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Homeland Security Department: FY2007 Appropriations

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November 17, 2006

Abstract. This report is a guide to one of the regular appropriations bills that Congress considers each year. It is designed to supplement the information provided by the House and Senate Appropriations Subcommittees on Homeland Security. It summarizes the status of the bill, its scope, major issues, funding levels, and related congressional activity.

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Homeland Security Department: FY2007 Appropriations

Updated November 17, 2006

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

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

Homeland Security Department: FY2007 Appropriations

Summary

This report describes the FY2007 appropriations for the Department of Homeland Security (DHS). On October 4, 2006, P.L. 109-295 was signed into law. P.L. 109-295 provides gross total budget authority of \$41.4 billion for DHS for FY2007. This amount includes \$1.8 billion in emergency funding that was added to the bill during conference. P.L. 109-295 provides net budget authority of \$34.8 billion, including the emergency funding. Excluding the emergency funding, P.L. 109-295 provides nearly \$33.0 billion in net budget authority for DHS for FY2007. Senate-passed H.R. 5441 would have provided \$32.8 billion in net budget authority for DHS for FY2007. House-passed H.R. 5441 would have provided \$33.2 billion in net budget authority for DHS in FY2007. The Administration requested a net appropriation of \$31.9 billion in net budget authority for FY2007.

P.L. 109-295 provides the following net appropriation for major components of DHS: \$8,035 million for Customs and Border Protection (CBP); \$3,958 million for Immigration and Customs Enforcement (ICE); \$3,628 million for the Transportation Security Administration (TSA); \$8,316 million for the U.S. Coast Guard; \$1,277 million for the Secret Service; \$4,018 million for the Preparedness Directorate; \$2,511 million for the Federal Emergency Management Agency (FEMA); \$182 million for U.S. Citizenship and Immigration Services (USCIS); and \$973 million for the Science and Technology Directorate (S&T).

The requested net appropriation for major components of the department included the following: \$6,574 million for CBP; \$3,928 million for ICE; \$2,323 million for TSA; \$8,181 million for the U.S. Coast Guard; \$1,265 million for the Secret Service; \$3,420 million for the Preparedness Directorate; \$2,964 million for FEMA; \$182 million for USCIS; and \$1,002 million for the S&T.

House-passed H.R. 5441, contained the following amounts for major components of the department: \$6,434 million for CBP; \$3,876 million for ICE; \$3,618 million for TSA; \$8,129 million for the U.S. Coast Guard; \$1,293 million for the Secret Service; \$4,069 million for the Preparedness Directorate; \$2,656 million for the FEMA; \$162 million for USCIS; \$956 million for S&T; and \$500 million for the Domestic Nuclear Detection Office (DNDO).

Senate-passed H.R. 5441 contained the following amounts for major components of the department: \$6,683 million for CBP; \$3,919 million for ICE; \$3,816 million for TSA; \$8,188 million for the U.S. Coast Guard; \$1,226 million for the Secret Service; \$3,901 million for the Preparedness Directorate; \$2,606 million for FEMA; \$135 million for USCIS; \$818 million for S&T; and \$442 million for the DNDO.

This report will not be updated.

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Homeland Security Department: FY2007 Appropriations

Most Recent Developments

P.L. 109-295 Signed into law. On October 4, 2006, P.L. 109-295 was signed into law. Both the House and Senate approved the conference report (H.Rept. 109-699) on September 29, 2006; the House by a vote of 412-6, and the Senate by a voice vote. P.L. 109-295 provides gross total budget authority of \$41.4 billion for the Department of Homeland Security (DHS) for FY2007. This amounts includes \$1.8 billion in emergency funding that was added to the bill during conference. P.L. 109-699 provides net budget authority of \$34.8 billion, including the emergency funding. Excluding the emergency funding, P.L. 109-295 provides nearly \$33.0 billion in net budget authority for DHS for FY2007.

Senate-Passed H.R. 5441. On July 13, 2006, the Senate passed H.R. 5441. The bill contains a total of \$32.8 billion in net budget authority for DHS for FY2007. This is \$900 million more than the \$31.9 billion net appropriation requested by the Administration for FY2007. The Senate-passed H.R. 5441 represents a \$.9 billion, or 3% increase, from the FY2006 enacted net budget authority of \$31.9 billion. Senate-passed H.R. 5441 also includes a \$648 supplemental appropriation for FY2006; for more information on this supplemental appropriation please refer to **Appendix I**.

House-Passed H.R. 5441. On May 22, 2006, the House passed H.R. 5441. The bill contains a total of \$33.2 billion in net budget authority for DHS for FY2007. This is \$1.2 billion more than the \$31.9 billion net appropriation requested by the Administration for FY2007. However, this difference is almost entirely (\$1.2 billion) due to the aviation security fee increase requested by the Administration, but which would be denied by the House bill. The House-passed H.R. 5441 amount of \$33.2 billion is \$1.2 or a 4% increase compared with the FY2006 enacted net budget authority of \$31.9 billion.

President's FY2007 Budget Submitted. The President's budget request for DHS for FY2007 was submitted to Congress on February 6, 2006. The Administration requested \$42.7 billion in gross budget authority for FY2007 (including mandatories, fees, and funds). The Administration's request includes gross appropriations of \$39.8 billion, and a net appropriation of \$32.0 billion in budget authority for FY2007, of which \$31.0 billion is discretionary budget authority, and \$1 billion is mandatory budget authority. The FY2006 enacted net appropriated budget authority for DHS was \$32.0 billion.

Table 1. Legislative Status of Homeland Security Appropriations

Subcommittee Markup		House Report 109-476	House Passage	Senate Report 109-273	Senate Passage	Conf. Report 109-699	Conference Report Approval		Public Law 109-295
House	Senate						House	Senate	
05/11 vv	06/27 vv	05/17 vv	06/06 389-9	06/29 28-0	07/13 100-0	09/28 —	09/29 412-6	09/29 vv	10/04 —

Note: vv = voice vote

Note on Most Recent Data. Data used in this report are from the President's Budget Documents; the FY2007 DHS Congressional Budget Justifications; the FY2007 DHS Budget in Brief; the House Appropriations Committee tables of April 19, 2006; the House Committee Report to H.R. 5441, H.Rept. 109-476; the Senate Committee Report to H.R. 5441, S.Rept. 109-273; the Conference Committee report to H.R. 5441, H.Rept. 109-699; and P.L. 109-295. Data used in **Table 15** are taken from the *Analytical Perspectives* volume of the FY2007 President's Budget. These amounts do not correspond to amounts presented in **Tables 4-11**, which are based on data from tables supplied by the Appropriations Subcommittees and from the *FY2006 DHS Congressional Budget Justifications* in order to best reflect the amounts that will be used throughout the congressional appropriations process. Most dollar amounts presented in this report are reported in millions of dollars. Where lesser amounts are presented, these amounts will be shown in italics. For example: \$545,000.

Background

This report describes the President's FY2007 request for funding for DHS programs and activities, as submitted to Congress on February 6, 2006. It compares the enacted FY2006 amounts to the request for FY2007. This report also tracks legislative action and congressional issues related to the FY2007 DHS appropriations bill, with particular attention paid to discretionary funding amounts. However, this report does not follow specific funding issues related to mandatory funding — such as retirement pay — nor does the report systematically follow any legislation related to the authorization or amendment of DHS programs.

Department of Homeland Security

The Homeland Security Act of 2002 (P.L. 107-296) transferred the functions, relevant funding, and most of the personnel of 22 agencies and offices to the new Department of Homeland Security created by the act.

Appropriations measures for DHS have been organized into four titles: Title I Departmental Management and Operations; Title II Security, Enforcement, and Investigations; Title III Preparedness and Recovery; and Title IV Research and

Development, Training, Assessments, and Services. Title I contains appropriations for the Office of Management, the Office of the Secretary, the Office of the Chief Financial Officer (CFO), Analysis and Operations (A&O), the Office of the Chief Information Officer (CIO), and the Office of the Inspector General (OIG). Title II contains appropriations for the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program, Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the Coast Guard, and the Secret Service. Title III contains appropriations for the Preparedness Directorate, the Federal Emergency Management Agency (FEMA), Infrastructure Protection and Information Security (IPIS), and the state and local grants programs. Title IV contains appropriations for U.S. Citizenship and Immigration Services (USCIS), the Science and Technology Directorate (S&T), and the Federal Law Enforcement Training Center (FLETC).

Secretary Chertoff's Second Stage Review. On July 13, 2005, the Secretary of DHS, Michael Chertoff, announced the results of the months-long Second Stage Review (2SR)¹ that he undertook upon being confirmed as DHS Secretary.² The proposed changes affect many aspects of the department. The Secretary has designed a six-point agenda based upon the results of the 2SR:

- increase overall preparedness, particularly for catastrophic events;
- create better transportation security systems to move people and cargo more securely and efficiently;
- strengthen border security and interior enforcement and reform immigration processes;
- enhance information sharing with our partners;
- improve DHS financial management, human resources development, procurement, and information technology; and
- realign the DHS organization to maximize mission performance.

On July 22, 2005, the Administration also submitted a revised budget request for DHS to reflect the organizational and policy changes recommended by the 2SR.³ The Administration submitted its requested amendments to the FY2006 budget request for DHS after both the House and Senate had passed their versions of H.R. 2360. Therefore, any proposed changes were addressed during the conference on H.R. 2360. The conferees noted that, for the most part, they have complied with the

¹ For more information, see CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by Harold C. Relyea and Henry B. Hogue.

² For text of the Secretary's speech see DHS, *Remarks by Secretary Michael Chertoff on the Second Stage Review of the Department of Homeland Security*, July 13, 2005, Washington, DC, at [http://www.dhs.gov/dhspublic/interapp/speech/speech_0255.xml]. For an overview of the proposed changes see DHS, *Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Department of Homeland Security*, July 13, 2005, Washington, DC, at [http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0703.xml]. Proposed organizational chart at [<http://www.dhs.gov/interweb/assetlibrary/DHSOrgCharts0705.pdf>].

³ See Communication from the President of the United States, *Request for FY2006 Budget Amendments*, 109th Congress, 1st sess., H.Doc. 190-50, July 22, 2005.

Administration's request to restructure DHS, and P.L. 109-90 adopted the following changes:

- abolished the Office of the Undersecretary for Border and Transportation Security, redistributing its functions to other locations within DHS;
- split the Directorate of Information Analysis and Infrastructure Protection into two new operational components: Analysis and Operations, and the Preparedness Directorate;
- moved all state and local grants within DHS to the Preparedness Directorate;
- transferred the Federal Air Marshals program from ICE to TSA; and
- included and expanded the role of the Office of Policy.⁴

The DHS Congressional Budget Justifications for FY2007 also reflect these changes.

302(a) and 302(b) Allocations

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

The annual concurrent resolution on the budget sets forth the congressional budget. The Senate budget resolution, S.Con.Res. 83 was introduced on March 10, 2006, and passed the Senate on March 16, 2006. S.Con.Res. 83, would provide \$873 billion in discretionary budget authority for FY2007. H.Con.Res. 376 was introduced and reported on March 31, 2006, and passed the House on May 18, 2006. H.Con.Res. 376 would provide \$873 billion in discretionary budget authority for FY2007. The anticipated difficulties in resolving the substantial differences between the House- and Senate-passed versions of the budget resolution led to both the House and the Senate adopting deeming resolutions. These deeming resolutions set the discretionary spending levels for FY2007 at \$873 billion.⁵

⁴ H.Rept. 109-241, p. 30.

⁵ Deeming resolutions serve as an annual budget resolution to establish enforceable budget (continued...)

Table 2. FY2007 302(b) Discretionary Allocations for DHS
(budget authority in billions of dollars)

FY2006 Comparable	FY2007 Request Comparable	FY2007 House Allocation	FY2007 Senate Allocation	FY2007 Enacted Comparable
30.3	31.0	32.1	31.9	31.7

Source: House Appropriations Committee press release, May 4, 2006; H.Rept. 109-488, *Report on the Revised Suballocation of Budget Allocations for FY2007*; S.Rept. 109-268, *Allocations to Subcommittees of Budget Totals for FY2007*; and the Conference Report to H.R. 5441, H.Rept. 109-699. FY2007 enacted comparable does not include funding designated as emergency funding or offsetting receipts.

Budget Authority, Obligations, and Outlays

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

Budget authority is established through appropriations acts or direct spending legislation and determines the amounts that are available for federal agencies to spend. The Antideficiency Act⁶ prohibits federal agencies from obligating more funds than the budget authority that was enacted by Congress. Budget authority may be indefinite, however, when Congress enacts language providing “such sums as may be necessary” to complete a project or purpose. Budget authority may be available on a one-year, multi-year, or no-year basis. One-year budget authority is only available for obligation during a specific fiscal year; any unobligated funds at the end of that year are no longer available for spending. Multi-year budget authority specifies a range of time during which funds can be obligated for spending; no-year budget authority is available for obligation for an indefinite period of time.

Obligations are incurred when federal agencies employ personnel, enter into contracts, receive services, and engage in similar transactions in a given fiscal year. Outlays are the funds that are actually spent during the fiscal year.⁷ Because multi-year and no-year budget authorities may be obligated over a number of years, outlays do not always match the budget authority enacted in a given year. Additionally,

⁵ (...continued)

levels in the absence of an actual congressionally adopted budget resolution. For more information, see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Robert Keith.

⁶ 31 U.S.C. §§1341, 1342, 1344, 1511-1517.

⁷ Appropriations, outlays, and account balances for government treasury accounts can be viewed in the end of year reports published by the U.S. Treasury titled *Combined Statement of Receipts, Outlays, and Balances of the United States Government*. The DHS portion of the report can be accessed at [<http://fms.treas.gov/annualreport/cs2005/c18.pdf>].

budget authority may be obligated in one fiscal year but spent in a future fiscal year, especially with certain contracts.

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

Discretionary and Mandatory Spending

Gross budget authority, or the total funds available for spending by a federal agency, may be composed of discretionary and mandatory spending. Of the \$42.7 billion gross budget authority requested for DHS in FY2007, 83% is composed of discretionary spending and 17% is composed of mandatory spending.

Discretionary spending is not mandated by existing law and is thus appropriated yearly by Congress through appropriations acts. The Budget Enforcement Act⁸ of 1990 defines discretionary appropriations as budget authority provided in annual appropriation acts and the outlays derived from that authority, but it excludes appropriations for entitlements. Mandatory spending, also known as direct spending, consists of budget authority and resulting outlays provided in laws other than appropriation acts and is typically not appropriated each year. However, some mandatory entitlement programs must be appropriated each year and are included in the appropriations acts. Within DHS, the Coast Guard retirement pay is an example of appropriated mandatory spending.

Offsetting Collections⁹

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

Some collections offset a portion of an agency's discretionary budget authority. Some of these fees offset spending at the account level and are subtracted from the Appropriations Committee tables directly below the program they offset. An example of this is the Federal Protective Service, which is immediately offset in the appropriations tables by an intergovernmental transfer from the General Services Administration. Other discretionary fees offset spending at the agency level and are thus subtracted from the discretionary budget authority of the agency to arrive at the actual appropriated level. An example of this is the Immigration Inspection fee, which is collected at Ports of Entry by Customs and Border Protection (CBP)

⁸ P.L. 101-508, Title XIII.

⁹ Prepared with assistance from Bill Heniff, Jr., Analyst in American National Government.

personnel and is used to offset both the CBP and Immigration and Customs Enforcement (ICE) appropriations.

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

Table 3 tabulates all of the offsets within the DHS budget as enacted for FY2006 and in the FY2007 request.

Table 3. FY2007 Request: Moving From Gross Budget Authority to Net Appropriation — Fee Accounts, Offsetting Fees, and Trust and Public Enterprise Accounts
(budget authority in millions)

Account/Agency	Account Name	FY2006	FY2007
DHS gross budget authority (gross discretionary + fees+ mandatory + funds)		40,826	42,719
Account level discretionary offset			
ICE	Federal Protective Service	482	516
TSA	Aviation security fees	1,990 ^a	3,650 ^a
	TWIC	100	20
	Hazmat	50	19
	Registered Traveler	20	35
FEMA/EPR	National flood insurance fund	124	129
CBP	Small airports	5	6
Subtotal account level discretionary offsets		-2,791	-4,460
Agency level discretionary offset			
CBP	Immigration inspection	465	529
	Immigration enforcement	6	2
	Land border	30	28
	COBRA	334	388
	APHIS	204	214
	Puerto Rico	98	98
ICE	Immigration inspection	100	108
	SEVIS	67	54
	Breached bond detention fund	87	90

Account/Agency	Account Name	FY2006	FY2007
TSA	Aviation security capital fund	250	250
	Alien flight school background checks	10	2
USCIS	Immigration examination fee	1,730	1,760
	H1b, and H1b & L fees	44	44
Subtotal agency level discretionary offsets		-3,425	-3,567
Mandatory budget authority			
Secret service	Secret service retired pay ^b	200	200
Coast guard	Coast guard retired pay ^c	(1,014)	(1,063)
Subtotal mandatory budget authority		-200	-200
Trust funds and public enterprise funds			
CBP	Customs unclaimed goods	8	8
FEMA	National Flood Insurance Fund ^d	2,104	2,233
Coast Guard	Boat safety	101	115
	Oil spill recovery	168	127
	Miscellaneous revolving fund	(11)	(11)
Subtotal trust and public enterprise funds		-2,381	-2,483
DHS gross budget authority		40,826^e	42,719
Total offsetting collections		-8,797	-10,710
DHS net appropriated BA (Mandatory + Discretionary)		31,743	32,015

Source: CRS analysis of the FY2007 President's Budget, DHS *Budget in Brief*, and House Appropriations Committee tables of April 19, 2006.

Notes: Totals may not add due to rounding.

- a. There is a discrepancy reported in the amount of aviation security fees collected by TSA, for both FY2006 and 2007. The enacted level aviation security fees for FY2006 was \$1,990 million, and this is the amount reported in the current committee tables. The Administration FY2007 budget documents and the DHS Congressional Budget Justifications report the FY2006 amount as \$2,010 million. The Administration has requested an increase in aviation security fees for FY2006, and the budget documents estimate the offsetting collections at \$3,736 million. The latest committee tables show \$3,650 million for FY2007 (a difference of \$86 million from the President's budget) based on estimates by the Congressional Budget Office. In order to complete the crosswalk in Table 3, we have used the enacted amount for FY2006 (\$1,990) and the committee table amount (\$3,650) for FY2007.
- b. Secret Service Retired Pay is permanently and indefinitely authorized, and as such is not annually appropriated. Therefore it is offset in Table 3.
- c. In contrast to Secret Service Retired Pay, Coast Guard Retired pay must be annually appropriated, and therefore is not offset in Table 3.
- d. This fund is comprised of both discretionary and mandatory appropriations; thus its component parts appear twice in this table.
- e. The President's budget for FY2006 includes a \$261 million charge within the Coast Guard for Health Care Fund Contributions that is not replicated in the House Appropriation Committee tables. For this reason, the FY2006 column does not add.

Appropriations for the Department of Homeland Security

Summary of DHS Appropriations

Table 4 is a summary table comparing the enacted appropriations for FY2006 and the requested amounts for FY2007. The President's budget request for FY2007 was submitted to Congress February 6, 2006. The Administration requested \$42.7 billion in gross budget authority for FY2007 (including mandatories, fees, and funds). The Administration's request includes gross appropriations of \$39.8 billion, and a net appropriation of \$32.0 billion in budget authority for FY2007, of which \$31.0 billion is discretionary budget authority, and \$1 billion is mandatory budget authority. The FY2006 enacted net appropriated budget authority for DHS was \$31.7 billion.

P.L. 109-295 provides \$39.8 billion in gross budget authority for DHS for FY2007. Including emergency funding, P.L. 109-295 provides \$41.4 billion in gross budget authority for DHS. P.L. 109-295 provides \$34.8 billion in net budget authority for DHS in FY2007 (including the emergency funding) and \$33.0 billion in net budget authority (not including the emergency funding). House-passed H.R. 5441 would have provided \$39.8 billion in gross budget authority and \$33.2 billion in net budget authority for DHS in FY2007. Senate-passed H.R. 5441 would have provided \$39.7 billion in gross budget authority and \$32.7 billion in net budget authority for DHS in FY2007.

Table 4. DHS: Summary of Appropriations
(budget authority in millions of dollars)

Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Appropriation		
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				FY2007 Enacted	FY2007 Emerg.	FY2007 Total
Title I: Departmental Operations										
Subtotal: Title I	907	53	-27	933	1,074	960	969	1,011	—	1,011
Title II: Security, Enforcement, and Investigations										
— Screening and Operations Office/ US-VISIT	340	—	-3	337	399	362	399	362	—	362
— Customs and Border Protection	5,952	857	-60	6,749	6,574	6,434	6,683	6,435	1,601	8,035
— Immigration and Customs Enforcement	3,175	340	-33	3,483	3,928	3,876	3,919	3,928	30	3,958
— Transportation Security Administration	3,924	—	-58	3,866	2,323	3,618	3,816	3,628	—	3,628
— U.S. Coast Guard	7,811	588	-343	8,056	8,181	8,129	8,188	8,140	176	8,316
— U.S. Secret Service	1,212	24	-12	1,224	1,265	1,293	1,226	1,277	—	1,277
Net subtotal: Title II	22,414	1,809	-508	23,715	22,670	23,712	24,231	23,770	1,807	25,577
— Total fee collections	4,302	—	—	4,302	6,009	4,779	5,029	4,779	—	4,779
Gross subtotal: Title II	26,716	1,809	-508	28,017	28,679	28,491	29,260	28,550	1,807	30,357
Title III: Preparedness and Recovery										
— Preparedness Directorate	4,072	25	-41	4,056	3,419	4,069	3,901	4,018	—	4,018
— Counter Terrorism Fund	2	—	—	2	—	—	—	—	—	—
— Federal Emergency Management Administration	2,633	6,379	-26	8,986	2,964	2,656	2,606	2,511	—	2,511
Net subtotal: Title III	6,707	6,404	-67	13,044	6,383	6,725	6,507	6,529	—	6,529

http://wikileaks.org/wiki/CRS-103328

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Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Appropriation		
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				FY2007 Enacted	FY2007 Emerg.	FY2007 Total
Title IV: Research and Development, Training, Assessments, and Services										
— Citizenship and Immigration Services	115	—	-1	114	182	162	135	182	—	182
— Federal Law Enforcement Training Center	282	25	-2	305	246	253	271	253	22	275
— Science and Technology	1,502	—	-15	1,487	1,002	956	818	973	—	973
— Domestic Nuclear Detection Office	—	—	—	—	535	500	442	481	—	481
Net subtotal: Title IV	1,899	25	-18	1,906	1,965	1,871	1,667	1,889	22	1,911
— Total fee collections	1,774	—	—	1,774	1,804	1,804	1,889	1,804	—	1,804
Gross subtotal: Title IV	3,673	25	—	3,680	3,769	3,675	3,555	3,693	22	3,715
Title V: General Provisions										
— Rescissions ^a	—	—	—	—	-16	-20	-582	-232	—	-232
Department of Homeland Security Appropriation										
Gross DHS budget authority	38,003	8,291	-620	45,674	39,889	39,831	39,709	39,783	1,829	41,380
— Total fee collections	-6,076	—	—	-6,076	-7,813	-6,583	-6,918	-6,815	—	-6,583
Net DHS budget authority	31,927	8,291	-620	39,598	32,076	33,248	32,792	32,967	1,829	34,796

Source: FY2006 enacted numbers from CRS analysis of the conference report to H.R. 2360, H.Rept.109-241; FY2006 supplemental numbers from CRS analysis of P.L. 109-61, P.L. 109-62, P.L. 109-88, and P.L. 109-148; FY2006 rescission numbers from CRS analysis of P.L. 109-148, P.L. 109-234, and the *FY2007 DHS Justifications*. FY2007 request numbers from the *FY2007 DHS Justifications*. FY2007 numbers from the conference report (H.Rept. 109-476) to H.R. 5441.

Notes: Totals may not add due to rounding. Amounts in parentheses are non-adds. For a more detailed analysis of the supplemental appropriations, refer to Appendix I.

a. FY2006 rescissions, including those in Title V or the General Provisions are displayed in the rescission column of the appropriate account. FY2007 Title V or General Provision rescissions are aggregated here for simplicity. FY2007 House-passed Title V rescissions include -\$16 million from the Counter Terrorism Fund and -\$4 million in TSA unobligated balances. Senate-passed H.R. 5441 includes a series of rescissions from unobligated balances of prior-year appropriations that are used to offset FY2007 appropriations, including -\$67 million from TSA Aviation Security and Headquarters and Management accounts; -\$16 million from the Counterterrorism Fund; -\$55 million from the Science and Technology Management and Administration account; -\$184 million

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from the Science and Technology Research, Development, Acquisitions and Operations account; -\$103 million from the U.S. Coast Guard from funds appropriated in P.L.109-90; -\$14 million from CBP Air and Marine Operations from funds appropriated in P.L. 109-90; and -\$99 million from the Science and Technology Research and Development account. Senate-passed H.R. 5441 also includes the following FY2007 rescissions: -\$43 million from travel and transportation expenses throughout DHS; and -\$1 million from printing and reproduction expenses throughout DHS. Title V of P.L. 109-295 includes rescissions of -\$16 million from the Counterterrorism Fund, and rescissions of unobligated balances from: S&T -\$125 million, TSA -\$67 million, USCG -\$20 million from the Acquisition, Construction, and Improvements account for the development of the Offshore Patrol Cutter, -\$20 million, and from Acquisition, Construction, and Improvements account for the Automatic Identification System -\$4 million. Title V of P.L. 109-295 also contains two re-appropriations of previously appropriated, but unobligated funds, including: \$78 million in funding that was appropriated by P.L. 109-90 for the USCG's Fast Response Cutter that is rescinded and re-appropriated by Sec. 521 of P.L. 109-295 for the USCG's Replacement Patrol Boat; and \$3 million that is rescinded and re-appropriated by Sec. 560 of P.L. 109-295 from USSS unobligated balances to National Security Special Events (NSSE).

Title I: Departmental Management and Operations¹⁰

Title I covers the general administrative expenses of DHS. It includes the Office of the Secretary and Executive Management (OS&EM), which is comprised of the immediate Office of the Secretary and 11 entities that report directly to the Secretary; the Office of Screening Coordination and Operations (OSCO); the Undersecretary for Management (USM) and its components, such as offices of the Chief Procurement Officer, Chief Human Capital Officer, and Chief Administrative Officer; the Office of the Chief Financial Officer (OCFO); the Office of the Chief Information Officer (CIO); Analysis and Operations Office (AOO); and the Office of the Inspector General (OIG). **Table 5** shows Title I appropriations for FY2006 and congressional action on the request for FY2007.

President's FY2007 Request. FY2007 requests relative to comparable FY2006 enacted appropriations are as follows: OS&EM, \$98 million, a decrease of \$28 million (-22%); OSCO, \$4 million, the same as previously provided; USM, \$209 million, an increase of \$40 million (24%); OCFO, \$44 million, an increase of \$25 million (+132%); OCIO, \$324 million, an increase of \$27 million (+9%); and OIG, \$96 million, an increase of \$13 million (+16%). The total FY2007 request for Title I was \$1,074 million. This represents an increase of \$167 million (18%) over the FY2006 enacted level (not including supplemental appropriations).

House-Passed H.R. 5441. With slight exception, appropriators, in making their recommendations for Title I accounts, cut allocations relative to both FY2006 funding and the President's requests for FY2007. The requested amount for OS&EM was decreased by a little more than \$1.5 million to a recommended amount of approximately \$96 million, which, after adjustment for floor offset amendments, was reduced to \$84 million. OSCO was not allocated monies as a separate entity, but its activities were funded in the Office of Policy within OS&EM. The USM request was slashed by almost \$50 million, with \$159 million recommended, which, after adjustment for floor offset amendments, was reduced to \$70 million. OCFO received a modest reduction of less than \$1 million in its request, with \$43 million recommended. OCIO, however, was recommended an increase of \$41 million above its request to make a total proposed allocation of \$365 million, whereas OIG was recommended \$96 million as requested. These recommended and otherwise adjusted amounts were approved by the House.

Senate-Passed H.R. 5441. Appropriators largely funded OS&EM accounts at or below FY2006 levels, and the Senate ultimately approved almost \$83 million, which was about \$15 million less than the amount requested by the President. OSCO was not allocated monies as a separate entity, but its activities were funded in the Office of Policy within OS&EM. Other accounts in Title I — OCFO, OCIO, and OIG — were generally funded at levels below the President's request, but above FY2006 amounts. The Senate approved a total of \$969 million for Title I accounts, \$9 million more than the House allocation and \$105 million less than the President's request.

¹⁰ Prepared by Harold C. Relyea, Specialist in American National Government, Government and Finance Division.

P.L. 109-295. P.L. 109-295 provides \$94 million for OS&EM instead of the \$84 million approved by the House and \$83 million approved by the Senate. Conferees explained they had “made reductions to the [President’s] budget request due to a large number of vacancies and unobligated balances within certain offices” of OS&EM.¹¹ The Citizenship and Immigration Services Ombudsman and the Privacy Officer were funded at the requested levels, but all other OS&EM accounts were trimmed in conference. Conferees agreed to provide a little over \$2 million for a separate Office of Counternarcotics Enforcement, which had previously been funded through the Office of Chief of Staff account. Other entities experiencing considerable reductions in their funding requests were USM (-\$51 million), OCFO (\$-18), and OIG (-\$11 million), whereas OCIO received an increase (+\$25 million) to its request.

