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Department of Homeland Security Appropriations: FY2023 State of Play

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Introduction

FY2023 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 four of those years, including FY2023. 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 for FY2023. 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*.

FY2023 Annual Appropriations

Historical Context

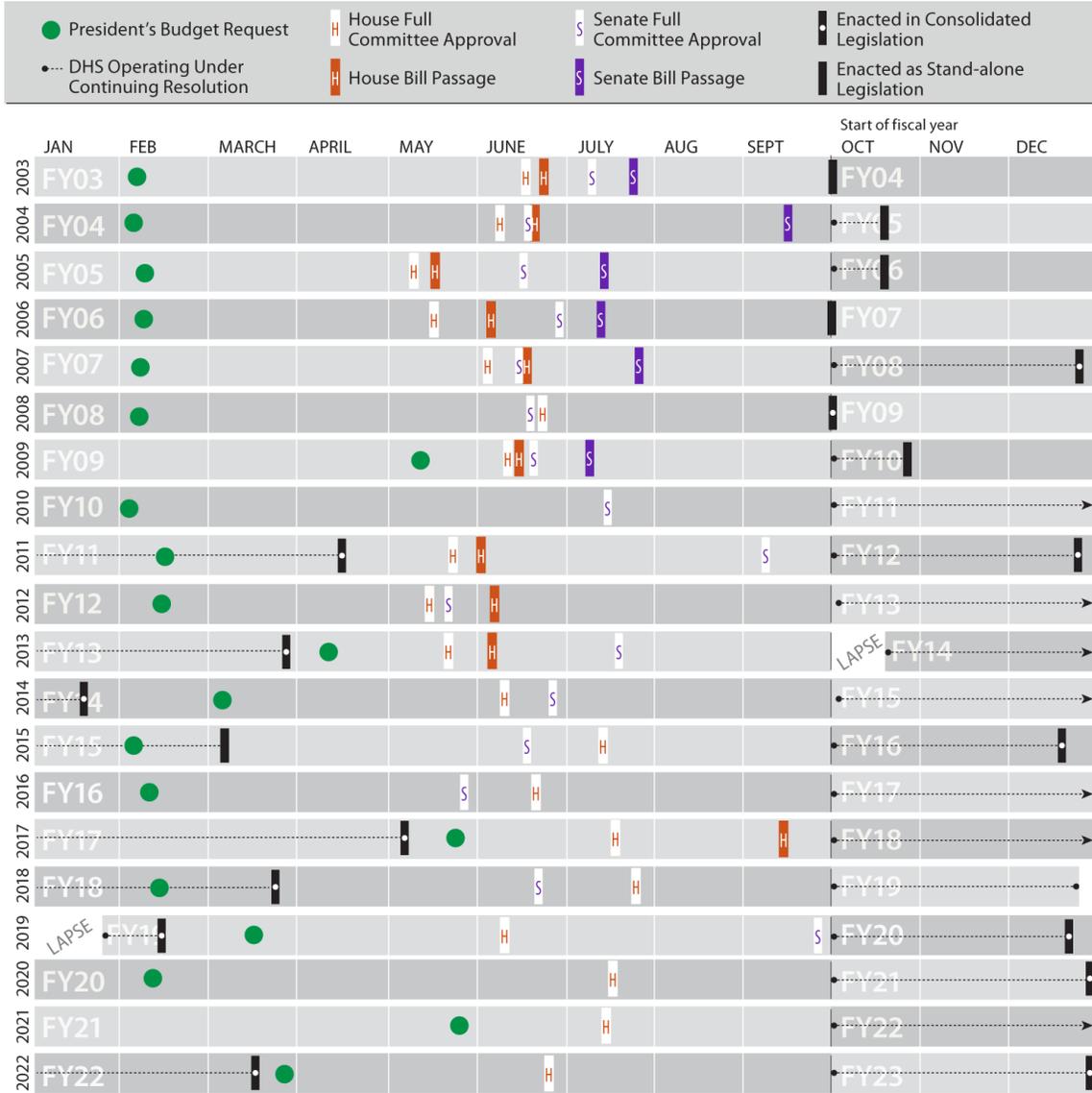
Figure 1 shows a timeline of key milestones in the annual appropriations process for DHS since the FY2004 cycle (which began in 2003). These milestones are

- The release of the budget request (green dot);
- Full committee markups of the House and Senate Appropriations Committee for the DHS Appropriations Act (white labels);
- Initial passage of the DHS Appropriations Act by the House and Senate (orange and purple labels); and
- Enactment of the DHS Appropriations Act (black bar).

