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FY2006 Appropriations for Border and Transportation Security

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FY2006 Appropriations for Border and Transportation Security

Summary

A well-managed border is central to maintaining and improving the security of the United States against terrorist threats. Border security entails regulating the flow of goods and people across the nation's borders so that dangerous and unwanted goods or people are denied entry. Transportation security entails screening and protecting people and goods as they move between different locations within the country. The overall appropriations over the past three years for Border and Transportation Security, as defined in this report, are as follows: in FY2004, Congress appropriated \$18,106 million; in FY2005, Congress appropriated \$20,313 million; in FY2006, the President requested \$19,586 million; House-passed H.R. 2360 provides \$21,015 million; and Senate-passed H.R. 2360 provides \$21,283 million.

Determining which goods and people are permitted and which are denied entry into the United States involves a system of sophisticated border management. This system must balance the need for securing the nation's borders while facilitating the essential commerce and legitimate free flow of citizens and authorized visitors. The system must be capable of a detailed examination of the goods and people seeking entry, but must still fit within budgetary constraints and be administratively feasible. Improving transportation security has meant an expanded federal role in screening passengers and baggage traveling through airports and also increasing the presence of federal officers aboard domestic and international flights. Plans exist to expand the presence of federal officers in other modes of transportation. Finally, these management systems must accomplish their functions with a minimum of disruption of legitimate activities, and without unnecessary intrusion into the civil liberties of persons affected by them.

Within the federal government, the Department of Homeland Security (DHS) has been given primary responsibility for securing the nation's borders and for increasing the security of transportation, among other responsibilities. The locus of border and transportation security activity within DHS is in the Directorate of Border and Transportation Security, which houses the Bureau of Customs and Border Protection (CBP), the Bureau of Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA). The U.S. Coast Guard is a stand-alone agency within DHS but plays an important role in border and transportation security, as does the Federal Law Enforcement Training Center (FLETC). This report includes appropriations for the functions and agencies of BTS, the U.S. Coast Guard and FLETC. Major issues include the number of available detention beds and investigators at ICE; the number of Border Patrol agents in CBP; the appropriate level of funding for the Deepwater program within the Coast Guard; and non-aviation security spending within TSA.

This report will be updated to reflect the Conference Agreement between the House and the Senate and final passage.

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FY2006 Appropriations for Border and Transportation Security

Most Recent Developments

Senate Passes H.R. 2360. On July 14, 2005, the Senate passed its version of H.R. 2360, which had been reported as an amendment in the nature of a substitute, 96-1. The Senate-passed version of H.R. 2360 recommends a net appropriation of \$31.9 billion for Department of Homeland Security (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. The Senate-passed version of H.R. 2360 includes \$21.3 billion for Border and Transportation Security (BTS) agencies as identified in this report. This amount represents an increase of \$1 billion, nearly 5%, as compared to the FY2005 enacted level; an additional \$300 million as compared to the \$21.0 billion provided in the House-passed H.R. 2360; and an additional \$1.7 billion as 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. House-passed H.R. 2360 contains \$21 billion for BTS as identified in this report, representing an increase of \$700 million or 3.4% as compared to the FY2005 enacted level of \$20.3 billion.

President's FY2005 Budget Submitted. On February 7, 2005, the President submitted the FY2006 budget request to Congress, proposing a net appropriation of \$30.6 billion for DHS. This represents a 7.7% increase over net enacted FY2004 funding of \$30.3 billion.¹ Of the \$30.6 billion requested by the Administration for DHS in FY2006, \$19.6 billion or 64% is for BTS agencies as identified in this report. The requested \$19.6 billion for BTS agencies in FY2006 represents a 3.4% decrease compared to the enacted FY2005 amount of \$20.3 billion (including supplemental and emergency appropriations).

Table 1 summarizes the legislative status of DHS appropriations for FY2005.²

¹ The FY2004 amount does not include \$4.8 billion in scorekeeping adjustments, rescissions, and advance appropriations.

² For more information on DHS Appropriations, see CRS Report RL32863, *Homeland* (continued...)

Table 1. Legislative Status of Homeland Security Appropriations

| Subcommittee Markup | | House Report 109-79 | House Passage | Senate Report 109-83 | Senate Passage | Conf. Report | Conference Report Approval | | Public Law |
|---------------------|---------------|---------------------|------------------|----------------------|-----------------|--------------|----------------------------|--------|------------|
| 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) | | | | |

Note: vv = voice vote

Introduction

Increasing border and transportation security are essential strategies for improving and maintaining homeland security. Border security entails regulating the flow of goods and people across the nation's borders so that dangerous and unwanted goods or people are detected and denied entry. Transportation security entails screening and protecting people and goods as they move between different locations within the country.

Determining which goods and people are permitted and which are denied entry into the United States involves a system of sophisticated border management. This system must balance the need for securing the nation's borders with facilitating the essential commerce and legitimate free flow of citizens and authorized visitors. The system must be capable of a detailed examination of the goods and people seeking entry, but must still fit within budgetary constraints and be administratively feasible.

Improving transportation security has meant an expanded federal role in screening passengers and baggage traveling through airports and also increasing the presence of federal officers aboard domestic and international flights. Plans exist to expand the presence of federal officers in other modes of transportation. Finally, these management systems must accomplish their functions with a minimum of disruption of legitimate activities, and without unnecessary intrusion into the civil liberties of persons affected by them.

Background

The Homeland Security Act of 2002 (P.L. 107-296) transferred the functions, relevant funding, and most of the personnel of 22 separate agencies and offices to the newly created Department of Homeland Security. DHS was organized into four

² (...continued)

Security Department: FY2006 Appropriations, coordinated by Jennifer Lake and Blas Nuñez-Neto.

major directorates: BTS; Emergency Preparedness and Response; Science and Technology; and Information Analysis and Infrastructure Protection.

The BTS Directorate, along with the U.S. Coast Guard, is responsible for the first line of defense against terrorism and for securing and managing the nation's borders. Included in these responsibilities are the inspection, investigative and enforcement operations of the former Immigration and Naturalization Service (INS), which had been responsible for managing and coordinating the entry of people into the United States, and for enforcing immigration laws. DHS border and transportation security objectives also include fulfilling the newly expanded responsibilities of the TSA in protecting the nation's transportation systems, initially involving airline passengers, baggage, and freight.

The Customs function, previously the responsibility of the Department of the Treasury's U.S. Customs Service, now also forms part of BTS. The Customs functions administered by DHS, in conjunction with the U.S. Coast Guard, are intended to effectively secure all commercial traffic entering the nation's ports. The Directorate also assumes responsibility for inspecting and monitoring plants and animals entering the United States to minimize the risk that noxious pests and diseases will be introduced into the country.

The activities for which BTS has assumed responsibility are organized into three bureaus: the Bureau of Customs and Border Protection (CBP); the Bureau of Immigration and Customs Enforcement (ICE); and the Transportation Security Agency (TSA). The inspection and border patrol functions of the legacy Customs, INS, and Animal and Plant Health Inspection Service (APHIS), were merged into CBP. The investigative and interior enforcement functions of the legacy Customs and INS were merged within ICE. The Federal Protective Service (FPS), the Federal Law Enforcement Training Center (FLETC), and the Office of Domestic Preparedness (ODP) were also included under BTS by the Homeland Security Act. Subsequently, the Federal Air Marshals (FAMs) have been transferred from TSA to ICE; the US-VISIT program has been transferred from ICE to be managed at the BTS directorate level; and ODP has been reconfigured and renamed the Office of State and Local Government Coordination and Preparedness (OSLGCP) and is managed at the DHS level. The Coast Guard remains a direct report, or free standing agency, within DHS but outside the BTS directorate.

Secretary Chertoff's Second Stage Review

On July 13, 2005, the Secretary of DHS, Michael Chertoff, announced the results of the months-long Second Stage Review (2SR) that he undertook upon being confirmed as DHS Secretary.³ The proposed changes affect many aspects of the

³ For text of the Secretary's speech, see DHS, *Remarks by Secretary Michael Chertoff on the Second Stage Review of the Department of Homeland Security*, July 13, 2005, Washington, DC, at [http://www.dhs.gov/dhspublic/interapp/speech/speech_0255.xml]. For an overview of the proposed changes, see DHS, *Homeland Security Secretary Michael Chertoff announces Six-Point Agenda for Department of Homeland Security*, July 13, 2005,

(continued...)

Department.⁴ 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.

Specific new policy initiatives and proposed actions announced on July 13 by the Secretary include several significant BTS changes, including the proposed elimination of the BTS Directorate. The Secretary announced the creation of a new Directorate of Policy (subject to legislative approval), which would, among other things, assume the policy coordination responsibilities of the BTS Directorate. The operational agencies that comprise BTS (CBP, ICE, TSA) would report directly to the Secretary and Deputy Secretary of DHS. Through this reorganization, DHS proposes to streamline the policy creation process and ensure that the department's policies and regulations are consistent across the department.

In terms of immediate policy changes, the Secretary announced that the US-VISIT program would be moving from the 2-print fingerprinting standard to a 10-print standard.⁵ The Federal Air Marshals (FAMs) program will be moved out of ICE and back into TSA, to increase operational coordination between all aviation security entities in the department. Regarding immigration, the Secretary stated that the DHS would be looking at restructuring the immigration process, adding more personnel and technology to assist in gaining control of the border. Specific details on the nature of these changes are not currently available, however. In terms of cargo and supply chain security, the Secretary announced a new initiative called "Secure Freight." Though few details are currently available, presumably this initiative builds upon the concepts explored under the Advance Trade Data Initiative (ATDI). Through Secure Freight CBP would seek to obtain additional cargo and supply chain data to supplement the data they currently receive through the submission of advanced electronic cargo manifests. Secretary Chertoff also called for increasing

³ (...continued)

at [http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0703.xml]. See [<http://www.dhs.gov/interweb/assetlibrary/DHSOrgCharts0705.pdf>] for the proposed organizational chart.

⁴ This report will only discuss those relating to the BTS mission and agencies. This section will discuss the proposed changes in general; while more specific changes and their implications will be discussed throughout the report along with the discussion of issues relating to the specific agencies discussed in this report.