¹¹ U.S. Congress, House Committee of Conference, *Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2007*, and for Other Purposes, conference report to accompany H.R. 5441, 109th Cong., 2nd sess., H.Rept. 109-699 (Washington: GPO, 2006), p. 114.

Table 5. Title I: Department Management and Operations
(budget authority in millions of dollars)

Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Enacted
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				
Office of the Secretary and Executive Management	79	51	—	130	98	84	83	94
Office of Screening Coordination and Operations	4	—	-4	—	4	—	—	—
Office of the Undersecretary for Management	169	—	-2	167	209	70	163	154
Office of the Chief Financial Officer	19	—	—	19	44	43	27	26
Office of the Chief Information Officer	297	—	-3	294	324	365	307	349
Analysis and Operations	255	—	-2	253	299	299	299	300
Office of the Federal Coordinator for Gulf Coast Rebuilding	—	—	—	—	—	3	—	3
Office of the Inspector General	83	2	-1	84	96	96	90	85
Net Budget Authority: Title I	907	53	-27^a	933^a	1,074	960	969	1,011

Source: FY2006 enacted numbers from CRS analysis of the Conference Report to H.R. 2360, H. Rept. 109-241; FY2006 supplemental numbers from CRS analysis of P.L. 109-61, P.L. 109-62, P.L. 109-88, and P.L. 109-148; FY2006 rescission numbers from CRS analysis of P.L. 109-148, P.L. 109-234, and the *FY2007 DHS Justifications*. FY2007 request numbers from the *FY2007 DHS Justifications*. FY2007 numbers from the conference report (H.Rept. 109-476) to H.R. 5441.

Notes: No FY2007 funding for Title I was designated as emergency spending. Totals may not add due to rounding. Amounts in parentheses are non-adds. For a more detailed analysis of the supplemental appropriations, please refer to Appendix I.

a. This total includes a \$15 million rescission from the Working Capital Fund which was included in Title V of H.Rept. 109-241.

Analysis and Operations¹²

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

- To assess, receive, and analyze law enforcement information, intelligence information, and other information from federal, state, and local government agencies, and the private sector to (1) identify and assess the nature and scope of the terrorist threats to the homeland, (2) detect and identify threats of terrorism against the United States, and (3) understand such threats in light of actual and potential vulnerabilities of the homeland;
- To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States;
- To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, and intelligence-related information within the federal government and between the federal government and state and local government agencies and authorities.¹³

Pursuant to DHS Secretary Michael Chertoff's Second Stage Review,¹⁴ and the Conference Report to H.R. 2360, Department of Homeland Security Act FY2006,¹⁵ a number of organizational changes were announced. Some of these changes include the following:

- The IAIP Directorate was disbanded. Intelligence Analysis was organizationally separated from Infrastructure Protection.

¹² Prepared by Todd Masse, Specialist in Domestic Intelligence and Counterterrorism, Domestic Social Policy Division.

¹³ See Title II, Subtitle A, Section 201(d), Responsibilities of the Undersecretary (of IAIP), codified at 6 U.S.C. §121. See also Department of Homeland Security, Office of the Inspector General, *Survey of the Information Analysis and Infrastructure Protection Directorate*, Office of Inspections, Evaluations, and Special Reviews, OIG-04-413, Feb. 2004, p. 26.

¹⁴ See "Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Department of Homeland Security," DHS Press Release, July 13, 2005.

¹⁵ See H.Rept. 109-241, in *Congressional Record*, Sept. 29, 2005, pp. H8585 - H8625.

- The Undersecretary of IAIP was dissolved and a new Undersecretary for Preparedness was created.
- Two new offices were created — the Office of Intelligence and Analysis, and the Office of Operations Coordination (which includes the Homeland Security Operations Center [HSOC]).
- The Assistant Secretary for the Office of Intelligence and Analysis was designated the DHS Chief Intelligence Officer and reports directly to the Secretary.
- A new budget account — Analysis and Operations (A&O) — was created within Title I, Departmental Management and Operations.

The A&O account “supports the activities of the Office of Intelligence and Analysis and the Directorate of Operations. Even though these two offices are different and distinct in their missions, they work together to improve intelligence, information sharing, and coordination.”¹⁶ There are two budget activities within this account — the Office of Intelligence and Analysis, which leads the DHS Intelligence Enterprise,¹⁷ and the Directorate of Operations Coordination, which “disseminate (s) threat information, provides domestic situational awareness, performs incident management, and ensures operations coordination among DHS components with specific threat responsibilities.”¹⁸ **Table 5** shows Title I appropriations for FY2006 and congressional action on the request for FY2007.

Budget Structure Changes. The budget for IAIP for FY2004 and FY2005 was located within Title IV (Research and Development, Training, Assessments, and Services) of the DHS Appropriations Bills.¹⁹ In FY2006, the budget for IA-related functions moved to Title I (Department Management and Operations). A new A&O account was established within Title I. According to the FY2006 Department of Homeland Security Appropriations Act (P.L. 109-90), \$256 million was appropriated for “necessary expenses for information analysis, as authorized by Title II of the Homeland Security Act of 2002 ... to remain available until September 30, 2007.”

President’s FY2007 Request. The FY2007 request for Title I, A&O is \$299 million and 475 full-time equivalent positions (FTEs). This represents an increase of 18.1% more than the FY2006 revised enacted amount of \$253 million, and an increase of 12 FTEs.²⁰

House-Passed H.R. 5441. The House Appropriations Committee recommended \$299 million, an amount equal to the level of funding requested by the

¹⁶ See DHS FY 07 *Congressional Justification*, p. AO-3.

¹⁷ The Intelligence Enterprise is defined as “all those component organizations within the Department that have activities producing raw information, intelligence-related information and/or finished intelligence.” See *DHS Intelligence Enterprise Strategic Plan*, Jan. 2006.

¹⁸ See DHS FY 07 *Congressional Justification*, p. AO-3.

¹⁹ See CRS Report RL32302, *Appropriations for FY2005: Department of Homeland Security*, by Jennifer E. Lake and Blas Nunez-Neto; and CRS Report RL32863, *Homeland Security Department: FY2006 Appropriations*, by Jennifer E. Lake and Blas Nunez-Neto.

²⁰ Adjustments to the FY06 base include 57 FTE and \$16.6 million.

President for FY2007. This amount is approximately \$46 million in excess of the \$253 million FY2006 appropriation for the activities associated with these DHS functions. In the report accompanying H.R. 5441, the Appropriations Committee also made the following points:

- It denied DHS's request to rename the Directorate of Operations Coordination the Directorate of Operations based on the Committee's position that the Directorate's function is "...to support decision makers rather than to direct activities."²¹
- It directed the HSOC and ICE report, not later than January 16, 2007, on the number, location, planned deployments, composition, and budgets of DHS-proposed situational awareness teams, noting that the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina found that the HSOC failed to provide valuable situational information to the White House. These teams are designed to provide "ground truth" as they are deployed throughout the country during an emergency.
- It directed the Office of Intelligence and Analysis to continue to provide the Committee with quarterly threat briefings, and noted that it is "...encouraged by the leadership put into place..."²² at the Department's OIA.
- It directed that a report be provided to the Committee by January 16, 2007, on the total number of intelligence fusion centers, their funding sources and amounts, and where additional fusion centers are necessary. The Committee "...strongly supports information sharing between the intelligence community and people responsible for taking action on that intelligence."²³
- It supports IA's recent effort to develop a staffing, recruitment, and training plan. Furthermore, "the Committee expects IA to expend unobligated personnel resources on recruitment and training, including fellowships and other tools deemed necessary and to report to the Committee bi-annually on its efforts."²⁴

Senate-Passed H.R. 5441. The Senate Appropriations Committee recommended \$299 million, an amount equal to the Administration's FY2007 request and the amount passed by the House. These funds, to remain available until September 30, 2008, are for "necessary expenses for information analysis and operations coordination activities, as authorized by title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.)" Of the recommended amount, no more than

²¹ See H.Rept. 109-476, p. 19.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

\$5,000 “shall be for official reception and expenses.” The committee further stated it “supports the activities to improve the analysis and sharing of threat information, including the activities of the Office of Intelligence and Analysis and the Office of Operations Coordination.”²⁵ The committee also made the following two additional recommendations:

- It directed “the Chief Intelligence Officer to report no later than 90 days after the enactment of this act on efforts to address concerns reported in the Office of Inspector General Report OIG-05-34.”²⁶
- It “understands the operating procedures for the Homeland Security Operations Center [HSOC] have not changed since Hurricane Katrina. The committee directs the Government Accountability Office to analyze the role of the HSOC and the numerous DHS component operations centers and to make recommendations regarding the operation and coordination of these centers.”²⁷

During Senate floor action on July 12, S.Amdt. 4569 required the following report on data-mining, an issue which could affect research conducted by any DHS intelligence element:

- “The head of each department or agency in the Department of Homeland Security that is engaged in any activity to use or develop data-mining technology shall each submit a report to Congress on all such activities of the agency under the jurisdiction of that official. The report shall be made available to the public.”²⁸

P.L. 109-295. P.L. 109-295 provides \$300 million, or \$1 million more than the Administration’s request, and level of funding recommended by the House and Senate. According to the conference report, “...Up to \$1 million is for an independent study on the feasibility of creating a counter terrorism intelligence agency.”²⁹ Such a study may consider the question of the establishment of an agency that might be the equivalent of the British Security Service (know as MI-5). However, numerous entities within the federal government, including DHS’s Office of Intelligence and Analysis, the FBI’s National Security Branch, and the interagency National Counterterrorism Center, among others, all currently perform a counterterrorism intelligence function. How the current organizational structure would be altered by

²⁵ See *Department of Homeland Security Appropriations Bill, 2007*, S.Rept. 109-273, p. 17.

²⁶ Ibid. DHS OIG Report OIG-05-34 is *Evaluation of DHS’ Security Program and Practices for Its Intelligence Systems*, Aug. 2005. An unclassified summary can be located at [http://www.dhs.gov/interweb/assetlibrary/OIG_05-34_Aug05.pdf].

²⁷ Ibid., p. 18.

²⁸ See *Congressional Record*, July 12, 2006, p. S7387.

²⁹ See *Conference Report, Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2007, and for Other Purposes*, H.Rept. 109-699, p. 122.

the potential creation of a “counter terrorism intelligence agency,” is an open question.

Linkages to DHS Strategic Goals. Although the Office of Intelligence and Analysis and the Office of Operations Coordination contribute to a broad array of DHS strategic goals, their activities are primarily targeted at achieving success in strategic goals one and two — awareness and prevention — respectively. According to DHS, the goal of awareness is to “identify and understand threats, assess vulnerabilities, determine potential impacts and disseminate timely information out to homeland security partners and the American public.”³⁰ Two programs under this goal include A&O and Intelligence. The performance goal for A&O is to “deter, detect and prevent terrorist incidents by sharing domestic situational awareness through national operational communications and intelligence analysis.”³¹ The performance goal for intelligence is “100 percent distribution of sensitive threat information relative to Department of Homeland Security/Transportation Security Administration components, field elements, and stakeholders.”³²

Budget Caveats. The FY2007 budget request for A&O represents an increase of nearly \$46 million and 12 FTE. However, it is important to note that disaggregating intelligence analysis from operations is problematic because the budget of the Office of Intelligence and Analysis, an entity of the Intelligence Community, is classified. The figures cited above are the combined figures for the Office of Operations Coordination and the Office of Intelligence and Analysis.

Budget Implications. Some observers might argue that the requested A&O budget is sufficient, given the current stage of development for intelligence and operations within DHS. Others, however, might question whether the requested budget can achieve the ambitious intelligence analysis goals, as outlined by Charles Allen, DHS Chief Intelligence Officer (CIO). In recent testimony before the House Committee on Homeland Security,³³ CIO Allen outlined at least five priorities laden with resource implications, including the following: (1) improving the quality of analysis across the Department, (2) integrating the DHS intelligence enterprise, (3) strengthening our intelligence support to State, local, and tribal authorities, as well as the private sector, (4) ensuring DHS intelligence takes its full place in the Intelligence Community, and (5) solidifying our relationship with the Congress by improving our transparency and responsiveness. These priorities and others might imply that in order to implement the integration of intelligence at DHS, additional funds may be necessary for department-wide information management systems and additional analysts — to be stationed both at Intelligence Community partner agencies, as well as at some of the 38 plus state, local, and regional intelligence

³⁰ See DHS FY 07 *Congressional Justification*, Budget Overview, p. 3.

³¹ Ibid.

³² Ibid.

³³ Testimony of DHS Chief Intelligence Officer Charles Allen in U.S. Congress, 109th Congress, 2nd sess., House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, May 24, 2006. “Progress of the DHS Chief Intelligence Officer.”

fusion centers.³⁴ The information management challenge at DHS is significant, as the organization must “know what it knows” in order to achieve the aforementioned priorities. According to CIO Allen, DHS has “...developed a comprehensive assessment of the existing intelligence information technology architecture in DHS, along with recommendations to improve and enhance it.”³⁵ Although integrated information management systems may not be a panacea, for an intelligence organization they are considered by many to be essential. In the absence of such systems, the coordination of intelligence can tend to rely on personal relationships and ad hoc arrangements. From a human resource perspective, DHS is stationing liaison officers and intelligence analysts at some of the 38 state and local fusion centers. When combined with the detailing of current staff to Intelligence Community partners, such as the National Counterterrorism Center (NCTC), such arrangements, though beneficial, may undermine the development of a permanent and experienced cadre of homeland security analysts at DHS headquarters.

Personnel Issues³⁶

In addition to the policy and planning issues, and the reorganization issues, several personnel issues may be of interest to Congress during the current appropriations cycle.

The Office of Human Capital (OHC) provides overall management and administration of human capital in the DHS. It establishes policy and procedures and provides oversight, guidance, and leadership for human resources (HR) functions within the department. The Chief Human Capital Officer (CHCO) is responsible for designing and implementing the new human resources management (HRM) system in the DHS, referred to as MaxHR,³⁷ including its human resources strategy and

³⁴ DHS intelligence analysts are currently being stationed at these fusion centers. See Dibya Sarkar, “DHS Adds Brainpower to Intelligence Centers,” in *Federal Computer Week*, Mar. 17, 2006.

³⁵ Testimony of DHS Chief Intelligence Officer Charles Allen in U.S. Congress, 109th Congress, 2nd sess., House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, May 24, 2006. “Progress of the DHS Chief Intelligence Officer.”

³⁶ Personnel Issues section prepared by Barbara L. Schwemle, Analyst in American National Government, Government and Finance Division.

³⁷ On Feb. 1, 2005, the DHS and the Office of Personnel Management jointly published final regulations in the *Federal Register* to implement MaxHR. (U.S. Department of Homeland Security and U.S. Office of Personnel Management, “Department of Homeland Security Human Resources Management System,” *Federal Register*, vol. 70, no. 20, Feb. 1, 2005, pp. 5271-5347.) The regulations provide new policies on position classification, pay, performance management, adverse actions and appeals, and labor-management relations for DHS employees. MaxHR will cover about 110,000 of the department’s 180,000 employees and will be implemented in phases. (See CRS Report RL32261, *DHS’s Max-HR Personnel System: Regulations on Classification, Pay, and Performance Management Compared With Current Law, and Implementation Plans*, by Barbara L. Schwemle; and CRS Report RL32255, *Homeland Security: Final Regulations for the Department of Homeland Security*

(continued...)

technology components. The OHC reports to the Undersecretary for Management and its appropriation is included in that of the Undersecretary. For FY2005, the OHC received an appropriation of \$43 million — \$7 million for HR Operations and \$36 million for MaxHR — and staffing of 49 FTEs. The OHC received funding of nearly \$38.511 million (down from \$38.9 million, after a 1.0% rescission) and a staffing level of 62 FTEs for FY2006. This total was allocated as \$8.811 million (down from \$8.9 million, after a 1.0% rescission) for HR Operations³⁸ and \$29.7 million (down from \$30 million, after a 1.0% rescission) for the development and implementation of MaxHR.³⁹ Of the FTEs, 50 were attached to HR Operations and 12 were attached to MaxHR.

President's FY2007 Request. The President's FY2007 budget proposes funding of \$81 million and staffing of 80 FTEs for the OHC.⁴⁰ The request represents

³⁷ (...continued)

Human Resources Management System (Subpart E) Compared With Current Law, by Jon O. Shimabukuro.) By Memorandum Opinion and Order issued on August 12, 2005, and by Memorandum Opinion issued on October 7, 2005, District Court Judge Rosemary Collyer blocked implementation of the labor-management relations regulations prescribed for MaxHR. The decision also enjoined a provision of the regulations that limits the authority of the Merit Systems Protection Board (MSPB) to modify a penalty imposed by DHS. The agency appealed the ruling. A unanimous decision by a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit on June 27, 2006, found that the proposed system would illegally curtail employee collective bargaining rights and that DHS limited the scope of collective bargaining in violation of law. The appeals court reversed the district court's holding that the appeals procedures in the DHS regulations do not comply with the requirement in the Homeland Security Act that they must be fair. It held that adjudicating the fairness of these procedures is not timely until DHS uses them in an administrative proceeding. The appeals court affirmed the district court's holding that assigning the MSPB an appellate role in mandatory removal cases is entitled to judicial deference. In September 2005, DHS announced that it was postponing the initial implementation of pay for performance under Max-HR for one year. In September 2006, the Justice Department decided that the appeals court decision would not be appealed to the Supreme Court. (See CRS Report RL33052, *Homeland Security and Labor-Management Relations: NTEU v. Chertoff*, by Thomas J. Nicola and Jon O. Shimabukuro.)

³⁸ The \$8.811 million appropriation was allocated as follows: salaries and benefits (\$6.563 million), travel (\$30,000), GSA rent (\$19,000), communication, utilities, and miscellaneous charges (\$110,000), printing (\$15,000), advisory and assistance services (\$1.633 million), other services (\$361,000), purchase from government accounts (\$7,000), operation and maintenance of facilities (\$16,000), supplies and materials (\$47,000), and equipment (\$10,000).

³⁹ The \$29.7 million appropriation was allocated as follows: salaries and benefits (\$954,000), travel (\$6,000), transportation of things (\$3,000), GSA rent (\$778,000), communication, utilities, and miscellaneous charges (\$1.378 million), printing (\$20,000), advisory and assistance services (\$25.037 million), other services (\$112,000), purchase from government accounts (\$875,000), operation and maintenance of facilities (\$16,000), supplies and materials (\$10,000), and equipment (\$511,000).

⁴⁰ *FY2007 DHS Justifications, Departmental Management and Operations*, Undersecretary for Management, Office of Human Capital and Office of Human Capital — MaxHR, pp. USM-43 - USM-50.

an increase of \$43 million and 18 FTEs more than the FY2006 enacted appropriation and includes money for HR Operations and MaxHR as discussed below.

HR Operations. An appropriation of \$10 million is requested for HR Operations, an increase of \$1 million more than the FY2006 enacted funding. Attached to this account are 53 FTEs, 3 more FTEs than in FY2006. More than 90% of the requested money is for salaries and benefits (\$7 million) and advisory and assistance services (\$2 million).⁴¹ Among the activities that the DHS plans to emphasize during FY2006 are continued refinement of the department's hiring processes, establishment of an Executive Leadership and Learning Center, and use of a Chief Learning Officer to conduct needs analyses and identify "best practices." In FY2007, initiatives are expected to include improving customer service, enhancing training to inculcate a "team" spirit across the DHS, and expanding the use of program evaluation to begin measuring the effects of changes.

MaxHR. The appropriation requested for the department's new HRM system is \$71 million, nearly \$42 million more than the amount provided in FY2006. The FTEs attached to the account are 27, an increase of 15 FTEs over FY2006. Almost 94% of the requested money is for salaries and benefits (\$3 million) and advisory and assistance services (\$64 million).⁴² Accounting for the increased funding are (1) implementation costs of the new pay system for employees who were originally scheduled to be converted in FY2006 (\$15 million), (2) implementation and operational costs for a market and performance-based compensation system in FY2007 (\$22 million), and (3) funding the Homeland Security Labor Relations Board (HSLRB) (\$5 million).

The implementation of MaxHR will continue during FY2006 and include such activities as design and review of a new market-based pay system, creation of a compensation committee, and continued training of supervisors, managers, and HR professionals. Non-bargaining unit employees from Headquarters, ICE, FLETC, FEMA, USCG, and U.S. Secret Service will convert to the new performance system, and CBP and CIS will begin training on that new system. The HSLRB, designed to resolve labor-management disputes, may be established insofar as is legally permissible. Employees converted to the new performance system in FY2006 will convert to the new market-based pay system in FY2007, and those training on the new performance system in FY2006 will be converted to it in FY2007.

⁴¹ Additional amounts requested for FY2007 are for: travel (\$33,000), GSA rent (\$74,000), communication, utilities, and miscellaneous charges (\$159,000), printing (\$20,000), other services (\$376,000), purchase from government accounts (\$159,000), operation and maintenance of facilities (\$20,000), supplies and materials (\$75,000), and equipment (\$25,000).

⁴² Additional amounts requested for FY2007 are for travel (\$70,000), transportation of things (\$3,000), GSA rent (\$756,000), communication, utilities, and miscellaneous charges (\$1.723 million), printing (\$100,000), other services (\$130,000), purchase from government accounts (\$880,000), operation and maintenance of facilities (\$20,000), supplies and materials (\$75,000), and equipment (\$550,000).

The Under Secretary for Management at DHS, Janet Hale, resigned effective in early May 2006, and the department's CHCO, K. Gregg Prillaman, resigned effective in early June 2006. In testimony before the House Committee on Homeland Security's Subcommittee on Management, Integration, and Oversight on May 18, 2006, Mr. Prillaman discussed the progress of MaxHR implementation and management challenges facing the department. With regard to MaxHR, he said that the performance management program, which links individual and department performance goals, should cover 18,000 employees by the end of 2006; the design of the pay bands is being finalized; and the pay-for-performance compensation system is expected to begin in February 2007. Among the challenges that DHS is facing is the retirement eligibility of a significant percentage of high level officials during the next four years. According to Mr. Prillaman, "49% of SES [Senior Executive Service] level employees and 37% of GS-15 level employees [at DHS] will be eligible to retire" by 2009. At the Secret Service, 91% of SES members and 75% of GS-15's will be retirement eligible by 2010.⁴³

On May 25, 2006, the Government Accountability Office (GAO) released an evaluation on the conversion of federal government employees from noncareer to career positions. GAO found that appropriate authorities and proper procedures may not have been followed for two of the three positions converted at DHS — a GS-13 staff assistant at the Federal Emergency Management Agency and a GS-15 Deputy Assistant Secretary for Legislative Affairs. For this latter position, GAO found that it may have been created specifically for a particular individual, which, if so, is a violation of federal law.⁴⁴ Following the hearing and the release of the GAO report, the Ranking Members of the House Homeland Security Committee and its Subcommittee on Management, Integration, and Oversight sent a letter to Homeland Security Secretary Michael Chertoff on June 1, 2006, requesting answers to several questions. Those queries related to actions DHS will take given the GAO findings on the legislative affairs position and regarding implementation of MaxHR, and explaining why the resignation (tendered on May 15, 2006) of the CHCO was not disclosed prior to his testimony before the Homeland Security Committee.⁴⁵

House-Passed H.R. 5441. As recommended by the Subcommittee on Homeland Security and the Committee on Appropriations, on June 6, 2006, the House passed an appropriation of \$38.9 million for the OHC, \$42.3 million less than requested. This amount would be allocated as \$9.2 million for HR Operations (salaries and expenses) and \$29.7 million for MaxHR; \$600,000 and \$41.7 million, respectively, less than requested. MaxHR is funded at the FY2006 enacted level. The OHC appropriation represents 24.4% of the funding provided for the Under Secretary for Management (\$159.5 million). According to the report accompanying H.R. 5441, the budget request assumed that increased aviation passenger fees would

⁴³ Statement by K. Gregg Prillaman, Hearing on Human Capital Issues and Security Procedures at the Department of Homeland Security, May 18, 2006, pp. 6-7 (unpublished).

⁴⁴ U.S. Government Accountability Office, *Personnel Practices; Conversions of Employees From Noncareer to Career Positions*, GAO-06-381 (Washington: May 2006), pp. 30, 60-62.

⁴⁵ Letter from Representatives Bennie G. Thompson and Kendrick B. Meek to Michael Chertoff, June 1, 2006.

allow MaxHR to be funded at the requested level. Because such fees are outside the Appropriation Committee's jurisdiction, the committee's FY2007 recommended appropriation was adjusted accordingly. The OHC appropriation fully funds nine of the requested 15 FTEs for MaxHR. The six FTEs not included in the appropriation were for the Labor Relations Board. A general provision at Section 504 provides that not more than 50% of unobligated balances remaining at the end of FY2007 from appropriations for salaries and expenses remain available through FY2008 subject to guidelines on reprogramming.⁴⁶ In a May 25, 2006, Statement of Administration Policy on H.R. 5441, the Office of Management and Budget (OMB) stated its opposition to either reducing or eliminating funds for MaxHR.⁴⁷

During consideration of H.R. 5441 in the House on May 25, 2006, H.Amdt. 936, offered by Representative Martin Olav Sabo, was agreed to by voice vote. The amendment removes \$15 million from the Under Secretary for Management and directs that it be used to fund grants for firefighters. If the entire \$15 million is taken from MaxHR, the FY2007 funding for the new personnel system would be \$14.7 million.

Senate-Passed H.R. 5441. Following the recommendation of the Subcommittee on Homeland Security and the Committee on Appropriations, the Senate, on July 13, 2006, passed an appropriation of \$44.8 million for the OHC, \$36.4 million less than requested. Under the Senate-passed bill, the funding would have been allocated as \$9.8 million for HR Operations (salaries and expenses) and \$35 million for MaxHR. The salaries and expenses total matched the budget request, but the MaxHR funding was \$36.4 million less than requested. As compared with the FY2006 appropriation and the FY2007 appropriation passed by the House, the amount represented an increase of \$5.3 million for MaxHR. The report accompanying H.R. 5441 stated that the new personnel system was not funded at the level requested in the budget because of the "ongoing litigation." It also directed the Secretary of Homeland Security "to submit an updated expenditure plan" based on the final FY2007 appropriation to the Senate and House Committees on Appropriations within 90 days of the act's enactment. All contract obligations, listed by year, contractor, and purpose, are to be included in the report.⁴⁸ The recommended appropriation for the OHC makes up 27.4% of the funding provided for the Under Secretary for Management (\$163.4 million). The general provision on unobligated balances was included as Section 505 of the Senate-passed bill. OMB expressed the administration's strong opposition to any reduction or elimination of funding for MaxHR.⁴⁹

An amendment (S.Amdt. 4674) offered by Senator Barbara Boxer and agreed to by the Senate by unanimous consent would have prohibited the use of certain funds

⁴⁶ H.Rept. 109-476, pp. 145, 14-15, 134.

⁴⁷ U.S. Executive Office of the President, *Statement of Administration Policy, H.R. 5441 (House)* (Washington: May 25, 2006), p. 3.

⁴⁸ S.Rept. 109-273, p. 14.

⁴⁹ U.S. Executive Office of the President, *Statement of Administration Policy, H.R. 5441 (Senate)* (Washington: July 12, 2006), p. 2.

for travel by DHS officers and employees until the recommendations of the Inspector General on the National Asset Database are implemented by the Under Secretary for Preparedness or until the Under Secretary submits a report to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Homeland Security, and the Senate and House Committees on Appropriations explaining why the recommendations have not been fully implemented.⁵⁰ (This provision is not included in the law.)

A Senate Committee on Homeland Security and Governmental Affairs hearing on July 19, 2006, received the results of a GAO audit on the use of purchase (government-issued credit cards) cards by DHS employees in the wake of Hurricane Katrina. Some 9,000 DHS employees have been issued such purchase cards and more than \$435 million was spent in FY2005 using the cards. GAO found that about 45% of the purchases did not have the appropriate written authorization and that some 63% of purchases had no documentation of receipt of goods and services. The investigators also found weak internal controls, in terms of leadership, staffing, monitoring, and training, at DHS that resulted in questionable and wasteful transactions and that too many purchase cards had been issued by DHS (some 2,468 purchase cards had not been used for a year). An agency manual on procedures for purchase card use remained in draft for two years because of internal disagreements within DHS. GAO will be issuing a report that will include recommendations for improved management controls at DHS.⁵¹

P.L. 109-295. The law provides funding of \$33.8 million for the OHC, some \$47.5 million less than the President's budget proposal. The amount is to be allocated as \$8.8 million for salaries and expenses (some \$1.0 million below the President's request) and \$25 million for Max-HR (some \$46.4 million below the President's request). The \$8.8 million matches the FY2006 appropriation for the salaries and expenses account after the rescission. The appropriation for the OHC makes up 22% of the funding provided for the Under Secretary for Management (\$153.6 million). As provided in the Senate report, the Secretary of DHS is directed to submit an updated expenditure plan for Max-HR to the House and Senate Committees on Appropriations within 90 days after the act's enactment. The report must include all contract obligations, by contractor by year, and the purpose of the contract.⁵² As proposed by the House and Senate, the law continues a general provision at Section 513 on background investigations. The conference report directs that background investigations, including updates and reinvestigations, be processed expeditiously for DHS employees, particularly those in the Office of the Secretary and Executive Management; Office of the Under Secretary for Management, Analysis, and Operations; Immigration and Customs Enforcement; the Directorate

⁵⁰ *Congressional Record*, daily edition, vol. 152, July 13, 2006, p. S7498.

