

DHS Border Barrier Funding Through FY2021

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The purpose of barriers on the U.S.-Mexico border has evolved over time. In the late 19th and early 20th centuries, fencing at the border was more for demarcation and containment of livestock than for prevention of people and contraband from crossing into the United States.

Physical barriers to deter migrants are a relatively new part of the border landscape and were first built in the 1990s in conjunction with counterdrug efforts. This phase of construction, extending into the 2000s, was largely driven by legislative initiatives. Specific authorization for border barriers was provided in 1996 in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and again in 2006 in the Secure Fence Act of 2006. These authorities were superseded by legislation included in the Consolidated Appropriations Act, 2008, which rewrote key provisions of IIRIRA and replaced most of the Secure Fence Act of 2006. The result of these initiatives was construction of more than 650 miles of barriers along the nearly 2,000-mile border. Authoritative data on federal investment in the earliest years of border barrier construction has proven elusive. Funding was not specifically designated for border barrier construction until FY2006.

The Administration of President Donald Trump drove a second phase of border barrier construction. On January 25, 2017, the Administration issued Executive Order (E.O.) 13767, “Border Security and Immigration Enforcement Improvements.” Section 2(a) of the E.O. indicated that it was the policy of the executive branch to “secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism.”

The \$5.84 billion in appropriations provided by Congress for border barrier planning and construction since the signing of the Trump Administration E.O. was almost two and half times the total amount provided for those purposes from FY2007-FY2016. Beginning in 2019, the Trump Administration also took steps to secure funding beyond the levels approved by Congress for border barriers. Almost \$10 billion was redirected from Department of Defense and Military Construction appropriations to border barrier development by the Department of Defense under counterdrug and emergency authorities. Roughly \$601 million from the Treasury Forfeiture Fund was also transferred to U.S. Customs and Border Protection (CBP).

By the end of the Trump Administration, 458 miles of wall panels had been installed along the U.S.-Mexico border, and 69 miles of border wall system had been completed and turned over the Department of Homeland Security to operate. Most of these miles of barriers were 18- to 30-foot-high bollard style fencing, designed to deter pedestrians and vehicles from crossing the border, replacing vehicle barriers and older, less effective designs.

This report begins with a brief discussion of the legislative and historical context of construction of barriers at the U.S.-Mexico border, then provides an overview of the funding provided for border barriers through FY2021, primarily focused on funding provided to CBP and its predecessor agencies. It concludes with a survey of the execution of border barrier funding through the end of the Trump Administration, and a number of questions Congress may explore.

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Introduction

Border security policy debates in the 21st century often focused on enhancing and expanding barriers on the southwest border. These debates have become central to the interactions between Congress and the Administrations of both parties.

This report briefly contextualizes the history of U.S. enforcement of the U.S.-Mexico border, before outlining the available information on the Department of Homeland Security (DHS) border barrier funding and construction from 2005 through January 20, 2021.

Historical Context

Establishment and Policing of the U.S.-Mexico Border

The Treaty of Guadalupe Hidalgo in 1848, with the cession of land to the United States, ended the Mexican-American War and set forth an agreed-upon boundary line between the United States and Mexico. The physical demarcation of the boundary was essentially set by the Gadsden Purchase, finalized in 1854, with some minor adjustments since then.¹

Securing U.S. borders has primarily been the mission of the U.S. Border Patrol, which was established by Congress by an appropriations act in 1924.² Initially, a relatively small force of 450 officers patrolled both the northern and southern borders between inspection stations, guarding against the smuggling of contraband and unauthorized migrants.³

The Immigration Act of 1924⁴ established immigration quotas for most countries, with the exception of those in the Western Hemisphere, including Mexico. (While some specific limitations existed, per-country quotas for Western Hemisphere countries did not exist until 1976.⁵) Earlier policies had set categorical exclusions to entry (e.g., for Chinese and other Asian immigrants) that were exceptions to an otherwise open immigration policy. Between 1942 and 1964, the Bracero Program brought in nearly 5 million Mexican agricultural workers to fill the labor gap caused by World War II. Both employers and employees became used to the seasonal work, and when the program ended, many continued this employment arrangement without legal authorization.⁶ Debates about enhancing enforcement of immigration laws ensued in the late 1970s and 1980s, largely in concert with counter-drug smuggling efforts⁷ and interest in curbing the rise in unauthorized flows of migrant workers.

¹ Office of the Historian, *Milestones in the History of U.S. Foreign Relations*, U.S. Department of State, Gadsden Purchase 1853-1854, <https://history.state.gov/milestones/1830-1860/gadsden-purchase> and International Boundary; and Water Commission website, "Treaties Between the U.S. and Mexico," https://www.ibwc.gov/Treaties_Minutes/treaties.html, as downloaded on July 8, 2019. The statutory manifestation of the treaty is codified at 22 U.S.C. §277d-34.

² Act of May 28, 1924 (43 Stat. 240).

³ Department of Homeland Security, U.S. Customs and Border Protection, "Border Patrol History," <https://www.cbp.gov/border-security/along-us-borders/history>.

⁴ Immigration Act of May 26, 1924 (43 Stat. 153).

⁵ Meyers, Deborah Waller, "From Horseback to High-Tech: U.S. Border Enforcement," Migration Policy Institute, November 2005, p. 2, <https://www.migrationpolicy.org/sites/default/files/publications/Insight-7-Meyers.pdf>.

⁶ See Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Migration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2003); and Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the INS (1992)* (New York: Routledge, 1992).

⁷ Meyers, pp. 2-4.

Today, the United States' southern border with Mexico runs for nearly 2,000 miles over diverse terrain, through varied population densities, and across discontinuous sections of public, private, and tribal land ownership.⁸

Emergence of Barriers as Deterrence

A significant effort to construct barriers on the southern border as a deterrent to illegal entry by migrants or smugglers into the United States began in the early 1990s. In 1991, U.S. Navy engineers built a ten-foot-high corrugated steel barrier between San Diego and Tijuana made of surplus aircraft landing mats, to upgrade the previous chain-link fencing.⁹

In 1994, the Border Patrol (then part of the Department of Justice under the Immigration and Naturalization Service, INS) released a strategic plan for enforcing immigration laws along the U.S. border, as a part of a series of immigration reform initiatives.¹⁰ The plan, developed by Chief Patrol Agents, Border Patrol headquarters staff, and planning experts from the Department of Defense Center for Low Intensity Conflict, described their approach to improving control of the border through a strategy of “prevention through deterrence,” under which resources were concentrated in major entry corridors to establish control of those areas and force traffic to more difficult crossing areas.

The Border Patrol will increase the number of agents on the line and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent. Because the deterrent effect of apprehensions does not become effective in stopping the flow until apprehensions approach 100 percent of those attempting entry, the strategic objective is to maximize the apprehension rate. Although a 100 percent apprehension rate is an unrealistic goal, we believe we can achieve a rate of apprehensions sufficiently high to raise the risk of apprehension to the point that many will consider it futile to continue to attempt illegal entry.¹¹

Prior to 1996, federal statute neither explicitly authorized nor required barrier construction along international borders.¹² In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted, and Section 102(a) specifically directed the Attorney General¹³ to “install additional physical barriers and roads ... in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.”¹⁴

⁸ U.S. Government Accountability Office, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions to Operations and Provide Guidance for Identifying Capability Gaps*, GAO-17-331, February 2017.

⁹ The barrier, originally seven miles long, was increased to 14 miles in 1993 by the U.S. Army Corps of Engineers, extending it into the Pacific Ocean. Meyers, p. 5.