⁵ 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 Stephen R. Vina.

the number of inspections carried out at foreign ports before cargo is loaded on U.S.-bound vessels, increasing the speed of cargo inspections, and for completing the deployment of radiation portal monitors to the nations ports.

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. The only change of relevance to the BTS agencies identified in this report is the elimination of the Office of the Under Secretary for BTS. The \$10 million requested for this office in the original FY2006 budget submission would be distributed among several accounts in the Departmental Management and Operations Bureau in DHS: \$1.3 million for resources management would move to the Office of the Chief Financial Officer; \$1.3 million for administration, support and functional integration would move to the Office of the Under Secretary for Management; \$2.0 million would move to the new Preparedness Directorate for Preparedness Operations; and \$3.2 million would move to the Office of the Secretary and Executive Management for the Policy Office.

Appropriations for Border and Transportation Security

March 1, 2003, was the effective date for shifting most of the responsibilities from former departments and agencies to the new DHS. While the transfer of functional lines of authority and the personnel to carry out those functions was relatively straightforward, problems arose with the initial attempts to ascertain the exact amount of appropriated funds that were actually transferred to the new department. Comparisons of responsibilities and analyses of requests for increased budget authority proved difficult to develop. This was due to the fact that the functions now performed by DHS were previously performed by predecessor agencies, and that some of these functions often had non-homeland security purposes prior to the creation of the department. As a result of this, the funding lines between FY2003 and FY2004 were not identical to lines of functional responsibility before and after the transfer. This reality, in turn, was exacerbated because the basic documentation of appropriations in the President's FY2004 Budget was prepared after the formation of DHS but before final enactment of appropriations for the remainder of FY2003. However, with the completion of appropriations for FY2004, a baseline has been established, making future appropriations decisions more easily compared to the previous year's levels. It is too early to tell, however, what the just announced reorganization of the department will mean for next year's appropriations cycle.

The distinction between BTS functions and other functions funded through the same account lines is somewhat arbitrary. Our analysis in this report attempts to identify a functional classification for "border and transportation security." This functional grouping includes the activities of the Coast Guard, a separate agency in DHS which is not part of the Directorate for BTS, but which has an essential role in providing "border and transportation security" as those words are commonly understood. Additionally, some functions contained in other accounts within DHS that are related to border and transportation security, such as those aspects of the

Science and Technology account which are used to improve security, are excluded from this table because that is not the main function of the account. We also exclude the grant programs available to localities through the Office for Domestic Preparedness and the Office of State and Local Government Coordination and Preparation, despite the fact that some of these grants may be used to secure transportation assets, because that is not necessarily the primary function of the grant programs and because they are not an operational component of border and transportation security within DHS.

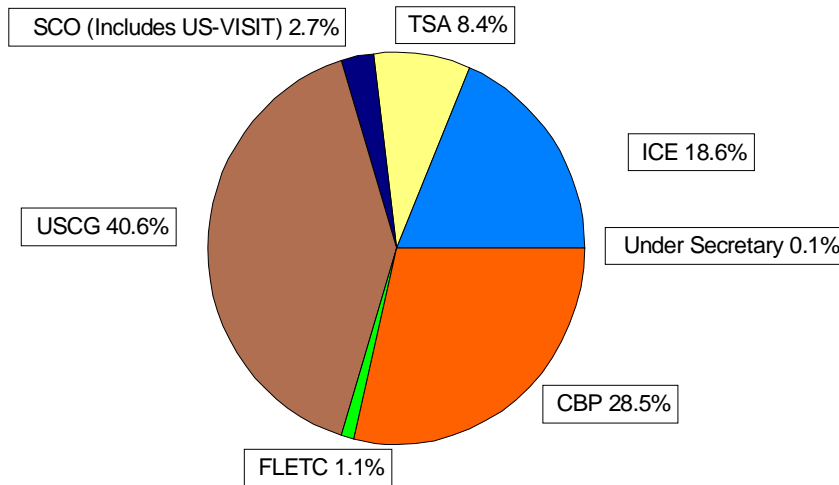
The tables presented throughout this report show an approximation of costs for border and transportation security, based on identifying the accounts for which such security functions are the primary function involved. They do not necessarily reflect DHS breakdowns as to estimated amounts specifically associated with the Directorate for BTS, nor the absolute total of the funds being spent directly and indirectly on border and transportation security by the department.⁶ The Administration's FY2006 request groups the requests for the Undersecretary for Border and Transportation; US-VISIT; CBP; ICE; the TSA; the U.S. Coast Guard; and the U.S. Secret Service in Title II *Security, Enforcement, and Investigations*.

In sum, for the purposes of this report, we exclude appropriations for the U.S. Secret Service, the Federal Protective Services, the Office of Science and Technology, ODP, and the Office of State and Local Government Coordination and Preparation. Included in this report are CBP, ICE, TSA, the U.S. Coast Guard, and the Undersecretary for BTS within Title II, as well as the appropriation for FLETC, which is located in Title IV. FLETC has been included because it trains most of the law enforcement officers that are responsible for BTS within DHS and a compelling argument can thus be made that they are an operational component of BTS.

The Administration requested \$30.6 billion for DHS in FY2005; of this amount \$19.6 billion, or 64%, is for BTS functions identified in this report. **Figure 1** illustrates the relative size of the request for each of the border and transportation security agencies. Of the \$19.6 billion requested in FY2006, the Coast Guard (USCG) accounts for 40.6%; CBP for 28.5%; ICE for 18.6%; TSA for 8.4%; Office of Screening Operations (SCO) for 2.7% and FLETC for 1.1%.

⁶ Identifying the exact dollar amount being spent on border and transportation security is not possible from the documentation available due to the fact that many of these distinctions occur at the sub-account level and are thus not identifiable.

Figure 1. FY2006 Request for Border and Transportation Security

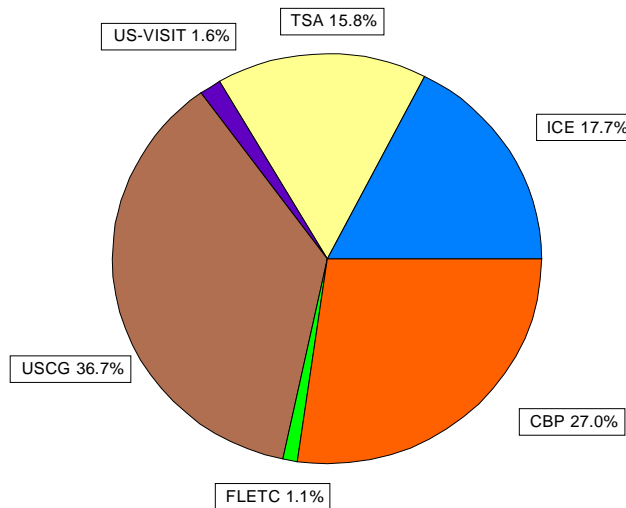


Source: CRS Analysis of the FY2006 President’s Budget, DHS *Budget in Brief*, and House Appropriation Committee tables of Mar. 15, 2005.

Notes: **Figure 2** illustrates net budget authority, and the amount requested for TSA includes a significant fee increase proposal that lowers TSA direct appropriation, and thus decreases TSA share of direct appropriations for DHS. Without including the fee increase (which has been denied in both the House and Senate-passed versions of H.R. 2360) TSA’s requested net budget authority would be \$3,321 million, or 16% of DHS total requested budget authority for FY2006.

Figure 2 illustrates the relative size of the appropriation for each of the border and transportation security agencies in FY2005. Of the \$20.3 billion appropriated for FY2005 (including supplemental appropriations), USCG accounts for 36.7%; CBP for 27.0%; ICE for 17.7%; TSA for 15.8%; US VISIT for 1.6% and FLETC for 1.1%.

Figure 2. FY2005 Appropriation for Border and Transportation Security



Source: CRS Analysis of P.L. 108-334.

Table 2 provides a basic summary of BTS appropriations for FY2005-FY2006, including the FY2005 enacted appropriation, the FY2006 request and the appropriations recommended by the House and Senate.

Table 2. Summary of Border and Transportation Security Appropriations, Functional Presentation

(budget authority in millions of dollars)

| | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|--------------------------------------------------------------|--------------------------|------------------------|-----------------------|----------------------|-----------------|
| Bureau of Customs and Border Protection (CBP) | 6,450 | 6,717 | 6,927 | 7,140 | |
| CBP Fee Accounts | -1,079 | -1,142 | -1,142 | -1,142 | |
| CBP Direct Appropriation | 5,371^a | 5,575 | 5,785 | 5,998 | |
| Bureau of Immigration and Customs Enforcement (ICE) | 4,215 | 4,364 | 4,546 | 4,524 | |
| Offsetting Federal Protective Service Receipts | -478 | -487 | -487 | -487 | |
| ICE Fee Accounts | -200 | -229 | -229 | -229 | |
| ICE Direct Appropriation | 3,537 | 3,648 | 3,830 | 3,808 | |
| Transportation Security Administration (TSA) | 5,401 | 5,562 | 5,683 | 5,484 | |
| TSA Offsetting Fees | -1,890 | -3,670 | -2,170 | -2,170 | |
| Aviation Security Capital Fund | -250 | -250 | -250 | -250 | |
| TSA Direct Appropriation | 3,260 | 1,641 | 3,263 | 3,065 | |
| Federal Law Enforcement Training Center | 227 | 224 | 259 | 282 | |
| U.S. Coast Guard | 7,568 | 7,962 | 7,458 | 7,780 | |
| Under Secretary of Border and Transportation Security | 10 | 11 | 9 | 10 | |
| Screening Operations Office | — | 525^b | 21^c | —^d | |
| US-VISIT | 340 | —^b | 390 | 340 | |
| Functional Total: Border and Transportation Security | 20,313 | 19,586 | 21,015 | 21,283 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

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

- This amount includes a \$63 million rescission of funds previously appropriated by P.L. 108-11.
- Includes \$390 million for US-VISIT in the SCO.
- The House-passed H.R. 2360 did not fund the SCO, but did place the US-VISIT, FAST, and NEXUS/SENTRI programs in a new Automation Modernization Office, and left the TSA fees proposed for transfer to the SCO in TSA.
- The Senate-passed version of H.R. 2360 also did not approve the proposed SCO, but unlike the House, the Senate does not create a new Automation Modernization Office, and leaves all the programs proposed for transfer to the SCO in their current location: FAST and NEXUS/SENTRI remain in CBP, and several fee based programs remain in TSA.

