyde found in travel trailers and some mobile homes used for housing following the Gulf Coast disasters of 2005. One House Committee Chairman concluded that “no one was looking out for the interests of the displaced families living in the FEMA trailers.”<sup>130</sup>

Congress directed in P.L. 109-295 that FEMA prepare a disaster housing strategy to inform the overall approach to housing following a catastrophic disaster. In a Senate hearing on the topic, the need for this report to serve as both a guide and an indication of Administration intent was underlined.<sup>131</sup> Though the report on a housing strategy was due in July of 2007, an outline of the strategy was not presented to Congress until July of

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<sup>128</sup> U.S. Congress, Senate Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2009*, report to accompany S. 3181, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 110-396, pg. 122.

<sup>129</sup> U.S. House of Representatives, Committee on Appropriations, Subcommittee on Homeland Security, “*Federal Emergency Management Agency: Is the Agency on the Right Track?*”, 110<sup>th</sup> Cong. 2<sup>nd</sup> Sess., March 13, 2008.

<sup>130</sup> U.S. House of Representatives, Opening Statement, Rep. Henry Waxman, July 9, 2008 at <http://oversight.house.gov/story.asp?ID=2073>.

<sup>131</sup> U.S. Senate, Homeland Security and Governmental Affairs Committee, Ad Hoc Subcommittees on Disaster Recovery and on State, Local, and Private Sector Preparedness and Integration, “*Is Housing too Much to Hope for? FEMA’s disaster housing strategy*,” 110<sup>th</sup> Cong. 2<sup>nd</sup> Sess., March 4, 2008.

2009. The full National Disaster Housing Strategy is expected to be delivered to Congress before the end of 2009.

The Administration's budget request for FY2009 noted that it would improve and expand the agency work force devoted to disaster assistance in general (both the programs addressing eligible assistance to households and those dedicated to infrastructure repair) but did not specifically address temporary housing nor the related health and safety issues. The absence of information in the budget request may have reflected statements by the FEMA Administrator indicating a desire for an increased role for the Department of Housing and Urban Development in disaster housing.<sup>132</sup> As evidence of this direction, FEMA entered into another agreement with HUD to provide housing assistance to the victims of Hurricane Ike.<sup>133</sup>

The ongoing housing problems following Hurricane Katrina prompted House comments that directly addressed an ongoing area of contention regarding the rebuilding of public housing in the wake of the 2005 hurricanes. Recent House hearings have concentrated on the perceived conflicting views of responsibility between HUD and FEMA regarding the repairs for public housing.<sup>134</sup> In response to these concerns the House Committee provided an additional \$50,000 to "the Office of the Federal Coordinator for Gulf Coast Rebuilding to convene a panel of experts to develop solutions for restoring the affordable rental housing stock of communities affected the 2005 hurricanes."<sup>135</sup>

In a related issue regarding mitigation, the House Committee noted it was "encouraged" by the progress being made to implement the Hazard Mitigation Grant Program (HMGP). Funding has moved slowly but it now appears that HMGP funds will supplement mitigation measures for recipients of the "Road Home" program in Louisiana.<sup>136</sup> While noting the administrative progress, the House report observed that the program deadline for applications was September 1, 2008. Based on all of these considerations, the House report urged FEMA to consider extending that deadline.

P.L. 110-329 included two provisions directed at Gulf Coast rebuilding. Section 546 of the law called on FEMA to provide "a single payment for any eligible costs" under the infrastructure repair program<sup>137</sup> for any "police station, fire station, or criminal justice

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<sup>132</sup> Testimony of FEMA Administrator David Paulison, House Committee on Appropriations, Subcommittee on Homeland Security, "Federal Emergency Management Agency: Is the agency on the Right Track?," 110<sup>th</sup> Cong. 2<sup>nd</sup> Sess. March 13, 2008.

<sup>133</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, "HUD, FEMA Announce 18-Month Housing Assistance Program For Families Displaced By Hurricane Ike," Release #FNF-08-075, Sept. 24, 2008 at <http://www.fema.gov/news/newsrelease.fema?id=45894>.

<sup>134</sup> U.S. Congress, House Committee on Financial Services, Subcommittee on Housing and Community Opportunity and the House Homeland Security Committee, Subcommittee on Emergency Communications, Preparedness and Response, *Examining the Roles and Responsibilities of HUD and FEMA in Responding to the Affordable Housing Needs of Gulf Coast States following Emergencies and Natural Disasters*, June 4, 2008.

<sup>135</sup> Opening Statement, Chairman David Price, Subcommittee Markup: FY2009 Homeland Security Appropriations Act, June 11, 2008, at <http://appropriations.house.gov/pdf/PriceSubMarkup06-11-08.pdf>.

<sup>136</sup> For additional information, see CRS Report RL34410, *The Louisiana Road Home Program: Federal Aid for State Disaster Housing Assistance Programs*, by Natalie Paris Love.

<sup>137</sup> 42 U.S.C. §5172.

facility that was damaged by Hurricane Katrina of 2005 or Hurricane Rita of 2005.” Section 548 of the law called on FEMA to reimburse Jones County and Harrison County in the State of Mississippi for unreimbursed debris removal<sup>138</sup> costs relating to debris as a result of Hurricane Katrina in 2005.

### **Administrative, Financial and Budgeting Challenges**

An area of concern voiced by the Senate Appropriations Committee is FEMA’s process of handling state and local grant programs. According to the Committee, grant award distribution is flawed because there is a lack of effective implementation. Accordingly, the Senate recommendation included a provision to withhold \$10 million from FEMA Management and Administration until the Secretary, in coordination with the Administrator of FEMA, certified and reported to the Senate Appropriations Committee that the processes to incorporate stakeholder input for grant guidance development and award distribution have improved transparency and increased information about security needs on all hazards. The House also voiced this concern, albeit without the stipulations set forth by the Senate (see Office of Grants Programs section in this report).

Other areas of concern were also noted. First, the House Appropriations Committee cited a recent GAO report<sup>139</sup> which stated that FEMA needs to develop policies and procedures to ensure states and localities are involved collaboratively in all future updates to the National Response Framework (NRF). Second, both chambers directed FEMA to submit its FY2010 budget request, including justification materials, by office. In 2008 FEMA was directed to submit its 2009 budget in this fashion, but failed to do so. The House Committee used their report as an opportunity to express their displeasure with FEMA on this matter. Third, the Senate Committee agreed with the Office of Inspector General that FEMA has financial weaknesses as a result of the agency’s financial reporting and accounting practices. While the Committee acknowledged the challenges of operating an agency which has been reorganized and supports multifaceted operations, the Members insisted that FEMA take steps to correct these areas of weakness.

P.L. 110-329 reflected the above concerns and required that Agency officials report to the Committees on Appropriations of the Senate and the House on how FEMA processes incorporate input from stakeholders for grant guidance development and award distribution. FEMA was required to demonstrate that the process will be sufficiently strengthened to ensure greater transparency and to include an increased capacity to provide information and consultation about security needs for all-hazards. Finally, the process FEMA employs to meet these objectives must be formalized and made clear to stakeholders.

### **Urban Search and Rescue**

Both Committees disagreed with the President’s request to reduce funding for the Urban Search and Rescue (USAR) Response System from the 2008 amount of \$32.5 million to

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<sup>138</sup> 42 U.S.C. §5172.

<sup>139</sup> U.S. General Accounting Office, National Disaster Response: *FEMA Should Take Action to Improve Capacity and Coordination between Government and Voluntary Sectors*, GAO -08-369, February 2008.

\$25 million. Rather, both recommended returning the account to its original amount of \$32 million. The House report directed FEMA to report back to the Committee within six months on the feasibility of adding another team to the USAR program. The USAR system currently has 28 teams. The FY2009 appropriations bill funded USAR at \$32 million.

## **Climate Change**

The House Committee stated \$5 million should be designated for North Carolina to perform a risk assessment, and devise a mitigation strategy, to address the impact of sea level rise in that state. The information gained from this study will then be disseminated to other states to assist them with their climate change mitigation efforts. The information obtained from the study is expected to be used to assess the long-term, potential fiscal impact of climate change as it “affects the frequency and impacts of natural disasters.”<sup>140</sup> P.L. 110-329 included the \$5 million for the state of North Carolina in the bill.

## **Office of Grant Programs<sup>141</sup>**

The Office of Grant Programs within the Federal Emergency Management Agency (FEMA) is responsible for facilitating and coordinating DHS state and local assistance programs. The office administers formula and discretionary grant programs to further state and local homeland security capabilities. As a result of the reorganization mandated by the Post-Katrina Emergency Management Reform Act of 2006 (P.L. 109-295), the work of the Office of Grant Programs was separated from FEMA training activities. FEMA’s National Integration Center within the agency’s National Preparedness Directorate administers training, exercises, and technical assistance for states and localities. Presently, DHS’s assistance programs for states and localities include:

- State Homeland Security Grant Program (SHSGP);
- Urban Area Security Initiative (UASI);
- Port Security Program;
- Transit Security Program;
- Bus Security Program;
- Trucking Security Program;
- Buffer Zone Protection Program (BZPP);
- Assistance to Firefighters (FIRE);
- Emergency Management Performance Grants (EMPG);
- Citizen Corps Program (CCP);

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<sup>140</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2009*, report to accompany H.R. 6947, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 110-862, p. 112.

<sup>141</sup> This section was prepared by Shawn Reese, Government and Finance Division.

- Metropolitan Medical Response System (MMRS);
- Training, technical assistance, exercises, and evaluations;
- Commercial Equipment Direct Assistance Program (CEDAP);
- Public Safety Interoperable Communications Grant Program (PSIC);
- Center for Counterterrorism and Cyber Crime;
- Emergency Operations Centers (EOC); and
- Regional Catastrophic Preparedness Grants.

### **President's Request**

The Administration requested \$2,200 million for FY2009 DHS assistance programs for states and localities. Additionally, the Administration proposed to reduce funding for most of the programs except the Urban Area Security Initiative (UASI), the Citizen Corps Program, and its program for bus security. Because of this, the Administration requested \$2,028 million less than the \$4,228 million Congress appropriated in FY2008.

### **House-reported H.R. 6947**

The House-reported version of H.R. 6947 proposed \$4,171 million for FY2009 DHS assistance programs for states and localities. This proposed appropriation was \$57 million, or 1%, less than the \$4,228 million Congress appropriated in FY2008. Some of the assistance programs that the bill proposed not to fund in FY2009 were the Buffer Zone Protection Program, Commercial Equipment Direct Assistance Grants, and Regional Catastrophic Preparedness Grants. Additionally, the bill did not propose to fund the Administration's new initiative, the National Security and Terrorism Prevention Program, which would have consolidated funding for such programs as Real ID and the Buffer Zone Protection Program.

### **Senate-reported S. 3181**

The Senate-reported version of S. 3181 proposed \$4,079 million for FY2009 DHS assistance programs for states and localities. This proposed appropriation was \$149 million, or nearly 4%, less than the \$4,228 million Congress appropriated in FY2008. Some of the assistance programs that the bill proposed to reduce funding for were the State Homeland Security Grant Program, Trucking Industry Security Program, Emergency Operations Centers, Metropolitan Medical Response System, and the Commercial Equipment Direct Assistance Grants. The Senate-reported bill, like House-reported legislation, did not propose to fund the National Security and Terrorism Prevention Program.

### **P.L. 110-329**

Congress appropriated, in P.L. 110-329, \$4,138 million for FY2009 DHS assistance programs for states and localities. This appropriation is \$90 million, or approximately 2%, less than the \$4,228 million Congress appropriated in FY2008. This reduction was

primarily due to Congress not funding the Real ID program (\$50 million) in FY2008. Additionally, Congress did not appropriate funding for the Administration’s proposed National Security and Terrorism Prevention Program. **Table 15** shows the appropriations for State and Local Homeland Security Programs.

