Financial Services and General Government (FSGG): FY2009 Appropriations

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Summary

The Financial Services and General Government (FSGG) appropriations bill includes funding for the Department of the Treasury, the Executive Office of the President (EOP), the judiciary, the District of Columbia, and 26 independent agencies. Among the independent agencies funded by the bill are the General Services Administration (GSA), the Office of Personnel Management (OPM), the Small Business Administration (SBA), and the United States Postal Service (USPS).

On September 30, 2008, President George W. Bush signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329). Division A of P.L. 110-329 provided continuing appropriations for most accounts in the Financial Services and General Government accounts through March 9, 2009. Funding was generally at the same rate appropriated in P.L. 110-161, the Consolidated Appropriations Act, 2008. Division B of P.L. 110-329 provided GSA with an additional $182 million for courthouse construction, and provided SBA with an additional $799 million, almost of all which was for the disaster loan program account.

On March 11, 2009, President Obama signed the Omnibus Appropriations Act, 2009 (P.L. 111-8), which provides $44.6 billion for FSGG programs and agencies, an increase of $385 million above the FY2009 requested amount and $58 million less than FY2008 enacted appropriations. The House Appropriations Committee had recommended $44.27 billion for FSGG agencies and programs for FY2009, and the Senate Appropriations Committee had recommended $44.75 billion.

In addition, Title V of the American Recovery and Reinvestment Act (ARRA; P.L. 111-5) provided funding for three FSGG agencies: GSA received $5.85 billion, the Department of Treasury received $187 million, and SBA received $730 million. The newly established Recovery Act Accountability and Transparency Board was also funded through Title V of the ARRA, receiving $84 million.

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On March 11, 2009, President Obama signed the Omnibus Appropriations Act, 2009 (P.L. 111-8), which provides $44.6 billion for FSGG programs and agencies, an increase of $385 million above the FY2009 requested amount and $58 million less than FY2008 enacted appropriations. The House Appropriations Committee had recommended $44.27 billion for FSGG agencies and programs for FY2009, while the Senate Appropriations Committee had recommended FY2009 appropriations of $44.75 billion. **Table 1**, below, reflects the status of the FY2009 FSGG appropriations bill.

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

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Joint Explanatory Statement	H.R. 1105 Passage		Public Law
House	Senate						House	Senate	
06/17/08	07/09/08	H.Rept. 110-920 12/10/08	N/A	S.Rept. 110-417 07/14/08	N/A	2/23/09	2/25/09	3/10/09	111-8

Introduction

The House and Senate Committees on Appropriations reorganized their subcommittee structures in early 2007. Each chamber created a new Subcommittee on Financial Services and General Government (FSGG). In the House, the jurisdiction of the FSGG Subcommittee was formed primarily of agencies that had been under the jurisdiction of the Subcommittee on Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies, commonly referred to as "TTHUD."[1] In addition, the House FSGG Subcommittee was assigned four independent agencies that had been under the jurisdiction of the Science, State, Justice, Commerce, and Related Agencies Subcommittee.[2]

In the Senate, the jurisdiction of the new FSGG Subcommittee was a combination of agencies from the jurisdiction of three previously existing subcommittees. The District of Columbia, which had its own subcommittee in the 109th Congress, was placed under the purview of the FSGG Subcommittee, as were four independent agencies that had been under the jurisdiction of the Commerce, Justice, Science, and Related Agencies Subcommittee.[3] Additionally, most of the agencies that had been under the jurisdiction of the Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies were assigned to the

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

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

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

FSGG Subcommittee.[4] As a result of this reorganization, the House and Senate FSGG Subcommittees have nearly identical jurisdictions.[5]

Overview of FY2009 Appropriations

On September 30, 2008, President George W. Bush signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329). Division A of P.L. 110-329 provided continuing appropriations for most accounts in the Financial Services and General Government accounts through March 9, 2009. Funding was generally at the same rate appropriated in P.L. 110-161, the Consolidated Appropriations Act, 2008. Division B of P.L. 110-329 provided GSA with an additional $182 million for courthouse construction, and provided SBA with an additional $799 million, most of which was for the disaster loan program account.

The Administration's FY2009 budget request included $44.20 billion for FSGG agencies and programs. The House Appropriations Committee recommended $44.27 billion for FSGG agencies, and the Senate Appropriations Committee recommended $44.75 billion. **Table 2** lists the enacted amounts for FY2008, the President's request, House and Senate Appropriations Committees' recommendations, and the enacted amounts for FY2009.

Table 2. Financial Services and General Government Appropriations, FY2008-FY2009

(in millions of dollars)

	FY2008 Enacted	FY2009 Request	FY2009House Committee	FY2009 Senate Committee	FY2009 Enacted
Department of the Treasury	$12,263	$12,432	$12,578	$12,699	$12,687
Executive Office of the President	680	696	697	748	728
The Judiciary	6,246	6,721	6,525	6,518	6,481
District of Columbia	610	667	712	722	742
Independent Agencies	24,840	23,681	23,760	24,064	23,942
Total	**$44,639**	**$44,197**	**$44,272**	**$44,751**	**$44,582**

Source: FY2008 Enacted, FY2009 Request, and FY2009 Enacted figures are taken from the Financial Services and General Government Appropriations Act, 2009 (Div. D, P.L. 111-8), House Appropriations Committee Print. FY2008 Enacted figures include emergency appropriations provided through P.L. 110-329. House Committee figures are taken from H.Rept. 110-920. Senate Committee figures are taken from S.Rept. 110-417. Amounts include rescissions but do not reflect funding provided through the American Recovery and Reinvestment Act (P.L. 111-5). Columns may not equal the total due to rounding.

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

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

Key Issues

The wide scope of FSGG appropriations—which provide funding for two of the three branches of the federal government, a city government, and 26 independent agencies with a range of functions—encompasses a number of potentially controversial issues, some of which are identified below.

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

Department of the Treasury[6]

This section examines FY2009 appropriations for the Treasury Department and its operating bureaus, including the Internal Revenue Service (IRS). **Table 3** shows the enacted amounts for FY2008, as well as the Bush Administration's budget request for FY2009, House and Senate Appropriations Committee recommendations for FY2009, and enacted amounts for FY2009.

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

(in millions of dollars)

Program or Account	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Salaries and Expenses (non-IRS)	$248	$274	$275	$274	$279
Department-wide Systems and Capital Investments	19	27	27	27	27
Office of Inspector General	18	19	19	19	26
Treasury Inspector General for Tax Administration	141	146	146	146	146
Community Development Financial Institutions Fund	94	29	105	100	107
Financial Crimes Enforcement Network	86	91	91	91	91

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

Program or Account	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Financial Management Service	299[a]	239	239	239	240
Alcohol and Tobacco Tax and Trade Bureau	94	97	97	99	99
Bureau of the Public Debt	173	177	177	177	177
Payment of Losses in Shipment	1	2	2	2	2
Internal Revenue Service, Total	11,095b	11,362	11,398	11,525	11,523
Taxpayer Services	*2,201*[c]	*2,150*	*2,210*	*2,213*	*2,293*
Enforcement	*4,780*	*5,117*	*5,117*	*5,117*	*5,117*
Operations Support	*3831*[d]	*3,856*	*3,833*	*3,897*	*3,867*
Business Systems Modernization	*267*	*223*	*223*	*282*	*230*
Health Insurance Tax Credit Administration	*15*	*15*	*15*	*15*	*15*
Rescissions	—	(-30)	—	—	(-30)
Total: Department of the Treasury	**$12,263**[e]	**$12,432**	**$12,578**	**$12,699**	**$12,687**

Sources: FY2008 Enacted, FY2009 Request, and FY2009 Enacted figures are taken from the Financial Services and General Government Appropriations Act, 2009 (Div. D, P.L. 111-8), House Appropriations Committee Print. FY2009 House Committee figures are taken from H.Rept. 110-920. FY2009 Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

a. Includes $64.2 million emergency appropriation received under the provisions of P.L. 110-185.

b. Includes $202.1 million emergency appropriations received under the provisions of P.L. 110-185.

c. Includes $50.7 million emergency appropriation under the provisions of P.L. 110-185.

d. Includes $151.4 million emergency appropriation under the provisions of P.L. 110-185.

e. The Department of Treasury total includes $266.3 million in emergency appropriations.

Department of the Treasury Budget and Key Issues

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

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

With one possible exception, the bureaus can be divided into those engaged in financial management and regulation and those engaged in law enforcement. In recent decades, the Comptroller of the Currency, U.S. Mint, Bureau of Engraving and Printing, Financial

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

Treasury Offices and Bureaus (Excluding the IRS)

Funding for many bureaus comes largely from annual appropriations. This is the case for the IRS, FMS, Bureau of Public Debt, FinCEN, Alcohol and Tobacco Tax and Trade Bureau, Office of the Inspector General (OIG), Treasury Inspector General for Tax Administration (TIGTA), and the CDFI. By contrast, the Treasury Franchise Fund, U.S. Mint, Bureau of Engraving and Printing, Office of the Comptroller of the Currency, and the Office of Thrift Supervision finance their operations largely from the fees they charge for services and products they provide.

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

FY2009 Budget Proposal

For FY2009, the Bush Administration asked Congress to approve $12.463 billion in funding for Treasury, or 1.6% more than the amount enacted for FY2008. Under the proposal, the IRS would have received $11.361 billion (or 91% of the total). The remaining $1.102 billion would have been distributed among Treasury's other appropriations accounts in the following amounts: departmental offices would have received $274 million; departmental systems and capital investments, $27 million; OIG, $19 million; TIGTA, $146 million; CDFI, $29 million; FinCEN, $91 million; FMS, $239 million; ATB, $97 million; and Bureau of the Public Debt, $177 million. All major accounts except for FMS and CDFI would have been funded at the same level as or higher levels than the amounts enacted for FY2008.

Under the Administration's budget proposal, total full-time equivalent employment (direct and reimbursable) at Treasury could have risen from an estimated 107,912 in FY2008 to a projected 109,597 in FY2009.[7] Nearly 98% of the gain in full-time jobs of 1,685 would have stemmed from an increase in full-time jobs at the IRS of 1,826 and a decrease in such jobs at the FMS of 179.

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

According to Treasury's budget documents, its proposed budget for FY2009 was crafted to provide the resources needed to "effectively manage the government's finances, promote economic opportunity through sound fiscal policy, work towards entitlement reform, strengthen trade and investment policies, and maximize voluntary tax compliance."[8]

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

Additional spending on department-wide systems and capital investments would have served multiple purposes. These include remedying "critical building deficiencies in the Treasury Annex Building," furthering the use of a newly developed computer-based system known as the Enterprise Content Management System, securing the Treasury Secure Data Network, and improving Treasury's performance in meeting the requirements of the Federal Information Security Management Act.[9]

In seeking more funding for Treasury's departmental offices, the Administration hoped to improve the department's debt management systems and its ability to "perform timely legal reviews" for the Committee on Foreign Investment in the United States, construct an Operations Center to respond to domestic and international financial crises, expand the department's capability to administer sanctions against "terrorist groups and their sponsors," and enhance its "internal counterintelligence and security capabilities."[10]

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

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

Congressional Consideration of the President's FY2009 Budget Proposal

Action in the House. The House Appropriations Committee recommended $12.578 billion in appropriated funds for the Treasury Department in FY2009, in a bill (H.R. 7323) it reported December 10, 2008. This amount was $115 million more than the amount requested by the Bush Administration and $315 million above the amount enacted for Treasury in FY2008. Under the measure, the IRS would have received $11.398 billion; departmental offices, $275 million; department-wide systems and capital investments, $27 million; OIG, $19 million; TIGTA, $146 million; FinCEN, $91 million; FMS, $239 million; ATB, $97 million; Bureau of Public Debt, $177 million; and CDFI, $105 million. Nearly the entire difference between the total amount recommended in the bill and the Administration's budget request lay in proposed funding for the

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[8] Ibid., p. 3.

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

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

CDFI and the IRS: H.R. 7323 would have given $76 million more to the former and $37 million more to the latter.

In its report (H.Rept. 110-920) that accompanied H.R. 7323, the committee directed Treasury to submit an operating plan addressing its expected use of the appropriated funds for each of its offices and bureaus in FY2009 within 60 days of the enactment of an appropriations bill.[11] It also recommended that the department receive $700,000 more than the Administration requested to spend on initiatives to combat predatory lending and improve the financial education of students in elementary and high schools.[12] In addition, the committee endorsed a proposal to spend $62 million (or $300 million more than the Administration requested) on the activities overseen by TFI, without commenting on how the additional funds should be used—though it did specify that at least $300,000 of the $62 million be used by OFAC to reduce its current backlog of Freedom of Information requests.[13]

The report also expressed concern that OFAC was devoting too much staff time to investigating alleged violations of the trade embargo against Cuba and urged the agency to re-think its decisions on resource allocation by assigning the highest priority to the "most pressing national security threats facing the United States."[14] To underscore this concern, the committee directed Treasury to submit a report within 60 days of the enactment of an appropriations bill describing the steps it is taking to "assess OFAC's allocation of resources."

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

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

In its report, the Senate Appropriations Committee endorsed the Administration's request that Treasury's budget for terrorism and financial intelligence be increased from $56.8 million in FY2008 to $61.7 million in FY2009. More specifically, it recommended that an additional $1.4 million be spent to upgrade OFAC's capacity to administer economic sanctions on "State sponsors of terrorism, such as Iran and Sudan, as well as terrorists, terrorist groups, and their support networks."[15] The committee also directed Treasury to channel an additional $3.4 million

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[11] U.S. Congress, House Appropriations Committee, *Financial Services and General Government Appropriations Bill, 2009*, report to accompany H.R. 7323, 110th Cong., 2nd sess., H.Rept. 110-920 (Washington: GPO, 2008), p. 13.

[12] Ibid., p. 14.

[13] Ibid., p. 15.

[14] Ibid., p. 15.

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

into OIA in order to address "current and emerging threats affecting the Department's national security mission" and improve the "Department's coordination of global finance intelligence issues with the intelligence community."

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

In addition, the report expressed opposition to the Administration's request to decrease funding for CDFI. It recommended that $8.3 million be set aside in FY2009 for grants, loans, technical assistance, and training programs intended to benefit "Native American, Alaskan Natives, and Native Hawaiian communities." In the committee's view, the agency should place a higher priority on improving its measurement of the extent to which programs funded through CDFI "leverage other non-Federal funds for CDFIs across the country."[16]

Passage of the Omnibus Appropriations Act of 2009 (H.R. 1105, P.L. 111-8). The omnibus spending bill for FY2009 signed by President Obama on March 11, 2009, provides $12.687 billion in appropriated funds for the Treasury Department — or $425 million more than the amount enacted for FY2008 and $255 million more than the amount requested by the Bush Administration. For the other offices and bureaus within the department, departmental offices are receiving $279 million, including $62 million for TFI, (or $30.5 million more than the amount it got in FY2008); department-wide systems and capital investments program, $27 million (+$8 million); OIG, $26 million, (+$8 million); TIGTA, $146 million (+$5.5 million); FinCEN, $91 million (+$6 million); FMS, $240 million (+$5 million); ATB, $99 million (+$6 million); Bureau of the Public Debt, $177 million (+$4 million); CDFI, $107 million (+$13 million); and a rescission of $30 million from the Treasury forfeiture fund.

The joint explanatory statement accompanying the act provides additional detail on congressional concerns and expectations about the use of appropriated funds by covered agencies. It notes that the Treasury Department has added administrative responsibilities as a result of the Emergency Economic Stabilization Act of 2008 (EESA, P.L. 110-343) and orders the department to account "properly" for spending on activities covered by the appropriations act and spending on activities funded under ESSA. The statement also specifies that at least $300,000 of the $31 million in funding for OFAC should be used to reduce its backlog of Freedom of Information Requests. In addition, the statement directs OFAC to assess how much it spends on investigating and penalizing violations of the Cuban trade embargo, and report to the House and Senate appropriations committees within 90 days of the enactment of H.R. 1105 on how it plans to allocate its resources in FY2009. There is some concern in Congress that OFAC is devoting insufficient resources to the enforcement of financial and trade sanctions against Sudan, Burma, Iran, and Zimbabwe.

[16] Ibid., p. 19.

Internal Revenue Service (IRS)

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

The IRS receives funding for its operations from three sources: appropriated funds, user fees, and so-called reimbursables, which are payments the IRS receives from other federal agencies and state governments for services it provides. In FY2008, appropriated funds account for 97% of IRS's operating budget, user fees for 2%, and reimbursables for the remaining 1%.

Appropriated funds are distributed among five accounts:

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

In FY2008, the IRS received $11.095 billion (including emergency appropriations) in appropriated funds, or 4.7% more than it received in FY2007. Of this amount, $2.200 billion was appropriated for taxpayer services, $4.780 billion for enforcement, $3.831 billion for operations support (including emergency appropriations), $267 million for the BSM program, and $15 million for administration of the health coverage tax credit (HCTC) established by the Trade Act of 2002 (P.L. 107-210).