Operational Components of Border and Transportation Security

While most observers indicate the need for additional funding in the area of border and transportation security, the issue for Congress is to determine the appropriate funding level in the context of the current budget situation and competing claims for resources. The following sections of the report provide detail concerning the operational components of border and transportation security. These include selected appropriations data; issues of potential interest to the conferees; and a discussion of some of the challenges facing the different components of border and transportation security.

Securing the nation's borders and transportation systems includes the regulation of imports and exports; enforcement of laws pertaining to immigration and visitation; border-related inspection of agriculture and livestock; oversight of the security of ports; federal inspection of airline passengers and baggage; achieving operational control over the international borders between ports of entry; and establishing comprehensive approaches to improving overall transportation security, including securing infrastructure such as roads and railways. Some observers might question the exclusion of the Bureau of Citizenship and Immigration Services (USCIS) from the discussion of border and transportation security. There is no question that homeland security is enhanced by the well managed administration of routine immigration services. However, such services would continue to be provided even in absence of any threats to the homeland. Because these immigration activities would continue in any event, including the cost of these activities in this analysis would distort the true summary costs of border and transportation security. For this reason, we include the enforcement of immigration laws, but not the provision of immigration services, within the purview of this report.

Table 3 provides account level details for the various component border and transportation agencies as identified in this report.

Table 3. BTS Appropriations: Select Detail, FY2005-FY2006
(budget authority in millions of dollars)

| Operational Component | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Enacted |
|-----------------------------------------------------------------------------|--------------------|-------------------|-----------------|------------------|-------------------|
| Office of the under secretary for border and transportation security | 10 | 11 | 9 | 10 | |
| Screening and operations office^a | | | | | |
| US-VISIT ^b | 340 | 390 | 390 | 340 | |
| Other programs | — | 135 | 21 | — | |
| Fee accounts ^c | — | 321 | — | — | |
| Gross total | 340 | 846 | 411 | 340 | |
| Offsetting collections | — | -321 | — | — | |
| Net total | 340 | 525 | 411 | 340 | |
| Customs & border protection^a | | | | | |
| Salaries and expenses ^d | 4,658 | 4,730 | 4,886 | 4,922 | |
| rescissions ^e | -139 | — | — | -14 | |
| Automation modernization | 450 | 458 | 458 | 458 | |
| Air and Marine Operations | 258 | 293 | 348 | 321 | |
| Construction ^f | 144 | 93 | 93 | 311 | |
| Fee accounts ^g | 1,079 | 1,142 | 1,142 | 1,142 | |
| Gross total | 6,450 | 6,717 | 6,927 | 7,140 | |
| Offsetting collections | -1,079 | -1,142 | -1,142 | -1,142 | |
| Net total | 5,371 | 5,575 | 5,785 | 5,998 | |
| Immigration & Customs Enforcement | | | | | |
| Salaries and expenses | 2,893 ^h | 2,892 | 3,064 | 3,052 | |
| Federal Air Marshals | 663 | 689 | 699 | 679 | |
| Federal Protective Services | 478 | 487 | 487 | 487 | |
| Automation & infrastructure modernization | 40 | 40 | 40 | 50 | |
| Construction | 26 | 27 | 27 | 27 | |
| Fee accounts ⁱ | 200 | 229 | 229 | 229 | |
| Rescission ^j | -85 | — | — | — | |
| Gross total | 4,215 | 4,364 | 4,546 | 4,524 | |
| Offsetting FPS fees | -478 | -487 | -487 | -487 | |
| Offsetting collections | -200 | -229 | -229 | -229 | |
| Net total | 3,537 | 3,648 | 3,830 | 3,808 | |
| Transportation Security Administration^a | | | | | |
| Aviation security (gross funding) | 4,324 | 4,735 | 4,592 | 4,452 | |
| Surface Transportation Security | 48 | 32 | 36 | 36 | |
| Credentialing activities (appropriation) ^k | — | — | 84 | 75 | |
| Credentialing/Fee accounts ^k | 67 | — | 180 | 180 | |
| Intelligence | 14 | 21 | 21 | 21 | |
| Research and development ^l | 178 | — | — | — | |
| Administration | 520 | 524 | 520 | 470 | |

| Operational Component | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Enacted |
|---------------------------------------------------------|-------------------|-------------------|-----------------|------------------|-------------------|
| Aviation security mandatory spending ^m | 250 | 250 | 250 | 250 | |
| Gross total | 5,401 | 5,562 | 5,683 | 5,484 | |
| Offsetting collections ^a | -1,823 | -3,670 | -1,990 | -1,990 | |
| Credentialing/Fee accounts | -67 | — | -180 | -180 | |
| Aviation security mandatory spending | -250 | -250 | -250 | -250 | |
| Net total | 3,260 | 1,641 | 3,263 | 3,065 | |
| U.S. Coast Guard | | | | | |
| Operating expenses ^o | 5,303 | 5,547 | 5,500 | 5,459 | |
| Environmental compliance & restoration | 17 | 12 | 12 | 12 | |
| Reserve training | 113 | 119 | 119 | 119 | |
| Acquisition, construction, & improvements ^p | 1,031 | 1,269 | 798 | 1,225 | |
| Rescission ^q | -16 | — | — | -83 | |
| Alteration of bridges | 16 | — | 15 | 15 | |
| Research, development, tests, & evaluation ^r | 19 | — | — | 19 | |
| Retired pay (mandatory, entitlement) | 1,085 | 1,014 | 1,014 | 1,014 | |
| Gross total | 7,568 | 7,962 | 7,458 | 7,780 | |
| Federal Law Enforcement Training Center | 227 | 224 | 259 | 282 | |
| Gross Budget Authority: BTS | 24,209 | 25,685 | 25,293 | 25,560 | |
| Total offsetting collections: BTS | -3,897 | -6,099 | -4,278 | -4,278 | |
| Net Budget Authority: BTS | 20,313 | 19,586 | 21,015 | 21,283 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

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

- a. DHS is proposing to create this new office, which would combine 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 denies the creation of the SCO. However, H.R. 2360 does move FAST and NEXUS/SENTRI from CBP to the BTS management level, and combines these two programs with USVISIT in a new Automation Modernization office. Programs from TSA proposed for transfer to SCO would remain in TSA under H.R. 2360. The Senate-reported version of H.R. 2360 would also deny the creation of the SCO, and would also leave funding for FAST and NEXUS/SENTRI in CBP, and funding for the TSA programs proposed for transfer to the SCO would remain in TSA.
- b. United States Visitor & Immigrant Status Indicator Project.
- c. Fees included TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks. Both the House-passed and Senate-reported versions of H.R. 2360 would leave these programs and their fees in TSA.
- d. Includes \$124 million in funding provided by P.L.109-13, the Emergency Supplemental Appropriations Act.
- e. 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.

- f. Includes \$52 million in supplemental funding provided by P.L.109-13.
- g. Fees included COBRA, Land Border, Immigration Inspection, Immigration Enforcement, and Puerto Rico.
- h. Includes \$454 million in supplemental funding provided by P.L.109-13.
- i. Fees included Exam, Student Exchange and Visitor Fee, Breached Bond, Immigration User, Land Border.
- j. Reflects the \$85 million rescission from ICE in P.L.109-13.
- k. Fees included TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks, which were included in the proposed SCO in the President's request, but would be retained in TSA as recommended by H.Rept. 109-79.
- l. DHS is proposing to transfer the Research and Development account from TSA to the Directorate of S&T.
- m. Aviation Security Capital Fund, used for installation of Explosive Detection Systems at airports.
- n. 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. The House Appropriations Committee did not approve the proposed fee increase, and recommends an offset of \$1,990 million, and a net appropriation of \$3,263 million for TSA. **Table 3** reflects the amounts contained on the committee tables.
- o. Includes \$112 million in supplemental funding provided by P.L.109-13.
- p. Does not include an additional \$34 million transfer of funds from the Department of Defense to the USCG pursuant to P.L. 108-287. Includes \$49 million in supplemental funding provided by P.L.109-13.
- q. \$16 million rescission pursuant to P.L. 108-334.
- r. DHS is proposing to transfer the Research, Development, Tests and Evaluation account from the USCG to the S&T Office.

Office of Screening Operations (SCO)

As a part of the FY2006 request, the Administration is proposing to create a new SCO which will coordinate DHS' efforts to screen people (and to some extent cargo) as they enter and move throughout the country. Programs proposed to be moved to this office include 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.

FY2006 Request for SCO. The Administration has requested \$846 million in gross budget authority for SCO for FY2006. The request includes \$390 million for the US-VISIT program⁷ (an increase of \$50 million over the enacted FY2005 amount), \$94 million for Secure Flight⁸ (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 will oversee several

⁷ For more information on US-VISIT, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa Seghetti and Stephen R. Viña.

⁸ See CRS Report RL32082, *Homeland Security: Air Passenger Prescreening and Counterterrorism*, by Bart Elias, and William Krouse.

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 notes 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 denies this consolidation and appropriates no funds for SCO. Instead, the committee establishes 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 are funded within a new BTS Automation Modernization office.⁹

Senate-Passed H.R. 2360. The Senate-passed version of H.R. 2360 would also deny the creation of the SCO. In contrast to the House-passed version of H.R. 2360, the Senate-reported version would leave funding for the FAST and NEXUS/SENTRI programs within CBP rather than placing them within a new BTS Automation Modernization office. The Senate-passed version of the bill would, like the House-passed version, leave funding for the TSA programs proposed for transfer to the SCO, within TSA.

⁹ H.Rept. 109-79, pp. 23 and 52.