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

Program	FY2008 Enacted <sup>a</sup>	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>b</sup>
State Homeland Security Grant Program (SHSGP)	950 <sup>c</sup>	200	950	890	890
Urban Area Security Initiative (UASI)	820 <sup>d</sup>	825	850	825	838
Law Enforcement Terrorism Prevention Program (LETPP)	—	—	—	—	—
Port Security Program	400	210	400	400	400
Transit Security Program	400	175	400	400	400
Intercity Bus Security Program	12	12	12	12	12
Trucking Industry Security Program	16	8	8	8	8
Emergency Operation Centers	15	—	35	10	35
Buffer Zone Protection	50	—	—	50	50
Assistance to Firefighters (FIRE)	750	300 <sup>c</sup>	800	750	775
Emergency Management Performance Grants (EMPG)	300	200	315	300	315
Citizen Corps Programs (CCP)	15	15	15	15	15
Metropolitan Medical Response System (MMRS)	41	—	50	33	41
Training, Technical Assistance, Exercises, and Evaluation	299 <sup>d</sup>	145 <sup>e</sup>	236	291	264
Commercial Equipment Direct Assistance Grants	25	—	—	10	8
Interoperable Communications Grants	50	[7] <sup>f</sup>	50	50	50
Real ID Grants	50	—	50	[50] <sup>g</sup>	—
Regional Catastrophic Preparedness Grants	35	—	—	35	35
National Security and Terrorism Prevention Program <sup>h</sup>	—	110	—	—	—
Center for Counterterrorism and Cyber Crime	—	—	—	—	2 <sup>i</sup>
<b>Total</b>	<b>4,228</b>	<b>2,200</b>	<b>4,171</b>	<b>4,079</b>	<b>4,138</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding. Amounts in parentheses are non-adds.

- a. Column "FY2008 Enacted" includes emergency funding for DHS enacted by Division E of P.L. 110-161.
- b. \* The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- c. Not less than 25% of the \$950 million for SHSGP is to be used for law enforcement terrorism prevention activities, in accordance with P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007.
- d. Not less than 25% of the \$820 million for UASI is to be used for law enforcement terrorism prevention activities, in accordance with P.L. 110-53.
- e. The \$300 million for FIRE grants is a separate line item in the Title III table.
- f. Of this \$299 million: \$88 million is for the National Domestic Preparedness Consortium; \$63 million is for the Center for Domestic Preparedness; \$50 million is for the National Exercise Program; \$12 million is for technical assistance; \$27 million is for Demonstration Training Grants; \$31 million is for Continuing Training Grants; \$19 million is for evaluations and assessments; and \$9 million is for the Rural Domestic Preparedness Consortium.
- g. Of this \$145 million: \$40 million is for the National Exercise Program; \$79 million is for the National Domestic Preparedness Consortium and the Center for Domestic Preparedness; \$10 million is for technical assistance; and \$16 million for evaluations and assessments.
- h. The Administration proposes to fund the Public Safety Interoperable Communications Grant program through the Department of Commerce.
- i. The Senate-reported bill includes \$50 million for Real-ID Grants under the SHSGP.
- j. The National Security and Terrorism Prevention Grant Program, newly requested for FY2009, would have provided competitive grants to state and local jurisdictions that address homeland security vulnerabilities, and for Real ID proposals and buffer zone protection of critical infrastructure.
- k. The Center for Counterterrorism and Cyber Crime at Norwich University, Northfield, Vermont, is a new grant program in FY2009.

## **Office of Grant Programs Issues for Congress**

In FY2009, Congress could elect to address three issues when considering appropriating funds for DHS's state and local assistance programs. The first issue is the reduction in state and local assistance funding, the second issue is the allocation method DHS uses to determine state and locality grant awards, and the third issue is the reduction in appropriations for the Assistance to Firefighters Program.

### ***Reduction in Total State and Local Assistance Funding***

The issue that appears to continue to dominate DHS's assistance programs for states and localities is the overall reduction in funding. Congress reduced funding to the State Homeland Security Grant Program by \$60 million, the Trucking Industry Security Program by \$8 million, the Commercial Equipment Direct Assistance Grants by \$17 million, and did not fund the Real ID program. Conversely, Congress did increase

funding for Urban Area Security Initiative by \$18 million, Emergency Operations Centers by \$20 million, Assistance to Firefighters by \$25 million, Emergency Management Performance Grants by \$15 million, and appropriated \$2 million for a new grant program, the Center for Counterterrorism and Cyber Crime.<sup>142</sup> This combination of reduced and increased funding for these different programs resulted in the overall funding for states and localities to be \$90 million less than appropriated in FY2008. Still, Congress continued to appropriate over \$4 billion for states and localities, similar to the amount appropriated in FY2008.

### *Allocation Methodology*

Since FY2003, Congress has debated the allocation methodology DHS uses to determine some state and locality grant awards. Some degree of resolution was reached in P.L. 110-53.<sup>143</sup> P.L. 110-329 requires GAO to report to Congress on the data, assumptions, and methodology that DHS uses to assess risk in determining SHSGP and UASI allocations. Specifically, this report is to include information on the reliability and validity of the data used, the basis for the assumptions used, how the methodology is applied to determine the risk scores for individual locations, an analysis of the usefulness of placing states and cities into tier groups, and the allocation of grants to eligible recipients.<sup>144</sup> Additionally, the *Congressional Record* version of the DHS explanatory statement states that FEMA is “expected to continue to fully engage agencies with subject matter expertise within the Department, when appropriate, in the development of grant guidance and the determination of awards.”<sup>145</sup>

### *Reduction in Funding for the Assistance to Firefighters Program*.<sup>146</sup>

In previous years, the Administration’s budget proposals have typically recommended significant cuts for fire grants, used to fund training and equipment, as well as zero funding for Staffing for Adequate Fire and Emergency Response (SAFER) grants, used for hiring, recruitment, and retention. Opponents of the cuts have argued that the reduced levels are inadequate to meet the needs of fire departments, while the Administration has argued that reduced levels are sufficient to enhance critical capabilities in the event of a terrorist attack or major disaster. For FY2009, the Administration proposed \$300 million for fire grants, a 46% cut from the FY2008 level. No funding was proposed for SAFER grants, and the total request for Assistance to Firefighters Grants (AFG) was 60% below the FY2008 level for fire and SAFER grants combined. The FY2009 budget proposal eliminated grants for wellness/fitness activities and modifications to facilities for firefighter safety. The budget justification requested funding for “applications that enhance the most critical capabilities of local response to fire-related hazards in the event

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<sup>142</sup> P.L. 110-329, Title III.

<sup>143</sup> For further information, see CRS Report RL34181, *Distribution of Homeland Security Grants in FY2007 and P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act*, by Shawn Reese and Steven Maguire.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Congressional Record*, daily edition, vol. 154, September 24, 2008, p. H9804.

<sup>146</sup> This section prepared by Lennard G. Kruger, Specialist in Science and Technology, Resources, Science, and Industry Division.

of a terrorist attack or major disaster.”<sup>147</sup> The budget justification also stated that the requested level of funding is “an appropriate level of funding given the availability of significant amounts of funding for first responder preparedness missions from other DHS grant programs which are coordinated with state and local homeland security strategies and, unlike AFG, are allocated on the basis of risk.”<sup>148</sup>

The Senate-reported version of S. 3181 proposed \$750 million for firefighter assistance, including \$560 million for fire grants and \$190 million for SAFER grants, the same funding level approved for FY2008. The Senate report directed DHS to continue the present practice of funding applications according to local priorities and those established by the U.S. Fire Administration (USFA), and further directed DHS to continue direct funding to fire departments and the peer review process. The House version of H.R. 6947, as reported, provided \$800 million for firefighter assistance, consisting of \$570 million for fire grants and \$230 million for SAFER grants, and directed FEMA to continue granting funds directly to local fire departments and to include the U.S. Fire Administration during the grant administration process, while also maintaining an all-hazards focus and not limiting the list of eligible activities. P.L. 110-329 provided \$775 million for firefighter assistance, including \$565 million for fire grants and \$210 million for SAFER. The *Congressional Record* version of the DHS explanatory statement directed FEMA to continue the present practice of funding applications according to local priorities and those established by the USFA.

## **Office of Health Affairs<sup>149</sup>**

The Office of Health Affairs (OHA) coordinates public health and medical programs throughout DHS, and administers several of them, including the BioWatch program, the National Biosurveillance Integration System (NBIS), certain functions of Project BioShield, and the department’s occupational health and safety programs.<sup>150</sup> Dr. Jeffrey Runge, who was confirmed by the Senate as the first DHS Assistant Secretary for Health Affairs in 2007, stepped down in August, 2008. The position is now filled by the Acting Assistant Secretary for Health Affairs, Dr. Jon R. Krohmer.

## **President’s FY2009 Request**

The Administration requested \$161 million for OHA for FY2009, including \$112 million for BioWatch, \$8 million for NBIS, \$3 million for the Rapidly Deployable Chemical Detection System (RDCDS), \$10 million for planning and coordination, and \$29 million for salaries and expenses.<sup>151</sup>

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<sup>147</sup> DHS FY2009 Congressional Budget Justifications.

<sup>148</sup> Ibid.

<sup>149</sup> Prepared by Sarah A. Lister, Specialist in Public Health and Epidemiology, Domestic Social Policy Division.

<sup>150</sup> For more information, see DHS, Office of Health Affairs, at [http://www.dhs.gov/xabout/structure/editorial\\_0880.shtm](http://www.dhs.gov/xabout/structure/editorial_0880.shtm).

<sup>151</sup> FY2009 Congressional Budget Justification, pp. 3051-3141 of the pdf document.

### **House-reported H.R. 6947**

The bill would have provided \$134 million for OHA, which is \$27 million (-17%) below the FY2009 request, but \$18 million (+15%) above the FY2008 level.<sup>152</sup> This amount includes \$89 million for the BioWatch program, \$8 million for NBIS, \$3 million for RDCDS, \$6 million for planning and coordination, and \$29 million for salaries and expenses.

### **Senate-reported S. 3181**

The bill would have provided \$171 million for OHA, which is \$10 million (+6%) above the FY2009 request, and \$55 million (+47%) above the FY2008 level.<sup>153</sup> This amount includes the amounts requested for BioWatch, NBIS, RDCDS, and planning and coordination, plus an additional \$10 million above the requested amount for salaries and expenses.

### **P.L. 110-329**

The law and the accompanying explanatory statement provided \$157 million for OHA, which is \$4 million (-3%) below the FY2009 request, and \$41 million (+35%) above the FY2008 level.<sup>154</sup> This amount includes \$112 million for BioWatch, and \$29 million for salaries and expenses, both amounts as requested.

### **Office of Health Affairs Issues for Congress**

The upcoming presidential transition may prove challenging for OHA, which was established three years ago and has since experienced rapid growth in its budget and mission. OHA began as the Office of the Chief Medical Officer (CMO) in 2005, and was funded at \$2 million in FY2006. As OHA, it was funded at \$117 million in FY2008. Most of that amount was for existing programs transferred from elsewhere in the department, principally BioWatch, which was transferred from the Science and Technology Directorate. In addition to a \$34 million increase for BioWatch for FY2009, OHA requested additional funding for planning and coordination, and salaries and expenses, partly to strengthen its administrative functions such as contracting, budget formulation, budget execution, and internal controls.<sup>155</sup>

In prior appropriations, Congress has been interested in the effectiveness of OHA programs. In FY2008, Congress provided funding for the National Academy of Sciences (NAS) to study the effectiveness of BioWatch. In P.L. 110-53, the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress called on the Comptroller General to evaluate implementation of NBIS. These reviews are pending. In its FY2009 recommendation, the House Committee provided BioWatch funding

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<sup>152</sup> H.Rept. 110-862, pp. 106-109.