Black numbers on the left side of the figure indicate the calendar year, and the white numbers on the gray bars indicate the operational fiscal year.

Dotted lines indicate the operation of a continuing resolution (CR), and white gaps in the gray bars indicate lapses in annual appropriations.

Figure I. DHS Appropriations Process, FY2004-FY2023
(as of May 1, 2023)



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.

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.¹ 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-FY2026.² \$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
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

¹ 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.

² 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.

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.³ 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 agency that this moment requires.⁴

Vice Chairman⁵ Senator Richard Shelby criticized the move as partisan, stating,

Democrats must commit to a bipartisan framework that abandons poison pills, preserves legacy riders, and demonstrates a serious commitment to our military.⁶

Consolidated Appropriations

On December 19, 2022, Senator Leahy submitted an amendment to H.R. 2617 (an unrelated measure) that contained the text of the Consolidated Appropriations Act, 2023. Division F of the measure was the Department of Homeland Security Appropriations Act, 2023.⁷ At the same time, explanatory statements were released by the House and Senate Appropriations Committees, in

³ 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>.

⁴ 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>.

⁵ Vice Chairman is the title for the leader of the minority party on the Senate Appropriations Committee.

⁶ 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>.

⁷ S.Amdt. 6552.

lieu of a conference report.⁸ According to the Congressional Budget Office, Division F included \$60.7 billion in budget authority for DHS, as well as \$19.95 billion in funding for the costs of major disasters under the Stafford Act. After adoption of eight further amendments, the Senate agreed to the amended measure by a vote of 68-29 on December 22, 2022.⁹ The House took up the bill on December 23, 2022, and passed it by a vote of 225-201, with one member voting “present.”¹⁰ Due to anticipated delays in enrollment of the bill, an additional extension of the CR was required—see the following section for details.

The enrolled bill was sent to President Biden on December 28, and he signed the bill into law as P.L. 117-328 on December 29, 2022.

FY2023 Continuing Resolutions

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.¹¹ 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.¹²

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

⁸ See <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Division-F-Homeland-Statement-FY23.pdf> and https://www.appropriations.senate.gov/download/division-f_-homeland-statement-fy23, which present identical documents.

⁹ Senate Record Vote no. 421, available at https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00421.htm.

¹⁰ House Roll Call 549, available at <https://clerk.house.gov/Votes/2022549>.

¹¹ 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/>.

¹² 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.

raising the H-2B visa cap), and that the Administration did not object to the inclusion of two other immigration program extensions as well.¹³

The Administration provided technical assistance to Congress in early December outlining needs for a CR extending to the end of FY2023. The list of needs included

- \$34 million for the U.S. Secret Service to begin preparations for the 2024 campaign cycle;
- \$4.85 billion for management of the situation at the U.S.-Mexico border (about \$3.5 billion more than under the initial CR), including
 - \$2 billion for CBP border processing,
 - \$2 billion for ICE transportation, removal, detention, and ATD, and
 - \$850 million for FEMA EFSP humanitarian grants;
- \$765 million for U.S. Citizenship and Immigration Services (\$490 million more than under the initial CR), including
 - \$375 million for asylum processing/adjudication,
 - \$256 million for backlog reduction, and
 - \$134 million for refugee processing.

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

Floor Action

On September 29, 2022, the Senate passed by a vote of 72-25¹⁴ an amended version of H.R. 6833, replacing the original text of the bill with a consolidated piece of legislation that included the Continuing Appropriations Act, 2023 as Division A.¹⁵ The amended bill passed the House on September 30, 2022, by a vote of 230-201.¹⁶ It was enacted the same day as P.L. 117-180.

Detailed descriptions of the CR and its functionality can be found in CRS Report R47283, *Overview of Continuing Appropriations for FY2023 (Division A of P.L. 117-180)*, by Drew C. Aherne and Sarah B. Solomon.

While appropriators and leadership continued to work on a consolidated appropriations bill to resolve the outstanding annual measures, an extension of P.L. 117-180 was required to avoid a lapse in annual appropriations.