Table 4. SCO Detail, FY2005-FY2006
(budget authority in millions of dollars)

| Budget Activity | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|------------------------------------------|-------------------|------------------------|------------------------|------------------------|-----------------|
| Direct Appropriations | | | | | |
| US-VISIT | 340 | 390 | 390 | 340 | |
| Secure Flight | 45 | 94 | — | — | |
| FAST | 7 | 7 | 7 | — | |
| NEXUS/SENTRI | 14 | 14 | 14 | — | |
| Credentialing/Startup | — | 20 | — | — | |
| TWIC/TSA Credentialing | 10 | — | — | — | |
| Registered Traveler | 15 | — | — | — | |
| Subtotal Direct Appropriation | 431 | 525 | 411 | 340 | |
| Fee-funded programs | | | | | |
| TWIC/Credentialing | 50 | 245 | — | — | |
| Registered Traveller | — | 23 | — | — | |
| HAZMAT | 17 | 44 | — | — | |
| Alien Flight School | 5 | 10 | — | — | |
| Subtotal Fee Funded Programs | 72 | 322 | — | — | |
| Total SCO | 503 | 847^a | 411^b | 340^c | |

Source: CRS analysis of the FY2006 President's Budget, DHS *Budget in Brief*, House Appropriations Committee tables of May 20, 2005, and S.Rept. 109-83.

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

- a. Includes \$390 million for US-VISIT in the SCO.
- b. The House-passed H.R. 2360 did not fund the SCO, but did place the US-VISIT, FAST, and NEXUS/SENTRI programs in a new Automation Modernization Office, and left the TSA fees proposed for transfer to the SCO in TSA.
- c. The Senate-passed version of H.R. 2360 also did not approve the proposed SCO, but unlike the House, the Senate does not create a new Automation Modernization Office, and leaves all the programs proposed for transfer to the SCO in their current location: FAST and NEXUS/SENTRI remain in CBP, and several fee based programs remain in TSA.

Issues for Congress. The proposal for the creation of the SCO can be traced to Homeland Security Presidential Directive 11 (HSPD-11), which was one of the Administration's responses to the 9/11 recommendations. HSPD-11 directed the

improved coordination of “comprehensive terrorist-related screening procedures.”¹⁰ The goal of the SCO, according to the FY2006 DHS Congressional Budget Justifications, is to leverage the unique aspects of each of the screening programs chosen to be incorporated into the SCO in order to enhance an overall screening policy which would be directed by the new credentialing office within the SCO. Both House and Senate appropriators have denied this consolidation in their Appropriation Reports.

There is not a significant amount of detail in the request about the operations of the SCO. One potential issue concerns the operational aspects of each of the programs proposed for transfer to the SCO. How much of the program would actually be transferred to SCO? Is it simply the funding, the policy planning, or would the whole function (and the people who carry out that function) be transferred as well? Recent testimony by CBP Commissioner Bonner, and USCIS Director Aguirre indicated that there remains some uncertainty concerning which operational functions should remain at the agency level and which functions could be performed by the SCO.¹¹

Coordination would be a key challenge for the SCO, particularly coordination between the SCO and the other agencies of the BTS Directorate. Other challenges recently identified by the Government Accountability Office (GAO) include defining interrelationships and commonalities among the programs proposed for transfer to the SCO; clearly delineating roles and responsibilities; and identifying data needs. In addition, existing issues and concerns confronting some of the programs proposed for transfer to SCO (such as Secure Flight, and TWIC) would still have to be addressed.¹²

Customs and Border Protection (CBP)

CBP is responsible for security at and between ports-of-entry along the U.S. 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, INS, and the APHIS; the Office of Air and Marine Interdiction; and the Border Patrol.

¹⁰ U.S. President George W. Bush, *Homeland Security Presidential Directive/HSPD-11*, Aug. 27, 2004, at [<http://www.whitehouse.gov/news/releases/2004/08/20040827-7.html>].

¹¹ U.S. Congress, Senate Appropriations Committee, *Homeland Security Subcommittee, Fiscal Year 2006 Appropriations for Citizenship and Immigration Services, and Immigration and Customs Enforcement*, Mar. 2, 2005.

¹² GAO, *Transportation Security: Systematic Planning Needed to Optimize Resources*, GAO-05-357T, Feb. 15, 2005, p. 23.

President's Request. The Administration has requested an appropriation of \$6,717 million in gross budget authority for CBP in FY2006. This represents a 4% increase over the enacted FY2005 level (including supplemental appropriations) of \$6,450 million. The Administration is requesting 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 includes 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 Border Patrol's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (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 provides a net appropriation for CBP of \$5,785 billion, an 8% increase over the FY2005 enacted level and a 4% increase over the President's FY2006 request.¹³ House-passed H.R. 2360 fully funds all of the above listed requested increases, and provides an additional \$150 million above the request for Border Patrol staffing. However, the House makes 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 provides 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 funds the \$125 million requested increase for radiation portal monitors (RPMs) under the S&T Directorate, rather than under CBP; and provides 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

¹³ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2006*, 109th Cong., 1st sess., H.Rept. 109-79, p. 142.

Administration-proposed SCO (the House-passed version of H.R. 2360 placed this funding in a new BTS-level Automation Modernization Account).

Table 5 presents account-level detail for CBP. CBP's appropriation is provided through four accounts: Salaries and Expenses; Air and Marine Operations; Automation Modernization; and Construction. The bulk of CBP's appropriation is funded through the Salaries and Expenses account, which includes salaries and expenses for Air and Marine Operations.

Table 5. CBP Account Detail, FY2005-FY2006
(budget authority in millions of dollars)

| CBP Account | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|------------------------------------|-------------------|-------------------|-----------------|------------------|-----------------|
| Salaries and Expenses | 4,658 | 4,730 | 4,886 | 4,922 | |
| rescissions from S&E | -139 | — | — | -14 | |
| Air and Marine Operations | 258 | 293 | 348 | 321 | |
| Automation Modernization | 450 | 458 | 458 | 458 | |
| Construction | 144 | 93 | 93 | 311 | |
| Total direct appropriations | 5,371 | 5,575 | 5,785 | 5,998 | |
| Offsetting fee receipts | -1,079 | -1,142 | -1,142 | -1,142 | |
| Total budget authority | 6,450 | 6,717 | 6,927 | 7,140 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

Table 6 provides sub-account level detail for the CBP Salaries and Expenses Account.

Table 6. CBP Selected Sub-Account Level Detail
(budget authority in millions of dollars)

| Salaries and Expenses | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|---------------------------------------------------|-------------------|-------------------|-----------------|------------------|-----------------|
| Headquarters Management and Administration | 1,173 | 1,250 | 1,250 | 1,250 | |
| At Ports of Entry: | | | | | |
| Inspection, trade and travel facilitation | 1,243 | 1,275 | 1,275 | 1,275 | |
| Harbor Maintenance Fee | 3 | 3 | 3 | 3 | |
| Container Security Initiative (CSI) | 126 | 139 | 139 | 139 | |
| Other International Programs | 57 | 9 | 9 | 9 | |
| C-TPAT, FAST | 38 | 54 | 54 | 75 | |
| Inspection and detection technology investments | 145 | 188 | 188 | 63 | |
| Systems for Targeting | 30 | 28 | 28 | 28 | |
| National Targeting Center | 16 | 17 | 17 | 17 | |
| Other technology investment | 1 | 1 | 1 | 1 | |
| Training | 23 | 24 | 24 | 24 | |
| Subtotal At Ports of Entry | 1,683 | 1,738 | 1,738 | 1,634 | |
| Between Ports of Entry: | | | | | |
| Border security and control | 1,414 | 1,465 | 1,615 | 1,751 | |
| Air program operations and maintenance | 37 | 58 | 58 | 58 | |
| Unmanned Aerial Vehicles | 10 | 10 | 10 | 10 | |
| Integrated surveillance and intelligence system | 64 | 51 | 51 | 51 | |
| Training | 22 | 22 | 22 | 22 | |
| Subtotal Between Ports of Entry | 1,547 | 1,606 | 1,756 | 1,892 | |
| Air and Marine Operations S&E | 131 | 136 | 141 | 147 | |
| Rescission | — | — | — | -14 | |
| Rescission (P.L. 108-334) | -63 | — | — | — | |
| Rescission (P.L. 109-13) | -76 | — | — | — | |
| Supplemental Appropriations (P.L. 109-13) | 124 | — | — | — | |
| Total CBP salaries and expenses | 4,520 | 4,731 | 4,886 | 4,908 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

The House and Senate versions of H.R. 2360 are very similar in terms of the amounts provided for CBP. The main differences are illustrated by **Table 6**. They include amounts provided for C-TPAT and FAST, for Inspection and Technology Investments, for Border Control Between Ports of Entry (Border Patrol), and for Air and Marine Operations S&E. The Senate version of H.R. 2360 provides \$75 million for C-TPAT and FAST in this account. However, while the House and Senate

versions of the bill would actually provide the same amount for C-TPAT and FAST, the House version funds the FAST program under a BTS-level Automation Modernization account, while the Senate funds FAST within CBP's S&E account. For Inspection technology, the differences between the House and Senate can be accounted for by the fact that the Senate funds the research and development of new RPMs and other non-intrusive inspection (NII) technology within the research and development accounts of the S&T Directorate, while the House version of H.R. 2360 funds this within CBP. Between Ports of Entry, both the House and Senate added funding to the President's request to accommodate the hiring, training, and deployment of 1,000 additional Border Patrol Agents. The Senate, however, added \$136 million more for this purpose than the House because it also included funding for support positions, relocation costs, and information technology costs.

CBP 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 inspection before they are loaded onto U.S.-bound vessels. The FY2006 request includes 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 fully funds the requested increase, recommending a total of nearly \$139 million for CSI in FY2006. However, the House Committee notes that it has not yet received a report detailing the spending and planning projections for CSI for FY2005-FY2009, and directs CBP to submit the report as soon as possible. The committee also includes a provision in H.R. 2360 withholding \$70 million until this report is submitted as directed by H.Rept. 108-541. House-passed H.R. 2360 fully funds the request for CSI. The Senate Committee fully funds 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.