<sup>153</sup> S.Rept. 110-396, pp. 100-101.

<sup>154</sup> Congressional Record version of the DHS explanatory statement, pp. H9802-H9803, September 24, 2008.

<sup>155</sup> FY2009 Congressional Budget Justification, p. OHA-44 (pp. 3094 of the pdf document).

substantially below the request, and expressed concern about OHA's plans to deploy two different versions of BioWatch sensing systems concurrently, before the NAS review is completed.<sup>156</sup> The Senate Committee recommended the requested amount for BioWatch, and did not discuss the program in its report. In P.L. 110-329 and the accompanying explanatory statement, Congress provided the amount requested for BioWatch, but laid out a number of explicit spending and reporting requirements for new system deployments.

Additional matters mentioned by the House Committee include, among others, a directive that DHS's pandemic influenza planning activities be based in OHA rather than elsewhere in the department, and encouragement of OHA's activities to monitor environmental exposures among disaster victims. The Senate Committee expressed concern about the level of national preparedness for a nuclear incident, and recommended that \$10 million—the amount that the Committee recommended above the request—be used to expand OHA's efforts to plan for this threat. Both the House and Senate Committees expressed concerns about problems with medical care in ICE detention facilities, and the House Committee directed ICE to initiate a comprehensive third-party review of detainee medical care, in consultation with OHA.<sup>157</sup> Both committees also directed OHA and FEMA to coordinate their efforts in managing the Metropolitan Medical Response System (MMRS) grants to cities.

## **National Protection and Programs Directorate<sup>158</sup>**

The National Protection and Programs Directorate (NPPD) was formed by the Secretary for Homeland Security in response to the Post-Katrina Emergency Management Reform Act of 2006. The Directorate includes the Office of Infrastructure Protection, the Office of Cybersecurity and Communications, the Office of Intergovernmental Programs, the Office of Risk Management and Analysis, and the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT). The programs and activities of the Office of the Undersecretary for National Protection and Programs, along with the activities of the Office of Intergovernmental Programs and the Office of Risk Management and Analysis, are supported within the Directorate's Management and Administration Program. The programs and activities of the Office of Infrastructure Protection and the Office of Cybersecurity and Communications are supported through the Infrastructure Protection and Information Security Program.

### **Management and Administration**

The programs and activities of the Office of the Undersecretary are aggregated in Directorate Administration and support the other offices and programs within the

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<sup>156</sup> For more information, see House Committee on Appropriations, Subcommittee on Homeland Security, hearing on Department of Homeland Security, Office of Health Affairs, April 1, 2008, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Washington, DC.

<sup>157</sup> For more information, see CRS Report RL34556, *Health Care for Noncitizens in Immigration Detention*, by Alison Siskin.

<sup>158</sup> Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division.

Directorate. This support includes budget formulation and financial management, contract and program management, information technology, business culture (i.e. employee relations), and communications, among other things.

The Office of Intergovernmental Programs (IPG) was established by the Homeland Security Act of 2002 to act as both an advocate for State, local, tribal, and territorial officials within the department and as the primary liaison between these officials, the Secretary of Homeland Security, and other senior level officials within the department. In this role, the IPG manages communications and helps coordinate activities among these stakeholders.

The Office of Risk Management and Analysis (RMA) was established as part of the Post-Katrina Emergency Reform Act of 2006. It had formerly been a division within the Office of Infrastructure Protection. The RMA now reports directly to the Undersecretary. The responsibility of this office is to help develop and implement a common risk management framework<sup>159</sup> and to leverage risk management expertise throughout the entire department.

### **President's FY2009 Request**

The President requested a total of \$54 million for the NPPD Management and Administration appropriation. This included \$43 million for Directorate Administration, \$2 million for Intergovernmental Programs, and \$10 million for Risk Management and Analysis. The budget request included a programmatic increase for additional personnel (including increases in recruitment and retention bonuses and training) for both the Office of the Undersecretary (24 positions, 12 FTEs) and the Office of Intergovernmental Programs (17 positions, 17 FTEs). The primary reason for the increase was to reduce dependence on outside contractors. The IPG received no NPPD funds in FY2008. The request for the Office of Risk Management and Analysis supports current services.

### **House-reported H.R. 6947**

The House Committee recommended no funding for the Office of Intergovernmental Programs in the National Protection and Programs budget, noting that the Post-Katrina Emergency Reform Act moved this Office into FEMA and, that funding for the Office is provided within the FEMA budget. The House Committee would also cut in half the amount of funding requested for hiring and retaining staff (a reduction of \$2 million in the Directorate Administration line item). The Committee stated the slow pace at which the Directorate is hiring new staff made it unlikely that the Directorate would need the full amount requested.

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<sup>159</sup> This framework includes the development of a risk management lexicon, risk performance metrics, a risk communication strategy, and support for the development and vetting of new risk management tools and techniques.

### Senate-reported S. 3181

The Senate Committee also chose not to fund the Office of Intergovernmental Programs through the NPPD. It did provide the requested funds for hiring and retaining staff within the Directorate Administration line item.

### P.L. 110-329

Congress approved \$42 million for Directorate Administration, a little over \$1 million less than requested. Congress did not fully support the requested increase for hiring and retaining staff, nor did it transfer funding for the Office of Intergovernmental Affairs from FEMA to NPPD. Congress did fully support the RMA request.

**Table 16. FY2009 Budget Activity for the Management and Administration Appropriation**  
(budget authority in millions of dollars)

Program Project Activity	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-reported	P.L. 110-329 <sup>a</sup>
Directorate Administration	38	43	41	43	42
Intergovernmental Programs	—	2	—	—	—
Risk Management and Analysis	9	10	10	10	10
<b>Total</b>	<b>47</b>	<b>55</b>	<b>50</b>	<b>53</b>	<b>51</b>

**Sources:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, H.R. 6947 and accompanying report H.Rept. 110-862, and P.L. 110-329 and the Congressional Record version of the DHS explanatory statement, Sept. 24, 2008.

**Note:** Tables may not add due to rounding.

- a. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

### Issues for Congress

One potential issue in this appropriation cycle is whether the FY2009 budget justification documents sufficiently address Congress's concerns about the quality of the NPPD's budget requests. In the FY2008 appropriations, both the House and the Senate criticized the level of detail and clarity of the NPPD budget justification documents and the apparent transfer of funds without the Committees' knowledge. The Omnibus Appropriations Act ordered \$5 million of the NPPD Management and Administration account to be put on hold until the Committees' receive and approve an expenditure plan that has been reviewed by the Government Accountability Office.

Another possible issue is the location of the Office of Risk Management and Analysis (RMA) and the Office of Intergovernmental Programs. Both of these offices oversee

activities that cut across the entire department. Some observers have expressed concern that the RMA, in particular, may be located too low in the organization to accomplish its goals.

Lastly, where to budget the activities of the Office of Intergovernmental Programs continues to be a contentious issue between Congress and the Administration. The Administration has sought to fund the office through the NPPD budget in its last two budget submissions; both times Congress has chosen to keep the funding in FEMA's budget.

## **U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT)<sup>160</sup>**

Until FY2006, US-VISIT was coordinated out of the Directorate of Border and Transportation Security (BTS). DHS Secretary Chertoff's second stage review, among other things, eliminated BTS and proposed placing US-VISIT within a new Screening Coordination Office (SCO) that would have combined a number of screening programs within DHS<sup>161</sup> and that would have reported directly to the Secretary. The appropriators did not provide funding for the SCO, however, and US-VISIT became a stand-alone office within Title II of the DHS appropriation in FY2006.<sup>162</sup> In FY2008, DHS transferred US-VISIT into a new entity, the National Protection Programs Directorate (NPPD). In its Section 872 letter, DHS stated that it was relocating US-VISIT to the NPPD "to support coordination for the program's protection mission and to strengthen DHS management oversight."<sup>163</sup>

### **President's Request**

The Administration requested \$390 million for US-VISIT in FY2009, a decrease of \$85 million from the FY2009 enacted level of \$475 million.<sup>164</sup> Included in the Administration's request is an increase of \$43 million to conduct testing of potential exit solutions at the land POE, and an increase of \$4 million to help US-VISIT deal with increased demand for services from other government entities as the system expands to 10-fingerprints.

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<sup>160</sup> Prepared by Blas Nuñez-Neto, Analyst in Domestic Security, Domestic Social Policy Division.

<sup>161</sup> Programs proposed for transfer to the Screening Coordination Office included the US Visitor and Immigrant Status Indicator Project (US-VISIT); Free and Secure Trade (FAST) and NEXUS/SENTRI, from CBP; and Secure Flight, Transportation Worker Identification Credential (TWIC), Registered Traveler, Hazardous Materials (HAZMAT) background checks, and the Alien Flight School background checks program from TSA.

<sup>162</sup> H.Rept. 109-241.

<sup>163</sup> U.S. Department of Homeland Security, letter from Secretary Michael Chertoff to the Honorable Joseph I. Lieberman, Chairman, Committee on Homeland Security and Government Affairs, U.S. Senate, Washington, DC, January 18, 2007, p. 8.

<sup>164</sup> While the FY2008 enacted total included \$275 million in emergency appropriations, the total appropriation for US-VISIT in FY2008 was in line with the President's FY2008 request of \$462 million.

### **House-reported H.R. 6947**

The House Committee recommended fully funding the President's request for US-VISIT, but withheld \$90 million pending the submission and approval of an expenditure plan for the program. Additionally, the House Committee included \$40 million for operations and management of the program within the CBP Salaries and Expenses account, \$22 million less than the President's request, because "the budget explanation did not justify full funding."<sup>165</sup>

### **Senate-reported S. 3181**

The Senate Committee recommended \$180 million for US-VISIT, \$210 million less than the President's request. The Senate Committee noted that it did not receive US-VISIT's FY2008 expenditure plan until June 12, 2008 (or almost 3/4 of the way through the fiscal year) and that \$125 million in FY2008 funding will remain unavailable for obligation until this plan is reviewed by GAO and accepted by the Committee—something that will likely not occur until September. As a result of the delay in submitting the plan, the Senate Committee noted that DHS was effectively turning US-VISIT into a forward funded account. As such, the Senate Committee reduced the FY2009 appropriation by \$210 million from the FY2009 request, to \$180 million. However, the Senate Committee noted that it fully funded the President's request for an additional \$62 million for "operations and management" of the program within the CBP Salaries and Expenses Account.

### **P.L. 110-329**

Congress provided \$300 million for US-VISIT in the Act, \$90 million below the President's request. The reduction in funding was in response "to the delay in submitting the expenditure plans and the resulting unobligated balances."<sup>166</sup> Congress admonished DHS for continuing to run high unobligated balances in the US-VISIT program and directed DHS to ensure that US-VISIT becomes a current-year program moving forward. In order to encourage this, Congress withheld \$70 million from obligation until an expenditure plan for the program is submitted to and approved by the House and Senate Committees on Appropriations. Of the \$300 million appropriation, Congress designated \$20,000,000 for identity management and screening services; \$66,368,000 for the Unique Identity program, and \$25,327,000 for moving US—VISIT operations to a DHS data and establishing a second disaster recovery site. The remaining \$188 million was made available for operations and maintenance, program management, and the development and implementation of biometric exit solutions.

### **Issues for Congress**

There are a number of issues that Congress may face relating to the implementation of the US-VISIT system. These issues may include whether the Administration's proposed

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<sup>165</sup> H.Rept. 110-826, pp. 36-37.