¹⁰ U.S. Government Accountability Office, *INS' Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, GAO-01-842, August 2, 2001, p. 1, <https://www.gao.gov/products/GAO-01-842>.

¹¹ U.S. Border Patrol, *Border Patrol Strategic Plan: 1994 and Beyond*, July 1994, p. 6, <https://www.hsdl.org/?view&did=721845>.

¹² CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*, by Michael John Garcia.

¹³ The authorities granted by this section now rest with the Secretary of DHS. See P.L. 107-296, §§102(a), 441, 1512(d), and 1517 (references to the Attorney General or Commissioner in statute and regulations are deemed to refer to the Secretary).

¹⁴ P.L. 104-208, Division C, §102(a) and (b); 8 U.S.C. §1103 note.

From INS (in Department of Justice) to CBP (in Homeland Security)

Following the terrorist attacks of September 11, 2001, the U.S. government changed its approach to homeland security issues, including control of the border. As a part of the establishment of DHS in 2003, INS was dismantled, and the Border Patrol and its responsibility for border security were moved from the Department of Justice to DHS as a part of U.S. Customs and Border Protection (CBP).¹⁵ CBP's border security responsibilities include the construction and maintenance of tactical infrastructure such as border barriers, but also the installation and monitoring of surveillance technology, and the deployment of border patrol agents to impede unlawful entries of people and contraband into the United States (e.g., unauthorized migrants, terrorists, firearms, and narcotics). CBP also maintains operations and staffing at official ports of entry through their Office of Field Operations (OFO).

The newly constituted DHS and CBP began operations in 2003 with transferred resources, and received their first annual appropriations for FY2004.

DHS Border Barriers: Legislative Era (2005-2016)

Built barriers, such as fencing, are a relatively new feature on most of the southern border.

During the 109th and the first session of the 110th Congresses (2005-2007), comprehensive immigration reform legislation and narrower border security measures were debated. One result was that Congress explicitly authorized and funded new construction of additional border barriers, significantly increasing their presence.

Enacted Authorizations and Appropriations

In the 109th Congress, two bills were enacted that amended Section 102 of IIRIRA, easing the construction of additional border barriers. Section 102 of the REAL ID Act of 2005 (P.L. 109-13, Div. B) included broad waiver authority that allowed for expedited construction of border barriers.¹⁶ The Secure Fence Act of 2006 (P.L. 109-367) directed the Secretary of Homeland Security to “achieve and maintain operational control over the entire international land and maritime borders of the United States,” mandated the construction of certain border barriers and technology on the border with Mexico by the end of 2008, and required annual reports on progress on border control.

This was a different approach in border barrier legislation. Past immigration policy bills had included border barriers as a part of a suite of remedies across government to the border security problem in the context of immigration policy. The Secure Fence Act of 2006 instead provided authorization for DHS alone to achieve “operational control” of the border through barriers, tactical infrastructure, and surveillance while largely not addressing the broader set of

¹⁵ CBP was established pursuant to reorganization authority provided in Sec. 1502 of the Homeland Security Act of 2002 (P.L. 107-296). An initial reorganization plan, altering the structure outlined in P.L. 107-296, was submitted on November 25, 2002, and was then modified on January 30, 2003, after Bush Administration consultations with Secretary of Homeland Security-designate Tom Ridge. The reorganization as modified restructured the Customs Service and the Bureau of Border Security into the Bureau of Customs and Border Protection. Permanent statutory authorization was provided in P.L. 114-125 (130 Stat. 122), 6 U.S.C. §211.

¹⁶ 119 Stat. 306. Also see, CRS Legal Sidebar LSB10111, *District Court Decision May Help Pave the Way for Trump Administration's Border Wall Plans*, by Adam Vann.

immigration policies that could contribute to improved border security.¹⁷ In addition, the Secure Fence Act of 2006 substantially revised IIRIRA Section 102(b) to include five specific border areas to be covered by the installation of fencing, additional barriers, and technology.

The FY2006 DHS Appropriations Act (P.L. 109-90) provided the first appropriations specifically designated for the Border Patrol (now under CBP and a part of DHS) to construct border barriers.¹⁸ The act specified \$35 million for CBP's San Diego sector fencing.¹⁹ This funding was part of a surge in CBP construction spending from \$91.7 million in FY2005—and \$93.4 million in the FY2006 request—to \$270.0 million for FY2006 enacted appropriations. This direction also represented the first specific statutory direction provided to CBP on the use of its construction funds.

Toward the end of 2007, Congress amended Section 102 of IIRIRA through Section 564 of the Consolidated Appropriations Act, 2008. Congress again required the construction of reinforced fencing along at least 700 miles of the U.S.-Mexico border, where it would be “most practical and effective,”²⁰ but also included flexibility in implementing this requirement, stating that

nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.²¹

The “BSFIT” Appropriation

Starting in FY2007 and continuing through FY2016, border barrier funding in CBP's budget was included in the “Border Security Fencing, Infrastructure, and Technology” (BSFIT) appropriation. When BSFIT was established in the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295), it consolidated border technology and tactical infrastructure funding from other accounts, including CBP's Construction appropriation and Salaries and Expenses appropriation.²²

According to the FY2007 DHS appropriations conference report, Congress provided \$1,512,565,000 for BSFIT activities for FY2007: \$1,187,565,000 from annual appropriations in P.L. 109-295, and \$325,000,000 in prior enacted supplemental appropriations from P.L. 109-234 and other legislation. Congress directed portions of that initial appropriation to two specific border security projects, and withheld \$950 million until a spending plan for a border barrier was

¹⁷ See Sen. Arlen Specter, Sen. Patrick Leahy, Sen. John Kerry, and Sen. John McCain, “Secure Fence Act of 2006—Resumed,” remarks in the Senate, *Congressional Record*, vol. 152 (September 29, 2006), pp. S10609-S10613.

¹⁸ In its first two annual appropriations acts, CBP's construction account was dedicated to the Border Patrol, but little detailed information was provided regarding specific projects. The appropriations committees requested a detailed priority list of projects in the FY2004 conference report (H.Rept. 108-280, p. 31), and noted in FY2005 that it had not received it (H.Rept. 108-774, p. 43). The account received slightly more than \$90 million in each of its first two years—funding the account at the requested level—with no special direction provided on border barriers.

¹⁹ H.Rept. 109-241. \$35 million was also provided for unspecified tactical infrastructure in CBP's Tucson Sector. Information on Border Patrol sectors can be found at <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors>, and a map is available in GAO-18-614 (<https://www.gao.gov/products/GAO-18-614>), on p. 8.

²⁰ 121 Stat. 2090.

²¹ 121 Stat. 2091.

²² H.Rept. 109-699, pp. 129-130.

provided. Starting in FY2008, a PPA²³ for “Development and Deployment” of technology and tactical infrastructure was included at congressional direction under the BSFIT appropriation.²⁴

Appropriations and PPAs

In examining the budget authority provided by Congress to fund the government, there are two terms of art that are used to illuminate how things are organized: Appropriations and “Programs, Projects, and Activities,” or PPAs. Appropriations are the affirmative statements made in statute that allow the government to draw money from the Treasury to fund their activities. Each appropriation usually funds a range of activities.

Appropriations are divided into “Programs, Projects, and Activities,” or “PPAs” which are more granular subdivisions of the resources Congress is providing. “Level I” PPAs are the initial level of segmentation on an appropriation, “Level II” is the next most detailed, and so on. DHS budget justifications since 2017 have included pages that specifically outline the PPA structure of the Administration’s budget request and Congress lays out a PPA structure in the detail tables accompanying the committee reports: PPA structure is typically not outlined in law. The Administration’s budget request generally includes more PPA detail than the appropriations documents.