⁵¹ U.S. Government Accountability Office, *Individual Disaster Assistance Programs; Fraud Prevention, Detection, and Prosecution*, GAO report GAO-06-954T (Washington: July 12, 2006). The hearing testimony is available at [<http://hsgac.senate.gov>].

⁵² H.Rept. 109-699, p. 119.

of Science and Technology; and the Directorate for Preparedness.⁵³ The general provision on unobligated balances is continued at Section 505 of the law, as proposed by the House and Senate. Both of these general provisions were addressed in the President's signing statement on H.R. 5441. With regard to the background investigations, he stated that "the executive branch shall construe this provision in a manner consistent with the President's exclusive constitutional authority ... to classify and control access to national security information and to determine whether an individual is suitable to occupy a position in the executive branch with access to such information." The statement characterizes the provision on unobligated balances as one of several provisions in the law that "The executive branch shall construe as calling solely for notification."⁵⁴

Title VI, Subtitle B of the law includes provisions on personnel policies for employees of the Federal Emergency Management Agency (FEMA). The Administrator of FEMA is directed to develop a strategic human capital plan for the agency's workforce and authorizes the Administrator to pay recruitment and retention bonuses to individuals in positions that are difficult to fill and to provide for the professional development and education of employees.

Title II: Security Enforcement and Investigations

Title II funds Security, Enforcement, and Investigations. Title II contains the appropriations for the U.S.-Visitor and Immigrant Status Indicator (US-VISIT) program, the Bureau of Customs and Border Protection (CBP), the Bureau of Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the US Coast Guard, and the US Secret Service. **Table 6** shows the FY2006 enacted and FY2007 enacted appropriation for Title II.

⁵³ Ibid., p. 174.

⁵⁴ U.S. President (Bush), "President's Statement on H.R. 5441, the 'Department of Homeland Security Appropriations Act, 2007,' Oct. 4, 2006, available at [<http://www.whitehouse.gov>].

Table 6. Title II: Security, Enforcement, and Investigations
(budget authority in millions of dollars)

Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Appropriation		
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				FY2007 Enacted	FY2007 Emerg.	FY2007 Total
US-VISIT^a										
— US-VISIT	340	—	-3	337	399	362	399	362	—	362
Net total	340	—	-3	337	399	362	399	362	—	362
Customs & Border Protection										
— Salaries and expenses	4,826	447	-48	5,225	5,519	5,435	5,355	5,459	103	5,562
— Automation modernization	456	—	-5	451	461	451	461	451	—	451
— Technology modernization	—	—	—	—	—	—	132	—	—	—
— Air and Marine Operations	400	95	-4	491	338	373	577	370	232	602
— Fencing, Infrastructure, and Technology	—	—	—	—	—	—	—	28	1,159	1,188
— Construction	270	315	-3	582	256	175	378	122	110	232
— Fee accounts ^b	1,142	—	—	1,142	1,265	1,265	1,265	1,265	—	1,265
Gross total	7,094	857	-60	7,891	7,839	7,699	8,168	7,701	1,601	9,302
— Offsetting collections	-1,142	—	—	-1,142	-1,265	-1,265	-1,485	-1,265	—	-1,265
Net total	5,952	857	-60	6,749	6,574	6,434	6,683	6,435	1,601	8,036
Immigration & Customs Enforcement										
— Salaries and expenses	3,108	340	-31	3,417	3,902	3,850	3,770	3,887	—	3,887
— Federal Protective Services (FPS)	487	—	—	487	516	516	516	516	—	516
— Automation & infrastructure modernization	40	—	—	40	—	—	20	15	—	15

http://wikileaks.org/wiki/CHS-RL33428

Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Appropriation		
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				FY2007 Enacted	FY2007 Emerg.	FY2007 Total
— Construction	27	—	-1	26	26	26	159	26	30	56
— Fee accounts ^c	254	—	—	254	252	252	252	252	—	252
Gross total	3,916	340	-32	4,224	4,696	4,644	4,717	4,697	30	4,727
— Offsetting FPS fees	-487	—	—	-487	-516	-516	-516	-516	—	-516
— Offsetting collections	-254	—	—	-254	-252	-252	-282	-252	—	-252
Net total	3,175	340	-32	3,483	3,928	3,876	3,919	3,928	30	3,958
Transportation Security Administration^a										
— Aviation security (gross funding)	4,607	—	-46	4,561	4,655	4,704	4,752	4,731	—	4,731
— Surface Transportation Security	36	—	—	36	37	37	37	37	—	37
— Credentialing activities (appropriation)	75	—	-1	74	55	75	30	40	—	40
— Credentialing/Fee accounts ^d	180	—	—	180	76	76	76	76	—	76
— Intelligence	21	—	—	21	21	21	21	21	—	21
— Federal Air Marshals ^e	686	—	-7	679	699	699	699	714	—	714
— Administration	489	—	-4	485	506	502	697	504	—	504
— Aviation security mandatory spending ^f	250	—	—	250	250	250	250	250	—	250
Gross total	6,344	—	-58	6,286	6,299	6,364	6,562	6,374	—	6,374
— Offsetting collections ^g	-1,990	—	—	-1,990	-3,650	-2,420	-2,420	-2,420	—	-2,420
— Credentialing/Fee accounts	-180	—	—	-180	-76	-76	-76	-76	—	-76
— Aviation security mandatory spending	-250	—	—	-250	-250	-250	-250	-250	—	-250
Net total	3,924	—	-58	3,866	2,323	3,618	3,816	3,628	—	3,628

http://www.legis.ks.gov/CRS-RL33428

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Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Appropriation		
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				FY2007 Enacted	FY2007 Emerg.	FY2007 Total
U.S. Coast Guard										
— Operating expenses	5,492	321 ^h	-330	5,483	5,519	5,482	5,534	5,478	—	5,478
— Environmental compliance & restoration	12	—	—	12	12	12	11	11	—	11
— Reserve training	119	—	-1	118	124	122	124	122	—	122
— Acquisition, construction, & improvements	1,142	267	-12	1,397	1,170	1,140	1,062	1,154	176	1,330
— Alteration of bridges	15	—	—	15	—	17	15	16	—	16
— Research, development, tests, & evaluation	17	—	—	17	14	14	18	17	—	17
— Retired pay (mandatory, entitlement)	1,014	—	—	1,014	1,063	1,063	1,145	1,063	—	1,063
— Health care fund contribution	—	—	—	—	279	279	279	279	—	279
Gross total	7,811	588	-343	8,056	8,181	8,129	8,188	8,140	176	8,316
U.S. Secret Service										
— Salaries and expenses; construction	1,212	24	-12	1,224	1,265	—	—	—	—	—
— Protection, administration, and training	—	—	—	—	—	956	918	962	—	962
— Investigations and field operations	—	—	—	—	—	312	304	311	—	311
— Special event fund	—	—	—	—	—	21	—	—	—	—
— Acquisition, construction, improvements, and related expenses	—	—	—	—	—	4	4	4	—	4
Net total	1,212	24	-12	1,224	1,265	1,293	1,226	1,277	—	1,277
Gross Budget Authority: Title II	26,717	1,809	-508	28,017	28,679	28,491	29,260	28,550	1,807	30,357
Total offsetting collections: Title II	-4,302	—	—	-4,302	-6,009	-4,779	-5,029	-4,779	—	-4,779
Net Budget Authority: Title II	22,415	1,809	-508	23,715	22,670	23,712	24,231	23,770	1,807	25,577

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Source: FY2006 enacted numbers from CRS analysis of the Conference Report to H.R. 2360, H. Rept.109-241; FY2006 supplemental numbers from CRS analysis of P.L. 109-61, P.L. 109-62, P.L. 109-88, and P.L. 109-148; FY2006 rescission numbers from CRS analysis of P.L. 109-148 and the *FY2007 DHS Justifications*. FY2007 request numbers from the *FY2007 DHS Justifications*. FY2007 numbers from the conference report (H.Rept. 109-476) to H.R. 5441.

Notes: Totals may not add due to rounding. Amounts in parentheses are non-adds. For a more detailed analysis of the supplemental appropriations, please refer to Appendix I.

- a. United States Visitor & Immigrant Status Indicator Project.
- b. Fees include COBRA, Land Border, Immigration Inspection, Immigration Enforcement, and Puerto Rico.
- c. Fees included Exam, Student Exchange and Visitor Fee, Breached Bond, Immigration User, and Land Border.
- d. Fees include TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks.
- e. P.L. 109-90 moved FAMS to TSA, pursuant to Secretary Chertoff's reorganization proposal submitted to Congress on July 13, 2005.
- f. Aviation Security Capital Fund, used for installation of Explosive Detection Systems at airports.
- g. In FY2007, DHS proposes increasing the passenger security fee for one-way and multi-leg flights by up to \$2.50, generating \$1.73 billion in new revenue.
- h. Includes \$100 million transfer from DOD.

US-VISIT⁵⁵

In 1996, Congress first mandated that the former INS implement an automated entry and exit data system, now referred to as the US-VISIT program, that would track the arrival and departure of every alien.⁵⁶ The objective for an automated entry and exit data system was, in part, to develop a mechanism that would be able to track nonimmigrants who overstayed their visas as part of a broader emphasis on immigration control. Following the September 11, 2001, terrorist attacks, however, there was a marked shift in priority for implementing an automated entry and exit data system. Although the tracking of nonimmigrants who overstayed their visas remained an important goal of the system, border security has become the paramount concern.

President's FY2007 Request. The Administration requested an appropriation of \$399 million in budget authority for US-VISIT in FY2007, amounting to a nearly 18% (or \$62 million) increase over the enacted FY2006 level of \$340 million.

House-Passed H.R. 5441. The House-passed version of H.R. 5441 would have provided \$362 million for US-VISIT, which would have amounted to \$37 million below the President's request for FY2007, and nearly \$22 million above the FY2006 enacted level of \$340 million. The House did not approve the requested aviation passenger fee increase requested by the Administration that would have funded US-VISIT at the requested level.

Senate-Passed H.R. 5441. The Senate-passed version of H.R. 5441 would have fully funded the President's request of \$399 million for US-VISIT in FY2007. The Senate would have made \$200 million of the appropriation conditional, however, upon approval of an expenditure plan for the program by the House and Senate Committees on Appropriations.

The Senate Appropriations Committee report also included language directing DHS to submit a report on the progress it has made toward creating the technical standards needed to implement the Western Hemisphere Travel Initiative. Senate-passed H.R. 5441 included a provision extending the current legislative deadlines for the implementation of this initiative.⁵⁷

P.L. 109-295. The act provides \$362 million for the US-VISIT program. Of this funding, \$60 million is to be used for implementation of 10 fingerprint

⁵⁵ Prepared by Blas Nuñez-Neto, Analyst in Domestic Security, Domestic Social Policy Division.

⁵⁶ For more detailed information regarding the US-VISIT system, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti and Stephen R. Vina.

⁵⁷ For additional information on this provision, which is similar to a provision in S. 2611, please refer to CRS Report RL33181, *Immigration Related Border Security Legislation in the 109th Congress*, by Blas Nuñez-Neto and Janice Beaver.

enrollment capability and to continue working towards the interoperability of the USBP's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (IAFIS). DHS is required to submit a strategic plan for modifying US-VISIT to allow for 10 fingerprint enrollment and for interoperability with IDENT and IAFIS and for the implementation of the exit component of the US-VISIT system.

Customs and Border Protection (CBP)⁵⁸

CBP is responsible for security at and between ports-of-entry along the border. Since 9/11, CBP's primary mission is to prevent the entry of terrorists and the instruments of terrorism. CBP's ongoing responsibilities include inspecting people and goods to determine if they are authorized to enter the United States; interdicting terrorists and instruments of terrorism; intercepting illegal narcotics, firearms, and other types of contraband; interdicting unauthorized travelers and immigrants; and enforcing more than 400 laws and regulations at the border on behalf of more than 60 government agencies. CBP is comprised of the inspection functions of the legacy Customs Service, Immigration and Naturalization Service (INS), and the Animal and Plant Health Inspection Service (APHIS); the Office of Air and Marine Interdiction, now known as CBP Air and Marine (CBPAM); and the Border Patrol (BP). See **Table 6** for account-level detail for all of the agencies in Title II, and **Table 7** for sub-account-level detail for CBP Salaries and Expenses (S&E) for FY2006 and FY2007.

President's FY2007 Request. The Administration requested an appropriation of \$7,839 million in gross budget authority for CBP for FY2007, amounting to a nearly 11% increase over the enacted FY2006 level of \$7,094 million. The bulk of the requested increase for FY2007, \$635 million, is for various aspects of the Secure Border Initiative (SBI). However, additional amounts were also requested for other CBP initiatives, including, among others, \$12 million for WMD detection staffing; nearly \$7 million for enhancements to the National Targeting Center (NTC); \$9 million for the Arizona Border Control Initiative (ABCI); nearly \$5 million for Border Patrol training at FLETC; nearly \$5 million for the Immigration Advisory Program (IAP); and \$1 million for the Fraudulent Document Analysis Unit.

House-Passed H.R. 5441. House-passed H.R. 5441 recommended an appropriation of \$7,699 million in gross budget authority for CBP and an appropriation of \$6,434 million in net budget authority (after offsetting fee receipts). The \$7,699 million amounted to \$140 million less than requested by the Administration for FY2007, and a nearly 9% increase over the enacted FY2006 level. In H.Rept. 109-476, the House Appropriations Committee stated that the reductions to the request included \$10 million that were attributed to the poor responsiveness of CBP in submitting reports to Congress, and the fact that the House recommended denying the Administration's request for an increase in the aviation passenger fees because such a fee increase lies outside the jurisdiction of the Committee. In the

⁵⁸ Prepared by Jennifer E. Lake, and Blas Nuñez-Neto, Analysts in Domestic Security, Domestic Social Policy Division.

CBP Salaries and Expenses account, only the C-TPAT program would have received funding above the Administration's request: \$15 million to improve validation capability.

Senate-Passed H.R. 5441. Senate-passed H.R. 5441 would have provided an appropriation of \$8,168 million in gross budget authority and \$6,683 million in net budget authority for CBP in FY2007. This gross budget authority represented a \$1.2 billion, or 15%, increase over the gross enacted FY2006 level of \$7,094 million. The Senate Appropriations Committee included language requiring DHS to submit expenditure plans before receiving parts of its appropriation for the Secure Border Initiative and the Automated Commercial Environment.

P.L. 109-295. P.L. 109-295 provides an appropriation of \$9,302 million in gross budget authority for CBP, an appropriation of \$8,036 million in net budget authority (after offsetting fee receipts). These amounts include \$1,601 million in emergency funding that was attached inserted into H.R. 5441 during conference. Including the emergency funding, gross budget authority for FY2007 represents an increase of \$2,208 million, or 24%, compared with the FY2006 enacted level of \$7,094 million. Not including the \$1.6 billion in emergency funding, P.L. 109-295 provides \$7,701 million in gross budget authority and \$6,435 million in net budget authority for CBP for FY2007. The \$7,701 million in gross budget authority amounts to an increase of \$607 million, or 9%, compared with the enacted FY2006 level.

Table 7. CBP S&E Sub-account Detail
(budget authority in millions of dollars)

Activity	FY06 Enact.	FY07 Req.	FY07 House	FY07 Senate	FY07 Conf.
Headquarters Management And Administration	1,233	1,258	1,248	1,258	1,248
Border Security Inspections and Trade Facilitation @ POE	1,605	1,680	1,695	1,679	1,860
Inspections, Trade & Travel Facilitation @ POE	1,250	1,282	1,282	1,281	1,327
Container Security Initiative (CSI)	137	139	139	139	139
Other International Programs	9	9	9	9	9
C-TPAT / FAST / Nexus / SENTRI	75	76	91	76	—
C-TPAT	—	—	—	—	55
FAST/Nexus/SENTRI	—	—	—	—	11
Inspection and Detection Technology	62	94	94	94	241
Systems for Targeting	28	27	27	27	27
National Targeting Center	17	24	24	24	24
Other Technologies	1	1	1	1	—

Activity	FY06 Enact.	FY07 Req.	FY07 House	FY07 Senate	FY07 Conf.
Training at POE	24	25	25	25	25
Harbor Maintenance Fee	3	3	3	3	3
Border Security and Control Between POE	1,778	2,421	2,329	2,176	2,278
Border Security and Control Between POE	1,726	2,244	2,177	2,138	2,240
Unmanned Aerial Vehicles (UAVs)	—	—	—	—	—
Border Technology/SBI Technology	31	132	115	—	—
Training Between the POE	22	46	37	38	38
Air and Marine Operations - Salaries	162	160	163	173	176
Undistributed Supplementals	447	—	—	—	—
CBP Salaries and Expenses Total:	5,225	5,519	5,435	5,286	5,562

Source: DHS FY2007 Justifications, p. CBP-S&E-5, and the conference report (H.Rept. 109-476) to H.R. 5441.

Note: Totals may not add due to rounding.

Issues for Congress. The bulk of the increase in CBP’s FY2007 request compared with the FY2006 enacted level is for a new DHS program, the Secure Border Initiative (SBI). DHS states that it “developed a three-pillar approach under the SBI that will focus on controlling the border, building a robust interior enforcement program, and establishing a Temporary Worker Program.”⁵⁹ Other CBP issues of interest to Congress include CBP staffing, Border Patrol vehicles, border technology, infrastructure construction, Tucson Border Patrol checkpoints, border tunnels, cargo and container security, radiation detection devices and non-intrusive inspection equipment, CBP Air and Marine, unmanned aerial vehicles, and the transfer of the Shadow Wolves from CBP to ICE.

CBP Staffing. Staffing issues have long been of interest to Congress, and there has been considerable debate concerning the appropriate level of staffing that CBP needs to effectively carry out its mission. CBP’s staffing needs include not only Border Patrol Agents (discussed in the following section), but also officers stationed at the nation’s ports of entry, import and trade specialists, pilots, and a variety of other positions. In addition to the debate over the appropriate level of staffing, other issues such as training resources, infrastructure demands, absorption of new staff, attrition, and hiring are also important. In an effort to address the concerns regarding CBP’s staffing, the conference report to H.R. 5441, H.Rept. 109-699, requires CBP to submit a resource allocation model (RAM) to Congress no later than January, 23, 2007. The report is required to address the concerns and items contained in both the House (H.Rept. 109-476) and Senate (S.Rept. 109-273) reports. The report would

⁵⁹ *DHS FY2007 Justification*, p. CBP S&E 4.

be required to address staffing levels at all ports of entry and provide the complete methodology for aligning staff across mission areas. The conferees were particularly concerned with airport processing times, and directed CBP to specifically include in the RAM airports and the number of flights that took longer than 60 minutes to process.

The House committee in its report, H.Rept. 109-476, would require CBP to submit its staffing model with the FY2008 budget request. The model should address the operational assumptions in requesting resources by mission area; and the methodology for aligning staffing levels to threats, vulnerabilities, and workload across all mission areas and per port of entry, Border Patrol sector, and Foreign Trade Zone, in addition to several other items.

The Senate committee in its report, S.Rept. 109-273, would also require CBP to submit a RAM with current and future year staffing requirements, by February 7, 2007. The Senate committee was particularly concerned with CBP's ability to process growing passenger volumes at the nation's airports. GAO issued a report in July 2005, which stated that CBP did not systematically assess its staffing requirements at airports.⁶⁰ S.Rept. 109-273 would required the report to be submitted by CBP to include assessments of optimal staffing levels at all ports for all missions, and stated that CBP should consult with appropriate nonfederal partners to estimate future passenger growth, throughput, and issues such as automatic secondary inspection requirements.

Increase in CBP Officers. P.L. 109-295 includes \$34.8 million in funding for an additional 450 CBP officers in FY2007.⁶¹ The recently enacted Security and Accountability for Every Port Act (the SAFE Port Act, P.L.109-347), authorizes 200 CBP officers per fiscal year for FY2008-FY2012, for a total of an additional 1,000 CBP officers in each of the next 5 fiscal years. The SAFE Port Act also would require the Commissioner of CBP to increase by not less than 50 full-time personnel, the number of personnel conducting validations and re-validations of certified C-TPAT participants in FY2008 and FY2009. The SAFE Port Act also authorizes additional funding for these personnel for FY2008-FY2012.⁶²

Increase in Border Patrol Agents. The President's request includes an increase of \$459 million to increase the U.S. Border Patrol (USBP) workforce by an additional 1,500 agents in FY2007. This would bring the total of new agents hired since FY2005 to 3,000 and give the USBP an agent workforce of nearly 14,000. The request does not match the increase authorized by Congress in the Intelligence Reform and Terrorism Prevention Act of 2005 (P.L. 108-458). IRTPA §5202 authorized DHS to increase the number of USBP agents by 2,000 each year from FY2006 to FY2010. The President's request is in line, however, with the 1,500

⁶⁰ See GAO, *International Air Passengers: Staffing Model for Airport Inspections Personnel Can be Improved*, GAO-05-663, July 2005.

⁶¹ H.Rept. 109-699, p. 125.

⁶² The Safe Port Act (H.R. 4954, enacted), Sec. 222, and Sec. 223. Signed by the President on Oct. 13, 2007.

increase in USBP agents that was appropriated by Congress in FY2006.⁶³ A potential issue for Congress could be whether the 1,500-agent increase in the President's request is adequate to provide for the security of the border, or whether the appropriate figure is the 2,000-agent increase authorized by IRTPA. The House included \$385 million in funding for 1,200 new USBP agents, cutting the President's request by 300 agents and \$74 million. The Senate recommended funding for an increase of 1,000 USBP agents, but noted that when combined with the 1,000 agents funded in the Emergency Supplemental Appropriations Act (P.L. 109-234) brings the total FY2007 increase to 2,000 agents. In addition, a floor amendment was agreed to that would have added an additional 236 USBP agents, bringing the total additional USBP agents in the Senate bill to 1,236; taken together with the supplemental the total number of agents added in FY2007 would have been 2,236. The conferees appropriated funding for an increase of 1,500 USBP agents, or 2,500 total in FY2007 including the supplemental, and noted that they expect 10% of any increase in staffing to occur along the northern border.

Border Patrol Vehicles. The conferees noted that they were "extremely disappointed" with what they characterized as insufficient vehicle fleet planning on CBP's part. They noted that CBP's cost-benefit analyses for comparing the operating costs of standard commercial vehicles to those that may be more appropriate for the unique and challenging topographical and environmental features found at the border are unclear. The conferees direct CBP to re-submit its Vehicle Fleet Management Plan by January 23, 2007, and to fully describe its process for evaluating which vehicles meet its mission requirements and cost constraints.

Border Technology Increase. The President's request includes \$100 million for border technologies to enhance the surveillance of the border and the USBP's ability to respond to incursions. DHS notes that it "will solicit and award a contract to complete the transition from the current, limited-scope technology plan to one that addresses the Department's comprehensive and integrated technological needs."⁶⁴ A potential issue for Congress may involve the contracting process that DHS will pursue for this program. In FY2005, the General Services Administration's Inspector General (GSA IG) released a report which criticized the USBP for its contracting practices regarding the Remote Video Surveillance (RVS) system.⁶⁵ The GSA IG found that the contracts were granted without competition, and that in many cases the contractor failed to deliver the services that were stipulated within the contract leading to RVS sites not being operational in a timely manner.⁶⁶ In a 2005 report, the

⁶³ P.L. 109-13 appropriated funding for 500 additional agents; P.L. 109-90 appropriated funding for another 1,000 additional agents.

⁶⁴ *DHS FY2007 Justifications*, p. CBP S&E 4.

⁶⁵ The Remote Video Surveillance system includes a set of cameras mounted on poles which can be remotely controlled by agents at a USBP station.

⁶⁶ United States General Services Administration, Office of the Inspector General, *Compendium of Audits of the Federal Technology Service Regional Client Support Services*, pp. 173-180.

DHS Inspector General (DHS IG) noted that deficiencies in contract management and processes resulted in 169 incomplete RVS sites.⁶⁷

Another potential issue for Congress could be the level of integration and scope of this border technology program. The RVS system mentioned above forms part of a larger program that integrates surveillance cameras with sensors. This program was originally called the Integrated Surveillance Intelligence System (ISIS), but was folded into the broader America's Shield Initiative (ASI) by DHS in 2005. DHS IG Richard Skinner stated in congressional testimony on December 16, 2005, that "to date, ISIS components have not been integrated to the level predicted at the onset of the program. RVS cameras and sensors are not linked whereby a sensor alert automatically activates a corresponding RVS camera to pan and tilt in the direction of the triggered sensor. However, even if ISIS was fully integrated, due to a limited number of operational RVS sites (255 nationwide), integration opportunities would be limited to the areas near these sites."⁶⁸ Additionally, the DHS IG noted in its 2005 report that, due to a lack of integration, "ISIS remote surveillance technology yielded few apprehensions as a percentage of detection."⁶⁹ For these reasons, the FY2006 DHS Appropriations Conferees noted that they were not fully funding the department's FY2006 request for ASI. The conferees stated that it was their understanding that DHS was currently reviewing the entire ASI program, and that major procurement for the program might be curtailed until DHS "has resolved fundamental questions about scope and architecture, and possibly its relation to overall, nationwide border domain security and awareness." The conferees noted that they expected to be kept informed of the results of this review and encouraged DHS to explore the use of off-the-shelf solutions for the program.⁷⁰ Possible issues for Congress could thus include the relationship between SBI and ASI, whether the review process outlined above has been concluded and what its recommendations were, whether the DHS IG's recommendations concerning ISIS will be carried out, and what the overall extent of the technological integration featured in SBI will be. H.Rept. 109-476 voiced concern about DHS' request for SBI, noting that the submission and review of a strategic plan should have been the first step in creating the program. The House required that a strategic plan for SBI be submitted by November 1, 2006, and cut funding for SBI technologies by \$17 million from the President's request. The Senate fully funded the President's request, but would make \$100 million conditional on the submission to and approval of an expenditure plan by the House and Senate Appropriations Committees. Senate-passed H.R. 5441 would require any contract action related to SBI valued at more than \$20 million to be reviewed by the DHS IG to ensure it adheres to applicable the cost requirements,

⁶⁷ U.S. Department of Homeland Security, Office of the Inspector General, *A Review of Remote Surveillance Technology Along U.S. Land Borders*, OIG-06-15, Dec. 2005, p. 2. Hereafter referred to as *DHS IG Surveillance Report*.

⁶⁸ Testimony of DHS Inspector General Richard L. Skinner before the House Homeland Security Committee, Subcommittee on Management, Integration, and Oversight, New Secure Border Initiative, 109th Cong., 1st sess., Dec. 16, 2005.

⁶⁹ *DHS IG Surveillance Report*, p. 2.

⁷⁰ H.Rept. 109-241, p. 44.

performance objectives, and program milestones. The conferees continued this language from the Senate-passed bill.

Infrastructure Construction. DHS requests an increase of \$30 million to continue construction of the border fence in San Diego, CA, as part of the SBI. Additionally, DHS is requesting \$51 million to accelerate the construction of permanent vehicle barriers in western Arizona. DHS is also requesting \$59 million to construct facilities for the additional USBP agents it is proposing to hire in FY2007. DHS has historically constructed tactical infrastructure⁷¹ under a Memorandum of Understanding (MOU) with the U.S. Corps of Engineers. Under this MOU, CBP was responsible for providing the funding for planning, engineering, and purchasing materials, while the actual construction was undertaken by military personnel at no charge. However, the department notes that using this traditional approach would take until 2010 to finish the projects currently underway. For this reason, the requested increase for tactical infrastructure includes funds for a commercial contract to construct almost half of the vehicle barriers in Arizona. DHS argues that it is at a critical point in its deployment of personnel and other resources at the border, and proposes using private contractors to accelerate the construction of this infrastructure.⁷² A potential issue for Congress could involve whether using private contractors to construct border infrastructure is the most cost-effective allocation of taxpayer resources given that under the current MOU with the Corps of Engineers CBP incurs no labor costs for these projects. Additionally, if contracts are issued for tactical infrastructure projects another potential issue for Congress could involve the oversight of the contracting process, given the contracting irregularities identified by the GSA IG in the RVS contracts mentioned earlier. H.Rept. 109-476 noted that while \$30 million in funding was provided for San Diego tactical infrastructure improvements as requested, funding for Arizona tactical infrastructure projects was reduced due to poor budget justifications, uncertainty surrounding SBI procurement, and the lack of a strategic plan for SBI expenditures. The House withheld \$25 million in funding until the Committees on Appropriations receive and approve an expenditure plan for SBI procurement and contracting. The Senate increased the President's request by \$122 million, to \$378 million. The Senate fully funded the infrastructure projects in Arizona and California, and included \$59 million for the costs associated with constructing facilities for new Border Patrol agents. The Senate total also included an unspecified \$90 million increase added as a floor amendment.

