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Department of Homeland Security Appropriations: FY2023 State of Play

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Introduction

Fiscal year 2023 marks the 20th annual appropriations cycle with a Department of Homeland Security (DHS) appropriations measure. Six of the first seven annual appropriations measures for DHS were enacted within the first month following the end of the fiscal year. Since FY2010, however, no annual appropriations measure for DHS was resolved within two months of the end of the fiscal year, and DHS received its annual appropriations within the first fiscal quarter in only two of those years. Lapses in annual appropriations for the department lasting more than a week have occurred twice in this period.

This report is a quick reference for tracking the status of DHS appropriations from the end of the August 2022 district work period until the resolution of the annual appropriations measure. It will be updated as events warrant.

For more in-depth analyses of the FY2023 DHS appropriations request and the House and Senate Appropriations Committee responses, see:

- CRS Report R47123, *DHS Budget Request Analysis: FY2023*; and
- CRS Report R47220, *Comparing DHS Component Funding, FY2023: In Brief*.

If Annual Appropriations Are Not Enacted Before the New Fiscal Year Begins...

Under current federal budgeting practices, the federal government's fiscal year ends at midnight on September 30. As this deadline approaches, if any of the annual appropriations measures are not expected to be enacted, the Administration and Congress take steps to prepare stopgap appropriations legislation—known as a *continuing resolution* (CR)—to extend funding for federal government operations until the unresolved appropriations measures can be signed into law. CRs do not provide specific levels of budget authority to agencies: they provide *temporary* budget authority provided at a specified *rate for operations* (the annualized level of resources available for the period of time covered by the CR) through a fixed expiration date, or until annual appropriations are enacted. Further, the Office of Management and Budget generally apportions those resources gradually over the period of the CR, and there are certain restrictions placed on the use of that temporary budget authority beyond the most basic agency operations. The rate for operations is usually derived from the prior year's annual appropriations measures, and the terms and conditions of those appropriations continue to apply under the CR.¹

These steps first become visible to the public when the Administration releases lists of necessary exceptions (anomalies) and extensions of authorizations that they either propose including, or would not object to including, in a CR. The Biden Administration provided such a list of anomalies on September 2, 2022, and authorization provisions the following week.² Congress weighs that information in formulating a CR, which is generally proposed by the majority without

¹ For more detailed information on continuing resolutions and how they work, see CRS Report R46595, *Continuing Resolutions: Overview of Components and Practices*.

² Shalanda Young, Office of Management and Budget (OMB) Director, *Meeting Critical Needs for the American People in the New Fiscal Year*, White House Briefing Room blog post, Washington, DC, September 2, 2022, <https://www.whitehouse.gov/omb/briefing-room/2022/09/02/meeting-critical-needs-for-the-american-people-in-the-new-fiscal-year/>.

going through a formal markup process. The CR may be considered as a stand-alone measure or attached to another bill.

It is not uncommon for a CR to only cover certain federal government agencies in cases when some annual appropriations have been enacted. For example, in FY2015, when disputes over immigration policy led to DHS being pulled from a consolidated appropriations measure, for almost three months DHS was the only federal department covered by the CR.³

If a Continuing Resolution Is Not Active...

A lapse in annual appropriations occurs if a CR is not passed prior to the end of a fiscal year, or is allowed to expire without passage of either an extension or the covered annual appropriations. A lapse results in a partial shutdown of government operations for those agencies without enacted annual appropriations. Immediately prior to the end of the fiscal year, agencies release shutdown plans that indicate, in broad terms, how the partial shutdown of operations will be implemented. Certain agency activities are allowed to continue, such as those funded by multi-year appropriations, or those specifically related to the protection of life and property. However, even for agencies like DHS, which conducts many of these excepted activities, lapses in annual appropriations can be highly disruptive.⁴

Occasionally, lapses in appropriations have occurred for a matter of hours, or over a weekend.⁵ However, in 2013 (FY2014), a lapse resulted in a partial shutdown of DHS operations for 16 days. Also, in late 2018 and early 2019 (FY2019), annual appropriations for many departments, including DHS, lapsed for 34 days.⁶

Figure 1 shows a history of the timing of the annual Department of Homeland Security Appropriations Act, since its first development in 2003 (for FY2004). Tracked actions include:

- the release of the budget request (green dot);
- full committee markups and passage of the House and Senate versions of the bill (orange and purple bars, respectively); and
- ultimate enactment of the measure (black bar).

