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# Department of Homeland Security Appropriations: FY2024 Provisions

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## Department of Homeland Security Appropriations: FY2024 Provisions

Through appropriations legislation, Congress provides not only budget authority for federal agencies and departments to operate, but also legally binding direction on how that budget authority can (or cannot) be used. Sometimes enacted appropriations measures include authorizing (or “legislative”) provisions as well.

These directions may appear in three places in an appropriations act:

1. in the language of individual appropriations;
2. in administrative provisions at the end of a title; and
3. in general provisions at the end of a bill (or division, in the case of a consolidated measure).

Some of these directions directly relate to the management of budget authority enacted in the measure, while others relate to policy or operational matters. As with any facet of legislation, these provisions are not constant. Due to the passage of time or other legislative developments, a provision may require adjustment or lose its relevance. Provisions enacted in appropriations legislation are also a focus of negotiations between the parties and between the chambers during the appropriations process, so provisions can evolve through negotiations until a compromise is worked out in the final measure.

Rather than reciting the entire catalog of more than 100 administrative and general provisions in the Department of Homeland Security (DHS) Appropriations Act, 2024, this report focuses on the substantive changes in directions provided from FY2023 to FY2024. It includes changes from the provisions in the DHS Appropriations Act, 2023, reflected in:

- the detailed proposals for administrative and general provisions made in the Administration’s FY2024 appropriations request for DHS;
- the administrative and general provisions in House Appropriations Committee-reported H.R. 4367; and
- the administrative and general provisions in Senate Appropriations Committee-reported S. 2625.

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## Introduction

Through appropriations legislation, Congress provides not only budget authority for federal agencies and departments to operate, but also legally binding direction on how that budget authority can (or cannot) be used. Sometimes enacted appropriations measures include authorizing (or “legislative”) provisions as well.

These directions may appear in three places in an appropriations act:

1. in the language of individual appropriations;
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Some of these directions directly relate to the management of budget authority enacted in the measure, while others relate to policy or operational matters. As with any facet of legislation, these provisions are not constant. Due to the passage of time or other legislative developments, a provision may require adjustment or lose its relevance. Provisions are also a focus of negotiations between the parties and between the chambers during the appropriations process, so provisions will evolve through negotiations until a compromise is reached and included in the final measure.

While other appropriations reports focus on funding levels provided in the bill, this report focuses on these administrative and general provisions under consideration in the FY2024 appropriations process for the Department of Homeland Security (DHS). It describes the substantive changes in administrative and general provisions from those enacted in FY2023 reflected in the Administration’s FY2024 budget request for DHS, and in the House and Senate committee-reported FY2024 DHS appropriations bills.

- For more information on the President’s DHS budget request for FY2024, see CRS Report R47496, *DHS Budget Request Analysis: FY2024*.
- For more information on the current status of DHS appropriations for FY2023, see CRS Report R47239, *Department of Homeland Security Appropriations: FY2023 State of Play*.
- For information on DHS structure, component missions, and longer-term staffing and funding history, see CRS Report R47446, *The Department of Homeland Security: A Primer*.

## Scope and Methodology

This report focuses on administrative and general provisions proposed

- by the Administration in the FY2024 budget request;
- by the House Appropriations Committee (HAC) in the committee-reported version of H.R. 4367; and
- by the Senate Appropriations Committee (SAC) in the committee-reported version of S. 2625.

Rather than listing all the administrative and general provisions in those three proposals, this report uses the administrative and general provisions of the enacted DHS Appropriations Act, 2023,<sup>1</sup> as a basis for comparison, and notes changes from that starting point.

For each title of the bill, a list of the components funded in the title and a tally of provisions included in the DHS Appropriations Act, 2023 is provided. This is followed by sections analyzing the Administration, House Appropriations Committee, and Senate Appropriations Committee proposals for FY2024, with subsections describing proposals to not include prior-year provisions, substantive changes to provisions being carried forward from FY2023 (ones that would alter the practical effects of the prior year's provisions), and new provisions.

Given the amount of funding provided in the title and the number of administrative provisions, the report starts with Title II, then moves to the other operational components in Title III, the support components in Title IV, and the headquarters components in Title I. The final section in the report deals with general provisions in Title V.

To avoid confusion between differing section numbers in various acts and bills, sections of the FY2023 act are referred to as “FY2023 Sections,” those of HAC-reported H.R. 4367 are referred to as “HAC Sections,” and those of S. 2625 are referred to as “SAC Sections.”

Appendices include a glossary of abbreviations and a brief discussion of the longer-term history of the general and administrative provisions in the DHS appropriations act.

## Security, Enforcement, and Investigations Administrative Provisions (Title II)

Title II of the annual DHS appropriations measures typically covers appropriations for

- U.S. Customs and Border Protection (CBP);
- U.S. Immigration and Customs Enforcement (ICE);
- the Transportation Security Administration (TSA);
- U.S. Coast Guard (USCG); and
- U.S. Secret Service (USSS).

There were 36 administrative provisions included at the end of Title II of the FY2023 act.<sup>2</sup>

### Administration Proposed Changes

The Administration proposed 34 administrative provisions for the FY2024 act: not including five provisions enacted for FY2023, substantively changing two others, and including three that had not appeared in the FY2023 act. The other 29 provisions remained essentially unchanged in the request.<sup>3</sup>

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<sup>1</sup> P.L. 107-328, Div. F.

<sup>2</sup> Descriptions of these provisions can be found in the FY2023 consolidated appropriations measure's explanatory statement, as printed in “Explanatory Statement Submitted by Mr. Leahy, Chair of the Senate Committee on Appropriations, Regarding H.R. 2617, Consolidated Appropriations Act, 2023,” Senate, *Congressional Record*, vol. 168, no. 198, Book II (December 20, 2022), pp. S8564-S8565.