The conferees agreed to provide \$1,188 million for a new account entitled Border Security Fencing, Infrastructure, and Technology. This account will be used to fund integrated infrastructure projects at the border, including fencing, vehicle barriers, access roads, cameras, sensors, stadium lighting. Combined with the supplemental appropriation, the conferees noted that DHS will have \$1,513 million for border infrastructure construction in FY2007. The conferees directed DHS to submit an expenditure plan for this funding within 60 days of the bill's enactment, and withheld \$950 million of the funding until this plan is received and approved by the House and

⁷¹ DHS uses this term to refer to its border fencing, vehicle barriers, and access roads, among other things.

⁷² *DHS FY2007 Justifications*, pp. CBP Construction 4-12.

Senate Committees. DHS was also directed to ensure that CBP's future budget submissions consolidate funding for fencing, infrastructure, and technology between POE within this account. Lastly, the conferees directed CBP to work with the Secure Border Coordination Office, the Chief Procurement Officer, and the Chief Financial Officer to rigorously oversee all contracts awarded for border fencing, infrastructure, and technology and to work to minimize the use of subcontractors.

Tucson Sector Border Patrol Checkpoints. House-passed H.R. 5441 included language prohibiting any funds in the bill from being used for the construction, design, or the acquisition of sites for permanent checkpoints in the Tucson sector. The House bill would have also required the USBP to relocate its checkpoints in the Tucson sector at least once every seven days to "prevent persons subject to inspection from predicting the location of any such checkpoint." The Senate Appropriations Committee report noted that the DHS IG concluded that the permanent checkpoints permit safer and more efficient law enforcement and strongly encourages CBP to construct permanent checkpoints in the Tucson sector. The Senate-passed bill did not include any language concerning checkpoints in the Tucson sector.

Border Tunnels. Both the House and Senate Appropriations Committee reports raised concern over the existence and increase in tunnels underneath the land border. The House committee directed CBP to work with Science and Technology to establish a program for detecting and addressing this smuggling tactic and incorporate the costs of funding such a program into future budget submissions. The Senate voiced concern over the lack of a clear policy within DHS concerning which agency is responsible for securing, closing, and filling tunnels that are discovered and directs DHS to address this issue and to submit a report on their proposed policy by February 8, 2007; the conferees concurred with the reporting requirement. During floor consideration in the Senate, an amendment was accepted to H.R. 5441 that would criminalize the construction, financing, and use of tunnels crossing the U.S. international border.⁷³ This amendment was agreed to in conference.

Cargo and Container Security. The recent Dubai Ports World controversy has brought significant attention to several issues surrounding port and maritime security, including cargo and container security. CBP's cargo security strategy includes two significant programs: the Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT). CSI is a CBP program that stations CBP officers in foreign sea ports to target marine containers for inspection before they are loaded onto U.S.-bound vessels. C-TPAT is a public-private partnership aimed at securing the supply chain from point of origin through entry into the United States. The FY2007 request did not contain significant increases in funding for either the Container Security Initiative (CSI) or the Customs-Trade Partnership Against Terrorism (C-TPAT). Funding for C-TPAT remained flat with the FY2007 request of \$76 million (which includes funding for the Free and

⁷³ For more information on this provision, which is identical to a provision in S. 2611, please refer to CRS Report RL33181, *Immigration Related Border Security Legislation in the 109th Congress*, by Blas Nuñez-Neto and Janice Beaver.

Secure Trade (FAST) and NEXUS/SENTRI programs), and the request for CSI increased by \$2 million to \$139 million for FY2007.

P.L. 109-295 provides \$139 million for CSI, \$55 million for C-TPAT, and \$11 million for FAST and NEXUS/SENTRI. The conferees in H.Rept. 109-699 noted that the conference agreement provides an additional \$147 million for additional non-intrusive inspection technology (NII) and fully funds the requests for all cargo security and trade facilitation programs within CBP. H.Rept. 109-699 specifically directs CBP to comply with all aspects of the reporting requirements specified in the statement of managers and the House report regarding the port, cargo, and container, strategic plan⁷⁴ (discussed below). The conferees also withhold \$5 million from obligation, from the OSEM account (in Title I), until the Secretary of DHS submits the port, cargo, and container strategic plan to Congress.⁷⁵ The conferees also note that they provide sufficient funding to allow CBP to meet the strategic plan requirements (specified in H.Rept. 109-699 and 109-476) of 100% initial validation and periodic re-validation of certified C-TPAT participants; and 100% manifest review at CSI ports.

The House-passed version of H.R. 5441 would have provided an additional \$15 million above the Administration's request for C-TPAT, and would fund CSI at the requested level. The Senate-passed version of H.R. 5441 would have funded both CSI and C-TPAT at the FY2007 requested level.

Significant concerns have recently been raised regarding both of these programs. GAO has issued several reports noting that inadequate staffing levels for both the CSI and C-TPAT programs have hampered CBP's ability to conduct inspections overseas at foreign ports and to validate every C-TPAT member within three years of certification.⁷⁶ Recent testimony by a CBP official has also noted that CBP itself is not satisfied with the current numbers of supply chain specialists available to conduct C-TPAT validations. GAO has raised a number of additional concerns regarding the C-TPAT program, which CBP has begun addressing, including the scope of effort and level of rigor applied to the validation process, how many and what types of validations are necessary to manage security risk, and the lack of a comprehensive set of performance measures for the program.⁷⁷ GAO has also reported that several factors limit CBP's ability to successfully target maritime containers at foreign ports, including staffing imbalances, operational factors, lack of technical requirements for

⁷⁴ H.Rept. 109-699, p. 127.

⁷⁵ H.Rept. 109-699, p. 114.

⁷⁶ GAO-05-446T, *Homeland Security: Key Cargo Security Programs Can Be Improved*, May 26, 2005, p. 20, and p. 16.

⁷⁷ See GAO, *Homeland Security: Key Cargo Security Programs Can Be Improved*, GAO-05-466T, Testimony by Richard M. Stana, Director, Homeland Security and Justice Issues, before the Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, May 26, 2005, for a discussion of these issues and steps CBP has taken to address them.

NII equipment used at foreign ports, and continued refinements to the strategic plan and performance measures needed to manage the program.⁷⁸

The House Appropriations Committee in H.Rept. 109-476 expressed several concerns regarding the department's port, container, and cargo security programs, including lack of a "port, container, and cargo strategic plan..."⁷⁹ The committee would have withheld \$10 million from the Office of the Secretary and Management until this strategic plan was submitted. Several elements that would be required under this plan are similar to items that have been included in port security bills (H.R. 4954 passed by the House, S. 2459 and S. 1052 both reported in the Senate, and S. 2791 introduced in the Senate). Significant provisions that would be required by the strategic plan outlined in H.Rept. 109-476 include having the Secretary ensure that

- all inbound cargo is screened by the Automated Targeting System (ATS);
- the percentage of inbound cargo inspected by CBP is doubled;
- by the end of FY2007:
 - CSI maintains a 100% manifest review rate;
 - C-TPAT conducts validations of new certified participants within one year, and once every three years thereafter; and
 - the percentage of containerized cargo screened for radiation as of January 1, 2006 is doubled.

In addition to the above items, the plan would be required to include a discussion of how the CSI program is coordinated with the Department of Energy's Megaports program, how CBP is promoting non-intrusive inspection (NII) equipment in foreign countries, minimum standards for securing cargo containers, an evaluation of evaluation of cargo inspection systems utilized at high-volume foreign ports (such as Hong Kong), among other items. P.L. 109-295 requires CBP to comply with these strategic plan directives set out in H.Rept. 109-699.

Section 558 of P.L. 109-295 requires the Secretary of DHS to conduct a full-scale pilot of the integrated screening system (similar to the one being used at certain terminals in Hong Kong). This provision is similar to the provision passed in the Security and Accountability for Every Port Act (the SAFE Port Act, P.L. 109-347). Title VII of Senate-passed H.R. 5441 contains additional appropriations for port security, including \$251 million for CBP for FY2006, but this funding was not included in P.L. 109-295 (though other emergency funding was included). For a full discussion, see **Appendix I** of this report.

⁷⁸ GAO has reported issues pertaining to the CSI on several occasions, including in testimony before the Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs. See *Homeland Security: Key Cargo Security Programs Can be Improved*, May 26, 2005. See also, GAO, *Container Security: A Flexible Staffing Model and Minimum Equipment Requirements Would Improve Overseas Targeting and Inspection Efforts*, GAO-05-557, Apr. 26, 2005.

⁷⁹ H.Rept. 109-476, pp.9-10.

Screening Municipal Solid Waste. The Senate-passed version of H.R. 5441 included provisions pertaining to CBP's screening of municipal solid waste (MSW). Sec. 555 would have required CBP to submit a report to Congress within 90 days of enactment indicating whether the methods used to inspect the trash trucks for chemical, nuclear, biological, and radiological weapons were as effective as methods used to screen other commerce. The report would also have been required to identify actions to improve the screening of MSW in the event the current screening methods are found deficient, including the acquisition of additional screening technology. Sec. 555 would have required the Secretary of DHS to deny the entry of any truck carrying MSW in the event that CBP failed to implement the required corrective actions within a specified time-frame. Sec. 557 would have required the Secretary of DHS to provide personnel and equipment to improve the inspection of commercial vehicles carrying MSW, and to levy a fee approximating the costs of the inspections. These provisions were not included in P.L. 109-295.

Radiation Detection Devices and Non-Intrusive Inspection (NII) Technology. CBP has deployed a number of non-intrusive inspection (NII) technologies at ports of entry to assist customs inspectors with the inspection of cargos. Large scale NII technologies include a number of x-ray and gamma ray systems. The Vehicle and Cargo Inspection Systems (VACIS), which uses gamma rays to produce an image of the contents of a container for review by the CBP inspector, can be deployed in a mobile or stationary capacity depending upon the needs of the port. Mobile Sea Container Examinations Systems are also deployed at ports to examine containers. CBP is also continuing to deploy nuclear and radiological detection equipment including personal radiation detectors, radiation portal monitors (RPMs), and radiation isotope identifiers to ports of entry (POEs).

Recently, various concerns have been raised regarding in particular the radiation detection equipment. GAO reported in March of 2006,⁸⁰ that although DHS has made progress in deploying radiation detection equipment at US POEs, the program goals are unrealistic (deployment has fallen behind schedule), and the program's cost estimate is uncertain. Delays have been caused by a variety of factors, including DHS's review process which has delayed the provision of acquisition and deployment information to Congress, and difficult negotiations with seaport operators concerning placement of the portal monitors and the screening of railcars. According to GAO, uncertainty regarding the cost and improved effectiveness of advanced technology portals are contributing to the difficulties in obtaining an accurate cost estimate of the radiation detection deployment program.

In addition, GAO found that although DHS has improved the use of the detection equipment, CBP officers do not have access to data that would allow them to verify Nuclear Regulatory Commission (NRC) licenses (which are generally required for radiological materials transported into the U.S., though the licenses need not accompany the shipment), and that CBP secondary inspection procedures do not *require* CBP officers to open containers and inspect them to resolve an alarm (though

⁸⁰ GAO, *DHS has Made Progress in Deploying Radiation Detection Equipment at U.S. Ports-of-Entry, but Concerns Remain*, GAO-06-389, Mar. 22, 2006.

GAO found that this does occur at some POEs). GAO recommended that DHS streamline its internal review procedures so that the department can

- provide Congress with spending data in a more timely fashion; update the RPM deployment schedule;
- analyze the benefits and costs of advanced portal technology and then revise the cost estimate;
- develop methods to effectively screen rail containers;
- revise agency container inspection procedures; and
- develop a way for CBP officers to verify NRC licenses.

The House, in H.Rept. 109-476, indicated its continuing concern with the issues cited by GAO in its report, and required CBP to report to Congress by January 16, 2007, on improvements to the process for combating nuclear smuggling.

The Senate, in S.Rept. 109-273, indicated its support for the acquisition and use of multiple technologies and advanced mobile inspection systems to screen cargo containers and conveyances. The committee also noted that GAO concluded that there was no specific plan to interdict hazardous materials that may be entering the United States, and the committee encouraged CBP to use the most up to date technology to address this issue.⁸¹

CBP Air and Marine. The Administration requested \$338 million for the CBP Air and Marine Interdictions, Operations, Maintenance, and Procurement account. P.L. 109-295 provides \$602 million for CBP Air and Marine. This amount includes \$70 million for P-3 service-life extension and additional hours; \$20 million for helicopter acquisition; \$20 million for unmanned aerial vehicles (UAVs) and related support systems; \$2 million for marine interceptor boat replacement; \$10 million for the missionization of manned covert aircraft; \$64 million for two medium lift helicopters; \$58 million for multipurpose aircraft; and \$19 million for the Northern Border Airwing (NBA). H.Rept. 109-699 would also require DHS to include funding for the fifth NBA, to be set up in Michigan, in the FY2008 budget request.

House-passed H.R. 5441 provided \$373 million for this account, nearly \$36 million above the Administration's request and \$23 million below the FY2006 enacted amount. The Senate-passed H.R. 5441 provided a total of \$472 million for the CBP Air and Marine Interdictions, Operations, Maintenance, and Procurement account; and \$173 million for CBP Air and Marine, Personnel, Compensation, and Benefits, in the CBP Salaries and expenses account. Title VI of Senate-passed H.R. 5441 contained a provision that provided an additional \$105 million for air asset replacement and air operations facilities upgrades. The total amount provided in Senate-passed H.R. 5441 for the CBPAM Interdictions, Operations, Maintenance, and Procurement account was \$577 million.

The House Appropriations Committee remained concerned with several aspects of the CBP Air and Marine program. CBP had yet to submit a capitalization plan to

⁸¹ GAO, *Undeclared Hazardous Materials: New DOT Efforts May Provide Additional Information on Undeclared Shipments*, GAO-06-471, Mar. 2006.

Congress, and as a result the House recommended reduced funding for CBP's Headquarters, Management and Administration has been reduced by \$4 million. In addition, H.Rept. 109-476 directed CBP to submit the Air and Marine Capitalization Plan no later than November 1, 2006. There have been several organizational changes made to CBP Air and Marine operations in the past couple of years. The most recent of these changes include the move of CBP Air and Marine from ICE to CBP and the consolidation of legacy Customs air and marine assets with the air and marine assets of the Border Patrol. Concerns have been raised regarding the impact of this consolidation on the deployment of CBP Air and Marine assets, particularly in the source and transit zones, and for investigative and surveillance support missions. H.Rept. 109-476 directed CBP to reflect a comprehensive approach to asset deployment that is not solely focused on the physical border. In addition, CBP was also directed to report to Congress no later than January 16, 2007, on requests for support made in 2006, the response to those requests, and on the consequences of reduced support to ICE.⁸²

Unmanned Aerial Vehicles. Senate-passed H.R. 5441 included a provision that would direct DHS to establish a pilot program for the use of Unmanned Aerial Vehicles to surveil the northern border. P.L. 109-295 provides \$20 million within the CBP Air and Marine Interdictions, Operations, Maintenance, and Procurement account for the acquisition of unmanned aerial vehicles (UAV). The conferees (in H.Rept. 109-699) directed CBP to submit to the House and Senate Committees the official findings of the April 2006 UAV crash in Arizona no later than January 23, 2007. CBP was also encouraged to work with the Federal Aviation Administration to establish a pilot program to test the use of UAVs to surveil the northern border.

Shadow Wolves Transfer. Prior to the creation of DHS, the Shadow Wolves were a Customs Patrol investigative unit within the U.S. Customs Service charged with enforcing customs laws and interdicting smugglers within the Tohono O'odham reservation. The Shadow Wolves were created after years of negotiation between the Customs Service and the Tribe, and members of the unit must be certified Native American. The Shadow Wolves were originally placed within ICE when DHS was created, but were subsequently moved into CBP where they are administratively under the USBP. During floor debate on H.R. 5441, an amendment was agreed to (H.Amdt. 952) that would transfer \$2 million in funding from CBP to ICE to effectively move the Shadow Wolves into ICE. P.L. 109-295 includes \$3 million to effect the transfer of the Shadow Wolves from CBP into ICE.⁸³

Immigration and Customs Enforcement (ICE)⁸⁴

ICE focuses on enforcement of immigration and customs laws within the United States. ICE develops intelligence to reduce illegal entry into the United States and is responsible for investigating and enforcing violations of the immigration laws

⁸² H.Rept. 109-476, pp. 33-34.

⁸³ H.Rept. 109-699, pp. 125 and 132.

⁸⁴ Prepared by Alison Siskin, Analyst in Social Legislation, Domestic Social Policy Division.

(e.g., alien smuggling, hiring unauthorized alien workers). ICE is also responsible for locating and removing aliens who have overstayed their visas, entered illegally, or have become deportable. In addition, ICE develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling, fraud, forced labor, trade agreement noncompliance, and vehicle and cargo theft. Furthermore, this bureau oversees the building security activities of the Federal Protective Service, formerly of GSA. The Federal Air Marshals Service (FAMS)⁸⁵ was returned from ICE to TSA pursuant to the reorganization proposal of July 13, 2005. The Office of Air and Marine Interdiction was transferred from ICE to CBP, and therefore the totals for ICE do not include Air and Marine Interdiction funding, which is included under CBP. See **Table 6** for account-level detail for all of the agencies in Title II, and **Table 8** for sub-account-level detail for ICE Salaries and Expenses (S&E) for FY2006 and FY2007.

President's FY2007 Request. The Administration requested \$4,696 million in gross budget authority for ICE in FY2007, which represents a 20% increase over the enacted FY2006 level of \$3,916 million. The Administration requested an appropriation of \$3,928 million in net budget authority for ICE in FY2007, representing a 24% increase over the FY2006 enacted level of \$3,175 million. **Table 8** provides activity-level detail for the Salaries and Expenses account.

Table 8. ICE S&E Sub-account Detail
(budget authority in millions of dollars)

Activity	FY2006 Enacted	FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Conf.
HQ & Administration	254	—	265	280	274
Legal Proceeding	129	207	187	187	187
Investigations - Domestic	1,183	1,457	1,325	1,286	1,285
Investigations - International	101	105	105	103	105
Investigations Total	1,284	1,562	1,430	1,388	1,390
Intelligence	50	58	51	51	51
DRO-Custody Operations	1,003	1,433	1,291	1,236	1,382
DRO-Fugitive Operations	101	174	200	146	183
DRO-Institutional Removal Program	93	110	105	101	137
DRO - Alternatives to Detention	28	43	46	41	44
DRO Transportation and Removal Program	133	317	273	308	238
DRO Total	1,358	2,077	1,915	1,833	1,984
Unspecified Supplemental	340	—	—	—	—
ICE Salaries and Expenses	3,417	3,902	3,850	3,740	3,887

Source: DHS FY2007 Congressional Budget Justifications, p. ICE-S&E-4, and the conference report (H.Rept. 109-476) to H.R. 5441. Unspecified supplemental from P.L. 109-234.

Note: Totals may not add due to rounding.

⁸⁵ FAMS transferred to ICE from TSA in Aug. 2003.

The request included the following program increases:

- \$66.9 million for the Office of Investigations pay and non-pay inflation;
- \$16.6 million for additional compliance enforcement agents and law enforcement technicians;
- \$364.6 million for custody management and detention bedspace;
- \$64.7 million for Fugitive Operations;
- \$13 million for Alternatives to Detention;
- \$8.7 million for Institutional Removal Program (IRP);
- \$174.9 million for transportation and removal within the detention and removal program;
- \$41.9 million for worksite enforcement; and
- \$59.1 million for legal proceedings.⁸⁶

House-Passed H.R. 5441. House-passed H.R. 5441 would have appropriated \$4,644 million in gross budget authority for ICE in FY2007, which represented a 19% increase over the enacted FY2006 level of \$3,916 million, and \$52 million less than the President's request. As shown in **Table 6**, the bill would have appropriated \$3,876 million in net budget authority for ICE in FY2007, which represented a 22% increase over the FY2006 enacted level of \$3,175 million. Of the appropriated amount, \$5.4 million would have been used to implement §287(g) of the INA; \$11.2 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens, and \$15.8 million would have been targeted for enforcement of laws against forced child labor.

In addition, H.Rept 109-476 recommended an increase over FY2006 funding of

- \$275 million for detention bedspace, transportation, and removal efforts associated with the SBI;
- \$33.4 million for 70 fugitive operations teams;
- \$13.7 million for financial and trade investigations;
- \$1 million for the Human Smuggling and Trafficking Center;⁸⁷
- \$5 million for alternatives to detention; and
- \$40 million to expand the Criminal Alien Program (CAP).

Senate-Passed H.R. 5441. Senate-passed H.R. 5441 would have appropriated \$4,717 million in gross budget authority for ICE in FY2007, which would have represented a 20% increase over the gross enacted FY2006 level of \$3,916 million, and \$21 million more than the President's request. As shown in **Table 6**, the bill would have appropriated \$3,919 million in net budget authority for ICE in FY2007, which would have represented a 23% increase over the FY2006 enacted level of \$3,175 million. Of the appropriated amount, \$58 million would have been available

⁸⁶ Also known as Office of the Principal Legal Advisor.

⁸⁷ Established by the Intelligence Reform and Terrorist Prevention Act of 2004 (P.L. 108-458, §7202), the Human Smuggling and Trafficking Center is an interagency group which provides information and support to counter migrant smuggling, trafficking of persons, and clandestine terrorist travel.

to increase detention space (including related support) by 1,700 beds, \$5.4 million would have been used to implement §287(g) of the INA; \$11.2 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens, \$15.8 million would have been targeted for enforcement of laws against forced child labor, \$102,000 would have been used to promote public awareness of child pornography, and \$203,000 would have funded project alert.⁸⁸ Senate-passed H.R. 5441 (§601) would have directed the Secretary of DHS to adjust the fees charged to noncitizens to achieve no less than \$350 million in additional receipts by September 30, 2007. Of the additional monies, \$30 million would have been for vehicle replacement in ICE, and \$15 million for ICE automation modernization.

In addition, S.Rept. 109-273 recommended an increase over FY2006 funding of

- \$10 million (27 FTEs) for compliance investigations related to visa overstays;
- \$400,000 to implement §287(g) agreements;
- \$3.9 million to respond to requests for assistance from state and local law enforcement;
- \$38.5 million (128 FTEs) for DHS representation in removal proceedings;
- \$165 million for DRO custody management;
- \$94 million for DRO transportation and removal operations;
- \$40 million for DRO fugitive operations;
- \$1 million (4 FTEs) to establish the Office of Financial Management to oversee internal controls within ICE;
- \$3.6 million (16 FTEs) to improve the Office of Procurement;
- \$10 million to expand the Office of Professional Responsibility; and
- \$2 million for the Cyber Crime Center.

P.L. 109-295. P.L. 109-295 appropriates \$4,727 million⁸⁹ in gross budget authority for ICE in FY2007, representing a 21% increase over the gross enacted FY2006 level of \$3,916 million. As shown in **Table 6**, the bill would appropriate \$3,928 million in net budget authority (not including the additional \$30 million in emergency funding) for ICE in FY2007, representing a 24% increase over the FY2006 enacted level of \$3,175 million. Of the appropriated amount, \$5.4 million would be used to implement §287(g) of the INA, \$11.2 million would be designated to fund or reimburse other federal agencies for the cost of care and repatriation of smuggled aliens, \$15.8 million would be targeted for enforcement of laws against forced child labor, \$102,000 would be used to promote public awareness of child pornography, and \$203,000 would fund Project Alert.⁹⁰ Of the monies, \$30 million

⁸⁸ Project ALERT was launched by the National Center for Missing and Exploited Children in 1992, and consists of retired law enforcement agents who volunteer to provide assistance, as requested, to law enforcement agencies.

⁸⁹ This number includes an emergency appropriation of \$30 million for ICE.

⁹⁰ Project ALERT was launched by the National Center for Missing and Exploited Children in 1992, and consists of retired law enforcement agents who volunteer to provide assistance, (continued...)

would be for vehicle replacement in ICE and \$15 million for ICE automation modernization. P.L. 109-295 specifies that \$13 million of the appropriated monies for automation modernization may not be obligated until the House and Senate Appropriations Committees receive and approve a plan for spending the funds.

In addition, H.Rept. 109-699 recommends increased or new funding of

- \$153.4 million for DRO custody management;
- \$94 million for DRO transportation and removal operations;
- \$76 million for DRO fugitive operations and associated bed space;
- \$20 million for DRO vehicles;
- \$2.5 million for Alternatives to Detention;
- \$4.6 million for internal controls and procurement management;
- \$5 million for the Office of Professional Responsibility;
- \$10 million for Compliance Enforcement Units;
- \$30 million for expanded worksite enforcement efforts;
- \$10 million for additional vehicles for the Office of Investigations;
- \$6.8 million for the Trade Transparency Unit;
- \$2 million for the Criminal Alien Program; and
- \$1 million for the Human Smuggling and Trafficking Center.

Office of Investigations/Immigration Functions. ICE's Office of Investigations (OI) focuses on a broad array of criminal and civil violation affecting national security such as illegal arms exports, financial crimes, commercial fraud, human trafficking, narcotics smuggling, child pornography/exploitation, worksite enforcement, and immigration fraud. ICE special agents also conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation.⁹¹ The Homeland Security Act of 2002 (P.L. 107-296) abolished the INS and the United States Customs Service, and transferred most of their investigative functions to ICE effective March 1, 2003. There are investigative advantages to combining the INS and Customs Services, as those who violate immigration laws often are engaged in other criminal enterprises (e.g., alien smuggling rings often launder money). Nonetheless, concerns have been raised that not enough resources have been focused on investigating civil violations of immigration law and that ICE resources have been focused on terrorism and the types of investigations performed by the former Customs Service.⁹²

P.L. 109-295 appropriates \$1,285 million for OI domestic operations, which according to the conference report, includes increases in the base funding for two specific immigration enforcement programs, the Compliance Enforcement Unit⁹³

⁹⁰ (...continued)
as requested, to law enforcement agencies.

⁹¹ For more information see [<http://www.ice.gov/graphics/investigations/index.htm>].

⁹² Based on CRS discussions with ICE personnel in New York City, Aug. 27, 2003.

⁹³ Officers of the Compliance Enforcement Unit use US-VISIT, Student and Exchange Visitor Information System (SEVIS), and the National Security Entry/Exit System to
(continued...)

(\$10 million) and worksite enforcement (\$30 million). The \$1,457 million requested in the President's budget for the OI domestic operations also included increases for the Compliance Enforcement Unit and worksite enforcement. The President's budget requested an additional \$41.9 million for worksite enforcement to add 206 positions responsible for investigating and prosecuting violations under immigration law for hiring unauthorized aliens. The President's budget also requested an additional \$10.6 million for compliance investigations for an additional 54 positions.⁹⁴ House-passed H.R. 5441 would have appropriated \$1,325 million for OI domestic operations, whereas Senate-passed H.R. 5441 would have appropriated \$1,286 million for OI domestic operations, \$39 million less than House-passed H.R. 5441, and \$171 million less than the President's request.

Detention and Removal Operations. Detention and Removal Operations (DRO) in ICE provides custody management of aliens who are in removal proceedings or who have been ordered removed from the United States.⁹⁵ DRO is also responsible for ensuring that aliens ordered removed actually depart from the United States. Many contend that DRO does not have enough detention space to house all those who should be detained. A study done by DOJ's Inspector General found that almost 94% of those detained with final orders of removal were deported whereas only 11% of those not detained who were issued final orders of removal left the country.⁹⁶ Concerns have been raised that decisions on which aliens to release and when to release the aliens may be based on the amount of detention space, not on the merits of individual cases, and that the amount of space may vary by area of the country leading to inequities and disparate policies in different geographic areas. The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5204) authorized, subject to appropriations, an increase in DRO bed space of 8,000 beds for each year, FY2006-FY2010. The President's budget requested a total of \$2,077 for DRO including an additional \$364.6 million for custody operations,

⁹³ (...continued)

identify, locate, and apprehend aliens who have violated the terms of the admission. For more information on these systems see CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno; CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin; and CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti.

⁹⁴ The President's budget also requests an additional 23 positions for compliance enforcement to be funded from SEVIS fees.

⁹⁵ For more information on detention issues see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin. Under the INA aliens can be removed for reasons of health, criminal status, economic well-being, national security risks, and others that are specifically defined in the act.

⁹⁶ Department of Justice, Office of the Inspector General, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, Report I-2003-004, Feb. 2003.

\$174.9 million for transportation and removal, \$64.8 million for fugitive operations,⁹⁷ and \$8.7 million for the Institutional Removal Program (IRP).

P.L. 109-295 appropriates \$1,984 million for DRO, 46% more than the FY2006 appropriation of \$1,358 million and \$93 million less than the President's request. H.Rept. 109-699 states that with the new DRO funding, ICE will be able to sustain an average bed space capacity of 27,500, as proposed by the President.⁹⁸ P.L. 109-295 also requires DHS to submit reports to Congress on removal orders, detainee bonds, and detention space management.