Dotted lines show the months covered by CRs. Unshaded, white gaps indicate lapses in annual appropriations.

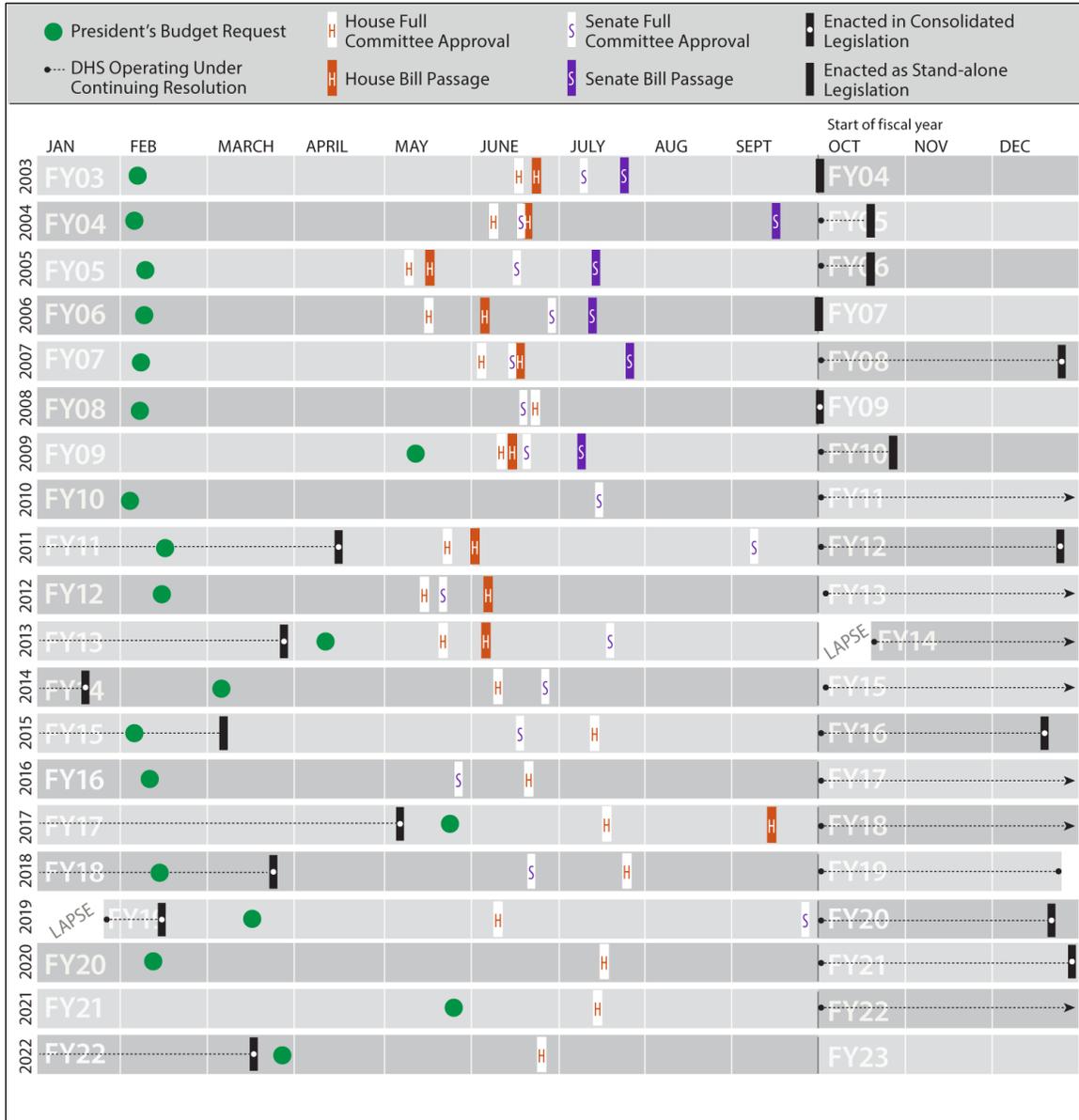
³ P.L. 113-235, Division L.