<sup>166</sup> Congressional Record version of the DHS explanatory statement, p. H9802.

pilot project for deploying the exit component at land POE is appropriate, whether the current plan to deploy the exit component at air POEs is adequate, and whether the current POE infrastructure can support the added communication load that a 10 fingerprint system would likely require.

### ***10 Fingerprint Entry***

In FY2008, US-VISIT has been operating a pilot program of the 10 fingerprint enrollment system to assess the impact of the program's expansion on the infrastructure at POE and wait times for travelers entering the United States. During FY2009, US-VISIT plans to deploy 3,000 new 10 fingerprint scanners to the 292 POE where the US-VISIT system is currently operational. Issues for Congress could include whether the current information technology infrastructure at POEs can support the enhanced bandwidth that a 10 fingerprint system will require, whether the 10 fingerprint technology that gets implemented can produce fast and effective results, and what kind of an impact the deployment of the system to airports will have on the travel times for individuals entering the country as well as the potential economic impacts that delays may have on airlines due to missed connections. The Senate Committee noted its approval of the plans to transition to a 10 fingerprint entry system, and included full funding for that portion of the request. The House Committee also recommended fully funding the President's request for this component of the US-VISIT system, and directed DHS to provide quarterly briefings on the implementation of the 10 fingerprint entry solution.

### ***Exit Component at Air and Sea Ports***

Deployment of a biometric exit system has been of concern to Congress for a number of years. Without verifying the identity of travelers who leave the United States, DHS has no easy way of identifying individuals who overstay their visas and remain in the country illegally. After being heavily criticized during FY2008 for appearing to move away from the deployment of an exit system, US-VISIT is requesting \$56 million for the exit component of the system in FY2009. According to the DHS, US-VISIT will "finalize a biometric exit strategy and complete implementation of a biometric air and sea exit system by the end of calendar year 2008."<sup>167</sup> The exact nature of this strategy will likely be an issue that Congress will closely examine, given the intense congressional interest on this topic in the past. The House Committee noted that the exit component remains behind schedule, and expressed its concern that "no pilot tests have been carried out or are planned for the proposed assignment of biometric collection responsibilities to private industry."<sup>168</sup> In order to address this concern, the House Committee withheld from its recommendation funding for the implementation of an exit solution at airports until US-VISIT conducts pilot programs testing private industry collection and transmission of biometric data *and* CBP collection of this data at airline gates and submits a report to the committee on their outcomes. US-VISIT would be required to complete these pilots by October 31, 2008. The House Committee also noted its concern that DHS has yet to

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<sup>167</sup> *FY2009 DHS Congressional Budget Justifications*, p. NPPD US-VISIT 21.

<sup>168</sup> H.Rept. 110-826, p. 101.

provide a detailed and comprehensive strategy for implementation of an exit solution across all ports of entry, as required by the Consolidated Appropriations Act of 2008, and included language reiterating this requirement. P.L. 110-329 directed DHS to execute the pilot programs outlined in the House Report, but extended the deadline for completion of these pilots to January 31, 2009.

## **Infrastructure Protection and Information Security<sup>169</sup>**

The Infrastructure Protection and Information Security Program (IPIS) supports the activities of the Office of Infrastructure Protection (OIP), which manages the Infrastructure Protection Program (IP), and the Office of Cybersecurity and Communications, which includes the National Cyber Security Division (NCS), the National Communication System (NCS), and the Office of Emergency Communications (OEC). OIP coordinates the national effort to reduce the risks associated with the loss or damage to the nation's critical infrastructure due to terrorist attack or natural events. This effort is a cooperative one between the federal government, state, local and tribal governments, and the private sector to identify critical elements of the nation's infrastructure, their vulnerabilities, the potential consequences of their loss or damage, and ways to mitigate those losses. The NCS performs a similar function, but specifically focuses on the nation's information networks. The NCS also performs similar function, but specifically focuses on the nation's communication systems, in particular the communications systems and programs that ensure the President can communicate with selected federal agencies, state, local, and tribal governments, and certain private sector entities during times of national emergencies. The OEC is responsible for promoting the ability of state, local and federal emergency response providers to communicate with each other during an emergency through the development and distribution of interoperable communication equipment.

### **President's FY2009 Request**

The President requested a total of \$841 million for IPIS in FY2009. This is an increase of approximately \$186 million above the amount enacted for FY2008. Each of the four Program/Project Activities (PPAs) requested increased funding (see **Table 16**). Of the total increase, \$44 million is the result of changes to baseline funding, including pay increases (plus one large baseline increase associated with the transfer of a program from the Coast Guard to the NCS). The balance, \$142 million, is the net result of expanded or reduced programmatic activity, including the hiring of additional personnel.

The National Communication System request is \$101 million above last year's enacted amount. The request included an increase of nearly \$35 million for the Next Generation Network. This program aims to migrate the Telecommunications Priority Services program from legacy circuit-switched technology to industry's new IP-based packet technology. In FY2008, Congress chose not to fully fund the President's request for this program, stating that DHS had not justified the need for the level of funding requested at

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

that time. Another large programmatic increase in the NCS request, \$57 million, would support the National Command and Coordination Capability (NCCC). NCCC is an effort to integrate existing and future networks that share classified as well as sensitive-but-unclassified information (voice, video, and data) between the President, Vice-President, federal agencies, state Emergency Operation Centers, and selected local fusion centers. The Secretary of DHS is the Executive Agent of the NCCC, and he has delegated this authority to the NCS. The \$57 million increase goes toward standing up the NCCC Management Coordination Office and to extend and integrate the necessary interoperable hardware and software. The NCS also requested a \$35 million increase to its baseline funding to take over the Coast Guard's Long Range Navigation (LORAN) system.

The NCS requested an increase of \$83 million above the FY2008 enacted amount. Expansion of the Division's Einstein program, and its role in the Office of Management and Budget's (OMB's) Trusted Internet Connections initiative, accounts for nearly \$70 million of this increase. The Einstein program monitors network traffic on federal information networks and acts as an intrusion detection system. OMB's Trusted Internet Connections initiative seeks to deploy the Einstein system to all federal departments and agencies (current involvement had been voluntary). The increased funding would be spent on the acquisition and deployment of additional and upgraded hardware and software, the expansion of facilities, and the hiring of additional personnel and contractor services. Some of the increases are to handle the additional incident handling and data analysis the expansion will generate.

The net budget increase requested for IP is less than a million dollars. Increases would include \$11 million to increase staff and support for chemical facility security compliance. It also would include \$1 million for additional Protective Security Advisors. Proposed decreases included -\$14 million for NIPP management, -\$4 million for the National Infrastructure Simulation and Analysis Center, and -\$1 million for the Bomb Prevention Program. Congress had appropriated funds above what the President requested for these programs in FY2008.

### **House-reported H.R. 6947**

The House Committee recommended \$847 million for the IPIS program, but voted to withhold from obligation \$149 million from three programs (National Cyber Security Initiative, Next Generation Networks, and the National Command and Coordination Capability) until the Committee receives expenditure plans and documentation on how these programs relate to achieving homeland security goals. The Committee recommended \$39 million more for Infrastructure Protection and \$6 million more for the National Cyber Security Division PPAs than requested. The House Committee supported the Administration's request for the Office of Emergency Communications, but recommended less (-\$90 million) than what was requested for the National Communications System program. In addition, the House Committee recommended the \$50 million REAL ID Hub program be transferred to NPPD. The Administration requested funds for this program in the U.S. Citizenship and Immigration Services (USCIS) budget. The Committee recommended the development program be run out of NPPD to allow the USCIS to focus on its large backlog of applications.

Within the Infrastructure Protection PPA, the Committee included an additional \$16 million to the request for National Infrastructure Protection Plan implementation and \$2 million to the Bombing Prevention Program, more than reversing the Administration's proposed reductions in those programs. The Committee also recommended an additional \$12 million for chemical plant security compliance support, also citing the need to support upcoming regulations on ammonium nitrate. In addition, the Committee recommended \$2 million to fund continued deployment of video surveillance cameras in Philadelphia and \$3 million to study the efficacy of manhole cover locking systems to ensure security of underground utilities.

The Committee fully supported the National Cyber Security Division's U.S.-CERT budget, but, withheld from obligation half of the amount (\$121 million) until the Committee receives an expenditure plan for the U.S.-CERT's contribution to the National Cyber Security Initiative. Also within the NCSD PPA, the Committee recommended \$4 million more than the request for testing at Idaho National Laboratory the security of control systems.

Within the National Communications System PPA, the Committee recommended \$14 million for the National Command and Coordination Capability budget, about \$47 million less than the request, and withheld all of this amount from obligation until it receives an expenditure plan for this program. The Committee also recommended \$8 million less for the Next Generation Networks program, and withheld half of this amount from obligation until it receives an expenditure plan for the program. The House Committee did not support the transfer of the LORAN program to NPPD.

### **Senate-reported S. 3181**

The Senate Committee recommended a total of \$809 million for the IPIS program. This included funding, above requested levels, for Infrastructure Protection (+\$25 million), the National Cyber Security Division (+\$26 million), and the Office of Emergency Communications (+\$10 million) PPAs. The Committee, however, recommended less than requested funding for the National Communications System PPA (-\$94 million).

Within the Infrastructure Protection PPA, the Committee recommended additional funds for the National Infrastructure Simulation and Analysis Center (+\$4 million) and the Bombing Prevention Program (\$1 million), reversing the Administration's proposed reductions in these two programs. In addition, the Committee increased the funding for chemical plant security compliance an additional \$12 million above the Administration's request, citing the need to enforce upcoming regulations on ammonium nitrate. The Committee also recommended an additional \$8 million above the Administration's request to help accelerate the pace of vulnerability assessments at Tier 1 and Tier 2 critical infrastructure sites. The additional \$10 million recommended for the Office of Emergency Communications PPA is to support 6 international interoperability border demonstration projects. The Committee did not expand upon its recommendation to increase the National Cyber Security Division's budget request by \$26 million.

Within the National Communications System PPA, the Committee recommended \$6 million for the National Command and Coordination Capability (NCCC), \$55 million less than what was requested. Although the Committee recommendation increased

funding over last year’s budget for the NCCC, the Committee expressed concern that the program lacked an overall strategic plan, input from prospective end users, a defined fully operational capability, and a total program cost estimate. The funds provided by the Committee are to conduct such planning. The Committee also directed the Government Accountability Office to review the program, including the business case for proceeding with the NCCC. Also within the National Communications System PPA, the Committee did not support the transfer of the LORAN program to the NPPD. The Committee noted that the requested funding was provided in the Coast Guard budget.

**P.L. 110-329**

Congress approved \$807 million for the IPIS program. This included \$314 million for IP, \$314 million for NCSD, \$38 million for OEC, and \$141 million for NCS. However, a total of \$152 million would be withheld from obligation until Congress received and approved expenditure plans for the following projects: the National Cyber Security Initiative in the NCSD program (\$127 million withheld); and, the Next Generation Network in the NCS program (\$25 million withheld).

Within the IP program, Congress appropriated a total of \$73 million for implementing chemical plant security regulations (\$10 million above the request) and \$5 million to initiate efforts to regulate ammonium nitrate. It provided \$11 million for the Office of Bombing Prevention, roughly \$2 million above the request. It also provided \$31 million for NIPP management (\$10 million above the request), \$20 million for NISAC (\$4 million above the request), and \$6 million more than requested to conduct vulnerability assessments. In addition, the \$2 million sought for the city of Philadelphia and the \$3 million to study the efficacy of protecting underground infrastructures by securing manhole covers was approved.