For example, for FY2020, border barrier construction was funded at DHS through the Procurement Construction and Improvements appropriation, under the Border Security Assets and Infrastructure (BSAI) Level I PPA, which had a Level II PPA for “Border Wall System.” The appropriation can be found in the FY2020 DHS Appropriations Act, and the Level I PPA can be readily identified in the FY2020 explanatory statement, with the amount of border barrier funding noted in both documents. However, the appropriations documents do not provide complete detail on the amount provided for the other Level II PPAs under BSAI, so the Administration has discretion to allocate remaining funding among those undesignated PPAs.

The BSFIT Development and Deployment PPA was the first consistently structured year-to-year direction from Congress to CBP regarding putting border security technology and infrastructure in the field, covering FY2008-FY2016.

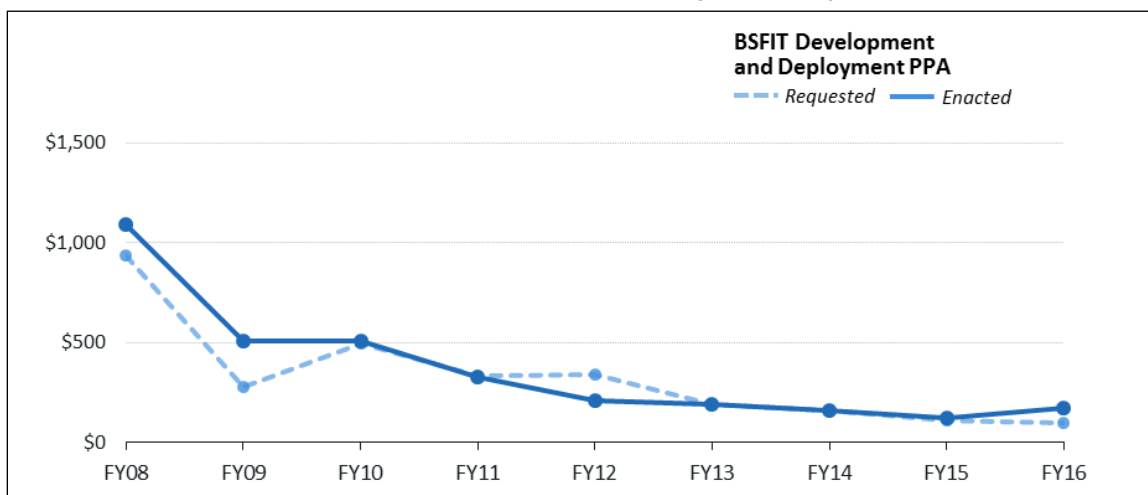
Figure 1 shows the requested and enacted levels for the Development and Deployment PPA from FY2008 through FY2016. Although it does not show an almost \$1.2 billion FY2007 appropriation for border infrastructure before the Development and Deployment PPA was implemented, it does indicate the early high levels of investment in border infrastructure, which then tapered off. The dashed line shows the size of the budget request for these elements.

²³ PPAs—short for “Programs, Projects, or Activities”—are subdivisions of appropriations. See following text box.

²⁴ H.Rept. 109-699, p. 130. For a detailed discussion of how the 2008 Appropriations Act amended IIRIRA and modified fencing requirements, see CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*, by Michael John Garcia.

Figure I. Development and Deployment PPA Request and Enacted Level, FY2008-FY2016

Millions of Nominal Dollars of Budget Authority



Source: CRS analysis of DHS Appropriations conference reports.

Notes: “Development and Deployment” is a PPA (division) of the Border Security Fencing, Infrastructure, and Technology (BSFIT) appropriation for putting technology and tactical infrastructure in the field. In FY2007 \$1,187,565,000 was appropriated for BSFIT without a formal request or appropriation reflecting the Development and Deployment structure.

The BSFIT Development and Deployment structure remained unchanged from its establishment until the implementation of the Common Appropriations Structure (CAS) for DHS in the FY2017 appropriations cycle, which redistributed BSFIT funding into two separate and broader appropriations. This implementation has complicated efforts to make detailed comparisons in funding levels across the time periods before and after FY2016.²⁵

Identifying Border Barrier Funding within BSFIT

The level of detail in DHS budget requests or appropriations bills and reports was not always sufficient to identify the specific funding levels for barrier construction. CRS was able to obtain more granular information directly from CBP, which provided a breakdown to CRS of its spending on border barriers beginning with FY2007.²⁶ The primary program that funded barrier construction in this period was the Tactical Infrastructure (TI) Program.²⁷

Figure 2 and **Table 1** present funding data provided by CBP for border barriers under the TI program.²⁸ The funding provided in FY2007 to FY2009 resulted in increased border barrier

²⁵ Data on FY2016 enacted appropriations transcribed into the new DHS budget structure were available in the detail table at the end of the explanatory statement accompanying the FY2017 Omnibus Appropriations Act, which included the Department of Homeland Security Appropriations Act, 2017 as Division F. See U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2017*, committee print, 115th Cong., 1st sess., H.Prt. 115-25-289 (Washington: GPO, 2017), pp. 973-976 for CBP’s appropriations in the CAS structure.

²⁶ Email to CRS from CBP Office of Congressional Affairs, November 26, 2018.

²⁷ CBP, in contracting documents, includes a broad range of things in tactical infrastructure, such as roads, pedestrian and vehicle fencing, lighting, low-water crossings, bridges, drainage structures, marine ramps, and other supporting structures. It does not include ports of entry.

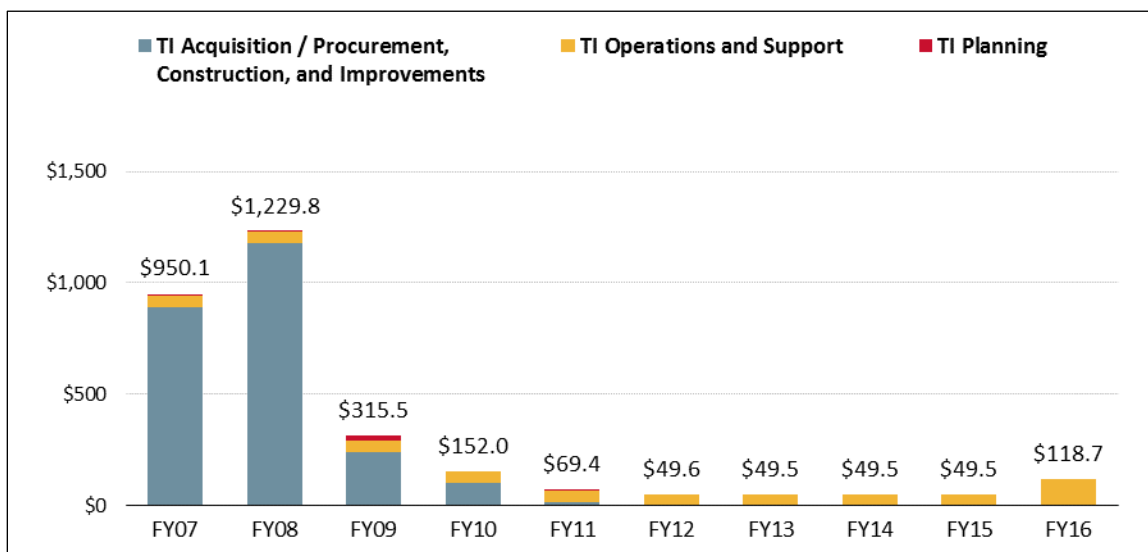
²⁸ CBP has indicated in follow-up communications that no further historical data are available, as barrier construction was conducted by several entities within CBP, and not centrally tracked. In addition, the definitions of tactical (continued...)

construction (which extended for a few years into the early 2010s). As the funds for construction were expended, CBP transitioned its border barrier activities to primarily maintenance and minor repairs.