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 includes 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 fully funds the request for C-TPAT. The Senate-passed version of H.R. 2360 fully funds the request for C-TPAT. 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. The Senate Committee voiced its concern over standards for both the CSI and C-TPAT programs. The committee directs CBP to submit a report by February 18, 2006 detailing: (1) the most rigorous performance measures and indicators for both the CSI and C-TPAT programs; (2) a human capital plan; and (3) plans currently in place describing the goals, objectives, and detailed implementation strategies of the programs. Finally, the report should include results of the programs

for FY2004 and FY2005, and should address the implementation of the recommendations made by GAO in its March 2005 report.¹⁴

Cargo Inspection Technology. The FY2006 Administration request for CBP includes an increase of \$125 million for technology to detect WMD. This request includes \$77 million for the purchase of additional RPMs, and the purchase of next generation RPMs. House-passed H.R. 2360 fully funds 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) the current status and investment plan for RPMs through FY2010; and (2) 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-FY2010. Senate-passed H.R. 2360 fully funds the requested increase of \$125 million for RPMs, but funds 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.

Air and Marine Operations (AMO). With the FY2005 Appropriation, AMO was transferred to CBP, where it is now located. The FY2006 request includes an increase of \$31.7 million for long range radar (LRR) coverage for AMO. This increase is 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 fully funds the request for AMO, and provides 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 fully fund the requested increase for AMO, and provide 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.

Increase in Border Patrol Agents. CBP is proposing to add 210 agents to the U.S. Border Patrol (USBP) workforce in FY2006 to backfill positions vacated along the Southwest border. These vacancies were the result of agents being transferred out 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 increase is well below the 2,000 additional agents authorized by the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5202). Given the disparity between the authorization and the President's request, a possible issue for Congress may be what the appropriate level of staffing for the Border Patrol is in order to achieve its mission of detecting and interdicting the entry of terrorists, WMD, and unauthorized aliens between ports of entry. House appropriators have addressed this issue by adding \$150 million to the

¹⁴ GAO, *Partnership Program Grants Importers Reduced Scrutiny with Limited Assurance of Improved Security*, GAO-05-404.

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 hire, train and deploy 1,500 agents to its workforce by the end of FY2006.¹⁵ The Senate Appropriations Committee concurs with the House in adding 1,500 agents to the USBP in FY2006 and increases the President's request by \$241 million. However, the Senate also included funding for 220 mission support positions, relocation costs, and information technology costs in its appropriation, resulting in a \$136 million increase over the appropriation proposed by the House. Additionally, the Senate included \$20 million for upgrading and modernizing the Border Patrol's fleet of aircraft, including the purchase of 12 single engine helicopters.¹⁶

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 interoperable IDENT/IAFIS workstations have been 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 FY2005.¹⁷ The president's request includes an increase of \$3 million for the system and notes 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 then 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."¹⁸ 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 Appropriations Committee funds the President's request and directs DHS to submit the report on the project that was requested in FY2005 which continues to be outstanding. The Senate also included \$3 million in its amount to allow CBP to reimburse the US-VISIT program for its use of the IDENT/IAFIS system.¹⁹

Arizona Border Control Initiative (ABCI). In response to a continuing high level of apprehensions in the Tucson sector, the ABCI was launched on March 16, 2004. ABCI is a multi-disciplinary initiative that seeks to coordinate federal, state, and local authorities to control the Arizona border. ABCI is specifically aimed at stopping cross-border smuggling operations by detecting, arresting, and deterring

¹⁵ H.Rept. 109-79, p. 24.

¹⁶ S.Rept. 109-83, p. 24.

¹⁷ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany H.R. 4567, 108th Cong., 2nd sess., H.Rept. 108-541 (Washington, GPO, 2004), pp. 18-19.

¹⁸ U.S. Congress, Senate Select Committee on Intelligence, *National Security Threats to the United States*, 109th Cong., 1st sess., Feb. 16, 2005.

¹⁹ S.Rept. 109-83, p. 19.

all groups seeking to bring people, drugs, weapons, and other merchandise into the country illegally. Two hundred 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 ABCI, apprehension of unauthorized aliens increased 56% from apprehensions 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 proposes 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 support 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.²⁰ The Senate Appropriations Committee fully funds the President's request.

America Shield Initiative. CBP proposes 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) 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 fund the President's request. However, the House cites its concern with the contracting problems identified in the ISIS program by the General Services Administration Inspector General and requests a report by January 16, 2006 on these problems and the specific measures taken by CBP to address them. Additionally, the House expects DHS to consult with the Appropriations Committee as it searches for a contractor to oversee the integration of new technologies into the existing ASI system. The House also notes that it expects the ASI will permit the Border Patrol to gather, analyze, and share information regarding the numbers and types of intrusions by creating a database. To this end, the House requests a report on the specific performance metrics used by the ASI program by January 16, 2006.²¹ The Senate Appropriations Committee fully funds the President's request and encourages program managers to explore off-the-shelf solutions as they develop the program.

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 for immigration enforcement staff. The House Appropriations Committee fully funds the President's request. The Senate Appropriations Committee increases the President's request by \$218 million, to \$311 million. Included in this increase is \$82 million for the construction of facilities to accommodate the 1,500 additional USBP

²⁰ H.Rept. 109-79, p. 28.

²¹ Ibid., pp. 27-28.

agents that are included in the bill, 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. The Senate also directs DHS to submit detailed spending plans for these construction projects.²²

Immigration and Customs Enforcement (ICE)

ICE focuses on enforcement of immigration and customs laws within the United States, as well as investigations into such activities as fraud, forced labor, trade agreement noncompliance, smuggling and illegal transshipment of people and goods, as well as vehicle and cargo theft. In addition, this bureau oversees the building security activities of the Federal Protective Services (FPS), formerly of the General Services Administration; and the Federal Air Marshals Service (FAMS) transferred to ICE from TSA in August of 2003. The Office of Air and Marine Interdiction was transferred from ICE to CBP. Therefore the totals for ICE do not include Air and Marine Interdiction funding now included under CBP.

The bureau combined the investigations and intelligence functions of the U.S. Customs Service and the former Immigration and Naturalization Service, the air and marine interdiction functions of those agencies, and the immigration detention and removal programs, as well as the operations of FPS. ICE conducts investigations to develop intelligence to reduce illegal entry into the United States, and is responsible for locating and removing illegal aliens by inspecting places of employment for undocumented workers. ICE is responsible for identifying and finding persons who have overstayed their visas, and the Bureau also develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling and fraud.

President's Request. The Administration has 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 is requesting 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 includes 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);

²² S.Rept. 109-83, p. 30.

- \$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 provides \$3,830 million for ICE, an increase of \$182 million, or 5% over the President's FY2006 request and \$243 million, or 8% above FY2005 enacted. Of the appropriated amount, \$5 million is to be used to implement §287(g) of the Immigration and Nationality Act (INA),²³ which allows the Attorney General²⁴ 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, House-passed H.R. 2360 would withhold \$20 million of the money appropriated to DHS' Office of the Secretary and Executive management until the Secretary of DHS submits 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. Similarly, of the ICE salaries and expenses, House-passed H.R. 2360 would withhold \$50 million of the appropriated funds until the Assistance Secretary of ICE submits to the Appropriations Committee a national detention management plan.

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

- \$90 million for 1,920 detention beds;
- \$16 million for 60 fugitive operations team positions;²⁵
- \$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 provides \$3,808 million for ICE, an increase of \$160 million and 4% over the President's request. During floor debate, two amendments were agreed to that impact ICE funding directly. Amendment 1139 added \$2 million to the Salaries and Expenses account and required that \$1 million be spent on improving the information being entered into the National Crime Information Center database. Amendment 1140 earmarks \$5 million for the facilitation of agreements between ICE and local law enforcement agencies under INA 287(g). Of the overall appropriated amount, \$11.2 million is designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens. Additionally, S.Rept. 109-83 recommends an *increase of*:

²³ 8 U.S.C. §§1101 *et seq.* 8 U.S.C. §1357(g).

²⁴ This provision is now being administered by the Secretary of Homeland Security.

²⁵ The Office of Detention and Removal's National Fugitive Operations Program seeks to apprehend, process, and remove aliens who have failed to comply with removal orders, giving priority to apprehending aliens convicted of crimes.

- \$77.4 million for 32 positions (16 full-time equivalents (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; and
- \$25 million for the ABCI;
- \$3.5 million for additional attorney personnel.

Table 7. ICE Account Detail
(budget authority in millions of dollars)

| ICE Account | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|----------------------------------|----------------|----------------|--------------|---------------|--------------|
| Salaries and Expenses | 2,808 | 2,892 | 3,064 | 3,052 | |
| Federal Protective Service | 478 | 487 | 487 | 487 | |
| offsetting FPS fee receipts | -478 | -487 | -487 | -487 | |
| Federal Air Marshals | 663 | 689 | 699 | 679 | |
| Automation Modernization | 40 | 40 | 40 | 50 | |
| Construction | 26 | 27 | 27 | 27 | |
| Fee receipts | 200 | 229 | 229 | 229 | |
| Subtotal ICE: | 3,737 | 3,877 | 4,059 | 4,037 | |
| Offsetting Fee Receipts | -200 | -229 | -229 | -229 | |
| Net Budget Authority ICE: | 3,537 | 3,648 | 3,830 | 3,808 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

Table 8. ICE Selected Sub-Account Level Detail
(budget authority in millions of dollars)

| Salaries and Expenses | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|--------------------------------------------------|-------------------|-------------------|-----------------|------------------|-----------------|
| Headquarters Management and Administration | 216 | 412 | 412 | 327 | |
| Investigations | | | | | |
| Operations | 1,055 | 1,216 | 1,254 | 1,281 | |
| Training | 16 | 18 | 18 | 14 | |
| Subtotal Investigations | 1,071 | 1,234 | 1,272 | 1,295 | |
| Intelligence | | | | | |
| Headquarters Reporting Center | 5 | 5 | 5 | 5 | |
| Operations/Operations Center | 55 | 57 | 57 | 44 | |
| Subtotal Intelligence | 60 | 62 | 62 | 49 | |
| Detention and Removal Operations (DRO) | | | | | |
| Custody Management | | 600 | 690 | 842 | |
| Case Management | | 166 | 166 | 178 | |
| Fugitive Operations | | 103 | 119 | 70 | |
| Institutional Removal Program | | 70 | 88 | 63 | |
| Alternatives to Detention | | 33 | 43 | 28 | |
| Transportation and Removal Operations | | 211 | 211 | 200 | |
| Subtotal DRO: | 1,091 | 1,184 | 1,318 | 1,381 | |
| Supplemental Appropriations (P.L. 109-13) | 454 | — | — | — | |
| Rescission (P.L. 109-13) | -85 | — | — | — | |
| Subtotal salaries and expenses: | 2,808 | 2,892 | 3,064 | 3,052 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

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 which have led to hiring and training freezes; the lack of detention bedspace which has resulted in some unauthorized aliens being released; and whether the agency has enough investigators to adequately pursue its many varied missions. The following sections outline the main issues identified within the President's request and the House and Senate Appropriations Committee Reports.