House-passed H.R. 5441 would have appropriated \$1,915 million for DRO. According to H.Rept. 109-476, the reduction from the President's request was due in part to inadequate information about DHS' detention management plan, and by budget constraints caused by the increase to aviation passenger fees. Senate-passed H.R. 5441 would have appropriated \$1,833 million for DRO, and S.Rept. 109-273 would have required DHS to submit reports on removal orders, alien absconders, detention bonds, separation of families in detention, and detention of unaccompanied minors.⁹⁹ Similar to House-passed and Senate-passed H.R. 5441, P.L. 109-295, appropriates \$11.2 million to fund or reimburse other federal agencies for the costs associated with the care, maintenance, and repatriation of smuggled aliens.

Alternatives to Detention. Because of the cost of detaining aliens and because many nondetained aliens with final orders of removal do not leave the country, there has been interest in developing alternatives to detention for certain types of aliens who do not require a secure detention setting. In 2004, ICE began a pilot program, the Intensive Supervision Appearance Program, for low-risk, nonviolent offenders.¹⁰⁰ In addition, ICE uses electronic monitoring devices as another alternative to detention. P.L. 109-295 appropriates \$44 million for detention alternatives, \$1 million more than the President's budget request. House-passed H.R. 5441 would have appropriated \$46 million and the Senate-passed H.R. 5441 would have appropriated \$41 million for detention alternatives

Secure Border Initiative. The Secure Border Initiative (SBI) is a DHS multi-year plan to secure the borders and reduce illegal migration by hiring more agents, expanding detention and removal capabilities, upgrading technology, increasing border infrastructure, and increasing interior enforcement of immigration laws.

⁹⁷ In Jan. 2006, there were 558,000 aliens with final orders of removal who were unconfirmed to have left the country. These aliens are known as absconders, and fugitive operations are responsible for locating, apprehending, and removing alien absconders.

⁹⁸ For FY2006, the funded number of beds was 20,800. CRS Report RL33351, *Immigration Enforcement in the United States*, coordinated by Alison Siskin.

⁹⁹ The report on alien absconders was due Feb. 18, 2006, but has not yet been submitted. The committee report would also require a report in the cost and need of establishing an ICE sub-office in Colorado Springs, CO.

¹⁰⁰ Department of Homeland Security, U.S. Immigration and Customs Enforcement, "Public Security: ICE Unveils New Alternative to Detention," *Inside ICE*, vol. 1, no. 5, June 21, 2004. Available at [http://www.ice.gov/graphics/news/newsreleases/insideice/insideice_062104_web3.htm].

According to the President's budget, several of the requested increases are part of the SBI, including funds for detention beds (\$364. million), worksite enforcement (\$41.7 million), and fugitive operations (\$64.7 million). House-passed H.R. 5441 would have included increases in fugitive operations (\$33.4 million) and for detention bedspace, transportation, and removal efforts (\$275 million) associated with the SBI. As in Senate-passed H.R. 5441, P.L. 109-295 does not appropriate any money within ICE specifically for the SBI.

State and Local Law Enforcement.¹⁰¹ Currently the INA provides limited avenues for state enforcement of both its *civil* and criminal provisions. One of the broadest grants of authority for state and local immigration enforcement activity stems from INA §287(g), which authorizes the Attorney General to enter into a written agreement with a State, or any political subdivision to allow an officer or employee of the State or subdivision, to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. The enforcement of immigration by state and local officials has sparked debate among many who question what the proper role of state and local law enforcement officials should be in enforcing federal immigration laws. Many have expressed concern over proper training, finite resources at the local level, possible civil rights violations, and the overall impact on communities. Some localities, for example, even provide “sanctuary” for illegal aliens and will generally promote policies that ensure such aliens will not be turned over to federal authorities. Nonetheless, some observers contend that the federal government has scarce resources to enforce immigration law and that state and local law enforcement entities should be utilized. P.L. 109-295 appropriates \$5.4 million to facilitate INA §287(g) agreements, the same amount that both House-passed and Senate-passed H.R. 5441 would have appropriated.

Senate-passed H.R. 5441 would also have created a new grant program called the “Border Relief Grant Program.”¹⁰² Under this program, subject to available appropriations, the Secretary would have awarded grants to tribal, state, and local law enforcement agencies located in counties no more than 100 miles from the U.S.-Mexico or U.S.-Canadian land border, or located in counties further than 100 miles from the U.S. land borders who had been certified by the Secretary as High Impact Areas. Two-thirds of the funds would have been allocated to the six states with the largest number of unauthorized alien apprehensions, and one-third would be set aside for High Impact Areas. The grants would have been used to provide additional resources to the law enforcement agencies to help address criminal activity that occurs in the jurisdiction by virtue of the agencies proximity to the U.S. land border, and the impact of any lack of security along the U.S. border. Priority would have been given to law enforcement agencies serving communities with populations less than 50,000 and located no more than 100 miles of the U.S. international land borders. The bill would have authorized \$50 million each year FY2007 through

¹⁰¹ This section adapted from CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa M. Seghetti, Stephen R. Vina, and Karma Ester.

¹⁰² See Title IX of Senate-passed H.R. 5441.

FY2011 for the “Border Relief Grant Program.” This program was not included in P.L. 109-295.

Transportation Security Administration (TSA)¹⁰³

The TSA was created by the Aviation and Transportation Security Act (ATSA, P.L. 107-71), and it was charged with protecting air, land, and rail transportation systems within the United States to ensure the freedom of movement for people and commerce. In 2002, the TSA was transferred to DHS with the passage of the Homeland Security Act (P.L. 107-296). The TSA’s responsibilities include protecting the aviation system against terrorist threats, sabotage, and other acts of violence through the deployment of passenger and baggage screeners; detection systems for explosives, weapons, and other contraband; and other security technologies. The TSA also has certain responsibilities for marine and land modes of transportation including assessing the risk of terrorist attacks to all non-aviation transportation assets, including seaports; issuing regulations to improve security; and enforcing these regulations to ensure the protection of these transportation systems. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities. See **Table 6** for account-level detail for all of the agencies in Title II, and **Table 9** for sub-account-level detail for TSA for FY2006 and FY2007.

President’s FY2007 Request. The President requested an appropriation of \$6,299 million in gross budget authority for the TSA in FY2007. The FY2006 enacted level was \$6,344 million. **Table 9** provides FY2006 appropriated and FY2007 requested funding levels for each TSA budget activity. As in past years, the large majority of these funds are slated for aviation security functions. Direct funding for aviation security (\$4,905 million) and air marshals (\$699 million) comprises about 89% of the requested TSA budget. Additionally, much of the TSA credentialing activities, intelligence, and administrative functions and associated funding requests would provide both direct and indirect support for aviation security operations.

Requested funding for transportation security threat assessments and credentialing totals \$131 million. The Secure Flight system for prescreening airline passengers and the voluntary Registered Traveler program designed to expedite checkpoint screening of vetted airline passengers account for more than half of the requested amount in this category. Several of these vetting and credentialing programs — including the alien flight school applicant vetting program, the credentialing program for HAZMAT drivers, and the proposed Registered Traveler and Transportation Worker Identification Credential (TWIC) programs — either are, or are anticipated to be, fully funded through fee collections.

The President has also requested \$37 million for TSA surface transportation security activities, including support personnel and resources to assess terrorist threats, assess standards and procedures to mitigate these risks, and ensure

¹⁰³ Prepared by Bart Elias, Specialist in Aviation Safety, Security, and Technology, Resources, Science, and Industry Division.

compliance with transportation security regulations and policies in non-aviation modes. Although the overall funding request for surface transportation security is roughly equal to FY2006 appropriated levels, the President requested an increase of about \$5 million for rail security but requested no specific appropriation for tracking trucks carrying hazardous materials, an initiative that received \$4 million in FY2006.

Table 9. TSA Gross Budget Authority by Budget Activity
(budget authority in millions of dollars)

Budget Activity	FY2006 Total	FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Enacted
Aviation Security	4,561	4,655	4,704	4,752	4,731
— Screening Partnership Program (SPP)	138	149	149	149	149
— Passenger Screening (PC&B)	1,505	1,556	1,556	1,556	2,470 ^a
— Passenger Screening (Other)	24	23	23	23	— ^b
— Baggage Screening (PC&B)	875	914	914	914	— ^a
— Baggage Screening (Other)	133	133	133	133	— ^b
— Screener Training	87	88	88	88	244 ^b
— Human Resource Services	205	207	207	200	207
— Checkpoint Support	163	173	173	181	173
— EDS/ETD Purchase	173	91	136	141	141
— EDS/ETD Installation	45	94	94	172	138
— EDS/ETD Maintenance and Utilities	198	234	234	210	222
— Operation Integration	23	23	23	23	23
— EDS/ETD Refurbish	—	—	10	—	—
— Regulation and Other Enforcement	220	218	218	218	218
— Airport Management, IT, and Support	679	666	666	666	666
— FFDO & Crew Training	30	30	25	23	25
— Air Cargo Security	54	55	55	55	55
— Airport Perimeter Security	5	0	—	—	—
— Foreign and Domestic Repair Stations	3	0	—	—	—
Aviation Security Capital Fund	250	250	250	250	250
Federal Air Marshal Service (FAMS)	679	699	699	699	714
— Management and Administration	607	628	628	628	628
— Travel and Training	70	71	71	71	86
— Air-To-Ground Communication	2	0	—	—	—

Budget Activity	FY2006 Total	FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Enacted
Threat Assessment and Credentialing	254	131	151	106	116
— Screening Administration and Operations	5	0	—	—	—
— Secure Flight	56	40	40	15	15
— Crew Vetting	13	15	15	15	15
— Registered Traveler Program Fees	20	35	35	35	35
— Alien Flight School Fees	10	2	2	2	2
— TWIC Appropriation	—	—	20	—	—
— TWIC Fees	100	20	20	20	20
— HAZMAT Commercial Driver Fees	50	19	19	19	19
Surface Transportation Security	36	37	37	37	37
— Operations and Staffing	24	24	24	24	24
— Rail Security Inspectors and Canines	8	13	13	13	13
— HAZMAT Truck Tracking and Training	4	0	—	—	—
Transportation Security Support	505	527	523	619	525
— Intelligence	21	21	21	21	21
— Headquarters Administration	277	296	292	296	294
— Research and Development	—	—	—	92	—
— Information Technology	208	210	210	210	210
TSA TOTAL:	6,286	6,299	6,364	6,508	6,374

Source: CRS analysis of the *FY2007 President's Budget*, *DHS Budget in Brief*, and *TSA FY2007 Congressional Justification* documents, the House Appropriations Committee report (H.Rept. 109-476) to H.R. 5441, Senate Appropriations Committee Report S.Rept. 109-273; and FY2007 enacted numbers from P.L. 109-295 and the Conference Report to H.R. 5441, H.Rept. 109-699.

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

- a. The final conference report combined passenger and baggage screening PC&B.
- b. The final conference report combined passenger and baggage screening training and other.

Highlighted Initiatives in the President's Funding Request. The President proposed several funding initiatives in FY2007 designed to improve aviation security screening functions. The TSA requested \$10 million as a component of screener benefits to improve screener retention. The TSA proposed to use this money to implement retention allowances, performance bonuses, college

credit reimbursement, flexible staffing options, and pay-for-performance incentives. The goal is to reduce attrition rates, which are nearly 20% for full-time screeners and above 50% for part-time screeners. The TSA believes that lowering attrition could reduce recruitment and training costs. The TSA also requested \$20 million to fund worker compensation payments owed to the Department of Labor. By some estimates, TSA on-the-job injury rates — which were close to 30% in 2005 — far exceed the rates of other federal and private-sector jobs, and injuries cost the TSA about \$52 million in 2005 in lost wages and medical treatment of injured workers.¹⁰⁴ The TSA also requested slightly more than \$80 million for emerging checkpoint technologies — such as whole body imaging systems, automated explosive spot samplers, and cast and prosthesis scanners — to improve the detection of weapons and explosives on passengers and their carry-on items. Congress and the 9/11 Commission have given a high priority to developing and deploying checkpoint technologies to screen passengers and carry-on items for explosives and nonmetallic, chemical, biological, and radiological weapons.¹⁰⁵ The TSA also proposed a budget increase of \$7.5 million to hire 30 additional procurement staff members to aid in the acquisition of new technologies and services and improve procurement processes and controls.

The President's Proposal for Restructuring Aviation Security Fees.

In an effort to increase revenues from user fees and reduce the general fund contribution for aviation security functions, the President proposed a restructuring of the passenger security fees established under ATSA. The proposal would have replaced the current fee structure of \$2.50 per flight segment and a maximum fee of \$5.00 per one-way trip, with a flat fee of \$5.00 per one-way trip. Although passengers making connections to reach their destination would not see a fee increase under this proposal, passengers on direct flights would see their aviation security fees double. The Administration argues that the flat fee proposal more closely parallels passenger utilization of the aviation security system since passengers and their baggage are typically screened only once regardless of how many connections they might make to reach their destination.¹⁰⁶

In this regard, the Administration's proposed aviation security fee changes for FY2007 differed significantly from those previously proposed in the FY2006 budget request. That prior proposal, which was not widely supported in Congress, would have kept the per-segment fee structure in place and raised it to \$5.50 per trip segment with a maximum of \$8.00 per one-way flight. That proposal, however, was opposed in Congress not only because it was viewed by many as detrimental to the airline industry as a whole, but also because it was seen as disproportionately impacting certain passengers, particularly those using smaller airports, who are more dependent on connecting flights. It is notable, however, that this perceived

¹⁰⁴ Thomas Frank, "Airport Screeners' Strains, Sprains Highest Among Workers," *USA Today*, Jan. 11, 2006, p. A2

¹⁰⁵ See CRS Report RL32541, *Aviation Security-Related Findings and Recommendations of the 9/11 Commission* by Bart Elias; and CRS Report RS21920, *Detection of Explosives on Airline Passengers: Recommendation of the 9/11 Commission and Related Issues*, by Dana Shea and Daniel Morgan.

¹⁰⁶ Office of Management and Budget, *President's Budget, FY2007*, p. 141.

imbalance in the aviation security fee structure stems from the original collection authority enacted under ATSA, which presently requires passengers taking connecting flights to pay twice as much in aviation security fees as passengers taking a direct flight.

The Administration projected that if the newly proposed flat fee of \$5.00 per one-way trip were enacted, the increase in fee collections from passengers on direct flights, along with a rise in the numbers of air travelers, would have boosted aviation security fee collections in FY2007 by about \$1,726 million dollars, or roughly 85%, compared to expected FY2006 revenues. If this measure were enacted, the Administration expected the new fees to cover about 70% of core aviation security costs, compared to a contribution of about 38% in FY2005.¹⁰⁷

The Administration asserts that having users pay for aviation screening and security is what Congress intended when it enacted the aviation security fee under ATSA and doing so would free up general funds for spending on other homeland security needs that are more generally applicable to all citizens. Critics of the proposal, on the other hand, argue that all citizens benefit from aviation security measures that are intended, in part, to prevent another terrorist attack like the attack of September 11, 2001, and therefore, aviation security should be funded, at least in part, through general fund contributions. Critics of the proposal also maintain that tacking the aviation security fee on to passenger tickets hurts airlines by increasing the overall ticket cost which may prompt some passengers to seek alternative transportation, particularly for shorter trips. These critics go on to argue that airlines are already burdened by other ticket taxes and higher fuel prices that can negatively impact passenger revenues. Also, industry experts believe that the proposed fee schedule would have a greater relative impact on low-cost carriers that offer more direct flights.¹⁰⁸ The current fee schedule arguably has a greater relative impact on legacy carriers that route passengers on connecting flights to a much greater extent using a hub-and-spoke service model.

The Administration also proposed to collect \$644 million from security fees paid directly by the air carriers, known as the aviation security infrastructure fees (ASIF). This sum includes \$448 million in projected FY2007 collections plus \$196 million in retroactive fee collections using revised prior-year airline contribution amounts based on a GAO analysis.¹⁰⁹

House-Passed H.R. 5441. House-passed H.R. 5441 would have provided a gross total of \$6,364 million for the TSA in FY2007. This amount was \$65 million more than the President's request and \$20 million more than FY2006 enacted appropriations.

¹⁰⁷ Ibid., and Transportation Security Administration, *Fiscal Year 2007 — Congressional Justification Overview*.

¹⁰⁸ John M. Doyle, "No Sale: Proposed TSA Hike in Passenger Security Fee Is Getting a Chilly Reception on Capitol Hill," *Aviation Week & Space Technology*, Feb. 12, 2006, p. 34.

¹⁰⁹ United States Government Accountability Office, *Review of Air Carriers' Year 2000 Passenger and Property Screening Costs*, April 2005, GAO-05-558.

The House-passed bill would have appropriated \$4,704, roughly 74% of the total TSA budget, on direct spending for aviation security, including screening operations, security direction and enforcement, and the mandatory \$250 million appropriation for the Aviation Security Capital Fund. The House-passed appropriation for aviation security was roughly \$50 million higher than the President's request. This amount, however, did not include appropriations for the Federal Air Marshals Service (FAMS), for which the House-passed bill would have provided \$699 million, matching the President's request. The amount for aviation security also did not include aviation-security related threat assessment and credentialing programs such as Secure Flight and the Registered Traveler program. The House-passed bill would have provided \$74 million for the TSA's Transportation Threat Assessment and Credentialing (TTAC) mission area in all transportation modes which includes the following programs: Secure Flight (aviation), Crew Vetting (aviation), Transportation Worker Identification Credential — TWIC (currently limited to marine/seaports), Registered Traveler (aviation), HAZMAT Commercial Driver Credentialing (highway, freight trucking) and Alien Flight School vetting (aviation). Under the House-passed bill, TTAC funding for aviation-related functions included \$55 million in direct appropriations, and an additional \$37 million from fee collections, largely anticipated to be derived from the Registered Traveler program. Adding the House-passed funding for FAMS and aviation-related threat assessment and credentialing programs would have yielded a total spending package for aviation-related functions of \$5,495 million, or 86% of total TSA funding included in the bill.

The House-passed bill would also have provided \$37 million for TSA surface transportation security functions, the same as the President's request. The committee report (H.Rept. 109-476) also directed the TSA to use prior year unobligated funds designated for surface transportation staffing and operations on rail and mass transit security screening pilot programs in large metropolitan areas. The House bill would also have appropriated \$20 million for the TWIC program in addition to the \$20 million that the administration expects from fee collections and, in-line with the President's request, anticipated \$19 million in fee collections for HAZMAT commercial driver credentialing. A general provision in the bill (Sec. 520) would have prohibited any funds designated for the TWIC program from being used to develop any type of credentialing program that is decentralized and not universal, and would have required that existing government card production facilities be used to carry out production of TWIC credentials.

With regard to the Administration's proposal to modify the passenger fee schedule, this request was not considered in the House-passed bill because it sought to modify existing law that falls under the jurisdiction of the House Committee on Homeland Security. The appropriations committee estimated FY2007 passenger fee collections under the existing fee schedule to total \$2,124 million. This included an initial \$250 million to be deposited in the Aviation Security Capital Fund plus an additional \$1,874 million to offset TSA spending on aviation security. In addition the House committee projected aviation security infrastructure fee (ASIF) collections directly from the airlines, including retroactive payments from FY2005 and FY2006, to total \$546 million in FY2007, \$98 million less than the administration projection. While the House-passed bill was based on the assumption of collecting significantly less in passenger and airline fees than administration projections, the only TSA program that was specifically reduced to derive cost savings was for headquarters

administration, which was reduced by \$4 million. House-passed funding for the Federal Flight Deck Officer (FFDO) program and flight attendant (cabin crew) training was also reduced, by \$5 million, compared to the President's request. However, this cut was attributed to high unobligated balances of prior year appropriations for the program rather than as a specific cost cutting measure. The House-passed bill otherwise set funding at levels equal to or greater than requested amounts. The appropriations committee, however, indicated that reductions to key funding proposals throughout DHS were made to "make up for the shortfall in the President's budget brought on by this untenable fee proposal."¹¹⁰

In report language, the House appropriations committee encouraged TSA to develop innovative approaches and incentives for airports to pursue private screener operations instead of federal TSA-screeners.¹¹¹ A general provision in the bill (Sec. 536) would have prohibited the TSA from hiring non-screener personnel at airports whose duties would be redundant with those performed by any non-screener personnel employed by a contract screening company participating in the Screening Partnership Program (SPP). As in past years, language in the House-passed bill capped TSA screener staffing levels to 45,000 full-time equivalents. The committee noted that this cap has been kept in place, in part, to ensure that the TSA accelerates technology deployment initiatives for passenger and baggage screening. Report language also directed the TSA to report on its efforts to decentralize screener hiring, and how these efforts might be encumbered by centralized financing of the hiring process. The committee also wanted the TSA to complete a study to identify those airports where passenger wait times at screening checkpoints are continually above system-wide averages.

The House-passed bill would have provided \$45 million more than the President's request for EDS purchase. The House-passed bill also included an additional \$10 million, not included in the President's request, to begin refurbishing and upgrading EDS equipment, with the caveat that only those machines that manufacturers are willing to place back under warranty should be refurbished. The committee, however, emphasized that it did not believe that explosive trace detection (ETD) should be refurbished, and sought the long term reduction in the use of ETD equipment for baggage screening. House-passed language also required the TSA to develop standards and protocols for increasing the use of EDS to screen air cargo, and requires the TSA to use existing EDS equipment and screeners to screen cargo on passenger aircraft to the greatest extent practicable at each airport. The bill further would have required the TSA to provide Congress with air cargo inspection statistics by airport and by air carrier on a quarterly basis, and would have reduced aviation security appropriations by \$100,000 for every day that the required report is late (Sec. 519).

As in previous years, the House-passed bill would have prohibited the full deployment or implementation of Secure Flight beyond its testing phase until the DHS certifies and the GAO reports that the system satisfactorily addresses specific statutory requirements pertaining to system performance, data protection, privacy,

¹¹⁰ H.Rept. 109-476, p. 46.

¹¹¹ Ibid.

and redress for aggrieved passengers. Language in the House-passed bill (Sec. 513) also would have prohibited the development of algorithms to assign passenger risk using any means other than official government watch lists, and prohibits the use of commercial, or non-federal, databases in the Secure Flight system.

Senate-Passed H.R. 5441. The Senate-passed bill would have provided \$6,562 million in total budget authority for the TSA, \$198 million more than the House-passed amount and \$276 million more than the requested funding amount. The Senate approved a total appropriation (including the Aviation Security Capital Fund) for aviation of \$5,002 million, \$48 million above the House-passed funding level and \$97 million more than the President's request. Like the House, the Senate did not include the President's proposed increase to passenger aviation security fees and projected total collections from passengers and the airlines to equal \$2,420 million in addition to the \$250 million designated for mandatory spending in the Aviation Security Capital Fund.

For most budget activities, the Senate-passed bill matches funding levels requested by the President and passed by the House. Notable exceptions to this are discussed below.

The Senate approved \$181 million for airport checkpoint support functions, \$8 million more than the requested level that was agreed to by the House. While the committee did not specifically designate what this additional funding was to be used for, its report (S.Rept. 109-273) indicated that the overall appropriation amount for this budget activity included funding for the development and piloting of an advanced checkpoint portal solution, and report language directed the TSA to develop a strategic plan and timeline for deploying emerging technologies to screen passengers for explosives. The Senate-passed bill also proposed bringing transportation security research and development functions back under the TSA, rather than in the Science and Technology Directorate (S&T), where they has been for the last two years. Much of these activities are directed at improving explosives detection capabilities in the aviation environment. The Senate agreed to \$92 million for these aviation security research and development activities.

The Senate-passed bill would have provided \$141 million for EDS and ETD purchase, \$50 million more than the President's request and \$5 million more than the House-passed amount. The Senate committee report (S.Rept. 109-273) expressed concerns over the President's budget request that would have cut this function by more than 50%. The report specified that out of the total funding amount for EDS and ETD purchase, \$20 million or more should be put toward acquiring and deploying next-generation EDS machines, noting that the newer machines are potentially more efficient than current-generation units and may yield a significant improvement in installation, integration, and life-cycle costs. The Senate-passed bill also included \$172 million for EDS and ETD installation, \$127 million more than the FY2006 appropriated amount and \$78 million more than both the President's request and the House-passed bill. S.Rept. 109-273 indicated that this sizable increase in funding would ensure that EDS and ETD installation is carried out in an expedited manner. The Senate-passed bill, however, recommended \$24 million less than the President's request for EDS and ETD maintenance, noting that the TSA has already achieved sizable savings on maintenance, and encouraged the TSA to continue to

work with contractors to further reduce maintenance costs. The bill language also limits the obligation of \$25 million of these funds until the committee receives a report responding to the DHS IG's findings regarding contractor fees. The committee report also includes language supporting the TSA's expanded use of refurbished EDS equipment and directs the TSA to work aggressively to save costs by maximizing the refurbishment of EDS equipment. However, unlike the House-passed bill, the Senate-passed bill did not include a specific funding amount for EDS and ETD refurbishing.

The Senate-passed bill included \$23 million for the Federal Flight Deck Officer (FFDO) program for armed pilots and for crew security training, \$7 million less than the FY2006 appropriation and the FY2007 request, and \$2 million less than the House-passed funding amount. Like the House committee report, the Senate committee report (S.Rept. 109-273) cited high unobligated balances in this program, rather than specific cost-cutting initiatives, as the reason for this proposed reduction.

The Senate-passed bill specified \$15 million for the Secure Flight program, \$25 million less than the amount requested and agreed to by the House. The Senate committee report asserted that this amount, in conjunction with available carryover balances, should be sufficient to meet FY2007 program requirements. While the committee expressed its general support for the additional layer of aviation security that would be provided through the Secure Flight program, the committee concluded that the shape and size of the program still remains unclear because of continuing delays and another effort to re-scope the program. The committee indicated that it was therefore reluctant to provide any resources beyond the proposed \$15 million.

Also regarding Secure Flight, the Senate-passed language was identical to the House-passed bill requiring DHS certification and GAO oversight to confirm that the system is secure, protects the privacy of personal data, and has an adequate redress process for passengers that are erroneously flagged by the system. Like the House-passed bill, this language would have prohibited the use of commercial databases in the Secure Flight system for any purpose including authenticating passenger identity or assessing passenger risk. In addition, S.Amdt. 4635 directed the TSA to work more closely with the airlines to provide technical data and other assistance to better align their reservation systems with terrorist databases to minimize travel delays and inconvenience associated with mistaken identification, until the Secure Flight system or a successor system is fully deployed. Also, S.Amdt. 4619 would have required the DHS to establish revised procedures for clearing individuals whose names are mistakenly placed on a terrorist watch list or whose names are similar or identical to individuals included on a terrorist watch list. Often these "false positive" identifications are made when an individual attempts to board a flight and is singled out for additional screening or denied boarding based on use of the no-fly and selectee lists provided by the TSA to the airlines.

The Senate also agreed to several amendments related to aviation security. S.Amdt. 4608 would have required the TSA to provide passenger and baggage screener and related resources at the New Castle Airport in Wilmington, DE, as long as commercial air service is provided at that airport. It is uncertain whether the wording of this amendment would have specifically restricted the use of private screeners, contracted by TSA under their Screening Partnership Program (SPP) –

sometimes referred to as the opt-out program – under which airports can elect to use private screeners instead of TSA screeners. If so, this provision could be highly controversial as it could set precedent for legislators to seek similar restrictions at other airports, which could be viewed by advocates for private screening as potentially undermining the intent of the opt-out provision of the Aviation and Transportation Security Act (ATSA; P.L. 107-71). Another agreed-to amendment (S.Amdt. 4582) would have required TSA to report on the effectiveness of screening operations resulting from its modification of the list of prohibited items in December 2005. Senate-passed S.Amdt. 4592 would have required air carriers to develop plans to comply with a provision of ATSA that gave emergency service personnel, such as firefighters, police officers, and medical technicians authority to voluntarily provide emergency services on commercial air flights during emergencies. The Senate also agreed to S.Amdt. 4552, which would have removed the TSA's exemption from federal procurement law. When TSA was established as part of the Department of Transportation under ATSA, it was given authority to operate under the FAA's acquisition management system, which was statutorily exempt from many aspects of federal procurement law in order to provide for more timely and cost-effective acquisitions of equipment and materials to meet unique challenges in responding to the needs of the aviation industry. Also, in contrast to the House and prior-year appropriations language that capped the number of TSA screeners at 45,000, the Senate-passed S.Amdt. 4558 would have prohibited any statutory limitation on the number of TSA employees, or any administrative rule or regulation limiting the recruiting or hiring of TSA personnel.

P.L. 109-295. P.L. 109-295 provides gross funding of \$6,374 billion for the TSA. That amount includes \$4,731 million for aviation security plus \$250 million for the Aviation Security Capital Fund. This, combined with \$714 million for the Federal Air Marshals Service (FAMS) and \$67 million for aviation-related threat assessment and credentialing functions (namely, Secure Flight, Registered Traveler, Alien Flight School Fees, and Crew Vetting), brings the total direct appropriation for aviation security-related function to \$5,762 billion. This amount comprises roughly 90% of the total TSA budget. By comparison, TSA's surface transportation security account was funded at \$37 million, and related threat assessment and credentialing functions (namely, the TWIC program and HAZMAT Commercial Driver Fees) totaled \$39 million. These activities collectively account for less than 2% of the TSA's total appropriations. While some in Congress have argued that increased funding for surface and maritime transportation initiatives is needed, this funding distribution is roughly inline with prior year funding allocations.