The Bush Administration asked Congress to appropriate $11.362 billion for IRS operations in FY2009, or 2.4% more than the amount enacted for FY2008. Of this amount, $2.150 billion (2% less than FY2008) was to be used for taxpayer services, $5.117 billion (7% more than FY2008) for enforcement, $3.856 billion (0.6% more than FY2008) for operations support, $223 million (17% less than FY2008) for the BSM program, and about $15 million (the same amount as

FY2008) for administering the HCTC. Under the budget proposal, total full-time equivalent employment (direct and reimbursables) at the IRS was projected to rise from an estimated 91,746 in FY2008 to 93,572 in FY2009, a gain of 2%.[17]

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

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

In assessing the Administration's budget proposal for the IRS, lawmakers may want to consider whether proposed funding for enforcement, taxpayer service, and the BSM can be judged adequate in light of the difficult challenges facing the agency. Foremost among those challenges are improving compliance rates among individuals and businesses without sacrificing recent gains in taxpayer service, generating more detailed and reliable estimates of the rates of non-compliance among business taxpayers, increasing the share of tax returns filed electronically, upgrading the agency's computer systems, managing the agency's private tax debt collection program so that it at once respects taxpayer rights and is cost-effective, and hiring and training sufficient numbers of enforcement agents to replace those who have retired or quit in recent years.

Congressional Consideration of the Bush Administration's FY2009 Budget Proposal

Action in the House. The House Appropriations Committee recommended that the IRS receive $11.398 billion in appropriated funds for FY2009, or $304 million more than the amount enacted for FY2008 and $37 million more than the Administration's request. Of this total, $2.210 billion ($60 million more than the Administration's requested amount) would have gone to taxpayer services, $5.117 billion (same as the Administration's requested amount) to enforcement, $3.833 ($23 million less than the Administration's requested amount) to operations support, $223 million (same as the Administration's requested amount) to BSM, and $15 million (same as the Administration's requested amount) for administration of the HCTC.

In H.Rept. 110-920, the committee recommended that the $60 million in additional funding for taxpayer service be used for the following purposes: (1) $47 million to educate taxpayers about their rights and responsibilities before they file, improve the IRS 1-800 help line, and assist taxpayers at walk-in centers around the country; (2) $10.5 million to bolster the capabilities of the IRS Taxpayer Advocate to assist taxpayers who have disputes with the IRS; (3) $1 million to

[17] Ibid., p. 11.

[18] Ibid., p. 60.

[19] Ibid., p. 61.

expand the Tax Counseling Program for the Elderly; and (4) $1.5 million to increase grants to Low-Income Taxpayer Clinics.[20]

The bill included a provision that could prove to be a source of controversy when the full House considers the measure. It would bar the IRS from using any appropriated funds to "enter into, renew, extend, administer, implement, enforce, or provide oversight of any qualified tax collection contract" under the IRS's private tax debt collection program.[21] The report cited as the major reason for taking this step the repeated acknowledgment of senior IRS officials in the past two years that the IRS could collect the same delinquent tax debt targeted by the program at less expense. In its budget request, the Administration noted that it would need $12 million to manage the program in FY2009.[22]

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

In its report on S. 3260 (S.Rept. 110-417), the committee maintained that one of the biggest challenges facing the IRS was reducing the federal tax gap. It also noted that the agency could make significant progress toward that objective if it was "given additional resources and is able to improve its operational capabilities (most notably through the Business Systems Modernization program)."[23] At the same time, the committee expressed the concern that the 16 legislative reforms aimed at reducing the tax gap proposed by the Administration in its budget request for FY2009 would lack the needed forcefulness to make sizable reductions in the gap and would yield a meager return on investment of "slightly more than a penny on the dollar."

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

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[20] Ibid., pp. 24-25.

[21] Ibid., p. 34. For more details on the program, see CRS Report RL33231, *The Internal Revenue Service's Private Tax Debt Collection Initiative: Current Status and Issues for Congress*, by (name redacted).

[22] Michael Joe, "House Appropriations Committee Approves Treasury, IRS Funding," *Tax Notes*, June 30, 2008, p. 1302.

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

required the IRS to fund pre-filing assistance and education at an amount not less than the $645 million enacted for this purpose in FY2008.

The committee expressed strong support for the ongoing efforts by the IRS to deepen its understanding of the scope and causes of taxpayer non-compliance through the National Research Program (NRP). In a bid to improve the NRP, the committee directed the IRS in FY2009 to collect information on the "causes of noncompliance, including inadvertent noncompliance, the type of return preparation method (self, volunteer, paid preparer, or IRS preparer), whether the taxpayer was represented during the examination, and the extent to which the taxpayer sought and received IRS services."[24]

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

As approved by the committee, S. 3260 also contained the same controversial provision dealing with the IRS's private tax debt collection program that was included in the appropriations bill for the IRS approved by the House Appropriations Committee. Specifically, Section 106 of the bill would have barred the IRS from using appropriated funds in FY2009 to "enter into, renew, extend, administer, implement, enforce, provide oversight of, or make any payment related to any qualified tax collection contract."[25]

Passage of the Omnibus Appropriations Act of 2009 (H.R. 1105, P.L. 111-8). Under P.L. 111-8, the IRS is receiving $11.523 billion in appropriated funds in FY2009 — or $428 million more than the amount enacted for FY2008 (including a $202 million emergency appropriation under P.L. 110-185) and $161 million more than the amount requested by the Bush Administration. Of the funds appropriated for FY2009, $2.293 billion is designated for taxpayer services ($143 million more than the amount appropriated for FY2008), $5.117 billion for enforcement (+337 million), $3.867 billion for operations support (+$187 million), $230 million for BSM (-$37 million), and $15 million for administering the HCTC (same as FY2008).

According to the joint explanatory statement accompanying P.L. 111-8, not less than $9.5 million of the funds appropriated for taxpayer services is to be used for low-income taxpayer clinics; $5.1 million for the Tax Counseling for the Elderly Program; $8 million (to be available until the end of FY2010) for matching grants under the Community Volunteer Income Tax Assistance program; and $193 million for the operating expenses of the Taxpayer Advocate Service. In addition, $38 million of the enacted amount above the President's budget request is to be used to improve pre-filing assistance and taxpayer education. The statement also directs the IRS to "demonstrate" to the House and Senate Appropriations Committees that any proposed reductions in taxpayer services would be "consistent with the IRS's budget justification, operating plan, and Taxpayer Assistance Blueprint, and that they would not "result in a decline in voluntary compliance." Two other concerns addressed in the statement are the quality of IRS services provided to non-English

[24] Ibid., p. 27.

[25] Ibid., p. 31.

speakers and the widespread use of refund anticipation loans (RALs) by recipients of the earned income tax credit. The statement orders the IRS to report to the two committees within 30 days of the enactment of H.R. 1105 on the "status of the quality and level of customer service for Spanish language applications on the IRS 1-800 help line." The agency also must consult with the National Taxpayer Advocate on effective ways to inform taxpayers about the costs associated with RALs, and to expand access to other speedy but less costly ways of obtaining tax refunds.

Reflecting heightened congressional concern over the size and persistence of the federal tax gap, the statement directs the IRS to collect information on the causes of non-compliance, as part of its administration of the National Research Program in FY2009. This information should focus on "inadvertent non-compliance, the type of return preparation method, whether the taxpayer was represented during the examination, and the extent to which that taxpayer sought and received IRS services." As a result of the increase in funding for enforcement in FY2009 relative to FY2008, the IRS expects to hire an additional 3,500 individuals to work on issues related to taxpayer compliance.[26]

None of the funds appropriated for the BSM may be spent until the Government Accountability Office and the House and Senate Appropriations Committees approve expenditure plans for the program submitted by the IRS.

Under a controversial amendment to the act, none of the appropriated funds designated for the IRS can be used to operate the agency's private tax debt collection program in FY2009. On March 6, 2009, five days before President Obama signed the omnibus spending bill, the IRS announced that it would not renew the two remaining contracts with private debt collectors, effectively terminating the program. From its inception, the program faced opposition from some Members of Congress, the National Treasury Employees Union, and an assortment of consumer advocacy groups on the grounds that it was unlawful and less cost-effective than hiring additional IRS staff to collect the same amount of delinquent taxes.

Executive Office of the President and Funds Appropriated to the President[27]

All but three offices in the Executive Office of the President (EOP) are funded in the Financial Services and General Government (FSGG) appropriations bill.[28] **Table 4** shows appropriations enacted for FY2008, amounts requested by the President for FY2009, amounts recommended by the House and Senate Committees on Appropriations for FY2009, and appropriations enacted for FY2009.

[26] Michael Joe, "Larger Budget Will Help International Tax Administration," *Tax Notes*, Apr. 6, 2009, p. 28.

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

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

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

(in thousands of dollars)

Office	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
The White House (total)	$174,505	$190,528	$181,642	$181,942	$187,342
Compensation of the President	*450*	*450*	*450*	*450*	*450*
The White House Office (salaries and expenses)	*51,656*	*52,499*	*53,899*	*52,499*	*53,889*
Executive Residence, White House (operating expenses)	*12,814*	*13,363*	*13,363*	*13,363*	*13,363*
White House Repair and Restoration	*1,600*	*1,600*	*1,600*	*1,600*	*1,600*
Council of Economic Advisers	*4,118*	*4,118*	*4,118*	*4,118*	*4,118*
Office of Policy Development	*3,482*	*3,550*	*3,550*	*5,250*	*3,550*
Privacy and Civil Liberties Oversight Board	*2,000*	—	—	—	—
National Security Council	*8,640*	*9,029*	*9,029*	*9,029*	*9,029*
Office of Administration	*91,745*	*105,919*	*95,633*	*95,633*	*101,333*
Office of Management and Budget	78,000	72,800	79,972	80,172	87,972
Federal Drug Control Programs (total)	421,702	418,382	422,011	472,150	438,900
Office of National Drug Control Policy	*26,402*	*23,697*	*26,011*	*27,900*	*27,200*
High Intensity Drug Trafficking Areas Program	*230,000*	*200,000*	*230,000*	*235,000*	*234,000*
Other Federal Drug Control Programs	*164,300*	*189,685*	*165,000*	*204,250*	*174,700*
Counterdrug Technology Assessment Center	*1,000*	*5,000*	*1,000*	*5,000*	*3,000*
Unanticipated Needs	1,000	1,000	1,000	1,000	1,000
Presidential transition administrative support	—	8,000	8,000	8,000	8,000
Office of the Vice President (salaries and expenses)	4,432	4,496	4,496	4,496	4,496
Official Residence of the Vice President (operating expenses)	320	323	323	323	323
Total: EOP and Funds Appropriated to the President	**$679,959**	**$695,529**	**$697,444**	**$748,083**	**$728,033**

Sources: President's FY2009 budget request, U.S. Executive Office of the President, *Fiscal Year 2009 Congressional Budget Submission* (Washington: February 2008), H.Rept. 110-920, S.Rept. 110-417, and Financial Services and General Government Appropriations Act, 2009 (Div. D, P.L. 111-8), House Appropriations Committee Print.

Note: The $2 million for the Privacy and Civil Liberties Oversight Board is not included in the White House and EOP totals because the Board has been reconstructed as an independent agency. Section 801(a) of P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007, enacted on August 3, 2007, authorizes the following appropriations for the Board: $5,000,000 (FY2008); $6,650,000 (FY2009); $8,300,000 (FY2010); $10,000,000 (FY2011); and such sums as may be necessary (FY2012 and each subsequent fiscal year).

The Executive Office of the President Budget and Key Issues

The Administration's FY2009 budget requested an appropriation of $695.5 million for the EOP and funds appropriated to the President, a 2.3% increase above the almost $680 million appropriated for FY2008. Within the request, funding for all "White House" accounts, discussed under "Consolidation Proposal" below, would have increased by 9.2%. As for the four accounts under federal drug control programs, increased appropriations were proposed for Other Federal Drug Control Programs (+15.4%) and the Counterdrug Technology Assessment Center (CTAC) (+400%), and reduced funding was proposed for the Office of National Drug Control Policy (-10.2%) and the High Intensity Drug Trafficking Areas Program (-13%).

Consolidation Proposal

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

- Compensation of the President,
- White House Office (WHO)—446,
- Executive Residence at the White House—95,
- White House Repair and Restoration—0,
- Office of Administration—222,
- Office of Policy Development—35,
- National Security Council—71, and
- Council of Economic Advisers—35.[29]

This consolidated appropriation would have totaled $190.5 million in FY2009 for the accounts proposed to be consolidated, an increase of 9.2% from the $174.5 million appropriated in FY2008. The appropriations requested for three of the eight accounts within the White House—Compensation of the President, White House Repair and Restoration, and Council of Economic Advisers—were the same as the FY2008 funding. Increased funding was requested for these five accounts: White House Office (+1.63%), Executive Residence (+4.28%), Office of Policy Development (+1.95%), National Security Council (+4.5%), and Office of Administration (+15.45%). According to the EOP budget submission, the increased appropriations would have

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

"offset payroll inflationary increases and maintain operations at current levels."[30] Additionally, the proposed expansion of the Enterprise Services Initiative (discussed below) underlies some of the increased funding requested for the Office of Administration.

The budget submission stated that consolidation "presents the best means for the President to realign or reallocate the resources and staff available in response to changing and emerging needs and priorities."[31] The conference committees on the FY2002 through FY2007 appropriations acts decided to continue with separate appropriations for the EOP accounts to facilitate congressional oversight of their funding and operation. This practice continued for FY2008 under P.L. 110-161, the Consolidated Appropriations Act for FY2008. The House and Senate Committees on Appropriations recommended that separate appropriations for the EOP accounts be continued in FY2009. P.L. 111-8, Omnibus Appropriations Act, 2009, continues with separate accounts for FY2009.

Transfer Authority Proposal

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

- The White House[32]
- Office of Management and Budget (OMB)
- Office of National Drug Control Policy
- Special Assistance to the President (Vice President) and the Official Residence of the Vice President (transfers would be subject to the approval of the Vice President)
- Council on Environmental Quality and Office of Environmental Quality
- Office of Science and Technology Policy
- Office of the United States Trade Representative[33]

The OMB Director (or such other officer as the President designates in writing) would have been able, 15 days after notifying the House and Senate Committees on Appropriations, to transfer up to 10% of any such appropriation to any other such appropriation. The transferred funds would have been merged with, and available for, the same time and purposes as the appropriation receiving the funds. Such transfers could not increase an appropriation by more than 50%. According to the EOP budget submission, the transfer authority would "provide the President with flexibility and improve the efficiency of the EOP" and would "significantly improve the

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

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

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

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

President's flexibility and effectiveness in meeting the needs across the EOP." The authority was "not intended to be used for new missions or programs, but to address emerging priorities, shifting demands, and administrative efficiencies within the currently funded programs."[34]

P.L. 108-447, the Consolidated Appropriations Act for FY2005 (Section 533, Title V, Division H) authorized transfers of up to 10% of FY2005 appropriated funds among the accounts for the White House Office, Office of Management and Budget, Office of National Drug Control Policy, the Special Assistance to the President (Vice President), and the Official Residence of the Vice President. For FY2006, P.L. 109-115, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Section 725) authorized transfers of up to 10% among the accounts for the White House, the Special Assistance to the President (Vice President), and the Official Residence of the Vice President. P.L. 110-161, the Consolidated Appropriations Act for FY2008, at Section 201, continued this practice. The House and Senate Committees on Appropriations recommended continuation of, and P.L. 111-8 continues, the current practice for FY2009.

Enterprise Services Proposal

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

GSA space rent funding for the White House Office, Office of Policy Development, National Security Council, Council of Economic Advisers, Office of Science and Technology Policy, Council on Environmental Quality, and the United States Trade Representative is already included in the Office of Administration's Enterprise Services fund. Services that will be assumed by the fund in FY2009 are transit subsidies, Flexible Savings Account administrative fees, health unit operations, and Federal Protective Service (FPS) rent-based fees.[35]

Neither the House Committee on Appropriations nor Senate Committee on Appropriations recommended adoption of, and P.L. 111-8 did not adopt, this proposal for FY2009. The OMB and ONDCP funding for rental payments to GSA will continue under their respective "Salaries and Expenses" accounts.

Administrative Support for the Presidential Transition

The FY2009 budget included a request for $8 million to fund "an orderly presidential transition." The appropriation covered the cost of processing the President's and Vice President's records, under the Presidential Records Act, and other expenses related to the transition to a new

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

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

administration. There are no FTEs associated with this account. The House and Senate Committees on Appropriations recommended the same funding as the President requested. Division A, Section 133 of P.L. 110-329 and Division D, Title II of P.L. 111-8 provide an appropriation of $8 million for the transition and states that the monies may be transferred to other accounts that fund the offices within the EOP and the Office of the Vice President.

The Vice President

An appropriation of $4.5 million and an FTE level of 24 was requested for the Special Assistance to the President (Vice President) account for FY2009. The funding was 1.44% above the $4.4 million provided for FY2008, while the FTE total remained the same. As for the Official Residence of the Vice President account, an FY2009 appropriation of $323,000, 0.94% above the $320,000 provided for FY2008, was requested. There was one FTE associated with this account for FY2009, the same as in the previous fiscal year. The House and Senate Committees on Appropriations recommended, and P.L. 111-8 provides, the same funding as the President requested.

