



# Homeland Security Department: FY2006 Appropriations

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## Summary

This report describes the FY2006 appropriations for the Department of Homeland Security (DHS). The Administration requested a net appropriation of \$30.6 billion in net budget authority for FY2006, of which \$29.6 billion is discretionary budget authority, and \$1 billion is mandatory budget authority. P.L. 109-90 was signed into law on October 18, 2005, and provides a net appropriation of \$31.9 billion for DHS and \$30.8 billion in discretionary budget authority.

The President's request for appropriations includes the following break out of net budget authority for the four Titles of the DHS appropriation bill: (I) Departmental Management and Operations, \$748 million; (II) Security, Enforcement and Investigations, \$20,566 million; (III) Preparedness and Response, \$6,710 million; and (IV) Research and Development, Training, Assessments, and Services, \$2,546 million. The House-passed version of H.R. 2360 would provide the following amounts for each title: (I) \$561 million; (II) \$21,988 million; (III) \$6,688 million; and (IV) \$2,522 million. The Senate-passed version of H.R. 2360 would provide the following amounts for each title: (I) \$647 million; (II) \$22,193 million; (III) \$6,334 million; and (IV) \$2,686 million. P.L. 109-90 reflects Secretary Chertoff's proposed reorganization and provides the following amounts for each title: (I) \$907 million; (II) \$22,401 million; (III) \$6,666 million; and (IV) \$1,899 million.

P.L. 109-90 concurs with much of Secretary Chertoff's reorganization of DHS, including moving the Federal Air Marshals from ICE to TSA and splitting the Directorate for Information Analysis and Infrastructure Protection into two different agencies, Analysis and Operations within Title I, and Infrastructure Protection and Information Security, within Title III. The requested net appropriation, amounts in House-passed H.R. 2360 (in parentheses), amounts in Senate-passed H.R. 2360 [in brackets], and amounts in the conference report {in ellipses} for major components of the department include the following: \$5,575 (\$5,785) [\$5,998] {\$5,993} million for Customs and Border Protection (CBP); \$3,648 (\$3,830) [\$3,808] {\$3,175} million for Immigration and Customs Enforcement (ICE); \$1,641 (\$3,263) [\$3,065] {\$3,925} million for the Transportation Security Administration (TSA); \$7,962 (\$7,458) [\$7,780] {\$7,797} million for the U.S. Coast Guard; \$1,204 (\$1,232) [\$1,192] {\$1,212} million for the Secret Service; \$3,565 (\$3,665) [\$3,573] {\$3,346} million for the Office of State and Local Government Preparedness (SLGCP); \$3,135 (\$3,013) [\$2,758] {\$2,633} million for the Emergency Preparedness and Response Directorate (EPR); \$80 (\$120) [\$80] {\$115} million for Citizenship and Immigration Services (USCIS); and \$1,368 (\$1,290) [\$1,453] {\$1,502} million for the Science and Technology Directorate.

Responding to the devastation caused by Hurricane Katrina, Congress enacted two supplemental appropriation laws totaling \$60 billion in FY2005 for EPR.

This report will not be updated.

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## **Most Recent Developments**

### **P.L. 109-90 Signed into Law**

On October 18, 2005, the FY2006 Department of Homeland Security (DHS) Appropriations Act (P.L. 109-90) was signed into law. The House approved the conference report (H.Rept. 109-241) on October 6, 2005 by a vote of 347-70, and the Senate approved the conference report on October 7, 2005 by voice vote. No amendments to the conference report were made during floor debate in either chamber. P.L. 109-90 provides a net appropriation of \$31.9 billion for DHS for FY2006. This amount represents an increase of \$1.3 billion or 4% compared to the FY2005 enacted level; and an increase of \$1.2 billion or nearly 4% compared to the FY2006 request.

### **Conference Report Filed**

On September 29, 2005, the conference committee approved and filed the conference report (H.Rept. 109-241) to H.R. 2360, the FY2006 Department of Homeland Security (DHS) Appropriations Act. The conferees agreed to recommend a net appropriation of \$31.9 billion for DHS for FY2006. This amount represents an increase of \$1.3 billion or 4% compared to the FY2005 enacted level; and an increase of \$1.2 billion or nearly 4% compared to the FY2006 request.

### **Senate Passes H.R. 2360**

On July 14, the Senate passed H.R. 2360 96-1. The Senate version of H.R. 2360 recommends a net appropriation of \$31.9 billion for DHS for FY2006. This amount includes \$30.8 billion in discretionary budget authority. This amount represents an increase of \$1.3 billion or 4% compared to the FY2005 enacted level; and an increase of \$1.2 billion or nearly 4% compared to the FY2006 request.

### **House Passes H.R. 2360**

On May 17, 2005, the House passed H.R. 2360 424-1. The bill provides a net appropriation of \$31.9 billion for DHS. This amount includes \$30.8 billion in discretionary budget authority, which represents an increase of \$1.3 billion, or 4%, compared to the baseline FY2005 enacted level (without advance or emergency appropriations); and an increase of \$1.2 billion, or nearly 4%, compared to the FY2006 request.

### **President's FY2006 Budget Submitted**

The President's budget request for FY2006 was submitted to Congress on February 7, 2005. The Administration requested \$41.1 billion in gross budget authority for FY2006 (including mandatories, fees, and funds). The Administration is requesting a net appropriation of \$30.6 billion in net budget authority for FY2006, of which \$29.6 billion is discretionary budget authority, and \$1 billion is mandatory budget authority. The FY2005 enacted net appropriated budget authority for DHS was \$40.2 billion, including an advance appropriation of \$2.058 billion for Bioshield and \$7.145 billion in emergency appropriations; without Bioshield or the emergency appropriations, the FY2005 net appropriated budget authority for DHS was \$30.6

billion. Without including Bioshield, the FY2006 request for an appropriation of \$30.6 in net budget authority represents no increase over the FY2005 enacted amount.

**Table 1** summarizes the legislative status of DHS appropriations for FY2006.

**Table 1. Legislative Status of Homeland Security Appropriations**

Subcommittee Markup		House Report 109-79	House Passage	Senate Report 109-83	Senate Passage	Confr. Report 109-241	Conference Report Approval		Public Law 109-90
House	Senate						House	Senate	
05/04 (vv)	06/14 (vv)	05/10 (vv)	05/17 (424-1)	06/16 (28-0)	07/14 (96-1)	09/29 —	10/6 347-70	10/7 (vv)	10/18

**Note:** vv = voice vote

### Note on Most Recent Data

Data used in this report include data from the President’s Budget Documents, the *FY2006 DHS Congressional Budget Justifications*, the *FY2006 DHS Budget in Brief*, and the House Appropriations Committee Homeland Security tables of May 20, 2005. Data used in **Table 3** and **Table 12** are taken from various sections of the FY2006 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. The most recent update of this report uses amounts contained in: the House-passed version of H.R. 2360, and the attached report (H.Rept. 109-79); the Senate-passed version of H.R. 2360, and the attached report (S.Rept. 109-83); the conference-approved version of H.R. 2360 and the attached report (H.Rept. 109-241); and P.L. 109-90.

FY2006 enacted amounts shown in the tables in this final version of the report may not match amounts listed in P.L. 109-90, as the tables include changes enacted by P.L. 109-148, the *Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006*. The tables *do not* reflect the 1% across-the-board rescission that was also enacted by P.L. 109-148. At the time of the final update of this paper it was unclear as to how this rescission would be applied across DHS discretionary accounts.

## Background

This report describes the President’s FY2006 request for funding for DHS programs and activities, as submitted to Congress on February 7, 2005. This report compares the enacted FY2005 amounts to the request for FY2006. This report will also track legislative action and congressional issues related to the FY2006 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.



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

The maximum budget authority for annual appropriations (including DHS) are 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 various 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 Senate budget resolution, S.Con.Res. 18 was introduced on March 11, 2005, and passed the Senate on March 17, 2005. S.Con.Res. 18 provides \$848.8 billion in discretionary spending. The House budget resolution, H.Con.Res. 95, was introduced on March 11, 2005, and passed the House on March 17, 2005. H.Con.Res. 95 proposed \$843 billion in discretionary budget authority. On April 28, 2005 the conference committee reported, and both the House and Senate passed, H.Rept. 109-62 providing \$843 billion in discretionary budget authority for FY2006. The House Appropriations Committee revised its 302(b) allocations on November 11, 2005, which allocates \$30.8 billion in discretionary budget authority for homeland security. The Senate Appropriations Committee revised its 302(b) allocation on November 18, 2005, and reported S.Rept. 109-184 which allocates \$30.8 billion in discretionary budget authority for DHS.

**Table 2. FY2006 302(b) Discretionary Allocations for DHS**  
(budget authority in billions of dollars)

FY2005 Comparable	FY2006 Request Comparable	FY2006 House Allocation	FY2006 Senate Allocation	FY2006 Enacted Comparable
32,000	29,554	30,846	30,846	30,860

**Source:** House Appropriations Committee tables of March 15, 2005; House Appropriation Committee 302(b) table of May 10, 2005; revised Senate Appropriations Committee 302(b) allocations in S.Rept. 109-184; revised House Allocations of Nov. 2, 2005 in H.Rept. 109-264.

## Budget Authority, Obligations, and Outlays<sup>1</sup>

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.

<sup>1</sup> Prepared with assistance from (name redacted), Analyst in American National Government, Government and Finance Division.

Budget authority is established through appropriations acts or direct spending legislation and determines the amounts that are available for federal agencies to spend. The Antideficiency Act<sup>2</sup> prohibits federal agencies from obligating more funds than the budget authority that was enacted by Congress. Budget authority may be indefinite, however, when Congress enacts language providing “such sums as may be necessary” to complete a project or purpose. Budget authority may be available on a one-year, multi-year, or no-year basis. One-year budget authority is only available for obligation during a specific fiscal year; any unobligated funds at the end of that year are no longer available for spending. Multi-year budget authority specifies a range of time during which funds can be obligated for spending; no-year budget authority is available for obligation for an indefinite period of time.

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

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

## **Discretionary and Mandatory Spending<sup>4</sup>**

Gross budget authority, or the total funds available for spending by a federal agency, may be composed of discretionary and mandatory spending. Of the \$41 billion gross budget authority requested for DHS in FY2006, 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 Act<sup>5</sup> 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.

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<sup>2</sup> 31 U.S.C. §§1341, 1342, 1344, 1511-1517.

<sup>3</sup> Appropriations, outlays and account balances for government treasury accounts can be viewed in the end of year reports published by the U.S. Treasury titled *Combined Statement of Receipts, Outlays, and Balances of the United States Government*. The DHS portion of the report can be accessed at <http://fms.treas.gov/annualreport/cs2004/c18.pdf>.

<sup>4</sup> Prepared with assistance from Bill Heniff, Jr., Analyst in American National Government.

<sup>5</sup> P.L. 101-508, Title XIII.

## Offsetting Collections<sup>6</sup>

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

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 CBP personnel and is used to offset both the CBP and 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, while 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 FY2005 and in the FY2006 request.

**Table 3. FY2006 Request: Moving From Gross Budget Authority to Net Appropriation: Fee Accounts, Offsetting Fees, and Trust and Public Enterprise Accounts**

(budget authority in millions of dollars)

Account/Agency	Account Name	FY2005	FY2006
<b>DHS gross budget authority</b> (gross discretionary + fees+ mandatory + funds)		<b>41,018</b>	<b>41,067</b>
<b>Account level discretionary offset</b>			
	TWIC	50	245
Office of Screening Operations	Hazmat	17	44
	Registered traveler	—	23

<sup>6</sup> Prepared with assistance from Bill Heniff, Jr., Analyst in American National Government.

<b>Account/Agency</b>	<b>Account Name</b>	<b>FY2005</b>	<b>FY2006</b>
ICE	Federal Protective Service	478	487
TSA	Aviation security fees	1,823 <sup>a</sup>	3,670 <sup>a</sup>
FEMA/EPR	National flood insurance fund	113	124
CBP	Small airports	5	5
<b>Subtotal account level discretionary offsets</b>		<b>-2,486</b>	<b>-4,598</b>
<b>Agency level discretionary offset</b>			
	Immigration inspection	429	465
	Immigration enforcement	6	6
CBP	Land border	28	30
	COBRA	318	334
	APHIS	200	204
	Puerto Rico	89	98
ICE	Immigration inspection	90	92
	SEVIS	40	67
	Breached bond detention fund	70	71
TSA	Aviation security capital fund	250	250
USCIS	Immigration examination fee	1,571	1,730
	H1b, and H1b & L fees	44	44
Office of Screening Operations	Alien flight school background checks	5	10
<b>Subtotal agency level discretionary offsets</b>		<b>-3,140</b>	<b>-3,400</b>
<b>Mandatory budget authority</b>			
Secret service	Secret service retired pay <sup>b</sup>	200	200
Coast guard	Coast guard retired pay <sup>c</sup>	(1,085)	(1,014)
<b>Subtotal mandatory budget authority</b>		<b>-200</b>	<b>-200</b>
<b>Trust funds and public enterprise funds</b>			
CBP	Customs unclaimed goods	8	8
	Claims expense	1,302	1,459
	Underwriting limit	563	563
FEMA/EPR	Operational expense limit	55	55
	Interest expense limit	30	30
	Boat safety	64	64
	Oil spill recovery	71	121
Coast Guard	Miscellaneous revolving fund	(10,533)	(10,533)
	Gift fund	1	1
<b>Subtotal trust and public enterprise funds</b>		<b>-2,094</b>	<b>-2,301</b>

Account/Agency	Account Name	FY2005	FY2006
<b>DHS gross budget authority</b>		<b>41,103</b>	<b>41,067</b>
<b>Total offsetting collections</b>		<b>(8,004)</b>	<b>(10,499)</b>
<b>DHS net appropriated BA (Mandatory + Discretionary)</b>		<b>33,099<sup>d</sup></b>	<b>30,569</b>

**Source:** CRS analysis of the FY2006 President's Budget, and DHS, *Budget in Brief*, House Appropriation Committee tables of May 20, 2005.

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

- a. There is a discrepancy reported in the amount of aviation security fees collected by TSA, for both FY2005 and 2006. The enacted level aviation security fees for FY2005 was \$1,823 million, and this is the amount reported in the current committee tables. The Administration FY2006 budget documents and the DHS Congressional Budget Justifications report the FY2005 amount as \$2,330 million. The Administration has requested an increase in aviation security fees for FY2006, and the budget documents estimate the offsetting collections at \$3,889 million. The latest committee tables show \$3,670 million for FY2006 (a difference of \$218 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 FY2005 (\$1,823) and the committee table amount (\$3,670) for FY2006.
- 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 amount (\$33,098 million) does not include \$6,500 million in emergency disaster relief funding. For more information on those supplemental appropriations, see CRS Report RL32581, *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by (name redacted) and (name redacted).

## Appropriations for the 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 (DHS) created by the act. DHS is organized into four major directorates<sup>7</sup>: Border and Transportation Security (BTS); Emergency Preparedness and Response (EPR); Science and Technology (S&T); and Information Analysis and Infrastructure Protection (IAIP).

BTS, the largest of the four directorates, contains three main agencies: Customs and Border Protection (CBP); Immigration and Customs Enforcement (ICE); and Transportation Security Administration (TSA). EPR is comprised primarily of the former Federal Emergency Management Agency (FEMA), and IAIP houses the Homeland Security Operations Center (HSOC), Information Analysis (IA) and the Infrastructure Protection (IP) offices. S&T is home to the Office of National Laboratories, Homeland Security Laboratories, and the Homeland Security Advanced Research Projects Agency (HSARPA). U.S. Citizenship and Immigration (USCIS), the U.S. Coast Guard, and the U.S. Secret Service are all stand-alone agencies within DHS directly under the Secretary of Homeland Security.

<sup>7</sup> The Department has been reorganized with the passage of P.L. 109-90. The organizational changes are discussed throughout the report. This discussion has been left intact to provide readers with a reference for the previous organization.

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), the Office of the Chief Information Officer (CIO), and the Office of the Inspector General (OIG). Title II contains appropriations for the Office of the Undersecretary for BTS, CBP, Immigration ICE, TSA, the Coast Guard, the Secret Service, and the newly proposed Office of Screening Operations (SCO). Title III contains appropriations for EPR and the Office of State and Local Government Coordination and Preparedness (SLGCP). Title IV contains appropriations for USCIS, IAIP, S&T, and the Federal Law Enforcement Training Center (FLETC).

## **Secretary Chertoff's Second Stage Review<sup>8</sup>**

On July 13, 2005, the Secretary of DHS, Michael Chertoff, announced the results of the months-long Second Stage Review (2SR) that he undertook upon being confirmed as DHS Secretary.<sup>9</sup> 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.<sup>10</sup> 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 Administration's request to restructure DHS, and P.L. 109-90 adopts the following changes:

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<sup>8</sup> For more information, see CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by (name redacted) and (name redacted).

<sup>9</sup> 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](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, accessible at [http://www.dhs.gov/dhspublic/interapp/press\\_release/press\\_release\\_0703.xml](http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0703.xml). Proposed organizational chart can be found at <http://www.dhs.gov/interweb/assetlibrary/DHSOrgCharts0705.pdf>.

<sup>10</sup> See, Communication from the President of the United States, *Request for FY2006 Budget Amendments*, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Doc. 190-50, July 22, 2005.

- abolishes the Office of the Undersecretary for Border and Transportation Security, redistributing its functions to other locations within DHS;
- splits the Directorate of Information Analysis and Infrastructure Protection into two new operational components: Analysis and Operations, and the Preparedness Directorate;
- moves all state and local grants within DHS to the Preparedness Directorate;
- transfers the Federal Air Marshals program from ICE to TSA; and
- includes and expands the role of Office of Policy.<sup>11</sup>

**Table 4** is a summary table comparing the enacted appropriations for FY2005 and the requested amounts for FY2006. The Administration requested an appropriation of \$30.6 billion in net budget authority for FY2006. The FY2005 enacted net appropriated budget authority for DHS was \$40.2 billion, including an advance appropriation of \$2.058 billion for Bioshield and \$7.145 billion in emergency appropriations; without Bioshield or the emergency appropriations, the FY2005 net appropriated budget authority for DHS was \$30.6 billion. Without including Bioshield, the FY2006 request for an appropriation of \$30.6 in net budget authority represents no increase over the FY2005 baseline enacted amount. House-passed H.R. 2360 provided a net appropriation of \$31.9 billion for DHS for FY2006. This amount represents a \$1.3 billion increase over the FY2005 base appropriation, and a \$1.2 billion, or nearly 4%, increase compared to the FY2006 request. Senate-passed H.R. 2360 also recommended \$31.9 billion (\$30.8 billion in discretionary budget authority) for DHS for FY2006. P.L. 109-90 provides \$31.9 billion for DHS in FY2006.

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

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
<b>Title I: Departmental Management and Operations</b>					
<b>Subtotal: Title I</b>	<b>583<sup>a</sup></b>	<b>748</b>	<b>561<sup>b</sup></b>	<b>647</b>	<b>954<sup>c</sup></b>
<b>Title II: Security, Enforcement, and Investigations</b>					
—Office of the Undersecretary for Border and Transportation Security	10	11	9	10	— <sup>d</sup>
—Screening and operations office/ Automation Modernization/US-VISIT <sup>e</sup>	340	525	411	340	340
—Customs and Border Protection	5,371	5,575	5,785	5,998	5,986 <sup>f</sup>
—Immigration and Customs Enforcement	3,537	3,648	3,830	3,808	3,188 <sup>g</sup>
—Transportation Security Administration <sup>h</sup>	3,260	1,641	3,263	3,065	3,925
—U.S. Coast Guard	7,568	7,962	7,458	7,780	7,843 <sup>i</sup>
—U.S. Secret Service	1,175	1,204	1,233	1,192	1,216 <sup>i</sup>
<b>Net subtotal: Title II</b>	<b>21,260</b>	<b>20,566</b>	<b>21,988</b>	<b>22,193</b>	<b>22,498</b>

<sup>11</sup> H.Rept. 109-241, p.30.

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
—Total fee collections	-3,897	-6,099	-4,278	-4,278	-4,302
<b>Gross subtotal: Title II</b>	<b>25,157</b>	<b>26,665</b>	<b>26,267</b>	<b>26,470</b>	<b>26,800</b>
<b>Title III: Preparedness and Recovery</b>					
—Management and Administration	N/A	N/A	N/A	N/A	16
—Infrastructure Protection and Information Security	N/A	N/A	N/A	N/A	625
—U.S. Fire Administration and Training	N/A	N/A	N/A	N/A	45
—Office for Domestic Preparedness/ Office of State and Local Government Coordination and Preparedness	3,985	3,565	3,665	3,573	3,356 <sup>k</sup>
—Counter-Terrorism Fund	8	10	10	3	2
—Federal Emergency Management Administration	48,564 <sup>l</sup>	3,135	3,013	2,758	2,652 <sup>m</sup>
<b>Net subtotal: Title III</b>	<b>52,557</b>	<b>6,710</b>	<b>6,688</b>	<b>6,334</b>	<b>6,696</b>
<b>Title IV: Research and development, training, assessments, and services</b>					
—Citizenship and Immigration Services	160	80	120	80	115
—Information Analysis and Infrastructure Protection	894	873	853	871	— <sup>n</sup>
—Federal Law Enforcement Training Center	227	224	259	282	282
—Science and Technology	1,115	1,368	1,290	1,453	1,502
<b>Net subtotal: Title IV</b>	<b>2,396</b>	<b>2,546</b>	<b>2,522</b>	<b>2,686</b>	<b>1,899</b>
—Total fee collections	-1,615	-1,774	-1,774	-1,774	-1,774
<b>Gross subtotal: Title IV</b>	<b>4,011</b>	<b>4,320</b>	<b>4,296</b>	<b>4,460</b>	<b>3,673</b>
<b>Title V: General Provisions</b>					
—REAL ID Grants <sup>o</sup>	—	—	100	(40)	40
—Rescissions <sup>p</sup>	—	—	—	—	-55
<b>DHS gross budget authority</b>	<b>82,308</b>	<b>38,399</b>	<b>37,912</b>	<b>37,912</b>	<b>38,108</b>
—Total fee collections	-5,512	-7,873	-6,052	-6,052	-6,076
<b>DHS net budget authority<sup>q</sup></b>	<b>76,796</b>	<b>30,569</b>	<b>31,860</b>	<b>31,860</b>	<b>32,032</b>
—Advance appropriation <sup>r</sup>	2,508	—	—	—	—
—Emergency appropriation	43,734 <sup>s</sup>	—	—	—	—
<b>DHS Appropriation</b>	<b>30,554</b>	<b>30,569</b>	<b>31,860</b>	<b>31,860</b>	<b>32,032</b>

**Source:** CRS analysis of the FY2006 President's Budget, and DHS *Budget in Brief*, House Appropriation Committee tables of May 20, 2005, House-passed H.R. 2360 and H.Rept. 109-79; Senate-passed H.R. 2360 and S.Rept. 109-83; the Conference Report to H.R. 2360, H.Rept. 109-241; and P.L. 109-90.

**Note:** Totals may not add due to rounding. Amounts in parentheses are non-adds. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- a. Includes a \$24 million rescission pursuant to P.L. 109-13.
- b. Includes a \$7 million rescission.



- c. Includes \$47 million for the Office of the Secretary and Executive Management for efforts to address a potential outbreak of highly pathogenic influenza pursuant to P.L. 109-148.
- d. The functions of the Office of the Under Secretary for border and Transportation Security have been transferred to the Office of Policy in Title I, pursuant to the Secretary's July reorganization proposal.
- e. The President's FY2006 request for DHS proposes to create the Screening and Operations Office by transferring in the following programs: FAST and NEXUS/SENTRI from CBP; Secure Flight, Crew Vetting, Credentialing Startup, TWIC, Registered Traveler, HAZMAT, and Alien Flight School from TSA. These programs are discussed in the text. The House report (H.Rept. 109-79) denies the creation of the SCO, but transfers FAST and NEXUS/SENTRI to a new office called Automation Modernization with the US-VISIT program. All other activities proposed for transfer to the SCO would remain in TSA, under the House-passed version of H.R. 2360. The Conferees, in H.Rept. 109-241, have provided \$4 million for SCO in Title I, but declined to transfer any of the proposed programs to the new office.
- f. Includes \$35 million, pursuant to P.L. 109-148, for CBP's Salaries and Expenses and Construction accounts to replace and repair equipment and facilities damaged by hurricanes and other disasters.
- g. Includes \$13 million, pursuant to P.L. 109-148, for ICE's Salaries and Expenses account to replace and repair equipment and facilities damaged by hurricanes and other disasters.
- h. TSA appropriations estimate includes a proposed \$3 increase in passenger security fees for one-way and multi-leg flights, for a total offsetting collection of nearly \$3.9 billion; Congressional Budget Office (CBO) calculations place the offsetting collections from the fee increase at \$3.7 billion. Throughout this report, the CBO figure will be used to calculate total appropriations. The House report (H.Rept. 109-79) denies the transfer of several TSA programs to the proposed SCO, as mentioned above in Note a, these programs would remain in TSA under House-passed H.R. 2360.
- i. Includes, pursuant to P.L. 109-148, \$232 million in supplemental funding for the Operations and Expenses account, \$75 million in supplemental funding for the Acquisition, Construction and Improvements account, and a rescission of \$261 million (of funds previously appropriated by P.L. 109-90) from the Operating Expenses account.
- j. Includes, pursuant to P.L. 109-148, \$4 million for the Secret Service Salaries and Expenses account.
- k. Includes, pursuant to P.L. 109-148, \$10 million to ODP's State and Local Programs account, to replace and repair equipment and facilities damaged by hurricanes and other disasters.
- l. FY2005 appropriations include \$66.5 billion in supplemental appropriations for disaster relief pursuant to: P.L. 109-61—\$10 billion; P.L. 109-62—\$60 billion; and P.L. 108-324—\$6.5 billion. Also includes rescissions and transfers totaling \$23.4 billion pursuant to P.L. 109-148. For more information on the Hurricane Katrina related supplemental appropriations, see CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*. For information on the other supplemental appropriations see CRS Report RL32581, *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by (name redacted) and (name redacted), Supplemental Appropriations for the 2004 Hurricanes and Other Disasters. The total also includes a 0.80% across the board rescission pursuant to P.L. 108-447, resulting in a \$20 million rescission from Bioshield funding.
- m. Includes \$17 million, pursuant to P.L. 109-148, for FEMA's Administrative and Regional Operations account.
- n. The conferees agreed to split up the IAIP Directorate pursuant to Secretary Chertoff's reorganization proposal submitted to Congress on July 13, 2005. The IA portion of IAIP has been moved to Title I under the account heading *Analysis and Operations*. The IP portion of IAIP has been moved to Title III in the Preparedness Directorate and is under the account heading of *Infrastructure Protection and Information Security*. The IAIP Management and Administration accounts have apparently been split between these two new accounts, however the exact division of these funds was not readily available.
- o. The Senate-passed version of H.R. 2360 included \$40 million in funding for REAL ID grants under OSLGCP.
- p. Rescissions pursuant to Sections 542 through 546 of the Conference-approved version of H.R. 2360 and include \$15 million from the Working Capital Fund (Title I); \$6 million from TSA's Aviation Security account; \$6 million from the Coast Guard's Operating Expenses and Acquisition, Construction and Improvements accounts; \$8 million from the Counterterrorism Fund; and \$20 million from S&T's Research, Development, Acquisition, and Operations account.