Airport checkpoint explosives screening of passengers and carry-on items has been a priority, highlighted in 9/11 Commission recommendations and recently spotlighted by the foiled terrorist plot to down United States-bound aircraft from the United Kingdom using liquid explosives. Although the conference report encouraged the deployment of emerging airport checkpoint technologies, it funded checkpoint support at \$173 million, consistent with the House-passed amount, instead of the \$181 million funding level originally passed by the Senate. This was due to a large unobligated carryover balance of \$56 million from previous fiscal years for this activity that can be used to support FY2007 checkpoint support initiatives. These initiatives remain a high priority, and the conference report directs the TSA to develop a strategic plan for screening all types of explosives on passengers and in

carry-on baggage. The act, however, did not include the Senate-passed language that would have moved aviation security research and development activities back within the TSA. With regard to checkpoint screening, report language also directs the TSA to review airport checkpoint wait times over the past three years and provide a report, identifying airports with above average wait times, with the FY2008 budget. Conference report language also direct the TSA to provide screening at 24 commercial airports and heliports that have requested TSA screening, but continue to operate with temporary screening or none at all. The report further directs the TSA to consider contracting out screening functions at these locations if it does not believe it would be efficient to deploy TSA personnel to these sites. Conference language also directs the GAO to study the effects of changes to the permitted and prohibited items lists made in December 2005 on public safety and screening effectiveness. The act keeps in place the longstanding cap on full-time equivalent TSA screeners of 45,000.

A provision of the act (Section 514) reiterates a prohibition on using funds for the Secure Flight passenger prescreening program in other than a test basis until the TSA demonstrates and the GAO certifies that certain conditions pertaining to data security, privacy, and redress have been adequately addressed. While the President's signing statement indicates that the executive branch considers this section to only be advisory in nature, the TSA has been cooperating with the GAO to address these unresolved issues. The act further requires the TSA to submit a detailed plan of Secure Flight program milestones and certification within 90 days of enactment.

The act provides \$141 million for EDS purchase, as initially agreed to by the Senate and \$5 million above the House-passed amount. Report language specifies that up to \$6 million may be used for refurbishing existing EDS equipment so long as the manufacturers are willing to place these machines back under warranty. This is \$4 million less than the direct appropriation for EDS and ETD refurbishing passed by the House. While the Senate report language expressed support for the TSA's EDS refurbishment efforts, it did not specify an appropriation level for this activity. The conference report further specifies that EDS purchase funding is not to be used to procure ETD equipment, unless necessary for secondary baggage screening, as replacements at airports primarily dependent of ETD technologies, or for use at small airports and heliports where screening operations are newly federalized. The act includes a total of \$388 million for EDS installations, including \$250 million from the Aviation Security Capital Fund and a separate appropriation of \$138 million. This amount is \$34 million less than the original Senate-passed amount, but it is \$44 million more than the original House-passed amount. The act also includes \$222 million for EDS and ETD maintenance, an even split between the original Senate and House amounts. Conference report language directs the TSA to combine maintenance costs for all equipment, including EDS, ETD, and checkpoint screening equipment, into one budget activity in FY2008 to provide a more complete picture of the total maintenance costs for security equipment deployed at the nation's airports. The conference report also directs the TSA to develop performance measures and targets with regard to alternative screening procedures; track the use of these alternative screening procedures at airports; assess their effectiveness; conduct covert tests at airports using these procedures; and develop a plan to stop the use of these alternative screening procedures which are sometimes used in lieu of EDS and ETD screening. A general provision of the act (Section 524) specifies that

recovered or deobligated funds for TSA aviation security, administration security support from prior fiscal years shall only be available for procurement and installation of EDS equipment for use in air cargo, checkpoint, and baggage screening. However, a separate provision (Section 537) rescinds roughly \$5 million of these prior-year unobligated funds.

The act provides \$714 million for the Federal Air Marshals Service (FAMS), \$15 million above the original amounts passed in both the House and Senate. The increased funding is designated for travel and training. Conference language states that the pilot program using FAMS in transportation modes other than aviation “goes beyond what has been authorized for FAMS.” The report further states that it is imperative for FAMS to focus on protecting aviation assets, particularly flights deemed to be a high security threat, before further expanding the role of FAMS. The act also maintains the Federal Flight Deck Officer (FFDO) program and crew training initiatives at a appropriated level of \$25 million, consistent with the original House-passed amount and \$2 million above the original Senate-passed funding level.

The act provides \$55 million for air cargo security, consistent with original House-passed and Senate-passed and requested amounts. While this funding is the same as FY2006 appropriations levels, the conference report noted that the TSA has been slow to obligate air cargo security funding, and expected that one-tenth of the total FY2006 appropriation would be carried into FY2007. The conference report language directs the TSA to use these carryover funds to hire additional staff to enhance the TSA’s air cargo security analytic capabilities. A separate provision (Section 518) of the act directs the TSA, in consultation with industry stakeholders, to develop standards and protocols for increasing the use of EDS for screening air cargo when appropriate.

With regard to surface transportation security, the act provides \$37 million, consistent with both the original House-passed and Senate-passed amounts. The act also appropriates \$20 million for the TWIC program, which is expected to be recouped through credentialing fees. Conference report language notes that due to the TSA’s reprogramming of TWIC, an additional direct appropriation for FY2007 was not necessary. The TWIC is regarded as a high priority issue in response to public attention directed at seaport security over the past year, and conference report language reflects support for expeditious implementation of the TWIC program. Also, Section 558 of the act directs the TSA, in collaboration with the Department of Energy, to pilot test an integrated scanning system, that couples nonintrusive imaging equipment and radiation detection equipment, at three foreign seaports.

TSA Issues for Congress. Congress may consider several TSA-related transportation security issues during the FY2007 appropriations process. Central issues include the aviation fee structure and funding aviation security costs; passenger pre-screening efforts and the status of the Secure Flight program; the pending roll-out of the Registered Traveler (RT) program; progress in installing in-line baggage screening systems; initiatives to mitigate workplace injuries among TSA screeners; efforts to improve the screening of passengers and carry-on items for explosives; the status of the Transportation Worker Identification Credential Program (TWIC); and TSA initiatives in other surface transportation modes.

The President's proposal to modify passenger aviation security fees has already been taken up by the Senate during debate over the FY2007 budget resolution (S.Con.Res. 83). An amendment to that resolution offered by Senator Lautenberg (S.Amdt. 3137) that would prohibit the proposed changes to aviation security fee collections was agreed to by unanimous consent. However, during consideration of the Transportation Security Administration Reorganization Act of 2005 (H.R. 4439) in a markup session held by the House Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity on March 9, 2006, Representative Lungren offered an alternative aviation security fee proposal that is similar to the President's proposed fee structure. This alternative fee structure — agreed to by the subcommittee for inclusion in H.R. 4439 — includes a \$4.00 fee per one-way trip that would directly fund the TSA, plus an optional \$1.00 fee that could be charged by the airport of origin for funding qualified aviation security projects. Passenger aviation security fees under this plan would be capped at \$5.00 per one-way trip and \$10.00 per round-trip. Under the proposal, however, security fees paid directly by the airlines — the ASIF — would be eliminated. Noting that going along with the President's proposed passenger fee restructuring would not be in order as part of the appropriations process because it would require modifications to existing law, the House-passed appropriations bill does not address the issue of modifying passenger security fees.

The status of the Secure Flight program to prescreen airline passengers against the consolidated terrorist watch list may be considered during the FY2007 appropriations debate. In prior years, appropriations legislation has contained language directing the GAO to review the program and making full implementation of the system beyond the testing phase contingent on the GAO finding that information security, privacy protection, and passenger redress issues have been adequately addressed. The GAO recently reported that these issues still largely remain unresolved and the program still faces many management hurdles,¹¹² while the TSA has indicated that it is “re-baselining” the program before entering into the operational testing phase.¹¹³ As previously noted, the House-passed bill would keep the restrictions on full deployment of Secure Flight in force. It also would prohibit the TSA from using methods other than Government watch lists for assessing passenger security risk, and would prohibit the use of commercial databases for vetting passengers. During the FY2007 appropriations process, Congress may also examine the related Registered Traveler program, scheduled to be launched on a nationwide basis in FY2006. The status of the Registered Traveler program may be of particular interest to Congress since the airline industry, which once championed the program concept as a means to gain efficiency in passenger screening, is no longer backing the program amid concerns over the manner in which it is being implemented.¹¹⁴

¹¹² United States Government Accountability Office, *Significant Management Challenges May Adversely Affect Implementation of the Transportation Security Administration's Secure Flight Program*, Feb. 9, 2006, GAO-06-374T.

¹¹³ “TSA Puts Brakes on ‘Secure Flight’; GAO Concurrs, Congress Resists,” *Airport Security Report*, 13(4), Mar. 1, 2006.

¹¹⁴ Statement of James C. May, President and CEO, Air Transport Association of America, (continued...)

Another aviation security-related issue that Congress may consider is the ongoing debate over resources and schedules for integrating checked baggage explosives detection equipment with airport baggage handling systems. Although deploying these in-line baggage screening systems is projected to significantly increase baggage throughput and reduce TSA manpower requirements for baggage screening, these capital projects are costly and will take several years to complete on a systemwide basis at current appropriations levels. A somewhat related issue is the TSA's effort to mitigate workplace injuries among TSA baggage screeners, which may benefit from in-line baggage screening systems and related ergonomic design considerations to the extent that they can eliminate or minimize the lifting and handling of baggage. Also, as previously discussed, the physical screening of passengers and their carry-on items for explosives and nonmetallic threats remains a high priority, and Congress may debate whether available technologies and TSA initiatives to deploy these technologies adequately respond to this stated need in a timely manner.

Recent interest in seaport security stemming from the proposed acquisition of terminal operations at several large U.S. seaports by Dubai Ports World (DPW) may prompt more detailed examination of TSA's efforts to assess security risks at seaports as well as progress on the Transportation Worker Identification Credential (TWIC) program. According to the TSA, the TWIC program, which is currently in a prototype testing phase, will be rolled out to ports utilizing the national port criticality list that prioritizes posts based on risk, threat, and vulnerability analysis. Although initial deployment of TWIC was planned for FY2006, it has been delayed until FY2007 to accommodate program review and related rulemaking.¹¹⁵ In light of the current interest in port security, the TWIC program scope, status, and deployment schedule may be of particular interest during the appropriations process. More generally, Congress may examine the TSA's initiatives to address security in other surface transportation modes such as passenger and freight rail and HAZMAT trucking, and perhaps intermodal and supply-chain security issues in the context of the appropriations framework.

United States Coast Guard¹¹⁶

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is the lead agency responsible for the security of U.S. ports, coastal and inland waterways, and territorial waters. The Coast Guard also performs missions that are not related to homeland security, such as maritime search and rescue, marine environmental protection, fisheries enforcement, and aids to navigation. The Coast Guard was transferred from the Department of Transportation to the DHS on March 1, 2003. The law that created the DHS (P.L. 107-296) directed that the Coast Guard be maintained as a distinct entity within the DHS and that the

¹¹⁴ (...continued)

Inc. Before the Committee on Commerce, Science, and Transportation, United States Senate, About the Secure Flight Program and Registered Traveler Program, Feb. 9, 2006.

¹¹⁵ Transportation Security Administration, *Fiscal Year 2007 Congressional Justification: Transportation Threat Assessment and Credentialing*, pp. 11-12.

¹¹⁶ Prepared by John Frittelli, Specialist in Transportation, Resources, Science and Industry Division.

Commandant of the Coast Guard report directly to the Secretary of DHS. See **Table 6** for account-level detail for all of the agencies in Title II.

President's FY2007 Request. For FY2007, the President requested a total of \$8,181 million in net budget authority for the Coast Guard, which is about a 0.5% increase over the FY2006 level. The President's request included slight increases in most Coast Guard accounts, including \$5,519 million for operating expenses, \$1,170 million for acquisition, construction, and improvements, \$124 million for reserve training, \$14 million for research, development, tests, and evaluation, \$12 million for environmental compliance and restoration, and zero funding for the bridge alteration program (Congress appropriated \$18 million for this program in FY2006).

The President requested \$62 million for a new mission for the Coast Guard — protecting the air space over Washington, DC, which used to be a responsibility of CBP. The funding would pay for five HH-65 Dolphin helicopters and their associated operating expenses to enforce a no-fly zone around the capital. The request also includes \$50 million to relocate the Coast Guard's headquarters in Washington, DC.

House-Passed H.R. 5441. The House-passed version of H.R. 5441 provided a total of \$8,129 million for the Coast Guard, \$52 million less than the President requested and \$318 million more than was enacted in FY2006. Most of the difference between the House and the President's request concerned the operating expense account and the ACI account. Under operating expenses, the House did not include \$50 million for the Coast Guard's headquarters relocation. Under the ACI account, the House did not include \$42 million for production of the fast response cutter. The House provided \$17 million for the bridge alteration program while the President requested no funds for this program.

Senate-Passed H.R. 5441. The Senate-passed version of H.R. 5441 provided a total of \$8,188 million for the Coast Guard, which is \$7 million more than the President requested and \$377 million more than was enacted in FY2006. The Senate did not include the \$50 million for the Coast Guard's headquarters relocation that the President requested. The Senate provided \$15 million for the bridge alteration program versus the President's request for no funds. The Senate provided \$18 million for research, development, test and evaluation, which is \$4 million more than the President requested.

P.L. 109-295. P.L. 109-295 provides a total of \$8,316 million for the Coast Guard for FY2007, which is about \$136 million more than the President requested. P.L. 109-295 provides \$5,478 million for operating expenses, which is \$41 million less than the President requested. It provides \$1,330 million for acquisition, construction, and improvements, which is \$160 million more than the President requested. (This amount includes an additional \$176 million appropriated as FY2007 emergency funding). Under the operating expenses account, P.L. 109-295 allows 5% of these funds to be transferred to the acquisition, construction, and improvements account for management and oversight of construction projects provided that the Coast Guard notifies the appropriations committees within 30 days of transfer. For the bridge alteration program, P.L. 109-295 provides \$16 million versus the President's request for zero funds. P.L. 109-295 does not provide any funds for the

Coast Guard's proposal to relocate its headquarters and the conference report requests a relocation plan from DHS.

Issues for Congress. Increased duties in the maritime realm related to homeland security have added to the Coast Guard's obligations and increased the complexity of the issues it faces. Congress is concerned with how the agency is operationally responding to these demands, including its plans to replace many of its aging vessels and aircraft.

Deepwater. The Deepwater program is a \$24 billion, 25-year acquisition program to replace or modernize 93 Coast Guard ships and 207 Coast Guard aircraft. For FY2007, the President requested \$934 million for the program, the House provided \$893 million, and the Senate provided \$994 million. P.L. 109-295 provides \$1,066 million for the Deepwater program. As indicated above, the House did not provide funding for the fast response cutter, whereas the Senate did provide funding. P.L. 109-295 rescinds \$79 million from the FY2006 unexpended balance for the fast response cutter and reprograms it for FY2007 for the service life extension program of the current 110-foot Island Class patrol boat fleet and the acquisition of traditional patrol boats. These patrol boats would act as "stand-in" assets until design issues with the fast response cutter are resolved. Issues for Congress include the Coast Guard's management of the program, which is the largest and most complex acquisition effort in Coast Guard history, the overall cost of the program, and the program's acquisition time-line. These issues are discussed in CRS Report RS21019, *Coast Guard Deepwater Program: Background and Issues for Congress*, by Ronald O'Rourke.

Security Mission. The Dubai Ports World issue intensified debate on U.S. port and maritime security. Some Members of Congress have expressed strong concerns that the Coast Guard does not have enough resources to carry out its homeland security mission. During hearings on the Dubai Ports World transaction, some witnesses raised the issue of whether the Coast Guard had enough presence on port grounds to enforce new security regulations.¹¹⁷

About half of the Coast Guard's FY2007 budget request is for its homeland security mission. This amount includes \$17 million for Maritime Domain Awareness, which is a term the Coast Guard uses to describe its efforts to identify threats as far from U.S. shores as possible by becoming more aware of the people, vessels, and cargo approaching and moving through U.S. ports and waterways. The \$17 million includes funding for development of prototype Joint Harbor Operation Centers (JHOC). JHOCs are facilities where the Coast Guard and other federal and local law enforcement agencies can monitor harbor traffic, fuse intelligence data to screen ships and cargo, and coordinate response activity if the need arises. For monitoring harbor traffic, the President's FY2007 request includes \$11 million to continue procurement plans and analysis for deployment of a nationwide system to

¹¹⁷ See testimony of Michael Mitre, Port Security Director, International Longshore and Warehouse Union, Senate Committee on Commerce, Science, and Transportation, Hearing on the Security of U.S. Ports, Feb. 28, 2006; and testimony of Stephen Flynn, Council on Foreign Relations, House Committee on Armed Services, Hearing on the Dubai Ports World Deal, Mar. 2, 2006.

identify, track, and communicate with vessels in U.S. harbors, called the Automatic Identification System (AIS). The FY2007 request also includes \$5 million for a third, 60-member Maritime Security and Response Team, which will be based in Chesapeake, VA, and whose mission is to provide on-call maritime counter-terrorism response.¹¹⁸

H.Rept. 109-476 states that “The Committee is very concerned about DHS’ progress towards securing our nation’s ports and inbound commerce. While the Department is to be commended for establishing many noteworthy security programs to address this issue, sustained, measurable improvement of our nation’s port and commerce security as a whole remains unclear.”¹¹⁹ The House report recommended \$15 million more than the President requested for Coast Guard port security inspectors to accelerate foreign port security assessments and increase the number of unannounced inspections at U.S. ports. The House report provided \$15 million for AIS deployment, the same amount that the President requested. P.L. 109-295 provides \$15 million as the House recommended for additional port security inspectors.

S.Rept. 109-273 indicates that the Senate committee provided \$3,767 million in the Coast Guard’s budget for maritime border security.¹²⁰ The Senate report also provided a program increase of \$3 million for Maritime Security Response Teams and \$5 million for Maritime Domain Awareness. The Senate report recommended no funding for AIS, noting that an unobligated balance is available.

The Senate-passed version also included additional funding for FY2006 for the Coast Guard’s security mission. As per an amendment offered by Senator Byrd, the Coast Guard would be provided \$184 million for purchasing new patrol boats, maintaining existing cutters, purchasing new patrol aircraft, and for arming its helicopters. For further information, see **Appendix I**.

Non-homeland Security Missions. Some Members of Congress have expressed concern that with the Coast Guard’s emphasis on its maritime security mission, the agency could have difficulty sustaining its traditional, non-homeland-security missions, such as fisheries enforcement or marine environmental protection.

The Senate denied the President’s request to terminate operations at LORAN (Long Range Aids to Navigation) stations nationwide and instead recommended that maintenance of these stations continue in Alaska, the far Northwest, and the far Northeast.¹²¹ The Coast Guard proposed dismantling the LORAN system in light of the availability of Global Positioning System (GPS) technology. Senators Stevens and Murray argued that GPS is not always reliable in their states because of line-of-

¹¹⁸ For further information on the agency’s homeland security operations, see CRS Report RS21125, *Homeland Security: Coast Guard Operations — Background and Issues for Congress*, by Ronald O’Rourke.

¹¹⁹ H.Rept. 109-476, p. 4.

¹²⁰ S.Rept. 109-273, p. 6.

¹²¹ See Sec. 545 under Title V – General Provisions, in the Senate-passed version.

sight obstacles and that fishermen, boaters, and pilots in their states rely on LORAN as a back up system to GPS. The House committee noted that the Coast Guard must first reach an agreement with the Department of Transportation before terminating the LORAN system.¹²² P.L. 109-295 also assumes continuation of the LORAN-C program until the appropriate entities within the executive branch have agreed in writing to the termination, the public has been notified, and the appropriate countries have been notified under existing international agreements. The conference report calls for a report from the Coast Guard providing details on how the above three requirements have been achieved.

Rescue 21 is the Coast Guard's new coastal zone communications network that is key to its search and rescue mission. The Senate and House agreed with the President's request of \$40 million to continue deployment of the new system, which began in 2002. However, the House committee expressed strong concerns with the Coast Guard's management of the program,¹²³ noting a GAO audit which found a tripling of project cost from the original estimate, a likely further cost increase in the near future, and further delays in project completion which is already five years behind schedule.¹²⁴ The conference report calls on the Coast Guard to brief the Committees on Appropriations on a quarterly basis regarding the Rescue-21 program.

U.S. Secret Service¹²⁵

The U.S. Secret Service (USSS) has two broad missions — criminal investigations and protection — both connected with homeland security (as well as other matters).¹²⁶ Criminal investigations encompass financial crimes, identity theft, counterfeiting, computer fraud, and computer-based attacks on the nation's financial, banking, and telecommunications infrastructure, among other areas. The protective mission is the most prominent, covering the President, Vice President, their families, and candidates for those offices, along with the White House and the Vice President's residence (through the Service's Uniformed Division). Protective duties extend to foreign missions in the District of Columbia, and other designated individuals, such as the DHS Secretary and visiting foreign dignitaries. Separate from these specific mandated assignments, the Secret Service is responsible for National Special Security Events (NSSEs), which include the major party quadrennial national conventions as well as international conferences and events held in the United States. The NSSE designation, by the President, gives the Secret Service authority to organize and coordinate security arrangements; these involve

¹²² H.Rept. 109-476, p. 60.

¹²³ H.Rept. 109-476, p. 66.

¹²⁴ GAO, *United States Coast Guard: Improvements Needed in Management and Oversight of Rescue System Acquisition*, GAO-06-623, May 2006.

¹²⁵ Prepared by Shawn Reese, Analyst in National Government, Government and Finance Division.

¹²⁶ OMB, *Budget of the United States Government, Fiscal Year 2007, Appendix*, United States Secret Service, pp. 479-482; DHS, *Budget-in-Brief, Fiscal Year 2007*, pp. 55-58; and *United States Secret Service, Fiscal Year 2007, Congressional Justification*.

various law enforcement units (along with the National Guard) from other federal agencies and state and local governments.

FY2007 Budget Request. For FY2007, the President's budget submission requested an appropriation of \$1,265 million for the protection and criminal investigation missions of the Secret Service.¹²⁷ This reflected an increase of \$60 million or nearly 5% more than the FY2006 total of \$1,204 million for the Service.¹²⁸ The new FY2007 appropriations request broke down the amounts for the total protection function (\$722 million) into specific categories — protection (\$651 million), protective intelligence activities (\$55 million), and White House mail screening (\$16 million). But it did not specify an amount for the National Special Security Event fund (which was \$5 million in FY2006), because of the uncertainty surrounding the number and extent of NSSEs, among other reasons. The total for field operations was \$302 million, with specific amounts for field operations (\$236 million), international field offices (\$22 million), and electronic crimes program and task forces (\$44 million).¹²⁹

House-Passed H.R. 5441. For FY2007, the House-passed appropriations for DHS proposed a total appropriation of \$1,293 million. H.R. 5441 proposed \$956 million for protection, administration, and training; \$312 million for investigations and field operations; \$21 million for special event security; and \$4 million for acquisition, construction, improvements, and related expenses. This proposed appropriation of \$1,293 was \$89 million more than Congress appropriated in FY2006 (\$1,204 million).

Senate-Passed H.R. 5441. For FY2007, the Senate-passed appropriations for DHS proposed a total appropriation of \$1,293 million. H.R. 5441 proposed \$918 million for protection, administration and training; \$304 million for investigations and field operations; and \$3.73 million for acquisition, construction, improvements, and related expenses. This proposed appropriation of \$1,226 million was nearly \$22 million more than Congress appropriated in FY2006 (\$1,204 million).

P.L. 109-295. For FY2007, Congress appropriated \$1,277 million for USS; \$962 million was appropriated for protection, administration, and training; \$311 million for investigations and field operations; and nearly \$4 million for acquisition, construction, improvements, and related expenses. The FY2007 USSS appropriations of \$1,277 million is nearly \$73 million more than Congress appropriated in FY2006 (\$1,204 million).

Of the \$962 million for protection, administration, and training, not to exceed \$25,000 shall be for official reception and representation expenses; up to \$18 million for protective travel and shall remain available until September 30, 2008; up to \$18

¹²⁷ This amount for gross discretionary appropriations excludes a mandatory appropriation of \$200 million (for annuity payments). OMB, *Budget of the US Government*, p. 480; and DHS, *Budget-in Brief*, p. 56.

¹²⁸ The FY2006 amount reflects the enacted total of \$1,212 million minus \$8 million (consisting of a recession of \$12 million plus a supplemental appropriation of \$4 million).

¹²⁹ OMB, *Budget of the US Government*, p. 480, and DHS, *Budget-in-Brief*, p. 56.

million for candidate nominee protection shall remain available until September 30, 2009; and up to \$1 million for National Special Security Events (NSSE).

Of the \$311 million appropriated for investigations and field operations, not to exceed \$100,000 shall be to provide technical assistance and equipment to foreign law enforcement organizations in counterfeit investigations; \$2 million shall be for forensic and related support of investigations of missing and exploited children; and \$6 million shall be for grant activities related to the investigations of missing and exploited children.

Title III: Preparedness and Response

Title III includes appropriations for the Preparedness Directorate and the Federal Emergency Management Agency (FEMA). The Preparedness Directorate includes (among others) appropriations accounts for the Undersecretary for Preparedness, State and Local Programs, Emergency Management Planning Grants (EMPG), the U.S. Fire Administration and Fire Assistance Grants, and Infrastructure Protection and Information Security (IPIS). **Table 10** provides account-level appropriations detail for Title III.

Table 10. Title III: Preparedness and Response
(budget authority in millions of dollars)

Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Enacted
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				
Preparedness Directorate								
— Office of the Undersecretary for Preparedness	16	—	—	16	74	39	31	31
— Management and Administration	5	—	—	5	5	—	—	—
— State and Local Programs	2541 ^a	25	-25	2,541	2,281	2,594	2,399	2,531
— Emergency Management Planning Grants	185	—	-2	183	170	186	220	200
— U.S. Fire Administration and Training	45	—	-1	44	47	47	46	47
— Infrastructure Protection and Information Security	625	—	-6	619	549	549	525	548
— Firefighter Assistance Grants	655	—	-7	648	293	654	680	662
Net total	4,072	25	-41	4,056	3,419	4,069	3,901	4,018
Counter Terrorism Fund	2	—	—	2	—	—	—	—
Federal Emergency Management Agency								
— Admin; regional operations	221	89	-2	308	255	254	249	282
— Prepare, mitigation, response & recovery	204	10	-2	212	233	240	240	244
— Public health programs	34	—	—	34	34	34	34	34
— Disaster relief	1,770	6,000	-18	7,752	1,941	1,677	1,582	1,500
— Flood map modernization fund	200	—	-2	198	199	199	199	199
— National flood insurance fund (NFIF) ^b	—	—	—	—	—	—	—	—

http://wikileaks.org/wiki/CRS-1033428

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Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Enacted
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				
— National flood mitigation ^c	—	—	—	—	—	—	—	—
— Pre-disaster mitigation fund	50	—	—	50	150	100	150	100
— Emergency food and shelter	153	—	-2	151	151	151	151	151
— Disaster assistance direct loan account	1	280	—	281	1	1	1	1
Net total	2,633	6,379	-26	8,986	2,964	2,656	2,606	2,511
Net budget authority subtotal: Title III	6,707	6,404	-67	13,044	6,383	6,725	6,507	6,529

Source: FY2006 enacted numbers from CRS analysis of the Conference Report to H.R. 2360, H. Rept. 109-241; FY2006 supplemental numbers from CRS analysis of P.L. 109-61, P.L. 109-62, P.L. 109-88, and P.L. 109-148; FY2006 rescission numbers from CRS analysis of P.L. 109-148, P.L. 109-234, and the *FY2007 DHS Justifications*. FY2007 request numbers from the *FY2007 DHS Justifications*. FY2007 House-passed numbers from the conference report (H.Rept. 109-476) to H.R. 5441.

Notes: No FY2007 funding for Title III was designated as emergency spending. Totals may not add due to rounding. Amounts in parentheses are non-adds. For a more detailed analysis of the supplemental appropriations, please refer to Appendix I.

- a. Includes \$40 million in REAL-ID Grant funding placed in Title V by H.Rept. 109-241.
- b. Funds derived from premium payments or transfers from the U.S. Treasury. The House approved bill imposes limits, including \$50 million for flood mitigation in severe repetitive loss properties.
- c. Funds derived from NFIF transfers. House approved bill provides for transfer of \$31 million in FY2007.

Preparedness Directorate¹³⁰

The preparedness appropriations accounts include the following:

- Chief Medical Officer — coordinates federal plans to prevent and respond to biological terrorist attacks;
- U.S. Fire Administration — educates the public, training firefighters, and develops enhanced firefighting technologies;
- Office for Grants and Training (G&T) — assists states, localities, and regional authorities to prevent, deter, and respond to terrorist and other threats to national security through grant funding, training, and exercises;
- Infrastructure Protection — identifies and assesses current and future threats to the nation’s physical and informational infrastructure, and issues warnings to critical infrastructure sectors;
- Office of National Capital Region Coordination — administers federal programs and relationships with the National Capital Region (NCR) to ensure planning, information sharing, training, and execution of NCR homeland security activities.¹³¹

Table 10 shows the FY2006 enacted and FY2007 requested appropriations for Title III. The Administration requested an appropriation of \$6,364 million in net budget authority for Title III in FY2007. This amount represents a 5% decrease compared with the FY2006 enacted total of \$6,709 million. For the FY2007 request, Title III accounts for roughly 20% of requested net appropriated DHS budget authority.