<sup>3</sup> Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2024: Appendix* (Washington, DC: U.S. Government Printing Office, 2023), <https://www.govinfo.gov/content/pkg/BUDGET-2024-APP/pdf/BUDGET-2024-APP.pdf> (hereinafter, *Appendix*), pp. 518-520.

The five provisions not included in the request were

- **FY2023 Section 211:** This one-time administrative provision provided for a transfer of up to \$785 million from CBP’s Operations and Support appropriation to FEMA’s Federal Assistance appropriation for a new Shelter and Services Grant program. Neither committee-reported bill included the provision.
- **FY2023 Section 212:** Included since FY2018 in annual appropriations,<sup>4</sup> this administrative provision delimited the use of part of CBP’s Procurement, Construction and Improvements appropriation.
  - HAC-reported H.R. 4367 included the provision as Section 211, with substantive modifications described below.
  - SAC-reported S. 2625 included the provision as Section 211, without substantive changes, aside from funding levels.
- **FY2023 Section 222:** This one-time administrative provision extended by two years the authority for a pilot program for screening of passengers outside of an existing primary passenger terminal screening area. Neither committee-reported bill included the provision.
- **FY2023 Section 231:** Included since FY2022,<sup>5</sup> this administrative provision restricted the USCG from charging a fee for inspecting certain towing vessels until the USCG determines whether the costs of towing vessel inspections done by the USCG differ from those of third-party inspectors, and adjusts its fees to reflect its costs.<sup>6</sup>
  - HAC-reported H.R. 4367 included the provision as Section 236.
  - SAC-reported S. 2625 included the provision as Section 228.
- **FY2023 Section 236:** This one-time administrative provision authorized the USSS to make a \$23 million grant or cooperative agreement from its Operations and Support appropriation for existing National Computer Forensics Institute Facilities used for cybersecurity incident and threat investigation and training. Neither committee-reported bill included the provision.

The Administration proposed two alterations, neither of which was included in either the HAC-reported or SAC-reported bill:

- **FY2023 Section 210:** Included since FY2020, this provision has restricted the ability to reduce CBP’s “anticipated or planned” vetting operations at existing locations unless specifically authorized by statute. The Administration has proposed dropping “anticipated or” from the provision, a request they first made in FY2023.
- **FY2023 Section 221:** Included since FY2020, this provision required the Administrator of the TSA to submit to certain congressional committees a single report that fulfils the requirements of a Capital Investment Plan, a five-year technology investment plan, and an Advanced Integrated Passenger Screening Technologies report within a certain amount of time. The Administration

<sup>4</sup> P.L. 115-141, Div. F, Section 230. A variant of this provision was carried in P.L. 115-31, Div. F, Title VI, where direction was provided in a supplemental appropriation for CBP’s Procurement, Construction, and Improvements account (131 Stat. 433).

<sup>5</sup> P.L. 107-103, Div. F, Section 231.

<sup>6</sup> P.L. 115-282.

proposed dropping language that had been added to the description of the Capital Investment Plan in the FY2023 act that required it to be “both constrained and unconstrained.”<sup>7</sup>

The Administration proposed three new administrative provisions in the budget request for FY2024. All three had been proposed by the Administration for FY2023 and were not enacted at that time:

- authorization for CBP to use unobligated balances of its Procurement, Construction, and Improvement appropriations from FY2020-FY2021 for other specified border management purposes;
- removal of previously enacted restrictions on the types of border barrier that could be constructed that had been carried in the FY2020 DHS appropriations act; and
- authorization for DHS to transfer up to \$225 million in unobligated CBP Procurement Construction, and Improvement appropriations from prior years to the Department of the Interior (including any agency or bureau within the Department of the Interior) or the Forest Service “for the execution of environmental and other mitigation projects or activities ... related to the construction of border barriers on the southwest border.”

Neither committee-reported bill included these proposed new provisions.

### House Appropriations Committee Proposed Changes

HAC-reported H.R. 4367 included 44 administrative provisions in Title II: dropping 5 provisions, substantively changing 2, and including 13 that had not appeared in FY2023. The other 29 remained essentially unchanged in the HAC-reported bill.

### *Provisions Not Included*

As noted above, HAC-reported H.R. 4367 did not include FY2023 Sections 211, 222, and 236. It also did not include two other provisions:

- **FY2023 Section 219:** Included in some form since FY2009,<sup>8</sup> this provision required that all awards by TSA for explosives detection systems deployment be based on certain standards; and
- **FY2023 Section 226:** Included in some form since FY2010,<sup>9</sup> this provision allowed a certain amount of USCG Operations and Support appropriations used for enduring overseas anti-terrorism missions to be moved between programs projects, and activities within the overarching appropriation without regard to the reprogramming<sup>10</sup> restrictions in the bill’s general provisions.

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<sup>7</sup> TSA Administrator David P. Pekoske, in testimony before the House Appropriations Committee, described an unconstrained capital investment plan as one “that describes an ideal future state in which TSA is able to buy down more risk to the transportation sector with additional resources.” The text of his full testimony is available at <https://www.tsa.gov/news/press/testimony/2023/03/29/fiscal-year-2024-presidents-budget-request-transportation-security>.

<sup>8</sup> Prior to FY2017, this requirement was included in the language of TSA’s Aviation Security appropriation.

<sup>9</sup> Prior to FY2018, this flexibility was included in the language of USCG’s Operating Expenses appropriation.

<sup>10</sup> Reprogramming is the action of shifting budget authority from one program, project, or activity to another.