- q. Net discretionary budget authority differs from the amounts listed in the President’s Budget due to the following: FY2005 includes \$2.508 billion in advance appropriations for Bioshield and \$1.085 in Coast Guard mandatory retirement pay. FY2006 includes \$1.014 billion in Coast Guard mandatory retirement pay.
- r. Represents the \$2.508 billion advance appropriation for Bioshield.
- s. Includes 6.5 billion in hurricane relief funding pursuant to P.L. 108-324, \$644 million in emergency appropriations pursuant to P.L. 109-13, and \$60 billion in hurricane relief funding in response to Hurricane Katrina (P.L. 109-61/P.L. 109-62). Also includes a rescission of \$23.4 billion and a transfer of \$2 million from FY2005 to FY2006.

## Title I: Departmental Management and Operations<sup>12</sup>

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

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
Office of the Secretary and Executive Management	85	196	113	125	126 <sup>a</sup>
Office of Screening Coordination and Operations <sup>b</sup>	—	N/A	—	—	4
Office of the Undersecretary for Management	151	147	50	146	169
Office of the Chief Financial Officer	13	19	19	18	19
Office of the Chief Information Officer	275	304	304	287	297
Analysis and Operations <sup>c</sup>	N/A	N/A	N/A	N/A	255
Office of the Inspector General	82	83	83	83	83
<b>Gross Total</b>	<b>607</b>	<b>748</b>	<b>568</b>	<b>659</b>	<b>954</b>
—Rescission	-4 <sup>d</sup>		-7 <sup>e</sup>	-12 <sup>f</sup>	-15 <sup>g</sup>
<b>Net Budget Authority: Title I</b>	<b>603</b>	<b>748</b>	<b>561</b>	<b>647</b>	<b>939</b>

**Source:** DHS FY2006 Congressional Budget Justifications, H.Rept. 109-79, S.Rept. 109-83, and H.Rept. 109-241.

**Note:** N/A stands for Not Available. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- a. Includes, pursuant to P.L. 109-148, \$47 million emergency supplemental for the Office of the Secretary and Executive Management for efforts to address a potential outbreak of highly pathogenic influenza pursuant to P.L. 109-148.
- b. The President’s FY2006 request for DHS proposes to create the Screening Coordination and Operations Office within Title II. Both the House and the Senate denied the creation of this new office within Title II. The Conference Report, H.Rept. 109-241, allocates \$4 million within Title I for the operations of the Office of Screening Coordination and Operations.
- c. This new category reflects Secretary Chertoff’s recommendation for restructuring DHS. For further analysis of this restructuring, please refer to **Table II**. We have been unable to track this account back through the appropriations process.
- d. Rescission pursuant to P.L. 109-13.
- e. Rescission to the Working Capital Fund, as per H.Rept. 109-79.
- f. Rescission to the Working Capital Fund, as per S.Rept. 109-83.

<sup>12</sup> Prepared by (name redacted), Specialist in American National Government, Government and Finance Division.

- g. Rescission to the Working Capital Fund, per H.Rept. 109-241.

## President's Request

Title I covers the general administrative expenses of DHS. It includes the Office of the Secretary and Executive Management (OS&EM), which counts the immediate Office of the Secretary and 14 entities that report directly to the Secretary; the Under Secretary 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 CIO; the Office of the Chief Financial Officer (OCFO); and OIG. FY2006 requests relative to comparable FY2005 enacted appropriations: OS&EM, \$195.8 million, an increase of \$110.8 million (+130%); USM, \$146.6 million, a decrease of \$4.5 million (-3%); OCIO, \$303.7 million, an increase of \$28.4 million (+10%); OCFO, \$18.5 million, an increase of \$5.5 million (+42%); and OIG, \$83 million, an increase of \$700,000 (+1%). **Table 4** shows appropriations for FY2005 and congressional action on the requests for FY2006, and **Table 5** provides account-level details for Title I. The total FY2006 request for Title I is \$748 million. This represents a 28% increase over the FY2005 enacted level.

## House-Passed H.R. 2360

Unhappy and otherwise frustrated with “the Department’s inability to respond quickly, or at all, to items of Congressional interest or direction,” “extremely concerned by the Department’s inability to submit reports on a timely basis,” and “very concerned about the results of the 2004 financial audit,” among other complaints, House appropriators slashed \$62.6 million from the OS&EM request, recommending \$133.2 million, which was \$48.2 million above the amount provided in FY2005.<sup>13</sup> Among the entities bearing the brunt of this cut were the Office of Security (-\$10 million), which was criticized for not assuring that unclassified information was clearly marked and distinguished from classified and other security sensitive information within DHS documents; the Operation Integration Staff (-\$1.9 million), which was left to continue to rely upon a half staff of detailees from other components within DHS; and Regions (-\$49.8 million), which, with regional structure still under internal DHS review, was considered to be “premature” for any funding at the time. The amount was reduced to \$113 million as a result of qualifying conditions specified in Title I.

## Senate-Passed H.R. 2360

Approving the recommendations of appropriators, the Senate chopped \$71.2 million from the OS&EM request, approving \$124.6 million. Among the entities hardest hit by this cut were the Office of Security (-\$6 million); the Executive Secretary (-\$1.3 million); the new Office of Policy, Planning, and International Affairs (OPPIA) (-\$1.5 million); the Office of Public Affairs (-\$1 million); the Operation Integration Staff (-\$9.4 million), due to its integration and coordination functions being assumed by OPPIA; and the Regions Initiative (-\$49.8 million), due to the lack of a required consolidation and collocation plan. In brief, no funding was approved for the latter two accounts.<sup>14</sup>

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<sup>13</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2006*, a report to accompany H.R. 2360, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 109-79 (Washington: GPO, 2005), pp. 5, 7-9, 14. Hereafter cited as H.Rept. 109-79.

<sup>14</sup> U.S. Congress, Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2006*, a report (continued...)

## **P.L. 109-90**

P.L. 109-90 provides \$79 million for OS&EM instead of the \$113 million approved by the House and the \$125 million approved by the Senate. Compared with the President's budget request, the OS&EM account receiving major reduction was the unfunded Regions area (-\$50 million), followed by the Office of Policy (-\$4 million), the Executive Secretary (-\$1 million), Office of Public Affairs (-\$1 million), and Office of Legislative and Intergovernmental Affairs (-\$1 million). The Office of Policy is a modified version of OPPIA. It is one of several new or modified entities resulting from the Secretary's 2SR reorganization of DHS. Acting on a July 21, 2005, DHS budget amendment requesting the department's appropriations structure be modified for FY2006, appropriations conferees endorsed much of the 2SR reorganization plan.<sup>15</sup>

## **Issues for Congress**

Within the OS&EM account, the House approved \$8.7 million for the new OPPIA, which had been proposed in the DHS budget justification. Immediately assisting the Secretary, OPPIA was to be headed by an Assistant Secretary for Policy and Planning and was to include other related staff located within the Office of the Under Secretary for BTS, as well as such existing entities as the Office of International Affairs, the Deputy Chief of Staff for Policy, the Homeland Security Advisory Council, and USM. Senate appropriators reduced the OPPIA allotment and indicated an expectation that it would assume the role of the Operation Integration Staff.

A similar DHS restructuring had been discussed at a January 26, 2005, oversight hearing conducted by the Senate Committee on Homeland Security and Governmental Affairs. Participating was one of the authors of a December 2004 Heritage Foundation report, *DHS 2.0: Rethinking the Department of Homeland Security*, which had recommended (1) eliminating the DHS management directorate and USM, but relocating the chief management officers to the office of the Deputy Secretary; and (2) establishing an Under Secretary for Policy, who would be assisted by a unified policy planning staff.<sup>16</sup> It was thought that the first reform would eliminate an unnecessary layer of bureaucracy and otherwise strengthen the roles of the chief management officers, and that the second reform would bring unity to DHS through the development of proactive, strategic homeland security policy and plans. Indications were that these reforms, among others, would be considered for inclusion in subsequent legislation reauthorizing DHS programs within the jurisdiction of the Senate committee. A DHS authorization bill (H.R. 1817) later reported from the House Committee on Homeland Security (H.Rept. 109-71), however, made no mention of these particular suggested reforms.

The House also approved a new general provision to ensure that the DHS Privacy Officer would report privacy abuses to Congress and have access to all documents and information necessary to carry out statutory responsibilities. The provision was added in committee because it was thought

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to accompany H.R. 2360, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 109-83 (Washington: GPO, 2005), pp. 9-11.

<sup>15</sup> See CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by (name redacted) and (name redacted).

<sup>16</sup> James Jay Carafano, and David Heyman, *DHS 2.0: Rethinking the Department of Homeland Security*, *Heritage Special Report* (Washington: Dec. 13, 2004).

that the Privacy Officer “should provide Congress, and thus the public, an unfettered view into the operations of the Department and its impact on personal privacy.”<sup>17</sup>

## **Personnel Issues<sup>18</sup>**

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 the Chief Human Capital Officer (CHCO)***

This Office (also referred to in the budget justification as the Office of Human Resources) establishes policy and procedures and provides oversight, guidance, and leadership for human resources management (HRM) functions within the DHS. It is organized into three major components as follows. Human Capital Innovation is responsible for designing and implementing the department’s new HRM system, referred to as Max-HR,<sup>19</sup> including human capital strategic planning efforts and HR information technology components, including payroll modernization. The activities associated with the new system’s regulatory process and the design and contract management processes also are part of the Innovation component. Human Capital Policy and Programs is responsible for establishing corporate human resources policy, including training and development programs, in support of headquarters and department-wide initiatives. This component manages program and policy development and execution for HRM at DHS, including workforce planning, corporate talent, executive resources, recruitment and branding, benefits, and work life programs. Human Capital Operational Services, newly established in FY2005, provides comprehensive human resources services for all headquarters organizations and manages the process of optimizing shared human capital services within DHS. The principal human capital officers from each component of the department comprise a Human Resources Council which coordinates activities across DHS. The Office of the CHCO reports to the Undersecretary for Management and its appropriation is included in that of the Undersecretary. For FY2005, the Office of the CHCO received an appropriation of \$43.2 million and a staffing level of 49 full-time equivalent employees (FTEs). Of this total, \$7.2 million funded HR operations<sup>20</sup> and \$36 million

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<sup>17</sup> H.Rept. 109-79, p. 7.

<sup>18</sup> Personnel Issues section prepared by Barbara Schwemle, Analyst in American National Government, Government and Finance Division.

<sup>19</sup> On Feb. 1, 2005, DHS and the Office of Personnel Management jointly published final regulations in the *Federal Register* to implement Max-HR. (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. Max-HR 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 (name redacted); and CRS Report RL32255, *Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law*, by (name redacted).) In early May 2005, the National Treasury Employees Union released the results of a series of focus group meetings on the design and implementation of the new pay-for-performance system. According to the union, issues that concern non-managerial employees include fair administration, sufficient funding, and accountability of the pay system. (The National Treasury Employees Union, “Front-Line Homeland Security Employees and Managers Alike Raise Concerns About Pay-For-Performance,” News Release, May 9, 2005. Available on the Internet at <http://www.nteu.org>, visited June 7, 2005. DHS conducted the surveys at 10 locations with some 289 employees from Feb. 24 through Mar. 18, 2005.)

<sup>20</sup> The \$7.2 million appropriation was allocated as follows: salaries and benefits (\$4,118,516), travel (\$46,370), printing (continued...)

(non-recurring) funded the development and implementation of Max-HR. Twelve of the FTEs were attached to Max-HR.

## **President's Budget Proposal**

The President's FY2006 budget proposed an appropriation of \$61.996 million and 50 FTEs for the Office of the CHCO. The request represents an increase of \$18.796 million and one FTE over the FY2005 appropriation.<sup>21</sup> Especially noteworthy in the budget proposal were the funding requests of \$593,000 for the Office of the CHCO and \$53 million for Max-HR as discussed below.

### *Workforce Strategies and DHS Employee Surveys*

The proposed increase of \$593,000 was allocated as follows. For workforce strategies, \$180,000 for one new FTE is requested. The additional FTE would "analyze the impact of current and/or potential occupational or skill gaps, and develop various human capital strategies and plans related to recruiting, retention, learning and development interventions needed to close these gaps."<sup>22</sup> The National Defense Authorization Act for FY2004 mandates an annual assessment of employees and the organization. To fund the employee survey and analysis of the results, \$413,000 was requested.<sup>23</sup>

### *Max-HR*

An appropriation of \$53 million is requested for the department's new HRM system, an increase of \$17 million over the FY2005 funding.<sup>24</sup> The Office of the CHCO serves as the "command center" for Max-HR. Twelve FTEs continue to staff Max-HR.

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(\$9,515), advisory and assistance services—portion not Max-HR (\$1,053,683), other services (\$854,731), purchase from government accounts (\$487,399), operation and maintenance of equipment (\$15,623), supplies and materials (\$48,104), and equipment (\$566,058).

<sup>21</sup> The following amounts are requested for FY2006 (unless otherwise noted, the increases result from pay raises or inflation): \$5,446,048 for salaries and benefits (includes \$180,000 for one new FTE), \$47,205 for travel, \$9,687 for printing, \$54,372,649 for advisory and assistance services (includes increases of \$17 million for Max-HR and \$300,000 for other HRM initiatives), \$983,116 for other services (includes an increase of \$113,000 for programs), \$496,172 for purchase from government accounts, \$15,905 for operation and maintenance of equipment, \$48,970 for supplies and materials, and \$576,248 for equipment.

<sup>22</sup> U.S. Department of Homeland Security, *Fiscal Year 2006 Congressional Justification*, p. USM-17.

<sup>23</sup> Of the \$413,000, \$300,000 is included under advisory and assistance services and \$113,000 is included under other services.

<sup>24</sup> The requested amount is allocated as follows: \$10 million for training for the department's executives, managers, supervisors, and human resources professionals; \$18 million for detailed systems design and implementation (for access to experts who are assisting in designing the performance management, job evaluation, and compensation systems and pay and performance linkages, and developing and documenting competencies for DHS positions); \$10 million for the conversion of Phase One employees (in DHS headquarters, IAIP, S&T, EPR, and FLETC) from the General Schedule to newly created market-based pay ranges; \$9 million for program management to manage appropriate cost, schedule, and control activities at the departmental level to ensure good management of the personnel system; and \$6 million for the Homeland Security Labor Relations Board (HSLRB) and Mandatory Removal Offense (MRO) Panel. The HSLRB, established in FY2005 as an independent entity that reports to the DHS Secretary, resolves labor-management disputes. The MRO is a separate entity and adjudicates appeals of employees who have been (continued...)

## House-Passed H.R. 2360

The Appropriations Committee tables that accompanied the House-passed bill show an appropriation of \$61.951 million for the Office of the CHCO. This amount would have been allocated as \$8.951 million for salaries and expenses (\$45,000 below the President's request of \$8.996 million) and \$53 million for Max-HR (the same amount as the President's request).<sup>25</sup> According to the committee, however, amendments agreed to by the House would have reduced the funding for the Office of the Under Secretary for Management by \$96.1 million, thereby resulting in reductions, unspecified, in the Under Secretary accounts. Full year funding would have been denied for the one new FTE in the Office of the CHCO requested by the President. The committee assumed that the "new staff will be on board beginning in the second quarter of FY2006."<sup>26</sup> Opposition to any change in the funding for Max-HR was stated by the Office of Management and Budget, DHS itself, and Senator George Voinovich, with particular emphasis on the adverse impact on managerial and supervisory training.<sup>27</sup> The National Treasury Employees Union supported the reduction, saying that \$18 million would have funded contractors working on the design of the performance management component and \$6 million would have funded the establishment of internal labor relations boards at DHS.<sup>28</sup> Section 516 of the House-passed bill would have continued to authorize transfer from the Office of Personnel Management (OPM) to DHS the authority to conduct personnel security and suitability background investigations, update investigations, and periodically re-investigate applicants for, or appointees in certain DHS positions.<sup>29</sup>

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(...continued)

removed from their positions for engaging in mandatory removal offenses.

<sup>25</sup> H.Rept. 109-79, pp. 13-14.

<sup>26</sup> *Ibid.*, p. 14.

<sup>27</sup> U.S. Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 2360—Department of Homeland Security Appropriations Bill, FY2006*, May 17, 2005, p. 2. David McGlinchey, "Homeland Security Appeals for Personnel Funding," *Government Executive*, May 24, 2005. Available on the Internet at <http://www.govexec.com>, visited June 7, 2005. Letter from Senator Voinovich, Chairman, Oversight of Government Management Subcommittee to Senator Judd Gregg, Chairman, Homeland Security Subcommittee provided to CRS by subcommittee staff on May 31, 2005.

<sup>28</sup> The National Treasury Employees Union, "Kelley Welcomes Shift of Substantial DHS Funding Away From Implementing New and Unnecessary Personnel System," News Release, May 20, 2005. Available on the Internet at <http://www.nteu.org>, visited June 7, 2005.

<sup>29</sup> The positions would be in the Office of the Secretary and Executive Management, the Office of the Under Secretary for Management, the Bureau of Immigration and Customs Enforcement, the Directorate of Science and Technology, and the Directorate of Information Analysis and Infrastructure Protection. Upon DHS' request, OPM would cooperate with and assist DHS in any investigation or reinvestigation. The authorization would cease to be effective once the President has selected a single agency to conduct security clearance investigations and that agency has reported to Congress that the agency selected is capable of conducting all necessary investigations in a timely manner or has authorized the entities within DHS covered by Section 516 to conduct their own investigations. This latter provision was added by Amendment No. 139 offered by Representative Tom Davis and agreed to by the House by voice vote on May 17, 2005. According to Representative Davis, the amendment provides that "the Congressionally mandated oversight authority will be responsible for ensuring that investigations for DHS security clearances are done in the most timely and efficient manner once the 9/11 Act reforms take effect." (*Congressional Record*, daily edition, vol. 151, no. 65, May 17, 2005, pp. H3394-H3395.)

## **Senate-Passed H.R. 2360**

Concurring with the Appropriations Committee, the Senate-passed bill provided the Office of the CHCO with the appropriation requested by the President, including \$53 million for Max-HR.<sup>30</sup> DHS is directed to report to the committee by February 18, 2006, on implementation progress, improved mission effectiveness, and projected costs for each fiscal year over the life of the new personnel system.<sup>31</sup> The general provision on background security investigations was not included in the Senate-passed bill.

## **P.L. 109-90**

P.L. 109-90 provides funding of \$38.9 million for the Office of the CHCO, some \$23 million less than the President's budget proposal. The amount would be allocated as \$8.9 million for salaries and expenses (\$96,000 below the President's request) and \$30 million for Max-HR (\$23 million below the President's request). As proposed by the House, a general provision at Section 516 on background investigations is included in the conference agreement. The conference report directs that background investigations be conducted 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 of Science and Technology; and the Directorate for Preparedness.

## **Bureau of Analysis and Operations<sup>32</sup>**

The conferees, pursuant to the Secretary Chertoff's organizational restructuring program that was provided to the Congress on July 13, 2005, propose to disband the Information Analysis and Infrastructure Protection (IAIP) Directorate. The conferees propose transferring the functions that existed within the erstwhile IAIP Directorate to, among other entities, the newly established Preparedness Directorate within Title III and two new Offices within Title I—the Office of Intelligence and Analysis and the Office of Operations Coordination. As such, the activities of Information Analysis (IA) and Infrastructure Protection (IP), formerly under Title IV, Research and Development, Training, Assessments and Services of the DHS appropriations bills, would be separated. The information analysis and operations coordination activities would be funded through a new Analysis and Operations bureau under which the new Operating Expenses account appears in the Conference agreement. Within the H.R. 2360, as approved by conferees, the information analysis functions would fall within Title I - Departmental Management Operations. Organizationally, under Secretary Chertoff's restructuring plan, DHS proposed that the former Assistant Secretary for Intelligence Analysis position be replaced with a Chief Intelligence Officer position, which would report directly to the Secretary. The proposed Office of Intelligence and Analysis will be "... comprised of analysts within the former Information Analysis Directorate

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<sup>30</sup> The Max-HR funding is allocated as \$18 million for detailed systems design and implementation support; \$10 million for training and communication; \$9 million for program management, oversight, and evaluation; \$10 million for initial personnel conversion from the General Schedule; and \$6 million for the Homeland Security Labor Relations Board. (S.Rept. 109-83, p. 101.)

<sup>31</sup> S.Rept. 109-83, p. 13.

<sup>32</sup> Prepared by (name redacted), Specialist in Domestic Intelligence and Counterterrorism, Domestic Social Policy Division.



and draw upon the expertise of other DHS components with intelligence collection and analysis operations.”<sup>33</sup> P.L. 109-90 adopts these proposals.

**Budget, Budget Structure, and Transfers**

As previous iterations of this report have outlined, prior to Secretary Chertoff’s proposed restructuring program, the IAIP Directorate had two accounts—(1) Management and Administration (M&A), which included the budgets for the Office of the Under Secretary for IAIP and Other Salaries and Expenses—and (2) Assessments and Evaluations (A&E), which covered intelligence analysis and infrastructure protection/vulnerability assessments. The President’s request for FY2006 for M&A for FY2006 was \$204 million, and for A&E it was \$669.2 million, for a total IAIP requested budget amount of \$872.2 million.

*Cross-Walk Between President’s Proposed and Amended Budget Structures*

On July 22, 2005, based on Secretary Chertoff’s organizational restructuring plan, the President proposed a number of budget amendments for FY2006 for the Department of Homeland Security. According to a presidential communication,<sup>34</sup> the overall discretionary budget authority for FY2006 for the department would not be increased. In short, under the president’s proposed budget amendments, \$311.2 million was requested for the new Analysis and Operations bureau, Operating Expenses account. **Table 6** outlines the changes germane to the IA function made pursuant to this communication.

**Table 6. Proposed FY2006 DHS Budget Amendments Germane to IA**  
(budget authority in millions of dollars)

Account	Moved into	Moved out
Departmental Management, Operations, Office of the Secretary and Executive Management	\$1.8 taken from IAIP, Management and Administration and moved into Policy Office in the Office of the Secretary and Executive Management	\$8.409 moved to Analysis and Operations, Operating Expenses as the proposed Operations Integration Staff moves to the Analysis and Operations bureau.
IAIP Management and Administration (M&A)		\$204. Composed of (1) \$97.7 to new Preparedness Directorate, (2) \$104.5 to new Analysis and Operations bureau, operating expenses account, and (3) \$1.8 to Departmental Management—Policy Office
IAIP Assessments and Evaluations (A&E)		Of the FY2006 requested resources, \$195.4 moves into the new Analysis and Operations bureau, Operating Expenses account.
Analysis and Operations—operating	\$311.2. Resources derived from the	

<sup>33</sup> See “Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Department of Homeland Security,” Department of Homeland Security, July 13, 2005.

<sup>34</sup> See *Request for FY2006 Budget Amendments—Communication from the President of the United States Transmitting A Request for FY 2006 Budget Amendments for the Department of Homeland Security*, July 22, 2005, H.Doc. 109-50.

Account	Moved into	Moved out
expenses (new bureau and account)	following accounts: (1) \$104.5 from IAIP M&A account, (2) \$195.4 from IAIP's A&E account, (3) \$8.4 from Departmental Operations, and (4) \$2.9 from Office of the Under Secretary for Border and Transportation Security, Salaries & Expenses.	

**Source:** Communication from the President of the United States Transmitting A Request for FY2006 Budget Amendments for the Department of Homeland Security, July 22, 2005, H.Doc. 109-50.

### *Top Line Figures for the IA Function and Conferee Adjustments*

According to the conference report, \$255.5 million would remain available until September 30, 2007, for "... necessary expenses for information analysis and operations coordination activities authorized by Title II of the Homeland Security Act of 2002 (6 U.S.C. et. seq.)."<sup>35</sup> Under the budget structure as agreed to by the conferees, these funds would fall within Title I of the appropriations bill, under the Analysis and Operations bureau, operating expenses account. This represents a reduction of \$55.7 million or 17.9% from the requested amount of \$311.2 million. Of the amount transferred into Analysis and Operations from the erstwhile IAIP, M&A account, the conferees, reduced the amount based:

... on a continuing large number of vacancies. The Secretary shall submit to the Committees on Appropriations no later than February 10, 2006, a report that identifies staffing and other resource requirements that reconciles the Department's intelligence mission responsibilities under the various Acts and executive orders.<sup>36</sup>

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

Title II funds Security, Enforcement, and Investigations. The largest component of Title II was the Directorate of Border and Transportation Security (BTS). BTS was comprised of the Office of the Under Secretary for BTS, CBP, ICE, and TSA. For FY2006, the Administration proposed the creation of SCO within BTS (now located in the Office of Policy under P.L. 109-90), that would coordinate the passenger (and to some extent the cargo) screening operations of BTS. Also included in Title II (though they were not operationally a part of the BTS Directorate) are the U.S. Coast Guard, and the U.S. Secret Service. With the passage of P.L. 109-90 the Office of the Undersecretary for BTS is eliminated, and the agencies (CBP, ICE, and TSA) that were a part of BTS report directly to the Office of the Secretary.

**Table 7** shows the FY2005 enacted and FY2006 requested appropriations for Title II. The Administration requested an appropriation of \$20.6 billion in net discretionary budget authority for Title II for FY2006. This amount represented a decrease of \$13 million or less than 1% decrease compared to the FY2005 enacted total of \$20.7 billion.<sup>37</sup> While almost every account in

<sup>35</sup> See conference report, H.Rept. 109-241, in *Congressional Record*, Sept. 29, 2005, p. H8586.

<sup>36</sup> See H.Rept. 109-241, as reported in *Congressional Record*, Sept. 29, 2005, p. H8596.

<sup>37</sup> This number does not include the FY2005 supplemental appropriation for Title II in P.L. 109-13.

Title II is up, the requested gross increase of \$2,138 million from FY2005 to FY2006 is more than offset by the total increase in offsetting collections of \$2,202 million in Title II; \$1,780 million of which would be the result of the proposed fee increase within TSA. For the FY2006 request, the BTS Directorate accounts for 67% of total appropriated DHS budget authority, while Title II accounts for 69% of total appropriated DHS budget authority.

House-passed H.R. 2360 recommended a net appropriation of nearly \$22 billion for activities and agencies of Title II. This amount represented a \$1.4 billion or nearly 7% increase over the President’s requested level for FY2006, and a \$728 million or 3% increase over the FY2005 enacted level (including supplemental appropriations). H.Rept. 109-79 did not approve the TSA security fee increase requested by the Administration. House-passed H.R. 2360 therefore shows an increased appropriation, as compared to the Administration’s request. House-passed H.R. 2360 provided \$22 billion for Title II, which accounts for 69% of total DHS budget authority. Senate-passed H.R. 2360 provided \$22.2 billion for the activities of Title II. This amount represented an increase of \$1,625 million or 7% as compared to the President’s request, an increase of \$203 million or 1% as compared to the House-passed amount; and an increase of \$931 million or 4% as compared to the FY2005 enacted amount. The \$22.2 billion that would have been provided by the Senate-passed version of H.R. 2360 would have accounted for 70% of total DHS budget authority in FY2006. P.L. 109-90 provides \$22.4 billion for the activities of Title II, representing an increase of \$141 million or less than 1% as compared to FY2005, an increase of \$1,835 million or 9% as compared to the request for FY2006, an increase of \$403 million or 2% as compared to the House-passed version of H.R. 2360, and an increase of \$208 million or 1% as compared to the Senate-passed version of H.R. 2360.