Office of Grants and Training. G&T is the single point of contact within DHS for facilitating and coordinating departmental state and local programs. G&T provides information to states and localities on best practices and federal homeland security activities. The office administers federal homeland security assistance programs for states and localities. To assist state and local homeland security efforts, G&T administers formula and discretionary grants and training, exercise, and technical assistance programs.

Table 11 provides summarizes budget request, House- and Senate-passed appropriations bills, and the FY2007 DHS appropriations (P.L. 109-295) for G&T programs for states and localities.

¹³⁰ Prepared by Shawn Reese, Analyst in National Government, Government and Finance Division. Firefighters assistance text contributed by Lennard Kruger, Specialist in Science and Technology, Resources, Science and Industry Division.

¹³¹ U.S. Department of Homeland Security, “DHS Organization: Directorate for Preparedness,” fact sheet, available at [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0794.xml].

**Table 11. FY2007 Appropriations,
Office of Grants and Training Assistance Programs**
(in millions)

Grant Program	President's Request	House-passed H.R. 5441	Senate-passed H.R. 5441	Enacted
State Homeland Security Grant Program (SHSCP)	663	545	500	525
Urban Area Security Initiative (UASI)	838	750	745	770
Targeted Infrastructure Protection Program (TIPP) ^a	600	0	0	0
Port Security ^a	0	200	210	210
Trucking Industry Security ^a	0	5	5	12
Intercity Bus Security ^a	0	10	12	12
Rail Security ^a	0	150	150	175
Buffer Zone Protection ^a	0	50	50	50
Law Enforcement Terrorism Prevention Program (LETPP)	0 ^b	400	350	375
Assistance to Firefighters Program (FIRE)	293	540	680	662
Emergency Management Performance Grants (EMPG)	170	186	220	200
Citizen Corps Programs (CCP)	35	0	20	15
Metropolitan Medical Response System (MMRS)	0 ^b	30	35	33

Source: FY2007 request numbers from the *FY2007 DHS Justifications*. FY2007 House-passed numbers from the House Appropriations Committee report (H.Rept. 109-476) to H.R. 5441; Senate-passed numbers from Senate-passed H.R. 5441 and the Senate Appropriations Committee Report S.Rept. 109-273. FY2007 enacted numbers from P.L. 109-295 and the Conference Report to H.R. 5441, H.Rept. 109-699.

a. See subsequent discussion, in “Issues for Congress,” regarding consolidation of infrastructure protection grants.

b. The Administration budget request proposed to eliminate funding for LETPP and MMRS in FY2007.

Issues for Congress. The Administration’s FY2007 budget request and the House-passed H.R. 5441 may raise policy issues that Congress may address as it legislates appropriations. Some of the policy issues include the overall reduction in appropriations, the consolidation of UASI sub-grants into the proposed TIPP, the reduction of FIRE grant appropriations, and the proposed elimination of MMRS and CCP.

The Administration proposed to reduce the FY2007 appropriations for the programs to \$2.57 billion — a reduction of \$395 million. While the reduction in overall funding seems to reflect the Administration's determination of the nation's homeland security needs, some critics see it as not meeting the needs of localities because of what is considered by some as inadequate and unfair distribution of past homeland security assistance funding.¹³² On the other hand, H.R. 5441 proposed to increase overall grant funding to states and localities by \$68 million. The House proposes to maintain funding to these programs in FY2007. Congress appropriated \$41 million more than FY2006 appropriations for these programs.

Additionally, the Administration proposed to consolidate six UASI sub-grants into TIPP with an appropriation of \$600 million.¹³³ The budget request stated that TIPP would consolidate disparate programs and focus on securing transportation assets and other critical infrastructure.¹³⁴ Some might argue, however, that the consolidation, without identified amounts for specific infrastructure protection activities, might result in states and localities not being able to meet their specific infrastructure security needs. H.R. 5441, passed by the House and Senate, did not propose consolidating the UASI sub-grants into TIPP. Congress did not consolidate infrastructure security grants into TIPP in the FY2007 DHS appropriation.

The Administration's budget proposal requested \$293 million for fire grants in FY2007, a cut of 46% from the FY2006 appropriation. The total of \$293 million requested for the firefighter assistance account (which includes both fire grants and SAFER grants) is down 55% from the FY2006 level. According to the Administration proposal, priority would be given to grant applications enhancing terrorism capabilities. Fire grants would be available for training, vehicles, firefighting equipment and personal protective equipment. Wellness/fitness activities and fire station modification would not be funded. The Administration requested no funding for SAFER Act grants, which support the hiring of firefighters as well as the recruitment and retention of volunteer firefighters. According to the budget justification, "the Administration has not requested funds for SAFER Grants in FY2007 on the grounds that local public safety agencies should assume responsibility for funding the appropriate number of personnel, and that Federal-funding for hiring local responders puts newly-funded personnel at risk once grant dollars phase out."

The House Appropriations Committee directed DHS to administer the grant programs in a manner identical to the current year. The committee did not agree to limit the list of eligible activities, nor to refocus program priorities on terrorism. The Senate Appropriations Committee directed DHS to continue direct funding to fire departments and the peer review process, to continue the present practice of funding applications according to local priorities and those established by the USFA, and to

¹³² National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, July 2004), p. 396.

¹³³ In FY2006, Congress appropriated \$415 million for the UASI sub-grants including: port security (\$175 million); rail security (\$150 million); trucking industry security (\$5 million); intercity bus security (\$10 million); non-governmental organization security (\$25 million); and buffer zone protection (\$50 million).

¹³⁴ *Fiscal Year 2007 Budget of the United States Government*, Appendix, pp. 508-509.

favor applications that take a regional approach in equipment purchases and their future deployment. The conference agreement (H.Rept. 109-699) provided \$547 million for fire grants and \$115 million for SAFER for FY2007.

The Metropolitan Medical Response System (MMRS) is a program of contracts with major cities to coordinate multiple local government agencies in emergency planning. MMRS was funded at \$30 million for FY2006. The program was slated for elimination in the FY2007 budget proposal, as it has been in each budget since it was transferred to DHS in 2003. The Administration has proposed that ongoing municipal emergency planning activities be supported at the discretion of states, using funds from the SHSGP and UASI grant programs. For FY2007, House-passed H.R. 5441 provided continued funding for the program at \$30 million. Senate-passed H.R. 5441 provided \$35 million. H.R. 5441 as enacted provided \$33 million for the program, and provided the program's first explicit authorization, through FY2008. (Additionally, House-passed H.R. 5441 proposed to eliminate funding for CCP, the Senate-passed bill provided \$20 million, and the enacted law provided \$15 million.)

The Office of the DHS Chief Medical Officer (CMO) was created by Secretary Chertoff in July 2005. Though the position was within the Preparedness Directorate, the new CMO, Dr. Jeffrey Runge, was given responsibility to coordinate public health and medical programs throughout the department.¹³⁵ The Office of the CMO was funded at \$2 million for FY2006. For FY2007, the House- and Senate-passed bills and the enacted law provided \$5 million, equal to the Administration request. H.R. 5441 as enacted also provided the first explicit authorization for the CMO position, to require Senate confirmation, but the position was not among the functions transferred from the Preparedness Directorate to FEMA.

Federal Emergency Management Agency (FEMA)¹³⁶

Hurricane Katrina Issues. Considerable controversy has enveloped FEMA since Hurricane Katrina devastated approximately 90,000 square miles in Gulf Coast states beginning August 29, 2005. Subsequent to investigations conducted in 2005 and 2006, the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, the Senate Homeland Security and Governmental Affairs Committee, and the White House issued reports on the response to the 2005 catastrophe.¹³⁷ Drawing from these reports and other sources, Congress considered

¹³⁵ *FY2007 DHS Justification*, pp. OUS PREP 15-16.

¹³⁶ Prepared by Keith Bea, Specialist in American National Government, Government and Finance Division.

¹³⁷ The White House, *The Federal Response to Hurricane Katrina Lessons Learned* (Washington, 2006). U.S. Congress, House Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, 109th Cong., 2nd sess., H.Rept. 109-377 (Washington, 2006). U.S. Congress, Senate, Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A National Still Unprepared* (Washington, 2006).

various legislative proposals concerning the organization and functions of FEMA.¹³⁸ Title VI of the FY2007 DHS appropriations legislation modifies FEMA's structure and leadership hierarchy, expands the agency's mission, and requires changes in operational procedures effective January 1, 2007, when the provisions take effect. Summary information on Title VI is provided at the end of this section.

Funding. The President's FY2007 request for FEMA did not propose dramatic changes for the agency. In general, the funding request for FY2007 was comparable to that requested and enacted for FY2006. The House-approved bill would have funded the agency at a level slightly above that currently provided (\$2,656 million recommended for FY2007, \$2,607 million enacted in FY2006, excluding emergency appropriations) and \$309 million below the amount requested. The difference between the House-approved version and the request primarily derived from a reduction of \$278 million for disaster relief, as well as a \$50 million reduction in mitigation funding. The funding level approved by the Senate, \$2,606 million, was \$50 million below the amount approved by the House, with the most significant differences between the chambers as follows:

- the Senate would have provided \$30 million for urban search and rescue funding, whereas the House would have provided almost \$20 million;
- the Senate matched the request for pre-disaster mitigation funding, recommending almost \$150 million, compared with the \$100 million approved by the House;
- the Senate would have provided almost \$37 million less for the Disaster Relief Fund (DRF) than the House; and
- the Senate would have provided roughly \$15 million less than the House for administrative and operating activities.

As approved by Congress and signed by the President, the legislation appropriates approximately \$450 million less than requested by the Administration and roughly \$100 million less than the amounts approved by the House and Senate. The difference primarily rests in the amount appropriated to the DRF. As noted below, this reduction is arguably insignificant in light of the historical practice of the enactment of supplemental appropriations for the DRF when the balance in the fund proves insufficient.

Disaster Relief Fund. Roughly two-thirds of the FEMA funding is used for the disaster relief and recovery activities authorized by the Robert T. Stafford

¹³⁸ See CRS Report RL33369, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, by Henry B. Hogue and Keith Bea.

Disaster Relief and Emergency Assistance Act (the Stafford Act).¹³⁹ Funds appropriated to the Disaster Relief Fund are used to

- meet the immediate needs of victims, and help communities, states, and nonprofit entities repair or rebuild damaged facilities;
- reduce the risk of future disasters through hazard mitigation measures such as elevating structures in floodplains, retrofitting bridges and buildings in earthquake prone areas;
- provide loans to local governments that lose tax revenues because of disasters; and
- help state and local governments develop and maintain preparedness plans.

Congress appropriates supplemental funding for the DRF when annual appropriations are not adequate.¹⁴⁰ Such appropriations have been historically designated emergency spending under the appropriate budget authorities. The Administration requested \$1,941 million for the DRF for FY2007, an amount roughly equivalent to the historical average of expenditures from the fund, excluding catastrophic events such as Hurricane Katrina and the terrorist attacks of September 11, 2001. The House approved \$1,677 million for the DRF in FY2007, the Senate approved a lower amount, \$1,640 million. Conferees and the President agreed to an even lower figure, \$1, 500 million.

National Disaster Medical System.¹⁴¹ The National Disaster Medical System (NDMS) is a system of medical, veterinary, and mortuary response teams that deploy in response to disasters, special security events, and certain other situations. The Senate-passed bill transferred NDMS to the Department of Health and Human Services (HHS), and the enacted law adopted this transfer, effective January 1, 2007. The transfer was supported by the Administration.¹⁴² (NDMS was originally transferred from HHS to DHS in P.L. 107-296, the Homeland Security Act, effective in 2003.)

¹³⁹ Background on the statute and funding history for the Disaster Relief Fund is presented in CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

¹⁴⁰ For example, supplemental funding for the DRF was approved in P.L. 109-61, P.L. 109-62, and P.L. 109-148 after Hurricane Katrina. See CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by Keith Bea. For information on the most recent supplemental funding request associated with Hurricane Katrina, see CRS Report RL33298, *FY2006 Supplemental Appropriations: Iraq and Other International Activities; Additional Katrina Hurricane Relief*, coordinated by Paul M. Irwin and Larry Nowels. Historical information on supplemental appropriations is presented in CRS Report RL33226, *Emergency Supplemental Appropriations Legislation for Disaster Assistance: Summary Data FY1989 to FY2005*, by Justin Murray.

¹⁴¹ Prepared by Sarah Lister, Specialist in Public Health and Epidemiology, Domestic Social Policy Division.

¹⁴² Office of Management and Budget, “Statement of Administration Policy: H.R. 5441—Department of Homeland Security Appropriations Bill, FY2007,” Senate version, July 12, 2006, p. 2, at [<http://www.whitehouse.gov/omb/legislative/sap/109-2/hr5441sap-s.pdf>].

Currently, NDMS administration is the only activity within the “Public Health Programs” account in FEMA. For FY2007, the House- and Senate-passed bills and the enacted law (P.L. 109-295) provided \$34 million, equal to the Administration request. NDMS has been funded at this level for several years. Generally, when NDMS teams are deployed pursuant to FEMA mission assignments during disasters, deployment costs are covered by the DRF. In supplemental appropriations for FY2006, a one-time amount of \$100 million was provided to NDMS to cover expenses related to the response to Hurricane Katrina.¹⁴³ Most of this amount — \$70 million — was transferred, through an interagency agreement with FEMA, to the Centers for Medicare and Medicaid Services in HHS, to reimburse hospitals and healthcare providers who cared for uninsured patients in affected areas.¹⁴⁴

The National Emergency Management Title (Title VI). A wide range of policy issues have been addressed by Congress with the inclusion of Title VI, “National Emergency Management,” in P.L. 109-295. The location, composition, and authorities of FEMA, the mission and procedures to be modified, and emergency communications capabilities and requirements were some of the more significant issues debated in the wake of the Hurricane Katrina investigations.

After considerable debate over the most appropriate organizational structure, Congress agreed to keep FEMA within DHS and established it as a “distinct entity” with prohibitions on the transfer of resources or mission from the agency. The mission and resources of the Preparedness Directorate of DHS will be merged with FEMA, but certain offices and authorities (Chief Medical Officer, National Cybersecurity, National Communications, and Infrastructure Protection) will not be integrated with FEMA. The legislation also establishes a Office of Emergency Communications in DHS (not within FEMA) to establish policy and practices related to the communications needs of emergency responders.

Title VI addresses a number of personnel and leadership concerns. The Administrator of FEMA must meet specified qualification requirements, and an advisory council comprising state, local, and private officials is to be established. In an effort to address concerns that the federal workforce is retiring and personnel in essential areas depleted, the FEMA Administrator has authority to issue incentives to recruit skilled persons or retain those who would otherwise retire.

The Homeland Security Act also is amended by the legislation by establishing more specific requirements for preparedness, planning, and operational procedures. In reviewing state emergency preparedness plans, FEMA must now consider whether the state has included a catastrophic incident annex and established evacuation procedures, the latter with federal assistance. In addition, elements of the national

¹⁴³ P.L. 109-62, *Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005*, Sept. 8, 2005, 119 Stat. 1991.

¹⁴⁴ Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Justification of Estimates for Appropriations Committees*, FY2007, p. 192. For more information about NDMS, see CRS Report RL33096, *2005 Gulf Coast Hurricanes: The Public Health and Medical Response*, by Sarah A. Lister.

preparedness system that have previously been established solely under administrative direction are now based on statute.

Infrastructure Protection and Information Security (IPIS)¹⁴⁵

As a result of the 2005 reorganization, many of the programs and activities of the former Information Analysis and Infrastructure Protection Directorate are now performed in the new Preparedness Directorate and funded through the Infrastructure Protection and Information Security appropriation. The Infrastructure Protection and Information Security (IPIS) appropriation is further divided into eight program/project activities (see **Table 12** below). Each of these are divided further into a number of sub-programs. Specific sub-programs are beyond the scope of this report, except where major changes may have occurred. However, these sub-programs involve activities that include the accumulation and cataloging of critical infrastructure information, the identification and prioritization of nationally critical assets, vulnerability assessments, national-level risk assessments, and assistance to owner/operators. It also includes the development of both sector-level and national infrastructure protection plans, and numerous information sharing and outreach activities.

President's FY2007 Request. The FY2007 request for IPIS activities was \$76 million below FY2006 enacted levels. According to the IPIS Budget Justification, most of the program requests maintained their current levels of activity, after certain "technical adjustments." These technical adjustments were not detailed, and in some cases resulted in a net increase (and in some cases resulted in a net decrease) in funds for the program. For example, the technical adjustments to the baseline Biosurveillance program resulted in a budget request almost \$6 million below the amount provided to that program for FY2006 (a 43% reduction). Technical adjustments to the NS/EP Program resulted in a budget request \$2 million above the amount provided for that program in FY2006. In the case of the NISAC program, the technical adjustment reducing the budget for that program by nearly \$4 million was attributed to the completion of facility construction and resulting redirection of funds to other programs and activities. **Table 12** provides activity and program-level detail for IPIS.

¹⁴⁵ Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division.

Table 12. FY2007 Budget Activity for the Infrastructure Protection and Information Security Appropriation
(budget authority in millions of dollars)

Program/Project Activity	FY2006 Enacted	FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Conf.
Management and Administration (M&A)	83	85	85	83	77
Critical Infrastructure Outreach and Partnerships (CIOP)	111	101	101	105	101
Critical Infrastructure Identification and Evaluation (CIIE)	68	72	72	68	69
National Infrastructure Simulation and Analysis Center (NISAC)	20	16	16	25	25
Biosurveillance (BIO)	14	8	8	8	8
Protective Actions (PA)	90	32	32	32	32
Cyber Security (CS)	92	92	92	82	92
National Security/Emergency Preparedness Telecommunications (NS/EP)	141	143	143	123	143
Total	619	549	549	525	547

Source: DHS FY2007 Congressional Justification: Preparedness Directorate, p. IPIS-5. FY2006 Figures include the 1% government-wide across the board rescission in FY2006 discretionary funding called for in Chapter 8, Title III of Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, P.L. 109-148. FY2007 House-passed numbers from the conference report (H.Rept. 109-476) to H.R. 5441.

Note: Totals may not add due to rounding.

The budget request, however, did make some relatively significant programmatic changes in two areas — CIOP and PA. Within the CIOP program, the budget requested no funds for the National Center for Critical Information Processing and Storage. No explanation was given for the elimination of funds. For FY2006, Congress appropriated \$50 million for the development, operation, and maintenance of that center, and directed the department to report on the progress of the center by February 2006. According to the budget justification, the directorate planned to send the report to Congress by the end of March 2006. In addition, the directorate requested an increase of \$35 million for National Infrastructure Protection Plan (NIPP) activities within the CIOP program. The net effect, including technical

adjustments and other minor transfers,¹⁴⁶ was a budget request for CIOP that was nearly \$10 million below the amount provided in FY2006.

The budget request for the PA program eliminated funds for two sub-programs, the Protective Security Analysis Center (\$20 million — Congress supported funding the Center in FY2006) and the Protective Measures Demonstration Pilots (\$20 million). Additional reductions were made to activities related to Control Systems (\$6 million, with the balance of \$4 million transferred to the CIIE program), the National Terrorist Prevention Training Program (almost \$9 million), the Coordinate National Protection Efforts (almost \$3 million, plus another \$4 million that was transferred to CIOP for National Infrastructure Protection Plan activities), and General Security Plans (over \$3 million). The budget did request new funding for a Chemical Security Office within the PA program (\$10 million). The net effect, including technical adjustments, is a budget request for PA that was over \$58 million less than what was provided in FY2006.

House-Passed H.R. 5441. In its appropriation bill, the House voted to appropriate the full amount of funds requested by the Administration. While the House was generally supportive of IPIS activities, it did add two caveats to that support. First, while appropriating the requested \$35 million increase for National Infrastructure Protection Plan activities, the House made \$20 million for the Management and Administration account unavailable for obligation until the National Plan was completed. Also, while supporting the \$10 million request for a new Chemical Security Office to run a new Chemical Site Security Program, the House required that DHS submit a spending plan and voted to make \$10 million of the Management and Administration account unavailable for obligation until DHS submits a national security strategy for the chemical sector.

Senate-Passed H.R. 5441. In its appropriation bill, the Senate voted to appropriate \$525 million for the IPIS budget activity. See **Table 12** for how those funds were allocated between programs. The Senate report did not provide a rationale for the specific increases or decreases made to the budget request. The report called for an enhanced and coordinated national bombing prevention effort and directed the Undersecretary for Preparedness to request the State Homeland Security Directors to work with their State Chief Information Officers to develop state cybersecurity strategies for information technology needed to support state and local services. The report also directed the Secretary to submit the report required by P.L. 109-90, identifying the resources needed to implement mandatory security requirements for the nation's chemical sector and to audit and ensure compliance with those requirements.

¹⁴⁶ For example, funding for DHS's role in the Committee on Foreign-owned Investment in the United States (CFIUS) was transferred out of CIOP and budgeted within the new Policy Office of the Secretary. CFIUS is a multi-agency committee, whose procedures have come under congressional scrutiny as a result of its approval of a transaction that would have allowed Dubai Ports World, a government-owned United Arab Emirates company, to purchase from a British company port terminal operations at a number of U.S. ports.

On the Senate floor, amendments were added requiring the Secretary to submit a report on efforts to comply with recommendations made in a July 2006 Inspector General (IG) report on issues associated with the National Asset Database. That report noted that the database has “an abundance of assets...whose criticality is not readily apparent.” First among the IG’s recommendations is that the IP Directorate evaluate the criticality of the assets in the database and eliminate those that are “out-of-place” or “extremely insignificant.” Another amendment passed on the Senate floor forbids the use of certain funds for travel by officers of the department, until the Undersecretary for Preparedness has implemented the recommendations or reported to Congress on why the recommendations have not been fully implemented. A third amendment passed on the Senate floor expanded, in statute, the role and responsibility of the National Infrastructure Analysis and Simulation Center. In essence, the amendment requires any federal agency with critical infrastructure responsibilities as established by Homeland Security Presidential Directive Number 7 to enter into a formal relationship with the center, including an agreement on information sharing, the purpose of which is facilitate the use by those agencies of the center’s modeling and simulation capabilities.

P.L. 109-295. Both houses approved the conference committee’s recommendations with the passage of P.L. 109-295. The committee recommended \$547 million for the IPIS budget activity. See **Table 12** for how those funds were allocated between programs. It also recommended withholding \$10 million (presumably from the Management and Administration program) until the department reports to Congress on the resources needed to implement its authority to issue mandatory security requirements for the nation’s chemical sector, including the creation of a system for auditing and ensuring compliance. The mandatory security requirements for the chemical sector were mandated in Section 550 of the bill. The bill reported from the conference committee also restructured FEMA within the department. All of the functions of the Preparedness Directorate, including those of the Undersecretary for Preparedness were transferred to the agency, except those of the Office of Infrastructure Protection, the National Communication System, the National Cybersecurity Division, and the Office of the Chief Medical Officer. The bill did not relocate these offices. The conference committee also included language similar to that of the Senate version of the bill relating to the National Infrastructure Analysis and Simulation Center. The conference committee, however, did not include Senate language that related the restriction of travel funds for department officials to the department’s implementation of its IG’s recommendations regarding the National Asset Database.

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

Title IV includes appropriations for U.S. Citizenship and Immigration Services (USCIS), the Federal Law Enforcement Training Center (FLETC), the Science and Technology Directorate (S&T), and the Domestic Nuclear Detection Office (DNDO). **Table 13** provides account-level details of Title IV appropriations.

Table 13. Title IV: Research and Development, Training, Assessments, and Services
(budget authority in millions of dollars)

Operational Component	FY2006 Appropriation				FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Total		
	FY2006 Enacted	FY2006 Supp.	FY2006 Resc.	FY2006 Total				FY2007 Enacted	FY2007 Emerg.	FY2007 Total
Citizenship and Immigration Services										
Direct Appropriation	1889	—	-1	1,888	1,986	1,966	2,024	1,986	—	1,986
— Offsetting fees ^a	-1774	—	—	-1,774	-1,804	-1,804	-1,889	-1,804	—	-1,804
Net subtotal	115	—	-1	114	182	162	135	182	—	182
Federal Law Enforcement Training Center	282	25	-2	305	246	253	271	253	22	275
Science and Technology^b										
— Management and Administration	81	—	-1	80	196	181	106	135	—	135
— Research, Development, Acquisition, and Operations	1,421	—	-14	1,407	806	775	712	838	—	838
Net Subtotal	1502	—	-15	1,487	1,002	956	818	973	—	973
Domestic Nuclear Detection Office^b										
— Management and Administration	—	—	—	—	30	30	30	30	—	30
— Research, Development, Acquisition, and Operations	—	—	—	—	327	292	234	273	—	273
— Systems Acquisition	—	—	—	—	178	178	178	178	—	178
Net Subtotal	—	—	—	—	535	500	442	481	—	481
Gross budget authority: Title IV	3,673	25	-18	3,680	3,769	3,675	3,555	3,693	22	3,715
— Offsetting collections: Title IV	-1,774	—	—	-1,774	-1,804	-1,804	-1,889	-1,804	—	-1,804
Net budget authority: Title IV	1,899	25	-18	1,906	1,965	1,871	1,667	1,889	22	1,911

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Source: FY2006 enacted numbers from CRS analysis of the Conference Report to H.R. 2360, H. Rept.109-241; FY2006 rescission numbers from CRS analysis of P.L. 109-148, P.L. 109-234, and the *FY2007 DHS Justifications*. FY2007 request numbers from the *FY2007 DHS Justifications*. FY2007 House-passed numbers from the conference report (H.Rept. 109-476) to H.R. 5441.

Notes: Totals may not add due to rounding. Amounts in parentheses are non-adds.

- a. Fees include Immigration Examination Fund; H-1b Visa Fee; and the Fraud Prevention and Detection fee.
- b. The President's FY2007 request proposes dividing out the Domestic Nuclear Detection Office from the Science & Technology Office. The new office would comprise more than one-third of the department's R&D budget.

U.S. Citizenship and Immigration Services (USCIS)¹⁴⁷

Three major activities dominate the work of the U.S. Citizenship and Immigration Services (USCIS): the adjudication of immigration petitions (including nonimmigrant change of status petitions, relative petitions, employment-based petitions, work authorizations, and travel documents); the adjudication of naturalization petitions for legal permanent residents to become citizens; and the consideration of refugee and asylum claims, and related humanitarian and international concerns.¹⁴⁸ USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits largely through monies generated by the Examinations Fee Account.¹⁴⁹ In FY2004, the Administration increased the fees charged to U.S. citizens and legal permanent residents petitioning to bring family or employees into the United States and to foreign nationals in the United States seeking immigration benefits.¹⁵⁰ That same year, 86% of USCIS funding came from the Examinations Fee Account. **Table 13** shows FY2006 appropriations and congressional actions in response to the FY2007 request.

In FY2005, USCIS had budget authority for \$1,571 million from the Examinations Fee Account.¹⁵¹ Congress provided a direct appropriation of \$160 million in FY2005. The House report language emphasized that \$160 million should be available to reduce the backlog of applications and to strive for a six-month processing standard for all applications by FY2006.¹⁵² Title IV of P.L. 108-447, the Consolidated Appropriations Act for FY2005, also required the Secretary of Homeland Security to impose a fraud prevention and detection fee of \$500 on H-1B (foreign temporary professional workers) and L (intracompany business personnel) petitioners. The statute requires that the H-1B and L fraud prevention and detection

¹⁴⁷ Prepared by Ruth Ellen Wasem, Specialist in Immigration Policy, Domestic Social Policy Division.

¹⁴⁸ CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

¹⁴⁹ §286 of the Immigration and Nationality Act, 8 U.S.C. §1356.

¹⁵⁰ For example, the I-130 petition for family members went from \$130 to \$185, the I-140 petition for LPR workers went from \$135 to \$190, the I-485 petition to adjust status went from \$255 to \$315, and the N-400 petition to naturalize as a citizen went from \$260 to \$320. *Federal Register*, vol. 69, no. 22, Feb. 3, 2004, pp. 5088-5093.

¹⁵¹ P.L. 108-334, Conference Report to accompany H.R. 4567, H.Rept. 108-774.

¹⁵² U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany H.R. 4567, 108th Cong., 2nd sess., H.Rept. 108-541 (Washington: GPO 2004). The President's Budget request for FY2002 proposed a five-year, \$500 million initiative to reduce the processing time for all petitions to six months. Congress provided \$100 in budget authority (\$80 direct appropriations and \$20 million from fees) for backlog reduction in FY2002. P.L. 107-77, Conference report to accompany H.R. 2500, U.S. Congress, House Committee of Conference, *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, H.Rept. 107-278 (Washington: GPO 2001).

fee be divided equally among DHS, the Department of State (DOS), and Department of Labor (DOL) for use in combating fraud in H-1B and L visa applications with DOS and H-1B and L petitions with USCIS and in carrying out DOL labor attestation enforcement activities.¹⁵³ DHS also receives 5% of the H-1B education and training fees in the Nonimmigrant Petitioner Account.¹⁵⁴

In FY2006, Congress provided a total of \$1,889 million for USCIS, of which 94% came from fees. The remaining 6% was a direct appropriation of \$115 million, which included \$80 million for backlog reduction initiatives as well as \$35 million to support the information technology transformation effort and to convert immigration records into digital format. This figure was revised downward to \$114 million. The FY2006 appropriations amount was a decrease of 29% from the \$160 million appropriated in FY2005. As a result of a 10% increase in revenue budgeted from fees, the FY2006 total is 6% greater than the FY2005 total.