Office of Management and Budget (OMB)

The FY2009 budget requested an appropriation of $72.8 million for OMB, 6.67% less than the $78 million provided for FY2008. The FTE level requested would have remained at 489. The decreased funding request resulted from moving OMB's monies for space rent to the Office of Administration, as discussed above under the "Enterprise Services Initiative." The House and Senate Committees on Appropriations recommended, and P.L. 111-8 provides, that the OMB funding for rental payments to GSA continue under the "Salaries and Expenses" account. An appropriation of almost $80 million, almost $7.2 million above the President's request, was recommended by the House committee for OMB.

The House Committee on Appropriations report that accompanied H.R. 7323 (H.Rept. 110-920) included several directives for OMB as follows:

- The incoming Administration is strongly urged to refocus the efforts of the Office of Federal Procurement Policy on oversight.
- OMB and the agencies are directed to "work directly with the pertinent appropriations subcommittees in advance of transferring funds relating to E-Government or Lines of Business."
- Within 60 days of the act's enactment, OMB is to report to the committee "on actions taken to implement GAO's recommendations and improve purchase card internal controls."
- OMB is expected to provide printed copies of the President's budget to Congress.[36]

The Senate committee recommended an appropriation of $80.2 million, almost $7.4 million above the President's request, for OMB. The funding included $200,000 for the printing of paper copies of the President's annual budget request. Section 205 of the Senate bill, as reported,

[36] H.Rept. 110-920, p. 40-41.

provided that the OMB appropriation support the printing of a sufficient number of copies of the budget for submission to Congress. In the Senate report, the committee urged the President to establish the Task Force on International Cooperation for Clean and Efficient Technologies and reminded OMB of the March 1, 2009, deadline for reporting to Congress on "the extent to which executive departments and agencies that administer directed funding allocate the designated amounts to intended recipients at a level less than specified in any enacted bill or accompanying report." A general provision at Section 751 of the Senate bill as reported would have directed departments and agencies "to include information in the fiscal year 2010 budget justifications ... regarding redirection of congressionally directed funding."[37]

P.L. 111-8 provides an appropriation of almost $88 million for OMB for FY2009, an amount that exceeds the President's request by more than $15 million. Included in the appropriation is $200,000 for the printing of paper copies of the President's annual budget request.

Committee Recommendations

The House and Senate Committees on Appropriations recommended, and P.L. 111-8 provides, funding at the levels requested by the President for each of the EOP accounts, with the following exceptions (in addition to the OMB funding mentioned above):

White House Office (WHO)

An appropriation of $53.9 million, or $1.4 million above the President's request, was recommended for the WHO. P.L. 111-8 provides this appropriation. The additional funding is for a White House Office on National AIDS Policy. In its report that accompanied H.R. 7323, the House Committee on Appropriations

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

Office of Policy Development (OPD)

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

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

http://www.whitehouse.gov. The Senate committee also "urges the President to send the Framework Convention on Tobacco Control to the Senate for ratification."[38]

The House committee recommended, and P.L. 111-8 provides, an appropriation of $3.5 million, the same amount requested by the President.

Office of Administration (OA)

An appropriation of $95.6 million, almost $10.3 million below the President's request, was recommended by both the House and Senate committees for the OA. The committees recommended that OMB's and ONDCP's funding for rent continue under their respective "Salaries and Expenses" accounts and not be transferred to the OA. In H.Rept. 110-920, the committee "strongly urges the incoming Administration to establish comprehensive policies and procedures for the preservation of all Presidential records, in keeping with the Presidential Records Act, the Federal Records Act, and other pertinent laws." Furthermore, the committee directed the new Administration to report to the committee by June 30, 2009, on "actions it is taking to implement such policies and procedures ... [and] the estimated costs, by program, activity, and fiscal year, of new systems, staff, or other resources needed to ensure the preservation of electronic Presidential records."[39] The Senate report stated the committee's support of the efforts of the National Archives and Records Administration (NARA) "to make all appropriate electronic records public regardless of original formatting," and expressed concern about "the lack of information from the White House on the format and volume of records to be transferred for the current administration." The OA was directed "to work closely to meet NARA requirements and deadlines so that a complete record is available."[40] Division A, Section 132 of P.L. 110-329 provides an appropriation of $5.7 million for the electronic mail restoration activities.

P.L. 111-8 provides an appropriation of $101.3 million for the OA for FY2009. This amount is almost $4.6 million less than the President's request. Included in the appropriation is $11.9 million for the continued modernization of the infrastructure for information technology. The law includes the reporting requirement stated above.

Federal Drug Control Programs

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

Appropriations of $1 million ($4 million below the President's request) and $165 million (almost $25 million below the President's request) would have been provided for the CTAC and the Other

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

[39] H.Rept. 110-920, p. 39.

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

Federal Drug Control Programs, respectively. The committee did not explain the reduced funding for the CTAC. The funding for the Other Federal Drug Control Programs would have been allocated as follows:

- Drug Free Communities—$90 million
- Training and technical assistance for drug court professionals—$1.5 million
- National Alliance for Model State Drug Laws—$1,250,000
- National Youth Anti-Drug Media Campaign—$60 million
- United States Anti-Doping Agency—$10.1 million
- World Anti-Doping Agency dues—$1.9 million
- National Drug Control Program performance measures—$250,000

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

An appropriation of $235 million, $35 million above the President's request was recommended for the HIDTA. Included in the total is funding of up to $2.1 million for auditing services and associated activities and up to $250,000 "to ensure the continued operation and maintenance of the Performance Management System." In addition, the committee suggested that $500,000 could be provided for the establishment of new counties "if the need is warranted and the criteria has been met."[41]

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

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

With regard to the Counterdrug Technology Assessment Center (CTAC), the Senate report stated that "the lackluster performance of, and lack of confidence in, the current director" precluded the committee from providing higher levels of funding to this program. The report also expressed the committee's hope that the FY2010 "budget will reinvigorate the CTAC program with additional requested funds and new leadership."[42]

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[41] Ibid., p. 41.

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

P.L. 111-8 provides appropriations of $27.2 million for the ONDCP, $234 million for the HIDTA, $174.7 million for Other Federal Drug Control Programs, and $3 million for the CTAC. These amounts are $3.5 million more, $34 million more, almost $15 million less, and $2 million less, respectively, than the President's request.[43]

The Judiciary[44]

As a co-equal branch of government, the judiciary presents its budget to the President, who transmits it to Congress unaltered. **Table 5** shows appropriations for the judiciary as enacted for FY2008, as requested for FY2009, as recommended by the House and Senate Appropriations Committees, and as enacted.

Table 5. The Judiciary Appropriations, FY2008 to FY2009

(in millions of dollars)

Budget Groupings and Accounts	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Supreme Court (total)	$78.7	$88.2	$88.2	$88.2[a]	$88.2
Salaries and Expenses	*66.5*	*69.8*	*69.8*	*69.8*[a]	*69.8*
Building and Grounds	*12.2*	*18.4*	*18.4*	*18.4*	*18.4*
U.S. Court of Appeals for the Federal Circuit	27.1	32.4	30.4	31.5	30.4
U.S. Court of International Trade	16.6	19.6	19.6	19.6[a]	19.6
Courts of Appeals, District Courts, and Other Judicial Services (total)	5,942.5	6,380.9	6,189.5	6,181.4	6,146.1
Salaries and Expenses	*4,619.3*	*4,963.1*	*4,830.1*	*4,832.8*	*4,801.4*
Court Security	*410.0*	*439.9*	*430.0*	*428.0*	*428.9*
Defender Services	*835.6*	*911.4*	*863.0*	*854.2*	*849.4*
Emergency Defender Services	*10.5*	—	—	—	—
Fees of Jurors and Commissioners	*63.1*	*62.2*	*62.2*	*62.2*	*62.2*
Vaccine Injury Compensation Trust Fund	*4.1*	*4.3*	*4.3*	*4.3*	*4.3*
Administrative Office of the U.S. Courts	76.0	82.0	79.0	79.0	79.0
Federal Judicial Center	24.2	25.8	25.7	25.5	25.7
United States Sentencing Commission	15.5	16.3	16.2	16.2	16.2

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

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

Budget Groupings and Accounts	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Judicial Retirement Funds	65.4	76.1	76.1	76.1	76.1
Total: The Judiciary	**$6,246.1**	**$6,721.2**	**$6,524.8**	**$6,517.6**	**$6.481.4**

Sources: FY2008 Enacted, FY2009 Request, and FY2009 Enacted figures are taken from the Financial Services and General Government Appropriations Act, 2009 (Div. D, P.L. 111-8), House Appropriations Committee Print. FY2009 House Committee figures are taken from H.Rept. 110-920. FY2009 Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

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

The Judiciary Budget and Key Issues

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

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

The judiciary also has "encumbered" funds—no-year authority funds for specific purposes, used when planned expenses are delayed, from one year to the next (e.g., costs associated with space delivery, and certain technology needs and projects).[45]

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

In her March 12, 2008, written testimony submitted to the House and Senate subcommittees on the judiciary's FY2009 budget request, Judge Julia S. Gibbons, United States Circuit Judge for the Sixth Circuit Court of Appeals and chair of the Budget Committee of the Judicial Conference of the United States,[46] stated, "We recognize the fiscal constraints Congress is facing. Through our cost-containment efforts and information technology innovations we have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice."[47]

Cost Containment Initiatives

According to Judge Gibbons, the Judicial Conference has endeavored, through cost containment policies, to reduce costs and increase productivity in the federal judiciary. For example, to limit the growth of the court rental fees paid to the General Services Administration (GSA), the judiciary has been working collaboratively with GSA. Through rent validation and rent capping initiatives, Judge Gibbons said that the previously projected rent costs of $1.2 billion for FY2009, has been reduced by $200 million dollars, with a new projection of $1.0 billion (or 17% below the pre-cost containment projection). She cited the identification of GSA rent overcharges, which totaled $30 million over three years, and a more recent finding of an additional $22.5 million in overcharges. The Judicial Conference also approved a cap of 4.9% on the average annual rate of growth for courthouse rent to be paid in FY2009 through FY2016. Under the rent cap, the circuit judicial councils are responsible for keeping their respective circuits within the caps for space needs through managing and prioritizing such needs.[48]

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

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

Judicial Security

Judicial security—the safe conduct of court proceedings and the security of judges in courtrooms and off-site—continues to be an issue of concern. The 2005 Chicago murders of family members of a federal judge; the Atlanta killings of a state judge, a court reporter, and a sheriff's deputy at a courthouse; and the 2006 sniper shooting of a state judge in the judge's office in Reno spurred

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

[47] Statement of Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States, before the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the United States Senate, March 12, 2008, p.17. Hereafter cited as *Judge Gibbons' March 12, 2008, Statement*.

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

efforts to enhance judicial security. Early in the 110th Congress, the chairmen of Senate and House Judiciary Committees introduced companion bills (S. 378 and H.R. 660, respectively), the Court Security Improvement Act of 2007, to strengthen security.[49] The legislation was amended and approved in December 2007, and the president signed the bill into law on January 7, 2008 (P.L. 110-177). Judicial security continues to be an issue of critical importance. As a result of concerns the judiciary raised about perimeter security the Federal Protective Service (FPS) provides, some functions at selected courthouses will be transferred to the U.S. Marshals Service (USMS). Under the Consolidated Appropriations Act, 2008 (P.L. 110-161), Congress authorized USMS to monitor the exterior of seven courthouses and assume control of FPS monitoring equipment in a pilot program. After months of planning, USMS officially implemented the pilot program on January 5, 2009, and assumed primary responsibility for security functions at six courthouses which previously had been the responsibility of the FPS. The six courthouses are located in New York, Chicago, Baton Rouge, Phoenix, Tucson, and Detroit. The 18-month pilot will begin in the fourth quarter of FY2008, and an evaluation of the pilot is expected to be provided to congressional subcommittees. The estimated annualized cost of the pilot is $5 million, which would be offset by expected reductions in FPS billings.

Workload

Judge Gibbons, in written testimony submitted to the House and the Senate on March 12, 2008, noted that Congress provided the judiciary with funding for staff in the past two years to enable the courts to address the workload in the short term, but that the additional judgeships and courthouse are needed. She referred to the increased workload expected from the southwest border due to immigration-related cases, and stressed that the President's request for additional border patrol agents would bring the border patrol, when fully staffed, to a total of about 20,000—doubling its size since 2001. Judge Gibbons stated that, "The district courts on the southwest border have not received any new district judgeships since 2002" although the Judicial Conference requested additional judgeships in 2003, 2005, and 2007 for a total of 32 judgeships. She also urged Congress to support the additional $110 million included in the President's FY2009 budget to fund fully a new federal courthouse in San Diego, California.[50]

Judge Gibbons summarized the judiciary's projection of the courts' workload, and noted that FY2009 staffing needs are based on 2008 caseload projection. "Our projections indicate that caseload will increase slightly in probation (+1%) and pretrial services (+3%) and increase substantially for bankruptcy filings (+23%). For 2008 we are projecting small declines in appellate (-3%) and criminal (-3%) caseload, and a steeper decline in civil filings (-8%)."[51]

Judgeships

The Judicial Conference voted on March 13, 2007, to ask Congress to create 67 new federal judgeships—15 for the courts of appeals (13 permanent, 2 temporary) and 52 for the district courts (38 permanent, 14 temporary)—to make permanent five temporary judgeships, and to extend another temporary judgeship for five years. According to the judiciary, since the 1990

[49] For details about the enacted legislation and other legislative proposals to enhance judicial security, see CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by (name redacted).

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

[51] Ibid., p.10.

omnibus judgeship bill, the number of courts of appeals judges has remained the same, while federal appellate court case filings increased by 55% over the same 17-year period. According to the judiciary, the number of district court judgeships increased by 4%, while case filings increased by 29%, over the same period of time.[52]

Subsequent to the conference's recommendation, on September 10, 2007, Representative James F. Sensenbrenner, Jr., introduced H.R. 3520, the Federal Judgeship and Administrative Efficiency Act of 2007. Among other things, the bill would authorize the appointment of an additional nine permanent and three temporary federal circuit judges, and an additional 44 permanent and 12 temporary district judges; establish a judicial district in the Virgin Islands; and provide for additional bankruptcy judgeships. In addition, the bill would amend the federal judicial code to divide the Ninth Judicial Circuit into the Ninth Circuit (to be composed of California, Guam, Hawaii, and the Northern Mariana Islands) and the Twelfth Circuit (to be composed of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington). On October 12, 2007, the bill was referred to the Subcommittee on Courts, the Internet, and Intellectual Property, and the Subcommittee on Commercial and Administrative Law. No further action was taken on H.R. 3520 in the 110th Congress.

On March 13, 2008, Senate Judiciary Committee Chairman Patrick J. Leahy introduced (for himself, and Senators Orrin G. Hatch, Dianne Feinstein, and Charles E. Schumer) S. 2774, the Federal Judgeship Act of 2008. The legislation would provide for the appointment of additional federal circuit and district judges: 12 permanent circuit court judgeships, 38 permanent district court judgeships, and the conversion of five existing temporary judgeships into permanent positions. In addition, 14 temporary district court judgeships, two temporary circuit judgeships, and one existing temporary district court judgeship would be extended. The bill was referred to the Senate Judiciary Committee. On May 15, 2008, the committee ordered S. 2774 reported favorably without amendment by a vote of 15-4.[53] After the committee reported the bill and written report (S.Rept. 110-427) on July 21, 2008, the bill was placed on the Senate calendar on the same day. No further action was taken on the bill in the 110th Congress.

Judicial Pay

Another key issue being discussed is the judiciary's advocacy for a significant increase in judicial pay. John G. Roberts Jr., Chief Justice of the United States, stated in his *2006 End-of-the-Year Report on the Federal Judiciary* that judges' pay has not kept pace with inflation over the years and has led to judges leaving the bench in increasing numbers. According to the Chief Justice, retaining and attracting the best talent to the courts is a serious concern. He stated that failure to raise judicial salaries has reached the level of a "constitutional crisis that threatens to undermine the strength and independence of the federal Judiciary."[54] In the subsequent 2007 and 2008 year-end reports, the Chief Justice reiterated his strong support to increase judicial pay. On June 15, 2007, Senator Leahy introduced S. 1638, the "Federal Judicial Salary Restoration Act of 2008,"

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

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

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

that, before markup, would have provided a 50% pay adjustment for justices and judges.[55] Representative John Conyers Jr., chairman of the House Judiciary Committee, introduced a companion bill, H.R. 3753, "Federal Judicial Salary Restoration Act of 2007," on October 4, 2007. The House bill, before markup, would have provided for a 41.3% pay adjustment. As amended in markup, and ordered to be reported by the respective committees, both bills, S. 1638 and H.R. 3753,[56] would authorize pay increases of 28.7% to 28.8%.[57]

On November 14, 2007, Senator Richard J. Durbin introduced S. 2353, the Fair Judicial Compensation Act of 2007, to authorize a 16.5% increase in the annual salaries of the Chief Justice of the United States, Associate Justices of the Supreme Court, courts of appeals judges, district court judges, and judges of the United States Court of International Trade, and to increase fees for bankruptcy trustees. S. 2353 was referred to the Senate Judiciary Committee. No further action was taken on the above pay bills before the end of the 110th Congress.