**Table 7. Title II: Security, Enforcement, and Investigations**  
(budget authority in millions of dollars)

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
<b>Office of the Undersecretary for Border and Transportation Security</b>	<b>10</b>	<b>11</b>	<b>9</b>	<b>10</b>	<b>—<sup>a</sup></b>
<b>Screening and Operations Office<sup>b</sup></b>					
—US-VISIT <sup>c</sup>	340	390	390	340	340
—Other programs	—	135	21	—	—
—Fee accounts <sup>d</sup>	—	321	—	—	—
<b>Gross total</b>	<b>340</b>	<b>846</b>	<b>411</b>	<b>340</b>	<b>340</b>
—Offsetting collections	—	-321	—	—	—
<b>Net total</b>	<b>340</b>	<b>525</b>	<b>411</b>	<b>340</b>	<b>340</b>
<b>Customs &amp; Border Protection<sup>a</sup></b>					
—Salaries and expenses <sup>e</sup>	4,658	4,730	4,886	4,922	4,850 <sup>f</sup>
—Rescissions <sup>g</sup>	-139	—	—	-14	—
—Automation modernization	450	458	458	458	456
—Air and Marine Operations	258	293	348	321	400
—Construction	144 <sup>h</sup>	93	93	311	280 <sup>i</sup>
—Fee accounts <sup>i</sup>	1,079	1,142	1,142	1,142	1,142

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
<b>Gross total</b>	<b>6,450</b>	<b>6,717</b>	<b>6,927</b>	<b>7,140</b>	<b>7,128</b>
—Offsetting collections	-1,079	-1,142	-1,142	-1,142	-1,142
<b>Net total</b>	<b>5,371</b>	<b>5,575</b>	<b>5,785</b>	<b>5,998</b>	<b>5,986</b>
<b>Immigration &amp; Customs Enforcement</b>					
—Salaries and expenses	2,893 <sup>k</sup>	2,892	3,064	3,052	3,121 <sup>l</sup>
—Federal Air Marshals <sup>m</sup>	663	689	699	679	—
—Federal Protective Services (FPS)	478	487	487	487	487
—Automation & infrastructure modernization	40	40	40	50	40
—Construction	26	27	27	27	27
—Fee accounts <sup>n</sup>	200	229	229	229	253
—Rescission <sup>o</sup>	-85	—	—	—	—
<b>Gross total</b>	<b>4,215</b>	<b>4,364</b>	<b>4,546</b>	<b>4,524</b>	<b>3,928</b>
—Offsetting FPS fees	-478	-487	-487	-487	-487
—Offsetting collections	-200	-229	-229	-229	-253
<b>Net total</b>	<b>3,537</b>	<b>3,648</b>	<b>3,830</b>	<b>3,808</b>	<b>3,188</b>
<b>Transportation Security Administration<sup>a</sup></b>					
—Aviation security (gross funding)	4,324	4,735	4,592	4,452	4,607
—Surface Transportation Security	48	32	36	36	36
—Credentialing activities (appropriation)	—	—	84	75	75
—Credentialing/Fee accounts <sup>p</sup>	67	—	180	180	180
—Intelligence	14	21	21	21	21
—Research and development <sup>q</sup>	178	—	—	—	—
—Federal Air Marshals <sup>m</sup>	—	—	—	—	686
—Administration	520	524	520	470	489
—Aviation security mandatory spending <sup>r</sup>	250	250	250	250	250
<b>Gross total</b>	<b>5,401</b>	<b>5,562</b>	<b>5,683</b>	<b>5,484</b>	<b>6,344</b>
—Offsetting collections <sup>s</sup>	-1,823	-3,670	-1,990	-1,990	-1,990
—Credentialing/Fee accounts	-67	—	-180	-180	-180
—Aviation security mandatory spending	-250	-250	-250	-250	-250
<b>Net total</b>	<b>3,260</b>	<b>1,641</b>	<b>3,263</b>	<b>3,065</b>	<b>3,925</b>
<b>U.S. Coast Guard</b>					
—Operating expenses	5,303 <sup>t</sup>	5,547	5,500	5,459	5,724 <sup>u</sup>
—Rescission	—	—	—	—	-276 <sup>v</sup>
—Environmental compliance & restoration	17	12	12	12	12
—Reserve training	113	119	119	119	119
—Acquisition, construction, & improvements	1,031 <sup>w</sup>	1,269	798	1,225	1,217 <sup>x</sup>

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
—Rescission <sup>y</sup>	-16	—	—	-83	—
—Alteration of bridges	16	—	15	15	15
—Research, development, tests, & evaluation <sup>z</sup>	19	—	—	19	17
—Retired pay (mandatory, entitlement)	1,085	1,014	1,014	1,014	1,014
<b>Gross total</b>	<b>7,568</b>	<b>7,962</b>	<b>7,458</b>	<b>7,780</b>	<b>7,842</b>
<b>U.S. Secret Service</b>					
—Salaries and expenses; construction	1,175	1,204	1,233	1,192	1,216 <sup>aa</sup>
<b>Net total</b>	<b>1,175</b>	<b>1,204</b>	<b>1,233</b>	<b>1,192</b>	<b>1,216</b>
<b>Gross Budget Authority: Title II</b>	<b>25,157</b>	<b>26,665</b>	<b>26,267</b>	<b>26,470</b>	<b>26,800</b>
<b>Total offsetting collections: Title II</b>	<b>-3,897</b>	<b>-6,099</b>	<b>-4,278</b>	<b>-4,278</b>	<b>-4,302</b>
<b>Net Budget Authority: Title II</b>	<b>21,260</b>	<b>20,566</b>	<b>21,988</b>	<b>22,193</b>	<b>22,498</b>

**Source:** CRS analysis of the FY2006 President’s Budget, and DHS *Budget in Brief*, House Appropriation Committee tables of May 20, 2005, House-passed H.R. 2360 and H.Rept. 109-79; Senate-passed H.R. 2360 and S.Rept. 109-83; and the Conference Report to H.R. 2360, H.Rept. 109-241.

**Note:** Totals may not add due to rounding. Amounts in parentheses are non-adds. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- a. The functions of the Office of the Under Secretary for Border and Transportation Security have been transferred to the Office of Policy in Title I, pursuant to the Secretary’s July reorganization proposal.
- b. DHS proposed creating this new office, which would have combined the following programs and fees: US-VISIT; FAST and NEXUS/SENTRI from CBP; and Secure Flight, Crew Vetting, Credentialing Startup, TWIC, Registered Traveler, HAZMAT, and Alien Flight School from TSA. The House Appropriation Committee denied the creation of the SCO, but did propose moving FAST and NEXUS/SENTRI from CBP to the BTS management level, and combining these two programs with USVISIT in a new Automation Modernization office. Programs from TSA proposed for transfer to SCO would have remained in TSA under House-passed H.R. 2360. The Senate-passed version of H.R. 2360 also denied the creation of the SCO, left funding for FAST and NEXUS/SENTRI in CBP, and funding for the TSA programs proposed for transfer to the SCO remained in TSA. P.L. 109-90 provides \$4 million for SCO in Title I, but does not transfer any of the proposed programs to the new office.
- c. United States Visitor & Immigrant Status Indicator Project.
- d. Fees include TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks. Both the House-passed and Senate-passed versions of H.R. 2360, and P.L. 109-90 left these programs and their fees in TSA.
- e. Includes \$124 million in funding provided by P.L. 109-13, the Emergency Supplemental Appropriations Act.
- f. Includes \$24 million, pursuant to P.L. 109-148, to replace and repair equipment and facilities damaged by hurricanes and other disasters.
- g. Includes a \$63 million rescission in P.L. 108-11 and a \$76 million rescission in P.L. 109-13 from the CBP salaries and expenses account.
- h. Includes \$52 million in supplemental funding provided by P.L. 109-13.
- i. Includes \$10 million pursuant to P.L. 109-148, to rebuild and repair structures damaged by hurricanes and other disasters.
- j. Fees include COBRA, Land Border, Immigration Inspection, Immigration Enforcement, and Puerto Rico.
- k. Includes \$454 million in supplemental funding provided by P.L. 109-13.
- l. Includes \$13 million, pursuant to P.L. 109-148, to replace and repair equipment and facilities damaged by hurricanes and other disasters.

- m. P.L. 109-90 moves FAMS to TSA, pursuant to Secretary Chertoff's reorganization proposal submitted to Congress on July 13, 2005.
- n. Fees included Exam, Student Exchange and Visitor Fee, Breached Bond, Immigration User, Land Border.
- o. Reflects the \$85 million rescission from ICE in P.L. 109-13.
- p. Fees include TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks, which were included in the proposed SCO in the President's request, but are retained in TSA as enacted in P.L. 109-90.
- q. The President's request for DHS proposed transferring the Research and Development account from TSA to the Directorate of S&T.
- r. Aviation Security Capital Fund, used for installation of Explosive Detection Systems at airports.
- s. In FY2006, DHS proposes a \$3 increase in the passenger security fee for one-way and multi-leg flights, generating \$1.56 billion in new revenue. There is a discrepancy between the Administration's budget documents and the Committee tables concerning the aviation security fee offset amount. The Administration's budget documents report the FY2005 enacted amount as \$2,330 million, while the Committee tables report the FY2005 enacted amount as \$1,890 million. For FY2006, with the requested fee increase the Administration shows \$3,889 million in offsetting aviation security fees, while the Committee tables show \$3,670 million, as scored by CBO. P.L. 109-90 did not approve the proposed fee increase, and assumes an offset of \$1,990 million, and a net appropriation of \$3,925 million for TSA.
- t. Includes \$112 million in supplemental funding provided by P.L. 109-13.
- u. Includes, pursuant to P.L. 109-148, \$232 million in supplemental funding for the Operations and Expenses account, \$75 million in supplemental funding for the Acquisition, Construction and Improvements account, and a rescission of \$261 million (of funds previously appropriated by P.L. 109-90) from the Operating Expenses account.
- v. Includes a rescission of unobligated port assessments funding previously provided in P.L. 108-111, and a rescission of \$261 million from funds appropriated by P.L. 109-90.
- w. Does not include an additional \$34 million transfer of funds from the Department of Defense to the Coast Guard pursuant to P.L. 108-287. Includes \$49 million in supplemental funding provided by P.L. 109-13.
- x. Includes \$75 million, pursuant to P.L. 109-148, for necessary expenses related to the consequences of hurricanes and other natural disasters.
- y. \$16 million rescission from FY2005 funding pursuant to P.L. 108-334, and \$83 million rescission from P.L. 108-90.
- z. President requested transferring the Research, Development, Tests and Evaluation account from the Coast Guard to the S&T Office, but P.L. 109-90 does not adopt that transfer.
- aa. Includes \$4 million, pursuant to P.L. 109-148, for equipment, vehicle replacement, and personnel relocation due to the consequences of hurricanes and other natural disasters.

## **Office of Screening Operations (SCO)<sup>38</sup>**

As a part of the FY2006 request, the Administration proposed the creation of a new SCO to coordinate DHS' efforts to screen people (and to some extent cargo) as they enter and move throughout the country. Programs proposed for transfer to this office included the US Visitor and Immigrant Status Indicator Project (US-VISIT); Free and Secure Trade (FAST) and NEXUS/SENTRI, from CBP; Secure Flight, Transportation Worker Identification Credential (TWIC), Registered Traveler, Hazardous Materials (HAZMAT) background checks, and the Alien Flight School background checks program from TSA.

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<sup>38</sup> Section prepared by (name redacted), Analyst in Domestic Security, Domestic Social Policy Division.

## **President's Request**

The Administration requested \$846 million in gross budget authority for SCO for FY2006. The request included \$390 million for the US-VISIT program<sup>39</sup> (an increase of \$50 million over the enacted FY2005 amount), \$94 million for Secure Flight<sup>40</sup> (an increase of \$49 million over the enacted FY2005 amount), \$7 million for the driver registration component of FAST, \$14 million for NEXUS/SENTRI, and \$20 million for the stand up of the Credentialing Coordination Office. In addition to appropriated activities, SCO would have overseen several fee funded activities including \$245 million for TWIC and other TSA credentialing activities; \$23 million for the Registered Traveler program; \$44 million for HAZMAT checks; and \$10 million for Alien Flight School background checks. The net requested appropriation for SCO is \$525 million.

## **House-Passed H.R. 2360**

The Committee noted that while the SCO office “may have merit,” a broader justification is required for it than what was given by the Department. The Committee therefore denied this consolidation and recommended no funds for SCO. Instead, the Committee recommended establishing a new Office of Transportation Vetting and Credentialing within TSA to oversee the Secure Flight, Crew Vetting, Registered Traveler, TWIC, HAZMAT, and Alien Flight School programs. US-VISIT, FAST, and NEXUS/SENTRI would have been funded within a new BTS Automation Modernization office.<sup>41</sup>

## **Senate-Passed H.R. 2360**

The Senate-passed version of H.R. 2360 denied the creation of the SCO. In contrast to the House-passed version of H.R. 2360, the Senate-passed version left funding for the FAST and NEXUS/SENTRI programs within CBP rather than placing them within a new BTS Automation Modernization office. Both the House and Senate-passed versions of the bill left funding for the TSA programs proposed for transfer to the SCO within TSA.

## **P.L. 109-90**

P.L. 109-90 provides \$4 million in Title I, under the Departmental Operations and Management for an Office of Screening Coordination and Management. However, the P.L. 109-90 does not transfer any of the programs requested for transfer by the President to this office.

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<sup>39</sup> For more information on US-VISIT, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti and (name redacted).

<sup>40</sup> See CRS Report RL32802, *Homeland Security: Air Passenger Prescreening and Counterterrorism*, by (name redacted) and William Krouse.

<sup>41</sup> H.Rept. 109-79, pp. 23 and 52.

## **Customs and Border Protection (CBP)<sup>42</sup>**

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 on-going 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; and the Border Patrol.

### **President's Request**

The Administration requested an appropriation of \$6,717 million in gross budget authority for CBP in FY2006, amounting to a 4% increase over the enacted FY2005 level (including supplemental appropriations) of \$6,450 million. The Administration requested an appropriation of \$5,575 million in net budget authority for CBP, representing a 4% increase over the FY2005 enacted level of \$5,371 million. The request included the following program increases (which are discussed later in this report):

- \$125 million for weapons of mass destruction (WMD) detection technology;
- \$37 million for Border Patrol staff;
- \$31.7 million for long range radar for Air and Marine Operations;
- \$20 million for Border Patrol aircraft replacement;
- \$19.8 million for the America Shield Initiative;
- \$8.2 million for the Customs-Trade Partnership Against Terrorism (C-TPAT);
- \$5.4 million for the Container Security Initiative (CSI);
- \$5.4 million for enhancements to the Automated Targeting System (ATS);
- \$3.2 million for the Homeland Security Data Network;
- \$3 million for IDENT/IAFIS;
- \$2 million for the Immigration Advisory Program (IAP); and
- \$1 million for the Arizona Border Control Initiative (ABCI).

### **House-Passed H.R. 2360**

The House Appropriators added \$210 million to both the gross and net budget authorities for CBP in order to cover a range of programs. The House-passed H.R. 2360 recommended a net appropriation for CBP is \$5.785 billion, an 8% increase over the FY2005 enacted level and a 4%

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<sup>42</sup> Section prepared by (name redacted) and (name redacted), Analysts in Domestic Security, Domestic Social Policy Division.



increase over the President's FY2006 request.<sup>43</sup> House-passed H.R. 2360 recommended fully funding all of the above listed requested increases, and providing an additional \$150 million above the request for Border Patrol staffing. However, the House recommended making unavailable the \$1 million requested increase for the IAP until CBP submits the report on the program that has been overdue since January 1.

### **Senate-Passed H.R. 2360**

The Senate-passed version of H.R. 2360 recommended a net appropriation of \$ 5,998 million for CBP, representing an increase of \$213 million or nearly 4% compared to the amount provided by the House in H.R. 2360; an increase of \$423 million or nearly 8% as compared to the FY2006 request; and an increase of \$627 million or nearly 12% as compared to the FY2005 enacted level. The Senate-passed version of H.R. 2360 would have funded the \$125 million requested increase for radiation portal monitors (RPMs) under the S&T Directorate, rather than under CBP; and would have provided an additional \$241 million for Border Patrol staffing. Amounts provided for CBP in Senate-passed H.R. 2360 include \$21 million in FAST and NEXUS/SENTRI funding that had been requested for transfer to the Administration proposed SCO (the House-passed version of H.R. 2360 placed this funding in a new BTS-level Automation Modernization Account).

### **P.L. 109-90**

P.L. 109-90 provides a net appropriation of \$5,952 million for CBP, which is \$46 million or approximately 1% less than provided in the Senate-passed version of H.R. 2360, \$167 or nearly 3% more than provided by the House-passed version of H.R. 2360, \$377 million or nearly 7% more than requested for CBP in FY2006, and \$581 million or nearly 11% more than enacted in FY2005. P.L. 109-90 provides no funding for radiation portal monitors under this account, and adopts the House recommendation that these be funded under S&T. P.L. 109-90 does not transfer the FAST and NEXUS/SENTRI programs to the proposed SCO, and instead fully funds FAST at \$7 million, and NEXUS/SENTRI at \$14 million for FY2006. P.L. 109-90, concurring with both the House and the Senate, also provides an additional \$241 million above the request to fund an additional 1,500 Border Patrol agents. P.L. 109-90 also agreed to makes \$10 million unavailable for obligation until CBP submits a detailed five-year plan on CBP's air and marine operations to the Appropriation Committees.

### **Issues for Congress**

Potential CBP issues for Congress include cargo and container security; targeting and risk assessments; cargo inspection technology; air and marine operations; the number of border patrol agents; IDENT/IAFIS integration; ABCI; and the America Shield Initiative.

### ***Cargo and Container Security***

CBP's cargo security strategy includes two significant programs: the CSI, and C-TPAT. CSI is a CBP program that stations CBP officers in foreign sea ports to target marine containers for

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<sup>43</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2006*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 109-79, p. 142.

inspection before they are loaded onto U.S.-bound vessels. The FY2006 request included an additional \$5.4 million for CSI to support the expansion of CSI activities in seven new ports in seven countries. House-passed H.R. 2360 recommended fully funding the requested increase, a total of nearly \$139 million for CSI in FY2006. However, the House Committee also noted that it has not yet received a report detailing the spending and planning projections for CSI for FY2005-2009, and directs CBP to submit the report as soon as possible. The Committee also included a provision in H.R. 2360 withholding \$70 million until this report is submitted as directed by H.Rept. 108-541. The Senate Committee recommended fully funding the request for CSI, but notes its concern about CSI host-country cooperation and directs CBP to submit a report to the Committee no later than February 18, 2006, detailing specific steps the Department is taking to address any reluctance on the part of foreign countries to fully cooperate. P.L. 109-90 fully funds the requested \$139 million for CSI in FY2006, and concurs with the reporting requirements on CSI outlined in both the House and Senate reports, and direct CBP to submit both reports no later than February 10, 2006. Further, the conferees also direct DHS, in conjunction with the Department of Energy (DOE), to submit a report by February 10, 2006, on the progress made on various radiation technology efforts, and (among other things) the coordination between CBP's CSI and DOE's Megaports Initiative.

C-TPAT is a public-private partnership aimed at securing the supply chain from point of origin through entry into the United States. The FY2006 request included an increase of \$8.2 million for C-TPAT to be used for travel and the purchase of equipment and supplies for Supply Chain Specialists to conduct an increased number of C-TPAT security profile validations. House-passed H.R. 2360 recommended fully funding the request for C-TPAT. The Senate-passed version of H.R. 2360 also recommended fully funding the request for C-TPAT, and S.Rept. 109-83 directs CBP to submit a report by February 18, 2006, providing detailed performance measures, human capital plans, and any plans or actions taken that would address the recommendations made by GAO's recent report on the program.<sup>44</sup> P.L. 109-90 fully funds the \$54 million request for C-TPAT for FY2006.

### *Cargo Inspection Technology*

The FY2006 Administration request for CBP includes an increase of \$125 million for technology to detect WMD. This request included \$77 million for the purchase of additional radiation portal monitors (RPMs), and the purchase of next generation RPMs. House-passed H.R. 2360 recommended fully funding the \$188 million request for cargo inspection technology. H.Rept. 109-79 directs CBP to submit two reports no later than January 16, 2006: (1) detailing the current status and investment plan for RPMs through FY2010; and (2) detailing the projected spending, maintenance and replacement of large-scale non-intrusive inspection (NII) equipment (for example, truck x-ray machines, and vehicle and cargo inspection systems) for FY2006-2010. Senate-passed H.R. 2360 recommended fully funding the requested increase of \$125 million for RPMs, but would have funded the request under the S&T Directorate rather than under CBP, as the Committee believes that S&T is the appropriate organization to test, pilot, and direct procurement of RPMs. P.L. 109-90 fully funds the \$125 million request for RPMs, and concurs with the Senate by placing the funding within the S&T Directorate, rather than under CBP.

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<sup>44</sup> GAO, "Partnership Program Grants Importers Reduced Scrutiny with Limited Assurance of Improved Security," GAO-05-404.

### ***Air and Marine Operations (AMO)***

With the FY2005 Appropriation, AMO was transferred to CBP, where it is now located. The FY2006 request included an increase of \$31.7 million for long range radar (LRR) coverage for AMO. This increase was requested to finance a 50% share of the cost (the other 50% share to be covered by the Department of Defense) of a primary Federal Aviation Administration (FAA) LRR feed that FAA intends to discontinue using. House-passed H.R. 2360 recommended fully funding the request for AMO, and providing an additional \$60 million above the request for AMO: \$14 million for the acquisition of manned covert surveillance aircraft, \$15 million for the acquisition and deployment of palletized sensor packages for the P-3 Slick aircraft, \$16 million for the P-3 service-life extension program, and \$5 million for additional staff and equipment. The Senate-passed version of H.R. 2360 would have fully funded the requested increase for AMO, and provided an additional \$33 million in total for AMO: \$5 million for staff for the fourth Northern Border airwing base in Great Falls, Montana; \$13 million for the operations of the fourth Northern Border airwing base; and \$15 million for the P-3 Slick palletized sensor packages. The conferees agreed to provide \$400 million for AMO operations, maintenance and procurement for FY2006. This amount, adopted in P.L. 109-90 includes \$15 million for the P-3 palletized sensor systems; \$16 million for the P-3 service-life extension; \$14 million for manned, covert surveillance aircraft; nearly \$13 million for the fourth Northern Border airwing base in Montana; \$20 million for the replacement of BP helicopters; \$10 million for unmanned aerial vehicles; \$19 million for the operation and maintenance of legacy BP aircraft and vessels; and \$2 million to begin work on an airwing in North Dakota. The conferees also agreed to withhold \$10 million from CBP's salaries and expenses account until the Department submits a five-year strategic plan for CBP's Air program.

### ***Increase in Border Patrol Agents***

The FY2006 request for CBP proposed adding 210 agents to the USBP workforce in FY2006 to backfill positions vacated along the Southwest border. These vacancies were the result of agents being transferred from the Southwest border in order to fulfill the requirement enacted in the USA PATRIOT Act (P.L. 107-56, §402) to triple the number of agents assigned to the Northern border. This requested increase was well below the 2,000 additional agents authorized by the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5202). The House Appropriators addressed this issue by adding \$150 million to the President's request, which, combined with the \$124 million available in the FY2005 supplemental appropriation (P.L. 109-13), will allow the Border Patrol to add 1,500 agents to its workforce by the end of FY2006.<sup>45</sup> The Senate Appropriations Committee concurred with the House in adding 1,500 agents to the USBP in FY2006 and increases the President's request by \$241 million.<sup>46</sup> P.L. 109-90 also includes this increase.

### ***IDENT/IAFIS***

According to CBP, the integration of the Border Patrol's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (IAFIS) is progressing and linked IDENT/IAFIS workstations have been

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<sup>45</sup> H.Rept. 109-79, p. 24.

<sup>46</sup> S.Rept. 109-83, p. 24.

deployed to all USBP stations. This would seem to address some of the concerns about the slow pace of the integration project raised by House Appropriators in FY2005.<sup>47</sup> The president's request included an increase of \$3 million for the system and noted that BTS has assumed ownership for the integration project. While the integration of the two biometric databases has given USBP agents access to the FBI's criminal records, leading to an 8.5% increase in the identification of criminal aliens, a possible issue for Congress may be the USBP's apparent lack of access to the name-based Terrorist Watchlist at their stations. This may be of concern due to recent Congressional testimony by DHS acting Secretary Admiral James Loy that Al-Qaeda is considering infiltrating the Southwest border due to a belief that "illegal entry is more advantageous than legal entry for operational security reasons."<sup>48</sup> House Appropriators expressed frustration with CBP that the report they requested in the FY2005 appropriation bill on the IDENT/IAFIS integration project has not been delivered yet. They directed DHS to submit the report by July 1, 2005. The Senate Appropriation Committee also funded the President's request and directed DHS to submit the report on the project that was requested in FY2005 which continues to be outstanding.<sup>49</sup>

### ***Arizona Border Control Initiative (ABCI)***

In response to the continuing high levels of apprehensions in the Tucson sector, the Arizona Border Control (ABC) initiative was launched on March 16, 2004. ABC is a multi-disciplinary initiative that seeks to coordinate federal, state, and local authorities to control the Arizona border. ABC is specifically aimed at stopping cross-border smuggling operations by detecting, arresting, and deterring all groups seeking to bring people, drugs, weapons, and other merchandise into the country illegally. 200 additional permanent border patrol agents and 60 special operations agents trained for search and rescue operations were assigned to the Tucson sector over the summer of 2004, bringing the total number of agents there to approximately 2,000. According to DHS, in the first six months of the ABC, apprehension of unauthorized aliens increased 56% from apprehension during the same period of the previous year. From March 16, 2004 to September 7, 2004, 351,700 unauthorized aliens were apprehended compared to 225,108 unauthorized aliens during the same period in 2003. CBP proposed an increase of \$1 million to continue this multi-disciplinary program in FY2006, though most funding for the program will come from ICE. House Appropriators supported this multi-agency approach to protecting the border and fund the President's request and direct CBP to work closely with the Tohono O'odham Nation along the Arizona border to ensure that the Nation is fully aware of CBP's actions on their territory.<sup>50</sup> The Senate Appropriations Committee fully funded the President's request.