President's FY2007 Request. For FY2007, the Administration sought an increase of \$68 million for USCIS. The Administration requested a total of \$1,986 million for USCIS (an increase of 5% more than the enacted FY2006 level of \$1,889 million), the bulk of the funding coming from fees paid by individuals and businesses filing petitions. For FY2007, USCIS expected to receive a total of \$1,804 million from the various fee accounts, most of which (\$1,760 million) would come from the Examinations Fee Account. According to the USCIS Congressional Budget Justification documents, funds from the Examinations Fee Account alone comprised 91% of the total USCIS FY2007 budget request. The FY2007 Budget also included \$13 million from the H-1B Nonimmigrant Petitioner Account¹⁵⁵ and \$31 million from the H-1B and L Fraud Prevention and Detection Account.¹⁵⁶ The Administration proposed to use the \$31 million generated from the fee on H-1B and L petitions to expand its Fraud Detection and National Security Office.¹⁵⁷ In terms of direct appropriations, the Administration requested \$182 million, which was an increase of \$67 million from FY2006.

House-Passed H.R. 5441. The House-passed bill, H.R. 5441, would have appropriated \$162 million for USCIS in FY2007.

Senate-Passed H.R. 5441. The Senate would have provided USCIS \$135 million in direct appropriations for FY2007. Among the Senate floor amendments to H.R. 5441 was one that would direct DHS, notably through USCIS, to increase its fees charged to noncitizens to produce an additional \$350 million in receipts for FY2007. Most of the funds collected by the fee increases would have gone to CBP and ICE, but \$85 million would have remained with USCIS for business transformation (\$47 million) and fraud detection and national security (\$38 million).

¹⁵³ §426(b) of P.L. 108-447.

¹⁵⁴ §286(s) of INA; 8 U.S.C. §1356(s).

¹⁵⁵ §286(s) of INA; 8 U.S.C. §1356(s).

¹⁵⁶ §286(v) of INA; 8 U.S.C. §1356(v).

¹⁵⁷ USCIS added a Fraud Detection and National Security Office to handle duties formerly done by the INS's enforcement arm, which is now part of DHS's ICE Bureau.

P.L. 109-295. The conferees provide USCIS with \$182 million in direct appropriations, \$47 million of which is contingent on USCIS obtaining approval from the Committees on Appropriations of the USCIS plan for “business system and information technology transformation plan.” The act also provides \$114 million for expansion of the Employment Eligibility Verification system and \$21 million for the Systematic Alien Verification for Entitlements (SAVE) system, both automated database systems to ascertain immigration status. In terms of USCIS income from fees, current estimates are \$1,804 million, giving USCIS \$1,986 million in total resources.

Issues for Congress. Many in Congress have expressed concern and frustration about the processing delays and pending caseload. Congress has already enacted statutory requirements for backlog elimination and has earmarked funding for backlog elimination for the past several years.¹⁵⁸ As Congress weighs comprehensive immigration reform legislation that would likely include additional border and interior enforcement, increased levels of permanent immigration, and perhaps include a significant expansion of guest workers, some question whether the DHS in general and USCIS in particular can handle the potential increase of immigration workload.¹⁵⁹

Another matter that may arise in the appropriations debate is the coordination and duplication of efforts between USCIS and ICE in the area of fraud and national security investigations. GAO has reported, “the difficulty between USCIS and ICE investigations regarding benefit fraud is not new ... as a result, some USCIS field officials told us that ICE would not pursue single cases of benefit fraud. ICE field officials who spoke on this issue cited a lack of investigative resources as to why they could not respond in the manner USCIS wanted.”¹⁶⁰ USCIS has established the Office of Fraud Detection and National Security to work with the appropriate law enforcement entities to handle national security and criminal “hits” on aliens and to identify systemic fraud in the application process. The House-passed Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) would establish an Office of Security and Investigations (OSI) in USCIS that would formalize these duties.¹⁶¹

Federal Law Enforcement Training Center (FLETC)¹⁶²

The Federal Law Enforcement Training Center provides training on all phases of law enforcement instruction, from firearms and high speed vehicle pursuit to legal

¹⁵⁸ For example, see §§451-461 of the Homeland Security Act of 2002 (P.L. 107-296).

¹⁵⁹ For background and legislative tracking, see CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno.

¹⁶⁰ GAO, *Management Challenges Remain in Transforming Immigration Programs*, GAO-05-81, Oct. 2004, available at [<http://www.gao.gov/new.items/d0581.pdf>].

¹⁶¹ CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

¹⁶² Prepared by Jennifer E. Lake and Blas Nuñez-Neto, Analysts in Domestic Security, Domestic Social Policy Division.

case instruction and defendant interview techniques, for 81 federal entities with law enforcement responsibilities, state and local law enforcement agencies, and international law enforcement agencies. Training policies, programs, and standards are developed by an interagency Board of Directors, and focus on providing training that develops the skills and knowledge needed to perform law enforcement functions safely, effectively, and professionally. FLETC maintains four training sites throughout the United States and has a workforce of over 1,000 employees. In FY2005, FLETC trained 47,560 law enforcement students.

President's FY2007 Request. The FY2007 request for FLETC was \$245 million, a decrease of \$37 million, or 13%, from the FY2006 enacted appropriation. Included in the request for FLETC were increases of \$5 million for Border Patrol and ICE Agent training, and \$2 million for a Practical Application - Counterterrorism Operational Training Facility.

House-Passed H.R. 5441. House-passed H.R. 5441 would have provided \$253 million for FLETC, \$8 million more than the Administration's request, and \$27 million less than the FY2006 enacted amount. The additional funding above the request was intended for the increased training needs of the Border Patrol and ICE.

Senate-Passed H.R. 5441. Senate-passed H.R. 5441 would have provided \$271 million for FLETC, \$26 million more than the President's request, and \$11 million less than the FY2006 enacted amount. The additional funding was intended to accommodate the increased training of border personnel.

P.L. 109-295. The act provides \$275 million for FLETC. Included in this amount are increases of \$9 million over the President's request for training resources that were proposed to be funded out of the CBP and ICE appropriations and \$22 million for renovation and construction at the Artesia, New Mexico, facility. The conferees also extended FLETC's authority to rehire annuitants through December 31, 2007, and included \$2 million for salaries and construction expenses related to the Counter-terrorism Operations Training Facility.

Science and Technology (S&T)¹⁶³

The FY2007 request for Science and Technology (S&T) was \$1,002 million, a reduction of 33% from FY2006. (See **Table 14** for details.) Most of the reduction resulted from the move of funding for the Domestic Nuclear Detection Office (DNDO) from S&T to a separate account. If FY2006 funding for DNDO was excluded, the reduction for S&T in FY2007 was only 13%. The House provided \$956 million, or \$46 million less than the request. The Senate provided \$818 million, or \$184 million less than the request. The Senate also rescinded \$200 million in unobligated balances from prior years. The final bill (P.L. 109-295) provided \$973 million and rescinded \$125 million from prior years.

¹⁶³ Prepared by Daniel Morgan, Analyst in Science & Technology, Resources, Science, and Industry Division.

For individual portfolios within the S&T Directorate, comparing the FY2007 request with previous years was difficult because of several accounting factors. Certain expenses previously funded by each R&D portfolio were requested in the Management and Administration account in FY2007. Funds for DNDO were requested separately rather than as part of S&T. The former Transportation Security Administration R&D program, which was merged into S&T and funded in the R&D Consolidation line in FY2006, constituted part of the requested Explosives Countermeasures and Support of Components portfolios in FY2007. The request stated that some activities, most notably the Counter-Man-Portable Air Defense Systems (Counter-MANPADS) Program to protect commercial aircraft against portable ground-to-air missiles, would continue at the same level of effort in FY2007 but would require little additional budget authority because prior-year funds remained unspent. After accounting for these factors, the FY2007 request would have reduced net funding for the Standards, Rapid Prototyping, Support Anti-terrorism by Fostering Effective Technologies (SAFETY) Act, and Critical Infrastructure Protection portfolios and increased net funding for Cyber Security and the Office for Interoperability and Compatibility. Several of the requested net changes would have offset changes that Congress made in FY2006 relative to the FY2006 request. The House increased funding for the Critical Infrastructure Protection portfolio relative to the request while decreasing Management and Administration, Chemical Countermeasures, Explosives Countermeasures, and Support of Components. The Senate increased funding for Counter-MANPADS relative to the request while cutting the request for Management and Administration almost in half and eliminating most funding for Explosives Countermeasures. (The Senate funded most explosives-related R&D in the Transportation Security Administration rather in S&T.) The final bill reduced Management and Administration and Chemical Countermeasures and increased Biological Countermeasures, Counter-MANPADS, and Critical Infrastructure Protection.

The House and Senate committee reports were both highly critical of the S&T Directorate. The House committee reduced the Management and Administration account by \$5 million “for lack of responsiveness” to its information requests. It made \$98 million of that account unavailable for obligation until S&T provides budgetary information “with sufficient detail.” The Senate committee reduced the same account by almost half and made \$60 million of the remainder unavailable for obligation pending an expenditure plan approved by the committee. In the Research, Development, Acquisition, and Operations account, the House committee made \$400 million unavailable for obligation until the Under Secretary reports on progress in addressing financial management deficiencies. The House committee objected that the budget justification contains “no details of how risk assessment was used in its formulation or even which DHS agency was tasked with prioritizing risks and assigning them resources,” while the Senate committee expressed “extreme disappointment” and judged it “simply unacceptable” that DHS was unable “to clearly articulate and justify the funding request.” The conference report was not as explicitly critical as the House and Senate reports, but the final bill did restrict \$60 million of the Management and Administration account with language similar to the Senate’s and \$50 million of the Research, Development, Acquisition, and Operations Account with language similar to the House’s. (According to the President’s signing

statement, the executive branch will construe these restrictions as “calling solely for notification” rather than “requir[ing] congressional committee approval.”¹⁶⁴)

The department’s FY2007 budget request marked the end of a period of consolidation for its R&D programs. In the FY2004 appropriations conference report (H.Rept. 108-280), Congress directed the department to consolidate its R&D activities into the S&T Directorate. This process began with several small programs in FY2005, but a proposed move of the Coast Guard RDT&E program was rejected by the Senate. In FY2006, the much larger R&D program of the Transportation Security Administration was moved into S&T, but again the Senate rejected moving the Coast Guard program. The FY2007 request proposed no further consolidations; conversely, it proposed dividing out DNDO funding into a separate account comprising more than one-third of the department’s R&D budget. The House and Senate approved this transfer, with some reservations. (See below under DNDO for more details.) The Senate also acted to reverse the move of the TSA program by appropriating \$92 million for R&D in TSA and transferring \$99 million in previously appropriated funding from S&T to TSA; the conference report kept these activities within S&T.

Domestic Nuclear Detection Office¹⁶⁵

The FY2007 request for the Domestic Nuclear Detection Office (DNDO) was \$535 million. Compared with FY2006, when DNDO was funded as part of S&T, this was a 70% increase. (See **Table 14** for details.) The increased funding would support new R&D initiatives, procurement of additional radiation portal monitors and other detection equipment, and salaries for all detailee staff (including 66 full-time equivalents formerly paid by their home agencies). The House provided \$500 million, a reduction of \$35 million from the request. The House committee report expressed puzzlement and dissatisfaction with the transfer of DNDO out of S&T, but approved it anyway because of the “critical importance of the DNDO mission” and “the liability [DNDO] would face” if left in S&T. The House committee directed S&T to work with DNDO and support its R&D-related needs. The Senate provided \$442 million, a reduction of \$93 million from the request. The bulk of the Senate reduction was in proposed funding for university research. The Senate committee report noted that S&T has an established university research program and directed DNDO to work with S&T rather than “start a duplicative grant program.” The final bill provided \$481 million. Conference report language limited the new university research program to \$9 million.

¹⁶⁴ “President’s Statement on H.R. 5441”, White House press release October 4, 2006, online at [<http://www.whitehouse.gov/news/releases/2006/10/print/20061004-10.html>].

¹⁶⁵ Prepared by Daniel Morgan, Analyst in Science and Technology, Resources, Science, and Industry Division.

**Table 14. Research and Development Accounts and Activities,
FY2006-FY2007**

(budget authority in millions of dollars)

	FY2006 Enacted ^b	FY2007 Request	FY2007 House	FY2007 Senate	FY2007 Final
Science and Technology Directorate	1,487	1,002	956	818	973
Management and Administration	80	196	181	104	135
R&D, Acquisition, and Operations	1,387	806	775	714	838
Biological Countermeasures	376	337	339	327	350
Chemical Countermeasures	94	83	45	75	60
Explosives Countermeasures	44	87	77	5	87
Radiological/Nuclear Countermeasures ^c	19	—	—	—	—
Domestic Nuclear Detection Office ^c	315	—	—	—	—
Threat Awareness ^d	43	40	40	35	35
Standards	35	22	22	27	22
Support of DHS Components	79	89	86	80	86
University and Fellowship Programs	62	52	52	50	50
Emergent and Prototypical Technology ^e	43	20	19	12	19
Counter MANPADS	109	5	5	40	40
SAFETY Act	7	5	5	5	5
Office of Interoperability and Compatibility	26	30	30	25	27
Critical Infrastructure Protection	40	15	35	12	35
Cyber Security	17	23	23	18	20
R&D Consolidation ^f	99	—	—	—	—
Domestic Nuclear Detection Office ^c	—	535	500	442	481
Management and Administration	—	30	30	30	30
Research, Development, and Operations	—	327	292	234	272
Systems Acquisition	—	178	178	178	178
U.S. Coast Guard Research, Development, Testing, & Evaluation	18	14	14	18	17
TSA: Research and Development in Transportation Security Support	0	0	0	92	0
Subtotal DHS R&D	1,505	1,552	1,470	1,370	1,471
Rescission of Unobligated Funds from Prior Years ^g	-20	—	—	-200	-125
Total	1,485	1,552	1,470	1,170	1,346

Source: CRS analysis of the FY2007 congressional budget justification, H.R. 5441, H.Rept. 109-476, and S.Rept. 109-273.

Notes: This table shows all DHS research and development activities, combining accounts from the Directorate of Science and Technology, the Domestic Nuclear Detection Office, the U.S. Coast Guard, and the Transportation Security Administration to show the department's overall R&D budget.

- a. Totals may not add because of rounding.
- b. FY2006 figures have been reduced by the 1% general rescission (P.L. 109-148) and include a supplemental appropriation of less than \$1 million for Coast Guard RDT&E.
- c. Funding for the Domestic Nuclear Detection Office (DNDO) was included in the budget for the Science and Technology Directorate in FY2006. It incorporated most of what had previously been in Radiological/Nuclear Countermeasures. In FY2007, DNDO had a separate budget request.
- d. Threat Awareness was formerly known as Threat and Vulnerability Testing and Assessment.
- e. Emergent and Prototypical Technology combines two previous portfolios, Emerging Threats and Rapid Prototyping, whose funding in FY2006 has been summed for this table.
- f. R&D Consolidation in FY2006 mostly funded R&D activities formerly conducted by the Transportation Security Administration. FY2007 funding for these activities was requested in the Explosives Countermeasures and Support of DHS Components portfolios.
- g. Included in Title V by H.Rept. 109-241 (FY2006) and S.Rept. 109-273 (FY2007).

FY2007 Related Legislation

Budget Resolution — S.Con.Res. 83/H.Con.Res. 376¹⁶⁶

The annual concurrent resolution on the budget sets forth the congressional budget. The Senate budget resolution, S.Con.Res. 83 was introduced on March 10, 2006, and passed the Senate on March 16, 2006. S.Con.Res. 83, would provide \$873 billion in discretionary budget authority for FY2007. H.Con.Res. 376 was introduced and reported on March 31, 2006, and passed the House on May 18, 2006. H.Con.Res. 376 would provide \$873 billion in discretionary budget authority for FY2007. The anticipated difficulties in resolving the substantial differences between the House- and Senate-passed versions of the budget resolution led to both the House and the Senate adopting deeming resolutions. These deeming resolutions set the discretionary spending levels for FY2007 at \$873 billion.¹⁶⁷

There is currently no separate functional category for Homeland Security in the budget resolution. However, homeland security budget authority amounts are identified within each major functional category, though these amounts are typically not available until the publication of the committee reports that will be attached to the budget resolution.

¹⁶⁶ See CRS Report RL33282, *The Budget for FY2007*, by Philip D. Winters, for a more detailed discussion of the budget resolution.

¹⁶⁷ Deeming resolutions serve as an annual budget resolution to establish enforceable budget levels in the absence of an actual congressionally adopted budget resolution. For more information see, CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith.

Appendix I. FY2006 Supplemental Appropriations and Rescissions

Senate-Passed H.R. 5441

Title VII of Senate-passed H.R. 5441 included an FY2006 supplemental appropriation for port security enhancements which would have totaled \$648 million. This funding was not included in P.L. 109-295. The funding would have been allocated as follows:

- \$251 million for the CBP Salaries and Expenses account,
- \$23 million for the U.S. Coast Guard for the Operating Expenses account to accelerate foreign port security assessments, conduct domestic port vulnerability assessments, and perform unscheduled security audits of certain facilities.
- \$184 million for the U.S. Coast Guard Acquisition, Construction, and Improvements account for the Integrated Deepwater Systems program in order to acquire maritime patrol aircraft and parent aircraft patrol boats, to provide armed helicopters, and to sustain the medium endurance cutter fleet,
- \$190 million for the Preparedness Directorate, for the State and Local Programs account, to provide port security grants.

P.L. 109-234 (H.R. 4939) — Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006¹⁶⁸

On June 15, 2006, P.L. 109-234 was signed into law by the President. P.L. 109-234 contains several provisions affecting DHS agencies and reflects the President's request for an additional \$1.9 billion in border security funding which focused on personnel, rather than the Senate's \$1.9 billion proposal that concentrated on capital improvements. P.L. 109-234 does not include the \$648 million in port security grant funding included in the Senate-passed version of H.R. 4939. Title I, Global War on Terror, would provide identical amounts to the House and Senate-passed versions of H.R. 4939, \$75 million in transfers, and \$27 million for the Coast Guard's Operating Expenses account. Title II, Hurricane Relief and Recovery, would provide the following amounts:

- OIG - \$2 million;
- CBP Salaries and Expenses - \$13 million;
- CBP Construction - \$5 million;
- Coast Guard Operating Expenses - \$89 million;
- Coast Guard Acquisition, Construction, and Maintenance - \$192 million;

¹⁶⁸ For more information about other aspects of this bill, see CRS Report RL33298, *FY2006 Supplemental Appropriations: Iraq and Other International Activities; Additional Hurricane Relief*, coordinated by Paul M. Irwin and Larry Nowels.

- FEMA Administrative and Regional Operations - \$72 million;
- FEMA Preparedness, Mitigation, Response and Recovery - \$10 million;
- FEMA Disaster Relief - \$6,000 million¹⁶⁹;
- FEMA Disaster Assistance Direct Loan Program Account - \$280 million.

Title V, Border Security includes the following:

- CBP Salaries and Expenses - \$410 million;
- CBP Air and Marine Interdiction, Operations, Maintenance, and Procurement - \$95 million;
- CBP Construction - \$300 million;
- ICE Salaries and Expenses - \$327 million;
- ODP State and Local Programs - \$15 million;
- FLETC Acquisition, Construction and Improvements - \$25 million.

Though not included in DHS accounts, the border security provisions adopted by the P.L. 109-234 also includes \$708 million to deploy National Guard troops to the border; and \$20 million in funding for related legal services to the Department of Justice.

Title VII, General Provisions, Sec. 7004 would rescind \$20 million in unobligated balances made available by P.L. 108-334, The FY2005 DHS Appropriations Act, and provide them to the Secret Service. Section 7005 would rescind \$4 million from Screening Coordination and Operations, and provide them to the office of the Secretary and Executive Management.

P.L. 109-148 — Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006¹⁷⁰

P.L. 109-148 contains a number of provisions that impact DHS budget accounts. Division A of P.L. 109-148 contains the Department of Defense (DoD) Appropriations Act for FY2006. Division B of P.L. 109-148 contains Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and the Pandemic Influenza in 2006. Division B also contains a number of rescissions that affect DHS accounts, including an across-the-board rescission of 1%.

Transfer of Funds to the Coast Guard. Division A, Title IX of the DoD Appropriations Act (P.L. 109-148) contains a provision that transfers up to \$100 million to the Coast Guard's Operating Expenses account from the Iraq Freedom

¹⁶⁹ Sec. 2604, in the General Provisions of Title II, directs that \$34 million of the funds provided to FEMA's Disaster Relief account be transferred to the Social Security Administration.

¹⁷⁰ See CRS Report RL32783, *FY2005 Supplemental Appropriations for Iraq and Afghanistan, Tsunami Relief, and Other Activities*, by Amy Belasco and Larry Nowels.

Fund. These funds are available for transfer until September 30, 2007, and are to be used only to support operations in Iraq or Afghanistan and classified activities.

Across-the-Board Rescission (ATB). Division B, Title III, Chapter 8, of P.L. 109-148 contains a 1% across-the-board (ATB) rescission that is to be applied to all discretionary FY2006 appropriations. Specifically, Sec. 3801 rescinds 1% of the following:

- the budget authority provided (or obligation limit imposed) for FY2006 for any discretionary account in any prior and in any other FY2006 appropriations act;
- the budget authority provided in any advance appropriation for FY2006 for any discretionary account in any prior fiscal year appropriation; and
- the contract authority provided in FY2006 for any program subject to limitation contained in any FY2006 appropriation act.¹⁷¹

The ATB rescission does not apply to emergency appropriations (as defined by Sec. 402 of H.Con.Res. 95, the FY2006 Budget Resolution), nor does it apply to the discretionary budget authority made available to the Department of Veterans Affairs.

Hurricane Katrina Reallocations and Rescissions. Division B, Title I, Chapter 4, of P.L. 109-148 provides emergency supplemental appropriations to various DHS accounts to address the impacts of Hurricane Katrina. On October 28, 2005, the President submitted a request to Congress to reallocate \$17.1 billion of the \$60 billion previously appropriated by Congress to FEMA's Disaster Relief Fund (DRF) to respond to Hurricanes Katrina, Rita, Wilma, and other disasters. The Congressional response to this request was included in Title I of Division B of P.L. 109-148; the rescissions (from DHS accounts) funding this request were included in Title III of Division B of P.L. 109-148. Most of the additional funding provided to DHS accounts is to be used to repair and/or replace DHS equipment and facilities lost or damaged by the Hurricanes. These include the following:

- \$24.1 million for CBP's Salaries and Expenses account;
- \$10.4 million for CBP's Construction account;
- \$13 million for ICE's Salaries and Expenses account;
- \$132 million for the Coast Guard's Operating Expenses account;
- \$74.5 million for the Coast Guard's Acquisition, Construction, and Improvements account;
- \$3.6 million for the Secret Service's Salaries and Expenses account;
- \$10.3 million for ODP's State and Local Programs account; and
- \$17.2 million for FEMA's Administrative and Regional Operations account.

This section of P.L. 109-148 also transfers \$1.5 million (of the funds previously appropriated to this account by P.L. 109-62, see Supplemental funds for Hurricane Katrina below) from FEMA's Disaster Relief Account to the "Disaster Assistance

¹⁷¹ P.L. 109-148, Division B, Title III, Section 3801.

Direct Loan Program Account” to carry out the direct loan program. All of the funds provided to DHS accounts under this section of P.L. 109-148 are designated as emergency funds.

Title III, Chapter 4, of Division B of P.L. 109-148 contains rescissions affecting DHS accounts. These include the following:

- \$23.4 billion in funds previously appropriated by P.L. 109-62, from FEMA’s Disaster Relief account; and
- \$260.5 million in funds previously appropriated by P.L. 109-90, from the Coast Guard’s Operating Expenses account.

Emergency Supplemental Appropriations for Pandemic Influenza.

Division B, Title II, Chapter 4 of P.L. 109-148 provides an additional \$47.3 million for the DHS Office of the Secretary and Executive Management account. These funds are for “necessary expenses to train, plan, and prepare for a potential outbreak of highly pathogenic influenza.” These funds are designated as emergency funds.

Additional Border Security Funding. During the conference consideration of H.R. 2863, two other Divisions, C and D, were inserted into the conference report (H.Rept. 109-359) attached to the bill. Division C, the American Energy Independence and Security Act of 2005, would have allowed oil well drilling in Alaska’s National Wildlife Refuge (ANWR). Division D contained provisions that would have distributed the revenues from the ANWR drilling. Among the items that would have been funded with these revenues was more than \$1 billion in additional border security funding for DHS.¹⁷² After a contentious floor debate concerning the attachment of the ANWR provisions to the Defense Appropriations Bill, both Divisions C and D were removed from the bill by S.Con.Res. 74, the enrollment correction measure, and are not included in P.L. 109-148.

¹⁷² An itemization of these amounts and the accounts they would have been appropriated to can be found in the Conference Report to H.R. 2863, H.Rept. 109-359, pp. 159-156.

Appendix II. DHS Appropriations in Context

Federal-Wide Homeland Security Funding

Since the terrorist attacks of September 11, 2001, there has been an increasing interest in the levels of funding available for homeland security efforts. The Office of Management and Budget, as originally directed by the FY1998 National Defense Authorization Act, has published an annual report to Congress on combating terrorism. Beginning with the June 24, 2002 edition of this report, homeland security was included as a part of the analysis. In subsequent years, this homeland security funding analysis has become more refined, as distinctions (and account lines) between homeland and non-homeland security activities have become more precise. This means that while **Table 15** is presented in such a way as to allow year to year comparisons, they may in fact not be strictly comparable due to the increasing specificity of the analysis, as outlined above.

With regard to DHS funding, it is important to note that DHS funding does not comprise all federal spending on homeland security efforts. In fact, while the largest component of federal spending on homeland security is contained within DHS, the DHS homeland security request for FY2007 accounts for approximately 48% of total federal funding for homeland security. The Department of Defense comprises the next highest proportion at 29% of all federal spending on homeland security. The Department of Health and Human Services at 7.8%, the Department of Justice at 5.6% and the Department of Energy at 2.9% round out the top five agencies in spending on homeland security. These five agencies collectively account for nearly 93% of all federal spending on homeland security. It is also important to note that not all DHS funding is classified as pertaining to homeland security activities. The legacy agencies that became a part of DHS also conduct activities that are not homeland security related. Therefore, while the FY2007 requests included a total *homeland security* budget authority of \$27.7 billion for DHS, the requested *total gross budget authority* was \$39.8 billion. The same is true of the other agencies listed in the table.

**Table 15. Federal Homeland Security Funding by Agency,
FY2002-FY2006**

(budget authority in millions of dollars)

Department	FY02	FY03	FY04	FY05	FY06	FY07 req.	FY07 as % of total
Department of Homeland Security (DHS)	17,380	23,063	22,923	24,549	25,626	27,777	47.7%
Department of Defense (DOD) ^a	16,126	15,413	15,595	17,188	16,440	16,698	28.6%
Department of Health and Human Services (HHS)	1,913	4,144	4,062	4,229	4,299	4,563	7.8%
Department of Justice (DOJ)	2,143	2,349	2,180	2,767	2,991	3,280	5.6%
Department of Energy (DOE)	1,220	1,408	1,364	1,562	1,705	1,700	2.9%
Department of State (DOS)	477	634	696	824	1,108	1,213	2.1%
Department of Agriculture (AG)	553	410	411	596	563	650	1.1%
Department of Transportation (DOT)	1,419	383	284	219	181	206	0.4%
National Science Foundation (NSF)	260	285	340	342	344	387	0.7%
Other Agencies	2,357	1,329	1,550	2,107	1,789	1,809	3.1%
Total Federal Budget Authority	43,848	49,418	49,405	54,383	55,046	58,283	100%

Source: CRS analysis of data contained in “Section 3. Homeland Security Funding Analysis,” and Appendix K of the Analytical Perspectives volume of the FY2007 President’s Budget (for FY2005-FY2007); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2006 President’s Budget (for FY2004); Section 3. “Homeland Security Funding Analysis,” of Analytical Perspectives volume of the FY2005 President’s Budget (for FY2003) and Office of Management and Budget, *2003 Report to Congress on Combating Terrorism*, Sept. 2003, p. 10; CRS analysis of FY2002-2006 re-estimates of DoD homeland security funding provided by OMB, March 17, 2005.

Notes: Totals may not add due to rounding. FY totals shown in this table include enacted supplemental funding. Year to year comparisons using particularly FY2002 may not be directly comparable, because as time has gone on agencies have been able to distinguish homeland security and non-homeland security activities with greater specificity.