**Substantive Changes**

HAC-reported H.R. 4367 included two Title II administrative provisions with substantive changes from their FY2023 enacted versions:

- FY2023 Section 212:** Included in annual DHS appropriations measures since FY2018, this administrative provision has delimited the use of CBP’s annual Procurement, Construction, and Improvements (PC&I) appropriation. HAC-reported H.R. 4367 included the provision as Section 211, directing \$2.1 billion of the \$3.0 billion appropriation to the deployment of physical border barriers, the first time new budget authority would be directed to border barriers since the DHS Appropriations Act, 2021.

**Table I. CBP PC&I Appropriations Allocation in Administrative Provisions**

Program, Project, or Activity	FY2023 Enacted	FY2024 Request	HAC-Reported H.R. 4367	SAC-Reported S. 2625
Acquisition and deployment of physical barriers	\$0	\$0	\$2,104,000,000	\$0
Acquisition and deployment of border technologies	230,277,000	229,568,000	276,000,000	263,300,000
Trade and travel assets and infrastructure	126,047,000	305,400,000	305,400,000	644,296,000
Facility construction and improvements	99,900,000	83,768,000	119,768,000	69,654,000
Integrated operations assets and infrastructure	92,661,000	82,732,000	123,232,000	134,100,000
Mission support and infrastructure	32,673,000	17,673,000	37,253,000	41,179,000
<b>Total</b>	<b>\$581,558,000</b>	<b>\$719,141,000</b>	<b>\$2,965,653,000</b>	<b>\$1,152,529,000</b>

**Sources:** CRS analysis of P.L. 117-328, Section 212; U.S. Customs and Border Protection FY2024 Congressional Justification; HAC-reported H.R. 4367, Section 211; and SAC-reported S. 2625, Section 211.

In addition, the administrative provision in HAC-reported H.R. 4367 would place strict limits on barrier parameters and locations for barrier construction, and would require the Secretary to begin obligation of border barrier construction funding no later than 120 days after the date of enactment.

- FY2023 Section 217:** Included since FY2021, this administrative provision carried forward two prior-year administrative provisions from the FY2020 DHS appropriations act by reference: Section 216, which barred the use of information shared by the Department of Health and Human Services to detain or take steps in the removal process against a sponsor of an unaccompanied minor, potential sponsor of that minor, or member of that household (with some exceptions based on risks of exploitation); and Section 217, which that required reporting on “287(g) agreements,” under which local law enforcement works with ICE on enforcement of immigration laws. HAC-reported H.R. 4367 did not carry forward FY2020 Section 216.



### *Proposals for New Provisions*

HAC-reported H.R. 4367 included 13 Title II administrative provisions that were not included in the previous two enacted DHS appropriations acts. One, added in an en bloc amendment at full committee markup, would provide the following direction to the department:

- **HAC Section 224:** This new administrative provision would direct the Secretary of DHS to allocate ICE Operations and Support appropriations to maintain the maximum average daily population of detainees throughout the fiscal year, and to ensure “every alien on the non-detained docket is enrolled into the Alternatives to Detention Program with mandatory GPS monitoring throughout the duration of all applicable immigration proceedings.”

Eleven of these provisions would impose restrictions on the use of funds made available by the bill, restricting

- Removal of existing border barriers unless they are being repaired or replaced (HAC Section 212);
- The use of CBP’s mobile application to facilitate the parole of any alien into the United States (HAC Section 213);
- Reducing the participation in the 287(g) program (described above) or diminishing the delegation of law enforcement authority involved, except if the DHS Office of the Inspector General (OIG) finds the terms of the agreement have been violated (HAC Section 214);
- Implementation of policies described in two memoranda on enforcement of civil immigration law (HAC Section 220);
- Transportation of aliens unlawfully present into the U.S. interior for purposes other than the enforcement of immigration laws, except for unaccompanied alien children (HAC Section 221);
- Use of ICE funding to “pay for or facilitate an abortion,” with some exceptions, or to require a person to “perform or facilitate in any way the performance of, any abortion” (HAC Section 222);
- Administration of hormone therapy medication or performance or facilitation of any surgery for any person in ICE custody “for the purpose of gender-affirming care” (HAC Section 223);
- Implementation of structural pay reform from the status quo as of October 1, 2022 for any TSA employee that is not a Transportation Security Officer (HAC Section 228);
- Implementation of a CBP policy directive on vehicular pursuits (HAC Section 241, added in an en bloc amendment at full committee markup);
- Admission of an alien on the basis of a certificate of eligibility for nonimmigrant student status issued by an institution of higher education accredited by a nationally recognized accrediting agency or association (HAC Section 242, added in an en bloc amendment at full committee markup); and
- Parole of nationals of the People’s Republic of China into the Commonwealth of the Northern Mariana Islands for temporary visits without a visa (HAC Section 243, added in an en bloc amendment at full committee markup).

HAC-reported H.R. 4367 also included an additional new administrative provision that is drafted to address all unobligated funds available for a particular procurement, regardless of what bill provided it. Section 244, added in full committee markup in an en bloc amendment, is intended to ensure that the procurement of the Waterways Commerce Cutter is conducted as a small business set-aside.<sup>11</sup>

### Senate Appropriations Committee Proposed Changes

SAC-reported S. 2625 included 32 administrative provisions in Title II: dropping 6 provisions, substantively changing 1, and including 2 that had not appeared in FY2023. The other 29 remained essentially unchanged in the SAC-reported bill.

#### *Provisions Not Included*

As noted above, SAC-reported S. 2625 did not include FY2023 Sections 211, 222, and 236. Like HAC-reported H.R. 4367, it did not include FY2023 Section 219 or 226. It also did not include one other Title II administrative provision:

- **FY2023 Section 215:** Included in some form since FY2014,<sup>12</sup> this provision allows U.S. Immigration and Customs Enforcement to reprogram funding within its Operations and Support appropriation “as necessary to ensure the detention of aliens prioritized for removal.”