### ***America Shield Initiative***

CBP proposed an increase of \$19.8 million for the America Shield Initiative (ASI), formerly known as the Integrated Surveillance Intelligence System (ISIS). ASI integrates Remote Video Surveillance camera systems, sensors, and the Integrated Computer Assisted Detection (ICAD)

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<sup>47</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany H.R. 4567, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-541 (Washington, GPO, 2004), pp. 18-19.

<sup>48</sup> U.S. Congress, Senate Select Committee on Intelligence, *National Security Threats to the United States*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., Feb. 16, 2005.

<sup>49</sup> S.Rept. 109-83, p. 19.

<sup>50</sup> H.Rept. 109-79, p. 28.

database into a multi-faceted network capable of detecting illegal entries in a wide range of climate conditions. The requested FY2006 funding will be used to deploy surveillance assets to high-priority areas such as Tucson, Yuma, and El Paso on the southwest border, and Blaine, Spokane, Buffalo, and Swanton (Vermont) on the northern border. House Appropriators fully funded the President's request and, citing concerns with the contracting problems identified in the ISIS program by the General Services Administration Inspector General, requested a report by January 16, 2006 on these problems and the specific measures taken by CBP to address them. A report on the specific performance metrics used by the ASI program was also requested by January 16, 2006.<sup>51</sup> The Senate Appropriations Committee fully funded the President's request and encouraged program managers to explore off-the-shelf solutions as they develop the program. The conferees did not fund the President's request for a \$19.8 million increase, noting that DHS is currently reviewing the entire planning process for this program and may suspend all major procurement action until this review is completed.

### ***Construction***

The President requested \$93 million for this account, which covers the construction of the tactical infrastructure that provides physical impediments to illegal entry. Construction under this account includes the erection of lights, fences, and vehicle barriers, as well as the creation of access roads. The House Appropriations Committee fully funded the President's request. The Senate Appropriations Committee increased the President's request by \$218 million, to \$311 million. Included in this increase was \$82 million for the construction of facilities to accommodate the 1,500 additional USBP agents, as well as \$55 million to complete the fence in the San Diego Sector and \$55 million to expand the USBP tactical infrastructure in the Tucson Sector.<sup>52</sup> The conferees provided \$270 million for the Construction account, including \$35 million each for the San Diego fence and the Tucson Sector tactical infrastructure expansion.

### **Immigration and Customs Enforcement (ICE)<sup>53</sup>**

ICE focuses on enforcement of immigration and customs laws within the United States. ICE develops intelligence to reduce illegal entry into the United States, and is responsible for investigating and enforcing violations of the immigration laws (e.g., alien smuggling, hiring unauthorized alien workers). ICE is also responsible for locating and removing aliens who have overstayed their visas, entered illegally, or have become deportable by committing a crime. In addition, ICE develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling, fraud, forced labor, trade agreement noncompliance, and vehicle and cargo theft. Furthermore, this bureau oversees the building security activities of the Federal Protective Service, formerly of the General Services Administration. The Federal Air Marshals Service (FAMS)<sup>54</sup> was returned from ICE to TSA pursuant to the reorganization proposal of July 13, 2005. The Office of Air and Marine Interdiction was transferred from ICE to CBP, and therefore the totals for ICE do not include Air and Marine Interdiction funding which is included under CBP.

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<sup>51</sup> H.Rept. 109-79, pp. 27-28.

<sup>52</sup> S.Rept. 109-83, p. 30.

<sup>53</sup> Section prepared by (name redacted), Analyst in Domestic Security, and (name redacted), Analyst in Social Legislation, Domestic Social Policy Division.

<sup>54</sup> FAMS transferred to ICE from TSA in Aug. of 2003.

## **President's Request**

The Administration requested an appropriation of \$4,364 million in gross budget authority for ICE in FY2006. This represents a 4% increase over the enacted FY2005 level (including supplemental appropriations) of \$4,215 million. The Administration requested an appropriation of \$3,648 million in net budget authority for ICE in FY2006, representing a 3% increase over the FY2005 enacted level of \$3,537 million. The request included the following program increases:

- \$105 million for the Office of Investigations;
- \$90 million for custody management and detention bedspace;
- \$43.7 million for ICE's Organized Crime and Drug Enforcement Task Force (OCDETF) activities;
- \$25 million for ABCI and Interior Repatriation;
- \$24 million for detention and removal;
- \$18 million for temporary worker worksite enforcement;
- \$11.3 million for the Homeland Security Data Network;
- \$9.9 million for the Federal Air Marshals (FAMS);
- \$8.8 million for Fugitive Operations;
- \$5.6 million for Institutional Removal Program (IRP);
- \$5.4 million for Alternatives to Detention;
- \$5 million for Visa Security; and
- \$3.5 million for legal resources.

## **House-Passed H.R. 2360**

House-passed H.R. 2360 provided \$3,830 million for ICE including \$699 million for FAMS, or \$3,131 million without funding for FAMS. Of the appropriated amount, \$5 million was to be used to implement §287(g) of the INA; and \$11.2 million was designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens. House-passed H.R. 2360 also would have withheld \$20 million of the money appropriated to DHS' Office of the Secretary and Executive management until the Secretary of DHS submitted a report to the Appropriations Committee outlining an immigration enforcement strategy to reduce the number of unauthorized aliens in the United States by 10% each year.

Additionally, H.Rept. 109-79 recommended fully funding the President's requests and recommended an additional:

- \$90 million for 1,920 detention beds;
- \$16 million for 60 fugitive operations team positions;
- \$18 million for 100 Institutional Removal Program agents;
- \$10 million for 49 Alternatives to Detention positions;
- \$19 million for 150 criminal investigators;

- \$18 million for 200 Immigration Enforcement Agents; and
- \$800,000 for the Cyber Crimes Center.

### **Senate-Passed H.R. 2360**

Senate-passed H.R. 2360 provided \$3,806 million for ICE including \$679 million for FAMS, or \$3,127 million without funding for FAMS. Of the appropriated amount, \$11.2 million was designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens. Additionally, S.Rept. 109-83 recommended an increase of:

- \$77.4 million for 32 positions (16 FTEs) for Custody Management;
- \$4.8 million for the Visa Security Program;
- \$24.9 million for 60 fugitive operations team positions (30 FTEs);
- \$23.4 million for 136 Institutional Removal Program agents (69 FTEs);
- \$15.4 million for 62 Alternatives to Detention positions (31 FTEs);
- \$37 million for 300 investigator positions for immigration investigations (150 FTEs);
- \$18 million for 200 (100 FTEs) Immigration Enforcement Agents;
- \$25 million for the Arizona Border Control Initiative; and
- \$3.5 million for additional attorney personnel.

### **P.L. 109-90**

P.L. 109-90 provides \$3,175 million for ICE. This total does not include \$686 million in funding for FAMS. If funding for FAMS is included in the total funding for ICE, P.L. 109-90 provides \$3,861 million for ICE, an increase of \$31 million over House-passed H.R. 2360, and \$55 million over Senate-passed H.R. 2360. In addition, the funding for ICE in P.L. 109-90 provides an increase of \$213 million, or 6% more than the President's FY2006 request and \$324 million, or 9% above FY2005 enacted. Of the appropriated amount in P.L. 109-90, not less than \$5 million is to be used to implement §287(g) of the Immigration and Nationality Act (INA),<sup>55</sup> which allows the Attorney General<sup>56</sup> to enter into agreements with states and local governments to allow their employees to perform functions of immigration officers; and \$11.2 million is designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens. In addition, \$5 million of the appropriated funds for ICE salaries and expenses would not be available until the Secretary of DHS submits to the House and Senate Appropriations Committees a national detention management plan.

Additionally, P.L. 109-90 recommends an increase of:

- \$90 million to augment bed space capacity including support positions;
- \$42 million for additional criminal investigator positions;

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<sup>55</sup> 8 U.S.C. §§1101 *et seq.* 8 U.S.C. §1357(g).

<sup>56</sup> This provision is now being administered by the Secretary of Homeland Security.

- \$35 million to annualize new positions and programs funded in P.L. 109-13 so that DHS will not divert the \$32 million provided for bed space in P.L. 109-13 to annualized personnel costs;
- \$9 million for 100 new Immigration Enforcement Agents;
- \$16 million for new fugitive operations team positions;<sup>57</sup>
- \$18 million to expand the Institutional Removal Program;
- \$10 million to broaden the Alternatives to Detention program including the Intense Supervision Appearance Program (ISAP);
- \$1 million to increase the speed, accuracy and efficiency of immigration enforcement information currently entered into the National Crime Information Center database (NCIC); and
- \$5 million for the Cyber Crimes Center.

P.L. 109-90 also recommends an increase of \$15.8 million to be offset by a reduction in CBP's salaries and expenses for the enforcement of laws against forced child labor.

### **ICE Issues for Congress**

There are several issues within the ICE appropriation that may be of interest to Congress, including but not limited to: the severe financial management problems at the agency over the past several years; the lack of detention bed-space; and whether the agency has enough investigators to adequately pursue its many varied missions.

### ***Financial Management at ICE***

ICE inherited its financial organization and systems from the former INS. An independent audit of ICE's financial statements concluded that the agency's accounting records were inadequately maintained during FY2004. The report noted that ICE had served as the accounting services provider for several other DHS agencies<sup>58</sup> while simultaneously experiencing significant turnover among its financial management staff. This led the agency to fall "seriously behind in basic accounting functions, such as account reconciliations, analysis of material abnormal balances, and proper budgetary accounting." Additionally, serving as the accounting provider for other agencies led ICE to experience budget shortfalls due to tardy reimbursements for expenses it provided to cover other agencies' costs. This budget shortfall forced the agency into a freeze on hiring and non-mission critical expenditures, including training. The auditors concluded that DHS should immediately address the "void in ICE's financial management infrastructure."<sup>59</sup> ICE recently requested a \$500 million reprogramming for FY2005 to cover funding shortfalls within the

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<sup>57</sup> The Office of Detention and Removal's National Fugitive Operations Program (NFOP) seeks to apprehend, process, and remove aliens who have failed to comply with removal orders, giving priority to apprehending aliens convicted of crimes.

<sup>58</sup> Among others, ICE serves as the accounting service provider for CIS, S&T, IAIP, DHS Management, and BTS Headquarters. These agencies include parts of 10 of the 22 legacy agencies that were transferred to DHS and account for roughly 20% of total DHS FY2004 budget authority.

<sup>59</sup> Department of Homeland Security, Office of the Inspector General, *Independent Auditors' Report on DHS FY2004 Financial Statements*, OIG-05-05, Dec. 2004, pp. 320-333.



agency.<sup>60</sup> House Appropriators expressed concern and disappointment over the continuing financial troubles at ICE. The Committee notes that the agency has been forced to employ drastic cost-cutting measures that the Committee believes adversely limited ICE's operations. The Committee directs DHS to provide monthly reports on ICE's financial condition.<sup>61</sup>

### *Office of Investigations/Immigration Functions*

The Office of Investigations (OI) in ICE 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.<sup>62</sup> 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.<sup>63</sup>

The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5203) authorized for FY2006, subject to appropriations, the addition of at least 800 new investigators to investigate violations of immigration law. The \$1,496 million requested in the President's budget for the OI includes increases in the base funding for two groups responsible for immigration enforcement, the Visa Security Unit (VSU)<sup>64</sup> and Temporary Worker Worksite Enforcement, and includes a total of 148 new positions for these units. The President's budget requested an additional \$18 million for temporary worker worksite enforcement to add 143 positions responsible for investigating and prosecuting violations under existing immigration law for hiring unauthorized aliens, and supporting and implementing the provisions of possible temporary worker legislation. The President's request also included an increase of \$5 million to add five new officers to the VSU, open a new overseas location, and expand training programs. H.Rept. 109-79 recommended \$19 million to expand the Visa Security Program, and S. Rept. 109-83 recommended an additional \$4.8 million for nine positions for an additional VSU. H.Rept. 109-241 does not contain an increase for the VSU. Furthermore, H.Rept. 109-79 recommended an additional \$18 million over the President's request for 200 new Immigration Enforcement Agents (IEAs),<sup>65</sup> and \$19 million for an additional 150 criminal investigators.<sup>66</sup> S.Rept. 109-83

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<sup>60</sup> U.S. Congress, House Appropriations Committee, Subcommittee on Homeland Security, *Fiscal Year 2006 Department of Homeland Security Appropriations*, Mar. 15, 2005.

<sup>61</sup> H.Rept. 109-79, pp. 33-34.

<sup>62</sup> For more information see <http://www.ice.gov/graphics/investigations/index.htm>.

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

<sup>64</sup> Officers of the VSU are assigned to consular posts to conduct law-enforcement reviews of visa applications, and provide advice and training to consular officers. For more information on visa issuance see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by (name redacted).

<sup>65</sup> The Conference Report (H.Rept. 109-72) for the Supplemental Appropriations Act (P.L. 109-13) provides funding for an additional 168 IEAs and detention officers.

<sup>66</sup> The Conference Report (H.Rept. 109-72) for the Supplemental Appropriations Act (P.L. 109-13) contains funding (continued...)

recommended an additional \$37 million for 300 new immigration investigations positions, and \$18 million for 200 IEAs. The conference report, H.Rept. 109-241, recommends an additional \$42 million for additional criminal investigator positions, \$5 million more than the Senate committee report and \$23 million more than House committee report. However, H.Rept. 109-241 provides an increase of \$9 million for 100 new IEA's, half of what was provided in the House and Senate committee reports. Like S.Rept. 109-83, H.Rept. 109-241 does not provide a funding increase for temporary worksite enforcement.

### *Detention and Removal Operations*

Detention and Removal Operations (DRO) in ICE provide custody management of aliens who are in removal proceedings or who have been ordered removed from the United States.<sup>67</sup> DRO is also responsible for ensuring that aliens ordered removed actually depart from the United States. Many contend that DRO does not have enough detention space to house all those who should be detained. A study done by DOJ's Inspector General found that almost 94% of those detained with final orders of removal were deported while only 11% of those not detained who were issued final orders of removal left the country.<sup>68</sup> 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 an increase for FY2006 of \$90 million for 1,920 new beds. H.Rept. 109-79 recommended \$90 million for 1,920 new beds,<sup>69</sup> while S.Rept. 109-83 recommended \$77.4 million for 32 positions for Custody Management and 2,240 new beds. H.Rept. 109-241 proposes an increase of \$90 million for new bedspace and the required support positions. House-passed H.R. 2360 would have withheld \$50 million of the appropriated funds for ICE salaries and expenses until the Assistant Secretary of ICE submitted to the Appropriations Committee a national detention management plan. This provision was included in H.Rept. 109-241, but only \$5 million will be withheld until the Secretary of DHS submits the report.

### *Alternatives to Detention*

Due to the cost of detaining aliens, and the fact that many non-detained 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 (ISAP), for low-risk, non-violent

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(...continued)

for 50 new criminal investigators. Nonetheless, it is unknown to which types of cases the new criminal investigators will be assigned.

<sup>67</sup> For more information on detention issues see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by (name redacted). Under the INA aliens can be removed for reasons of health, criminal status, economic well-being, national security risks and others that are specifically defined in the act.

<sup>68</sup> Department of Justice, Office of the Inspector General, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, Report I-2003-004, Feb. 2003.

<sup>69</sup> The Conference Report (H.Rept. 109-72) for the Supplemental Appropriations Act (P.L. 109-13) contains funding for an additional 1950 beds.

offenders.<sup>70</sup> H.Rept. 109-79 recommended \$10 million for 49 new positions for this program, and S.Rept. 109-83 recommended \$15.4 million and 32 new positions. Like, the H.Rept. 109-79, H.Rept. 109-241 provides an increase of \$10 million for alternatives to detention including the ISAP.

### ***Interior Repatriation***

ICE proposes a \$25 million increase for the Interior Repatriation program. On June 9, 2004 the White House announced it had reached agreement with the Mexican government to begin piloting the Interior Repatriation Program, which aims to reduce the number of aliens who immediately try to cross back into the United States by flying them into the interior of Mexico. Due to constitutional constraints in Mexico, the apprehended aliens' return to the interior must be strictly voluntary and the willingness of their participation is certified by Mexican consular officers.<sup>71</sup> In order to continue the program in FY2006, the Administration requested \$39.3 million; \$25 million for Custody Management and \$14.3 for Transportation and Removal. This represented a \$25 million increase from the \$14 million spent on the pilot program in FY2005. H.Rept. 109-79 directed the Commissioner of CBP to report no later than January 16, 2006 on the performance of the Interior Repatriation Program. As in H.Rept. 109-79, neither S.Rept. 109-83 nor H.Rept. 109-241 contains funding specifically for the Interior Repatriation Program.

### ***State and Local Law Enforcement***<sup>72</sup>

Currently the INA provides limited avenues for state enforcement of both its *civil* and criminal provisions. One of the broadest grants of authority for state and local immigration enforcement activity stems from INA §287(g), which authorizes the Attorney General to enter into a written agreement with a State, or any political subdivision to allow 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. As in Senate-passed H.R. 2360 and House-passed H.R. 2360, H.Rept. 109-241 would appropriate \$5 million to implement INA §287(g).

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<sup>70</sup> 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](http://www.ice.gov/graphics/news/newsreleases/insideice/insideice_062104_web3.htm).

<sup>71</sup> U.S. Department of Homeland Security, Bureau of Customs and Border Protection, Office of the Press Secretary, "Department of Homeland Security to Begin Pilot Program for Voluntary Interior Repatriation of Mexican Nationals," press release, June 29, 2004.

<sup>72</sup> This section adapted from CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa M. Seghetti, (name redacted), and (name redacted).

## **Transportation Security Administration (TSA)<sup>73</sup>**

The TSA was created by the Aviation and Transportation Security Act (ATSA, P.L. 107-71), and was charged with protecting U.S. air, land, and rail transportation systems to ensure 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). 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. TSA also has certain responsibilities for marine and land modes of transportation. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities, and with conducting research and development to improve security technologies.

### **President's Request**

The President requested an appropriation of \$5,562 million in gross budget authority for TSA in FY2006, a net increase of \$162 million, or 3%, over the enacted FY2005 level of \$5,400 million.<sup>74</sup> However, in comparing the FY2006 budget request to prior year levels, it is important to note that the President requested to transfer a large portion of TSA's research and development functions—totaling \$109 million in FY2005 appropriated amounts—to the S&T Directorate, and a transfer of a variety of functions—totaling \$142 million in FY2005—to the proposed Office of Screening Coordination and Operations (SCO). Functions that would have been transferred to the SCO under the proposal included Secure Flight (\$35 million); Crew Vetting (\$10 million); Credentialing Startup Costs (\$10 million); Transportation Worker Identification Card (TWIC, \$50 million); Registered Traveler (\$15 million); HAZMAT Driver Security Threat Assessments (\$17 million); and Alien Flight School Applicant Security Threat Assessments (\$5 million). Adjusting for these transfers and other miscellaneous factors, the requested increase to the TSA budget totaled \$415 million, roughly a 7.7% increase over FY2005 enacted levels (see P.L. 108-334).

Almost 90% of the TSA's proposed budget is designated for aviation security functions. Key aviation security initiatives proposed included:

- developing and testing emerging checkpoint explosives technologies;
- realigning the screener workforce and providing funds needed to maintain an authorized level of 45,000 full-time equivalents (FTEs);
- deploying high-speed Internet connections at airport screening checkpoints and baggage screening areas;
- providing mandated training for flight and cabin crews and conducting semiannual requalification for armed pilots; and
- conducting mandated security inspections of foreign airline repair stations and inspections at domestic repair stations.

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<sup>73</sup> Section prepared by Bartholomew Elias, Specialist in Aviation Safety, Security, and Technology; and (name redacted), Specialist in Transportation, Resources, Science and Industry Division.

<sup>74</sup> The amount for FY2005 listed here includes \$250 million for the Aviation Security Capital Fund, and \$5 million for Alien Flight School Background Checks; and the amount for FY2006 includes \$250 million for the Aviation Security Capital Fund. These amounts are listed as non-adds in **Table 5**, and are not included in the committee tables.

In an effort to approach full cost recovery from user fees for aviation security screening, the President proposed an increase in passenger security fees. The proposal would have raised the fee from its current level of \$2.50 per flight segment, with a maximum fee of \$5.00 per one-way trip, to \$5.50 per segment, with a maximum of \$8.00 per one-way trip. The Administration believed that this proposed fee increase coupled with a return to pre-9/11 passenger volume would result in an increase in fee collections from an estimated \$2.652 billion in FY2005 to \$4.1 billion in FY2006. This increase was projected to offset roughly 82% of the proposed \$4.985 billion budget for aviation security. In contrast, aviation security fees collected in FY2004 offset only 41% of expenditures for aviation security.<sup>75</sup>

For surface transportation security, the President requested \$32 million, including \$8 million for hiring and deploying 100 rail and transit inspectors. These inspectors will be deployed at significant rail and mass transit points across the United States to perform compliance reviews, audits, and enforcement actions pertaining to security measures.

### **House-Passed H.R. 2360**

House-passed H.R. 2360 would have provided a gross total of \$5,683 million (net total of \$3,263 million) for the TSA. This total included \$264.3 million for Transportation Vetting and Credentialing which the President's request proposed to transfer to the SCO.

For aviation security activities, the initial House-passed version of H.R. 2360 would have provided \$143.2 million less than the President's request but was \$268.1 million more than FY2005 enacted levels.<sup>76</sup> There are several key differences between H.R. 2360 and the President's request regarding aviation security. Funding for private screening contracts at airports was set at \$6.5 million less than the requested level. The House Committee on Appropriations found that the full request was not justified because of a lack of interest in the federal screening opt-out program due to lingering concerns over airport liability and other aspects of the program. The committee also found a lack of justification for the proposed increases in aviation regulation and law enforcement recommending that the TSA trim staffing levels in this program element, and the House initially agreed to a funding level \$9.8 million below the President's request. Similarly, the committee expressed concerns over staffing levels in airport management, information technology and support, and the House initially agreed to fund this component of the TSA budget at a level \$108.2 million below the President's request. The committee also did not agree with the President's request for increased funding for the Federal Flight Deck Officer Program, citing high unobligated balances as evidence that this program does not need additional funds. The House agreed to \$25 million for this program, the same as what was appropriated in FY2004 and FY2005.

In keeping with previous year trends, the House initially agreed to larger funding amounts for air cargo security, providing \$60 million, \$20 million more than the President's request. This included an additional \$10 million to hire 100 new air cargo inspectors, plus increased funding for travel for inspectors, enhancements to the known-shipper database, and security threat assessments. Additionally, the House passed two general provisions calling for more thorough

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<sup>75</sup> U.S. Department of Homeland Security, Transportation Security Administration, *Statement of David M. Stone, Assistant Secretary Before the Committee on Commerce, Science & Transportation, United States Senate*, Feb. 15, 2005. (Hereafter cited as *Statement of David M. Stone*).

<sup>76</sup> H.Rept. 109-79, p. 42.

screening of shipments on all-cargo and passenger aircraft by March 1, 2006 (Sec. 522), and requiring the TSA, to the greatest extent practicable, to use checked baggage equipment and screeners to screen cargo carried on passenger aircraft (Sec. 523).

Consistent with the President's request and prior year appropriations language, the House agreed to keep screener staffing at or below the 45,000 full-time-equivalent (FTE) cap. The committee noted that efficiencies gained through new technologies and increased use of in-line explosives detection systems (EDS) can greatly reduce the need for baggage screeners. The House agreed to additional funding of in-line EDS, proposing a total of \$75 million for this purpose—\$61 million above President's request—in addition to the \$250 million mandatory deposit into the Aviation Security Capital Fund. While the committee agreed with the President's request to limit the federal share at the eight existing airports with letters on intent (LOIs) to 75% , rather than the 90% authorized for large airports in Vision 100 (P.L. 108-176), this measure was stricken by a point of order because it sought to modify existing law. H.R. 2360 provides additional funding for the purchase of EDS and explosive trace detection (ETD) equipment, providing \$40 million above the \$130 million included in the President's request for this purpose. In an effort to further increase the availability of funds for EDS, the House agreed to language directing the TSA to spend any recovered or deobligated funds appropriated for aviation security or TSA administration exclusively on EDS procurement and installation (Sec. 530).

For surface transportation security, the House agreed to \$36 million, which is \$4 million more than the President's request. The House agreed with the President's request that \$8 million of this total be designated for federal rail security inspectors. The House also provided \$4 million for a hazardous materials truck tracking program.

### **Senate-Passed H.R. 2360**

The Senate initially agreed to a gross total of \$5,055 million (net total of \$3,065 million) for the TSA, not including the \$250 million in direct funding to the Aviation Security Capital Fund. This total includes \$255 million for Transportation Vetting and Credentialing which the President's request proposed to transfer to the SCO.

For aviation security, the Senate initially agreed to \$4,452 million, \$129 million more than the FY2005 appropriation, but \$283 million less than the budget request and \$139 million less than the House-passed bill. Unlike the budget request and the House-passed bill, the Senate language contained no specific cap on the number of screeners but, like the House bill, sought to increase funding for screening technologies in a move to rapidly shift away from a workforce-intensive use of resources. The Senate bill endeavored to do this, in part, by increasing the TSA's flexibility to transfer monies from screener workforce accounts to accounts for procuring screening equipment. The Senate bill provided \$180 million for EDS and ETD procurement with the stipulation that at least \$50 million be used for acquiring next-generation EDS equipment.

The Senate-passed bill made more modest reductions in the budget request for airport management, staff, information technology, and support, recommending \$748 million for this function, \$10 million less than the budget request but \$103 million above the House-passed amount. In contrast to the fiscal concerns expressed by the House committee, Senate report language noted that increased funding for information technology is imperative for maintaining real-time intelligence and operational effectiveness and efficiency.

The Senate provision of \$50 million for air cargo security fell directly between the budget request of \$40 million and the House-passed level of \$60 million. The additional \$10 million above the request offered in the Senate-passed bill included \$7 million for hiring additional inspectors and \$3 million for increased inspections of both international flights and domestic passenger flights. The Senate bill also directed the TSA to continue coordination of “known-shipper” and Customs-Trade Partnership Against Terrorism (C-TPAT) programs and move toward the goal of screening 100 percent of cargo carried on passenger airplanes.

With regard to surface transportation security, the Senate bill was in full agreement with the House-passed amount and use of funds. Also, the Senate bill was in concordance with the House-passed plan to keep transportation vetting and credentialing functions within the TSA but set direct funding for credentialing activities at a level \$9 million less than the House-passed amount. Senate floor debate on the appropriations bill occurred shortly after the terrorist bombings of London’s transit system. Three amendments that would have substantially increased security funding for U.S. transit and intercity rail systems were defeated during Senate floor debate.

### **P.L. 109-90**

P.L. 109-90 provides \$5,334 million for the operations of the TSA plus an additional \$686 million for the Federal Air Marshals, which rejoined the TSA under the DHS restructuring plan, termed the Second Stage Review (2SR), that was released in June, 2005. This set the total discretionary appropriation for TSA at \$6,094 million. To this, \$250 million in mandatory funding for the Aviation Security Capital Fund is added to bring the total TSA appropriation to \$6,344 million.