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

House and Senate Budget Hearings

On March 12, 2008, the House Appropriations Subcommittee on Financial Services and General Government held a hearing on the FY2009 federal judiciary budget request. The subcommittee heard testimony from Judge Julia S. Gibbons, and James C. Duff, director of the Administrative Office of the U.S. Courts (AOUSC). Among issues raised at the hearing were judicial security, rent paid to GSA, and workload. Later that same day, the Senate Appropriations Subcommittee on Financial Services and General Government also held a hearing on the FY2009 budget request and heard testimony from Judge Gibbons and Director Duff. The Senate subcommittee heard testimony on some of the same issues that were discussed at the House hearing.

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

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

55 On January 8, 2007, Senator Leahy introduced S. 197, legislation to authorize a 1.7% salary increase for federal justices and judges for FY2007. The Senate had approved the bill by unanimous consent on the same day, and it was referred to the House Judiciary Committee. On February 2, 2007, S. 197 was referred to the Subcommittee on Courts, the Internet, and Intellectual Property. No further action has been taken.

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

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

> funding requirements essentially reflect basic operating costs of which more than 80 percent are for personnel and space requirements.[58]

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

FY2009 Request and Congressional Action[59]

For FY2009, the judiciary requested $6.721 billion in total appropriations, a $475 million (7.6%) increase over the $6.246 billion enacted for FY2008. According to the judiciary, about 85.6% of the increase was to provide for pay adjustments, inflation, and other adjustments necessary to maintain current services. The FY2009 request included funding for 33,591 full-time-equivalent (FTE) positions—an increase of 300 FTE positions over the estimated 33,291 FTE positions funded for FY2008.[60]

For FY2009, the House committee recommended a total of $6.525 billion, and the Senate recommended $6.518 billion. The FY2009 enacted amount was $6.481 billion.

The following are highlights of the FY2009 judiciary budget request, FY2008 enacted amounts, the recommendations of the House and Senate Appropriations Committees, and FY2009 enacted amounts.[61]

Supreme Court

For FY2009, the total request for the Supreme Court (salaries and expenses plus buildings and grounds) was $88.224 million, a $9.5 million (12.1 %) increase over the FY2008 appropriation of $78.727 million. The total request comprised two accounts: (1) Salaries and Expenses—$69.777 million was requested, an increase of $3.3 million (4.9%) over the $66.526 million enacted for FY2008; and (2) Care of the Building and Grounds—$18.447 million was requested, an increase of $6.2 million (51.2%) over the $12.201 million enacted for FY2008. The increase in the second account included repairs to the roof of the Supreme Court building and exterior property renovation and landscaping. The overall request reflected increases in salary and other inflationary costs. The House committee recommended the full amount requested for both Supreme Court accounts. The Senate committee recommended $69.776 million for Salaries and Expenses ($1,000 less than requested), and the full amount requested for Care and Building Grounds. The total enacted amount was the same as the full amount requested.

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[58] *Judge Gibbons' March 12, 2008, Statement*, p. 13.

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

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

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

U.S. Court of Appeals for the Federal Circuit

This court, consisting of 12 judges, has nationwide jurisdiction and reviews, among other things, certain lower court rulings in patent and trademark, international trade, and federal claims cases. The FY2009 request for this account was $32.357 million—a $5.3 million (19.5%) increase over the $27.072 million appropriated for FY2008. The request included six FTE positions for 12 law clerks, one for each of the judges. According to the budget submission, the need for more law clerks was due to the increase in caseload and the complicated nature of the cases. The House committee recommended $30.384 million. The Senate recommended $31.482 million. The enacted amount was $30.384 million, the same amount the House recommended.

U.S. Court of International Trade

This court has exclusive nationwide jurisdiction of civil actions against the United States, its agencies and officers, and certain civil actions brought by the United States, arising out of import transactions and the administration and enforcement of the federal customs and international trade laws. The FY2009 request was $19.622 million—a $3.0 million (18.0%) increase over the FY2008 appropriation of $16.632 million. The judiciary budget submission ascribed the increase primarily to rent paid to GSA. The House committee recommended $19.590 million. The Senate committee recommended $19.605 million. The enacted amount was $19.605 million, the same amount the Senate had recommended.

Courts of Appeals, District Courts, and Other Judicial Services

This budget group includes 12 of the 13 courts of appeals and 94 district judicial courts located in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the territories of Guam and the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Totaling about 95% of the judiciary budget, the four accounts in the group—salaries and expenses, court security, defender services, and fees of jurors and commissioners—fund most of the day-to-day activities and operations of the federal circuit and district courts. For this budget group, the FY2009 request was $6.381 billion, a $438 million (7.4%) increase over the FY2008 enacted amount of $5.943 billion. The House committee recommended $6.189 billion for this budget group. The Senate committee recommended $6.181 billion. The enacted amount was $6.146 billion.

The total of this budget group comprised the following accounts:

Salaries and Expenses

The FY2009 request for this account was $4.963 billion, a $344 million (7.4%) increase over the FY2008 level of $4.619 billion. According to the budget request, this increase was needed for inflationary and other adjustments to maintain the courts' current services. According to the FY2009 budget submission, the request included $308.8 million for standard pay and other inflationary increases, and other adjustments to maintain FY2008 service levels. The House committee recommended $4.830 billion. The Senate committee recommended $4.833 billion. The enacted amount was $4.801 billion.

Court Security

This account provides for protective guard services, security systems, and equipment for courthouses and other federal facilities to ensure the safety of judicial officers, employees, and visitors. Under this account, a major portion of the funding is transferred to the U.S. Marshals Service (USMS), to pay for court security officers under the Judicial Facility Security Program. The FY2009 request was $439.915 million—a $29.915 million (7.3 %) increase over the FY2008 appropriation of $410.000 million. This increase was reportedly driven by pay and benefit adjustments and other adjustments needed to maintain current services. The FY2009 request to pay the Federal Protective Service (FPS) $72.9 million was also covered under this account. Funding requested included 9 FTE positions for USMS. The House committee recommended $430.004 million. The Senate committee recommended $428.004 million. The enacted amount was $428.858 million.

Defender Services

This account funds the operations of the federal public defender and community defender organizations, and the compensation, reimbursement, and expenses of private practice panel attorneys appointed by the courts to serve as defense counsel to indigent individuals accused of federal crimes. The FY2009 request was $911.408 million—a $65.307 million (7.7 %) increase over the FY2008 appropriation of $846.101 million (which included $10.500 million in emergency funding). The House committee recommended $862.977 million. The Senate committee recommended $854.204 million. The enacted amount was $849.400 million.

Fees of Jurors and Commissioners

This account funds the fees and allowances provided to grand and petit jurors, and the compensation of jury and land commissioners. The FY2009 request was $62.206 million—a $0.9 million (1.4%) decrease over the FY2008 appropriation of $63.081 million. Both the House and Senate committees recommended the full amount requested. The enacted amount was the full amount requested.

Vaccine Injury Compensation Trust Fund

Established to address a perceived crisis in vaccine tort liability claims, the Vaccine Injury Compensation Program is a federal no-fault program that protects the availability of vaccines in the nation. The FY2009 request for this account was $4.253 million, a slight increase of $0.2 million (3.8%) above the FY2008 enacted amount of $4.099 million. Both the House and Senate committees recommended the full amount requested. The enacted amount was the full amount requested.

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

As the central support entity for the judiciary, the AOUSC provides a wide range of administrative, management, program, and information technology services to the U.S. courts. The AOUSC also provides support to the Judicial Conference of the United States, and implements conference policies and applicable federal statutes and regulations. The FY2009 request for this account was $81.959 million—a $5.923 million (7.8%) increase over the FY2008 level of $76.036 million. The increase was reportedly for pay increases and other inflationary adjustments to maintain FY2008 service levels. The AOUSC also receives non-appropriated funds from fee collections and carry-over balances to supplement its appropriations requirements. Both the House and Senate committees recommended $79.049 million for this account. The enacted amount was the amount as recommended by both the House and Senate.

Federal Judicial Center

As the judiciary's research and education entity, the center undertakes research and evaluation of judicial operations for the Judicial Conference committees and the courts. In addition, the center provides judges, court staff, and others with orientation and continuing education and training. The center's FY2009 request was $25.759 million—a $1.6 million (6.5%) increase over the FY2008 appropriation of $24.187 million. The House committee recommended $25.725 million. The Senate committee recommended $25.468 million. The enacted amount was $25.725 million, the same amount the House recommended.

United States Sentencing Commission

The commission promulgates sentencing policies, practices, and guidelines for the federal criminal justice system. The FY2009 request was $16.257 million—a $0.800 million (5.0%) increase over the FY2008 appropriation of $15.477 million. Both the House and Senate committees recommended $16.225 million. The enacted amount was the same amount both the House and Senate committees recommended.

Judiciary Retirement Funds

This mandatory account provides for three trust funds that finance payments to retired bankruptcy and magistrate judges, retired Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers. The FY2009 request was $76.140 million—a $10.740 million (16.4%) increase over the FY2008 appropriation of $65.400 million. According to the budget submission, the appropriation requirements were calculated by an enrolled actuary as mandated by law. Both the House and Senate committees recommended the full amount requested. The enacted amount was the full amount requested.

General Provision Changes

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

- Sec. 306, which would have granted the judiciary the same tenant alteration authorities as the executive branch.
- Sec. 308, which would have deleted a provision related to establishing Vancouver, Washington, as a place of holding court in the Western District of Washington.
- Sec. 309, which would have deleted a one-year provision extending the temporary judgeships in the Districts of Kansas and the District of Northern Ohio through FY2008.

The House Appropriations Committee recommended the following provisions:

- Sec. 301, which would have continued language to permit funding in the bill for salaries and expenses to employ experts and consultant services (as authorized by 5 U.S.C. 3109).
- Sec. 302, which would have continued language to permit the transfer of up to 5% of any available FY2008 appropriations between judiciary appropriations accounts, provided that no appropriation shall be decreased by more than 5% or increased by more than 10% by any such transfer except in certain circumstances. The language also provides that any such transfer shall be treated as a reprogramming of funds under Section 608 of the bill and shall not be available for obligation or expenditure except in compliance with procedures in that section.
- Sec. 303, which would have continued language to authorize official reception and representation expenses, not to exceed $11,000, incurred by the Judicial Conference of the United States.
- Sec. 304, which would have continued language to require a financial plan for the judiciary within 90 days of enactment of this act.
- Sec. 305, which would enable the judiciary to contract for repairs under $100,000.
- Sec. 306, which would have authorized a court security pilot program.
- Sec. 307, which would have provided equal treatment for federal judges regarding life insurance premiums.
- Sec. 308, which would have allowed the Director of AOUSC to expend funds for the purposes of the Second Chance Act, and directs the AOUSC to report to the committee on the parameters that define eligible expenses before the program is implemented.
- Sec. 309, which would have removed a sunset date from certain procurement authorities.
- Sec. 310, which would have extended temporary judgeships in Ohio and Kansas.

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

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

As enacted, the administrative provisions are as follows:

- Sec. 301, which allows the Judiciary to expend funds for the employment of expert and consultative services.
- Sec. 302, which provides transfer authority in compliance with transfer and reprogramming guidelines set forth in section 604 and 608 of this act.

- Sec. 303, which authorizes not to exceed $11,000 to be available for official receptions and representation expenses.
- Sec. 304, which requires a financial plan from the judiciary allocating the sources and uses of all funds within 90 days of enactment of this act.
- Sec. 305, which extends the authority to contract for repairs of less than $100,000 to the judiciary.
- Sec. 306, which continues to authorize a pilot program to allow the AOUSC to reimburse the U. S. Marshals Service for some services currently being performed by the Federal Protective Service.
- Sec. 307, which includes language intended to provide equal treatment for federal judges regarding life insurance premiums.
- Sec. 308, which extends the sunset provision for certain procurement authorities.
- Sec. 309, which extends the term of temporary judgeships in Kansas, Northern Ohio, and Hawaii for one year.
- Sec. 310, which authorizes a cost of living adjustment for fiscal year 2009 for federal judges.

District of Columbia[62]

The authority for congressional review and approval of the District's budget is derived from the Constitution and the District of Columbia Self-Government and Government Reorganization Act of 1973 (Home Rule Act).[63] The Constitution gives Congress the power to "exercise exclusive Legislation in all Cases whatsoever" pertaining to the District of Columbia. In 1973, Congress granted the city limited home rule authority and empowered citizens of the District to elect a mayor and city council. However, Congress retained the authority to review and approve all District laws, including the District's annual budget. As required by the Home Rule Act, the city council must approve a budget within 50 days after receiving a budget proposal from the mayor. The approved budget must then be transmitted to the President, who forwards it to Congress for its review, modification, and approval.[64]

Both the President and Congress may propose and approve of financial assistance to the District in the form of special federal payments in support of specific activities or priorities. **Table 6** shows details of the District's federal payments—the FY2008 enacted amounts, the amounts included in the President's FY2009 budget request, and the amounts recommended by the House and Senate Appropriations Committees, and the amount enacted for FY2009 with the passage of P.L. 111-8.

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

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

[64] 87 Stat. 801.

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

(in millions of dollars)

	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Resident Tuition Support	$33.0	$35.1	$35.1	$35.1	$35.1
Emergency Planning and Security	3.4	15.0	15.3	15.4	39.2
District of Columbia Courts	223.9	223.9	248.4	251.6	248.4
Defender Services	48.0	48.0	52.5	52.5	52.5
Court Services and Offender Supervision Agency	190.3	202.5	202.5	203.5	203.5
Public Defender Service	32.7	35.7	35.7	35.7	35.7
Criminal Justice Coordinating Council	1.3	1.8	1.8	1.8	1.8
Water and Sewer Authority	8.0	14.0	14.0	16.0	16.0
Anacostia Waterfront Initiative	—[a]	0.0	0.0	0.0	0.0
Office of the Chief Financial Officer	5.5[b]	0.0	4.5	5.0[c]	4.9[d]
Executive Office of the Mayor	5.0	0.0	0.0	3.5	3.4
Anacostia River Water Quality Initiative	*1.0*	*0.0*	*0.0*	*0.0*	*0.0*
Public Education Initiative	*2.0*[e]	*0.0*	*0.0*	*0.0*	*0.0*
Marriage Initiative Matching Funds	—	*0.0*	*0.0*	*1.2*	*1.3*
Marriage Development Accounts	—[e]	*0.0*	*0.0*	*1.2*	*2.1*
Pediatric Health Care Initiative	*1.0*	*0.0*	*0.0*	*0.0*	*0.0*
Historic Preservation	*1.0*	*0.0*	*0.0*	*0.0*	*0.0*
School Improvement	40.8	54.0	54.0	54.0	54.0
Public Schools	*13.0*	*18.0*	*21.2*	*20.0*	*20.0*
Public Charter Schools	*13.0*	*18.0*	*18.0*	*20.0*	*20.0*
Education Vouchers	*14.8*	*18.0*	*14.8*	*14.0*	*14.0*
Jump Start Public School Reform	0.0	20.0	20.0	20.0	20.0
Consolidated Laboratory Facility	5.0	5.0	21.0	21.0	21.0
Central Library and	9.0	7.0	7.0	7.0	7.0

	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Branches					
FBI Reimbursement	4.0	5.0	0.0	0.0	0.0
Special Federal Payments (total)	**$609.9**	**$667.0**	**$711.8**	**$722.0**	**$742.4**

Sources: FY2008 Enacted, FY2009 Request, and FY2009 Enacted figures are taken from the Financial Services and General Government Appropriations Act, 2009 (Div. D, P.L. 111-8), House Appropriations Committee Print. FY2009 House Committee figures are taken from H.Rept. 110-920. FY2009 Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

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

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

c. Includes $3 million for the Children's National Medical Center.

d. The conference report accompanying H.R. 1105 (P.L. 111-8), directs the CFO to award funds to 12 specific organizations and activities: "I Have a Dream" Foundation of Washington DC, Brent Dream Class of 2006-$82,536; Boys and Girls Club of Greater Washington for Project Learn-$100,000; Capital Area Food Bank Facility Construction-$196,514; Children's National Medical Center, pediatric surgical center renovations-$2,850,000; DC Campaign for Literacy Education (CYCLE)-$82,536; Educational Advancement Alliance for the DC Student Support Services Project-$245,643; Everybody Wins!-$225,000; Excel-Automotive Workforce Development Training Program-$294,772; Georgetown Metro Connection-$98,257; National Children's Alliance-$245,643; Safe Kids Worldwide, Inc., Child Safety Initiative-$368,464; The Perry School for an Economic Empowerment Program-$98,257.

e. Marriage Initiative is included as a $1.8 million award administered by the CFO.

The District of Columbia Budget and Key Issues

President's Request

The Bush Administration's proposed FY2009 budget included $668.0 million in federal payments to the District of Columbia. The funding request for the courts and criminal justice system (court operations, defender services, offender supervision, and criminal justice coordinating council) was $511.9 million, or 76.8%, of the request. The President's budget also requested $109.1 million in special federal payments for specific education initiatives, including $35.1 million for college tuition assistance, $38 million for public school enhancements and reforms, $18 million for public charter schools, and $18 million for the school choice (school voucher) program, which awards grants to eligible students to attend private schools.