#### *Substantive Changes*

The one substantive change in the S. 2625 Title II administrative provisions are the funding levels in Sec. 211, compared to those in Sec. 212 in the FY2023 act. Details are shown in **Table 1**.

#### *Proposals for New Provisions*

SAC-reported S. 2625 included two Title II administrative provisions that had not been included in the previous two enacted DHS appropriations acts. One proposed new provision would provide direction to the department:

- **SAC Section 217:** This provision would require ICE to provide monthly budget and staffing reports to the committee—direction that had been made by report language in prior years. It also would reduce funding for ICE’s Executive Leadership and Oversight activity for every day ICE is out of compliance.

One proposed new provision would impose a restriction on the use of funding provided in the bill:

- **SAC Section 216:** This provision would block funding for certain senior performance awards until ICE realigns their Chief Financial Officer into an office that reports directly to the Director or Deputy Director, and is made the equivalent of an Executive Associate Director.

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<sup>11</sup> The description of the section’s intent is based on the subcommittee chairman’s description of the amendment during the markup.

<sup>12</sup> Prior to FY2017, this requirement was included in the language of ICE’s “Salaries and Expenses” appropriation.

## Protection, Preparedness, Response, and Recovery Administrative Provisions (Title III)

Title III of annual DHS appropriations measures currently covers appropriations for

- the Cybersecurity and Infrastructure Security Agency (CISA); and
- Federal Emergency Management Agency (FEMA).

There were 11 administrative provisions included at the end of Title III of the DHS Appropriations Act, 2023.<sup>13</sup>

### Administration Proposed Changes

The Administration proposed 13 Title III administrative provisions for the FY2024 act: not including one provision enacted for FY2023, substantively changing six others, and including three that had not appeared in the FY2023 act. The other four provisions remained essentially unchanged in the request.<sup>14</sup>

The one FY2023 provision not included in the request was FY2023 Section 302, a new statutory provision<sup>15</sup> that required the Director of CISA to provide quarterly budget and staffing briefings to the appropriations committees.

The Administration proposed five alterations:

- **FY2023 Section 301:** Included since FY2022, this provision allowed CISA Operations and Support appropriations to be used to provide cybersecurity threat feeds to a broader range of CISA’s various partners, fusion centers, and Information and Analysis Organizations. The Administration proposed reducing the scope of allowable uses of funds from “procuring or providing access to cybersecurity threat feeds” to simply “providing access” to such feeds. HAC-reported H.R. 4367 did not include the entire provision. SAC-reported S. 2625 did not include the modification, but included the base provision as Section 301.
- **FY2023 Sections 303, 304, and 305:** The Administration modified these administrative provisions to reflect its preferred structuring of the grant programs, presenting the Nonprofit Security Grant Program as a carveout within the State Homeland Security Grant Program and Urban Area Security Initiative, rather than as a separate program. The Administration thus proposed dropping language in the first section that specified that the restriction also applied to state recipients for the administration of Nonprofit Security Grants, and renumbered paragraph references in the other two. Neither committee-reported bill included these modifications.
- **FY2023 Section 306:** Included since FY2017, this administrative provision required FEMA to brief the appropriations committees on the award of certain

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<sup>13</sup> Descriptions of these provisions can be found in the FY2023 consolidated appropriations measure’s explanatory statement, as printed in “Explanatory Statement Submitted by Mr. Leahy, Chair of the Senate Committee on Appropriations, Regarding H.R. 2617, Consolidated Appropriations Act, 2023,” Senate, *Congressional Record*, vol. 168, no. 198, Book II (December 20, 2022), pp. S8564-S8565.

<sup>14</sup> *Appendix*, pp. 533-534.

<sup>15</sup> The requirement had originally been laid out in the explanatory statement accompanying the FY2022 DHS Appropriations Act. The administrative provision put the requirement in law, and curtailed certain CISA funding unless the briefings were provided within a certain time frame.

preparedness grants at least five business days prior to the public announcement of the award. In FY2023, the provision was modified to add a reduction of the FEMA Operations and Support appropriation should FEMA announce such grant awards without meeting that requirement. In addition to paragraph renumbering similar to Sections 304 and 305 above, the Administration proposed not including the reduction in the FY2024 act. Neither committee-reported bill included this modification.

The Administration proposed three new administrative provisions in the budget request for FY2024:

- a provision authorizing CISA to use certain funds for a cybersecurity competition;<sup>16</sup>
- a provision allowing any prior-year unobligated balances in the Pre-disaster Mitigation Fund to be merged with funding for the Building Resilient Infrastructure and Communities (BRIC) grant program;<sup>17</sup> and
- a provision allowing prior-year separate appropriations for the FEMA “Flood Hazard Mapping and Risk Analysis” account to be transferred to and merged with the FEMA Federal Assistance appropriation to carry out the purposes of the program.

Neither committee-reported bill included the first of these proposed new provisions. While HAC-reported H.R. 4367 did not include the second two either, S. 2625 included them as Sections 312 and 313, respectively.

## House Appropriations Committee Proposed Changes

HAC-reported H.R. 4367 included nine Title III administrative provisions: not including two provisions that had appeared in the FY2023 act, and substantively changing one. The other eight remained essentially unchanged.

### *Provisions Not Included*

HAC-reported H.R. 4367 did not carry forward two provisions: FY2023 Section 301, noted above, and

- **FY2023 Section 304:** This administrative provision was a fix to ensure that with congressional restructuring of the Nonprofit Security Grant Program, its resources would not be included in the calculation of minimum allocations for the State Homeland Security Grant Program.