For aviation security, P.L. 109-90 provides \$4,607 million, \$15 million above the House-passed amount and \$155 above the Senate-passed amount, but \$128 million below the President’s request. The Act provides \$283 million more than the FY2005 enacted level for aviation security but keeps the longstanding cap on the number of full-time equivalent screeners in place at 45,000.

Funding for privatized screening is set at \$139 million, consistent with the House-passed amount, with the option for TSA to adjust funding between TSA screening operations and the private set aside as new contracts are awarded or as airports leave the private screening program after notifying the appropriations committees. A general provision (Sec. 547) of the Act added in conference provides long-sought liability protections for airports that elect to opt-out of TSA federal screening and implement private screening contracts managed by the TSA. San Francisco International Airport, the largest airport with private screeners, had signaled that it would end its private screener pilot program, but reversed this decision based on the inclusion of statutory liability protections. While privatizing airport screening contracts have not yet attracted much interest among airports that currently have federal screeners, in part, due to lingering liability concerns, lawmakers who have advocated a shift toward private screening operations are hopeful that this provision will spur an increase in airports with private screeners.

For air cargo security measures, P.L. 109-90 provides \$55 million, an even split between the House-passed \$60 million and the Senate-passed \$50 million. This funding level is \$15 million above FY2005 enacted levels and the President’s request for FY2006 and includes \$10 million for hiring and deploying an additional 100 regulatory inspectors and \$5 million for improving databases of freight forwarders and known shippers, performing threat assessments, and carrying out pending rulemaking activities.

The conferees agreed to \$57 million for Secure Flight—the controversial program for prescreening airline passengers—an amount equal to that passed by the Senate, but \$9 million less than the House-passed amount. While the conferees continued to support this additional layer of aviation security, the conference report noted that the TSA has failed to fully justify cost estimates for FY2006 and has failed to commence initial operating capability of the system at two airlines by the scheduled date of August 19, 2005. The conferees also agreed to a general provision prohibiting deployment of the system on other than a test basis until the Government Accountability Office (GAO) certifies that 10 elements related to privacy protections, data security, and redress for aggrieved individuals are adequately addressed. Similar provisions were enacted in appropriations legislation for FY2004 and FY2005. The provision in the FY2006 Act also prevents the TSA from using commercial data in the system. While commercial data is seen as a possible means for authenticating passenger identities, some in Congress have raised concerns over TSA's prior disclosure and handling of personal data obtained from commercial sources during the development and testing of Secure Flight.

P.L. 109-90 provides \$36 million for surface transportation security. Both the House and Senate had agreed to this amount, which is \$12 million less than FY2005 enacted levels but \$4 million above the President's request.

### **Issues for Congress**

The President's proposal to increase airline passenger security fees has been a contentious issue that failed to garner sufficient support in either the House or the Senate, and met with considerable criticism during the appropriations debate. Financially strapped airlines—still recovering from the economic impact of the 9/11 attacks and now facing rising fuel costs—argued that they would likely have to absorb some of the proposed fee increases by reducing ticket prices.<sup>77</sup> Some Members of Congress also voiced concern that the proposed fee increase could cut into the revenues of the airlines, and could have a greater impact on rural airline customers who would pay proportionately more in per-segment fees because fewer direct flights are available to these customers.<sup>78</sup> The Administration, on the other hand, argued that increased fees could help reduce a funding deficit by generating additional revenue to offset expenditures for aviation security, or could free up general tax revenues for spending on broader homeland security needs. The Administration maintained that increasing fees to offset costs is in line with long-standing transportation infrastructure policy to fund these services largely through user fees, as well as its assessment of the original intent of these passenger security fees established under ATSA (P.L. 107-71).<sup>79</sup> However, some opponents of aviation security fees contend that aviation security, particularly since September 11, 2001, is vital to national security, and therefore, like defense spending, is the responsibility of all taxpayers. The House Committee on Appropriations noted that amending the statutory fee structure falls under the jurisdiction of the Homeland Security Committee and did not include the proposed fee increases in its bill. An amendment to the FY2006 DHS Authorization Act (H.R. 1817) prohibiting an increase in airline ticket taxes for aviation security was agreed to by a large majority in the House, despite opposition by Aviation

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<sup>77</sup> Air Transport Association of America, Inc., *Statement for the Record to the Committee on Commerce, Science & Transportation, United States Senate Hearing on Fiscal Year 2006 Budget Transportation Security Administration*, Feb. 15, 2005.

<sup>78</sup> Sara Kehaulani Goo, "Senate Turbulence Greets Plan to Raise Airline Ticket Security Fees," *The Washington Post*, Feb. 16, 2005, p. A2.

<sup>79</sup> See *Statement of David M. Stone*.



Subcommittee Chairman John Mica. While the Senate also did not recommend any passenger fee increases, language in S.Rept. 109-83 directed the TSA to use its available authority to collect about \$448 million from aviation security infrastructure fees paid directly by the airlines. This is the amount determined by a GAO audit that TSA should be collecting annually. However, the TSA has been collecting only about \$318 million in these fees, despite assuming that collections would total \$750 million for FY2005, thus creating a projected shortfall of more than \$400 million.

Another key issue for the TSA during the FY2006 appropriations process was the proposed creation of SCO. The proposed transfer of programs related to credentialing and vetting of passengers and transportation workers raised several issues regarding coordination of effort between the TSA and the proposed SCO. The Administration offered few details regarding how the proposed SCO would interface with the TSA on several high-profile programs such as Secure Flight and the TWIC program. Citing concerns over disrupting work on these key programs, P.L. 109-90 implements a different approach that integrates these various programs, but keeps them within the TSA under a new Office of Transportation Vetting and Credentialing. The Act establishes a FY2006 funding level of \$75 million for the newly created Office of Transportation Vetting and Credentialing, an amount consistent with the Senate-passed bill but \$9 million less than the House-passed amount. In addition to these sums, it is anticipated that the office will handle an additional \$180 million in credentialing accounts that are expected to be fully offset by user fees.

Another lingering issue that did not receive much attention during the appropriations process is the coordination between TSA and S&T in light of the transfer of the TSA's research and development activities to the S&T Directorate. One particular oversight issue is how aviation security research needs will be prioritized given that S&T is more broadly focused on all homeland security research and development activities. There may be some concern that aviation security projects could take a back seat to other high-profile initiatives—such as chemical, biological, radiological and nuclear weapons countermeasures—that have been the primary focus of S&T to date. Also, while consolidating research and development on explosives and chemical weapons detection—the primary focus of aviation security-related research and development—may help leverage resources for other DHS components, these projects could potentially lose some of the aviation security-specific focus that they received while under the auspices of the TSA. Consequently, Congress may focus on what coordination and interaction between TSA and S&T will be established to ensure that aviation security research and development needs are adequately addressed.<sup>80</sup> House report language specifies that the S&T Directorate is to carry out air cargo research and development pilot programs initiated by the TSA, but expressed frustration over the lack of progress in this area commenting that "... high unobligated balances give the impression that the TSA does not view air cargo as a serious aviation security vulnerability."<sup>81</sup> Consequently, the report contains language that would require the TSA to develop protocols and standards for emerging new technologies to screen cargo, noting past deployment delays occurred because such coordination was lacking.

Appropriations to the TSA for surface transportation modes raise the issue of determining TSA's role, and in a broader context, the federal government's role, in the security of the non-aviation

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<sup>80</sup> Further information and analysis of transportation security issues before Congress are provided in CRS reports at [http://beta.crs.gov/cli/cli.aspx?PRDS\\_CLI\\_ITEM\\_ID=471](http://beta.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=471).

<sup>81</sup> H.Rept. 109-79, p. 48.

modes of transportation. While ATSA made TSA responsible for the security of all modes of transportation, it did not direct the TSA to take specific actions to address security needs in modes other than aviation. One view is that the federal government, and TSA in particular, should assume a more dominant, or at least a more prominent role, in the security of surface modes. Proponents of this view hold that the federal Treasury should fund most of the security needs of surface modes. Another view is that the federal role in securing surface modes should reflect or parallel its existing role in financing the infrastructure or operations of surface modes. This view holds that federal funding for the security needs of surface modes should be in partnership with state and local governments or the private sector. For instance, because freight railways are predominantly privately owned and financed, some believe that the freight railroad companies should pay for their security needs. Likewise, in the case of mass transit, in which state and local governments have primary responsibility for infrastructure financing and operations, some believe the federal government's role in securing mass transit should be in partnership with state and local governments rather than having a dominant role, as it does in aviation.

## **United States Coast Guard<sup>82</sup>**

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is the lead agency responsible for BTS as it applies to 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 DHS and that the Commandant of the Coast Guard report directly to the Secretary of DHS. Accordingly, the Coast Guard exists as a distinct agency within DHS and is not part of DHS's BTS, although it does work closely with that directorate.

## **President's Request**

For FY2006 the President requested an appropriation of \$7,961 million in net budget authority for the Coast Guard, which is a 5.21% increase over the enacted FY2005 level of \$7,567 million. The Coast Guard's budget is divided into seven categories. The President requested increases in three of these categories and decreases or zero funding in the four remaining categories. Among the categories with increased funding, the largest increase in percentage terms is in acquisition, construction, and improvements (the agency's physical equipment), which would increase by 23.08% to \$1,269.2 million. Operating expenses would increase by 4.62% to \$5,547.4 million and reserve training would increase by 5.31% to \$119.0 million. The President requested zero funds for the Coast Guard's bridge alteration program which funds alterations to the understructure of bridges that are obstructing navigational waterways. Congress provided \$15.9 for this program in FY2005. The President also requested zero funds for Coast Guard research and development; transferring and consolidating this account under the DHS S&T Directorate.

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<sup>82</sup> Section prepared by (name redacted), Specialist in Transportation, Resources, Science and Industry Division. Further information and analysis of the Coast Guard's role in maritime security is provided in CRS Report RS21125, *Homeland Security: Coast Guard Operations—Background and Issues for Congress*, by Ronald O'Rourke; and CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress*, by (name redacted).

Congress provided \$18.5 million for Coast Guard R&D in FY2005. The two other budget categories that the President would reduce funding for are Coast Guard environmental compliance and restoration, which would decrease by 29.41% to \$12 million and retired pay, which would decrease by 6.54% to \$1,014.1 million.

### **House-Passed H.R. 2360**

House-passed H.R. 2360 provided \$7,458 million, \$503 million or 6% less than the President's request and \$109 million or 1% less than FY2005 enacted. H.R. 2360 provided \$798 million for acquisitions, construction, and improvements, which is about \$471 million less than the President requested. Most of this difference has to do with the Coast Guard's Deepwater program, which is explained further below. For operating expenses, the House bill provided \$5,500 million which is \$47 million less than the President's request. For alteration of bridges, the House bill provided \$15 million versus the President's request of no funds. For environmental compliance and restoration, reserve training, and retired pay, the House bill provided the same amounts that the President requested. The House bill also agreed with the President's request to transfer the Coast Guard's research and development funds to the DHS S&T Directorate. The House Committee on Appropriations' report states that the Committee "is extremely frustrated in the Coast Guard's apparent disregard for Congressional direction" and cites the Deepwater plan and other reprogramming submissions as examples.<sup>83</sup>

### **Senate-Passed H.R. 2360**

Senate-passed H.R. 2360 provided \$7,780 million, \$322 million or 4% more than the House. The Senate provided \$1,225 million for acquisitions, construction, and improvements, which is \$427 million more than the House. As indicated below, most of the \$427 million difference between the House and Senate concerns the Deepwater program. The Senate provided \$5,459 million for operating expenses, which is \$41 million less than the House. For environmental compliance and restoration, reserve training, and alteration of bridges, the Senate provided the same amount as the House. Senate-passed H.R. 2360 does not agree with the House and the President's request to transfer the Coast Guard's R&D funds to the DHS S&T Directorate; it provides \$19 million to the Coast Guard for R&D.

### **P.L. 109-90**

P.L. 109-90 provides a total of \$7,797 million for the Coast Guard for FY2006, representing a decrease of \$165 million or 2% as compared to the request; an increase of \$339 million or 5% as compared to the House-passed version of H.R. 2360; and an increase of \$17 million as compared to the Senate-passed version of H.R. 2360. P.L. 109-90 provides \$5,492 million for operating expenses, which is \$55 million less than the President requested. It provides \$1,142 for acquisitions, construction, and improvements, which is \$127 million less than the President requested. P.L. 109-90 provides the same amount that the President requested for environmental compliance and restoration (\$12 million), reserve training (\$119 million), and retired pay (\$1,014 million). P.L. 109-90 provides \$15 million for the alteration of bridges while the President requested no funds for this purpose; and provides \$18 million for Coast Guard R&D while the President requested that these funds be transferred to the DHS S&T Directorate.

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<sup>83</sup> H.Rept. 109-79, p. 57.

## **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 Program***<sup>84</sup>

The Deepwater program is a planned 22-year, multi-billion dollar project to replace or modernize 93 aging Coast Guard ships and 207 aging Coast Guard aircraft. It is the largest and most complex acquisition ever undertaken by the Coast Guard. The Deepwater program is a subset of the agency's acquisition, construction, and improvements budget category. For FY2006, the President requested \$966 million for the Deepwater program which is \$242 million more than Congress provided in FY2005. The House bill provided \$500 million for the Deepwater program, which is \$466 million less than the President's request. The House bill would have withheld \$50 million of this amount until the Appropriations Committee received a new Deepwater program baseline that reflects revised, post September 11 mission requirements. Senate-passed H.R. 2360 provided \$906 million for Deepwater and the Senate Committee's report states that it "is extremely disappointed with the poor congressional justifications accompanying the President's budget request," and directs the Coast Guard to update the Deepwater plan the agency submitted to Congress on May 31, 2005. The conference agreement provides \$933 million for the Deepwater program, which is \$33 million less than the President requested. The conference agreement also specifies information about the Deepwater plan as well as the Coast Guard's overall capital plan that Congress wants the agency to submit in conjunction with future budget submissions.

### ***Maritime Security Mission***

The Deepwater program will help the Coast Guard achieve its many missions, including maritime security, which is another Coast Guard issue of keen interest to Congress. The President's FY2006 request includes \$2,219.4 million for port waterways and coastal security, an increase of \$127.9 million from FY2005. Maritime Domain Awareness (MDA) is a central element of the Coast Guard's security mission. MDA can be described as the Coast Guard's ability to know all that is happening in the maritime environment—to understand normal activity, in order to spot suspicious activity. One objective of MDA is to increase the transparency of ship movements in U.S. coastal areas. Using Automatic Identification Systems (AIS) technology, the Coast Guard expects to be able to track ships in coastal waters. For FY2006, the President requested \$29.1 million for AIS which is \$5.1 million more than Congress provided in FY2005. In FY2005, Congress expressed disappointment that only nine seaports would be able to receive AIS signals and therefore increased funding from the requested \$5 million to \$24 million to achieve nationwide coverage. The President's FY2006 request indicates that nationwide implementation of AIS is the Administration's objective.

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<sup>84</sup> Further information and analysis of the Deepwater program is provided in CRS Report RS21019, *Coast Guard Deepwater Program: Background and Issues for Congress*, by Ronald O'Rourke.

Another area of maritime security that Congress has expressed particular interest in is the security of LNG (liquefied natural gas) tankers. The President's FY2006 request includes \$11 million for additional boat crews and screening personnel at U.S. LNG shoreside facilities. Rising natural gas prices are expected to increase the demand for imported natural gas, most of which will be transported by LNG tankers.

## **United States Secret Service<sup>85</sup>**

The United States Secret Service performs two broad missions in homeland security: criminal investigations and protection.<sup>86</sup> Criminal investigations cover financial crimes, identify theft, counterfeiting, computer fraud, and computer-based attacks on the nation's financial, banking, and telecommunications infrastructure, among other areas. The protection mission is most prominent for the President, Vice President, their families, and candidates for those offices, along with the White House and the Vice President's residence. Protection duties also extend to foreign missions in the District of Columbia; other designated individuals, such as the Secretary of DHS and visiting foreign dignitaries; and National Special Security Events (NSSE), which include the political party national nominating conventions as well as various international conferences and other major designated events in the United States.

## **President's Request**

For FY2006, the President's budget requested an appropriation of \$1,204 million for the protection and criminal investigation missions of the Secret Service, an increase of \$29 million (2%) over the FY2005 total of \$1,175 million.<sup>87</sup> Within the FY2006 amount were requests for certain specific matters: \$100,000 to assist foreign law enforcement organizations in counterfeit investigations; \$2.1 million for forensic and related support for investigations of missing and exploited children; and \$5 million for a grant for activities related to the investigations of missing and exploited children. In addition, the budget submission directed that "up to \$18 million provided for protective travel shall remain available until September 30, 2007" and that "not less than \$5,000,000 solely for the unanticipated costs related to security operations for National Special Security Events."<sup>88</sup>

## **House-Passed H.R. 2360**

The House Appropriations Committee recommended an appropriation of nearly \$1,233 million, an increase of almost \$29 million, or 2%, above the President's request and almost \$58 million, or 5%, above the FY2005 appropriation.<sup>89</sup> The House-passed version of H.R. 2360 included additional amounts above the President's request of: \$5 million for NSSEs; \$23 million to support

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<sup>85</sup> Prepared by (name redacted), Specialist in American National Government, Government and Finance Division.

<sup>86</sup> U.S. Department of Homeland Security, United States Secret Service, *Fiscal Year 2006, Congressional Justification* (Washington: DHS, 2005), p. SS-1.

<sup>87</sup> *Ibid.*, and U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2006, Appendix* (Washington: GPO, 2005), p. 485.

<sup>88</sup> U.S. Office of Management and Budget, *Fiscal Year 2006 Budget for the United States Government* (Washington: GPO, Feb. 2005), p. 485. (Hereafter cited as OMB, *FY2006 Budget*.)

<sup>89</sup> H.Rept. 109-79, pp. 155-156.

protective operations, investigations, foreign field offices, and technical support functions; and \$1 million for support to the National Center for Mission and Exploited Children.<sup>90</sup>

### **Senate-Passed H.R. 2360**

The Senate-passed version of H.R. 2360 recommended \$1,192 million for the Secret Service, a decrease of \$41 million, or 3%, compared to the House-passed amounts; a decrease of \$12 million, or 1%, as compared to the requested amount; and an increase of \$17 million compared to the FY2005 enacted amount. The Senate Committee did not provide the requested \$5 million for the NSSE fund, because of unobligated balances remaining in the account.<sup>91</sup> The Senate Committee also did not continue general provision bill language “regarding maintaining the Service as a distinct entity within” DHS.<sup>92</sup>

### **P.L. 109-90**

P.L. 109-90 provides \$1,212 million for the Secret Service, essentially splitting the difference between the House and Senate versions of H.R. 2360. This sum represents an increase of \$8 million and 1% from the President’s request. The conferees, in H.Rept. 109-241, note their concern with the workloads facing Secret Service Agents and direct the agency to submit a workload rebalancing report by February 10, 2006.

### **Issues for Congress**

Developments in the contemporary era, particularly after the 2001 terrorist attacks, have added to the Secret Service’s roles and responsibilities. Even though its two primary missions remain the same as they have for the past 100 years, the actual assignments, activities, duties, and functions have been expanded and have become more complex and sophisticated than before. The resulting issues for Congress (and the executive) range from the sufficiency of USSS resources to meet its new obligations to the adequacy of interagency cooperation. The former involves not just facilities, equipment, and personnel levels but also training, language skills, and protective research. The latter involves coordination not just with entities inside the Department but also with organizations outside it: i.e., in other federal departments and agencies, State and local governments, foreign governments, and the private sector. Along with this are occasional requests from subnational governments for the Secret Service (or DHS) to reimburse them for their expenses associated with specific USSS protective operations within their jurisdictions. Another matter extends to the capability of the Secret Service to maintain its traditional role in the enforcement of certain financial crimes, such as anti-counterfeiting. Such criminal conduct has also become more sophisticated and complex. And combating it may now have to compete with new higher priorities and expanded duties in other fields, most markedly in anti-terrorism.

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<sup>90</sup> H.Rept. 109-79, pp. 70-71.

<sup>91</sup> S.Rept. 109-83, p. 63.

<sup>92</sup> S.Rept. 109-83, p. 64.

## Title III: Preparedness and Recovery

Title III Preparedness and Recovery, provides funding for the Office of State and Local Government Coordination and Preparedness (SLGCP), which includes the Office for Domestic Preparedness. In addition, Title III funds the Emergency Preparedness and Response (EPR) Directorate.

**Table 8** shows the FY2005 enacted and FY2006 requested appropriations for Title III. The Administration requested an appropriation of \$6,710 million in net budget authority for Title III for FY2006. This amount represents a 4% decrease compared to the FY2005 enacted total of \$6,963 million (not including \$2,508 million for Bioshield).<sup>93</sup> For the FY2006 request, Title III accounts for 22% of requested net appropriated DHS budget authority; 10% for EPR, and 12% for SLGCP. The House-passed version of H.R. 2360 recommended an appropriation of \$6,688 million in net budget authority for Title III, represents a \$21 million or less than 1% decrease compared to the President's request. The Senate-passed version of H.R. 2360 recommended \$6,336 million for the activities of Title III, representing a decrease of \$374 million or nearly 6% compared to the FY2006 request; and a decrease of \$352 million or 5% as compared to House-passed H.R. 2360. P.L. 109-90 provides \$6,666 million for the activities of Title III. This amount includes \$625 million for Infrastructure Protection and Information Security (IPIS) activities that were transferred from the now disbanded IAIP Directorate in Title IV, pursuant to the Secretary's reorganization proposal.

**Table 8. Title III: Preparedness and Response**  
(budget authority in millions of dollars)

Operational component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
<b>Management and Administration<sup>a</sup></b>					
—Office of the Under Secretary	N/A	N/A	N/A	N/A	13
—Office of the Chief Medical Officer	N/A	N/A	N/A	N/A	2
—Office of National Capital Region Coordination	N/A	N/A	N/A	N/A	1
<b>Net subtotal</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>16</b>
—Radiological preparedness <sup>b</sup>	-1	-1	-1	-1	-1
<b>U.S. Fire Administration and Training</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>45</b>
<b>Infrastructure Protection and Information Security<sup>c</sup></b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>625</b>
<b>Office for Domestic Preparedness/Office of state and local government coordination and planning</b>					
—State and local programs	3,086	2,891	2,831	2,714	2,511 <sup>d</sup>

<sup>93</sup> The FY2005 enacted net budget authority of \$6,963 million does not include a \$2,508 million Bioshield obligation limitation, nor does it include the \$6.5 billion in supplemental disaster relief funding. For more information on the supplemental appropriations, see CRS Report RL32581, *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by (name redacted) and (name redacted).

Operational component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	FY2006 Enacted
—Salaries and Expenses	4	4	4	4	5
—Emergency management planning grants	180	170	180	190	185
—Firefighter assistance grants	715	500	650	665	655
<b>Net subtotal</b>	<b>3,985</b>	<b>3,565</b>	<b>3,665</b>	<b>3,573</b>	<b>3,356</b>
<b>Counter-Terrorism fund</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>3</b>	<b>2</b>
<b>Federal Emergency Management Agency</b>					
—Admin; regional operations	203	218	225	216	238 <sup>e</sup>
—Operating expenses (rescission)	-5	—	—	—	—
—Prepare, mitigation, response & recovery	239	235	249	203	204
—rescission	—	—	—	-10	—
—Public health programs <sup>f</sup>	34	34	34	34	34
—Biodefense countermeasures (obligation limitation) <sup>g</sup>	2,508	—	—	—	—
—Disaster relief <sup>h</sup>	68,542	2,140	2,000	1,920	1,770
—Rescission & transfer <sup>i</sup>	23,411	—	—	—	—
—Flood map modernization fund	200	200	200	200	200
—National flood insurance fund <sup>j</sup>	—	—	—	—	—
—National flood mitigation <sup>k</sup>	—	—	—	—	—
—Pre-disaster mitigation fund	100	150	150	37	50
—Emergency food and shelter	153	153	153	153	153
—Disaster assistance direct loan account	1	1	1	1	3 <sup>l</sup>
<b>Net subtotal</b>	<b>48,564</b>	<b>3,135</b>	<b>3,013</b>	<b>2,758</b>	<b>2,652</b>
<b>Net budget authority subtotal: Title III</b>	<b>52,557</b>	<b>6,710</b>	<b>6,688</b>	<b>6,334</b>	<b>6,696</b>

**Source:** CRS analysis of the FY2006 President's Budget, and DHS *Budget in Brief*, House Appropriation Committee tables of May 20, 2005, House-passed H.R. 2360 and H.Rept. 109-79; Senate-passed H.R. 2360 and S.Rept. 109-83; and the Conference Report to H.R. 2360, H.Rept. 109-241.

**Note:** Totals may not add due to rounding. Some amounts were not available for inclusion in this report. These amounts are designated 'N/A'. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- These three offices were proposed in the Secretary's reorganization proposal of July 13, 2005 as parts of a new set of accounts under the heading Preparedness Operations. The Conferees separated these accounts under the heading 'Management and Administration'.
- Radiological Emergency Preparedness funds are provided through reimbursements and are not actually appropriated funds. The Administration projects that funding obtained from other sources will exceed estimated BA needs by \$17 million in FY2005, and \$18 million in FY2006.
- This new office was proposed in the Secretary's July 13, 2005 reorganization proposal, and is comprised of accounts that were a part of the IAIP Directorate. Account details can be found in **Table I I** later in this report under the heading Infrastructure Protection and Information Security.
- Includes \$10 million, pursuant to P.L. 109-148, for equipment replacement related to hurricanes and other natural disasters.



- e. Includes \$17 million, pursuant to P.L. 109-148, for necessary expenses related to hurricanes and other natural disasters.
- f. Total amount funds the National Disaster Medical System (NDMS), a system of health workers and emergency transport to provide medical care during disasters.
- g. Includes \$20 million rescission from Bioshield (biodefense countermeasures) enacted by the Consolidated Appropriations Act of 2005 (P.L. 108-447).
- h. FY2005 totals include \$60 billion in disaster relief funding precipitated by Hurricane Katrina; \$10 billion in P.L. 109-61 and \$50 billion in P.L. 109-62. For more information on these supplemental appropriations, see CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by (name redacted). FY2005 totals also include \$6.5 billion in disaster relief funding enacted by P.L. 108-324. For more information on those supplemental appropriations, see CRS Report RL32581, *Supplemental Appropriations for the 2004 Hurricanes and Other Disasters*, by (name redacted) and (name redacted).
- i. Includes rescissions and transfers totaling \$23.4 billion of funds previously appropriated by P.L. 109-61 and P.L. 109-62, pursuant to P.L. 109-148. (See below, Related Legislation “H.R. 2863/P.L. 109-148”).
- j. Amounts available in the National Flood Insurance Fund (NFIF) are derived through premiums and are not appropriated. These amounts are completely offset in the Committee tables, in the amount of \$113 million for FY2005, and \$124 million in FY2006. P.L. 109-65, enacted after Hurricane Katrina, increased NFIF borrowing authority to ensure that sufficient funds are available for flood insurance payments needed as a result of the hurricane.
- k. Amounts for National Flood Mitigation are offset by a transfer from the National Flood Insurance Fund, \$20 million in FY2005, and \$40 million in FY2006.
- l. P.L. 109-148 transfers \$1.5 million from FEMA’s Disaster Relief account (from funds previously appropriated in FY2005 by P.L. 109-62) to the Disaster Assistance Direct Loan account for administrative expenses in FY2006.