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 situation was characterized as especially grave regarding intra-departmental and intra-governmental agreements and transactions, costs, and budgetary transactions. This required extensive reconciliation and adjustment at the

end of the fiscal year, which ICE was unable to complete. The report noted that ICE had served as the accounting services provider for several other DHS agencies²⁶ 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” in order to fix the lack of oversight and controls that led ICE to become anti-deficient or that prevented DHS management from knowing whether ICE was anti-deficient.²⁷ ICE recently requested a \$500 million reprogramming for FY2005 to cover funding shortfalls within the agency.²⁸ 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.²⁹

Office of Investigations/Immigration Functions. The Office of Investigations (OI) in ICE focuses on a broad array of criminal and civil violations 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.³⁰ The Homeland Security Act of 2002 (P.L. 107-296) abolished the INS and the U.S. 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

²⁶ 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.

²⁷ DHS, Office of the Inspector General, *Independent Auditors’ Report on DHS FY2004 Financial Statements*, OIG-05-05, Dec. 2004, pp. 320-333. According to the Office of Management and Budget (OMB) Circular No. A-11 (2005) the “Antideficiency Act consists of provisions of law that were passed by Congress (beginning in the nineteenth century and later codified in Title 31 of the United States Code) to prevent departments and agencies from spending their entire appropriations during the first few months of the year.” The act prohibits federal employees from “entering into contracts that *exceed* the enacted appropriations for the year,” or from “purchasing services and merchandise *before* appropriations are enacted”.

²⁸ U.S. Congress, House Appropriations Committee, Subcommittee on Homeland Security, *Fiscal Year 2006 Department of Homeland Security Appropriations*, Mar. 15, 2005.

²⁹ H.Rept. 109-79, pp. 33-34.

³⁰ For more information see [<http://www.ice.gov/graphics/investigations/index.htm>].

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 disproportionately focused on terrorism and the types of investigations performed by the former Customs Service.³¹

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 OI³² includes increases in the base funding for two groups responsible for immigration enforcement, the Visa Security Unit (VSU)³³ and Temporary Worker Worksite Enforcement, and includes a total of 148 new positions for these units. The President's budget requests 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 includes 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 recommends \$19 million to expand the Visa Security Program, and S. 109-83 recommends an additional \$4.8 million for nine positions for an additional VSU. Furthermore, H.Rept. 109-79 recommends an additional \$18 million over the President's request for 200 new Immigration Enforcement Agents (IEAs).³⁴ H.Rept. 109-79 also recommends \$19 million for an additional 150 criminal investigators.³⁵ S.Rept. 109-83 recommends an additional \$37 million for 300 new immigration investigations positions, and \$18 million for 200 IEAs, but does not provide a funding increase for temporary workers worksite enforcement.

Detention and Removal Operations. Detention and Removal Operations (DRO) in ICE provides custody management of aliens who are in removal

³¹ Based on CRS discussions with ICE personnel in New York City, Aug. 27, 2003.

³² This number is the overall funding for Investigations within ICE and includes funding from various accounts within the agency's appropriation, including Salaries and Expenses; Intelligence; Headquarters Management, Administration, and Information Technology; Automation Modernization; Immigration User Fee; and Student Exchange Visitor Program.

³³ 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. The Homeland Security Act transferred to DHS the authority to issue regulations regarding visa issuances, and to assign staff to consular posts abroad. The Department of State's Bureau of Consular Affairs remains the agency responsible for issuing visas. For more information on visa issuance see CRS Report RL31512, *Visa Issuance: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

³⁴ 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.

³⁵ The Conference Report (H.Rept. 109-72) for the Supplemental Appropriations Act (P.L. 109-13) contains funding for 50 new criminal investigators. Nonetheless, it is unknown to which types of cases the new criminal investigators will be assigned.

proceedings or who have been ordered removed from the United States.³⁶ 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.³⁷ Concerns have been raised that decisions on which aliens to release and when to release them 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 requests an increase for FY2006 of \$90 million for 1,920 new beds. H.Rept. 109-79 recommends \$90 million for 1,920 new beds,³⁸ and House-passed H.R. 2360 would withhold \$50 million of the appropriated funds for ICE salaries and expenses until the Assistant Secretary of ICE submits to the Appropriations Committee a national detention management plan. S.Rept. 109-83 recommends \$77.4 million for 32 positions for Custody Management, and 2,240 new beds.

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 offenders.³⁹ The program, provides less restrictive alternatives to detention, using such tools as electronic monitoring devices (e.g., ankle bracelets), home visits, work visits, and reporting by telephone, to monitor aliens who are out on bond while awaiting hearings during removal proceedings or the appeals process.⁴⁰ H.Rept. 109-79 recommends \$10 million and 49 new positions for this program, and S.Rept. 109-83 recommends \$15.4 million and 32 new positions.

Interior Repatriation. ICE proposes a \$25 million increase for the Interior Repatriation program. On June 9, 2004 the White House announced it had reached

³⁶ For more information on detention issues see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin. Under the INA aliens can be removed for reasons of health, criminal status, economic well-being, national security risks and others that are specifically defined in the act.

³⁷ 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.

³⁸ The Conference Report (H.Rept. 109-72) for the Supplemental Appropriations Act (P.L. 109-13) contains funding for an additional 1950 beds.

³⁹ DHS, 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].

⁴⁰ *Ibid.*

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 must be certified by Mexican consular officers.⁴¹ In order to continue the program in FY2006, the Administration is requesting \$39.3 million; \$25 million for Custody Management and \$14.3 for Transportation and Removal. This represents a \$25 million increase from the \$14 million spent on the pilot program in FY2005. H.Rept. 109-79 directs the Commissioner of CBP to report no later than January 16, 2006 on the performance of the Interior Repatriation Program, including its cost, the number of agents required for its functioning, and the relevant statistics related to the number of aliens repatriated and any data on their recidivism.

State and Local Law Enforcement.⁴² 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. Both Senate-passed H.R. 2360 and House-passed H.R. 2360 would appropriate \$5 million to implement INA §287(g).

Student Exchange and Visitor Program (SEVP). The Student Exchange and Visitor Program (SEVP) in ICE is responsible for maintaining the web-based foreign student monitoring system known as the Student and Exchange Visitor

⁴¹ U.S. DHS, CBP, 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.

⁴² This section adapted from CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa M. Seghetti, Stephen R. Viña, and Karma Ester.

Information System (SEVIS).⁴³ The operating budget for SEVP comes from fees⁴⁴ collected from potential foreign students (i.e., those applying for student visas, or to change their nonimmigrant status to student), and from institutions seeking certification to participate in SEVIS.⁴⁵ Schools have reported technical difficulties operating SEVIS, and the lack of consistent information and guidance from ICE.⁴⁶ The President is requesting an additional appropriation of \$19.7 million for the SEVP in FY2006 to maintain staffing levels, and increase spending on enhancements such as incorporating historical data, enhancing batch mode processing into SEVIS, and providing more training and outreach to the schools. This increase was not included in H.R. 2360 as passed by the House or Senate.

Office of Principal Legal Advisor. The Office of Principal Legal Advisor (OPLA) is responsible for litigating alien custody and removal cases generated by ICE, CBP, and USCIS before DOJ's Executive Office of Immigration Review (EOIR). The OPLA also provides legal advice to operational components in ICE. The President's budget requests an increase of \$3.5 million for OPLA to hire an additional 32 attorneys, and 16 legal support staff, arguing that the increase in the staff will increase OPLA's ability to complete matters in the immigration courts, thereby reducing the number of backlogged cases. This increase was not included in H.R. 2360 as passed by the House or Senate.

Transportation Security Administration (TSA)

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 air transportation 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 responsibilities for marine and land modes of transportation including assessing the risk of terrorist attacks to all non-aviation transportation modes, issuing regulations to improve the security of the modes, and enforcing these regulations to ensure the protection of the transportation system. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities, and

⁴³ For more information on SEVIS see CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

⁴⁴ Collection of the student fee began on Sept. 1, 2004. Prior to the student fee collection, the operating budget for SEVIS came from fees collected from the schools for SEVIS enrollment and from the general DHS/INS appropriations. Congress only appropriated funds specifically for SEVIS in FY2002.

⁴⁵ Only institutions certified (i.e., enrolled) in SEVIS may admit foreign students.

⁴⁶ Conversation with Victor Johnson, of National Association of Foreign Student Advisors, Association of International Educators, Nov. 20, 2003.

with conducting research and development activities to improve security technologies.

FY2006 Request for TSA. The President has requested an appropriation of \$5,562 million in gross budget authority for TSA in FY2006, a net increase of \$156 million, or 3%, over the enacted FY2005 level of \$5,406 million.⁴⁷ However, in comparing the FY2006 budget request to prior year levels, it is important to note that the President is requesting 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 be transferred to the SCO under the proposal include 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 on a comparable basis totals \$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 include the following:

- 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.

In an effort to approach full cost recovery from user fees for aviation security screening, the President has proposed an increase in passenger security fees. The proposal would raise 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 anticipates that this proposed fee increase coupled with a return to pre-9/11 passenger volume will result in an increase in fee collections from an estimated \$2.652 billion in FY2005 to \$4.1 billion in FY2006. This increase is projected to offset roughly 82% of the proposed \$4.985

⁴⁷ 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.

billion budget for aviation security. In contrast, aviation security fees collected in FY2004 offset only 41% of expenditures for aviation security.⁴⁸

For surface transportation security, the President requests \$32 million, which includes \$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.