### *Substantive Changes*

HAC-reported H.R. 4367 proposed one substantive change to a Title III administrative provision carried forward from FY2023.

- **FY2023 Section 302:** In FY2023, this new administrative provision required the Director of CISA to provide quarterly budget and staffing briefings that had been originally laid out in the explanatory statement accompanying the FY2022 DHS Appropriations Act, making them a statutory requirement, and curtailing certain

<sup>16</sup> A similar provision was included in the FY2022 act (P.L. 117-328, Div. F, Section 301).

<sup>17</sup> This had been proposed in the FY2023 budget request as well.

CISA funding unless the briefings are provided within a certain time frame. HAC-reported H.R. 4367 specified the reduction should come from CISA’s “Mission Support” activity within its Operations and Support appropriation, rather than “Management and Business Activities,” which is no longer part of the account structure in the FY2024 CISA budget.

## Senate Appropriations Committee Proposed Changes

SAC-reported S. 2625 included 13 Title III administrative provisions: retaining all the provisions that had appeared in the FY2023 act, substantively changing one, and including two provisions that had been requested by the Administration.

### *Substantive Changes*

- SAC-reported S. 2625 proposed one substantive change to a Title III administrative provision carried forward from FY2023—the same technical change proposed in HAC-reported H.R. 4367.

### *Proposals for New Provisions*

- As noted above, SAC-reported S. 2625 included two new administrative provisions proposed by the Administration as Sections 312 and 313.

## Research, Development, Training, and Services Administrative Provisions (Title IV)

Title IV of annual DHS appropriations measures currently covers appropriations for

- U.S. Citizenship and Immigration Services;
- Federal Law Enforcement Training Centers (FLETC);
- the Science and Technology Directorate (S&T); and
- the Countering Weapons of Mass Destruction Office.

There were seven administrative provisions included at the end of Title IV of the DHS Appropriations Act, 2023.<sup>18</sup>

### Administration Proposed Changes

The Administration proposed eight Title IV administrative provisions, only requesting a single additional provision: an administrative provision repealing the termination date for the DHS Countering Weapons of Mass Destruction Office.<sup>19</sup> Neither committee-reported bill included this provision.

The other seven administrative provisions remained essentially unchanged in the request.

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<sup>18</sup> Descriptions of these provisions can be found in the FY2023 consolidated appropriations measure’s explanatory statement, as printed in “Explanatory Statement Submitted by Mr. Leahy, Chair of the Senate Committee on Appropriations, Regarding H.R. 2617, Consolidated Appropriations Act, 2023,” Senate, *Congressional Record*, vol. 168, no. 198, Book II (December 20, 2022), pp. S8564–S8565.

<sup>19</sup> Under current law as of the date of publication, the Office is set to terminate on December 21, 2023, per 6 U.S.C. §591(e).

## House Appropriations Committee Proposed Changes

HAC-reported H.R. 4367 included 12 Title IV administrative provision, adding five that had not been included in the FY2023 act. The other seven administrative provisions remained essentially unchanged.

### *Proposals for New Provisions*

HAC-reported H.R. 4367 included five Title IV administrative provisions that had not been included in the previous two enacted DHS appropriations acts.

Two of these would impose restrictions on the use of funds made available by the bill, restricting

- Implementation of a rule outlining procedures for credible fear screening and consideration of other claims by asylum officers (HAC-reported Section 404); and
- Issuance of employment authorization to aliens whose applications for asylum have been denied, or who were convicted of a federal or state crime while their application was pending (HAC-reported Section 405).

Three others provide other direction:

- **HAC Section 406:** This new administrative provision<sup>20</sup> would allow workers who have received an H-2B visa in the previous three years to be counted as returning workers, and therefore not count against the FY2024 limit on H-2B visas.
- **HAC Section 407:** This new administrative provision would allow nonimmigrants to be admitted under the H-2A temporary or seasonal agricultural visa program in FY2024 regardless of whether the agricultural work is temporary or seasonal.
- **HAC Section 408:** This new administrative provision<sup>21</sup> would allow the Director of USCIS to use up to \$5,000 from the Immigration Examinations Fee Account for official reception and representation expenses in FY2024.

## Senate Appropriations Committee Proposed Changes

SAC-reported S. 2625 included the same seven Title IV administrative provision as were included in the DHS Appropriations Act, 2023, with no changes.

## Departmental Management, Intelligence, Situational Awareness and Oversight Administrative Provisions (Title I)

Title I of annual DHS appropriations measures currently covers appropriations for

- the Office of the Secretary and Executive Management;
- the Management Directorate;

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<sup>20</sup> A general provision with a similar effect was carried in the Consolidated Appropriations Act, 2016 (P.L. 114-113, Div. F, Section 565).

<sup>21</sup> A similar provision had been included in the Administration's FY2022 budget request, and in the Senate Appropriations Committee majority draft for FY2022 as Section 409.

- Intelligence, Analysis, and Situational Awareness; and
- the Office of Inspector General.

There were eight administrative provisions included at the end of Title I of the FY2023 act.<sup>22</sup>

## Administration Proposed Changes

The Administration proposed six administrative provisions: not including three provisions, substantively changing none, and including one that had not appeared in FY2023. The other five remained essentially unchanged in the request.