⁴ For further information on the impact of the FY2014 lapse in appropriations on the Department of Homeland Security (DHS), see CRS Report R43252, *FY2014 Appropriations Lapse and the Department of Homeland Security: Impact and Legislation*, by William L. Painter.

⁵ In FY2018, two brief lapses of annual appropriations occurred with expirations of the continuing resolution: on January 20, 2018, appropriations lapsed until January 22; and on February 8, 2018, appropriations lapsed for several hours until an extension of the CR was enacted.

⁶ At the time of the lapse, five of the 12 appropriations measures had been enacted. For more information on the impacts of past shutdowns, see CRS Report R41759, *Past Government Shutdowns: Key Resources*, by Jared C. Nagel and Justin Murray.

Figure I. DHS Appropriations Process, FY2004-FY2023
(as of September 11, 2022)



Source: CRS analysis of presidential budget request release dates and legislative action from Congress.gov.

Notes: Final action on annual appropriations for FY2011, FY2013-FY2015, FY2017-FY2019, and FY2022 did not occur until after the beginning of the new calendar year. A three-day lapse in January of FY2018 and an hours-long lapse in February of that same year are not displayed due to limitations of scale. Please note that the FY2019 lapse began in December, 2018.

The FY2023 DHS Appropriations Process

Request

On March 28, 2022, the Biden Administration released its FY2023 annual budget request, including a \$97.3 billion budget request for DHS. According to the Congressional Budget Office’s (CBO’s) initial estimation, the request included \$56.64 billion in adjusted net discretionary appropriations and \$19.74 billion in disaster relief-designated appropriations.⁷ This was \$0.99 billion less than was enacted for DHS in FY2022.

For additional analysis of the content of the FY2023 budget request for DHS, see CRS Report R47123, *DHS Budget Request Analysis: FY2023*.

Advance Appropriations

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law as P.L. 117-58. Division J of the IIJA included a number of supplemental appropriations, including a total of \$7.96 billion for DHS in Title V. Of this amount, \$3.08 billion was available in FY2022. The remaining appropriations were advance appropriations, which become available over the period of FY2023-FY2026.⁸ \$1.42 billion of that becomes available in FY2023.

Table 1 lists DHS accounts with advance appropriations provided by P.L. 117-58, and includes a breakdown of amounts coming available each fiscal year, with FY2023 highlighted.

Table 1. Accounts with Advance Appropriations for DHS provided in the Infrastructure Investment and Jobs Act (P.L. 117-58)
(emergency-designated budget authority, in thousands of dollars)

Component / Appropriation / PPA	Total Provided	FY2022	FY2023	FY2024	FY2025	FY2026
Cybersecurity and Infrastructure Security Agency (CISA)						
Cybersecurity Response and Recovery Fund	100,000	20,000	20,000	20,000	20,000	20,000
Federal Emergency Management Agency (FEMA)						
Federal Assistance						
Section 205 Grants (for establishing hazard mitigation revolving loan funds)	500,000	100,000	100,000	100,000	100,000	100,000

⁷ This total evolved over the course of the appropriations process due, in part, to the changes in unobligated balances available for rescission. Analyses in this report refer to the Congressional Budget Office’s (CBO’s) estimates as outlined in the detail table at the end of H.Rept. 117-396.