At the end of FY2016, approximately 654 miles—roughly one-third of the international boundary—had a primary layer of barriers.²⁹ Approximately 300 miles of the primary barrier was designed to prevent vehicles from entering, and approximately 350 additional miles was designed to block people on foot (i.e., pedestrian fencing). CBP has used various materials for pedestrian fencing, including bollard, steel mesh, and chain link, and employed bollard and Normandy-style fencing for vehicle barriers.³⁰ In certain areas, the primary layer was backed by a secondary layer of pedestrian fencing as well as, in rare cases, tertiary fencing (typically to delineate property lines).

Figure 2. CBP-Reported Data on Border Barrier Funding, FY2007-FY2016

Millions of Nominal Dollars



Source: U.S. Customs and Border Protection, “Summary of Historical Spending for TI and Wall Programs,” email attachment sent to CRS November 26, 2018.

Note: Data provided in **Table I**.

infrastructure may allow for inclusion of some elements only peripherally related to border barriers. Taking these factors into account, given the limited mileage constructed prior to FY2007, the above data present the best available understanding of appropriations and spending on border barriers in the 2007-2016 period.

²⁹ GAO-17-331, p. 1.

³⁰ GAO-17-331; see pp. 11-12 for images of barrier types and materials for pedestrian/vehicle and modern/legacy fencing.

Table 1. CBP-Reported Data on Border Barrier Funding, FY2007-FY2016

Millions of Nominal Dollars of Budget Authority

	Tactical Infrastructure (TI) Program Total	TI Acquisition / Procurement, Construction, and Improvements	TI Operations and Support	TI Planning
FY2007	\$950	\$893	\$50	\$8
FY2008	1,230	1,178	50	2
FY2009	315	242	50	24
FY2010	152	102	50	—
FY2011	69	14	50	5
FY2012	50	—	50	—
FY2013	50	—	50	—
FY2014	50	—	50	—
FY2015	50	—	50	—
FY2016	119	4	115	—
Total	3,034	2,434	561	39

Source: U.S. Customs and Border Protection, “Summary of Historical Spending for TI and Wall Programs,” email attachment sent to CRS November 26, 2018.

Notes: Table presents nominal dollars, rounded to the nearest million. Tactical infrastructure includes roads, pedestrian and vehicle fencing, lighting, low-water crossings, bridges, drainage structures, marine ramps, and other supporting structures. It does not include ports of entry.

DHS Border Barriers: Executive Era (2017- 2021)

On January 25, 2017, the Trump Administration issued Executive Order 13767, “Border Security and Immigration Enforcement Improvements.” Section 2(a) of the EO indicated that it was the policy of the executive branch to “secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism.” The EO went on to define “wall” as “a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.”³¹

Enacted Appropriations

Changes in Structure

For FY2017, changes were made both in the structure of how funds were appropriated, and how CBP organized those funds among its authorized activities.

The redistribution of appropriations into consistent functions across DHS components under the Common Appropriations Structure redistributed BSFIT funding into CBP’s Operations and

³¹ Executive Order 13767, “Border Security and Immigration Enforcement Improvements,” 82 *Federal Register* 8793-8797, January 30, 2017.

Support (OS) appropriation and the Procurement, Construction, and Improvements (PC&I) appropriation.³²

Border barrier design and construction funding, other than ports of entry, was included in the Border Security Assets and Infrastructure PPA under PC&I along with several other activities. It was initially identified as the “Wall Program.” According to CBP, the program oversaw the execution of the FY2017 TI program funding and would be “responsible for all future wall construction.”³³ In the FY2021 request, the Administration changed the name of the activity to the “Southwest Border Wall System.”

A relatively small amount for operation and maintenance of CBP’s border barriers was included under the Assets and Support PPA as part of the Border Patrol portion of CBP’s OS appropriation. However, the debate focused primarily on the PC&I appropriation.

DHS Construction Funding for Border Barriers FY2017-2021

Table 2 shows appropriations for construction of border barriers requested by the Administration and provided by Congress in the DHS appropriations acts. Each fiscal year is discussed in detail after **Table 2**.

Table 2. Border Wall Funding Appropriated to DHS, FY2017-FY2021

Millions of Nominal Dollars of Budget Authority

	Trump Administration Request	Enacted
FY2017	\$999 ^a	\$341 ^b
FY2018	1,571	1,375
FY2019	5,700 ^c	1,375
FY2020	5,000	1,375
FY2021	1,965	1,375
Total	15,235	5,841

Sources: U.S. Customs and Border Protection, “Summary of Historical Spending for TI and Wall Programs,” email attachment sent to CRS November 26, 2018; CBP budget Justifications and appropriations conference reports for FY2019-FY2021.

Notes: **Table 2** presents nominal dollars, rounded to the nearest million. Each fiscal year is discussed in detail below.

- This represents the Trump Administration’s supplemental appropriations request to begin planning, design, and construction of border barriers.
- CBP reported that \$341 million of FY2017 TI Acquisition / Procurement, Construction, and Improvements funding was for Wall Program requirements, but funding was provided to the TI program, because the Wall program had yet to be established when appropriations were provided.
- The Trump Administration’s original budget request for FY2019 included \$1.6 billion for border barrier construction; this was increased during the course of budget negotiations to \$5.7 billion.

³² For detailed information on the shift to the CAS, see CRS Report R44621, *Department of Homeland Security Appropriations: FY2017*, coordinated by William L. Painter.

³³ U.S. Customs and Border Protection email to CRS, November 26, 2018. CBP frequently relies on the U.S. Army Corps of Engineers for real estate services and contracting out construction of border barriers to private companies. For details see CRS In Focus IF11224, *Army Corps of Engineers and U.S. Southern Border Barriers*, by Nicole T. Carter.

Legislative History of DHS Border Barrier Funding, FY2017-FY2021

FY2017

The Trump Administration submitted a supplemental appropriations request in March 2017 for a variety of priorities, including CBP staffing and border wall construction. The request for additional CBP PC&I funding included \$1.38 billion, of which \$999 million was for “planning, design, and construction of the first installment of the border wall.”³⁴

The FY2017 DHS Appropriations bill included a sixth title with the congressional response to the supplemental appropriations request. It included \$341.2 million to replace approximately 40 miles of existing primary pedestrian and vehicle barriers along the southwest border “using previously deployed and operationally effective designs, such as currently deployed steel bollard designs, that prioritize agent safety” and to add gates to existing barriers.³⁵

FY2018

The Administration requested \$1.72 billion for the Border Security Assets and Infrastructure PPA, including \$1.57 billion for construction of border barriers. In the FY2018 appropriations measure, Congress provided \$1.74 billion, which, according to a House Appropriations Committee summary, included funding for “over 90 miles of physical barrier construction along the southern border—including replacement, bollards, and levee improvements.”³⁶ Section 230 of the bill specified the following \$1.375 billion for the following activities under the CBP PC&I appropriation:

- **\$445 million** for 25 miles of primary pedestrian levee fencing in Rio Grande Valley (RGV) sector;
- **\$196 million** for primary pedestrian fencing in RGV sector;
- **\$251 million** for secondary replacement fencing in San Diego sector;
- **\$445 million** for replacement of existing primary pedestrian fencing; and
- **\$38 million** for border barrier planning and design.³⁷

The section went on to note that the funding for primary fencing “shall only be available for operationally effective designs deployed as of [May 5, 2017], such as currently deployed steel bollard designs that prioritize agent safety.”³⁸

FY2019

The Administration initially requested \$1.647 billion for the Border Security Assets and Infrastructure PPA. Budget justification documents noted that \$1.6 billion was requested for the

³⁴ Letter from Donald J. Trump, President of the United States, to The Honorable Paul Ryan, Speaker of the House of Representatives, March 16, 2017, p. 3 of the enclosure, https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/budget/fy2018/amendment_03_16_18.pdf.