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

- prohibited the use of federal and District funds to finance or administer a needle exchange program intended to reduce the spread of AIDS and HIV among intravenous drug abusers and their partners;
- prohibited the use of both federal and District funds to provide abortion services except in instances of rape or incest, or when the health of the mother is threatened;
- prohibited the city from decriminalizing the use of marijuana for medical purposes;
- prohibited the use of federal funds to implement the Health Care Benefits Act;
- limited the payment of fees to no more than $4,000 to attorneys representing a party in an action brought against the District under the Individuals with Disabilities Act; and
- limited the city's ability to use District funds to lobby for congressional voting representation or statehood.

House Appropriations Committee

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

Senate Appropriations Committee

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

Omnibus Appropriations Act FY2009, P.L. 111-8

The Omnibus Appropriation Act of FY2009, P.L. 111-8, includes $742.4 million in special federal assistance to the District of Columbia. This is $132.5 million more than appropriated in FY2008, and $75.4 million more than requested by the Bush Administration. The additional funding includes increased assistance for public safety, criminal justice and court operations, education initiatives, and planning and security activities related to inauguration of the 44th President of the United States, Barak Obama. The act includes $599.2 million for public safety and court operations activities, and $109 million in support of school improvement and reform activities including support for school vouchers and college tuition assistance programs.

Resident Tuition Support

The District of Columbia Tuition Access Grant (DCTAG) program provides tuition support through grants to institutions of higher education (IHEs) for eligible residents of the District of Columbia by paying the difference between in-state and out-of-state tuition (up to $10,000) at public IHEs; and up to $2,500 per year for tuition at private non-profit IHEs that are either located in the Washington, DC, metropolitan area, or are Historically Black Colleges and Universities (HBCUs). Funding has been provided for the DCTAG program annually since FY2000. For FY2009, the Administration proposed an appropriation of $35.1 million for the DCTAG program, of which $1.3 million would have been available for administrative expenses. The House Appropriations Committee and the Senate Appropriations Committee both recommended the appropriation of $35.1 million for the DCTAG program. Consistent with House and Senate recommendations, the Omnibus Appropriations Act for FY2009 included $35.1 million for the program. As in prior years, the appropriations language specified that awards made under the DCTAG program may be prioritized on the basis of a resident's academic merit, the need of eligible students, and other factors as may be authorized.

School Improvement

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

The Opportunity Scholarship program was enacted under the D.C. School Choice Incentive Act of 2003 (P.L. 108-199) and was authorized through FY2008. Under the program, the Secretary of Education may award grants to eligible entities for a period of not more than five years to make opportunity scholarships to eligible individuals. The program enables children from families with incomes not exceeding 185% of the poverty line to apply to receive opportunity scholarships valued at up to $7,500 to cover the costs of tuition, fees, and transportation expenses associated with attending participating private elementary and secondary schools located in the District of Columbia. Scholarship recipients remain eligible to continue to participate in the program in subsequent years, so long as their family income does not exceed 300% of the poverty level. FY2008 (school year 2008-2009) is the final year of the initial grant awarded to the Washington Scholarship Fund.

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

The House Appropriations Committee recommended the appropriation of $54 million for school improvement in the District of Columbia—the same amount proposed by the Administration. However, the committee recommended that $21.2 million be provided to DCPS for school improvement, that $18 million be provided to the SEO for public charter schools, and that $14.8 million be provided to ED for the Opportunity Scholarship program, of which $1 million would be available to administer and fund assessments. In S. 3260, the Senate Appropriations Committee also recommended $54 million in funding for school improvement, but with $20 million provided to DCPS to improve public school education, $20 million provided to the SEO to expand public charter schools, and $14 million to ED for the Opportunity Scholarship program, of which $1 million would have been available to administer and fund assessments.

The House Appropriations Committee did not recommend the amendments to the D.C. School Choice Incentive Act of 2003 proposed by the Administration. In S. 3260, the Senate Appropriations Committee recommended that funds provided for the Opportunity Scholarship program may not be used to support the enrollment of students in schools participating in the program unless the school has a valid certificate of occupancy and the teachers of core subjects hold four-year baccalaureate degrees.[65] S. 3260 also specified that after school year 2009-2010, funds for the Opportunity Scholarship program be available only upon the reauthorization of the program by Congress and the adoption of legislation by the District of Columbia approving reauthorization. The Omnibus Appropriations Act for FY2009 includes $54 million for school improvements, including $20 million for public schools, $20 million for public charter schools, and $14 million school vouchers.

Federal Payment to Jump Start Public School Reform

In addition to funding provided for school improvement in the District of Columbia, the Administration proposed, and both the House Appropriations Committee and the Senate Appropriations Committee recommended, the appropriation of $20 million to "jump start" the reform of public education in the District of Columbia. Of the $20 million that would have been made available, $3.5 million would have been provided for the recruiting, development, and

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

training of principals and other school leaders; $7 million would have been provided for the development of optimal school programs, and for intervention in low-performing schools; $7.5 million would have been provided for a student performance data reporting and accountability system, and for parental and community outreach; and $2 million would have been provided for data reporting associated with the DCPS teacher incentive program. Of the total amount appropriated, the lesser of $500,000 or 10% would have been available for transfer from one activity to another. Consistent with the recommendations of the House and Senate Appropriations Act, P.L. 111-8 includes $20 million for public school reform activities.

General Provisions

Consistent with the provision included in the House and Senate bills, the Omnibus Appropriations Act:

- prohibits the use of federal funds to finance or administer a needle exchange program intended to reduce the spread of AIDS and HIV among intravenous drug abusers and their partners;
- prohibits the use of both federal and District funds to provide abortion services except in instances of rape or incest, or when the health of the mother is threatened;
- prohibits the city from decriminalizing the use of marijuana for medical purposes;
- prohibits the use of federal funds to implement the Health Care Benefits Act; and
- prohibits the use of federal funds to lobby for congressional voting representation or statehood.

Prior to passage of the Omnibus Appropriations Act, P.L. 111-8, Congress approved a Continuing Budget Resolution that funded the federal government through March 11, 2009. Section 134 of the CR granted congressional approval of the District of Columbia General Fund budget for FY2009. This allowed the District to spend $10 billion in local source revenues and federal grants, including $1.1 billion for capital projects and $8.9 billion for operating expenses. FY2009 special federal payments for the District of Columbia were frozen at the FY2008 appropriations level. However, there is one exception. Section 135 of the act appropriated $15 million in special federal payments for emergency planning and security activities. This was a significant increase above the $3.4 million appropriated for FY2008, and was intended be used to cover expenses related to the activities surrounding the inauguration of President Obama.

The Omnibus Appropriations Act approves the District of Columbia's budget for FY2009. This includes $9.9 billion for operating expenses and $1.5 billion for capital projects.

Independent Agencies

In FY2009, a collection of 26 independent entities are slated to receive funding through the FSGG appropriations bill. **Table 7** lists appropriations as enacted for FY2008, as requested by the President for FY2009, as recommended by the House and Senate Committees on Appropriations, and as enacted.

Table 7. Independent Agencies Appropriations, FY2008 to FY2009

(in millions of dollars)

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Administrative Conference of the United States	—	—	—	—	$1.5
Christopher Columbus Fellowship Foundation	0.6	—	—	1.0	1.0
Commodity Futures Trading Commission[a]	111	130	—	157	146
Consumer Product Safety Commission	80	80	100	95	105
Election Assistance Commission	142	17	135	17	124
Federal Communications Commission[b]	1	1	1	—	—
Federal Deposit Insurance Corporation: Office of Inspector General (by transfer)[c]	(27)	(27)	(27)	(27)	(27)
Federal Election Commission	59	64	64	64	64
Federal Labor Relations Authority	24	23	23	23	23
Federal Trade Commission[b]	82	69	70	69	70
General Services Administration	357[d]	536	311	674	577
Merit Systems Protection Board	40	41	41	41	41
Morris K. Udall Foundation	6	1	6	6	6
National Archives and Records Administration	400	392	424	430	447
National Credit Union Administration	1	1	1	1	1
Office of Government Ethics	12	13	13	13	13
Office of Personnel Management (total)	21,110	20,358	20,358	20,362	20,360
Salaries and Expenses	*102*	*93*	*93*	*93*	*93*
Government Payments for Annuitants, Employee Health Benefits	*8,884*	*9,533*	*9,533*	*9,533*	*9,533*
Government Payments for Annuitants, Employee Life Insurance	*41*	*46*	*46*	*46*	*46*
Payment to Civil Service Retirement and Disability Fund	*11,941*	*10,550*	*10,550*	*10,550*	*10,550*
Office of Special Counsel	17	17	17	17	17
Postal Regulatory Commission[e]	—	14	14	14	14
Privacy and Civil Liberties	2	2	1	2	2

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Oversight Board[f]					
Securities and Exchange Commission[g]	843	871	879	890	894
Selective Service System	22	22	22	22	22
Small Business Administration	1,368[h]	659	880	766	612
United States Postal Service	118	322	351	351	351
United States Tax Court	45	48	48	48	48
Total: Independent Agencies	**$24,840**	**$23,681**	**$23,760**	**$24,064**	**$23,942**

Sources: FY2008 Enacted, FY2009 Request, and FY2009 Enacted figures are taken from the Financial Services and General Government Appropriations Act, 2009 (Div. D, P.L. 111-8), House Appropriations Committee Print. FY2009 House Committee figures are taken from H.Rept. 110-920. FY2009 Senate Committee figures are taken from S.Rept. 110-417. Columns may not equal the total due to rounding.

a. The CFTC is funded in the House through the Agriculture appropriations bill. In FY2008, CFTC enacted appropriations were provided through the Agriculture and Related Agencies division of P.L. 110-161, the Consolidated Appropriations Act. 2008. In FY2009, CFTC enacted appropriations are provided through the Financial Services and General Government division of P.L. 111-8, the Omnibus Appropriations Act, 2009.

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

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

d. This amount includes $182 million in emergency appropriations provided by P.L. 110-329.

e. FY2009 is the first year the PRC has been funded through the FSGG appropriations bill. Funding for the PRC is discussed in the United States Postal Service section.

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

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

h. This amount includes $799 million in emergency appropriations provided through P.L. 110-329.

Commodities Futures Trading Commission (CFTC)

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

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

Appropriations Act, 2008, the CFTC was funded in Division A, Agriculture and Related Agencies. The FY2008 appropriation was $111.3 million.

For FY2009, the Administration requested $130.0 million. The Senate Appropriations Committee recommended $157.0 million, an increase of 24.3% over the Administration's request, and 41.1% over the FY2008 appropriation. The increase was related to concerns over the CFTC's ability to monitor the futures markets, particularly those in energy commodities. In the House, CFTC funding was proposed through the agriculture appropriations bill, but FY2009 enacted funding was included in the Financial Services section of the omnibus appropriations act (P.L. 111-8). The act provides $146.0 million for the CFTC, of which $34.7 million is to be available only after the agency has submitted an expenditure plan for FY2009 to the Agriculture Committees of the House and Senate.

Consumer Product Safety Commission (CPSC)[66]

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

For FY2009, the Administration requested $80 million in funding for the CPSC, the same amount Congress provided for FY2008, but $16.75 million more than requested last year ($63.25 million). The House Committee on Appropriations recommended $100 million, $20 million above the Administration's request. The committee stated that the additional funding was necessary for the agency to meet the increased responsibilities envisioned by the CPSC reform legislation (discussed below), including the implementation of an Import Safety Initiative, upgrades to information technology and databases, and modernization of CPSC's testing laboratory. In the Senate, the Committee on Appropriations recommended $95 million, $5 million less than its House counterpart, but $15 million above the Administration's request. P.L. 111-8 provided the CPSC $105.4 million for FY2009, slightly more than $25 million in additional funding than requested by the Administration—a nearly one third (31.75%) increase.

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

A steady stream of television and print media stories throughout 2007 about unsafe imported consumer products generated strong congressional interest concerning the agency. Conferees, concluding months of negotiations over differences between House and Senate CPSC reform bills (H.R. 4040 and S. 2663, respectively), sent what is generally regarded as the strongest consumer protection legislation in decades to the President for his signature. The new law, P.L. 110-314, substantially increases the authority of and funding for the CPSC. Major provisions of the

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

Consumer Product Safety Improvements Act of 2008 included the creation of a publicly accessible consumer complaint database, increased civil penalties that the agency can assess against violators, the protection of whistleblowers who report product safety defects, mandatory testing of toys, and banning certain phthalates in children's products.[67]

Election Assistance Commission (EAC) [68]

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

For FY2008, funding for the EAC and election reform programs was provided by the Consolidated Appropriations Act, 2008. The act provided $16.53 million for the EAC, of which $3.25 million was for National Institute of Standards and Technology (NIST), and $200,000 was for the high school mock election program. It also provided $115 million for requirements payments and $10 million for data collection grants to selected states.

The President's budget request for FY2009 included $16.7 million for EAC salaries and expenses. The House Appropriations Committee recommended $18.6 million for EAC salaries and expenses, of which $4 million was to be transferred to NIST, and the Senate Appropriations Committee recommended $16.7 million for the EAC, of which $4 million was to be transferred to NIST for the development of voluntary voting systems guidelines. The Omnibus Appropriations Act, 2009 provided $18 million for the EAC, with $4 million of that to be transferred to NIST, $750,000 for the College Program, and $300,000 for the high school mock election program. It also provided funding for requirements payments to the states in the amount of $100 million, with an additional $5 million for grants for research on voting technology improvements and $1 million for a pilot program for grants to states and localities to test voting systems before and after elections.

Federal Communications Commission (FCC)[69]

The Federal Communications Commission, created in 1934, is an independent agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC is also charged with promoting the safety of life and property through wire and radio communications. The mandate of the FCC under the Communications Act is to make available to all people of the United States a rapid, efficient, nationwide, and worldwide wire and

[67] For an examination of the issues surrounding the roughly dozen chemicals known as phthalates that are used to make the plastics found in thousands of consumer products, see CRS Report RL34572, *Phthalates in Plastics and Possible Human Health Effects*, by (name redacted) and (name redacted).

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

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

radio communications service. The FCC performs five major functions to fulfill this charge: spectrum allocation, creating rules to promote fair competition and protect consumers where required by market conditions, authorization of service, enhancement of public safety and homeland security, and enforcement. The FCC obtains the majority — and sometimes all — of its funding through the collection of regulatory fees pursuant to Title I, Section 9, of the Communications Act of 1934; therefore, its direct appropriation is considerably less than its overall budget; sometimes, as is the case for FY2009, there is no direct appropriation.

For FY2009, the President signed a budget of $341.875 million to be collected entirely through regulatory fees (e.g., no direct appropriation). The budget stipulates that $3 million will be available to establish and administer a competitive grant program for state broadband data collection and analysis; proceeds of up to $85 million from the use of a competitive license bidding system may be made available for obligation; and up to $25.48 million may be transferred from the Universal Service Fund (USF) to monitor the USF program.

Additionally, the FY2009 budget stipulates that none of the budget may be used to "modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments."

For FY2008, the President signed a budget of $313 million with a direct appropriation of $1 million and the remainder to be collected through regulatory fees.[70]

Federal Deposit Insurance Corporation (FDIC): OIG[71]

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

The Consolidated Appropriations Act of 2008 (P.L. 110-161) provided for a FY2008 budget of $27 million for the OIG, which was a 13% decrease from the FY2007 appropriation of $31 million. The President requested, and both the House and Senate Committees on Appropriations recommended, $27.5 million for FY2009. The Omnibus Appropriations Act of 2009 (P.L. 111-8) also provides for $27.5 million.

Federal Election Commission (FEC) [72]

The FEC administers, and enforces civil compliance with, the Federal Election Campaign Act (FECA) and campaign finance regulations. The agency does so through educational outreach, rulemaking, and litigation, and by issuing advisory opinions.[73] The FEC also administers the

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

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

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

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

presidential public financing system.[74] Between January and June 2008, the FEC lacked a quorum necessary to make major policy decisions. With the June 24, 2008, Senate confirmations of five FEC nominees, the agency now stands at full capacity of six commissioners.[75]

The President's FY2009 budget request included an appropriation of $63.6 million for the FEC, a 7.4% increase above the enacted FY2008 appropriation of $59.2 million. The House Appropriations Committee also recommended an appropriation of $63.6 million for FY2009.[76] Although the FEC requested no additional staff in FY2008, the FY2009 budget justification requested funding for 12 additional full-time positions.[77] Most of the FY2009 request emphasized maintaining current services and funding technology upgrades.[78] Like its House counterpart, the Senate Appropriations Committee recommended $63.6 million in FY2009 funding for the FEC. The FY2009 omnibus appropriations law (P.L. 111-8) also funded the FEC at $63.6 million.

Report language (which originated in the Senate) accompanying P.L. 111-8 directed the FEC, within 270 days of the law's enactment, to provide the House and Senate appropriations committees with an estimate of the feasibility of gathering and making public data about media costs in campaigns. Campaign media costs have been of recent interest to Congress, particularly in the Senate. The topic was the subject of a June 2007 Senate Rules and Administration Committee hearing, and the Senate Appropriations Committee report on the FY2008 FSGG appropriations bill directed the Government Accountability Office (GAO) to provide information on "the 10-year trend in the cost of House and Senate campaigns as well as the percentage of those costs that are incurred due to rising broadcast advertising rates."[79]

In the past, Congress has chosen to use the appropriations process to extend the FEC's Administrative Fine Program (AFP), which was scheduled to expire at the end of 2008. In October 2008, however, President George W. Bush signed a stand-alone bill (H.R. 6296, which became P.L. 110-433) that extends authority for the program until 2013.[80]

In recent years, FEC appropriations have generally been noncontroversial and subject to limited debate in committee or on the floor. For FY2009, the House Appropriations Committee noted that

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

[75] See CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by (name redacted).