Notwithstanding the withholding of obligations noted above, Congress appropriated \$255 million for DHS’s activities associated with the National Cyber Security Initiative and \$50 million for the Next Generation Network. Congress appropriated \$6 million for the National Command and Control Capability. Congress provided \$22 million for NCSD’s activities to secure control systems of critical infrastructures (\$4 million more than requested). Congress did not support the transfer of LORAN to NPPD. The bill did not mention transferring the Real ID Hub from U.S. Citizenship and Immigration Services to NPPD as sought in the House.

**Table 17. FY2009 Budget Activity for the Infrastructure Protection and Information Security Appropriation**  
(budget authority in millions of dollars)

Program Project Activity	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-reported	P.L. 110-329 <sup>a</sup>
IP	273	273	312	298	314
NCSD <sup>b</sup>	210	293	299	319	314
NCS <sup>c</sup>	136	237	147	143	141
OEC	36	38	38	48	38

<b>Program Project Activity</b>	<b>FY2008 Total</b>	<b>FY2009 Request</b>	<b>FY2009 House-Reported</b>	<b>FY2009 Senate-reported</b>	<b>P.L. 110-329<sup>a</sup></b>
REAL ID Hub	—	—	50	—	—
<b>Total</b>	<b>655</b>	<b>841</b>	<b>847</b>	<b>809</b>	<b>807</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, H.R. 6947 and accompanying report H.Rept. 110-862, and P.L. 110-329 and the Congressional Record version of the DHS explanatory statement, Sept. 24, 2008.

**Notes:** Tables may not add due to rounding. IP=Infrastructure Protection; NCS=National Cyber Security Division; NCS=National Communications System; OEC=Office of Emergency Communications.

- a. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- b. Account formerly called Computer Security.
- c. Account formerly called National Security/Emergency Preparedness.

### **IPIS Issues for Congress**

Congress and the Administration continue to disagree on the direction or pace certain programs within the IPIS should take. The Administration favors reducing funding in the National Infrastructure Simulation and Analysis Center, the National Infrastructure Protection Plan implementation support, and the Bombing Prevention Program. Congress did not support these reductions in FY2008 and have not in the FY2009 budget. Meanwhile, Congress has not been willing to completely support relatively large increases the Administration has been seeking for programs in the National Communications Systems PPA. Both the House and the Senate appear to be in basic agreement. A primary difference between the House and Senate bills is that the House Appropriations Committee recommended the transfer of the REAL ID Hub program to NPPD, while the Senate Committee did not make a similar recommendation.

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

Title IV includes appropriations for U.S. Citizenship and Immigration Services (USCIS), the Federal Law Enforcement Training Center (FLETC), the Science and Technology Directorate (S&T), and the Domestic Nuclear Detection Office (DNDO). **Table 18** provides account-level details of Title IV appropriations.

**Table 18. Title IV: Research and Development, Training, Assessments, and Services**  
(budget authority in millions of dollars)

Operational Component	FY2008 Appropriation				FY2009 Appropriation			P.L. 110-329 <sup>b</sup>
	FY2008 Enacted <sup>a</sup>	FY2008 Supp.	FY2008 Resc.	FY2008 Total	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	
<b>Citizenship and Immigration Services</b>								
Total available budget authority	2,620			2,620	2,690	2,641	2,690	2,641
Offsetting fees <sup>c</sup>	-2,539			-2,539	-2,539	-2,539	-2,539	-2,539
<b>Net subtotal (Direct appropriation)</b>	<b>81</b>			<b>81</b>	<b>151</b>	<b>102</b>	<b>151</b>	<b>102</b>
<b>Federal Law Enforcement Training Center</b>	<b>289</b>			<b>289</b>	<b>274</b>	<b>286</b>	<b>324</b>	<b>333</b>
<b>Science and Technology</b>								
Management and Administration	139			139	132	132	132	132
Research, Development, Acquisition, and Operations	692			692	737	755	787	800
<b>Net Subtotal</b>	<b>830</b>			<b>830</b>	<b>869</b>	<b>887</b>	<b>919</b>	<b>933</b>
<b>Domestic Nuclear Detection Office</b>								
Management and Administration	32			32	39	35	39	38
Research, Development, and Operations	324			324	334	333	334	323
Systems Acquisition	130			130	191	176	168	153
<b>Net Subtotal</b>	<b>485</b>			<b>485</b>	<b>564</b>	<b>544</b>	<b>541</b>	<b>514</b>
<b>Gross budget authority: Title IV</b>	<b>4,224</b>			<b>4,224</b>	<b>4,396</b>	<b>4,358</b>	<b>4,474</b>	<b>4,421</b>
Offsetting collections: Title IV	-2,539			-2,539	-2,539	-2,539	-2,539	-2,539
<b>Net budget authority: Title IV</b>	<b>1,685</b>			<b>1,685</b>	<b>1,857</b>	<b>1,819</b>	<b>1,935</b>	<b>1,882</b>

**Source:** CRS Analysis of the *FY2009 DHS Congressional Budget Justifications*, the *FY2009 DHS Budget in Brief*, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate-enrolled version of H.R. 2638.

**Note:** Tables may not add due to rounding.

a. Column "FY2008 Enacted" includes emergency funding for DHS enacted by Division E of P.L. 110-161.

- b. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- c. Fees include Immigration Examination Fund; H-1b Visa Fee; and the Fraud Prevention and Detection fee.

## U.S. Citizenship and Immigration Services (USCIS)<sup>170</sup>

There are three major activities that dominate the work of the U.S. Citizenship and Immigration Services (USCIS): the adjudication of immigration petitions (including nonimmigrant change of status petitions, relative petitions, employment-based petitions, work authorizations, and travel documents); the adjudication of naturalization petitions for legal permanent residents to become citizens; and the consideration of refugee and asylum claims, and related humanitarian and international concerns.<sup>171</sup> USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits largely through funds generated by the Examinations Fee Account.<sup>172</sup> **Table 19** shows FY2008 appropriations and the FY2009 request.

### President's FY2009 Request

USCIS is a fee supported agency. As part of the former Immigration and Naturalization Service (INS), USCIS was directed to transform its revenue structure with the creation of the Examinations Fee Account.<sup>173</sup> Although the agency has received direct appropriations in the last decade, these appropriations have been largely directed towards specific projects such as backlog reduction initiatives. The vast majority of the agency's revenues, however, comes from the adjudication fees of immigration benefit applications and petitions. In the President's FY2009 budget request, the agency requested \$151 million in direct appropriations. The remaining \$2,539 million in gross budget authority requested would be funded by revenues from collected fees.

As **Table 19** below shows, the requested USCIS budget for FY2009 is approximately \$2,690 million. This requested amount constitutes an increase of \$70 million, or almost 3%, over the gross budget authority provided in FY2008. The requested direct appropriation of \$151 million would include \$100 million for the Employer Eligibility Verification Program (EEV, or E-Verify), \$50 million for REAL ID Act implementation, and roughly \$1 million for asylum and refugee program operating expenses. All other programs and operations would be fee funded. Of the requested funds for FY2009, \$1,979 million, or roughly 73.6%, would fund the USCIS adjudication services. A plurality of these adjudication funds would go towards pay and benefits with an allocation of \$780 million, while district operating expenses would receive \$535 million and service center operating expenses would be allocated \$346 million. Business transformation initiatives for modernizing systems and improving agency information sharing and efficiency would receive \$139 million. The President's budget request also

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<sup>170</sup> Prepared by Chad C. Haddal, Analyst in Immigration Policy, Domestic Social Policy Division.

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

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

<sup>173</sup> There are two other fee accounts at USCIS, known as the H-1B Nonimmigrant Petitioner Account and the Fraud Prevention and Detection Account. The revenues in these accounts are drawn from separate fees that are statutorily determined (P.L. 106-311 and P.L. 109-13, respectively). USCIS receives 5% of the H-1B Nonimmigrant Petitioner Account revenues and 33% of the Fraud Detection and Prevention Account revenues. In FY2007, the USCIS shares of revenues in these accounts were approximately \$13 million each, and the funds combined for a little less than 2% of the USCIS budget (U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2009 Congressional Budget Justifications*).

includes requested funding levels of \$168 million for information and customer services, \$374 million for administration, and \$19 million for the Systematic Alien Verification for Entitlements (SAVE) Program.

### **House-reported H.R. 6947**

House-reported H.R. 6947 would have provided USCIS with total appropriations \$2,641 million, of which \$2,539 million would have been mandatory appropriations collected from fees and \$102 million would have been direct appropriations. For the mandatory fees, the House report stated that at least \$54 million must be used for supporting Customer Service Center operations. Additionally, the report would have directed all USCIS' premium processing revenues to be used for business and information technology transformation purposes, including the digital conversion of records.<sup>174</sup> Discretionary funding included \$100 million for E-Verify, \$1 million for asylum/refugee operating expenses, and \$1 million for citizenship education grants.<sup>175</sup> Section 522 of the bill would have prohibited USCIS from using funds made available from House-reported H.R. 6947 for granting any immigration benefits unless any legally required background checks were completed and the results did not preclude benefits to be granted.

Although the mandatory appropriations in the House-reported bill were identical to those in the President's budget request (as well as those in Senate-reported S. 3181), the discretionary funds would not have included the \$50 million requested for REAL ID implementation. H.Rept. 110-862 noted that this funding would instead be provided through the National Protections and Program Directorate (NPPD), which has similar identity verification systems and experience in data integration. The Citizenship and education grants—proposed competitively awarded grants to community organizations in areas of the country with the highest concentrations of immigrants—were an exclusive item to House-reported H.R. 6947.<sup>176</sup>

H.Rept. 110-862 made several additional notes regarding Congressional concerns. First, it noted concerns over the high error rates in the E-Verify system and required USCIS to submit a report on its plan to address this issue. Moreover, noting the projected cost of a nationwide mandatory E-Verify program, H.Rept. 110-862 encouraged USCIS to develop a detailed plan of E-Verify use, along with projected costs and an implementation timeline. Second, the report noted concern over the 2007 USCIS immigration benefit fee increase and the reduced possibility for fee waivers. Specific concerns were raised in the report regarding applicants under the Violence Against Women Act. Third, concerns were raised over refugee processing and cases where material support to extremist groups has been provided under threat or duress. USCIS, in conjunction with the Department of State, were asked to clarify United States policy on this matter. Finally, H.Rept. 110-862

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<sup>174</sup> H.Rept. 110-862 also states that no more than \$10,000 of the fees collected be used for official reception and representation expenses.

<sup>175</sup> The bill also allows discretionary funds to be used for the purchase of up to five vehicles, of which two are to be replacement vehicles. This provision is also included in Senate-reported S. 3181.

<sup>176</sup> The initial President's FY2009 budget request for discretionary funds requested an additional four \$4 million. OMB withdrew this funding request, noting it was a technical error based upon a faulty assumption. House-reported H.R. 6947 explicitly denies funding for the erroneous budget item.

expressed concerns over fraudulently or erroneously identified orphans from Vietnam, as well as the levels of funding used for naturalization and oath of allegiance ceremonies.

### **Senate-reported S. 3181**

Unlike House-reported H.R. 6947, Senate-reported S. 3181 would have provided USCIS with its full funding request of \$2,690 million. This funding would have provided \$2,539 million in mandatory appropriations from fee collections and \$151 million in direct appropriations.<sup>177</sup> The accompanying report, S.Rept. 110-396, noted that USCIS planned to use over \$24 million in anticipated carry-over funds from FY2008 for E-Verify. It also noted the expectation that all DHS privacy rules and regulations will be adhered to in the development of the REAL ID program.