Table 9. TSA Account Detail
(budget authority in millions of dollars)

| SA Activity | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|----------------------------------------|-------------------|-------------------|-----------------|------------------|-----------------|
| Aviation Security | 4,324 | 4,735 | 4,592 | 4,452 | |
| Surface Transportation Security | 48 | 32 | 36 | 36 | |
| Credentialing Activities Appropriation | — | — ^a | 85 | 75 | |
| Credentialing Activities | 67 | — ^a | 180 | 180 | |
| Intelligence | 14 | 21 | 21 | 21 | |
| Research and Development | 178 | — | — | — | |
| Administration | 520 | 524 | 520 | 471 | |
| Aviation Security Capital Fund | 250 | 250 | 250 | 250 | |
| Subtotal TSA | 5,401 | 5,562 | 5,684 | 5,485 | |
| Offsetting Fee Collections | | | | | |
| <i>Aviation Security Fees</i> | -1,823 | -3,670 | -1,990 | -1,990 | |
| <i>Credentialing Fees</i> | -67 | — | -180 | -180 | |
| <i>Aviation Security Capital Fund</i> | -250 | -250 | -250 | -250 | |
| Total TSA | 3,260 | 1,642 | 3,264 | 3,065 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

- a. These activities were proposed for transfer to the SCO under the President's FY2006 request, including TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks. Both the House-passed and Senate-reported versions of H.R. 2360 would leave these programs and their fees in TSA.

⁴⁸ U.S. DHS, 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.*)

Table 10. TSA Selected Sub-Account Level Detail
(budget authority in millions of dollars)

| Aviation Security | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|------------------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-----------------|
| Screener Operations | | | | | |
| Screener Workforce | | | | | |
| Privatized screening | | 145 | 140 | 146 | |
| Passenger screener personnel, compensation and benefits | | 1,591 | 1,520 | 1,375 | |
| Baggage screener personnel, compensation and benefits | | 932 | 884 | 813 | |
| Subtotal Screener Workforce: | 2,424 | 2,669 | 2,544 | 2,334 | |
| Screening Training and other | | | | | |
| Passenger screeners, other | | | 21 | 27 | |
| Baggage screeners, other | | | — | 127 | |
| Screener training | | | 85 | 91 | |
| Screener, other | | | 126 | 16 | |
| Subtotal Screening, Training, and other: | 344 | 261 | 232 | 261 | |
| Human Resources Services | | 207 | 207 | 207 | |
| CAPPS II/Secure Flight | | — | (66) ^a | (57) ^a | |
| Crew Vetting | | — | (13) ^a | (13) ^a | |
| Registered Traveler | | — | — | — | |
| Checkpoint Support | | 158 | 158 | 172 | |
| EDS/ETD Systems^b | | | | | |
| Purchase | 180 | 130 | 170 | 180 | |
| Installation | 45 | 14 | 75 | 14 | |
| Maintenance | 175 | 200 | 200 | 200 | |
| Operation Integration | — | 23 | 23 | 23 | |
| Subtotal EDS/ETD Systems: | 400 | 367 | 468 | 417 | |
| Subtotal Screening Operations | 3,502 | 3,662 | 3,609 | 3,392 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

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

- a. FY2006 House and Senate recommended amounts shown in **Table 10** for CAPPS II/Secure Flight and Crew Vetting are listed here for comparison only. These amounts are shown as non-adds in Table 10 because both the House and Senate provide funding for both programs under a different sub-account called "Transportation Vetting and Credentialing."
- b. Explosive Detection System (EDS)/Explosive Trace Detection (ETD).

House-Passed H.R. 2360. House-passed H.R. 2360 provides a gross total of \$5,684 million (net total of \$3,263 million) for the TSA. This total includes \$264.3 million appropriation for Transportation Vetting and Credentialing which the President's request proposed to transfer to the SCO.

For aviation security activities the House-passed H.R. 2360 provides \$143.2 million less than the President's request but is \$268.1 million more than FY2005 enacted levels.⁴⁹ There are several key differences between H.R. 2360 and the President's request regarding aviation security. Funding for private screening contracts at airports is \$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 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 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 agreed to larger funding amounts for air cargo security, providing \$60 million, \$20 million more than the President's request. This includes 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 screening of shipments on all-cargo and passenger aircraft by March 1, 2006 (§522), and requiring the TSA, to the greatest extent practicable, to use checked baggage equipment and screeners to screen cargo carried on passenger aircraft (§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 believes 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 of 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 in an appropriation act. 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

⁴⁹ H.Rept. 109-79, p. 42.

funds appropriated for aviation security or TSA administration exclusively on EDS procurement and installation (§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 HAZMAT truck tracking program.

Senate-Passed H.R. 2360. The Senate 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 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 contains no specific cap on the number of screeners but, like the House bill, increases funding for screening technologies in a move to rapidly shift away from a workforce-intensive use of resources. The Senate bill endeavors 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 would provide \$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 makes 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 argued 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 lies 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 includes \$7 million for hiring additional inspectors and \$3 million for increased inspections of both international flights and domestic passenger flights. The Senate bill would also direct 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% of cargo carried on passenger airplanes.

With regard to surface transportation security, the Senate bill is in full agreement with the House-passed amount and use of funds. Also, the Senate bill is in agreement with the House-passed plan to keep transportation vetting and credentialing functions within the TSA, but recommends 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. However, three amendments that would have

substantially increased security funding for U.S. transit and intercity rail systems were defeated during Senate floor debate.

TSA Issues for Congress. The President's proposal to increase airline passenger security fees has been a contentious issue. Financially strapped airlines — still recovering from the economic impact of the 9/11 attacks and now facing rising fuel costs — argue that they will likely have to absorb some of the cost of these fee increases by reducing ticket prices.⁵⁰ Some Members of Congress have 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.⁵¹ The Administration, on the other hand, argues 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 also contends 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).⁵² 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 Subcommittee Chairman John Mica. While the Senate committee also did not recommend any passenger fee increases, language in S.Rept. 109-83 directs 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.

While both the House and the Senate have indicated support in report language for investment in advanced screening technologies and practices to decrease the need for screeners, particularly baggage screeners, only the House went along with the Administration's request to formally keep in place an identified cap of 45,000 FTE screeners. The principal means for reducing screener requirements identified by both the House and the Senate is investment in in-line explosive detection systems (EDS) which may be capable of processing baggage at two to three times the rate of stand-alone EDS equipment. However, while the House recommended \$75 million in

⁵⁰ 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.

⁵¹ Sara Kehaulani Goo, "Senate Turbulence Greets Plan to Raise Airline Ticket Security Fees," *The Washington Post*, Feb. 16, 2005, p. A2.

⁵² See *Statement of David M. Stone*.

addition to the \$250 million from the Aviation Security Capital Fund for this purpose, the Senate concurred with the Administration request of just \$14 million in additional funds. Citing budgetary constraints, the House concurred with the Administration request to limit the federal share to 75% of program cost, waiving the distribution formula in P.L. 108-176 (Vision 100) that would have set the federal share at 90% for large airports. Recent GAO testimony highlighted the potential benefits of investing in in-line EDS installation, concluding that the federal government could realize a return on investment in terms of operational costs savings in little more than a year at airports with existing letter-of-intent agreements in place with the TSA, and the overall savings to the federal government from in-line EDS installations would be about \$1 billion over seven years.⁵³ Both the House and the Senate bills seek to increase funding for the purchase of explosives detection equipment with the House approving an additional \$40 million and the Senate approving \$50 million more than the requested level of \$130 million.

Both the House and the Senate expressed concerns over the Administration's progress in air cargo security. The House agreed to \$20 million above the \$40 million requested, while the Senate agreed to \$10 million more than the requested level. The House also formally recommended pilot programs in air cargo screening and, like the Senate, provided for hiring additional regulatory inspectors and increased oversight of cargo security.

Another key issue for the TSA is the proposed creation of SCO. With the proposed transfer of programs related to credentialing and vetting of passengers and transportation workers, several potential issues regarding coordination of effort between the TSA and the proposed SCO arise. The Administration has 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, the House language has taken a different tack that would integrate these various programs, but keep them within the TSA under a new Office of Transportation Vetting and Credentialing. The Senate also favored a plan merging vetting and credentialing programs but retaining them under the direction of the TSA.

Another potential issue that may arise during the appropriations process is coordination between TSA and S&T in light of the proposal to transfer the TSA's research and development activities. One particular issue would be 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 nuclear, biological, and chemical weapon 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 currently have under the auspices of the TSA.

⁵³ GAO, *Aviation Security: Better Planning Needed to Optimize Deployment of Checked Baggage Screening Systems*, July 13, 2005, GAO-05-896T.

Consequently, Congress may focus on what coordination and interaction between TSA and S&T will be established under the proposed transfer to ensure that aviation security research and development needs are adequately addressed.⁵⁴ The House Committee on Appropriations has proposed to task the S&T Directorate with carrying 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."⁵⁵ Consequently, the committee directed the TSA to develop protocols and standards for emerging new technologies to screen cargo, noting past deployment delays 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 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 government 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.

U.S. Coast Guard

The Coast Guard (USCG) 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 USCG 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 USCG 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 USCG be maintained as a distinct entity within DHS and that the Commandant of the USCG report directly to the Secretary of DHS. Accordingly, the USCG exists as a

⁵⁴ Further information and analysis of transportation security issues before Congress are provided in CRS reports at [<http://www.congress.gov/erp/legissues/html/istrn5.html>].

⁵⁵ H.Rept. 109-79, p. 48.

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 USCG, which is a 5% increase over the enacted FY2005 level of \$7,567 million. The USCG'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 over 23% to \$1,269.2 million. Operating expenses would increase by 4% to \$5,547.4 million and reserve training would increase by 5% to \$119.0 million. The President requested zero funds for the USCG'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 USCG research and development; transferring and consolidating this account under the DHS S&T Directorate. Congress provided \$18.5 million for USCG R&D in FY2005. The two other budget categories that the President would reduce funding for are USCG environmental compliance and restoration, which would decrease by over 29% to \$12 million and retired pay, which would decrease by almost 7% to \$1,014.1 million.