⁸ For more information on advance appropriations, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*, by Jessica Tollestrup and Kate P. McClanahan.

Component / Appropriation / PPA	Total Provided	FY2022	FY2023	FY2024	FY2025	FY2026
Grants For Cybersecurity and Critical Infrastructure	1,000,000	200,000	400,000	300,000	100,000	0
Disaster Relief Fund (for Building Resilient Infrastructure and Communities grants)	1,000,000	200,000	200,000	200,000	200,000	200,000
National Flood Insurance Fund	3,500,000	700,000	700,000	700,000	700,000	700,000

Source: P.L. 117-58, Division J, Title V.

Note: PPA = program, project, or activity. Title V included \$1.86 billion in accounts and PPAs that did not receive advance appropriations, and thus are not shown in **Table I**.

House Committee Action

On June 24, 2022, the House Committee on Appropriations marked up H.R. 8257, its version of the Department of Homeland Security Appropriations Act, 2023. H.Rept. 117-396 was filed on July 1, 2022. Committee-reported H.R. 8257 included \$60.27 billion in adjusted net discretionary budget authority. This was \$3.64 billion above the level requested by the Administration and \$2.65 billion above the FY2022 enacted level of annual appropriations.

Senate Committee Action

On July 28, 2022, Senate Appropriations Committee Chairman Senator Patrick Leahy released drafts of twelve appropriations measures that had yet to be marked up by the committee, along with draft explanatory statements for each.⁹ The Senate Appropriations majority draft bill for DHS for FY2023 included \$59.89 billion in adjusted net discretionary budget authority. This was \$3.25 billion above the level requested by the Administration, and \$2.26 billion above the enacted annual level for FY2022.

Chairman Leahy said,

It is my hope that by releasing these bills, and making clear what the priorities of Senate Democrats are, we can take a step closer toward reaching a bipartisan compromise after months of stalled negotiations.... I look forward to continuing to work with my dear friend, Vice Chairman Shelby, and I encourage good faith, bipartisan negotiations on topline to resume with the urgency that this moment requires.¹⁰

Vice Chairman¹¹ Senator Richard Shelby criticized the move as partisan, stating,

⁹ The draft bills and explanatory statements can be found on the Senate Appropriations Committee website at <https://www.appropriations.senate.gov/news/majority/chairman-leahy-releases-remaining-nine-senate-appropriations-bills>.

¹⁰ U.S. Senate Committee on Appropriations, “Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills,” press release, July 28, 2022, <https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills>.

¹¹ Vice Chairman is the title for the leader of the minority party on the Senate Appropriations Committee.

Democrats must commit to a bipartisan framework that abandons poison pills, preserves legacy riders, and demonstrates a serious commitment to our military.¹²

Continuing Resolution

Proposed Anomalies and Authorization Extensions

On September 2, 2022, the Biden Administration released technical assistance documents providing “guidance to lawmakers on funding and legislative adjustments that are necessary to avoid disruptions to a range of important public services,” in the event of a short-term CR.¹³ The request included five adjustments to the rate of spending allowed under the CR to accommodate certain situations:

- increased fuel costs (U.S. Coast Guard);
- potential disaster activity (Federal Emergency Management Agency (FEMA));
- the ongoing situation at the U.S.-Mexico border (U.S. Immigration and Customs Enforcement and FEMA); and
- increased operational costs for seasonal activity (Transportation Security Administration).