[76] H.Rept. 110-920, p. 65.

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

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

[79] The June 2007 hearing also covered congressional public financing legislation; the hearing record has not yet been published. A transcript is available on the Senate Rules and Administration Committee website at http://rules.senate.gov/hearings/2007/062007correctedTranscript.pdf. For additional discussion, see CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by (name redacted). On the FY2008 report language, see U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., S.Rept. 110-129 (Washington: GPO, 2007), pp. 72-73.

[80] For additional discussion of the AFP, see CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by (name redacted), p. 7.

it had “recently approved a significant reprogramming” of the FEC’s FY2008 appropriation and that it intended to “carefully monitor the resource needs of the FEC during the coming months and may consider adjustments to [the agency’s] fiscal year 2009 budget in the final appropriations bill.”[81] That reprogramming came in response to a significant drop in FEC salary expenses between January and June 2008, when four commissioners and some staff were out of office, and when the agency reportedly had difficulty recruiting career staff.[82] Now that the Commission is back at full operating capacity, provided that career staff recruiting improves, salary needs will presumably return to normal levels. The Senate report did not mention the reprogramming.

Federal Trade Commission (FTC) [83]

The Federal Trade Commission (Commission or FTC) is an independent agency. It seeks to protect consumers and enhance competition by eliminating unfair or deceptive acts or practices in the marketing of goods and services and by ensuring that consumer markets function competitively. For FY2009, the Administration requested a program level for the FTC of $256.2 million, an increase of $12.4 million, or 5%, over the agency’s present (FY2008) level of funding. Of the total amount provided, $168 million was to be derived from pre-merger filing fees, $19.3 million from Do-Not-Call fees, and the remaining amount—$68.9 million—was to be provided by a direct appropriation. The request represents an increase of $12.3 million from the FTC’s FY2008 budget appropriations level.

The Senate Committee on Appropriations recommended the same program level as requested by the Administration, including the same breakdown of fees and direct appropriation, as noted above. For its part, the House Committee on Appropriations recommended an FTC program level of $259.2 million, $3 million more than the Administration’s request. More specifically, the committee assumed $168 million from pre-merger filing fees, $21 million from Do-Not-Call fees, and a direct appropriation of $70.2 million. The committee recommendation assumed an increase of $3 million over the Administration’s request to provide additional support for consumer protection activities, including subprime lending and other financial services investigations, as well as activities to fight spam, spyware, and Internet fraud and deception. Enacted appropriations for FY2009 echoed the recommendations of House Committee on Appropriations (i.e., an FTC program level of $259.2 million, with a $168 million from pre-merger filing fees, $21 million from Do-Not-Call fees, and a direct appropriation of $70.2 million).

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

General Services Administration (GSA)

The General Services Administration administers federal civilian procurement policies pertaining to the construction and management of federal buildings, disposal of real and personal property,

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[81] H.Rept. 110-920, p. 65.

[82] Duane Pugh, director, legislative affairs, FEC, provided information on the reprogramming (telephone consultation with (name redacted), July 2, 2008).

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

and management of federal property and records. It is also responsible for managing the funding and facilities for former Presidents and presidential transitions. Typically, only about 1% of GSA's total budget is funded by direct appropriations.

For FY2009, the President requested $56.6 million for government-wide policy and $71.8 million for operating expenses, $54.0 million for the Office of Inspector General (OIG), $2.9 million for allowances and office staff for former presidents, $8.5 million for presidential transition expenses, and $36.6 million to be deposited into the Federal Citizen Information Center Fund (FCICF). The House Committee on Appropriations recommended $56.2 million for government-wide policy, $71.2 million for operating expenses, $51.8 million for the OIG, $2.9 million for allowances and office staff for former presidents, $8.5 million for presidential transition expenses, and $36.1 million to be deposited into the FCICF. The Senate Appropriations Committee recommended $54.6 million for government-wide policy, $69.3 million for operating expenses, $54 million for the OIG, $2.9 million for allowances and office staff for former presidents, $8.5 million for presidential transition expenses, and $36.6 million for the FCICF. The CR provided $8.25 million for presidential transition expenses, and $2.68 million for allowances and office staff for former presidents. Enacted appropriations for FY2009 included $54.6 million for government-wide policy, $70.6 million for operating expenses, $54.0 million for the OIG, $2.9 million for allowances and office staff for former presidents, $8.52 million for presidential transition expenses, and $36.1million for the FCIF.

Federal Buildings Fund (FBF)

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

For FY2009, the President requested that an additional amount of $525 million be deposited in the FBF, and that $620 million of FBF revenues remain available until expended for construction and acquisition of facilities. The House Appropriations Committee recommended that an additional amount of $309 million be deposited in the FBF, and $454 million be made available for construction and acquisition of facilities, both less than the President's request. The Senate Appropriations Committee recommended that an additional amount of $672 million be deposited in the FBF, and $767 million be made available for construction and acquisition of facilities, both more than the President's request. Enacted appropriations for FY2009 included $651 million for deposit in the FBF, and $746 million for construction and acquisition of facilities.

Electronic Government Fund (E-Gov Fund)[84]

Originally unveiled in advance of the President's proposed budget for FY2002, the E-Gov Fund and its appropriation have been a somewhat contentious matter between the President and Congress. The President's initial $20 million request was cut to $5 million, which was the amount provided for FY2003, as well. Funding thereafter was held at $3 million for FY2004, FY2005, FY2006, FY2007, and FY2008. Created to support interagency e-gov initiatives approved by the

[84] Questions regarding the Electronic Government Fund should be directed to (name redacted), Analyst in American National Government, Government and Finance Division.

Director of OMB, the fund and the projects it sustains have been subject to close scrutiny by, and accountability to, congressional appropriators. As he did for FY2008, the President requested $5 million for the fund for FY2009. Noting that, as of March 2008, the e-gov account had a little over $7 million still unspent from prior years, including the entire FY2008 appropriation, House appropriators recommended no additional funding for the account for FY2009. Senate appropriators recommended $1 million for the fund.

The consolidated continuing appropriations act temporarily returned the E-Gov Fund to a $3 million appropriation for FY2009. The omnibus budget, however, eliminated all FY2009 E-Gov Fund appropriations. The E-Gov Fund received no FY2009 appropriations.

Although GSA did not receive FY2009 appropriations for its E-Gov Fund, the Small Business Administration received $2,649,000 in direct appropriations for its "Business Gateway" E-gov initiative. The program is to improve administrative efficiency by eliminating the need for as many as 80 funding transfers annually from 21 participating agencies.[85] Congress also directed SBA to budget a direct request for funding for this project in its FY2010 submission to Congress.

In addition, Section 733 of P.L. 111-8 prohibits agencies from acquiring funding for E-Gov initiatives previously approved by the Office of Management and Budget (OMB) unless the relevant congressional appropriation committee has been notified of the funding request at least 15 days prior the distribution of funding. The law also requires all new E-Gov initiatives seeking funding to receive approval from relevant congressional committees.

Independent Agencies Related to Personnel Management

The FY2008 budget included information on the portfolios of each of the agencies involved in personnel management functions: the Federal Labor Relations Authority (FLRA), the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), and the Office of Special Counsel (OSC). **Table 8** shows appropriations as enacted for FY2008, as requested for FY2009, as recommended by the House and Senate Committees on Appropriations, and as enacted for FY2009, for each of these agencies.

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

(in millions of dollars)

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Federal Labor Relations Authority	$23.6	$22.7	$22.7	$22.7	$22.7
Merit Systems Protection Board	40.1	41.4	41.4	41.4	41.4
(total)					
Salaries and Expenses	*37.5*	*38.8*	*38.8*	*38.8*	*38.8*
Limitation on Administrative	*2.6*	*2.6*	*2.6*	*2.6*	*2.6*

85 P.L. 111-8, p. 55.

Agency	FY2008 Enacted	FY2009 Request	FY2009 House Committee	FY2009 Senate Committee	FY2009 Enacted
Expenses					
Office of Personnel Management (total)	21,110.3	20,357.9	20,358.4	20,362.5	20,360.5
Salaries and Expenses	*101.8*	*92.8*	*92.8*	*92.8*	*92.8*
Limitation on Administrative Expenses	*123.9*	*118.1*	*118.1*	*118.1*	*118.1*
Office of Inspector General (salaries and expenses)	*1.5*	*1.5*	*1.5*	*2.1*	*1.8*
Office of Inspector General (limitation on administrative expenses)	*17.1*	*16.5*	*17.0*	*20.4*	*18.8*
Government Payments for Annuitants, Employee Health Benefits[a]	*8,884.0*	*9,533.0*	*9,533.0*	*9,533.0*	*9,533.0*
Government Payments for Annuitants, Employee Life Insurance[a]	*41.0*	*46.0*	*46.0*	*46.0*	*46.0*
Payment to Civil Service Retirement and Disability Fund[a]	*11,941.0*	*10,550.0*	*10,550.0*	*10,550.0*	*10,550.0*
Office of Special Counsel	$17.5	$17.5	$17.5	$17.5	$17.5

Sources: President's FY2008 budget request; *FY2009 Budget, Appendix*, pp. 1097-1108, 1179-1180, 1190-1191, and 1215; H.Rept. 110-920, S.Rept. 110-417, and Financial Services and General Government Appropriations Act, FY2009 (Div. D, P.L. 111-8), House Appropriations Committee Print.

a. The annual appropriations act provides "such sums as may be necessary" for the health benefits, life insurance, and retirement accounts. The Office of Personnel Management's *Congressional Budget Justification* for FY2009 states the FY2009 amounts for these accounts as $9,595.0 million (health benefits), $46 million (life insurance), and $10,172.0 million (retirement) at pp. 129-131. The *FY2009 Budget Appendix*, at pp. 1100-1101, states the same amounts as the budget justification.

Federal Labor Relations Authority (FLRA) [86]

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

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

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

charges of unfair labor practices, and manages the FLRA's regional offices. The FSIP resolves labor negotiation impasses between federal agencies and labor organizations.

The President's FY2009 budget proposed an appropriation of $22.7 million for the FLRA, $967 thousand below the agency's FY2008 appropriation of $23.6 million. The House recommended $22.7 million for FY2009, the same as the President's request. The Senate Committee on Appropriations approved funding of $22.7 million, the same amount as recommended by the House. The Omnibus Appropriations Act, 2009 (P.L. 111-8) appropriated $22.7 million, the same as the amount requested and $967 thousand (4.1%) less than the amount provided for FY2008.

Merit Systems Protection Board (MSPB) [87]

The President's budget requested an FY2009 appropriation of almost $41.4 million for the MSPB, 3.25% above the FY2008 funding of $40.1 million. The agency's full-time equivalent (FTE) employment level would remain at 236 for FY2009. The House committee recommended the same appropriation as the President requested to provide "funding for mandatory pay raises, increased rent payments, and other non-personnel cost increases." The Senate committee also recommended, and P.L. 111-8 provides, the same appropriation as the President requested. MSPB issued 8,105 decisions in FY2007 (actual), and its budget submission projected that 8,400 decisions would be issued in FY2008 (estimate).

The authorization for the agency expired on September 30, 2007. The 110th Congress considered, but did not act upon, legislation that would have reauthorized the MSPB for three years and enhanced the agency's reporting requirements. Senator Daniel Akaka and Representative Danny Davis introduced the Federal Merit System Reauthorization Act of 2007, S. 2057 and H.R. 3551, on September 17, 2007, and the bills were referred to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform, respectively.

Office of Personnel Management (OPM)

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

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

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

The House committee recommended the same funding as requested by the President for the OPM accounts, except for the "limitation on transfers from the trust funds" account of the Office of Inspector General (OIG), for which the committee recommended an additional $500,000. The Senate committee did likewise, except for the OIG salaries and expenses and "limitation on transfers from the trust funds" accounts for which the committee recommends additional amounts of $598,000, and almost $4 million, respectively. The Senate report stated that the funding "will help restore the OIG's budget to previous levels and permit additional audits and investigations."[88] P.L. 111-8 provides the same funding as requested by the President for the OPM accounts, except for the OIG salaries and expenses and "limitation on transfers from the trust funds" accounts for which the law appropriates additional amounts of $300,000 and $2.3 million, respectively.

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

- The Government Accountability Office is directed "to assess the impact of the stop work [on a major contract] order on OPM's plans for developing (including testing) and implementing RetireEZ," the program to modernize the federal government's retirement systems.[89] (House and Senate reports)
- OPM is directed to continue to make publicly available, "in a consistent and consolidated format, and in a timely manner" data from the Federal Human Capital Survey. (House report)
- OPM is encouraged "to develop approaches that agencies can use to attract the best and brightest talent; match employee skills and abilities with specific agency missions and goals; ensure that talented employees are engaged and empowered to use their talent; improve leadership development; and ensure high performance from the workforce." (House report)
- OPM is urged to review the findings of a study group on Hispanic employment in the federal government (formed by several agencies, including the Equal Employment Opportunity Commission and the Social Security Administration) "for possible approaches to improve Hispanic recruitment, retention, and advancement government-wide." (House report)
- OPM is directed to lead an "effort to encourage individual agency human resource offices to ... [recruit from] the talent pool that exists in the U.S. territories."[90] (House report)
- Within 45 days after the act's enactment, OPM is directed to report to the committee on time lines, including start and completion dates for activities related to dependent care programs, including a marketing campaign for an open season for enrollment, development of ways to encourage agencies to educate employees about enrollment, outreach to groups with similar interests in dependent care, advertising the availability of tuition assistance to offset enrollment costs, and establishing a link on child care subsidies on the OPM homepage. (Senate report)

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88 S.Rept. 110-417, p. 103.

89 H.Rept. 110-920, p. 86, and S.Rept. 110-417, p. 99.

90 H.Rept. 110-920, pp. 86-87.

- OPM is directed to advise the committee as improvements in the agency's efforts to foster the employment of individuals with disabilities are made. (Senate report)
- Within 120 days after the act's enactment, OPM is directed to report to the committee on the use of the Intergovernmental Personnel Act Mobility Program to alleviate the shortage of nurses and the steps taken to encourage nurses employed by the federal government to teach at accredited colleges of nursing. (Senate report)
- OPM is directed to review federal employment policies and consider whether any changes may be necessary to foster the employment of individuals who are blind. The agency is encouraged to submit a report on employment for the blind, including the views of federal employee labor organizations. The report must be submitted by July 15, 2009.[91] (Senate report)
- The directives listed above are included in P.L. 111-8. The law also strongly urges the Department of Defense to submit a request, and OPM to act swiftly on any such request, to waive the pay cap for blue-collar workers in the New Orleans, Louisiana Appropriated Fund Federal Wage System area. P.L. 111-8 directs OPM to consider taking steps to extend health care benefits to the domestic partners of federal employees.

Office of Special Counsel (OSC)[92]

The President's budget requested an FY2009 appropriation of $17.5 million for the OSC, the same level of funding that was enacted in FY2008. The agency's full-time equivalent (FTE) employment level would have increased by one, to 111, for FY2009. OSC's budget submission projected a continued increase in the number of prohibited personnel practices cases and disclosure cases received and notes that strategic management and cross-training of employees is being emphasized to ensure the maximum use of agency resources. The House and Senate committees recommended, and P.L. 111-8 provides, the same funding as the President requested. The House committee report stated that the OSC "must refocus its efforts" to carry out its "fundamental missions of protecting federal employees from prohibited personnel practices, providing a safe channel for whistleblower disclosures, and enforcing the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act."[93] In its report, the Senate committee "strongly urges the OSC to work with whistleblower advocacy organizations to promote the highest level of confidence in the Whistleblower Protection Act and the OSC" and acknowledges that the agency's caseload continues to grow.[94]

The authorization for the agency expired on September 30, 2007. The 110th Congress considered, but did not act upon, S. 2057 and H.R. 3551, The Federal Merit System Reauthorization Act of 2007. The legislation, introduced by Senator Daniel Akaka and Representative Danny Davis,

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

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

[93] H.Rept. 110-920, p. 90.

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

would have reauthorized the OSC for three years and included provisions to enhance the agency's reporting requirements.

National Archives and Records Administration (NARA)[95]

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

The President's budget also attempted to deny funding for the recently created Office of Government Information Services (OGIS) established within NARA by amendments to the Freedom of Information Act (FOIA), which were signed into law by the President on December 31, 2007.[96] The OGIS was established to (1) review agency compliance with FOIA policies, (2) recommend policy changes to Congress and the President, and (3) offer mediation services between FOIA requesters and agencies as a non-exclusive alternative to litigation. The OGIS is authorized to issue advisory opinions if mediation fails to resolve a dispute. The President's budget proposed no funding for the OGIS and having the Department of Justice carry out the responsibilities of the office using funds from its general administration account.[97] Amending language would have to be included in appropriations legislation in order to fully effectuate this proposed arrangement.