The Administration proposed not including three provisions:

- **FY2023 Section 106:** Carried since FY2022, this administrative provision required the Under Secretary for Management to provide quarterly a briefing to the appropriations committees on DHS's major acquisition programs,<sup>23</sup> as well as copies of each acquisition memorandum as they are approved. The requirement would have covered all acquisition programs costing more than \$300 million over their lifecycle on the DHS Master Acquisition Oversight List.<sup>24</sup> All such programs from the point that a program manager had begun to review approaches to meeting a capability need to full operational capability were to be included, including those programs removed from the list in the preceding quarter. In FY2023, additional parameters were added for the cost estimates. Both committee-reported bills included the provision without substantive changes as Section 105.
- **FY2023 Section 107:** Carried since FY2022, this administrative provision required reporting from the DHS Under Secretary for Management to the appropriations committees before DHS could obligate money from the act for pilot or demonstration programs. To trigger the reporting, the program would need to use more than 10 full-time equivalents (FTE) or \$5 million, with some exceptions provided for IT contract work and programs specifically directed by Congress. Both committee-reported bills included the provision without substantive changes as Section 106.
- **FY2023 Section 108:** This provision allowed \$14 million to be transferred from the supplemental appropriation provided for the Disaster Relief Fund to the DHS Office of Inspector General for oversight of that appropriation. Neither committee reported bill included the provision.

The Administration proposed a new general provision to establish a "Department of Homeland Security Southwest Border Contingency Operations Fund," which could provide up to \$4.7

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<sup>22</sup> Descriptions of these provisions can be found in the FY2023 consolidated appropriations measure's explanatory statement, as printed in "Explanatory Statement Submitted by Mr. Leahy, Chair of the Senate Committee on Appropriations, Regarding H.R. 2617, Consolidated Appropriations Act, 2023," Senate, *Congressional Record*, vol. 168, no. 198, Book II (December 20, 2022), pp. S8564-S8565.

<sup>23</sup> The Office of Management and Budget (OMB) defines a major acquisition as "a capital project that requires special management attention because of its: (1) importance to an agency's mission; (2) high development, operating, or maintenance costs; (3) high risk; (4) high return; or (5) significant role in the administration of an agency's programs, finances, property, or other resources."

<sup>24</sup> A list of all DHS major acquisitions developed by the DHS Office of Program Accountability and Risk Management.

billion in emergency-designated appropriations, contingent on the cumulative number of migrant encounters at the border each quarter.<sup>25</sup> Neither committee reported bill included the provision.

## House and Senate Appropriations Committee Proposed Changes

Both committee-reported bills included six administrative provisions in Title I: dropping two provisions that had appeared in FY2023, and substantively changing none.

### *Provisions Not Included*

As noted above, neither bill included FY2023 Section 108, as had been proposed by the Administration. They also did not include FY2023 Section 103, which required DHS to link any and all award fees in their contracts to specific successful acquisition outcomes.

## General Provisions (Title V)

As noted earlier, Title V of the annual DHS appropriations act has historically contained general provisions, the impact of which may reach across the government, apply to the entire department, affect multiple components, or focus on a single activity. Title V often includes provisions that make additional appropriations and others that make rescissions—cancellations of previously provided budget authority.<sup>26</sup>

### **Some Provisions Are More General Than Others**

There are general provisions not included in this report that affect DHS; their effect is so broad they cover the entire federal government. Title VII of the Financial Services and General Government Appropriations Act includes these broadest general provisions, which address a range of issues.

There were 49 general provisions included in Title V of the DHS Appropriations Act, 2023.

## Administration Proposed Changes

The Administration proposed 37 general provisions for the DHS Appropriations Act, 2024: it proposed not including 13 provisions, substantively changing one, and including one that had not appeared in FY2023. The other 36 remained essentially unchanged.

The Administration's FY2024 request did not carry forward the following provisions that had been included in the FY2023 act:

- **FY2023 Section 530:** This general provision included grant funding for FEMA to reimburse extraordinary law enforcement or other emergency personnel costs directly related to any residence of the President that is secured by the U.S. Secret Service. Similar general provisions have been included in the DHS annual appropriations acts beginning in FY2017.<sup>27</sup> The HAC-reported bill included this as Section 528; the SAC-reported bill did not include it.

<sup>25</sup> For more details on this proposal, see CRS Report R47496, *DHS Budget Request Analysis: FY2024*, p. 2 on the type of appropriation, and pp. 9-10 on the triggers.

<sup>26</sup> Descriptions of these provisions can be found in the FY2023 consolidated appropriations measure's explanatory statement, as printed in "Explanatory Statement Submitted by Mr. Leahy, Chair of the Senate Committee on Appropriations, Regarding H.R. 2617, Consolidated Appropriations Act, 2023," Senate, *Congressional Record*, vol. 168, no. 198, Book II (December 20, 2022), pp. S8564-S8565.

<sup>27</sup> P.L. 115-31, Div. F, Section 544.



- **FY2023 Section 534:** This general provision required the DHS Under Secretary for Management to submit an unfunded requirements list to the appropriations committees for any activities funded as a part of the defense budget function. A similar general provision has appeared in DHS annual appropriations acts beginning in FY2021.<sup>28</sup> Both committee-reported bills retained this provision.
- **FY2023 Section 535:** This general provision required reporting to certain congressional committees and leadership on providing, extending, or terminating protection under any authority for former or retired federal officials or employees. A similar general provision has appeared in DHS annual appropriations acts beginning in FY2021.<sup>29</sup> Both committee-reported bills retained this provision.
- **FY2023 Section 537:** This general provision required the Administration to identify discretionary offsets when legislatively unauthorized fee increase proposals are made in the budget request to support current activities, despite the prospective nature of those additional revenue sources. A similar general provision has appeared in DHS annual appropriations acts beginning in FY2017.<sup>30</sup> Both committee-reported bills retained this provision.
- **FY2023 Section 540:** This one-time general provision made technical corrections to Section 205 of the Stafford Act, which allows the FEMA Administrator to make capitalization grants to states or tribal entities to establish hazard mitigation revolving loan funds. Neither committee-reported bill included this provision.
- **FY2023 Sections 541 and 542:** These two one-time general provisions made technical corrections to a Community Funding Project and a Congressionally Direct Spending grant, respectively, both of which had been funded in FY2022. Neither committee-reported bill included these provisions.
- **FY2023 Section 543:** This general provision extended flexibility provided in the CARES Act<sup>31</sup> for DHS employees, detailees, or contractors who are licensed to perform health care services as part of their duties and can carry out their duties in any U.S. jurisdiction they are assigned to, unless they are affirmatively excluded from doing so in any U.S. jurisdiction. A similar general provision has appeared in DHS annual appropriations acts beginning in FY2022. Neither committee-reported bill included this provision.
- **FY2023 Section 544:** This general provision prohibited the use of funds for the transfer or release of certain individuals detained at U.S. Naval Station Guantanamo Bay, Cuba into or within the United States. A similar general provision has appeared in DHS annual appropriations acts beginning in FY2012.<sup>32</sup> The House and Senate committee-reported bills included this provision as Section 538 and Section 537, respectively.
- **FY2023 Section 545:** This general provision, new in FY2023, required the Secretary to develop and share bimonthly estimates on noncitizens anticipated to