The Administration also requested permission for DHS to use modified account structures for its new Office of Health Security, and legislative authority to adjust the immigration status of certain Afghans and their families who are resettling in the United States.¹⁴

A second list of authorization extensions was released later that week, noting that in the event other legislation did not resolve the matter first, extensions would be necessary for nine DHS-related programs (including the National Flood Insurance Program, the E-Verify program, and raising the H-2B visa cap), and that the Administration did not object to the inclusion of two other immigration program extensions as well.¹⁵

Floor Action

On September 29, 2022, the Senate passed by a vote of 72-25¹⁶ an amended version of H.R. 6833, replacing the original text of the bill with a consolidated piece of legislation that included the

¹² U.S. Senate Committee on Appropriations, “Shelby: Democrats’ Partisan Bills Threaten FY23 Appropriations Process,” press release, July 28, 2022, <https://www.appropriations.senate.gov/news/minority/shelby-democrats-partisan-bills-threaten-fy23-appropriations-process>.

¹³ Young, blog post.

¹⁴ OMB, *FY2023 Continuing Resolution (CR) Appropriations Issues*, September 2, 2022, pp. 15-19. https://www.whitehouse.gov/wp-content/uploads/2022/09/CR_Package_9-2-22.pdf.

¹⁵ The document, while available through Congressional Quarterly, has not been presented on the OMB website. It is available to subscribers at <https://jukebox.cq.com/www/graphics/file/2022/09/06/file20220906-242456.pdf>.

¹⁶ Senate Record Vote Number 351, available at https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00351.htm.

Continuing Appropriations Act, 2023 as Division A.¹⁷ The amended bill passed the House on September 30, 2022, by a vote of 230-201.¹⁸ It was enacted the same day as P.L. 117-180.

P.L. 117-180 covered all twelve appropriations measures, providing for continuing appropriations through December 16, 2022, or until the requisite annual appropriations measures were passed. The baseline used to determine the rate for operations—or annualized rate of funding—for DHS was the FY2022 annual appropriations act, with the exception of two general provisions that had provided funding for the construction of joint processing centers.¹⁹ The baselines also included extension of three immigration programs and a temporary expansion of the H-2B visa programs, which had been carried in Division O of the Consolidated Appropriations Act, 2022.²⁰ The authority extensions have been addressed in the appropriations process annually beginning with the FY2016 continuing resolution.²¹ The H-2B cap increase has been carried every year since the FY2018 continuing resolution.²²

The following sections provide descriptions of provisions in the continuing resolution that specifically applied to DHS appropriations and authorities:

Section 135—Federal Emergency Management Agency Disaster Relief Fund (DRF)

Section 135 provides that amounts made available by Section 101 for the Disaster Relief Fund may be apportioned at a rate for operations necessary to carry out response and recovery activities under the Stafford Act.²³ This anomaly ensures that funding would be available to support the federal government’s disaster response and recovery activities associated with disasters and emergency declarations, in the event the DRF’s existing carryover balances are spent down while the CR is in effect.

This anomaly was included in the Administration’s issues lists, and similar anomalies have been enacted via continuing appropriations measures each year since FY2018.²⁴

¹⁷ Other legislation included in the measure were the Biosimilar User Fee Amendments of 2022, the FDA User Fee Reauthorization Act of 2022, the Generic Drug User Fee Amendments of 2022, the Hermit’s Peak/Calf Canyon Fire Assistance Act, the Medical Device User Fee Amendments of 2022, the Prescription Drug User Fee Amendments of 2022, the Ukraine Supplemental Appropriations Act, 2023, and the United States Parole Commission Extension Act of 2022.

¹⁸ House Roll no. 476, available at <https://clerk.house.gov/Votes/2022476>.

¹⁹ P.L. 117-180, Division A, §101(6)

²⁰ P.L. 117-103.

²¹ In FY2016 these appeared in the CR (P.L. 114-53), then as general provisions in the final bill (P.L. 114-113, Division G, §§572-574). In FY2017 and FY2018, those general provisions were extended by reference in the CR (P.L. 114-223, Division C; P.L. 115-56, Division D). In the FY2018 consolidated appropriation (P.L. 115-141), the immigration extensions were shifted to a different division (Division M), so in FY2019, they were included by reference in the first section of the CR (P.L. 115-245, Division C). This pattern of extension in CRs by reference to a year-end extensions division has continued since (see footnote 22 for references).