House-Passed H.R. 2360. House-passed H.R. 2360 provides \$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 provides \$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 USCG's Deepwater program, which is explained further below. For operating expenses, the House bill provides \$5,500 million which is \$47 million less than the President's request. For alteration of bridges, the House bill provides \$15 million versus the President's request of no funds. For environmental compliance and restoration, reserve training, and retired pay, the House bill would provide the same amounts that the President requested. The House bill also agrees with the President's request to transfer the USCG'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 USCG's apparent disregard for Congressional direction" and cites the Deepwater plan and other reprogramming submissions as examples.⁵⁶

Senate-Passed H.R. 2360. Senate-passed H.R. 2360 provides \$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

⁵⁶ H.Rept. 109-79, p. 57.

transfer the USCG's R&D funds to the DHS S&T Directorate; it provides \$19 million to the USCG for R&D.

Table 11. Coast Guard Account Detail
(budget authority in millions of dollars)

| Coast Guard Account | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|---------------------------------------------|----------------|----------------|--------------|---------------|--------------|
| Operating Expenses | 5,303 | 5,547 | 5,500 | 5,459 | |
| Environmental Compliance and Restoration | 17 | 12 | 12 | 12 | |
| Reserve Training | 113 | 119 | 119 | 119 | |
| Acquisition, Construction, and Improvements | 982 | 1,269 | 798 | 1,225 | |
| Rescission | (-16) | — | — | -83 | |
| Alteration of Bridges | 16 | — | 15 | 15 | |
| Research, Development, Test, and Evaluation | 19 | — | — | 19 | |
| Retired Pay (mandatory) | 1,085 | 1,014 | 1,014 | 1,014 | |
| Total Coast Guard | 7,568 | 7,962 | 7,458 | 7,780 | |

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

Note: Totals may not add due to rounding.

Table 12. Coast Guard — Select Sub-Account Level Detail
(budget authority in millions of dollars)

| Coast Guard Account | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|--------------------------------------------------------------|----------------|----------------|--------------|---------------|--------------|
| Operating Expenses | | | | | |
| Military Pay | 2,808 | 3,011 | 3,010 | 3,001 | |
| Civilian Pay | 456 | 536 | 532 | 531 | |
| Maintenance | 1,547 | 1,628 | 1,610 | 1,582 | |
| Other Expenses | 345 | 372 | 348 | 345 | |
| Emergency Appropriations | 146 | — | — | — | |
| Subtotal: Operating Expenses | 5,303 | 5,547 | 5,500 | 5,459 | |
| Acquisition, Construction, and Improvements | | | | | |
| Deepwater | 764 | 966 | 500 | 906 | |
| Non-Deepwater | 251 | 303 | 298 | 236 | |
| Subtotal: Acquisition, Construction, and Improvements | 1,015 | 1,269 | 798 | 1,142 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

Coast Guard Issues for Congress. Increased duties in the maritime realm related to homeland security have added to the USCG'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.⁵⁷ The Deepwater program is a planned 22-year, multi-billion dollar project to replace or modernize 93 aging USCG ships and 207 aging USCG aircraft. It is the largest and most complex acquisition ever undertaken by the USCG. 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 provides \$500 million for the Deepwater program, which is \$466 million less than the President's request. The House bill also would withhold \$50 million of this amount until the Appropriations Committee receives a new Deepwater program baseline that reflects revised, post September 11 mission requirements. Senate-passed H.R. 2360 provides \$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 USCG to update the Deepwater plan the agency submitted to congress on May 31, 2005.

Maritime Security Mission. The Deepwater program will help the USCG achieve its many missions, including maritime security, which is another USCG 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 USCG's security mission. MDA can be described as the USCG'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 USCG 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.

Another area of maritime security that congress has expressed particular interest in is the security of liquefied natural gas (LNG) 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.

⁵⁷ 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.

For the security mission, the House Appropriations Committee report recommends \$20 million for area security maritime exercises, and \$5 million for enhanced radiological and nuclear detection. The committee also directs that the USCG take action regarding credentialing of merchant mariners, and submit a plan regarding Maritime Safety and Security Teams (MSSTs). MSSTs consist of approximately 100 active duty and reserve personnel that provide a surge presence at specific ports in response to terrorist threats or incidents, in support of special events, to protect military load-outs, or to enforce security zones around high interest vessels.

Senate-passed H.R. 2360 provides \$12 million for restructuring the merchant marine credentialing program, \$22 million for MDA, and provides no additional funds for AIS, noting that this program has significant unobligated funds from prior years.

Non-Homeland Security Missions. A key issue is whether the USCG's resources are adequate to perform both its maritime security and non-security missions. The terrorist attacks of September 11, 2001, increased USCG requirements for homeland security missions without obviously reducing the requirements for other missions. After September 11, 2001, the USCG significantly increased homeland security operations while reducing operations in other missions. GAO, in reports and testimony on this topic, noted a reduced number of USCG operating hours devoted to non-security missions. For FY2006, the President requested the following amounts for the USCG's non-security missions:

- \$1,589.8 million for maritime safety, an increase of \$63.5 million over FY2005;
- \$1,257.6 million for maritime mobility, an increase of \$53.4 million over FY2005; and
- \$1,385.3 million for marine environmental protection, an increase of \$146.3 million over FY2005.⁵⁸

Efficient and Effective Resource Allocation. While Congress is concerned with whether the USCG has sufficient resources to fulfill its multiple missions, since September 11, 2001 the USCG's budget has increased substantially, which raises the issue of whether the agency has the systems in place to make the best use of these additional resources. GAO has concluded that the agency needs to be able to better track how its personnel spend their time as well as establish a clearer link between where resources are spent and what results are achieved. The House Appropriations report directs the USCG to take more expedited action with respect to implementing a new financial management plan.⁵⁹

⁵⁸ For further information on the Coast Guard's environmental protection activities, see CRS Report RS22145, *Environmental Activities of the U.S. Coast Guard*, by Mark Reisch.

⁵⁹ H.Rept. 109-79, p. 57.

Federal Law Enforcement Training Center

The Federal Law Enforcement Training Center (FLETC) 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 is headquartered in Glynco, GA and has sister facilities in Artesia, NM and Charleston, SC, as well as a training facility in Cheltenham, MD, which provides in-service and re-qualification training for federal law enforcement personnel in the Washington, DC area. Overall, FLETC 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 is \$224 million, an decrease of \$3 million, and 1%, from the FY2005 enacted appropriation (including supplemental appropriations). FLETC's FY2006 request includes 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 allots \$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. The House adds \$11 million to the salaries and expense account to compensate FLETC for the increased training needs that will result from the increase in Border Patrol and ICE agents. Additionally, the House provides FLETC with \$24 million more than the President's Request in the Construction account to finance the increased facility needs of the incoming Border Patrol and ICE agents.⁶⁰

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 Senate concurs with the House in providing \$11 million above the President's request for the salaries and expenses account and includes language in the bill which requires the FLETC director to ensure that all training centers are operated at the highest level possible throughout the year. The committee also notes it believes that the Cheltenham, MD location is not being used to its fullest capacity because its indoor firing ranges are being used by less than 20% of the students. The Senate Appropriation Committee directs DHS to submit a report by February 18, 2006 making recommendations for how it intends to increase the facility's usage. The Senate provides \$47 million above the President's request and \$23 million above the House recommendation in the Construction account for the expansion and

⁶⁰ H.Rept. 109-79, pp. 100-101.

maintenance of FLETC facilities in order to accommodate the increase in Border Patrol agents and ICE investigators.⁶¹

Table 13. FLETC Account Detail
(budget authority in millions of dollars)

| FLETC Account | FY2005 Enacted | FY2006 Request | FY2006 House | FY2006 Senate | FY2006 Conf. |
|--------------------------------------------|---------------------------|---------------------------|-------------------------|--------------------------|-------------------------|
| Salaries and Expenses | 180 | 183 | 194 | 194 | |
| Acquisition, Construction, Improvements | 47 | 41 | 65 | 88 | |
| Total FLETC | 227 | 224 | 259 | 282 | |

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; and Senate-reported H.R. 2360 and S.Rept. 109-83.

Note: Totals may not add due to rounding.

⁶¹ S.Rept. 109-83, pp. 81-82.

Appendix I. Federal Spending on Border and Transportation Security

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 (OMB) 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 this analysis. In subsequent years, this homeland security funding analysis has become more refined, as distinctions (and account lines) have become more precise. This means that while **Table 14** 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. Beginning in FY2005, the homeland security funding analysis has been included in the *Analytical Perspectives* volume of the President's Budget.

The definition of *homeland security* used by the OMB in its analysis comes from the *National Strategy for Homeland Security* which states that homeland security is “a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”⁶² The National Strategy also divides homeland security activities into six critical mission areas: Intelligence and Warning (IW); Border and Transportation Security (BTS); Domestic Counterterrorism (DC); Protection of Critical Infrastructure and Key Assets (PCI); Defense Against Catastrophic Threats (DACT); and Emergency Preparedness and Response (EPR). This report is concerned with the BTS portion of this analysis.

As **Table 14** illustrates, DHS accounts for nearly all, 94%, of federal funding for BTS activities. This is unsurprising as one of the primary objectives of the design of DHS was to have the missions, functions, and activities of the federal border agencies combined under one agency. The Department of State (DOS) accounts for the bulk of the remaining federal spending on BTS activities, at 5%; and the USDA accounts for the final 1%.

⁶² Office of Homeland Security, *National Strategy for Homeland Security*, July 2002, p. 2.

Table 14. Federal Spending on Border and Transportation Security FY2003-FY2006

(budget authority in millions of dollars)

| Agency | FY2003 | FY2004 | FY2005 | FY2006 (req.) | FY2006 as % of total |
|---------------------------------|---------------------|---------------------|---------------------|---------------|----------------------|
| Department of Homeland Security | 16,028 ^a | 15,033 ^a | 16,561 ^a | 18,207 | 94% |
| Department of State | 592 | 664 | 778 | 878 | 5% |
| Department of Agriculture | 143 | 148 | 163 | 164 | 1% |
| Department of Transportation | 241 | 67 | 14 | 15 | — |
| Department of Justice | 25 | 20 | 35 | 21 | — |
| Total BTS: | 17,029 | 15,932 | 17,551 | 19,286 | 100% |

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 the Analytical Perspective volume of the FY2005 President’s Budget (for FY2003).

a. Includes supplemental funding