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<sup>28</sup> P.L. 116-260, Div. F, Section 537.

<sup>29</sup> P.L. 116-260, Div. F, Section 542.

<sup>30</sup> P.L. 115-31, Div. F, Section 532.

<sup>31</sup> P.L. 116-136, Div. B, Title VI, Section 16005.

<sup>32</sup> P.L. 112-74, Div. D, Section 541. The provision was also carried in the Full Year Continuing Appropriations Act, 2010 (P.L. 112-10, Div. B) as Section 1112.

arrive at the U.S.-Mexico border, and use those estimates to inform policymaking and budget processes. The House and Senate committee-reported bills included this provision as Section 539 and Section 538, respectively.

- **FY2023 Section 546:** This general provision provided emergency-designated funding for CBP and ICE to address the situation at the U.S.-Mexico Border.<sup>33</sup> Neither committee-reported bill included this provision.
- **FY2023 Section 547:** This general provision, new in FY2023, extended through the end of FY2023 the authority for the Secretary and the Attorney General to take steps to mitigate threats posed by unmanned aerial vehicles. The HAC-reported bill did not include this provision, while the SAC-reported bill included the provision as Section 539.
- **FY2023 Section 549:** In FY2023, Section 549 rescinded \$46 million in expired FY2022 Operations and Support appropriations from 12 different accounts.<sup>34</sup> Neither committee-reported bill included this provision.

The Administration proposed one alteration: In FY2023, Section 548 rescinded \$348 million from nine active and legacy accounts at DHS. In the FY2024 request, the administration proposed canceling \$56 million in appropriations from 18 different accounts. The House and Senate committee-reported bills included this provision with their own modifications as Section 553 and Section 545, respectively.

**Table 2** includes a comparison of the rescission proposals made by the Administration in March 2023, the House Appropriations Committee in June 2023, and the Senate Appropriations Committee in July 2023.

**Table 2. FY2024 DHS Rescission Proposals**  
(Thousands of dollars of discretionary budget authority)

Designation	Request	HAC-Reported H.R. 4367	SAC-Reported S. 2625
OSEM O&S	800	800	—
Management Directorate	4,100	4,100	—
CBP PC&I	1,473	1,473	1,473
CBP BSFIT	1,842	1,842	1,842
CBP Air and Marine Interdiction	452	452	452
CBP PC&I FY2020	—	1,159,000	—
CBP PC&I FY2021	—	945,000	—
ICE O&S (expiring in FY2024)	3,000	3,000	1,000
ICE O&S (not expiring)	2,093	2,093	2,093
ICE Automation Modernization	10	10	10
TSA O&S	—	154,515	—
TSA O&S (not expiring)	—	—	63,591

<sup>33</sup> A related general provision, which also included funding for FEMA, was first included in the FY2022 act: P.L. 117-103, Div. F, Section 543.

<sup>34</sup> The budget was developed without knowledge of what the expired unobligated balances of FY2023 funding in Operations and Support accounts would be.

Designation	Request	HAC-Reported H.R. 4367	SAC-Reported S. 2625
USCG AC&I	22,600	22,600	22,600
USSS O&S	2,400	—	2,400
USSS PC&I	4,000	—	4,000
CISA PC&I	3,500	3,500	3,500
CISA R&D	2,000	2,000	—
FEMA PDM Fund	5,821	5,821	—
FLETC PC&I	800	800	800
S&T O&S	900	900	900
CWMD R&D (expiring in FY2024)	389	389	389
CWMD (not expiring)	11	11	11
DHS CRSO (Inflation Reduction Act) (H.R. 4367, Sec. 554)	—	312,000	—
DHS Nonrecurring Expenses Fund (H.R. 4367, Sec. 555)	—	3,800	—
<b>Total Rescissions</b>	<b>56,191</b>	<b>2,622,106</b>	<b>105,061</b>

**Source:** CRS analysis of H.Rept. 118-123 and S.Rept. 118-72.

**Note:** Abbreviations available in **Appendix A**.

The Administration proposed one new general provision: The Administration sought the ability to transfer up to 5% of any appropriation into the “Information Technology Modernization Fund” for DHS that was authorized under the National Defense Authorization Act for Fiscal Year 2018.<sup>35</sup> The Biden Administration first proposed this provision in its FY2022 budget request. Neither committee-reported bill included this provision.

### House Appropriations Committee Proposals

HAC-reported H.R. 4367 included 56 general provisions: not carrying forward nine, substantively changing one (the rescissions provision, noted above), and including 16 that had not appeared in FY2023. The other 39 remained essentially unchanged. As noted above, HAC-reported H.R. 4367 did not include the Administration’s proposed new general provision.