³⁵ P.L. 115-31, 131 Stat. 433-434.

³⁶ House Committee on Appropriations, “Fiscal Year 2018 Homeland Security Bill,” press release, March 21, 2018, https://appropriations.house.gov/sites/repUBLICans.appropriations.house.gov/files/migrated/UploadedFiles/03.21.18_FY18_Omnibus_-_Homeland_Security_-_Summary.pdf.

³⁷ P.L. 115-141, Division F, Sec. 230(a)(1)-(5).

³⁸ Ibid.

border wall.³⁹ The Administration reportedly requested \$5.0 billion for the wall from Republican congressional leadership.⁴⁰ However, no publicly available modification of its request was presented to Congress until January 6, 2019. At that time, in the midst of a lapse in annual appropriations due in part to conflict over border barrier funding, the acting head of the Office of Management and Budget (OMB) submitted a letter seeking \$7 billion in additional border related funding.⁴¹ The \$7 billion included \$4.1 billion more for “the wall” than the Administration originally requested. The letter indicated that the total request of \$5.7 billion would pay for “approximately 234 miles of new physical barrier and fully fund the top 10 priorities in CBP’s Border Security Improvement Plan.”

P.L. 116-6, the Consolidated Appropriations Act, 2019, included \$1.375 billion for CBP “for the construction of primary pedestrian fencing, including levee pedestrian fencing, in the Rio Grande Valley Sector.” Funding could only be used for “operationally effective designs deployed as of [May 5, 2017], such as currently deployed steel bollard designs that prioritize agent safety.”⁴²

The same day President Trump signed the FY2019 consolidated appropriations act into law, he announced his intention to apply additional assets to border barrier construction. See “Border Barrier Funding Outside the Appropriations Process,” below.

FY2020

In February 2019, the Administration requested \$5.402 billion for the Border Security Assets and Infrastructure PPA. This included \$5 billion in border barrier funding for FY2020, to support the construction of approximately 206 miles of border wall system.⁴³

The House Appropriations Committee included no funding for border barriers when it reported its FY2020 DHS appropriations bill.⁴⁴ In addition, the bill would have restricted the ability to transfer or reprogram funds for border barrier construction and proposed rescinding \$601 million from funding appropriated for border barriers in FY2019.⁴⁵ The Senate Appropriations Committee took the opposite approach when it reported S. 2582 (116th Congress), recommending \$5 billion for border barrier construction. It also did not include any of the House bill’s proposed restrictions or the rescission. Neither the House nor the Senate considered these appropriations bills on the floor.

The FY2020 DHS Appropriations Act (P.L. 116-93, Div. D)—which was passed as part of the Consolidated Appropriations Act, 2020—included \$1.375 billion for “construction of barrier system along the southwest border.”⁴⁶ The barrier system design restrictions were similar to prior

³⁹ Department of Homeland Security, *U.S. Customs and Border Protection Budget Overview: Fiscal Year 2019 Congressional Justification*, Washington, DC, p. CBP-16, <https://www.dhs.gov/publication/congressional-budget-justification-fy-2019>.

⁴⁰ Jennifer Shutt, “Trump, House GOP Dig In on Spending Bills, Border Wall,” *CQ News*, November 27, 2018, <https://plus.cq.com/doc/news-5420430?11>.

⁴¹ Letter from Russell T. Vought, Acting Director, Office of Management and Budget, to Sen. Richard Shelby, Chairman, Committee on Appropriations, U.S. Senate, January 6, 2019, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/01/Final-Shelby-1-6-19.pdf>

⁴² P.L. 116-6.

⁴³ This description was drawn from the FY2019 CBP budget justification, which was written without knowledge of the resources provided for FY2019 or the Administration’s redirection of Department of Defense and Military Construction funding.

⁴⁴ H.R. 3931 (116th Congress).

⁴⁵ H.R. 3931, Sec. 536.

⁴⁶ P.L. 116-93, Div. D, §209(a)(1).

years, with a new exception for designs that help “mitigate community or environmental impacts.”⁴⁷ There was an additional requirement that the barriers are to be built in the highest priority locations identified in CBP’s Border Security Improvement Plan.⁴⁸

FY2021

In February 2020, the Administration requested \$2.060 billion for the Border Security Assets and Infrastructure PPA. This included \$1.965 billion in border barrier funding for FY2021, to support the construction of 82 miles of border wall system.⁴⁹

Funding was not included in the House committee-reported bill, but \$1.964 billion was included in the Senate majority draft legislation. The consolidated appropriations act for FY2021 ultimately included \$1.375 billion for border barrier construction.⁵⁰

Comparing DHS Border Barrier Funding Levels Across Eras

Figure 3 presents a comparison of the total funding made available in the first and second eras of DHS efforts to support planning and construction of barriers on the U.S.-Mexico border.

This comparison is made with two important caveats: the data sources and funding structures were different in the two eras. In the legislative era (FY2007-FY2016), detailed information was provided directly to CRS in a communication from CBP. It was tracked for “tactical infrastructure,” which included funding for border roads and other TI. In the executive era identified in this report (FY2017 into FY2021), data from CBP and appropriations measures (which has been more detailed with respect to barrier planning and construction) were generally consistent, but the Trump Administration also used the specifically defined “border wall” program to track most of the funding.

⁴⁷ P.L. 116-93, Div. D, §209(b)(1)(B).

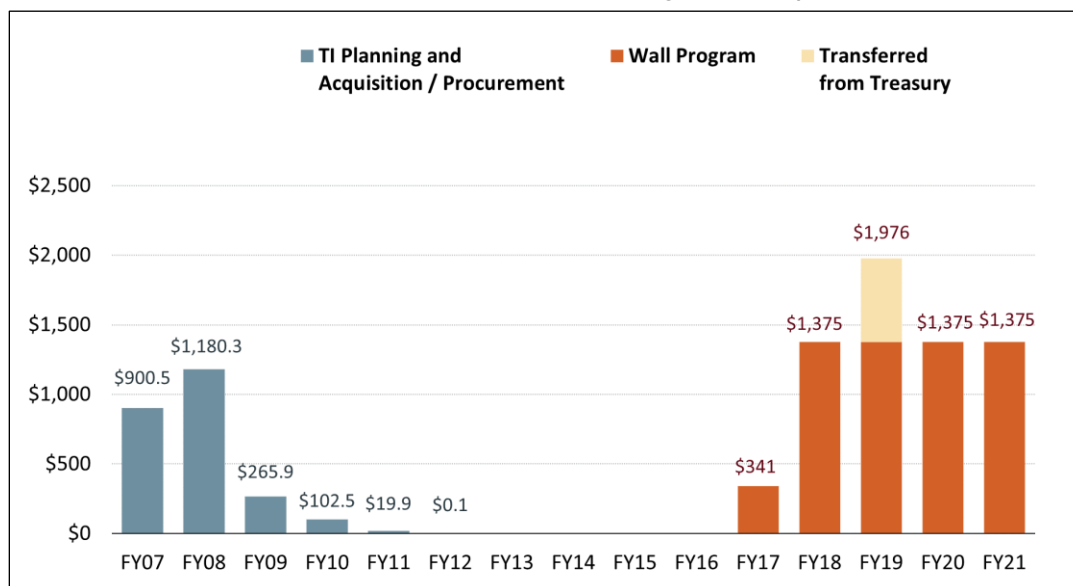
⁴⁸ P.L. 116-93, Div. D, §209(b)(2).