On December 14, operating under a special rule, the House brought up and amended H.R. 1437 (an unrelated Senate-passed bill), replacing its text with an amendment to the Continuing Appropriations Act, extending its expiration date to December 23, 2022. The House-amended version of H.R. 1437 also included a provision to extend the authorization for DHS's cyber

¹³ 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>.

¹⁴ Senate Record Vote Number 351, available at https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00351.htm.

¹⁵ 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.

¹⁶ House Roll no. 476, available at <https://clerk.house.gov/Votes/2022476>.

intrusion and detection program, and the congressional reporting requirement for it, for the life of the CR.¹⁷ No additional funding was provided beyond the extension of the existing CR.

The House passed H.R. 1437 in its amended form on December 14, 2022, by a vote of 224-201.¹⁸ The Senate agreed to the House amendment on December 15, 2022, by a vote of 71-19.¹⁹ President Biden signed the bill on December 16, 2022, and it became P.L. 117-229.

On December 22, the Senate amended H.R. 4373, an unrelated House-passed measure, replacing its text with an amendment to the Continuing Appropriations Act, extending its expiration date to December 30, 2022. Although the Senate and House were in the process of approving the Consolidated Appropriations Act, 2023, that measure would not be ready for enactment before the expiration of the existing CR.²⁰ The Senate passed the amended version of H.R. 4373 by a voice vote, and the House agreed to the Senate amendment under the terms of H.Res. 1531 on December 23. The President signed it into law that same day, and it became P.L. 117-264.

FY2023 Supplemental Appropriations for DHS

The Administration's technical assistance document on a possible CR, provided 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.²¹

On November 18, 2022, the White House provided a second technical assistance document regarding funding that was needed to address recent disasters.²² The list of funding needs included

- \$39 million in Operations and Support appropriations and \$123.5 million in Procurement, Construction, and Improvements appropriations for the U.S. Coast Guard for costs related to Hurricanes Ian and Fiona;
- \$11 billion in appropriations for the Disaster Relief Fund;
- \$2.9 billion for FEMA to address outstanding claims from the Hermit's Peak fire; and
- \$4 billion for the National Flood Insurance Fund for the National Flood Insurance Program to pay claims.

Division N of P.L. 117-328 included roughly \$6.9 billion in supplemental appropriations for DHS:

- \$39 million in Operations and Support appropriations, and \$115.5 million in Procurement, Construction, and Improvements appropriations for the U.S. Coast Guard for costs related to Hurricanes Ian and Fiona;

¹⁷ P.L. 117-209, Division A. The authority and reporting requirement (6 U.S.C. §1525) would have expired on December 18, 2022, without such an extension.

¹⁸ House Roll Call 523, available at <https://clerk.house.gov/Votes/2022523>.

¹⁹ Senate Record Vote Number 399, available at https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00399.htm.

²⁰ Enrolling bills—proofreading and printing official copies of passed legislation in preparation for signature—of a significant length can be a lengthy process. The enrolled version of H.R. 2617 was 1,653 pages.

²¹ OMB, *FY2023 CR Appropriations Issues*, p. 49.

²² OMB, “Technical Assistance Regarding Funding Needs to Address Recent Natural Disasters,” November 18, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/11/FY-2023-Supplemental-funding-request-for-disasters.pdf>.

- \$5 billion in appropriations for the Disaster Relief Fund, of which \$13 million was to be transferred to the DHS Office of Inspector General for disaster relief oversight;
- \$1.45 billion for FEMA to address outstanding claims from the Hermit’s Peak fire; and
- \$309 million to fund activities usually covered by Immigration User Fee receipts.

Discussions at an April 2023 House Appropriations Committee hearing indicated that an additional supplemental request is anticipated to address an expected shortfall²³ in the Disaster Relief Fund for FY2023.²⁴ On August, 10, 2023, the Administration submitted a supplemental appropriations request to Congress that included \$12 billion for the Disaster Relief Fund, which would cover the projected shortfall and provide resources for additional potential catastrophic events.

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²³ At the end of March 2023, FEMA anticipated that by the end of the fiscal year, funding requirements for major disasters would exceed DRF resources by more than \$11.7 billion.

²⁴ House Appropriations Committee, “Joyce Remarks at FY24 Budget Hearing for the Federal Emergency Management Agency (As Prepared),” April 18, 2023, available at <https://appropriations.house.gov/news/statements/joyce-remarks-fy24-budget-hearing-federal-emergency-management-agency-prepared>.