## Office for State and Local Government Coordination and Preparedness (SLGCP)

The SLGCP is the single point of contact within DHS for facilitating and coordinating departmental state and local programs. SLGCP provides information to states and localities on best practices and federal homeland security activities. Within SLGCP, the Office for Domestic Preparedness (ODP) administers federal homeland security assistance programs for states and localities. To assist state and local homeland security efforts, ODP administers formula and discretionary grants and training, exercise, and technical assistance programs.

### President’s Request

The FY2006 budget request proposed the following amounts for the SLGCP homeland security assistance programs:

- Emergency Management Performance Grants (EMPG)—\$170 million;
- Citizen Corps Programs (CCP)—\$50 million;
- State Homeland Security Grant Program (SHSGP)—\$1,020 million;<sup>94</sup>

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<sup>94</sup> The \$1,020 million provided for each of the SHSGP and UASI programs includes \$200 million (for a total of \$400 million) for the Law Enforcement Terrorism Prevention Program (LETPP). **Table 9** shows these amounts broken out: \$800 million each for SHSGP and UASI, and \$400 million for LETPP.

- Urban Area Security Initiative (UASI)—\$1,020 million;
- Targeted Infrastructure Protection Program (TIPP) (new program)—\$600 million;
- Assistance to Firefighters Program (FIRE)—\$500 million.<sup>95</sup>

### **House-Passed H.R. 2360**

The House passed the following amounts for the SLGCP homeland security assistance programs:

- Emergency Management Performance Grants—\$180 million;
- Citizen Corps Programs—\$40 million;
- State Homeland Security Grant Program—\$750 million;
- Urban Area Security Initiative—\$1,215 million;<sup>96</sup>
- Assistance to Firefighters Program—\$600 million;<sup>97</sup> and
- Metropolitan Medical Response System—\$40 million.

### **Senate-Passed H.R. 2360**

The Senate passed the following amounts for the SLGCP homeland security Assistance programs:

- Emergency Management Performance Grants—\$190 million;
- Citizen Corps Programs—\$25 million;
- State and Local Assistance Grants—\$1,538 million;<sup>98</sup>
- Assistance to Firefighters Program—\$665 million;
- Metropolitan Medical Response System—\$10 million; and
- Law Enforcement Terrorism Prevention—\$400 million.

### **P.L. 109-90**

P.L. 109-90 provides the following amounts for the SLGCP homeland security Assistance programs:

- Emergency Management Performance Grants—\$185 million;
- Citizen Corps Programs—\$20 million;

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<sup>95</sup> OMB, *FY2006 Budget*, p. 478.

<sup>96</sup> Includes funding for port, rail, and infrastructure security.

<sup>97</sup> House Appropriations Committee Homeland Security tables of Mar. 15, 2005.

<sup>98</sup> Senate passed H.R. 2360 does not provide a specific amount for State Homeland Security Grant Program or Urban Area Security Initiative, instead it provides \$1,518 billion for “state and local assistance grants” of which \$425 million are to be allocated in the same amounts in FY2005 based on the Section 1014, USA PATRIOT Act (P.L. 107-56), with remainder of total appropriations distributed based on risk.

- State Homeland Security Grant Program—\$550 million;
- Urban Area Security Initiative—\$1,155 million;<sup>99</sup>
- Assistance to Firefighters Program—\$655 million;<sup>100</sup> and
- Metropolitan Medical Response System—\$30 million.

**Table 9** provides program level details for SLGCP.

**Table 9. SLGCP Program Level Details, FY2005-FY2006**  
(budget authority in millions of dollars)

Operational Component	FY2005 Enacted	FY2006 Request	FY2006 House	FY2006 Senate	F2006 Enacted
<b>Office of state and local government coordination and preparedness</b>	<b>3,985</b>	<b>3,565</b>	<b>3,665</b>	<b>3,573</b>	<b>3,346</b>
—State and local assistance grants	—	—	—	1,538	—
—State homeland security grant program	1,100	820	750	—	550
—Urban area security initiative	885	820	850	—	765
—Citizen corps program	15	50	40	25	20
—Emergency management performance grants	180	170	180	190	185
—Firefighters assistance	715	500	650	665	655
—State and local training program	55	83	65	55	55
—Law enforcement terrorism prevention	400	400	400	400	400
—Technical assistance	30	8	20	20	20
—National exercise program	52	52	52	52	52
—Evaluations program	14	14	14	14	14
—Transportation and infrastructure program (TIPP)	315	600	365	365	390
—Management and administration	4	48	54	4	5
—Technology transfer	50	—	—	50	—
—National domestic preparedness consortium	135	—	125	145	145
—Metropolitan Medical Response System	30	—	40	10	30
—Rural domestic preparedness consortium	5	—	10	—	10
—Commercial equipment direct assistance program	—	—	50	—	50
—REAL ID Implementation	—	—	—	40	—

**Source:** Conference Report (H.Rept. 108-774) accompanying P.L. 108-334 (FY2005 DHS Appropriations); OMB, *FY2006 Budget*, Appendix, p. 478; House Appropriation Committee tables of May 20, 2005, introduced H.R. 2360 and H.Rept. 109-79.

<sup>99</sup> Includes funding for port, rail, and infrastructure security.

<sup>100</sup> House Appropriations Committee Homeland Security tables of Mar. 15, 2005.

**Note:** FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

## **Issues for Congress**

The budget request raises policy questions because it proposes to reduce the overall level of funding for assistance to state and local preparedness programs, gives new emphasis to assistance for the protection of port, transit, and other infrastructure; and changes the grant allocation formula for one of the grants administered by ODP.

## ***Reduction in Funding***

In FY2005, Congress appropriated approximately \$3.99 billion for SLGCP and state and local homeland security assistance.<sup>101</sup> In the FY2006 budget request, the Administration proposes a total of \$3.57 billion for SLGCP and federal homeland security assistance, a reduction of \$420 million from FY2005 funding. Additionally, the FY2006 budget request provides no line item funding for the Law Enforcement Terrorism Prevention Program (LETPP). It proposes, however, to direct states and localities to allocate no less than 20% of SHSGP and UASI funding for LETPP activities.<sup>102</sup> Apparently, this is a reduction in SHSGP and UASI funding for equipment, training, exercises, and planning, which states and localities were authorized to fund with 100% of their allocated amount in FY2005. One could argue that the overall funding reduction of \$420 million and the Administration's requirement of states and localities allocating no less than 20% of their SHSGP and UASI funding for LETPP activities represents a further reduction of funding for federal homeland security assistance.

The House passed H.R. 2360 proposes a total of \$3.67 billion for SLGCP and federal homeland security assistance, a reduction of \$320 million from FY2005 funding. This proposed reduction includes \$350 million less for SHSGP than was appropriated in FY2005.<sup>103</sup>

The Administration's budget proposal requests \$500 million for FIRE in FY2006, a cut of 23% from the FY2005 appropriated level. Priority would be given to grant applications enhancing counter-terrorism capabilities. Activities such as prevention, public fire safety education and awareness, and fire code enforcement would be funded under a separate fire prevention and firefighter safety grant program. For FY2006, the Administration is requesting no funding of the SAFER grants, which provide assistance to fire departments for hiring personnel.<sup>104</sup> After House Amendment 134 was adopted during floor debate, House-passed H.R. 2360 included \$650 million for firefighter assistance, including \$575 million for fire grants and \$75 million for SAFER Act grants. The committee does not agree with the Administration's proposal to shift the program's priority to terrorism or to limit the list of eligible activities.

On June 16, 2005, the Senate Appropriations Committee approved \$615 million for firefighter assistance, including \$550 million for fire grants and \$65 million for SAFER Act grants. The committee report states that DHS should "continue the present practice of funding applications according to local priorities and those established by the United States Fire Administration." The

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<sup>101</sup> P.L. 108-334, Title III, FY2005 DHS appropriations.

<sup>102</sup> OMB, *FY2006 Budget*, p. 478.

<sup>103</sup> House Appropriations Committee Homeland Security tables of Mar. 15, 2005.

<sup>104</sup> This information provided by Len Kruger, Research, Science, and Industry Division.

Senate passed H.R. 2360 proposes \$3.49 billion for SLGCP and federal homeland security-assistance, a reduction of \$492 million from FY2005 funding. This proposed reduction includes \$350 million less for SHSGP than was appropriated in FY2005. The H.R. 2360 conference report proposes \$3.346 billion for SLGCP, which is \$639 million than appropriated for these programs in FY2005.

### ***Port, Rail, and Infrastructure Security***

In FY2005 Congress appropriated \$150 million for port security and \$150 million for rail security (both part of UASI).<sup>105</sup> The Administration, in the FY2006 budget request, proposes the establishment of a new state and local homeland security assistance program, TIPP, and requests \$600 million for the program. TIPP would provide funding to enhance the security of ports, transits systems, and other infrastructure, as determined by the DHS Secretary.<sup>106</sup> The budget request, however, does not specify how much funding would be allocated for port security, or transit systems. Since the Administration proposes TIPP as a discretionary grant program, one could argue that there is no way to determine the amount that would be allocated for port and rail security which have been congressional priorities.

The House passed H.R. 2360 proposed \$365 million for port, rail, and infrastructure security, however, the committee did not agree with the Administration in establishing a separate grant program for these security activities.<sup>107</sup> The Senate passed H.R. 2360 recommended \$365 million for port, rail, and infrastructure security and for the grants to be administered separately from UASI. The H.R. 2360 conference report proposed \$390 million (adopted in P.L. 109-90) for these port, rail, and infrastructure security grants, which is \$75 million more than what was appropriated in FY2005.

### ***Formula Changes***

The Administration proposed changing the formula for ODP's SHSGP. The FY2006 budget request proposed \$1.02 billion for SHSGP to be allocated based on risks, threats, vulnerabilities, and unmet first responder capabilities, provided each state and territory is allocated no less than 0.25% of total funds appropriated for this program. There was no proposed formula change for UASI, CCP, EMPG, or FIRE. The Administration did, however, propose that FIRE applications to enhance terrorism response capabilities be given priority.<sup>108</sup> It can be argued that the proposed formula change for SHSGP did not fully support the National Commission on Terrorist Attacks Upon the United States' (9/11 Commission) recommendation of providing federal homeland security assistance strictly based on threat and risk,<sup>109</sup> because of the Administration's proposed state and territory guaranteed minimum of 0.25%.

The House report (H.Rept. 109-79) accompanying H.R. 2360 stated that the committee recognizes pending legislation to modify state formula grants and presumes ODP would distribute

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<sup>105</sup> P.L. 108-334, Title III.

<sup>106</sup> OMB, *FY2006 Budget*, p. 478.

<sup>107</sup> House Appropriations Committee Homeland Security tables of Mar. 15, 2005

<sup>108</sup> *Ibid.*, pp. 478-480.

<sup>109</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, Aug. 2004), p. 396.

funds based on any successor legislation to Section 1014 of the USA PATRIOT Act (P.L. 107-56). Provided no succeeding legislation to the USA PATRIOT Act is enacted, the Committee directs ODP to assess each state's threat, risk, and need to determine their minimum essential preparedness capability levels and allocate remaining funds to address those identified gaps in preparedness.<sup>110</sup>

Senate passed H.R. 2360 recommended \$425 million to be allocated to states in the same manner as amounts distributed to states in FY2005. All remaining funds would be allocated to states at the discretion of the DHS Secretary based on risks, threats, vulnerabilities, unmet essential capabilities, and cooperation of multiple jurisdictions in preparing domestic preparedness plans.<sup>111</sup> The Collins-Lieberman Amendment (S.Amdt. 1142) passed by the Senate on July 12, 2005 to Senate passed H.R. 2360 would allow states, and U.S. possessions and territories to select either of two options that yields the highest funding level. First, funds would be divided among the states, the District of Columbia (DC), and U.S. possessions and territories as follows: states and DC would receive 0.55%, and Puerto Rico and specified U.S. possessions and territories 0.055%; these total 28.62%. Second, states could alternatively choose to receive an amount based on a "sliding scale baseline allocation" calculated by multiplying 0.001 times (1) a state's population ratio and (2) a state's population density ratio.<sup>112</sup> After the "base" funds are distributed, the remainder would be distributed through the risk assessment process, with a maximum of 50% to be distributed to high-threat urban areas, and the remainder to the states.

On September 29, 2005, the conference on H.R. 2360—FY2006 Department of Homeland Security appropriations—issued its report, which recommended a total of \$3.34 billion for state and local homeland security grant programs. This is \$270 million less than was appropriated for these programs in FY2005 (\$3.61 billion). The conference report does not propose to alter the funding formula for SHSGP and LETPP, it maintains the current formula in which states, DC, and Puerto Rico are to receive 0.75% of total appropriations, and U.S. insular areas are to receive 0.08% of total appropriations.<sup>113</sup> It does propose, however, that states be required to update their State Homeland Security Strategies in accordance with the Interim National Preparedness Goal to be eligible for federal homeland security assistance.

Additionally, it does not specify what risk factors ODP is to consider in determining the remainder of appropriations following the distribution of state base amounts.

The conference report requires the GAO to review the threats and risk factors the DHS Secretary used in determining discretionary grant allocations—the Urban Area Security Initiative (UASI) and sub-grants<sup>114</sup>—and report to Congress on the review no later than November 17, 2005.

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<sup>110</sup> H.Rept. 109-79, p. 77.

<sup>111</sup> S.Rept. 109-83, p. 66.

<sup>112</sup> Section 1801(7) of S.Amdt. 1142 sets out the alternatives as follows: (A) the value of a state's population relative to that of the most populous of the 50 states, where the population of the 50 states has been normalized to a maximum value of 100; and (B) one-fourth of the value of a state's population density relative to that of the most densely populated of the 50 states, where the population density of the 50 states has been normalized to a maximum value of 100.

<sup>113</sup> P.L. 107-56, Section 1014.

<sup>114</sup> The sub-grants include port security, trucking industry security, intercity bus security, intercity passenger rail transportation security, and buffer zone protection grants.

## Public Health and Medical Programs in Title III<sup>115</sup>

A number of programs in Title III address public health and medical preparedness for and response to disasters. Existing programs include the Metropolitan Medical Response System (MMRS) contracts in SLGCP and the National Disaster Medical System (NDMS) in FEMA. A new position of Chief Medical Officer was proposed by DHS Secretary Chertoff in July 2005, and is slated for initial funding in the Homeland Security appropriations conference report for FY2006. Community EMS services are eligible for funding through a number of state and local grant programs, including MMRS. Finally, certain activities in the Biosurveillance Initiative, previously in the DHS Information Analysis and Infrastructure Protection (IAIP) Directorate, have been transferred to a new Infrastructure Protection and Information Security (IPIS) program in Title III. Proposed FY2006 funding levels for these programs are found in **Table 8**. Certain funding issues associated with these programs are discussed below.<sup>116</sup>

The Metropolitan Medical Response System (MMRS) is a program of contracts with major cities to coordinate multiple local government agencies in emergency planning. MMRS is slated for elimination in the FY2006 budget proposal, as it has been in each budget proposal since it was transferred to DHS. The Administration proposes that ongoing municipal emergency planning activities be supported at the discretion of states, using funds from the SHSGP and UASI grant programs. The House Appropriations Committee did not agree with the Administration's proposal to eliminate MMRS, and recommended an appropriation of \$40 million.<sup>117</sup> The Senate Appropriations Committee recommended an appropriation of \$10 million.<sup>118</sup> Conferees recommended an appropriation of \$30 million.

Emergency Medical Services (EMS) providers are considered first responders but are not given funding priority in any sizeable homeland security grant programs. A few small grant programs are available through the National Highway Traffic Safety Administration (NHTSA), though they are not specifically designed for homeland security activities. EMS providers are also eligible for preparedness funds through DHS first responder grants (SHSGP, UASI and FIRE) and through the hospital preparedness program at the Department of Health and Human Services (HHS). But a recent report found that while EMS providers may represent one-third of traditional first responders, they have received only 4% of the preparedness funds available through DHS, and 5% of funds available through HHS.<sup>119</sup> In its report on homeland security appropriations for FY2006, the House Committee on Appropriations directs that no less than 10% of SHSGP and UASI funds must be provided to EMS responders.<sup>120</sup> The Senate Committee on Appropriations encourages DHS to require that states include EMS representatives in planning efforts.<sup>121</sup> The conferees direct ODP to require state and local governments to include EMS representatives in

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<sup>115</sup> This information provided by Sarah Lister, Domestic Social Policy Division.

<sup>116</sup> For more information about the MMRS and Biosurveillance programs, see CRS Report RL31719, *An Overview of the U.S. Public Health System in the Context of Emergency Preparedness*, by (name redacted). For more information about NDMS and the Chief Medical Officer position, see CRS Report RL33096, *2005 Gulf Coast Hurricanes: The Public Health and Medical Response*, by (name redacted).

<sup>117</sup> H.Rept. 109-79, pp. 82-83.

<sup>118</sup> S.Rept. 109-83, p. 68.

<sup>119</sup> New York University, Center for Catastrophe Preparedness and Response, *Emergency Medical Services: The Forgotten First Responder*, Apr. 2005, at <http://www.nyu.edu/ccpr/index.html>.

<sup>120</sup> H.Rept. 109-79, p. 85.

<sup>121</sup> S.Rept. 109-83, p. 68.

planning committees. The conferees do not mandate that a specific percentage of grant funds be allocated to EMS providers, but rather they direct ODP to evaluate how much money goes to EMS providers and to require an explanation from any state not providing at least 10% of its grant funding to them.<sup>122</sup>

## Federal Emergency Management Administration (FEMA)<sup>123</sup>

### Hurricane Katrina

Responding to the devastation caused by Hurricanes Katrina and Rita, Congress enacted two supplemental appropriations to the Disaster Relief Fund (DRF). These appropriations provided EPR with \$60 billion in additional funding to administer relief to the affected region and to other areas included in major disaster or emergency declarations. The funding comprises \$10 billion in P.L. 109-61 and \$50 billion in P.L. 109-62. DHS uses DRF funds to provide assistance to individuals, families, state and local governments, and certain nonprofit organizations, as authorized by the Stafford Act (42 U.S.C. 5170b).<sup>124</sup>

### President's Request

Few substantive changes were proposed in the FY2006 budget justification for the EPR accounts. The disaster relief funding request submitted by the Administration corresponded to the amount requested in previous fiscal years. Funding for two hazard mitigation programs would have increased under the proposal; an increase of \$50 million (\$100 million appropriated for FY2005) proposed for pre-disaster mitigation grants awarded on a competitive basis, and an increase of \$8 million (\$20 million authorized to be transferred in each previous year) for flood mitigation assistance. Post-disaster mitigation grants, however, would continue to be funded at a lower level than historically provided.

### House Passed H.R. 2360

The House approved legislation that differed in certain respects from the Administration request. The version of H.R. 2360 adopted by the House included the following: (1) a reduction of \$2 million for the Office of the Under Secretary for Emergency Preparedness and Response in light of a "lack of cooperation received from EP&R, specifically regional and field offices;"<sup>125</sup> (2) increased funding of \$10 million to further development of the national preparedness system;<sup>126</sup> (3) completion of a report by EPR (March 15, 2006) on disaster relief overpayments made over the past four years; and (4) mitigation assistance higher than that proposed by the Administration.

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<sup>122</sup> H.Rept. 109-241, pp. 68.

<sup>123</sup> Prepared by (name redacted), Specialist in American National Government, Government and Finance Division.

<sup>124</sup> For more information see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by (name redacted), and CRS Report RS22739, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by (name redacted) and (name redacted).

<sup>125</sup> H.Rept. 109-79, p. 85-86.

<sup>126</sup> H.Rept. 109-79, p. 89.



## **Senate Passed H.R. 2360**

The Title III provisions approved by the Senate differed from those approved by the House. The Senate-passed version (1) provided the requested funding for the Office of the Under Secretary, (2) did not include \$15 million requested for the national preparedness system and rescinded almost \$10 million in unobligated funds, (3) did not address disaster relief overpayments, and (4) recommended mitigation funding below that requested and the amount approved by the House. The Senate report included an increase of \$23 million to support Urban Search and Rescue teams, along with a requirement for a report on costs of the teams, as well as support for the National Dam Safety Program. Also, while both chambers recommended comparable funding levels (\$2 billion) for the disaster relief fund, the Senate approved an amendment that would reduce funding by \$10 million in order to increase the funding level for Emergency Management Performance Grants (EMPG).

## **P.L. 109-90**

The final version of the FY2006 appropriations statute supported the Second Stage Review (2SR) reorganization plan proposed by Secretary Chertoff on July 13, 2005 by providing a total of \$16.079 million for management and administration of the Preparedness Directorate and requiring that the Directorate “work with” FEMA to continue to build “an all-hazard approach for preparation, response and recovery to any type of disaster.”<sup>127</sup> P.L. 109-90 also provides roughly \$40 million less than the \$249.5 million approved by the House for Preparedness, Mitigation, Response and Recovery (PMRR) funding. Of the total, \$20 million is to be provided for “catastrophic planning,” and \$22 million for implementation of the National Incident Management System (NIMS). In addition, \$20 million in the same account has been approved by conferees for urban search and rescue teams (the House proposed \$7 million, the Senate \$30 million), as has \$4 million for reusable structures. The statute provides additional funding for the DRF at a level (\$1.770 billion) lower than proposed by both the House (\$2 billion) and the Senate (\$1.920 billion), apparently largely because of the supplemental funding provided after Hurricanes Katrina and Rita. Also of significance, the statute increases funding for disaster mitigation by providing \$40 million for activities involving repetitively flooded property (not previously funded) and for the National Flood Mitigation Fund, from the historic level of \$20 million to \$40 million through transfers from the National Flood Insurance Fund. As enacted, the statute includes funding for the pre-disaster mitigation fund that differs from the amount approved by the two chambers—\$50 million compared to \$150 million approved by the House and \$37 million by the Senate.

## **Issues for Congress**

Two significant developments, not apparent when debate on the FY2006 appropriation began were addressed by Congress during debate on H.R. 2360. First, funding (\$16 million) has been provided for the management and administration of the Preparedness Directorate. Second, in the wake of the destruction caused by Hurricane Katrina increased reporting requirements have been imposed on FEMA to ensure that expenditures of over \$50 million is provided to Congress.

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<sup>127</sup> For an examination of 2SR and its impact on FEMA’s mission see CRS Report RL33064, *Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109<sup>th</sup> Congress*, by (name redacted).

## Disaster Relief Expenditures

Congress appropriates money to the Disaster Relief Fund (DRF) to ensure that federal assistance is available to help individuals and communities stricken by severe disasters. Funds appropriated to the DRF remain available until expended. DHS allocates money from the DRF to provide assistance to individuals, families, state and local governments, and certain nonprofit organizations, as authorized by the Stafford Act.<sup>128</sup> Stafford Act aid is available after the President issues a declaration that federal assistance is needed to supplement the resources of states and localities that are overwhelmed by catastrophes. Federal assistance supported by DRF money is used by states, localities, individuals, and certain non-profit organizations for mass care, restoration of damaged or destroyed facilities, clearance of debris, and certain uninsured needs.

As shown in **Table B-1** in **Appendix B**, DRF obligations have increased considerably since 1990 in comparison to those recorded in previous decades. The cause of the increase in federal expenditures since 1990 has been the subject of some debate. A report issued by the OIG for FEMA concluded that the increase in federal disaster costs “is due to a greater number and magnitude of disasters, expansion of the law and eligibility for assistance, and interpretation of the law and regulations.”<sup>129</sup> Some contend that other factors, notably political considerations, contribute to the costs of disaster relief as well. The author of one study reportedly analyzed data from the insurance industry, climatic study organizations, and DHS, and concluded that “electoral motivations ... had a dramatic effect on which states were granted disaster declarations.”<sup>130</sup> More specifically, and less dramatically, the author reports in a published summary of his work: “The best predictor of a disaster declaration, bar none, is actual need. The question arises in these marginal cases, when it’s unclear whether to give or not.”<sup>131</sup> On the other hand, a study issued by GAO also considered the effects of politics on disaster declarations but arrived at a different conclusion. After examining presidential declaration data from the perspective of the party affiliation of governors and members of state congressional delegations, the authors concluded that there “were no indications that party affiliation affected White House major disaster declaration decisions.”<sup>132</sup>

In considering a gubernatorial request for disaster relief, the President evaluates a number of factors, including the cause of the catastrophe, damages, needs, certification by state officials that state and local governments will comply with cost sharing and other requirements, and official requests for assistance. Neither the Stafford Act nor implementing regulations provide for a congressional role in the declaration process.<sup>133</sup>

The level of expenditures from the DRF fluctuates from year to year primarily as a consequence of three factors—the number of disaster declarations issued, the extent of destruction caused by the disasters, and the amount of uninsured losses that result from declared disasters. Discussions in Congress on the escalating disaster relief costs move between two policy concerns—the need

<sup>128</sup> The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et seq.

<sup>129</sup> U.S. Federal Emergency Management Agency, at <http://www.fema.gov/library/pp2man.shtm>.

<sup>130</sup> For a summary see Andrew Reeves, “Plucking Votes from Disasters,” *Los Angeles Times*, May 12, 2004, p. A19.

<sup>131</sup> Brian Tarcey, “Flooding the Ballot Box: The Politics of Disaster,” *Harvard Magazine*, at <http://www.harvard-magazine.com/on-line/030492.html>.

<sup>132</sup> U.S. General Accounting Office, *Disaster Assistance: Timeliness and Other Issues Involving the Major Disaster Declaration Process*, GAO/RCED-89-138, May 25, 1989, pp. 1, 4.

<sup>133</sup> For regulations on the request and declaration process, see 44 CFR §§206.35-206.39.

to control federal costs, particularly at a time of significant deficits, and the need of constituents who have suffered devastating losses.

During the second session of the 109<sup>th</sup> Congress Members may wish to evaluate several options in balancing the needs of disaster stricken areas with budgetary constraints. These options include and are not limited to the following approaches.<sup>134</sup>

- Amend the Stafford Act to determine whether existing statutory declaration criteria are appropriate. Reducing the categories or narrowing their scope would result in cost savings as fewer disasters would trigger federal assistance. Such changes, however, would result in greater financial burdens for individuals and communities in distress.
- Modify how Congress and the President budget for emergencies. Currently, Congress provides additional funds during the fiscal year, usually in supplemental appropriations, to respond to specific natural disasters and other emergency, or unanticipated, situations. Congress and the President usually designate the additional spending as an “emergency requirement,” effectively exempting it from budget constraints associated with the annual budget resolution. Some believe this practice of budgeting for emergencies might lead to unnecessary or wasteful spending. In addition, some believe that the existing budgetary treatment of emergency spending provides an incentive to designate non-emergency spending as an emergency requirement in order to circumvent the existing budgetary constraints. To address these concerns, some have proposed the following two reforms, establishment of a reserve fund or criteria for the designation of an emergency, as follows.
- Establish a reserve fund for disaster assistance. Proponents of a reserve fund for disaster assistance argue that the average annual amount of overall emergency spending can be projected based on past experience, even though specific emergencies cannot be predicted. Therefore, they further argue that an expected amount of disaster assistance spending should be incorporated into the overall amount of spending in the President’s budget and the budget resolution. Proponents of such a reserve fund generally suggest that an historical average of actual disaster assistance spending would provide sufficient funds to meet specific emergencies as they arise. Legislation pending before Congress (S. 24) would establish such a fund in the Treasury.
- Establish criteria for emergency spending. Proponents of emergency spending criteria argue that any spending for disasters and other emergencies should meet specific criteria to be considered outside the constraints associated with the budget resolution and outside the regular annual appropriations process. Past budget resolutions have required that spending designated as an “emergency requirement” meet criteria such as the “underlying situation poses a threat to life, property, or national security” and is sudden, urgent, unforeseen, and temporary (for example, see the budget resolution considered by the 108<sup>th</sup> Congress,

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<sup>134</sup> Contributions on emergency funding provided by Bill Heniff, Jr., Analyst in American National Government, Government and Finance Division.