²² FY2018, P.L. 115-56, Division D, §101, extended by reference to P.L. 115-31, Division F (FY2017 general provisions); FY2019, P.L. 115-245, Division C, §101, extended by reference to P.L. 115-141, Division M, Title II (immigration extensions); FY2020, P.L. 116-59, Division A, §101, extended by reference to P.L. 116-6, Division H, Title I (immigration extensions); FY2021, P.L. 116-159, §101, extended by reference to P.L. 116-94, Division I, Title I (immigration extensions); FY2022, P.L. 117-43, §101, extended by reference to P.L. 116-260, Division O, Title I §§101-103, and 105 (immigration extensions).

²³ 42 U.S.C. §5121 et seq.

²⁴ For more information, see Office of Management and Budget, *FY 2023 Continuing Resolution (CR) Appropriations*

Section 136—Hermit’s Peak / Calf Canyon Fire Assistance

Section 136 transfers \$2.5 billion in unobligated balances from amounts in the Disaster Relief Fund not intended for relief and recovery from major disasters to carry out the Hermit’s Peak / Calf Canyon Fire Assistance Act—which was included in the same measure.²⁵

This funding was initially provided in the CARES Act,²⁶ when it was unclear how the Stafford Act’s authorities might be used to address the COVID-19 pandemic. As of the end of August, 2022, the DRF base was anticipated to have \$3.384 billion available at the end of FY2022.²⁷ Taking \$2.5 billion from that account would leave a projected \$884 million—\$159 million more than the Administration projected needing for FY2023.²⁸

Section 136 explicitly does not affect the amount available for disaster relief, and quarterly reports are required on obligations and expenditures of this budget authority.

This anomaly was not included in the Administration’s issues lists.

Section 137—Department of Homeland Security Joint Task Forces

Section 137 extends the existing authorization for the Department of Homeland Security Joint Task Forces for the duration of the CR.

The authority, initially provided under Title XIX of the National Defense Authorization Act for Fiscal Year 2017, allows the Secretary of Homeland Security to establish Joint Task Forces for DHS to conduct joint operations among its components to secure U.S. borders, address homeland security crises, and establish regionally-based operations. The authority was set to expire at the end of FY2022.²⁹

The extension of this authorization was considered “necessary” by the Administration for inclusion in the CR if not addressed by other legislation.

Section 138—National Computer Forensics Institute

Section 138 extends the existing authorization for the U.S. Secret Service’s National Computer Forensics Institute for the duration of the CR, which extended through FY2022.

The authority, initially provided under the Strengthening State and Local Cybersecurity Crime Fighting Act of 2017,³⁰ authorized the operations of the Institute to educate and train state, local, tribal, and territorial law enforcement officers, prosecutors, and judges on cyber and electronic crimes and related threats, including how to investigate them and collect and manage evidence. It

Issues, p. 17, at https://www.whitehouse.gov/wp-content/uploads/2022/09/CR_Package_9-2-22.pdf. Prior extensions were provided by P.L. 115-56, Division D, §129; P.L. 115-245, Division C, §124; P.L. 116-59, §133; P.L. 116-159, §145; and P.L. 117-43, §133.

²⁵ P.L. 117-180, Division G.

²⁶ P.L. 116-136, Division B, in pertinent part at 134 Stat. 543.

²⁷ Federal Emergency Management Agency, “Disaster Relief Fund: Monthly Report as of August 31, 2022,” September 8, 2022, p. 4. These reports are available at <https://www.fema.gov/about/reports-and-data/disaster-relief-fund-monthly-reports>.