The main concern expressed in S.Rept. 110-396 was the ongoing issue of FBI background check backlogs. Noting that having approximately 327,000 individuals in the country awaiting adjudication represented an unnecessary security risk, the report reiterated that a total of \$28 million had been appropriated in previous fiscal years to address this issue. The report stated that USCIS has assured Congress that previously appropriated funding should be sufficient. Additionally, the report urged USCIS to place personnel at the FBI name check facility to expedite additional information requests. This request reflected a recent recommendation of the Department of Justice Inspector General.

### **P.L. 110-329**

The provision of P.L. 110-329 regarding USCIS were virtually identical to those of the House-reported H.R. 6947. Like its predecessor in the House, the public law provided \$102 million in direct appropriations, of which \$100 million was specified for the E-Verify program. According to report language in the Congressional Record,<sup>178</sup> \$1 million of the direct appropriations was for citizenship education grants as spelled out in House-reported H.R. 6947.<sup>179</sup> The REAL ID funding that was requested and included in Senate-reported S. 3181 was included under Title V of the public law.<sup>180</sup>

In addition to the direct appropriations, USCIS was directed to collect an estimated \$2,539 million in fee collections from adjudication services for mandatory appropriations. For the mandatory fees, the report language stated that at least \$54 million must be used for supporting Customer Service Center operations. Additionally,

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<sup>177</sup> Section 515 of Senate-reported S. 3181 states: "None of the funds appropriated by this Act may be used to process or approve a competition under Office of Management and Budget Circular A-76 for services provided as of June 1, 2004, by employees (including employees serving on a temporary or term basis) of United States Citizenship and Immigration Services of the Department of Homeland Security who are known as of that date as Immigration Information Officers, Contact Representatives, or Investigative Assistants."

<sup>178</sup> Rep. David Obey, "Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009," remarks in the House, *Congressional Record*, daily edition, vol. 154 (September 24, 2008), p.H9806.

<sup>179</sup> The bill also allows discretionary funds to be used for the purchase of up to five vehicles, of which two are to be replacement vehicles.

<sup>180</sup> See Section 547 of House-Passed H.R. 2638.

\$28 million of the mandatory fees was directed to be used for converting immigration records to digital format. Finally, the report language stated that USCIS is directed to advise Congress of any resource requirements necessary to avoid the buildup of new backlogs with the FBI Name Check Program.

**Table 19. USCIS Budget Account Detail**  
(budget authority in millions of dollars)

Program/Project Activity	FY2008 Enacted	FY2009 Request	FY2009 House-Reported	FY2009 Senate-Reported	P.L. 110-329 <sup>a</sup>
<b>Appropriations</b>					
<b>Appropriations</b>	<b>81</b>	<b>151</b>	<b>102</b>	<b>151</b>	<b>102</b>
REAL ID Act Implementation	—	50	—	50	—
Asylum/Refugee Operating Expenses	—	1	1	1	1
EEV	60	100	100	100	100
FBI Background Check	21	—	—	—	—
Citizenship Education Grants	—	—	1	—	1
<b>Fee Accounts</b>					
<b>Adjudication Services</b>	<b>2,000</b>	<b>1,979</b>	<b>1,979</b>	<b>1,979</b>	<b>1,979</b>
Pay & Benefits	758	780	780	780	780
District Operating Expenses	567	535	535	535	535
Service Center Operating Expenses	353	346	346	346	346
Asylum/Refugee Operating Expenses	95	93	93	93	93
Records Operating Expenses	88	86	86	86	86
Business Transformation	139	139	139	139	139
<b>Information and Customer Services</b>	<b>162</b>	<b>168</b>	<b>168</b>	<b>168</b>	<b>168</b>
<b>Administration</b>	<b>375</b>	<b>374</b>	<b>374</b>	<b>374</b>	<b>374</b>
<b>SAVE</b>	<b>22</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>
<b>Total USCIS Funding</b>	<b>2,620</b>	<b>2,690</b>	<b>2,641</b>	<b>2,690</b>	<b>2,641</b>

**Sources:** CRS Analysis of the FY2009 DHS Congressional Budget Justifications, the FY2009 DHS Budget in Brief, S. 3181 and the accompanying report S.Rept. 110-396, and House-reported H.R. 6947 and its accompanying report (H.Rept. 110-862). FY2009 enacted from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

**Notes:** Tables may not add due to rounding. Column “FY2008 Enacted” includes emergency funding for DHS enacted by Division E of P.L. 110-161.

a. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

## USCIS Issues for Congress

USCIS issues for Congress included the surge in immigration benefit applications that occurred in FY2007 and which resulted in an increase in the agency's backlog, and the use of the Federal Bureau of Investigation's (FBI's) National Name Check program to vet immigration benefit applications.

### *Surge in Benefit Applications and Resulting Backlog*

According to the testimony of USCIS Director Emilo T. Gonzalez, USCIS experienced an increase in its backlog of naturalization applications in the second half of FY2007.<sup>181</sup> From May through July of 2007 USCIS received three and a half times more applications than during the same three months in the previous year.<sup>182</sup> Consequently, published accounts indicate that processing time for applications filed during the FY2007 "surge" would be between 16-18 months, as compared to 6-7 months for applications filed in the same period during FY2006.<sup>183</sup> For all immigration benefits, the USCIS director testified that the agency received over 1.2 million more applications during the FY2007 surge than in the same period during FY2006, for a total of over 3 million applications.<sup>184</sup> According to media reports, in February USCIS officials believed that the backlog created by the application surge could take close to three years to clear.<sup>185</sup> As of April 2008, USCIS believed it would take 13-15 months to process an application for naturalization.<sup>186</sup>

Although citizenship campaigns and a contentious national immigration debate have been cited as contributing factors, many observers believe most of the surge in applications may be attributed to the USCIS fee increase of July 30, 2007.<sup>187</sup> These fee adjustments followed an internal cost review and they increased application fees by a weighted average of 96% for each benefit.<sup>188</sup> The cost of naturalization, for example, increased

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<sup>181</sup> Testimony of USCIS Director Emilio T. Gonzalez, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Naturalization Delays: Causes, Consequences and Solutions*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 17, 2008.

<sup>182</sup> *Ibid.*

<sup>183</sup> For example, see Muzaffar Chishti and Claire Bergeron, "USCIS: Backlog in Naturalization Applications Will Take Nearly Three Years to Clear," Migration Policy Institute, February 15, 2008, at <http://www.migrationinformation.org/usfocus/display.cfm?ID=673>, visited July 17, 2008.

<sup>184</sup> Testimony of USCIS Director Emilio T. Gonzalez, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Naturalization Delays: Causes, Consequences and Solutions*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 17, 2008.

<sup>185</sup> Muzaffar Chishti and Claire Bergeron, "USCIS: Backlog in Naturalization Applications Will Take Nearly Three Years to Clear," Migration Policy Institute, at <http://www.migrationinformation.org/usfocus/display.cfm?ID=673>, visited July 17, 2008.

<sup>186</sup> Citizenship and Immigration Services Ombudsman, *Annual Report 2008*, p.2.

<sup>187</sup> Chris Nelson, "Delay Debacle," *IndUS Business Journal Online*, February 15, 2008, at <http://www.indusbusinessjournal.com/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=5AF6AC18B95142F39C890025700AFBC3>, visited July 17, 2008.

<sup>188</sup> This weighted average does not include the increases to the biometric fee. When combined with the biometric fee, the weighted average application fee increase would be reduced to 86%. (U.S. Department of Homeland Security, "U.S. Citizenship and Immigration Services, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule," *Federal Register*, vol. 72, no. (continued...))

from \$330 to \$595.<sup>189</sup> Critics of this new naturalization backlog have mainly raised concerns that applicants would not naturalize in time to participate in the 2008 election.<sup>190</sup> USCIS did not include a request for direct appropriations to hire additional temporary personnel to adjudicate the backlog.

### *Use of FBI National Name Check Program*

An additional issue for Congress concerned USCIS' use of the Federal Bureau of Investigation's (FBI) National Name Check Program. In February, USCIS officials estimated that roughly 44% of 320,000 pending name checks for immigration benefit applications have taken more than six months to process, including applications for legal permanent residence<sup>191</sup> (LPR) and naturalization.<sup>192</sup> As a result, the White House authorized USCIS to grant approximately 47,000 LPR applicants their immigration benefits without requiring completed FBI name checks.<sup>193</sup> Critics of this decision believe it could expose the United States to more security threats.<sup>194</sup> The USCIS ombudsman, however, has argued that USCIS employment of the FBI name check process is of limited value to public safety or national security because in most cases the applicants are living and working in the United States without restriction.<sup>195</sup> According to the USCIS Ombudsman's *2008 Annual Report*, on May 6, 2008 there were 269,943 pending name checks, of which 219,615 (81%) had been pending for more than 90 days and 74,260 (28%) had been pending for more than one year.<sup>196</sup>

### **Federal Law Enforcement Training Center (FLETC)**<sup>197</sup>

The Federal Law Enforcement Training Center provides training on all phases of law enforcement instruction, from firearms and high speed vehicle pursuit to legal case instruction and defendant interview techniques for 81 federal entities with law

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(...continued)

21 (February 1, 2007), p. 4888.)

<sup>189</sup> U.S. Department of Homeland Security, "U.S. Citizenship and Immigration Services, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," *Federal Register*, vol. 72, no. 103 (May 30, 2007), p. 29854.

<sup>190</sup> Chris Nelson, "Delay Debacle," *IndUS Business Journal Online*, February 15, 2008, at <http://www.indusbusinessjournal.com/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=5AF6AC18B95142F39C890025700AFBC3>, visited July 17, 2008.

<sup>191</sup> Legal permanent residence is more commonly known as being issued a "green card."

<sup>192</sup> Spencer S. Hsu, "U.S. to Skirt Green-Card Check: Action Will Help Applicants Lacking Final FBI Clearance," *Washington Post*, February 12, 2008, p. A03.

<sup>193</sup> Susan Carroll, "Green Cards Will Go Out, Background Check or Not," *Houston Chronicle*, February 12, 2008.

<sup>194</sup> *Ibid.*

<sup>195</sup> U.S. Department of Homeland Security, Citizenship and Immigration Service Ombudsman, *Annual Report 2007*, June 11, 2007, p. 40.

<sup>196</sup> Citizenship and Immigration Services Ombudsman, *Annual Report 2008*, p. 6. In S.Rept. 110-396, the backlog in background checks is cited as 327,000 cases pending.

<sup>197</sup> Prepared by Blas Nuñez-Neto, Analyst in Domestic Security, Domestic Social Policy Division.

enforcement responsibilities, state and local law enforcement agencies, and international law enforcement agencies. Training policies, programs, and standards are developed by an interagency Board of Directors, and focus on providing training that develops the skills and knowledge needed to perform law enforcement functions safely, effectively, and professionally. FLETC maintains four training sites throughout the United States and has a workforce of more than 1,000 employees.

### **President's Request**

The overall request for FLETC in FY2009 was \$274 million, a decrease of \$14 million from the FY2008 appropriation. The Administration requested an increase of 55 positions to assist in the training of the additional USBP agents, CBP officers, ICE detention personnel, and ICE investigators requested by DHS in its FY2009 budget submission. DHS also proposed transferring the office of Federal Law Enforcement Training Accreditation to the Chief Human Capital Office in Title I.<sup>198</sup>

### **House-reported H.R. 6947**

The House Committee recommended \$286 million for FLETC in FY2009, an increase of \$12 million over the President's request. This increase would have been used to fund improvements in FLETC's simulated training capabilities, to add instructors for United States Capitol Police training needs, and to train 734 additional CBP officers. The House Committee did not support the Administration's requests to transfer FLETA and to close down its Washington D.C. office.