S.Con.Res. 95, H.Rept. 108-498). Proponents, however, suggest that such criteria should be statutory.<sup>135</sup>

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

Activities funded by Title IV include the Bureau of Citizenship and Immigration Services (USCIS), IAIP, FLETC, and the S&T.

**Table 8** shows the FY2005 enacted and FY2006 requested appropriations for Title IV. The Administration requested an appropriation of \$4,320 million in gross budget authority for Title IV in FY2006, representing an 8% increase over the enacted FY2005 level of \$4,011 million. The Administration requested an appropriation of \$2,546 million in net budget authority for Title IV in FY2006, representing a 6% increase over the FY2005 enacted level of \$2,392 million. Of the requested net appropriation for DHS for FY2006: USCIS accounts for less than 1%; IAIP accounts for 3%; S&T accounts for 5%; FLETC accounts for less than 1%; and all Title IV accounts combined account for 8% of requested net appropriated DHS budget authority. House-passed H.R. 2360 recommended a net appropriation of \$2,522 million in net budget authority for Title IV in FY2006, representing a \$126 million or nearly 5% increase as compared to the FY2005 enacted amount; and a \$24 million or 1% decrease as compared to the FY2006 request. The Senate-passed version of H.R. 2360 would have provided \$2,686 million for the activities of Title IV, representing an increase of \$140 million, or 5%, compared to the FY2006 request; an increase of \$164 million, or 7%, compared to the amount provided in the House-passed version of H.R. 2360; and an increase of \$290 million, or 12%, compared to the FY2005 enacted amount. P.L. 109-90 provides \$1,899 million for the activities of Title IV. This does not include funding for IAIP (see tablenote b to **Table 10**).

**Table 10. Title IV: Research and Development, Training, Assessments, and Services**  
(budget authority in millions of dollars)

Operational component	FY2005 enacted	FY2006 request	FY2006 House	FY2006 Senate	FY2006 Enacted
<b>Citizenship and immigration services (direct appropriation)</b>					
<b>Gross subtotal</b>	<b>1,775</b>	<b>1,854</b>	<b>1,894</b>	<b>1,854</b>	<b>1,889</b>
—Offsetting fees <sup>a</sup>	-1,615	-1,774	-1,774	-1,774	-1,774
<b>Net subtotal</b>	<b>160</b>	<b>80</b>	<b>120</b>	<b>80</b>	<b>115</b>
<b>Information analysis and infrastructure protection<sup>b</sup></b>					
—Management and administration	132	204	190	169	—

<sup>135</sup> For example, the state of Louisiana defines “emergency,” for the purpose of appropriating emergency funds, as “an event or occurrence not reasonably anticipated by the legislature. ‘An event not reasonably anticipated’ shall be one not considered and rejected, in the same relative form or content, by the legislature during the preceding session either by specific legislative instrument or amendment thereto on the floor of either house or by a committee thereof.” See La. Rev. Stat. Title 39, §461.1.A.(2).

Operational component	FY2005 enacted	FY2006 request	FY2006 House	FY2006 Senate	FY2006 Enacted
—Assessments and evaluation	762	669	663	702	—
<b>Net subtotal</b>	<b>894</b>	<b>873</b>	<b>853</b>	<b>871</b>	<b>—</b>
<b>Federal law enforcement training center</b>	<b>227<sup>c</sup></b>	<b>224</b>	<b>259</b>	<b>282</b>	<b>282</b>
<b>Science and technology</b>					
—Management and administration	69	81	81	81	81
—Research, development, acquisition, and operations <sup>d</sup>	1,047	1,287	1,209	1,372	1,421
<b>Net subtotal</b>	<b>1,115</b>	<b>1,368</b>	<b>1,290</b>	<b>1,453</b>	<b>1,502</b>
<b>Gross budget authority: Title IV</b>	<b>4,011</b>	<b>4,320</b>	<b>4,296</b>	<b>4,460</b>	<b>3,673</b>
<b>Offsetting collections: Title IV</b>	<b>-1,615</b>	<b>-1,774</b>	<b>-1,774</b>	<b>-1,774</b>	<b>-1,774</b>
<b>Net budget authority: Title IV</b>	<b>2,396</b>	<b>2,546</b>	<b>2,522</b>	<b>2,686</b>	<b>1,899</b>

**Source:** CRS analysis of the FY2006 President's Budget, and DHS *Budget in Brief*, House Appropriation Committee tables of May 20, 2005, House-passed H.R. 2360 and H.Rept. 109-79; Senate-passed H.R. 2360 and S.Rept. 109-83; and the Conference Report to H.R. 2360, H.Rept. 109-241.

**Note:** Totals may not add due to rounding. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- a. Fees include Immigration Examination Fund; H-1b Visa Fee; and the Fraud Prevention and Detection fee.
- b. P.L. 109-90 splits up the IAIP Directorate pursuant to Secretary Chertoff's reorganization proposal submitted to Congress on July 13, 2005. The IA portion of IAIP has been moved to Title I under the account heading *Analysis and Operations*. The IP portion of IAIP has been moved to Title III in the Preparedness Directorate and is under the account heading of *Infrastructure Protection and Information Security*. The IAIP Management and Administration accounts have apparently been split between these two new accounts, however the exact division of these funds was not readily available.
- c. Includes \$4 million in supplemental appropriations provided by P.L. 109-13.
- d. DHS proposed consolidating the department's Research and Development efforts by transferring the Research and Development functions of CBP, ICE, TSA, and the Coast Guard to the Directorate of S&T.

## Citizenship and Immigration Services (USCIS)<sup>136</sup>

There are three major activities that dominate the work of the U.S. Citizenship and Immigration Services (USCIS): the adjudication of immigration petitions (including nonimmigrant change of status petitions, relative petitions, employment-based petitions, work authorizations, and travel documents); the adjudication of naturalization petitions for legal permanent residents to become citizens; and the consideration of refugee and asylum claims, and related humanitarian and international concerns. USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits largely through monies generated by the Examinations Fee Account.<sup>137</sup> Last year, the Administration increased the fees charged to U.S. citizens and legal permanent residents petitioning to bring family or employees into the United

<sup>136</sup> Section prepared by (name redacted), Specialist in Immigration Policy, Domestic Social Policy Division. For further information see CRS congressional distribution memorandum, *FY2006 Funding for U.S. Citizenship and Immigration Services*, by (name redacted).

<sup>137</sup> §286 of the Immigration and Nationality Act, 8 U.S.C. §1356.

States and to foreign nationals in the United States seeking immigration benefits.<sup>138</sup> In FY2004, 86% of USCIS funding came from the Examinations Fee Account.

In FY2005, USCIS had budget authority for \$1.571 billion from the Examinations Fee Account.<sup>139</sup> 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.<sup>140</sup> 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 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.<sup>141</sup> DHS also receives 5% of the H-1B education and training fees in the Nonimmigrant Petitioner Account.<sup>142</sup>

### **President's Request**

For FY2006, the Administration is seeking an increase of \$79 million for USCIS. The Administration is requesting a total of \$1,854 million for USCIS, (an increase of 4% over the enacted FY2005 level of \$1,775 million) the bulk of the funding coming from increased fees paid by individuals and businesses filing petitions (**Table 10**). For FY2006, USCIS expects to receive a total of \$1,774 million from the various fee accounts, most of which (\$1,730 million) would be coming from the Examinations Fee Account. According to the USCIS Congressional Justification documents, funds from the Examinations Fee Account alone comprise 93% of the total USCIS FY2006 budget request. The FY2006 Budget also includes \$13 million from the H-1B Nonimmigrant Petitioner Account<sup>143</sup> and \$31 million from the H-1B and L Fraud Prevention and Detection Account.<sup>144</sup> The Administration proposes to use the \$31 million generated from the new fee on H-1B and L petitions to expand its Fraud Detection and National Security Office.<sup>145</sup>

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<sup>138</sup> 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.

<sup>139</sup> P.L. 108-334, Conference Report to accompany H.R. 4567, H.Rept. 108-774.

<sup>140</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany H.R. 4567, 108<sup>th</sup> Cong., 2<sup>nd</sup> 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).

<sup>141</sup> §426(b) of P.L. 108-447.

<sup>142</sup> §286(s) of INA; 8 U.S.C. §1356(s).

<sup>143</sup> §286(s) of INA; 8 U.S.C. §1356(s).

<sup>144</sup> §286(v) of INA; 8 U.S.C. §1356(v).

<sup>145</sup> 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.

In terms of direct appropriations, the Administration is requesting \$80 million—a decrease of \$80 from FY2005 (**Table 10**) and a decrease of \$155 million from the \$235 million Congress appropriated in FY2004.

### **House-Passed H.R. 2360**

House-passed H.R. 2360 recommended an increase of \$40 million above the President's request for a total of \$120 million, which is \$40 million less than the FY2005 enacted appropriation.

### **Senate-Passed H.R. 2360**

Senate-passed H.R. 2360 recommended \$80 million for USCIS in direct appropriations fully funding the President's request, but recommending \$40 million less than provided in House-passed H.R. 2360, and \$80 million less than enacted in FY2005.

### **P.L. 109-90**

P.L. 109-90 provides a total of \$1,889 million for USCIS, of which 94% comes from fees. The remaining 6% is a direct appropriation of \$115 million, which includes \$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. The FY2006 appropriations amount is a decrease of 28% 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.

### **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 backlog elimination for the past several years.<sup>146</sup> The number of pending immigration and naturalization petitions has decreased by 21.5% from 6.0 million at the close of FY2003 to 4.7 million at the close of FY2004. Nonetheless, this figure remains 25.7% greater than the 3.7 million pending cases at the close of FY2000. USCIS hopes to achieve the six-month petition processing time by FY2006.

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."<sup>147</sup> USCIS has established the Office of Fraud Detection and National Security to work with the appropriate law enforcement

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<sup>146</sup> For example, see §§451-461 of the Homeland Security Act of 2002 (P.L. 107-296).

<sup>147</sup> GAO, *Management Challenges Remain in Transforming Immigration Programs*, GAO-05-81, Oct. 2004, available at <http://www.gao.gov/new.items/d0581.pdf>.

entities to handle national security and criminal “hits” on aliens and to identify systemic fraud in the application process.<sup>148</sup>

## **Federal Law Enforcement Training Center (FLETC)<sup>149</sup>**

The Federal Law Enforcement Training Center provides training on all phases of law enforcement instruction, from firearms and high speed vehicle pursuit to legal case instruction and defendant interview techniques, for 81 Federal entities with law 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 900 employees. In FY2004, FLETC trained almost 44,781 law enforcement students.

### **President’s Request**

The FY2006 request for FLETC was \$224 million, an decrease of \$3 million, and 1%, from the FY2005 enacted appropriation (including supplemental appropriations). FLETC’s FY2006 request included only one program change, an increase of \$2.7 million for Simulation Training Technology. This technology will be used to simulate weather, light, urban, and traffic conditions during high-speed pursuits, allowing the agency to increase their students’ proficiency at making rapid decisions during critical law enforcement situations.

### **House-Passed H.R. 2360**

House-passed H.R. 2360 allotted \$259 million for FLETC in FY2006, \$35 million, or 16%, more than the President’s request and \$32 million, or 14% more than the agency’s FY2005 appropriation. This increase was intended to cover the increased training needs that will be engendered by new Border Patrol agents and ICE investigators added by the House Committee.<sup>150</sup>

### **Senate-Passed H.R. 2360**

The Senate Appropriations Committee recommended \$282 million for FLETC in FY2006, \$58 million more than the President’s request and \$55 million, or 24% more than the agency’s FY2005 appropriation. The bulk of this increase was in the construction account in order to cover the expansion and maintenance of training facilities to accommodate the increase in Border Patrol agents and ICE investigators.<sup>151</sup>

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<sup>148</sup> For further analysis, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by (name redacted).

<sup>149</sup> Prepared by (name redacted), Analyst in Domestic Security, Domestic Social Policy Division.

<sup>150</sup> H.Rept. 109-79, pp.100-101.

<sup>151</sup> S.Rept. 109-83, pp. 81-82.



## **P.L. 109-90**

P.L. 109-90 provides \$282 million for FLETC. This number includes the Senate's recommendation for \$88 million in the Construction account in order to cover the increased training needs of DHS as the department hires additional Border Patrol agents and ICE investigators.<sup>152</sup>

## **Information Analysis and Infrastructure Protection (IAIP)<sup>153</sup>**

The historical mission of the DHS IAIP, in short, was to:

- integrate and analyze terrorist threat information;
- map threat information against physical and cyber vulnerabilities of the Nation's critical infrastructure and key assets; and
- implement and/or recommend actions that protect the lives of the American people and ensure the national and economic security of the United States.

The IAIP appropriation was divided into two primary accounts: Management and Administration, and Assessments and Evaluations. Management and Administration includes budgets for the Office of the Under Secretary and Other Salaries and Expenses. The latter (Other Salaries and Expenses) includes all the personnel costs of the Directorate. The Assessment and Evaluations budget supports the directorate's activities. These activities have been divided into 12 programs. Each program contains one or more projects. Projects are defined with varying degrees of specificity. The Directorate's budget justification document breaks funding down to the program level. It is beyond the scope of this report to discuss in much detail the specific activities associated with each of these programs.

The President's FY2006 IAIP request was \$873 million, a decrease of 2.3% from the amount enacted for FY2005. The House approved \$853 million for IAIP, about \$20 million below what the Administration requested. The Senate Appropriations Committee recommended \$871 million for IAIP. **Table 11** summarizes the President's request and congressional action for each account and program.

### **Management and Administration**

The President's FY2006 request for the M&A account was \$204 million, an increase of \$72 million, or 55%. Of the \$72 million increase requested for the Management and Administration account, \$69.1 million are programmatic changes: \$11.7 million to increase staffing (146 new positions, funded for half a year),<sup>154</sup> \$38 million to upgrade and expand facilities and equipment for the Directorate (including security upgrades), and \$19.4 million to construct a Homeland

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<sup>152</sup> H.Rept. 109-241, p. 77.

<sup>153</sup> Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division; and (name redacted), Specialist in Domestic Intelligence and Counterterrorism, Domestic Social Policy Division.

<sup>154</sup> The majority of these positions (100) would go toward the Infrastructure Vulnerability and Risk Assessment program involved in studying the tactics and capabilities of terrorist groups and liaising with the Intelligence Community. Another 26 people would be hired for the Threats Determination and Assessment program to do more strategic level threat assessments.

Secure Data Network, to accommodate the automated access and sharing of classified information within the Directorate. Adjustments to the FY2005 base (\$2.8 million) account for the balance.<sup>155</sup>

The House approved \$190.2 million for this account, \$13.8 million less than what was requested. The House cut \$5.8 million from the amount requested for additional positions. The House report noted that IAIP has still not filled its currently authorized FTE positions and that the committee would like a review of the mission and function of IAIP in light of the Intelligence Reform and Terrorism Prevention Act and the formation of the National Counter Terrorism Center and the Terrorist Screening Center.<sup>156</sup> The House also approved a floor amendment to reduce the M&A account by another \$8 million (in undisclosed reductions).

The Senate also approved less funding for the M&A account (\$168.7 million). It denied all of the requested funds for extra FTE positions and included a base reduction due to continued hiring difficulties.<sup>157</sup> Like the House, the Senate called for a review of IAIP staffing requirements. The Senate also recommended that no funds be made available for the Homeland Secure Data Network through the M&A account. The Senate recommended funding this program through the Chief Information Officer's budget, located elsewhere in the DHS budget. The Senate did allow increases for pay and non-pay inflationary costs and other efficiencies.

### **Assessments and Evaluations**

The President's request for FY2006 in the A&E account was \$669 million, a decrease of \$92.4 million, or 12% from FY2005. The reduction is the net result of a number of programmatic increases, decreases, and transfers. The IAIP Directorate proposes transferring two activities to other DHS components. One proposal is to transfer support for state and local assistance to help create Buffer Zone Protection Plans around critical assets to the SLGCP, as part of the latter's new \$600 million initiative (TIPP). The other proposal is to transfer support for the National Control Systems Test Center (a test bed for analyzing and fixing vulnerabilities in computer control systems) to the S&T Directorate. The Cyber Security program has been supporting the center.

These adjustments to the enacted FY2005 A&E account bring the FY2006 base to \$624 million. Requested program enhancements for the A&E account total \$49 million. Of the \$49 million, the A&E program with the largest increase (\$26 million, or 53%) is the Homeland Security Operations Center (HSOC). Major programmatic increases within HSOC include \$13.4 million for hardware, software, and support for extending the Homeland Security Information Network<sup>158</sup> to localities and relevant private sector entities; and \$12.9 million to purchase, upgrade, and support additional information and communications hardware and software to improve the HSOC capabilities to acquire, manipulate, store and disseminate greater amounts of information. Other programmatic increases in the A&E account include \$5 million to support expanded capabilities

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<sup>155</sup> Adjustments to base are changes made to the prior year's enacted appropriation and generally include transfers of funds from one program to another, or technical adjustments for salaries and other management efficiencies.

<sup>156</sup> H.Rept. 109-79, pp. 101-102.

<sup>157</sup> S.Rept. 109-83, p. 83.

<sup>158</sup> DHS and the IA/IP view the Homeland Security Information Network as the primary portal for communicating with states, localities, and the private sector. Connectivity via the Network has been established with all 50 states and many law enforcement entities. The FY2006 increase is to extend connectivity to 1800 other sites.

and operations of the United States Computer Emergency Response Team within the Cyber Security program; \$5.5 million to primarily provide for additional contractor support of the Protected Critical Infrastructure Information project (within the Critical Infrastructure Outreach and Partnerships program);<sup>159</sup> \$3.0 million within the Critical Infrastructure Outreach and Partnerships program to support implementation and oversight of the National IP Plan; and \$5.5 million to hire contractors to better define policy, procedures and processes governing information sharing between DHS and its partners, to draft technical and operational needs statements, and to analyze new requirements.

The IAIP budget justification provides less detail about the programmatic decreases in FY2006, totaling approximately \$146 million (including the transfer of the National Control Systems Test Center). The Critical Infrastructure Outreach and Partnerships program decrease includes a \$35 million reduction associated with no longer hosting some departmental applications as directed by the department's CIO. Some of the increases and decreases within specific programs are the result of the transfer of projects between programs. For example, some Threat Determination and Assessment activities were transferred to the Infrastructure Vulnerability and Risk Assessment program. The budget request also estimates approximately \$3.0 million in savings due to management and technology efficiencies. The A&E program with the highest (\$100 million) adjustment to its base is the Protective Actions program. This program assists federal, state, local, tribal, and private sector organizations in identifying vulnerabilities, and devising protection strategies and local protective programs to surround select infrastructure assets. Of the \$100 million adjustment, the Buffer Zone Protection Plans (BZPP) project was reduced by \$53 million associated with the transfer of assistance to the new TIPP, administered by SLGCP. Another \$42 million of the \$100 million adjustment was a decrease for Emerging Pilot Projects and Technology Application Pilots. This effort will now be funded within the DHS S&T.

The House approved \$663 million for the A&E account, making a few modifications to specific programs, as noted in **Table 11**. It reduced the Critical Infrastructure and Outreach program request by \$5 million because it did not receive a report on Information Sharing and Analysis Centers, which it said it needed to assess funding levels for them. The House reduced the Homeland Security Operations Center request by \$5 million because it did not receive a five-year implementation plan for the center. The House reduced the Biosurveillance request by \$1 million because it did not receive a classified report on the program's scope, costs, schedules, and key milestones. The House increased the Critical Infrastructure Identification and Evaluation program by \$5 million to expand IAIP Comprehensive Reviews of selected infrastructure sectors. The House commended IAIP on its Review of the nuclear reactor and fuel storage facilities and would like to see similar Reviews of the chemical and liquified natural gas sectors.<sup>160</sup>

The Senate approved \$702 million for the A&E account, making different modifications to specific programs from those approved by the House. The Senate nearly doubled the Critical Infrastructure Outreach and Partnerships program request to \$126.6 million, maintaining that program at FY2005 levels plus increasing funds for the National Center for Critical Information Processing and Storage by \$20 million. The Senate also increased the request for the National Infrastructure Simulation and Analysis Center by \$5 million (\$1 million above its FY2005

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<sup>159</sup> The Protected Critical Infrastructure Information program implements Title II, Subtitle B of the Homeland Security Act, which, among other protections, exempted information voluntarily provided to DHS, and certified as critical infrastructure information by DHS, from the Freedom of Information Act.

<sup>160</sup> H.Rept. 109-79, pp. 103-108.

appropriation), and increased the Biosurveillance program request by \$7 million, for a total of \$18 million. The Senate recommended reducing the Critical Infrastructure Identification and Evaluation program request by \$12.3 million. It also recommended reducing the Homeland Security Operations Center request by \$21.1 million and denied funding for the new Information Sharing and Collaboration program. The Senate Appropriations Committee's report language, however, stated that its recommendation for the Operations Center included funding for the 10 additional FTEs requested for that program. This is at odds with its earlier language denying all additional FTE increases.<sup>161</sup>

## **IAIP Reorganization**

The Chertoff reorganization essentially split the IA/IP Directorate, with the IA part forming part of the Analysis and Operations group, funded under the Departmental Operations account, and the IP part being merged with elements from the Emergency Preparedness and Response Directorate (including the Office of Domestic Preparedness and its multitude of grant programs, and FEMA) to form a new Preparedness Directorate. Conferees agreed to this reorganization, if not quite the level of funding to be provided.

The conferees funded the Analysis and Operations account at \$255.5 million. The amended request was \$311 million. The reduction was due in part to reductions made to those funds being transferred from the old IA/IP Management and Administration account. The number of vacant positions was given as the reason for those reductions. The amended request asked for \$577 million for Preparedness Operations, which included funding for the Office of the Undersecretary for Preparedness, the Office of the Chief Medical Officer, the Office of the National Capital Region Coordinator, and for Infrastructure Protection and Information Security programs (i.e., those IP programs that comprised the old Evaluations and Assessment account). The conferees provided a total of \$642 million: \$16 million for Management and Administration which includes funding (but \$4.8 million less than what was requested) for those offices mentioned above and \$625 million for Infrastructure Protection and Information Security programs (\$69 million more than was requested).

**Table 11** shows the FY2005 funding and FY2006 proposals for IAIP. The Conference Report, H.Rept. 109-241, split IAIP into Infrastructure Protection and Information Security within Title III, and Analysis and Operations in Title I. Where possible, **Table 11** follows tracks the accounts that were moved back to the FY2005 enacted level. Where such information was not available or not readily identifiable, we insert N/A. Lastly, we include the total funding provided to the new entities, IPIS and Analysis and Operations, in order to make comparisons possible between the overall request and the House and Senate recommendations for IAIP and for the new agencies.

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<sup>161</sup> See S.Rept. 109-83, pp. 83 and 86.

**Table 11. IAIP Account Level Funding and Crosswalk**  
(budget authority in millions of dollars)

Account (program)	FY2005 enacted	FY2006 request	FY2006 House	FY2006 Senate	FY2006 Enacted
<b>Management and administration</b>	<b>132.0</b>	<b>204.0</b>	<b>190.2</b>	<b>168.8</b>	<b>N/A<sup>a</sup></b>
Office of the under secretary	5.8	6.9	6.9	6.9	N/A
Other salaries and expenses	126.2	197.1	191.3	161.9	N/A
Unspecified reduction	—	—	8	—	N/A
<b>Assessments and evaluations</b>	<b>761.7</b>	<b>669.2</b>	<b>663.2</b>	<b>701.8</b>	<b>N/A</b>
<b>Total IAIP<sup>a</sup></b>	<b>893.7</b>	<b>873.2</b>	<b>853.4</b>	<b>870.6</b>	<b>N/A</b>
<b>Infrastructure Protection and Information Security (IPIS)<sup>a</sup></b>					
Management and administration	N/A	N/A	N/A	N/A	83.3
Critical infrastructure identification and evaluation	77.9	72.2	77.2	59.9	68.5
National infrastructure simulation and analysis center	20.0	16.0	16.0	21.0	20.0
Biosurveillance	11.0	11.1	10.1	18.1	14.1
Protective actions	191.6	91.4	91.4	91.4	91.4
Critical infrastructure outreach and partnerships	106.6	67.2	62.2	126.6	112.2
Cyber security	67.4	73.3	73.3	73.3	93.3
National security/emergency preparedness telecommunications	140.8	142.6	142.6	142.6	142.6
<b>IPIS Subtotal</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>625.5</b>
<b>Analysis and Operations<sup>a</sup></b>					
Management and administration	N/A	N/A	N/A	N/A	N/A
Threat determination and assessment	21.9	19.9	19.9	19.9	N/A
Infrastructure vulnerability and risk assessment	71.1	74.3	74.3	74.3	N/A
Competitive analysis and evaluation	4.0	—	—	—	N/A
Evaluations and studies	14.4	34.5	34.5	34.5	N/A
Homeland Security Operations Center	35.0	61.1	56.1	40.0	N/A
Information sharing and collaboration	—	5.5	5.5	—	N/A
<b>Analysis and Operations Subtotal</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>255.5</b>
<b>Total, IPIS and Analysis and Operations</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>881.1</b>

**Source:** CRS analysis of the FY2006 President's Budget, and DHS, *Budget in Brief*, House Appropriation Committee tables of May 20, 2005, introduced H.R. 2360 and H.Rept. 109-79, Senate Appropriations Committee tables of June 16, 2005, S.Rept. 109-83 to accompany H.R. 2360, and the Conference Report, H.Rept. 109-241.

**Note:** Totals may not add due to rounding. N/A means not available. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- a. The conferees agreed to split up the IAIP Directorate pursuant to Secretary Chertoff's reorganization proposal submitted to Congress on July 13, 2005. The IA portion of IAIP has been moved to Title I under the account heading *Analysis and Operations*. The IP portion of IAIP has been moved to Title III in the

Preparedness Directorate and is under the account heading of *Infrastructure Protection and Information Security*. The IAIP Management and Administration accounts have apparently been split between these two new accounts, however the exact division of these funds was not readily available.