²⁸ Department of Homeland Security, *Federal Emergency Management Agency, Disaster Relief Fund: Fiscal Year 2023 Congressional Justification*, March, 2022, p. FEMA-DRF-9. DHS congressional budget justifications for FY2023 are available at <https://www.dhs.gov/publication/congressional-budget-justification-fiscal-year-fy-2023>.

²⁹ 6 U.S.C. §348.

³⁰ P.L. 115-76.

included authorization for the Institute to equip nonfederal law enforcement officers to conduct cyber investigations and forensic examinations.³¹

The extension of this authorization was considered “necessary” by the Administration for inclusion in the CR if not addressed by other legislation.

Section 139—National Flood Insurance Program (NFIP) Reauthorization

Section 139 extends the authorization for the NFIP to continue to operate for the duration of the CR by altering the application of two provisions in the *U.S. Code*.

The first provision is a temporary extension of the NFIP’s borrowing authority, and the second is a termination date for NFIP’s authority to issue new policies. Both provisions are necessary to extend normal NFIP operations. Under the language in the *U.S. Code*, the NFIP is provided with \$30.4 billion of borrowing authority through the end of FY2022.³² Section 139(a) extends this level of borrowing authority through the duration of this act, allowing the NFIP to continue to pay claims. Additionally, the NFIP’s authority to issue new policies expired at the end of FY2022 by the language in the *U.S. Code*.³³ Section 134(a) extends that authority through the duration of the CR as well.

The extension of this authorization was considered “necessary” by the Administration for inclusion in the CR if not addressed by other legislation. Similar extensions have been enacted since FY2018, and CRs have sometimes been used as vehicles for temporary extensions of NFIP authorities since 1998.

Section 140—Pilot Programs for Authority to Acquire Innovative Commercial Items Using General Solicitation Competitive Procedures

Section 140 extends the authorization for the Department of Homeland Security (DHS) and the General Services Administration (GSA) to carry out pilot programs under which innovative commercial items may be acquired through an expedited competitive process.

This authority was granted under Section 880 of the National Defense Authorization Act for Fiscal Year 2017, and was expected to terminate at the end of FY2022.³⁴ It allows DHS and GSA to conduct pilots to acquire innovative commercial items through a general solicitation of proposals followed by a peer review that informs the competitive selection process, rather than the standard competitive acquisition process. Acquisitions under such a pilot were limited to \$10 million per contract.

The extension of this authorization was considered “necessary” by the Administration for inclusion in the CR if not addressed by other legislation.

³¹ 6 U.S.C. §383(d).

³² 42 U.S.C. §4016(a).

³³ 42 U.S.C. §4026.

³⁴ P.L. 114-328. The provision in question is in Division A, Title VIII, and can be found at 41 U.S.C. §3301 note.

Section 141—Protection of Certain Facilities from Unmanned Aircraft Extension

Section 141 extends the authorization for the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to address threats to certain facilities and assets from unmanned aerial vehicles through the period of the CR.

This authority was granted under Division H of the FAA Reauthorization Act of 2018, and allowed DHS and DOJ to detect, identify, monitor, and track unmanned aircraft, disrupt control of them, and seize, confiscate, disable, damage, or destroy them to mitigate a credible threat to the safety or security of domestic potential high-risk targets associated with a variety of DHS and DOJ missions.³⁵ It was set to terminate on October 5, 2022.

The extension of this authorization was considered “necessary” by the Administration for inclusion in the CR if not addressed by other legislation.

More detailed historical analyses of DHS anomalies and authorization extensions are available upon request for congressional clients.

Supplemental Appropriations for DHS

Requested Supplemental Appropriations

The Administration’s technical assistance document on a possible CR in September 2022 (for FY2023) also included a request for \$47.1 billion in supplemental appropriations, including \$2.9 billion for the Disaster Relief Fund.³⁶

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³⁵ P.L. 115-254, Division H, Section 1602. It can be found at 6 U.S.C. §124n.

³⁶ OMB, *FY2023 CR Appropriations Issues*, p. 49.

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