⁴⁹ Department of Homeland Security, *U.S. Customs and Border Protection Budget Overview: Fiscal Year 2021 Congressional Justification*, Washington, DC, p. p. CBP-PC&I-41.

⁵⁰ P.L. 116-260, Div. F, §210.

Figure 3. DHS Funding Available for Border Barrier Construction,* FY2007-FY2021

Millions of Nominal Dollars of Budget Authority



Sources: CRS analysis of U.S. Customs and Border Protection, “Summary of Historical Spending for TI and Wall Programs,” email attachment sent to CRS November 26, 2018; CBP Budget Justifications and appropriations committee reports and conference reports for FY2019-FY2021.

Notes: TI = Tactical Infrastructure. “Transferred from Treasury” indicates \$601 million transferred to DHS from the Treasury Asset Forfeiture Fund to support border barrier funding.

* This does not include \$2.5 billion in FY2019 DOD counterdrug funding and \$3.6 billion in FY2019 military construction funding, as those funds were not under DHS control.

Border Barrier Funding Outside the Appropriations Process

The same day that President Trump signed the FY2019 consolidated appropriations act into law, he declared a national emergency on the southern border of the United States. A fact sheet accompanying the declaration indicated the President’s intent to make additional funding available for border barriers through three methods, sequentially. These methods and related actions involved the following:

Drawing about \$601 million from the Treasury Forfeiture Fund

A letter from the Department of the Treasury on February 15, 2019, indicated that those funds would be made available to DHS for “law enforcement border security efforts” (\$242 million available March 2, and \$359 million after additional forfeitures were received).⁵¹

According to court documents, Treasury transferred the full \$601 million to DHS on September 27, 2019. CBP reportedly was to use the funds as follows:

- \$261 million for future-year real estate planning and acquisition for border barrier construction along the southwest border.
- \$340 million for border barrier projects in the Rio Grande Valley Sector, of which
- \$124 million was for construction; and

⁵¹ Treasury Forfeiture Fund assets have been made available to support DHS missions in the past, although not on this scale—CBP does not require an emergency designation to receive or use these funds in support of its law enforcement missions.

- \$216 million was for construction management costs, increased project costs, and real estate planning and acquisition.⁵²

Most of these funds were never obligated, and \$455 million was returned to the Fund in June 2021.⁵³

Making up to \$2.5 billion available through the Department of Defense's support for counterdrug activities (authorized under 10 U.S.C. §284)⁵⁴

\$1 billion was reprogrammed within the Department of Defense to its Drug Interdiction and Counter Drug Activities account, and that funding, in turn, was transferred for the U.S. Army Corps of Engineers to do certain DHS-requested work on border barriers.⁵⁵

On May 10, 2019, the Department of Defense announced an additional \$1.5 billion reprogramming of funding that had been dedicated to a variety of initiatives, including training and equipping Afghan security forces, programs to dismantle chemical weapons, and other activity for which savings or program delays had been identified. The DOD indicated that the funding would construct an additional 80 miles of border barriers.

- Use of both of these tranches of reprogrammed funds to pay for border barrier projects had been blocked by a court injunction until July 26, 2019, when the Supreme Court ruled that the government could proceed with the use of the funds while a lower court determined the legality of the transfer that made the funds available.⁵⁶

Reallocating up to \$3.6 billion from various military construction projects under the authority invoked by the emergency declaration⁵⁷

On September 3, 2019, then-Secretary of Defense Mark Esper issued a memorandum with the determination that "11 military construction projects ... along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency [at the southern border]."⁵⁸

- The memorandum indicated \$1.8 billion in unobligated military construction funding for overseas projects would be made available immediately, while \$1.8 billion in domestic military construction projects would be provided once it is needed.⁵⁹

On February 13, 2020, three days after submitting its FY2021 budget request to Congress, the Trump Administration again used its transfer authority to make an additional \$3.8 billion available for border barrier construction under the 10 U.S.C. §284 counterdrug authority.

Defense authorization and appropriations committees in the House opposed this reprogramming. The House attempted to include restrictions on border barrier funding in various vehicles, including the defense authorization and appropriations measures, but these provisions were ultimately not enacted.

⁵² Notice re Treasury Forfeiture Fund, *State of California, et al. v. Donald J. Trump, et al.*, 4:19-cv-00872-HSG, Exhibit A: Declaration of Loren Flossman, January 8, 2020.

⁵³ Department of Homeland Security, "Border Wall Plan Pursuant to Presidential Proclamation 10142," June 9, 2021, p. 5.

⁵⁴ For additional information on this authority, see CRS Insight IN11052, *The Defense Department and 10 U.S.C. 284: Legislative Origins and Funding Questions*, by Liana W. Rosen.

⁵⁵ Standard CBP practice for construction of border barriers is that the real estate and construction contracting has been handled by the U.S. Army Corps of Engineers, with funding provided by CBP by transfer under the Economy Act. For more details, see CRS In Focus IF11224, *Army Corps of Engineers and U.S. Southern Border Barriers*, by Nicole T. Carter.

⁵⁶ Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction at 8, *Sierra Club v. Trump*, Case No. 4:19-cv-00892-HSG (N.D. Cal. June 28, 2019), [ECF No. 185], https://www.crs.gov/products/Documents/8_Permanent_Injunction_Order/pdf. For additional information on the injunction, see CRS Legal Sidebar LSB10310, *Supreme Court Stays Injunction That Had Blocked a Portion of the Administration's Border Wall Funding*, by Edward C. Liu and Benjamin Hayes.

⁵⁷ CRS Insight IN11017, *Military Construction Funding in the Event of a National Emergency*, by Michael J. Vassalotti and Brendan W. McGarry.

⁵⁸ Memorandum from Mark T. Esper, Secretary of Defense, to Acting Under Secretary of Defense (Comptroller)/Chief Financial Officer, "Military Construction Necessary to Support the Use of the Armed Forces in Addressing the National Emergency at the Southern Border," September 3, 2019.

⁵⁹ Ibid.

For more information on the process and disposition of the Department of Defense funding for border barriers, see CRS Report R45937, *Military Funding for Southwest Border Barriers* and CRS Insight IN11675, *An Update on Military Funding for the Border Wall*, by Christopher T. Mann.