House appropriators recommended almost $424 million for NARA for FY2009, an increase of almost $32 million over the requested amount. Of this recommended amount, $330 million was proposed for operating expenses, an increase of a little more than $2 million above the budget request. Specified allocations from this account included slightly more than half a million dollars to increase archivist staff, $1 million for the OGIS, and over half a million dollars for review and declassification of U.S. government records on the Nazi and Japanese Imperial governments. Other allocations from the recommended amount for NARA included $67 million for the electronic records archive, almost $27 million for repairs and restoration, and $12 for the NHPRC. Appropriators indicated they were "greatly concerned about the preservation of official Presidential records, including the revelations that the White House cannot account for hundreds of days of e-mails processed between 2003 and 2005. They urged NARA "to continue to work diligently to ensure that the records of the outgoing Administration are located and preserved" and "to work with the incoming Administration to establish and implement policies and procedures to ensure the preservation of electronic Presidential records."[98]

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[95] Questions regarding the National Archives and Records Administration should be directed to (name redacted), Analyst in American National Government, Government and Finance Division.

[96] P.L. 110-175, Sec. 10.

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

[98] H.Rept. 110-920, p. 82.

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

The consolidated continuing appropriations act temporarily returned NARA funding to its FY2008 funding level of $400 million for FY2009. As indicated in **Table 7**, the omnibus budget appropriated a total of $447,435,000 to the National Archives and Records Administration. The omnibus budget appropriated $330,308,000 in operating expenses — nearly $2 million more than requested by the President and $308,000 more than recommended by the House Appropriations Committee, but $575,000 less than the Senate Appropriations Committee recommended. Congress appropriated $67,008,000 for the electronic records archive, and $50,711,000 for repairs and restoration. The funding for repairs and restoration is considerably larger than the President, the House, and the Senate had requested, but the law requires $31,500,000 of that appropriation be used to build an addition on the John F. Kennedy Presidential Library and Museum ($22,000,000), to repair and renovate the Franklin D. Roosevelt Presidential Library and Museum ($17,500,000), and to repair and restore the Lyndon Baines Johnson Presidential Library and Museum ($2,000,000).[99] Within the appropriation, $6,325,000 is provided for operations of the temporary George W. Bush Presidential Library and Museum in Lewisville, TX.

In addition to the other appropriations, Congress included in the omnibus budget $1 million for NARA to create a new Office of Government Information Services. The law explicitly states that the Office is to be funded through NARA as "authorized by the OPEN Government Act of 2007" (P.L. 110-175). The National Historical Publications Commission received $11,250,000 for FY2009, $1,750,000 more than FY2008. Congress required $2 million of that appropriation to be used for operating expenses.

National Credit Union Administration (NCUA)[100]

The NCUA is an independent federal agency funded entirely by the credit unions that the agency charters, insures, and regulates. Two entities managed by the NCUA are addressed by the Financial Services and General Government bill. One of these, the Community Development Revolving Loan Fund (CDRLF), makes low-interest loans and technical assistance grants to low-income credit unions. The Consolidated Appropriations Act of 2008 (P.L. 110-161) appropriated $975,000 for FY2008. The President requested, and both the House and Senate Committees on Appropriations recommended, $1 million for FY2009. The Omnibus Appropriations Act of 2009 (P.L. 111-8) provides for $1 million.

The Consolidated Appropriations Act of 2008 (P.L. 110-161) provided a $1.5 billion limitation on direct loans from the Central Liquidity Facility (CLF) for FY2008. The President requested, and both committees recommended, that the $1.5 billion cap remain unchanged for FY2009. P.L. 110-329 increases the cap to the amount authorized by the Federal Credit Union Act (12 U.S.C. 1795f(a)(4)(A)) of 12 times the subscribed capital stock and surplus of the CLF. This increase is

[99] Conference Report.

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

equivalent to a cap of about $41 billion. The Omnibus Appropriations Act of 2009 also provides the CLF with the ability to lend up to the maximum level provided for by the Federal Credit Union Act for FY2009. This provision gives the NCUA flexibility to assist with credit unions' financial liquidity during the current economic downturn.

Privacy and Civil Liberties Oversight Board (PCLOB)[101]

Originally established by the Intelligence Reform and Terrorism Prevention Act of 2004 as an agency within the Executive Office of the President (EOP),[102] the PCLOB was reconstituted as an independent agency within the executive branch by the Implementing Recommendations of the 9/11 Commission Act of 2007.[103] The board assumed its new status on January 30, 2008; its FY2009 appropriation will be its first funding as an independent agency.[104] Among its responsibilities, the five-member board is to (1) ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the nation against terrorism; (2) review the implementation of laws, regulations, and executive branch policies related to efforts to protect the nation from terrorism, including the implementation of information sharing guidelines; and (3) analyze and review actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties. The board advises the President and the heads of executive branch departments and agencies on issues concerning, and findings pertaining to, privacy and civil liberties. The board provides annual reports to Congress detailing its activities during the year, and board members appear and testify before congressional committees upon request.

As indicated in **Table 7**, the President's FY2009 request for the PCLOB was $2 million, which was the same amount appropriated for the board for FY2008 when it was an EOP agency. House appropriators recommended $1 million for the PCLOB for FY2009. In their report, appropriators expressed strong support for the mission of the board, and indicated they would "consider additional funding as necessary at the appropriate time." They noted that the board has not been fully reconstituted as an independent agency and, therefore, "the new entity's funding requirements have not been firmly established or justified to the Committee [on Appropriations]." The board was urged, "once reconstituted, to present the Committee with a detailed budget justification as quickly as possible."[105]

Senate appropriators recommended $2 million for the PCLOB, the amount requested by the President. The consolidated continuing appropriations act temporarily returned PCLOB funding to its FY2008 funding level of $2 million for FY2009. The omnibus appropriations act (P.L. 111-8) provides $1.5 million for the board to remain available until September 30, 2010.

[101] Questions regarding the Privacy and Civil Liberties Oversight Board should be directed to (name redacted), Analyst in American National Government, Government and Finance Division.

[102] 118 Stat. 3638 at 3684.

[103] 121 Stat. 266 at 352.

[104] See CRS Report RL34385, *Privacy and Civil Liberties Oversight Board: New Independent Agency Status*, by (name redacted).

[105] H.Rept. 110-920, p. 91.

Securities and Exchange Commission (SEC)[106]

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

For FY2008, the SEC received $906.0 million, of which $63.3 million came from prior year unobligated balances, and the remainder from current-year collections. There was no direct appropriation from the general fund.

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

The Senate Appropriations Committee recommended $938.0 million for FY2009, or 2.7% over the Administration's request. Of the amount, $890 million would have come from new fee collections, and the remaining $48 million from prior year balances. There would have been no direct appropriation from the general fund. The omnibus appropriations act (P.L. 111-8) provides $943.0 million for the SEC, of which $48.6 million will come from prior-year fees and $894.4 million from current-year fees.

Selective Service System (SSS)[107]

The SSS is an independent federal agency operating with permanent authorization under the Military Selective Service Act (50 U.S.C. App. §451 et seq.). It is not part of the Department of Defense, but its mission is to serve the emergency manpower needs of the military by conscripting personnel when directed by Congress and the President.[108] All males ages 18 through 25 and living in the United States are required to register with the SSS. The induction of men into the military via Selective Service (i.e., the draft) terminated in 1972. In January 1980, President Carter asked Congress to authorize standby draft registration of both men and women. Congress approved funds for male-only registration in June 1980.

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

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

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

Since 1972, Congress has not renewed any President's authority to begin inducting (i.e., drafting) anyone into the armed services. In 2004, an effort to provide the President with induction authority was rejected.[109]

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

Small Business Administration (SBA)[110]

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

The Bush Administration requested $658.5 million for the SBA for FY2009; this figure included $174.4 million for disaster loans. The Senate Appropriations committee recommended $765.8 million in FY2009 budget authority compared to the House Appropriations Committee recommendation of $880.3 million. The Administration's request and the Senate and House committees' recommendations represented an increase over the amount enacted for FY2008 of $569.0 million (P.L. 110-161). In addition to regular appropriations, in FY2008 the SBA had $799 million in an emergency appropriation contained in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (P.L. 110-329), which became law on September 30, 2008, for total appropriations of $1.368 billion in FY2008.

P.L. 111-8, the Omnibus Appropriations Act of 2009, provides $386.9 million for SBA salaries and expenses; $141.0 million was provided for the business loan account, $65.7 million for small business "programmatic and construction activities," $16.8 million for the SBA Office of the Inspector General, and $2.0 million for the surety bond guarantee revolving loan program.[111] There was no new budget authority for disaster loans. Total funding appropriated for SBA for FY2009 was $612.3 million, 7% below the President's request of $658.5 million.

In FY2009 the SBA is authorized to guarantee up to $17.5 billion of 7(a) loans, up to $7.5 billion for the 504 certified development company loans, up to $3.0 billion for Small Business Investment Company debentures, and up to $12.0 billion for the secondary market guarantee program. These are the same authorization levels as in FY2008.

[109] See H.R. 163, October 5, 2004, failed by Yeas and Nays (Roll no. 494).

[110] This section was written by Oscar Gonzalez, Analyst in Economics, Government and Finance Division.

[111] The act provides funding for non-credit SBA programs, including $1.2 million for veterans programs; $110.0 million for Small Business Development Centers; $13.75 million for Women's Business Centers; $20.0 million for microloans; and $2.15 for Historically Underutilized Business Zones (HUBZones).

In addition, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) appropriated $730 million for the SBA.[112]

United States Postal Service (USPS)[113]

The U.S. Postal Service generates nearly all of its funding—about $75 billion annually—by charging users of the mail for the costs of the services it provides.[114] However, Congress does provide an annual appropriation to compensate the USPS for revenue it forgoes in providing free mailing privileges to the blind[115] and overseas voters.[116] Appropriations for these purposes were authorized by the Revenue Forgone Reform Act of 1993 (RFRA).[117] This act also authorized Congress to provide the USPS with a $29 million annual reimbursement until 2035 to pay for the costs of postal services provided at below-cost rates to not-for-profit organizations in the early 1990s.[118] Funds appropriated to the USPS are deposited in the Postal Service Fund, a revolving fund at the U.S. Department of the Treasury.

The Postal Accountability and Enhancement Act (PAEA), which was enacted on December 20, 2006, first affected the postal appropriations process for FY2009.[119] While the PAEA did not authorize any additional appropriations to the Postal Service Fund, it did alter the budget submission process for the USPS's Office of Inspector General (USPSOIG) and the Postal Rate Commission (PRC). In the past, the USPSOIG and the PRC submitted their budget requests to the USPS's Board of Governors. Accordingly, past presidential budgets did not include funding proposals for the USPSOIG and the PRC. Under the PAEA, both the USPSOIG and the PRC—which the PAEA renamed the Postal Regulatory Commission—must submit their budget requests to Congress and to the Office of Management and Budget (120 Stat. 3240-3241), and they are to be paid from the off-budget Postal Service Fund. The law further requires USPSOIG's budget submission to be treated as part of USPS's total budget, while the PRC's budget, like the budgets of other independent regulators, is treated separately.

For FY2009, the USPS requested a $117.7 million appropriation to the Postal Service Fund.[120] Of this amount, $88.7 million would be for revenue forgone, and $29 million would be for the

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[112] CRS Report R40241, *Small Business Provisions in the American Recovery and Reinvestment Act of 2009*, by (na me redacted) and (name redacted).

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

[114] U.S. Postal Service, *United States Postal Service Annual Report 2008* (Washington: USPS, 2008), p. 3.

[115] 84 Stat. 757; 39 U.S.C. 3403. See also USPS, *Mailing Free Matter for Blind and Visually Handicapped Persons: Questions and Answers*, Publication 347 (Washington: USPS, May 2005), available at http://www.usps.com/cpim/ftp/pubs/pub347.pdf.

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

[117] 107 Stat. 1267, 39 U.S.C. 2401(c)-(d).

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

[119] P.L. 109-435; 120 Stat. 3198. On PAEA's major provisions, see CRS Report RS22573, *The Postal Accountability and Enhancement Act*, by (name redacted).

[120] USPS, "Fiscal Year 2009 Appropriation Request," Dec. 11, 2007, available at http://www.usps.com/financials/_pdf/
(continued...)

annual RFRA reimbursement. This amount is $0.2 million less than USPS's FY2008 appropriation (P.L. 110-161, Title V).

The USPSOIG requested a $241.3 million appropriation,[121] and the PRC requested a $14 million appropriation.[122]

The President's FY2009 budget proposed a $322.2 million total appropriation to USPS. It included an $82.8 million appropriation to USPS for revenue forgone, no funds for the annual RFRA reimbursement,[123] and a $239.4 million transfer of funds from the Postal Service Fund to the USPSOIG. Separately, the President's budget proposed a $14.0 million "transfer of funds" from the USPS's Postal Fund to the PRC.[124]

The House Committee on Appropriations recommended a total appropriation of $351.2 million, which includes $111.8 for USPS—$82.8 million for revenue forgone, $29 million for the RFRA reimbursement—and $239.4 million for the USPSOIG. Separately, the committee recommended a $14.0 million transfer of funds from the Postal Service Fund to the PRC. The committee also approved an amendment offered by Representative Jack Kingston that would have required the USPS to provide a "report on the cost effectiveness of and fuel consumption of a five-day delivery system and the efficiency and consumer demand of Saturday delivery services."[125]

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

> believes that 6-day mail delivery is one of the most important services provided by the Federal Government to its citizens. Especially in rural and small town America, this critical postal service is the linchpin that serves to bind the Nation together.[126]

The committee also encouraged the USPS

> to expedite its efforts to assess service needs, reestablish postal facilities, improve mail delivery, and enhance product and service offerings to customers in New Orleans and other Louisiana communities affected by Hurricanes Katrina and Rita.... to seek additional savings resulting from lower [paper] waste disposal costs which accompany increased [paper] recycling.... [and] to routinely examine the cost, feasibility, and mission compatibility of

(...continued)

Appropriations2009_Final.pdf.

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

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

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

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

125 U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, 110th Cong., 2nd sess., H.Rept. 110-920 (GPO: Washington, 2008), p. 102.

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

> other opportunities to fulfill its commitment to minimize the agency's impact on every aspect of the environment and demonstrate its commitment to environmental stewardship.[127]

Additionally, the committee directed the USPS

> not to proceed with the Sioux City, Iowa AMP until after the [Government Accountability Office (GAO)] has reported to Congress and the Committee has had an opportunity to review GAO's findings.... [and] to keep the Committee promptly and regularly informed on its [mail biohazard] treatment processes and to consult with the Committee on its future plans for securing mail irradiation services, including costs.[128]

Congress's decision to enact a continuing resolution presented, as the U.S. Government Accountability Office (GAO) put it, a "conundrum" for the USPOIG and the PRC.[129] As mentioned above, Section 603 of the PAEA requires the USPOIG and the PRC to receive their funding through congressional appropriation. Additionally, the law makes these agencies' expenditures "subject to the availability of the amounts appropriated." A continuing resolution would extend the past year's appropriation law (P.L. 110-161), which did not provide an appropriation for either the USPOIG or the PRC. (Again, under the pre-PAEA law, the USPS's Board of Governors funded the USPOIG and the PRC.) Thus, the enactment of a continuing resolution might have required the USPOIG and the PRC to shut down operations on October 1, 2008, the start of FY2009.

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

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

Ultimately, the Omnibus Appropriations Act, 2009 (P.L. 111-8) provided the USPS with an appropriation of $111.8 million, $82.8 million of which is to be used for revenue forgone, and $29.0 million is for the annual RFRA reimbursement. The act also approved transfers of $239.4 million and $14.0 million from the Postal Fund to the USPOIG and the PRC respectively.

The explanatory statement accompanying the act states the following:

> The U.S. Postal Service should keep Congress apprised of any actions the Postal Service plans to take on the PRC recommendations [regarding alterations to universal postal service

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127 Ibid., p. 116.

128 Ibid., pp. 116-117.

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

> and the USPS's monopoly], including actions, if applicable, relating to five-day delivery service and its impact on fuel consumption.[130]
>
> The Postal Service should continue its efforts to upgrade postal operations and improve customer service in Chicago, and to assess service needs, reestablish postal facilities, improve mail delivery, and enhance product and service offerings to customers in New Orleans and other Louisiana communities.
>
> The Postal Service should make every effort to maintain the U.S. Post Office in Danville, Virginia, and provide full postal services to the citizens of Danville.
>
> [Additionally, the USPS must] keep the Appropriations Committees promptly and regularly informed on its mail treatment processes and to consult with the Committees on its future plans for securing mail irradiation services, including costs.[131]

United States Tax Courts (USTC) [132]

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

The President requested, and P.L. 111-8 provides, $48.5 million for USTC for FY2009, an increase of $3.2 million over the agency's FY2008 enacted appropriation.

General Provisions Government-Wide[133]

The Financial Services and General Government appropriations language includes general provisions which apply either government-wide or to specific agencies or programs. There also may be general provisions at the end of an individual title within the appropriations act which relate only to agencies and accounts within that specific title. The Administration's proposed language for government-wide general provisions was included in the FY2009 Budget, Appendix.[134] Most of the provisions continue language that has appeared under the General Provisions title for several years. For various reasons, Congress has opted to reiterate the language rather than making the provisions permanent. Presented below are some of the government-wide general provisions that were included in P.L. 110-161, the Consolidated Appropriations Act for FY2008, but that were not included in the FY2009 budget proposal. (The section numbers refer to the provisions as they appeared in P.L. 110-161.