## Science and Technology<sup>162</sup>

The requested FY2006 budget for Science and Technology (S&T) was \$1,368 million. (For details see **Table 10**.) For the first time, all R&D funding for the department was included in this request. Compared with the enacted FY2005 funding for the S&T Directorate alone (\$1,115 million) the FY2006 request was a 23% increase. However, if one included the enacted FY2005 funding for R&D programs formerly funded elsewhere in the department, the requested increase in DHS-wide R&D funding was 4%. The House provided \$1,290 million, a reduction of \$78 million from the request.<sup>163</sup> The Senate committee recommended \$1,453 million, or \$85 million more than the request. P.L. 109-90 provides \$1,502.1 million.

R&D programs formerly in the TSA and Coast Guard, together with some other smaller programs, would all have been consolidated into the S&T Directorate under the proposed FY2006 budget. This move reflected direction originally given in the FY2004 appropriations conference report (H.Rept. 108-280). Consolidating the Coast Guard R&D program was proposed in the FY2005 budget request as well, but the change was controversial, and Congress did not approve it. For FY2006, the House accepted the Coast Guard move, but the Senate again rejected it, and the conference agreement again followed the Senate. The House, Senate, and conference agreement all accepted the other proposed FY2006 consolidations as requested. The FY2006 budget was the first to propose consolidation for the TSA R&D program because the Homeland Security Act, which established DHS, required that TSA be maintained as a single distinct entity until November 2004 (P.L. 107-296, §424).

The request for the newly created Domestic Nuclear Detection Office (DNDO) was \$227 million. Although funded under S&T, DNDO has been made a freestanding office that reports directly to the Secretary. Noting this fact, the House report provided \$100 million less than was requested and stated that “DHS still needs to clarify its role in regard to other federal agencies ... that have similar and more mature programs.” The Senate committee, stating that it was “troubled by the manner in which this initiative has been handled,” also recommended \$100 million less than requested for DNDO, and recommended restricting the obligation of all but \$15 million until further details are provided to the appropriations committees. Some DNDO activities were formerly funded by the S&T Directorate’s radiological and nuclear countermeasures program, whose FY2006 request was \$19 million, down from \$123 million. The House provided the requested amount for radiological and nuclear countermeasures, while the Senate provided an increase to \$226 million, including \$125 million requested under CBP for testing, development, and deployment of radiation portal monitors at ports of entry. The conference agreement provided \$318 for DNDO, including \$135 million for radiation portal monitors and with restrictions on the obligation of another \$145 million pending approval of an expenditure plan by the appropriations committees. The conference agreement provided \$19 million for radiological and nuclear countermeasures and concurred with the plan to transfer most funding for this activity into DNDO.

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<sup>162</sup> Prepared by (name redacted), Analyst in Science & Technology, Resources, Science, and Industry Division.

<sup>163</sup> The House committee recommended \$1,340 million, but a floor amendment by Rep. Obey reduced this by \$50 million to fund state conformance with drivers’ license standards under the REAL ID Act of 2005 (P.L. 109-13).

Although the proposed total R&D budget for DHS would have changed from the previous year by less than in any other year since the department’s creation, the FY2006 request made substantial changes in several existing programs, as well as the new DNDO. Chemical countermeasures, support for other department components, and efforts to counter the threat from MANPADs (portable ground-to-air missiles) were all roughly doubled. Meanwhile, funding for rapid prototyping (to accelerate the adaptation or development of technologies that can be deployed in the near term) was dropped from \$76 million to \$21 million, and the consolidated R&D activities currently conducted by TSA were dropped from \$178 million to \$109 million. The House and the Senate committees and the conference agreement all broadly accepted these proposals, with some modifications, and made various other changes to the request, such as increasing funding for explosives countermeasures. See **Table 12** for details.

The FY2006 budget justification for the S&T Directorate presented program-level data on the directorate’s actual FY2004 expenditures, as compared with the program allocations specified in the FY2004 appropriations conference report. These data showed substantial reprogramming. For example, actual expenditures on biological countermeasures in FY2004 were \$455 million, versus the enacted level of \$197 million. Actual funding for construction of the National Biodefense Analysis and Countermeasure Center was \$4 million, versus \$88 million enacted. University centers and efforts to counter MANPADs, two items that were of particular congressional interest and received more FY2004 funding than had been requested, had actual expenditures of \$22 million and \$17 million respectively, versus \$69 million and \$60 million enacted. As Congress considered appropriations for FY2006, these FY2004 data raised questions about how the S&T Directorate establishes priorities among its programs and how it handles changes in those priorities after funding decisions have been made.

Section 546 of P.L. 109-90 rescinds \$20 million in unobligated funding for the S&T Directorate from previous fiscal years.

**Table 12. Science and Technology Directorate Accounts and Activities,  
FY2005-FY2006**

(budget authority in millions of dollars)

<b>Account/Activity</b>	<b>FY2005 enacted</b>	<b>FY2006 request</b>	<b>FY2006 House</b>	<b>FY2006 Senate</b>	<b>FY2006 Enacted</b>
<b>Science and Technology Directorate</b>	<b>1,115.4</b>	<b>1,368.4</b>	<b>1,290.0</b>	<b>1,453.5</b>	<b>1,502.1</b>
Salaries and expenses	68.6	81.4	81.4	81.1	81.1
R&D, acquisition, and operations	1,046.8	1,287.0	1,208.6	1,372.4	1,421.0
—biological countermeasures	362.6	362.3	360.0	384.3	380.0
—National Biodefense Analysis and Countermeasures Center	35.0	—	—	—	—
—chemical countermeasures	53.0	102.0	90.0	100.0	95.0
—explosives countermeasures	19.7	14.7	54.7	33.9	44.0
—radiological/nuclear countermeasures	122.6	19.1	19.1	226.0	19.1
—Domestic Nuclear Detection Office	—	227.3	127.3	127.3	318.0
—threat and vulnerability testing and assessment	65.8	47.0	47.0	40.0	43.0
—critical infrastructure protection	27.0	20.8	35.8	13.8	

<b>Account/Activity</b>	<b>FY2005 enacted</b>	<b>FY2006 request</b>	<b>FY2006 House</b>	<b>FY2006 Senate</b>	<b>FY2006 Enacted</b>
—cyber security	18.0	16.7	16.7	16.7	16.7
—standards	39.7	35.5	35.5	35.5	8.0
—support of DHS components	54.6	93.6	80.0	74.7	80.0
—university and fellowship programs	70.0	63.6	63.6	63.6	63.0
—emerging threats	10.8	10.5	10.5	5.3	40.8
—rapid prototyping	76.0	20.9	30.0	20.9	35.0
—counter MANPADs	61.0	110.0	110.0	110.0	110.0
—SAFETY Act	10.0	5.6	10.0	5.6	7.0
—Office of Interoperability and Compatibility	21.0	20.5	41.5	15.0	26.5
—R&D consolidation	—	116.9	116.9	99.9	99.9
—technology development and transfer	—	—	10.0	—	—
—general reduction	—	—	—50.0	—	—
<b>TSA R&amp;D<sup>a</sup></b>	<b>178.0</b>	—	—	—	—
<b>U.S. Coast Guard RDT&amp;E<sup>a</sup></b>	<b>18.5</b>	—	—	<b>8.5</b>	<b>17.8</b>
<b>CBP R&amp;D<sup>a</sup></b>	<b>1.4</b>	—	—	—	—
<b>DHS total R&amp;D</b>	<b>1,313.3</b>	<b>1,368.4</b>	<b>1,290.0</b>	<b>1,453.5</b>	<b>1,519.9</b>

**Source:** CRS analysis of the FY2006 President's Budget; DHS, *Budget in Brief*; House Appropriations Committee tables of May 20, 2005; House-passed H.R. 2360; and H.Rept. 109-79.

**Note:** Totals may not add due to rounding. FY2006 amounts do not reflect the 1% across-the-board rescission enacted by P.L. 109-148.

- a. The TSA, Coast Guard, and CBP R&D amounts are included to provide a total comparable with the FY2006 request for S&T, which consolidates all R&D funding for the Department.

## Related Legislation

### H.R. 2863/P.L. 109-148 Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006

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 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 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.<sup>164</sup>

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. At the time of the final update of this report, it was unclear how the rescission would be applied across DHS discretionary accounts.

### **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:

- \$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

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<sup>164</sup> P.L. 109-148, Division B, Title III, Section 3801.

- 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 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:

- \$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.<sup>165</sup> 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.

### **FY2005 Supplemental Appropriations for Hurricane Katrina Relief**

In response to the widespread destruction brought to the Gulf Coast by Hurricane Katrina, the 109<sup>th</sup> Congress has completed action on two separate emergency supplemental bills (P.L. 109-61/H.R. 3645 and P.L. 109-62/H.R. 3673) which together provide an additional \$62.3 billion for emergency response and recovery needs.<sup>166</sup> Of the combined amount provided in the two measures, \$60 billion is for the ongoing efforts of FEMA to provide emergency food, shelter, and medical care to areas stricken by the hurricane and other disasters. In addition, \$1.9 billion is for

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<sup>165</sup> 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.

<sup>166</sup> For more information, see CRS Report RS22239 *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by (name redacted).

the Department of Defense to defray the cost of deploying military personnel to the region for rescue, relief, and for other response costs, and \$400 million is for the Army Corps of Engineers to restore navigation waterways and repair damaged flood control projects in affected Gulf states. Additional requests for supplemental funding may be forthcoming in the weeks and months ahead as loss and recovery statements, and assessments of the damage caused by Hurricane Rita become available.

## **FY2006 Budget Resolution, S.Con.Res. 18/H.Con.Res. 95**

The annual concurrent resolution on the budget sets forth the congressional budget. The Senate budget resolution, S.Con.Res. 18 was introduced on March 11, 2005, and passed the Senate on March 17, 2005. S.Con.Res. 18 provides \$848.8 billion in discretionary spending. The House budget resolution, H.Con.Res. 95, was introduced on March 11, 2005, and passed the House on March 17, 2005. H.Con.Res. 95 proposes \$843 billion in discretionary budget authority. On April 28, 2005 the conference committee reported, and both the House and Senate passed, H.Rept. 109-62 providing \$843 billion in discretionary budget authority for FY2006.<sup>167</sup>

## **FY2005 Supplemental Appropriations for Iraq and Afghanistan, Tsunami Relief, and Other Activities<sup>168</sup>**

On February 14, 2005, the President submitted an \$81.9 billion request for supplemental FY2005 funding for military operations, international affairs, intelligence, and homeland security activities. The request includes an additional \$161 million for the Coast Guard to offset the costs of operations in Iraq. The request for Coast Guard includes \$111 million for operations in support of Operation Iraqi Freedom and Operation Enduring Freedom, including port security and law enforcement capabilities; strategic waterside security teams; and funding of active duty and mobilized reserve personnel. The request further includes \$49 million for the retrofit, renovation and subsystem replacement of Coast Guard 110-foot patrol boats. The supplemental request also includes \$110 million for the Department of Energy's Megaports Initiative. This initiative provides for the deployment of radiation detection technology and law enforcement personnel to foreign ports (in this case the funding would be for four specific ports) to detect, deter, and interdict nuclear and other radioactive material. Though this request is for the DOE, the Megaports Initiative supports CBP's CSI program.

H.R. 1268 was introduced on March 11, 2005, and passed the House March 16, 2005. The bill passed the Senate on April 21, 2005. The conference committee reported the conference report (H.Rept. 109-72) was filed on May 3, 2005. H.Rept. 109-72 was agreed to in the House on May 5, 2005; and was agreed to in the Senate on May 10, 2005. The President signed H.R. 1268 on May 11, 2005, and the bill became P.L. 109-13.

Within DHS, P.L. 109-13 provides CBP with an additional \$125 million for 500 new Border Patrol agents above the FY2005 enacted level, and with \$52 million in additional construction funding; ICE with an additional \$454 million for additional investigators, enforcement agents,

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<sup>167</sup> For more information, see CRS Report RL32812, *The Budget for Fiscal Year 2006*, by Philip D. Winters.

<sup>168</sup> For more information, see CRS Report RL32783, *FY2005 Supplemental Appropriations for Iraq and Afghanistan, Tsunami Relief, and Other Activities*, by (name redacted) and (name redacted).

detention officers and detention bedspace; Coast Guard with an additional \$161 million as requested (see above); and FLETC with an additional \$4 million. As enacted, P.L. 109-13 also includes the REAL ID Act of 2005.<sup>169</sup>

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<sup>169</sup> For more information, see CRS Report RL32754, *Immigration: Analysis of the Major Provisions of the REAL ID Act of 2005*, by (name redacted), (name redacted), and (name redacted).

## Appendix A. DHS Appropriations in Context

### DHS Appropriations and Federal Homeland Security Spending

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 A-1** is presented in such a way as to allow year to year comparisons, they may in fact not be strictly comparable due to the increasing specificity of the analysis, as outlined above.

With regard to DHS funding, it is important to note that DHS funding does not comprise all federal spending on homeland security efforts. In fact, while the largest component of federal spending on homeland security is contained within DHS, the DHS homeland security request for FY2006 accounts for approximately 54% of total federal funding for homeland security. The Department of Defense comprises the next highest proportion at 19% of all federal spending on homeland security. The Department of Health and Human Services at 8.8%, the Department of Justice at 6.2% and the Department of Energy at 3.3% round out the top five agencies in spending on homeland security. These five agencies collectively account for nearly 95% 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 FY2006 requests a total homeland security budget authority of \$27.3 billion for DHS, the requested gross budget authority is reported as \$41.1 billion. The same is true of the other agencies listed in the table.

**Table A-1. Federal Homeland Security Funding by Agency, FY2002-FY2006**  
(budget authority in millions of dollars)

Department	FY02	FY03	FY04	FY05	FY06 est.	FY06 as % of total
Department of Homeland Security (DHS)	17,380	23,063	22,923	24,887	27,333	54.1%
Department of Defense (DOD)	5,159	8,442	7,024	8,570	9,514	19.0%
Department of Health and Human Services (HHS)	1,913	4,144	4,062	4,231	4,407	8.8%
Department of Justice (DOJ)	2,143	2,349	2,180	2,678	3,104	6.2%
Department of Energy (DOE)	1,220	1,408	1,364	1,562	1,666	3.3%
Department of State (DOS)	477	634	696	824	938	1.9%
Department of Agriculture (AG)	553	410	411	600	704	1.4%
Department of Transportation (DOT)	1,419	383	284	182	192	0.4%
National Science Foundation (NSF)	260	285	340	342	344	0.7%
Other Agencies	2,357	1,329	1,550	2,129	1,741	3.5%
<b>Total Federal Budget Authority</b>	<b>32,881</b>	<b>42,447</b>	<b>40,834</b>	<b>46,005</b>	<b>49,943</b>	<b>100%</b>

**Source:** CRS analysis of data contained in “Section 3. Homeland Security Funding Analysis,” and Appendix K of the Analytical Perspectives volume of the FY2006 President’s Budget (for FY2004-FY2006); 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.

**Note:** 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.

## Appendix B. Disaster Relief Fund

**Table B-1. Disaster Relief Fund, FY1974-FY2005**

(millions of dollars, 2005 constant dollars)

FY	Request <sup>a</sup>	Total appropriations				Outlays	
		Original	Supplemental	Nominal	Constant	Nominal	Constant
1974	100	200	233	433	1,412	250	816
1975	100	150	50	200	591	206	609
1976	187	187	0	187	517	362	999
1977	100	100	200	300	770	294	754
1978	150	115	300	415	997	461	1,108
1979	200	200	194	394	876	277	616
1980	194	194	870	1,064	2,175	574	1,173
1981	375	358	0	358	668	401	746
1982	400	302	0	302	526	115	201
1983	325	130	0	130	217	202	337
1984	0	0	0	0	0	243	391
1985	100	100	0	100	156	192	299
1986	194	100	250	350	533	335	511
1987	100	120	0 <sup>b</sup>	120	178	219	325
1988	125	120	0	120 <sup>c</sup>	173	187	269
1989	200	100	1,108 <sup>d</sup>	1,208	1,674	140	194
1990	270	98	1,150 <sup>e</sup>	1,248	1,668	1,333	1,781
1991	270	0	0	0	0	552	711
1992	184 <sup>f</sup>	185	4,136	4,321 <sup>g</sup>	5,429	902	1,134
1993	292	292	2,000	2,292 <sup>h</sup>	2,816	2,276	2,796
1994	1,154 <sup>i</sup>	226	4,709 <sup>j</sup>	4,935	5,935	3,743	4,502
1995	320	320	3,275 <sup>k</sup>	3,595	4,235	2,116	2,492
1996	320	222	3,275 <sup>k</sup>	3,497 <sup>k</sup>	4,042	2,233	2,581
1997	320	1,320 <sup>l</sup>	3,300 <sup>l</sup>	4,620	5,248	2,551	2,898
1998	2,708 <sup>m</sup>	320	1,600 <sup>n</sup>	1,920	2,155	1,998	2,242
1999	2,566 <sup>o</sup>	1,214 <sup>p</sup>	1,130 <sup>q</sup>	2,344	2,597	3,746	4,149
2000	2,780	2,780 <sup>r</sup>	0	2,780	3,019	2,628	2,853
2001	2,909	300	<sup>s,t</sup>	5,890 <sup>t</sup>	6,249	3,217	3,413
2002	1,369 <sup>u</sup>	664	7,008 <sup>v</sup>	12,160 <sup>v</sup>	12,677	3,947	4,114
2003	1,843	800	1,426 <sup>w</sup>	2,199 <sup>w</sup>	2,255	8,541	8,761
2004	1,956	1,800	2,275 <sup>x</sup>	2,042 <sup>x</sup>	2,068 <sup>y</sup>	3,044 <sup>y</sup>	3,082 <sup>y</sup>

FY	Request <sup>a</sup>	Total appropriations				Outlays	
		Original	Supplemental	Nominal	Constant	Nominal	Constant
2005	2,151	2,042	68,500 <sup>x</sup>	70,542	70,542	3,363 <sup>y</sup>	3,363 <sup>y</sup>
<b>Total</b>	<b>24,240</b>	<b>16,360</b>	<b>108,988</b>	<b>132,099</b>	<b>144,455</b>	<b>50,648</b>	<b>60,224</b>

**Sources:** U.S. President, annual budget documents; appropriations legislation; U.S. FEMA budget justifications. Nominal amounts are the actual appropriations; constant dollar amounts based on CRS calculations in turn based on GDP (chained) price index in U.S. President (Bush), *Historical Tables, Budget of the United States Government, Fiscal Year 2005* (Washington, 2004), pp. 184-185. Table prepared by (name redacted), Specialist in American National Government, Government and Finance Division.

- a. Data in the request column generally represent the first budget request submitted by the Administration each year and do not include amended or supplemental requests. Notes in this column provide additional detail.
- b. In Feb. 1987, a total of \$57.475 million was rescinded and transferred from the DRF to the Emergency Food and Shelter Program account (P.L. 100-6; 101 Stat. 92). That amount was returned to the fund the same year in supplemental appropriations legislation enacted in July 1987 (P.L. 100-71; 101 Stat. 412).
- c. P.L. 100-202 (101 Stat. 329), the Continuing Appropriations Act for FY1988, appropriated \$120 million for disaster relief. According to FEMA, the original appropriation for that fiscal year was \$125 million, but \$5 million was transferred to the Department of Labor for "low income agriculture workers."
- d. Supplemental funds were included in P.L. 101-100 (101 Stat. 640), continuing appropriations legislation enacted after Hurricane Hugo struck in Sept. 1989. According to FEMA, this amount was "referred to as a supplemental but was an increase in the original appropriation during a continuing resolution."
- e. P.L. 101-130 (103 Stat. 775), enacted after the Loma Prieta earthquake, appropriated \$1.1 billion in supplemental funding for FY1990. In addition, \$50 million was appropriated in P.L. 101-302 (104 Stat. 214), dire emergency supplemental appropriations legislation. **Table 12** does not reflect a \$2.5 million transfer from the President's unanticipated needs fund.
- f. FY1992 request does not include the budget amendment of \$90 million submitted by the Administration.
- g. Appropriations for FY1992 included a \$943 million dire emergency supplemental in P.L. 102-229 (105 Stat. 1701), enacted in fall 1991 after Hurricane Bob; \$300 million after the Los Angeles riots and flooding in Chicago (spring 1992) in P.L. 102-302 (106 Stat. 248); and \$2.893 billion in P.L. 102-368 (106 Stat. 1117) after Hurricanes Andrew and Iniki, Typhoon Omar, and other disasters.
- h. Total for FY1993 includes the \$2 billion supplemental approved after the Midwest floods in 1993 (P.L. 103-75; 107 Stat. 739).
- i. The original FY1994 budget request was \$292 million. On July 29, 1993, a supplemental request of \$862 million was sent by President Clinton to Congress.
- j. Supplemental appropriations for FY1994 enacted after the Northridge earthquake struck Los Angeles (P.L. 103-211; 108 Stat. 13).
- k. Additional supplemental appropriation approved for Northridge earthquake costs (P.L. 104-19; 109 Stat. 230) for FY1995, with the same amount (\$3.275 billion) reserved for a contingency fund for FY1996 (P.L. 104-19; 109 Stat. 231). However, \$1 billion of the contingency fund was rescinded in FY1996 omnibus appropriations, P.L. 104-134 (110 Stat. 1321-358). In the same legislation, another \$7 million was also appropriated to other FEMA accounts for costs associated with the bombing of the Alfred P. Murrah federal building in Oklahoma City (P.L. 104-134; 109 Stat. 254).
- l. The FY1998 budget appendix (p. 1047) noted a transfer of \$104 million from the disaster relief fund in FY1996. In the FY1997 appropriations act (P.L. 104-204; 110 Stat. 1321-358), \$1 billion that had been rescinded in FY1996 (P.L. 104-134) was restored, and \$320 million in new funds were appropriated. Supplemental appropriations of \$3.3 billion were approved in P.L. 105-18 (111 Stat. 200) after flooding in the Dakotas and Minnesota, and after storms in other states were declared major disasters. The legislation specified, however, that of the total, \$2.3 billion was to be available in FY1998 only when FEMA submitted a cost control report to Congress. This requirement was met, and the funding was made available in FY1998.



- m. The FY1998 request consisted of a \$320 million base amount plus \$2.388 billion “to address actual and projected requirements from 1997 and prior year declarations.” (*Budget Appendix FY1998*, p. 1047). Does not include \$50 million requested for the DRF for mitigation activities.
- n. Supplemental appropriations legislation (P.L. 105-174; 112 Stat. 77) for FY1998, approved for flooding associated with El Niño and other disasters.
- o. The FY1999 request consisted of \$307.8 million for the DRF and an additional \$2.258 billion in contingency funding to be available when designated as an emergency requirement under the Balanced Budget Act of 1985, as amended.
- p. The FY1999 omnibus appropriations act (P.L. 105-277; 112 Stat. 2681-579) included \$906 million for costs associated with Hurricane Georges, flooding associated with El Niño, and other disasters.
- q. Emergency supplemental appropriations for FY1999 (P.L. 106-31; 113 Stat. 73) included \$900 million for tornado damages as well as \$230 million for unmet needs, subject to allocation directions in the conference report (H.Rept. 106-143).
- r. FY2000 appropriations act (P.L. 106-74, 113 Stat. 1085) included disaster relief funding as follows: \$300 million in regular appropriations and \$2.480 billion designated as emergency spending for costs associated with Hurricane Floyd and other disasters. In addition, the Consolidated Appropriations Act (P.L. 106-113; 113 Stat. 1501) authorized the Director of FEMA to use up to \$215 million in disaster relief funds appropriated in P.L. 106-74 (113 Stat. 1047) for the purchase of residences flooded by Hurricane Floyd, under specified conditions.
- s. Supplemental appropriations legislation (P.L. 106-246; 114 Stat. 568) authorized that \$50 million from the DRF was to be used for buyout and relocation assistance for victims of Hurricane Floyd. The act also appropriated \$500 million in a separate account (P.L. 106-246; 114 Stat. 590) for claim compensation and administrative costs associated with the Cerro Grande fire that destroyed much of Los Alamos, New Mexico.
- t. P.L. 107-38 (115 Stat. 220) appropriated \$40 billion in response to the terrorist attacks of Sept. 11, 2001. Pursuant to the statute, these funds for FY2001 were allocated by the Office of Management Budget from the Emergency Response Fund (ERF). Of the total appropriated in P.L. 107-38 after the Sept. 11 attacks, \$4.357 billion was allocated for FY2001 through P.L. 107-117 (115 Stat. 2338). The total available for obligation for FY2001 (\$5.9 billion) taken from FEMA *Justification of Estimates, FY2003*, p. DR-2.
- u. Request for FY2002 did not include funding for the Disaster Relief Contingency Fund.
- v. Congress appropriated a total of \$7.008 billion for FY2002 in P.L. 107-117 (115 Stat. 2238) and P.L. 107-206 (116 Stat. 894) to meet additional needs associated with the terrorist attacks. Total funds available (\$12.16 billion) include a transfer from TSA, \$1 billion released from the Emergency Contingency Fund, and other sources. See DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2004*, p. DR-2.
- w. Includes \$983.6 million in P.L. 108-69 (117 Stat. 885) and \$441.7 million in P.L. 108-83 (117 Stat. 1037) to meet needs associated with tornadoes, winter storms, the recovery of wreckage of the Space Shuttle *Columbia* and other disasters. Also, funds appropriated in these measures and in the FY2004 appropriations act for DHS (P.L. 108-90; 117 Stat. 1137) have been used for costs associated with Hurricane Isabel. Total of \$2.199 billion available taken from DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18.
- x. P.L. 108-106 (117 Stat. 1209), which primarily addressed reconstruction costs in Iraq and Afghanistan, also contained an appropriation of \$500 million for needs arising from disasters in fall 2003, including Hurricane Isabel and the California fires (117 Stat. 1220). Section 4002 of the act designates the funds an emergency requirement pursuant to the budget resolution adopted by Congress (H.Con.Res. 95), but the Consolidated Appropriations Act for FY2004 (Section 102(a), Division H, P.L. 108-199; 118 Stat. 454) rescinded \$225 million of the \$500 million appropriated in P.L. 108-106 (117 Stat. 1220). Total of \$2.043 billion taken from: DHS, Emergency Preparedness and Response Directorate, *Justification of Estimates, FY2005*, p. FEMA-18. P.L. 108-303 (118 Stat. 1124), enacted after Hurricanes Charley and Frances struck Florida, appropriated \$2 billion to the DRF and gave discretion to DHS to transfer \$30 million to the Small Business Administration for disaster loans. P.L. 108-324, Division B of the Military Construction Appropriations Act for FY2005, appropriated an additional \$6.5 billion to the DRF (118 Stat. 1247). Congress also appropriated \$10 billion in P.L. 109-61 (119 Stat. 1988), approved by Congress in a special session of the leadership and signed by the President on September 2, 2005, as an immediate response to the needs caused by Hurricane Katrina.

A second supplemental for costs associated with Hurricane Katrina (\$50 billion, P.L. 109-62; 119 Stat. 1990) was approved by Congress and signed by President Bush on Sept. 8, 2005.

- y. Outlay data and constant dollar calculations based on estimates.

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