Border Barrier Funding Execution: January 2017 to January 2021

Over the course of the Trump Administration’s push for border barrier construction, the Government Accountability Office wrote a number of reports examining the process and results of this activity. GAO has access to extensive information beyond the public record regarding the execution of border barrier funding—information beyond what is available to CRS. GAO’s nonpartisan oversight mission and expertise provides a useful perspective on how border barriers have been developed in recent years. References from GAO’s summaries follow:

Southwest Border Security: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps (GAO-17-331), February, 2017:

Border fencing is intended to benefit border security operations in various ways, according to officials from the U.S. Border Patrol.... For example, according to officials, border fencing supports Border Patrol agents’ ability to execute essential tasks, such as identifying illicit-cross border activities. CBP collects data that could help provide insight into how border fencing contributes to border security operations, including the location of illegal entries. However, CBP has not developed metrics that systematically use these, among other data it collects, to assess the contributions of border fencing to its mission. For example, CBP could potentially use these data to determine the extent to which border fencing diverts illegal entrants into more rural and remote environments, and border fencing’s impact, if any, on apprehension rates over time. Developing metrics to assess the contributions of fencing to border security operations could better position CBP to make resource allocation decisions with the best information available to inform competing mission priorities and investments.⁶⁰

Southwest Border Security: CBP Is Evaluating Designs and Locations for Border Barriers but Is Proceeding Without Key Information (GAO-18-614), July, 2018:

CBP and U.S. Border Patrol developed a methodology for prioritizing future barrier deployments along the entire southwest border, which included input from Border Patrol officials, data on illegal entry traffic, and analysis of operational and engineering feasibility for each potential location. However, the strategy did not include analysis of the costs associated with deploying barriers in each location or segment, which can vary depending on topography, land ownership, and other factors. Without assessing costs, consistent with leading practices for capital decision making, CBP does not have complete information for prioritizing locations to use its resources in the most cost-effective manner.⁶¹

DHS Annual Assessment: Most Acquisition Programs Are Meeting Goals but Data Provided to Congress Lacks Context Needed For Effective Oversight (GAO-21-175), January, 2021:

CBP officials stated that land access and acquisition issues are significant challenges and could affect the Border Wall System Program’s ability to meet its schedule goals.

⁶⁰ U.S. Government Accountability Office, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps*, GAO-17-331, February 16, 2017, p. Highlights, <https://www.gao.gov/products/gao-17-331>.

⁶¹ U.S. Government Accountability Office, *Southwest Border Security: CBP Is Evaluating Designs and Locations for Border Barriers but Is Proceeding Without Key Information*, GAO-18-614, July 30, 2018, p. Highlights, <https://www.gao.gov/products/gao-18-614>.

The program develops acquisition program baselines (APB) for new segments as funding becomes available. As of September 2020, DHS leadership had approved two APBs for the program—for funding received in fiscal years 2018 and 2019—and CBP’s Component Acquisition Executive had approved the program’s preliminary APB associated with fiscal year 2020 funding.

The Border Wall System Program APBs do not account for related construction efforts that may limit oversight of the entire border wall system. For example, DOD has also provided support and funding for the construction of barriers and infrastructure along the southern border.... CBP officials told GAO that, although they provided a prioritized list of segments and construction standards to DOD, they have limited insight into DOD’s planned efforts.⁶²

GAO noted in analyses of the FY2018 APB that the program was behind schedule by 15 months in the Rio Grande Valley and three months behind in San Diego due to delays in land acquisition.⁶³ They also noted CBP anticipated a funding shortfall in operation and support costs for FY2019 and FY2020 projects, which would require additional appropriations to cover.⁶⁴

Southwest Border: Schedule Considerations Drove Army Corps of Engineers’ Approaches to Awarding Construction Contracts through 2020 (GAO-21-372), June 2021:

Some Department of Defense funding was only available for a short time before expiring, giving the Corps a tight schedule for awarding contracts. This—and the emergency declaration—led the Corps to depart from its planned acquisition approach.

The Corps focused on starting construction quickly and maximizing the miles of border barrier panels it could build. To do so, it:

- * Awarded \$4.3 billion in noncompetitive contracts. Competition helps ensure the government gets a good price.
- * Started work before agreeing to terms. The Corps awarded several contracts before terms, such as barrier specifications and cost, were finalized.

By focusing on expediency in contracting, the government risks paying higher costs.

Contractors completed most DOD-funded border barrier panels by the end of December 2020 as scheduled.⁶⁵

In this report, GAO also noted a distinction between the construction of border barriers and the completion of a border wall system. The former is simply the placement of barrier panels, while the latter includes the sensors, lighting, and roads to deliver the operational capabilities DHS requires. GAO reported 345 miles of *border barriers* were built using counterdrug and military construction funding, and 112 miles were built using DHS funding. Sixty-nine miles of contracted *border wall system* was completed – all on contracts awarded with DHS funding. **Table 3** provides GAO’s breakdown of mileage and funding by budget source.

⁶² U.S. Government Accountability Office, *DHS Annual Assessment: Most Acquisition Programs Are Meeting Goals but*, GAO-21-175, January 19, 2021, p. 73, <https://www.gao.gov/assets/gao-21-175.pdf>.

⁶³ GAO-21-175, p. 17.

⁶⁴ GAO-21-175, pp. 75-76.

⁶⁵ U.S. Government Accountability Office, *Southwest Border: Schedule Considerations Drove Army Corps of Engineers’ Approaches to Awarding Construction Contracts through 2020*, GAO-21-372, June 17, 2021, p. Highlights, <https://www.gao.gov/products/gao-21-372>.

Table 3. Completion Status for Selected USACE Construction Contracts, as of January 2021

Funding Source	Contracts Awarded	Miles Under Contract	Wall Panels Complete (miles)	Wall System Complete (contract complete)	Funds Obligated	Funds Disbursed
Department of Defense counterdrug	7	295	258	0	\$6.3 billion	\$4.0 billion
Military Construction	6	96	87	0	\$1.2 billion	\$0.9 billion
DHS	18	240	112	69	\$3.0 billion	\$1.8 billion
Total	31	631 miles	458 miles	69 miles	\$10.5 billion	\$6.6 billion

Source: GAO-21-372, p. 34, citing U.S. Army Corps of Engineers (USACE) documentation and Federal Procurement Data System data.

Notes: Numbers may not sum due to rounding.

- a. This includes 31 of the 39 contracts GAO reviewed. Six of the remaining contracts were exclusively for roads or gates, so do not count toward the total miles of border wall constructed. The two remaining contracts were terminated shortly after award.

GAO went on to note this about the status of construction activity as of January 2021:

All 13 DOD-funded contracts were expected to complete at least some wall panels by the end of 2020. Prior to the direction to pause work, 12 of these contracts were expected to be finished by the end of fiscal year 2021—i.e., the wall system was expected to be completed for most of the 391 miles awarded. While seven of the 18 contracts for border wall construction that were funded by DHS appropriations were completed, the completion timelines and construction status for the remaining DHS-funded contracts varied. Several were pushed back until fiscal year 2022 or suspended prior to the direction to pause work, and the completion status of the remaining miles is uncertain. According to CBP officials, these suspensions were related to difficulties they experienced in certifying real estate availability, which led USACE to pause construction activities, although design activities continued until the work stoppage.⁶⁶

Fence or Wall? New or Replacement?

Part of the debate around southwest border barriers in the 21st century was centered on the question of progress: What had the Trump Administration done with the border barrier funding it had received so far? Was the Administration “building the wall,” or was it “just replacing existing fences?” Framing the debate on barrier or wall building at the border using these extremes often did not capture the complexity of the situation, in terms of what CBP stated the barriers could be expected to do or the realities of the terrain and geography of the border. Much of the wave of construction—whether new or replacement barriers⁶⁷—was 18- to 30-foot-high reinforced bollard fencing. It poses a formidable barrier, but it was not the high, thick masonry structure that most dictionaries term a “wall.” Nor is a border barrier a one-time investment or stand-alone solution to the issue of

⁶⁶ GAO-21-372, p. 34.