### **Senate-reported S. 3181**

The Senate Committee recommended \$324 million for FLETC in FY2009, an increase of \$50 million over the President's request. Of the increase: \$40 million was included for the construction of a new dormitory in FLETC's Charleston, South Carolina facility to compensate for the expiration of a lease on dormitory currently being used there; \$3 million was included to complete construction of training-related facilities at the Artesia, New Mexico facility; and \$7 million was included for law enforcement accreditation and annualized increases in pay. The Senate Committee prohibited DHS from transferring the Law Enforcement Training Accreditation Board (FLETA) from FLETC and from closing down or transferring its Washington D.C. office. Lastly, the Committee recommended \$5 million for the creation of a Rural Policing Institute to export training programs to rural first-responders throughout the country.

### **P.L. 110-329**

Congress provided \$339 million for FLETC in the Continuing Resolution, \$65 million more than the President's request. Within this total, \$40 million is allocated for construction of a replacement dormitory in the Charleston, South Carolina campus and \$3 million for construction in the Artesia, New Mexico facility. Congress also denied

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<sup>198</sup> *DHS FY2009 Congressional Budget Justifications*, p. FLETC S&E 2 and 11.

FLETC's request to close its Washington D.C. office, provided \$4 million for the creation of a Rural Policing Institute, and allocated \$6 million above the President's request for the training needs of the additional CBP and ICE personnel provided in Title II of the appropriation.

## **Science and Technology (S&T)<sup>199</sup>**

The Directorate of Science and Technology (S&T) is the primary DHS organization for research and development (R&D).<sup>200</sup> Headed by the Under Secretary for Science and Technology, it performs R&D in several laboratories of its own and funds R&D performed by the national laboratories, industry, universities, and other government agencies. See **Table 20** for details of the directorate's appropriation.

### **President's FY2009 Request**

The Administration requested a total of \$869 million for the S&T Directorate for FY2009. This was 5% more than the FY2008 appropriation of \$830 million. A proposed increase of \$18 million for the Explosives program would fund R&D on countering improvised explosive devices (IEDs), with an emphasis on basic research to complement shorter-term R&D being conducted by other agencies. A proposed increase of \$43 million for the Laboratory Facilities program included \$29 million for startup costs at the National Biodefense Analysis and Countermeasures Center (NBACC) as well as \$14 million for laboratory employee salaries previously budgeted in another account. A proposed \$27 million reduction in the Infrastructure and Geophysical program was largely the result of reducing funding for local and regional initiatives previously established or funded at congressional direction.

### **House-reported H.R. 6947**

The House committee recommended a total of \$887 million. Increases relative to the request included \$11 million for the Infrastructure and Geophysical program to support the National Institute for Hometown Security; \$5 million for the ongoing construction at PNNL; \$4 million to help develop an operational test and evaluation program for first responder technologies; \$2 million for a pilot program to improve the productivity and efficiency of the homeland security industrial base; and \$7 million for University Programs to support university centers of excellence and maintain the fellowship program at the FY2008 level. Decreases included \$5 million for new maritime technologies "more appropriately handled by the Coast Guard" and \$6 million for the Innovation program "due to a lack of budgetary details." The committee directed DHS to provide a report on issues related to the S&T Directorate's unobligated balances.

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<sup>199</sup> Prepared by Daniel Morgan, Analyst in Science & Technology, Resources, Science, and Industry Division.

<sup>200</sup> Two other DHS organizations also conduct R&D: the Domestic Nuclear Detection Office (see next section) and the U.S. Coast Guard (see Title II above).

**Senate-reported S. 3181**

The Senate committee recommended a total of \$919 million. Increases relative to the request included \$25 million for cyber security research in the Command, Control, and Interoperability program; \$27 million for the Infrastructure and Geophysical program to continue the Southeast Region Research Initiative; and \$15 million for Laboratory Facilities to accelerate ongoing construction activities at the Pacific Northwest National Laboratory (PNNL). Decreases included \$12 million for Innovation (because of the need for “sound business plans” based on “operational requirements”) and \$4 million for Human Factors. The committee recommended that \$5 million for the Homeland Security Institute be provided as a separate item, as it was in FY2008, rather than as part of the Transition program as the Administration requested.

**P.L. 110-329**

The final appropriation for S&T was \$933 million. Relative to the request, this total included increases of \$10 million for cyber security research, \$11 million for the National Institute for Hometown Security, \$27 million for the Southeast Region Research Initiative, \$15 million for the ongoing construction at PNNL, and \$6 million for University Programs. Decreases included \$12 million from Innovation, because the DHS Inspector General “raised concerns about how projects were selected and managed” and because S&T took nine months to inform the committee how FY2008 funding would be spent. Funding for the Homeland Security Institute was provided as a separate line item. The explanatory statement included the House requirement for a report on unobligated balances.

**Table 20. Directorate of Science and Technology Accounts and Activities, FY2008-FY2009**

(budget authority in millions of dollars)

	FY2008 Enacted	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>a</sup>
<b>Directorate of Science and Technology</b>	<b>830</b>	<b>869</b>	<b>887</b>	<b>919</b>	<b>933</b>
Management and Administration <sup>b</sup>	139	132	132	132	132
R&D, Acquisition, and Operations	692	737	755	787	800
<i>Border and Maritime</i>	25	35	30	35	33
<i>Chemical and Biological</i>	208	200	200	200	200
<i>Command, Control, and Interoperability</i>	57	62	62	87	75
<i>Explosives</i>	78	96	96	96	96
<i>Human Factors</i>	14	12	12	8	12
<i>Infrastructure and Geophysical</i>	64	38	49	65	76
<i>Innovation</i>	33	45	39	33	33
<i>Laboratory Facilities<sup>b</sup></i>	104	147	152	162	162

	FY2008 Enacted	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>a</sup>
<i>Test and Evaluation, Standards</i>	29	25	29	25	29
<i>Transition<sup>c</sup></i>	25	32	34	27	29
<i>University Programs</i>	49	44	51	44	50
<i>Homeland Security Institute<sup>c</sup></i>	5	—	—	5	5

**Source:** CRS analysis of the FY2009 DHS congressional budget justification; H.R. 6947 and H.Rept. 110-862; S. 3181 and S.Rept. 110-396; and P.L. 110-329 and explanatory statement, Congressional Record, September 24, 2008, pp. H9806-9807.

**Note:** Totals may not add because of rounding.

- a. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.
- b. Reflects transfer of \$14 million for salaries of DHS laboratory employees from Management and Administration in FY2008 to Laboratory Facilities in FY2009.
- c. Congress appropriated \$5 million for the Homeland Security Institute as a separate line item in FY2008. The FY2009 budget justification incorporated this amount into Transition. The FY2009 request for Transition included \$5 million for the Homeland Security Institute.

## Issues for Congress

Among the issues facing Congress are the S&T Directorate's priorities and how they are set, its relationships with other federal R&D organizations both inside and outside DHS, its budgeting and financial management, and the allocation of its R&D resources to national laboratories, industry, and universities. The directorate announced five new university centers of excellence in February 2008. Some existing centers are expected to be terminated or merged over the next few years to align with the directorate's division structure. For more information, see CRS Report RL34356, *The DHS Directorate of Science and Technology: Key Issues for Congress*, by Dana A. Shea and Daniel Morgan.

## Domestic Nuclear Detection Office<sup>201</sup>

The Domestic Nuclear Detection Office (DNDO) is the primary DHS organization for combating the threat of nuclear attack. It is responsible for all DHS nuclear detection research, development, testing, evaluation, acquisition, and operational support. See **Table 21** for details of the appropriation for DNDO.

## President's FY2009 Request

The Administration requested a total of \$564 million for DNDO for FY2009. This was a 16% increase from the FY2008 appropriation of \$485 million. Most of the growth was in

<sup>201</sup> Prepared by Daniel Morgan, Analyst in Science and Technology, Resources, Science, and Industry Division.

the Systems Acquisition account, where an increase of \$68 million for procurement of Advanced Spectroscopic Portals (ASPs) was partly offset by a decrease of \$10 million for the Securing the Cities initiative in the New York City area.

**House-reported H.R. 6947**

The House committee recommended a total of \$544 million. Changes relative to the request included reductions of \$3 million for new headquarters employees, \$1 million for a proposed fellowship program at the National Technical Nuclear Forensics Center, and \$15 million for the Radiation Portal Monitoring Program. The House continued the prohibition on full-scale procurement of ASPs until the Secretary certifies their performance and added a prohibition from engaging in high-risk concurrent development and production of mutually dependent software and hardware. Report language directed DNDO to conduct a risk assessment for radiological dispersal devices.

**Senate-reported S. 3181**

The Senate committee recommended a total of \$541 million. The only change relative to the Administration request was a reduction of \$23 million in the Radiation Portal Monitoring Program because of delays in the required certification of ASP performance. Like the House, the Senate continued the prohibition on full-scale procurement of ASPs until secretarial certification and prohibited high-risk concurrent development and production of mutually dependent software and hardware components of detection systems. The committee report urged DNDO to prioritize its programs based on risk and directed it to contract with the National Academy of Sciences (or another independent organization) to develop a conceptual framework for prioritizing defensive efforts relative to mitigation measures.

**P.L. 110-329**

The final appropriation for DNDO was \$514 million. Reductions relative to the request included \$10 million from new initiatives in Transformational R&D and \$38 million from the Radiation Portal Monitoring Program due to development delays. Like the House and Senate bills, the final bill continued the prohibition on full-scale procurement of ASPs and prohibited high-risk concurrent development and production.

**Table 21. Domestic Nuclear Detection Office Accounts and Activities, FY2008-FY2009**

(budget authority in millions of dollars)

	<b>FY2008 Enacted</b>	<b>FY2009 Request</b>	<b>FY2009 House- Reported</b>	<b>FY2009 Senate- Reported</b>	<b>P.L. 110- 329<sup>a</sup></b>
<b>Domestic Nuclear Detection Office</b>	<b>485</b>	<b>564</b>	<b>544</b>	<b>541</b>	<b>514</b>
Management and Administration	32	39	35	39	38
Research, Development, and	324	334	333	334	323

*Homeland Security Department: FY2009 Appropriations*

	FY2008 Enacted	FY2009 Request	FY2009 House- Reported	FY2009 Senate- Reported	P.L. 110- 329 <sup>a</sup>
<b>Operations</b>					
<i>Systems Engineering and     Architecture</i>	22	25	25	25	25
<i>Systems Development</i>	118	108	108	108	108
<i>Transformational Research     and Development</i>	96	113	113	113	103
<i>Assessments</i>	38	32	32	32	32
<i>Operations Support</i>	34	38	38	38	38
<i>National Technical Nuclear     Forensics Center</i>	15	18	17	18	17
<b>Systems Acquisition</b>	130	191	176	168	153
<i>Radiation Portal Monitoring     Program</i>	90	158	143	135	120
<i>Securing the Cities</i>	30	20	20	20	20
<i>Human Portable Radiation     Detection Systems</i>	10	13	13	13	13

**Source:** CRS analysis of the FY2009 DHS congressional budget justification; S. 3181 and S.Rept. 110-396; H.R. 6947 and H.Rept. 110-862; and P.L. 110-329 and explanatory statement, Congressional Record, September 24, 2008, p. H9807.

**Note:** Totals may not add because of rounding.

- a. The text of P.L. 110-329 was not available as of November 6, 2008. These tables reflect DHS appropriations for FY2009 contained in the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate- enrolled version of H.R. 2638.