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[130] Postal Regulatory Commission, Report on Universal Postal Service and the Postal Monopoly (Washington: PRC, 2008).

[131] Obey, Representative David R. "Explanatory Statement Submitted by Mr. Obey, Chairman of the House Committee on Appropriations, Regarding H.R. 1105, Omnibus Appropriations Act, 2009." Congressional Record, daily edition, vol. 155, no. 31 (February 23, 2009), p. H2073.

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

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

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

- Section 709, which prohibited payment to political appointees who are filling positions for which they have been nominated, but not confirmed. Section 749 of P.L. 111-8 prohibits appropriation of funds for the payment of services to any individual carrying out the responsibilities of any position requiring Senate advice and consent in an acting or temporary capacity after the second submission of a nomination for that individual to that position has been withdrawn or returned to the President. The provision became effective on January 20, 2009, and applies for each fiscal year thereafter.
- Section 717, which prohibited the payment of any employee who prohibits, threatens, prevents, or otherwise penalizes another employee from communicating with Congress. Section 714 of the House bill and the Senate bill as reported and Section 714 of P.L. 111-8.
- Section 718, which prohibited the obligation or expenditure of appropriated funds for employee training that (1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties; (2) contains elements likely to induce high levels of emotional response or psychological stress in some participants; (3) does not require prior employee notification of the contents and methods to be used in the training and written end of course evaluation; (4) contains any methods or contents associated with religious or quasi-religious belief systems or "new age" belief systems; or (5) is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace. Section 715 of the House and Senate bills as reported and P.L. 111-8.
- Section 719, which prohibited the use of appropriated funds to implement or enforce employee non-disclosure agreements if they do not contain whistleblower protection clauses. Section 716 of the House and Senate bills as reported and P.L. 111-8.
- Section 722, which required the approval of the Committees on Appropriations for the release of any "non-public" information, such as mailing or telephone lists, to any person or any organization outside the federal government. Section 719 of the House and Senate bills as reported and P.L. 111-8.
- Section 733, which stated that Congress recognizes the United States Anti-Doping Agency as the official anti-doping agency for Olympic, Pan American, and Paralympic sports in the United States. Section 729 of the House and Senate bills as reported and Section 729 of P.L. 111-8.
- Section 735, which prohibited the use of appropriated funds to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program or to implement OPM's proposed regulations limiting the detail of executive branch employees to the legislative branch. Section 731 of the House and the Senate bills as reported and P.L. 111-8.
- Section 737, which required agencies to provide information on e-government initiatives, including lines of business, in their FY2009 budget justifications. Section 733 of the House and Senate bills as reported and P.L. 111-8.
- Section 738, which required appropriate executive department and agency heads either to transfer funds to, or reimburse, the Federal Aviation Administration to

ensure the uninterrupted, continuous operation of the Midway Atoll airfield. Section 734 of the Senate bill as reported and P.L. 111-8.

- Section 742, which precluded contravention of the Privacy Act. Section 739 of the House bill and section 740 of the Senate bill as reported and P.L. 111-8.
- Section 744, which required OMB to submit a crosscut budget report on restoration activities for the Great Lakes. Section 741 of the House bill and Section 742 of the Senate bill as reported and P.L. 111-8.
- Section 745, which prohibited funds to be used for federal contracts with expatriated entities. Section 742 of the House bill and Section 743 of the Senate bill as reported and P.L. 111-8.
- Section 748, which required OMB to establish a pilot program to develop and implement an inventory to track the cost and size of service contracts, particularly those that have been performed poorly, in at least three cabinet-level departments. Section 746 of the Senate bill as reported and Section 747 of P.L. 111-8.

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

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

The President allocated the pay raise between a 2.9% annual (basic) adjustment and a 1.0% locality pay adjustment in Executive Order 13483, issued on December 18, 2008. (Individuals who are paid under the schedule for the Senior Executive Service (SES) do not receive locality pay and those who are paid under the schedule for senior-level (SL) and scientific or professional (ST) positions will not receive locality pay after April 12, 2009, when a new SL and ST pay schedule authorized by P.L. 110-372 becomes effective.)

Among new general provisions that were recommended by the House or Senate Committees on Appropriations and are included in P.L. 111-8 are these:

- OPM, or any other agency, is prohibited from using funds to implement regulations that would change competitive areas under reductions-in-force affecting federal employees. Section 745 of the House bill, Section 749 of the Senate bill as reported and Section 745 of P.L. 111-8.

- Funds are prohibited from being used to implement the provisions on Regulatory Policy Officers in Executive Order 13422.[135] Section 746 of the House bill and P.L. 111-8.
- The federal government is expected to conduct its business "in an environmentally, economically, fiscally sound and scientifically defensible manner" in carrying out Executive Order 13423 related to management of the environment, energy, and transportation.[136] Section 747 of the House bill and Section 748 of P.L. 111-8.
- Federal employees will maintain their federal salary when called up to active duty in the National Guard and Reserve, with their agencies making up the difference between their military pay and their federal salary. Section 750 of the Senate bill as reported and Section 751 of P.L. 111-8.
- Each executive branch department and agency is required to submit a report to the OMB Director that would state the total size of its workforce, including the number of civilian, military, and contract workers as of December 31, 2008. The report must be submitted within 120 days after the act's enactment. The OMB Director is required to submit a "comprehensive statement" to the House and Senate Committee on Appropriations on the workforce data of the departments and agencies and aggregate totals of civilian, military, and contract workers, within 180 days after the act's enactment. Section 753 of the Senate bill as reported and Section 752 of P.L. 111-8.

Competitive Sourcing[137]

Section 735 of P.L. 111-8 expands the applicability of Section 739(a)(1) (Division D) of P.L. 110-161, the Consolidated Appropriations Act of 2008, to all public-private competitions. Section 739(a)(1) of the act, which established certain requirements for public-private competitions, applied only to competitions that involve more than 10 federal government employees.[138]

Section 736 of P.L. 111-8 replaces the language found in Section 739(b) (Division D) of P.L. 110-161 and elaborates on the guidelines for insourcing new functions and agency functions performed by the private sector sources. This provision directs agency heads to implement required guidelines and procedures no later than 120 days after the date of enactment of this subsection (that is, Section 736(b)). GAO's deadline for submitting a report to certain congressional committees regarding the implementation of insourcing guidelines is 210 days after the date of enactment of this subsection.

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

[136] H.Rept. 110-920, p. 109.

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

[138] Summaries of Section 739, and Sections 735-736 of P.L. 111-8, may be found in CRS Report RL32833, *Competitive Sourcing Statutes and Statutory Provisions*, by (name redacted).

In this context, the term "insourcing" refers to considering using federal employees "to perform new functions and functions that are performed by contractors and could be performed by Federal employees."[139] Public-private competitions that involve work performed by contractors are rare. Most public-private competitions involve work performed by agency employees. Opponents of the proposed revision may maintain that the feasibility, and hence the implications, of Section 735 are unclear. The requirement to consider using federal employees for new functions and for functions currently being performed by contractors might be affected by, for example, the availability of resources. That is, an agency might not have sufficient personnel to staff the new function, and it might not be able to obtain additional personnel. Potential critics may argue that if a function under consideration for insourcing is currently being performed by contractor personnel and an A-76 competition is required, an agency might not have sufficient resources to perform the tasks associated with a public-private competition.

Section 737 of P.L. 111-8 prohibits using funds appropriated by this act or any other act for the announcement or commencement of a public-private competition or study that involves activities currently being performed by federal employees. This provision does not apply to public-private competitions in progress. In its report on H.R. 7323, the House Committee on Appropriations explained that the "one-year moratorium on new A-76 studies" would provide "the new [presidential] Administration ... an opportunity to review and develop Federal workforce policies."[140] In the absence of additional information, the meaning of "Federal workforce policies" is unclear in this context. Nevertheless, the moratorium could provide an opportunity for gathering data on the disposition of federal employees whose work was outsourced as a result of public-private competitions, or conducting an independent study of the savings and costs associated with public-private competitions. Opponents of this provision might assert that the moratorium will adversely affect the amount of savings that results from completed competitions.

Cuba Sanctions[141]

Background

Since the early 1960s, U.S. policy toward communist Cuba has consisted largely of efforts to isolate the island nation through comprehensive economic sanctions, including prohibitions on U.S. financial transactions—the Cuban Assets Control Regulations (CACR)—that are administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

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

[140] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2009*, report to accompany H.R. 7323, 110th Cong., 2nd sess., December 10, 2008, H.Rept. 110-920 (Washington: GPO, 2008), p. 108.

[141] This section was written by Mark Sullivan, Specialist in Latin American Affairs, Foreign Affairs, Defense, and Trade Division. For additional information, see CRS Report R40193, *Cuba: Issues for the 111th Congress*, by (name re dacted), and CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by (name redacted).

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

Under U.S. sanctions, some U.S. commercial agricultural exports to Cuba have been allowed since 2001 pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000, or TSRA (Title IX of P.L. 106-387). However, there are numerous restrictions and licensing requirements for these exports. For instance, exporters are denied access to U.S. private commercial financing or credit, and all transactions must be paid for in cash in advance or with financing from third countries. The Administration tightened sanctions on Cuba in February 2005 by further restricting how U.S. agricultural exporters may be paid for their product. OFAC amended the CACR to clarify that the term "payment of cash in advance" for U.S. agricultural sales to Cuba means that the payment is to be received prior to the shipment of the goods. This differs from the practice of being paid before the actual delivery of the goods, a practice that had been utilized by many U.S. agricultural exporters to Cuba since such sales were legalized in late 2001. U.S. agricultural exporters and some Members of Congress strongly objected to this "clarification" on the grounds that the action constituted a new sanction that violated the intent of TSRA, and could jeopardize millions of dollars in U.S. agricultural sales to Cuba. Then OFAC Director Robert Werner maintained that the clarification "conforms to the common understanding of the term in international trade."[142]

Since 2001 Cuba has purchased almost $2.7 billion in agricultural products from the United States. Overall U.S. exports to Cuba rose from about $7 million in 2001 to $404 million in 2004. U.S. exports to Cuba declined in 2005 and 2006 to $369 million and $340 million, respectively, but increased to $447 million in 2007. In 2008, U.S. agricultural exports to Cuba rose to $718 million, far higher than in previous years, in part because of the rise in food prices, but also because of increased Cuban needs in the aftermath of several hurricanes and tropical storms that severely damaged Cuba's agricultural sector.[143]

Legislative Action

From 2000-2007, either one or both houses of Congress included provisions in the annual Treasury Department appropriations bill that would have eased U.S. economic sanctions on Cuba (especially on travel and on U.S. agricultural exports), but none of these provisions were enacted. The Bush Administration regularly threatened to veto legislation if it included any provision weakening sanctions on Cuba. In 2007, both the House-passed and Senate Appropriations Committee-reported versions of the FY2008 Financial Services and General Government Appropriations bill, H.R. 2829, contained language that would have eased Cuba sanctions, but

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

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

ultimately Congress dropped these provisions in the Consolidated Appropriations Act for FY2008 (P.L. 110-161).

In 2008, the House Appropriations Committee version of the Financial Services and General Government Appropriations bill for FY2009, H.R. 7323, contained three provisions in Title VI that would have eased restrictions on the sale of U.S. agricultural exports and on family travel. Section 621 would have prohibited funds in the act from being used to administer, implement, or enforce new language in the Cuban embargo regulations added on February 25, 2005 (31 CFR Part 515.533) that requires that U.S. agricultural exports must be paid for before they leave U.S. ports. With regard to family travel, Section 622 would have allowed for such travel once a year, while Section 623 would have expanded such travel by a person to visit an aunt, uncle, niece, nephew, or first cousin. The committee's report to the bill, H.Rept. 110-920, would have required the OFAC to provide detailed information on OFAC's Cuba-related licensing and enforcement actions.

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

None of the Cuba provisions in S. 3260 or H.R. 7323 were included in the Consolidated Appropriations Act for FY2009 (P.L. 110-329), which continued FY2009 appropriations for the Treasury Department through March 6, 2009 (at FY2008 levels).

In 2009, however, the 111th Congress included three provisions easing Cuba sanctions in Sections 620-622 of Division D of the Omnibus Appropriations Act, 2009 (H.R. 1105/P.L. 111-8) that was signed into law on March 11, 2009. (The provisions were identical to the Cuba provisions in the Senate version of the FY2009 Financial Services and General Government Appropriations bill, S. 3260.) The provisions ease restrictions on family travel and travel for the marketing and sale of U.S. agricultural and medical exports to Cuba, and also were intended to ease payment provisions for U.S. agricultural exports to Cuba, although as discussed below, the Treasury Department's interpretation of this provision mitigated its practical effect. The joint explanatory statement to P.L. 111-8 also requires the Department of the Treasury to prepare a report within 90 days on the steps that it is taking to assess OFAC's allocation of resources for investigating and penalizing violations of the Cuba embargo with respect to the numerous other sanctions programs it administers. As part of the report, the Treasury Department is directed to provide detailed information on OFAC's Cuba-related licensing on its enforcement of the Cuba embargo.

Travel for the Marketing and Sale of Agricultural and Medical Goods. Section 620 amends the Trade Sanctions Reform and Export Enhancement Act of 2000 to require the Secretary of the Treasury to issue regulations for travel to, from, or within Cuba under a general license for the marketing and sale of agricultural and medical goods. Such travel had required a specific license from OFAC, issued on a case by case basis. On March 9, 2009, Secretary of the Treasury Timothy Geithner stated in a letter published in the *Congressional Record* that the regulations issued pursuant to this provision "would provide that the representatives of only a narrow class of businesses would be eligible, under a new general license, to travel to market and sell agricultural and medical goods." The Secretary also maintained that "any business using the general license would be required to provide both advance written notice outlining the purpose and scope of the planned travel and, upon return, a report outlining the activities conducted, including the persons with whom they met, the expenses incurred, and business conducted in Cuba."[144] On March 11, 2009, OFAC maintained that it would implement this provision in the coming weeks and promulgate regulations authorizing travel under the general license for the marketing and sale of agricultural and medical goods.

Family Travel. Section 621 prohibits funds from being used to administer, implement, or enforce family travel restrictions that were imposed by the Bush Administration in June 2004. As noted above, those 2004 restrictions allowed family travel only to visit immediate family (grandparents, grandchildren, parents, siblings, spouses, and children) once every three years for a period not to exceed 14 days. Under the 2004 restrictions, a specific license was required from OFAC for such travel, and the authorized amount that family travelers could spend while in Cuba was limited to $50 a day. On March 11, 2009, OFAC provided guidance on its implementation of this omnibus provision that reinstated the authorization for family travel to Cuba that existed prior to the June 2004 restrictions. OFAC issued a general license authorizing family travel once every 12 months for an unlimited length of stay, and increased daily expenditure limits for family travelers to the same as all other authorized travelers to Cuba (State Department maximum per diem rate for Havana, currently $179 a day). The new general license also provides for an expanded definition of "close relatives" to mean any individual related to the traveler by blood, marriage, or adoption, who is no more than three generations removed from that person (e.g., great-grandparents and second cousins). Specific licenses may be issued on a case-by-case basis for additional visits during the 12-month period or for travel to visit a close relative who is not a national of Cuba.

Payment of Cash in Advance. Section 622 prohibits funds in the Act from being used to administer, implement, or enforce an amendment to the Cuban embargo regulations issued on February 25, 2005, requiring that U.S. agricultural exporters using the "cash in advance" payment mechanism for selling their goods to Cuba must be paid in cash for their goods before the goods leave U.S. ports. As noted above, TSRA requires either the "payment of cash in advance" for such exports (or financing by third country financial institutions), but does not provide a definition of cash in advance. Prior to the February 2005 amendment to the Cuban embargo regulations, U.S. exporters could be paid for the goods before they were unloaded in Cuba. OFAC guidance on the implementation of this provision states that TSRA's statutory provisions remain in place that agricultural exports to Cuba be either paid for by "cash in advance" or financed using a third-country bank.[145] Secretary of the Treasury Geithner provided additional guidance on the implementation of this provision in a letter published in the *Congressional Record* that states that, "exporters will still be required to receive payment in advance of shipment."[146] This appears to continue the Bush Administration policy imposed in February 2005. Given the Secretary's interpretation, it appears the omnibus provision will have little, if any, practical effect. While the Secretary's response ameliorated the concerns that several Senators had regarding the provision,

[144] *Congressional Record*, March 10, 2009, p. S2933.

[145] U.S. Department of the Treasury, Office of Foreign Assets Control, "Guidance on Implementation of Cuba Travel and Trade-Related Provisions of the Omnibus Appropriations Act, 2009," March 11, 2009.

[146] *Congressional Record*, March 10, 2009, p. S2933.

it also triggered concerns by other Senators who maintained that the Secretary's action ignores the legislative intent of the Cuba provisions to ease restrictions on agricultural sales to Cuba.[147]

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[147] Caitlin Webber, "Obama Accused of Ignoring Legislators' Bid to Ease Cuba Trade Restrictions," *CQ Today*, March 18, 2009; and Jerry Hagstrom, "Bipartisan Senate Group Pushes Geithner on Cuba Trade," *Congress Daily PM, National Journal*, March 17, 2009.

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