⁶⁷ There is dispute, as referenced by then-Acting DHS Secretary Wolf in his remarks of January 10, 2020 in Yuma, Arizona, over the use of “new” and “replacement” in discussions of barriers or miles of barriers. In this report, “new” barriers are those that contribute additional miles to the total count of the primary layer of fencing where no human-made barrier existed. “Replacement” refers to newly constructed barriers that either replace or update existing fencing of an earlier vintage, or upgrade fencing designed to prevent the entry of vehicles with fencing designed to prevent the entry of people.

illegal border crossing or drug smuggling. CBP has viewed border barriers as a means of delaying and channeling those attempting to cross between ports of entry to increase the likelihood they can be detected, intercepted, and detained before they can evade authorities.⁶⁸ Once constructed, border barriers and their supporting infrastructure of sensors, roads, lighting, and surveillance technology, need to be monitored and maintained to be effective.

The designs being deployed were significantly different from the pedestrian fencing and vehicle barriers they replaced in some cases, and posed a much different challenge to those attempting to cross them. Roughly 300 miles of the existing border barriers constructed prior to the Trump Administration were barriers designed to impede vehicles, not people. Replacing vehicle barriers with the bollard-style pedestrian barriers may not have represented new miles of primary barriers along the border, but they represented a new obstacle that changes the calculus of those attempting to cross the border between ports of entry.

How much progress does a number of miles of installed barrier panels or completed border wall system represent? There are a variety of different metrics that can be applied to assess that. The significant question to ask may not be whether a piece of barrier is “new” versus “replacement,” or how to count miles against a rhetorical requirement, but whether placement of a barrier or complete border wall system in a given location has the desired effect on illicit cross-border flows. In addition, Congress may consider whether the cost of constructing and maintaining a modern barrier in a particular area is worth all of the effects, both in terms of illicit border crossings and secondary impacts to landowners, communities, the environment, overall border security, and long term diplomatic and budgetary priorities.

Change in Administration, Change in Policy

On January 20, 2021, President Joe Biden terminated the Trump Administration’s national emergency with respect to the southern border, stating: “It shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall.”⁶⁹ The proclamation went on to direct a pause in construction and obligation of funds related to the construction of barriers, to the extent permitted by law, and directed agencies to collect a range of data with consideration to repurposing barrier-related contracts. The Secretary of Defense and the Secretary of Homeland Security, in consultation with a range of executive departments and agencies were to

develop a plan for redirection of funds concerning the southern border wall, as appropriate and consistent with applicable law. The process of developing the plan shall include consideration of terminating or repurposing contracts with private contractors engaged in wall construction, while providing for the expenditure of any funds that the Congress expressly appropriated for wall construction, consistent with their appropriated purpose.⁷⁰

Questions Raised by Recent Border Barrier Funding

The Role of Congress v. the Administration in Funding

Section 4 of E.O. 13767, “Physical Security of the Southern Border of the United States,” focused almost entirely on the construction of “a physical wall” on the U.S.-Mexico border as a means of

⁶⁸ See discussion in Davis, John, “Walls Work: Historic successes point the way toward border barriers of the future,” <https://www.cbp.gov/frontline/border-security>; and U.S. Customs and Border Protection, “Border Wall System: Frequently Asked Questions,” <https://www.cbp.gov/border-security/border-wall/border-wall-system-frequently-asked-questions> (as downloaded on January 10, 2020).

⁶⁹ Proclamation 10142, “Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction,” 86 *Federal Register* 7225-7227, January 27, 2021.

⁷⁰ Proclamation 10142.

obtaining operational control of the nearly 2,000-mile border.⁷¹ To briefly recap the funding that was provided by Congress in response to the Trump Administration’s initiative, the \$5.84 billion in appropriations provided by Congress to CBP for border barrier planning and construction for FY2017-FY2021 more than doubled the amount provided for those purposes in the BSFIT account for FY2007 to FY2016. Of the \$5.84 billion

- \$1.04 billion was specifically directed to barrier replacement projects;
- \$2.02 billion was specifically directed to construction needs in the Rio Grande Valley Sector; and
- \$2.78 billion was provided for planning and construction of border barriers without specific direction in regards to location or whether the funding was for barrier replacement or construction of additional miles of barriers.

Despite the historically high volume of resources provided, the Trump Administration took unprecedented steps—noted in “Border Barrier Funding Outside the Appropriations Process” above—to redirect additional federal funds to this purpose, making almost \$10 billion available to the Department of Defense to undertake a task for which the primary authority lay with CBP.

- In a situation where Congress has assessed the Administration’s case for funding a given initiative, and chosen to only provide limited funding, how can Congress best maintain its Constitutional “power of the purse” when an Administration chooses to disregard appropriations law precedents and practices?
- Conversely, when Congress has appropriated funds for a given purpose, and an Administration—new or incumbent—chooses to change the policy that Congress has specifically funded, what avenues should be available for Congress to either provide flexibility on the use of those funds, or insist on its position and ensure the funding is used as directed?

The Role of Congress v. the Administration in Execution and Oversight

Congress has at times been challenged in obtaining information on border barrier construction for use in public debate. Generally, the Trump Administration (and the Biden Administration thereafter), in discussions about border barriers, relied on the *U.S. Border Patrol Impedance and Denial Prioritization Strategy*, which includes a list of projects for barrier construction. This is not a document available for use in public debate, as it is a report to a specific committee of Congress, and its contents, while not classified information, are restricted from public circulation.⁷²

There were no known authoritative cost estimates for the total construction or operation and maintenance costs of these projects if they were all completed, or publicly available assessments of how completion of various projects might affect CBP’s operational costs. As noted above, the GAO reported in 2018 that CBP’s methodology for prioritizing border barrier deployments did not use cost estimates that included analysis of the costs associated with deploying barriers in

⁷¹ Executive Order 13767, “Border Security and Immigration Enforcement Improvements,” 82 *Federal Register* 8793-8797, January 30, 2017.

⁷² The Strategy is part of a report to a specific committee of Congress, and is designated Law Enforcement Sensitive. This designation indicates that the information is sensitive (but unclassified) and for that reason, DHS, by guidance, restricts circulation of it beyond those with a “need-to-know” to perform official governmental duties.

each location, such as those driven by topography, land ownership, and other factors.⁷³ Furthermore, GAO reported in 2016 that the border barriers' contributions to CBP goals were not being adequately measured.⁷⁴

As long as this issue is a matter of congressional debate, Congress may wish to obtain additional information and explore the following questions in assessing border barrier funding proposals:

- What are the projected operation and maintenance costs for the existing southwest border barriers? How will those change with the continuing maintenance needs for replacements and upgrades, or new construction of barriers?
- How is CBP prioritizing further border wall system work? What level of transparency is possible without compromising operational effectiveness and efficiency?
- What are the projected land acquisition and construction costs of CBP's remaining top priority border barrier projects, based on unique topography, land ownership, and strategic intent of the projects? What steps is CBP taking to control the growth of those costs? Who within the Administration is providing oversight of how these funds are used, and are they reporting their findings to Congress?
- Are existing barriers and completed improvements having measurable impacts on illegal entries into the U.S. and smuggling of contraband? How are CBP and other stakeholders making their assessments? Is CBP getting its desired tactical or strategic outcomes?
- Are the operational benefits worth the financial and operational costs, or are there more efficient ways to achieve the desired tactical or strategic outcomes?

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⁷³ GAO-18-614.

⁷⁴ GAO-17-331.

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