## Issues for Congress

Congressional attention has focused on the testing and analysis DNDO conducted to support its decision to purchase and deploy ASPs, a type of next-generation radiation portal monitor.<sup>202</sup> The requirement for secretarial certification before full-scale ASP procurement has been included in each appropriations act since FY2007. The expected date for certification has been postponed several times; the current target is reportedly November 2008.<sup>203</sup> The global nuclear detection architecture overseen by DNDO and the relative roles of DNDO and the S&T Directorate in research, development, testing, and evaluation also remain issues of congressional interest. For more information on the

<sup>202</sup> See, for example, Government Accountability Office, *Combating Nuclear Smuggling: Additional Actions Needed to Ensure Adequate Testing of Next Generation Radiation Detection Equipment*, GAO-07-1247T, testimony before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, September 18, 2007.

<sup>203</sup> Government Accountability Office, *Combating Nuclear Smuggling: DHS Need to Consider the Full Costs and Complete All Tests Prior to Making a Decision on Whether to Purchase Advanced Portal Monitors*, GAO-08-1178T, September 25, 2008.

global nuclear detection architecture, see CRS Report RL34574, *The Global Nuclear Detection Architecture: Issues for Congress*, by Dana A. Shea.

## **FY2009-Related Legislation**

### **Budget Resolution**

The President's FY2009 budget request included nearly \$992 billion in discretionary, non-emergency, budget authority. On March 6, 2008, the House and Senate Budget Committees each reported budget resolutions. The House budget resolution (H.Con.Res. 312) was passed in the House on March 13, 2008. While the budget resolution does not identify specific amounts for DHS, it does note that:

this resolution assumes funding above the President's requested level for 2009, and additional amounts in subsequent years, in the four budget functions—Function 400 (Transportation), Function 450 (Community and Regional Development), Function 550 (Health), and Function 750 (Administration of Justice)—that fund most nondefense homeland security activities.<sup>204</sup>

The Senate budget resolution (S.Con.Res. 70) was passed in the Senate on March 14, 2008. On June 5, 2008, the House and Senate reached agreement on S.Con.Res. 70. The final agreement contained language similar to the House language excerpted above, and also noted that:

the homeland security funding provided in this resolution will help to strengthen the security of our Nation's transportation system, particularly our ports where significant security shortfalls still exist and foreign ports, by expanding efforts to identify and scan all high-risk United States-bound cargo, equip, train and support first responders (including enhancing interoperable communications and emergency management), strengthen border patrol, and increase the preparedness of the public health system.<sup>205</sup>

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<sup>204</sup> H.Con.Res. 312, §603

<sup>205</sup> S.Con.Res. 70, §512.

## **Appendix A. FY2008 Supplemental Funding provided by Division B of P.L. 110-329**

Division B of P.L. 110-329 provided supplemental funding related to disaster relief efforts in 2008. DHS received a total of \$8,260 million in FY2008 emergency supplemental funding. The Act provided \$300 million to the Coast Guard for the Acquisition, Construction, and Improvements account for the reconstruction and restoration of facilities damaged by disasters during 2008 and required that a plan listing these facilities be submitted to the House and Senate Committees on Appropriations. The Act also provided \$7,960 million to FEMA for the Disaster Relief account and designated that up to \$100 million be provided to the American Red Cross for reimbursement of their activities during major disasters, as designated by the President, during 2008.

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

This appendix describes the distribution of \$3,000 million (\$3.0 billion) in emergency funds for border security throughout the Consolidated Appropriations Act, 2008 (P.L. 110-161).<sup>206</sup> Division E of P.L. 110-161 includes \$2,710 million (\$2.7 billion) in emergency funding for border security purposes. This funding is disbursed throughout several DHS funding accounts including Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT); State and Local Programs (S&L); the U.S. Coast Guard, US Citizenship and Immigration Services (USCIS), and the Federal Law Enforcement Training Center (FLETC). P.L. 110-161 also includes another \$40 million in Division B—Commerce, Justice, Science; the remaining \$250 million is included in Division D—Financial Services.

### **Distribution of FY2008 Emergency Border Security Funding in Division E—DHS of P.L. 110-161**

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

#### **CBP FY2008 Emergency Border Security Appropriations**

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

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

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<sup>206</sup> Figures in this memorandum are rounded to the nearest million.

- \$150 million for the Western Hemisphere Travel Initiative (WHTI);
- \$25 million for a ground transportation vehicle contract (Border Patrol);
- \$13 million for Border Patrol vehicles;
- \$14 million for Air and Marine Personnel Compensation and Benefits for 82 positions to support the establishment of 11 new marine enforcement units.
- Border Security Fencing, Infrastructure, and Technology (BSFIT)—\$1,053 million:
  - \$1,053 million (\$1.1 billion) for development and deployment of systems and technology.
- Air and Marine Interdiction, Operations, Maintenance, and Procurement:
  - \$94 million for procurement.
- Construction—\$61 million:
  - \$61 million for Border Patrol Construction.

### **ICE FY2008 Emergency Border Security Appropriations**

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

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

### **U.S. Coast Guard FY2008 Emergency Border Security Appropriations**

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

- Operating Expenses—\$70 million

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

### **U.S. Visitor and Immigrant Status Indicator Technology (USVISIT) FY2008 Emergency Border Security Appropriations**

The \$275 million in FY2008 emergency funding for US-VISIT is provided in the main US-VISIT account.

### **State and Local Programs FY2008 Emergency Border Security Appropriations**

The \$110 million in FY2008 emergency funding for State and Local Programs is disbursed as follows:

- \$60 million for Law Enforcement Terrorism Prevention Grants—Operation Stonegarden;<sup>207</sup>
- \$50 million for REAL ID<sup>208</sup> grants.

### **USCIS FY2008 Emergency Border Security Appropriations**

The \$80 million in FY2008 emergency funding for USCIS is disbursed as follows:

- \$60 million for the E-Verify<sup>209</sup> program;
- \$20 million for the FBI background check backlog.

### **FLETC FY2008 Emergency Border Security Appropriations**

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

- Salaries and Expenses—\$17 million
  - \$17 million for law enforcement training

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<sup>207</sup> Operation Stonegarden provides funds (awarded on a competitive basis) to state and local law enforcement in counties along the land border in support of ongoing law enforcement operations along the border.

<sup>208</sup> Grants to assist states in implementing the requirements of the REAL ID Act of 2005 regarding the issuance of state driver's licenses and state identification cards.

<sup>209</sup> The E-Verify program was previously referred to as the Employment Eligibility Verification program and is administered by USCIS.

- Acquisition, Construction, Improvements, and Related Expenses—\$4 million
  - \$4 million for construction.

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

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

### **Department of Justice (DOJ) FY2008 Emergency Border Security Appropriations**

The \$40 million in FY2008 emergency funding for DOJ is disbursed as follows, by amount and account:

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

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

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

## **General Services Administration (GSA) FY2008 Emergency Border Security Appropriations**

There is \$225 million in emergency border security funding included in the Construction and Acquisition account of the Federal Buildings Fund under the GSA:

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

## **Courts of Appeals, District Courts and Other Judicial Services, FY2008 Emergency Border Security Appropriations**

P.L. 110-161 provides \$25 million<sup>210</sup> in emergency funding for border security initiatives within Courts of Appeals, District Courts and Other Judicial Services:

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

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<sup>210</sup> The overall total appropriated for this account was \$25 million because the total for Salaries and Expenses was actually \$14.5 million and the total for defender services was actually \$10.5 million.

## Appendix C. DHS Appropriations in Context

### Federal-Wide Homeland Security Funding

Since the terrorist attacks of September 11, 2001, there has been an increasing interest in the levels of funding available for homeland security efforts. The Office of Management and Budget, as originally directed by the FY1998 National Defense Authorization Act, has published an annual report to Congress on combating terrorism. Beginning with the June 24, 2002 edition of this report, homeland security was included as a part of the analysis. In subsequent years, this homeland security funding analysis has become more refined, as distinctions (and account lines) between homeland and non-homeland security activities have become more precise. This means that while **Table C-1** is presented in such a way as to allow year to year comparisons, they may in fact not be strictly comparable due to the increasing specificity of the analysis, as outlined above.

With regard to DHS funding, it is important to note that DHS funding does not comprise all federal spending on homeland security efforts. In fact, while the largest component of federal spending on homeland security is contained within DHS, the DHS homeland security request for FY2009 accounts for approximately 49.5% of total federal funding for homeland security. The Department of Defense comprises the next highest proportion at 26.6% of all federal spending on homeland security. The Department of Health and Human Services at 6.7%, the Department of Justice at 5.7% and the Department of State at 3.7% round out the top five agencies in spending on homeland security. These five agencies collectively account for nearly 92.2% of all federal spending on homeland security. It is also important to note that not all DHS funding is classified as pertaining to homeland security activities. The legacy agencies that became a part of DHS also conduct activities that are not homeland security related. Therefore, while the FY2009 request included total *homeland security* budget authority of \$32.8 billion for DHS, the requested *total gross budget authority* was \$46.8 billion. The same is true of the other agencies listed in the table.

**Table C-1. Federal Homeland Security Funding by Agency, FY2003-FY2009**  
(budget authority in millions of dollars)

Department	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009 Request	FY2009 as % of Total
Department of Homeland Security (DHS)	17,381	23,063	22,923	24,549	26,571	29,554	32,740	32,817	49.5%
Department of Defense (DOD) <sup>a</sup>	16,126	8,442	7,024	17,188	17,510	16,538	17,374	17,646	26.6%
Department of Health and Human Services (HHS)	1,913	4,144	4,062	4,229	4,352	4,327	4,301	4,457	6.7%
Department of Justice (DOJ)	2,143	2,349	2,180	2,767	3,026	3,518	3,523	3,795	5.7%
Department of State (DOS)	477	634	696	824	1,108	1,242	1,962	2,466	3.7%
Department of Energy (DOE)	1,220	1,408	1,364	1,562	1,702	1,719	1,829	1,943	2.9%
Department of Agriculture (AG)	553	410	411	596	597	541	570	691	1.0%
National Science Foundation (NSF)	260	285	340	342	344	385	374	379	0.6%
Department of Veterans Affairs (VA)	49	154	271	249	298	260	272	348	0.5%
Department of Commerce	116	112	125	167	181	205	207	262	0.4%
Other Agencies	3,613	1,445	1,437	1,910	1,429	1,545	1,772	1,500	2.3%
<b>Total Federal Budget Authority</b>	<b>43,848</b>	<b>42,447</b>	<b>40,834</b>	<b>54,383</b>	<b>57,118</b>	<b>59,833</b>	<b>64,923</b>	<b>66,303</b>	<b>100%</b>

**Sources:** CRS analysis of data contained in “Section 3. Homeland Security Funding Analysis,” and Appendix K of the Analytical Perspectives volume of the FY2009 President’s Budget (for FY2007- FY2009); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2008 President’s Budget (for FY2006); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2008 President’s Budget (for FY2005); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2006 President’s Budget (for FY2004); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2005 President’s Budget (for FY2003) and Office of Management and Budget, *2003 Report to Congress on Combating Terrorism*, Sept. 2003, p. 10; CRS analysis of FY2002-2006 re-estimates of DoD homeland security funding provided by OMB, March 17, 2005.

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

- a. FY2002, FY2003, and FY2004 do not include re-estimates of DOD homeland security funding. For FY2007 DOD changed the manner in which they calculate their homeland security activities. This new method of estimation has been applied for FY2005 and forward. Re-estimates of FY2002-FY2004 DOD funding using this new method of calculation were not available for inclusion.

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

This report is a guide to one of the regular appropriations bills that Congress considers each year. It is designed to supplement the information provided by the House and Senate Appropriations Subcommittees on Homeland Security. It summarizes the status of the bill, its scope, major

issues, funding levels, and related congressional activity, and is updated as events warrant. The report lists the key CRS staff relevant to the issues covered and related CRS products.

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