#### *Provisions Not Included*

HAC-reported H.R. 4367 did not carry forward nine general provisions that had been included in the FY2023 act. Two of these had been included in the Administration’s request for FY2024:

- **FY2023 Section 510:** In FY2023, this section was an explicit inclusion of a restriction on the use of funds to pay the salary of a person acting as a contracting officer’s representative or in a similar role if they have not completed training for said role. In prior years, this had been included by reference to a prior appropriations act.<sup>36</sup>

<sup>35</sup> P.L. 115-91, Div. A, Title X, Section 1077(b)(1).

<sup>36</sup> P.L. 110-161, Div. E, Section 520.

- **FY2023 Section 521:** This general provision, carried in the DHS annual appropriations act since FY2010,<sup>37</sup> barred DHS from entering into a contract if it did not meet the requirements of the Federal Property and Administrative Services Act of 1949, 10 U.S.C. Chapter 137, and the Federal Acquisition Regulation, unless it is authorized in statute.

The other seven general provisions were also not included in the Administration’s request for FY2024, as described above: Sections 540, 541, 542, 543, 546, 547, and 549.

### *Proposals for New Provisions*

HAC-reported H.R. 4367 included 16 new general provisions that had not been included in the FY2022 or FY2023 DHS appropriations acts. Four would provide direction to the department or meet House procedural requirements:

- **HAC Section 548:** This new general provision, added in the managers’ amendment in full committee markup, would modify the authorization for the DHS Nonrecurring Expenses Fund, which had been established in the FY2022 act to help fund DHS information technology and facilities improvements.<sup>38</sup> It would require (rather than allow) expired budget authority to be transferred to the Fund, require the passage of the full-year appropriation measure for DHS before resources in the fund could be used in a given year, and require advance notification to the appropriations committees for the use of fund resources.
- **HAC Section 554:** This new general provision would rescind \$312 million from funding provided to the DHS Chief Readiness Support officer in P.L. 117-169.
- **HAC Section 555:** This new general provision, added in the managers’ amendment in full committee markup, would rescind \$3.8 million from the DHS Nonrecurring Expenses Fund described above.
- **HAC Section 556:** This new general provision, under the heading of “Spending Reduction Account,” states that the bill’s 302(b) allocation under the Congressional Budget Act of 1974 does not exceed the amount of proposed new budget authority in the bill.<sup>39</sup>

Eleven of these would impose restrictions on the use of any of the funds made available by the bill, in order to prevent DHS from taking certain actions:

- Establishing a Disinformation Governance Board at DHS, or “any other entities carrying out similar activities” related to misinformation, or supporting the activities of “any entity responsible, directly or indirectly... for instructing, influencing, directing, or recommending that private companies censor, prohibit, or obstruct lawful and constitutionally protected speech of United States persons on social media platforms” (HAC Section 540, added in an en bloc amendment in full committee markup);
- Requiring COVID-19 vaccinations for DHS employees (HAC Section 541);

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<sup>37</sup> P.L. 111-83, Section 570.

<sup>38</sup> P.L. 107-103, Div. F, Section 538.

<sup>39</sup> In the FY2024 appropriations cycle, each House Appropriations Committee-reported bill included a “Spending Reduction Account,” pursuant to H.Res. 5, Section 3(f), designed to enable certain reductions in budget authority incurred from en bloc amendments adopted during floor consideration.

- Administering, implementing or enforcing COVID-19 pandemic travel rules that require noncitizen nonimmigrant arrivals to show proof of vaccination to enter the United States.<sup>40</sup> (HAC Section 542);
- Classifying any communication by a U.S. person as “mis-, dis-, or mal-information” or partnering with organizations that in any way recommend that private companies in any way censor, prohibit, or obstruct lawful and constitutionally protected speech of a U.S. person on social media platforms (HAC Section 543, added in an en bloc amendment in full committee markup);
  - The provision furthermore would direct the removal from federal service any officer or employee funded by this act who carries out such actions.
- Administering, implementing or enforcing a new rule limiting access to the asylum process for certain migrants (HAC Section 544);
- Implementing, administering, enforcing, or carrying out the DHS Equity Action Plan, two executive orders related to advancing racial equity and support for underserved communities, one Executive order related to diversity, equity, inclusion, and accessibility in the federal workforce, or “any program, project or activity that promotes or advances Critical Race Theory or any concept associated with Critical Race Theory” (HAC Section 545);
- Purchase unmanned aircraft systems manufactured in China or any country identified as a foreign adversary or made by an entity domiciled in such a place (HAC Section 547);
- Inspecting a contracted ICE detention facility more than once within a six-month period (HAC Section 549);
- Inspecting a contracted ICE detention facility for any reason other than compliance with the National Detention Standards of 2019 (HAC Section 550, added in an en bloc amendment in full committee markup);
- Admitting Chilean nationals until DHS gets access to screen Chilean nationals against appropriate Chilean criminal databases (HAC Section 551, added in an en bloc amendment in full committee markup); and
- Taking a discriminatory action against a person on the basis of their beliefs regarding the definition of marriage as being between one man and one woman (HAC Section 552, added in an en bloc amendment in full committee markup).

In a narrower, two-part action, the new HAC Section 546<sup>41</sup> would specifically restrict the use of the Operations and Support appropriation for the Office of the Secretary and Executive Management to hire outside counsel (1) before all the border barrier funding in the bill has been obligated, and (2) “to prepare for or defend against impeachment.”

### Senate Appropriations Committee Proposed Changes

SAC-reported S. 2625 included 45 general provisions: not carrying forward nine, substantively changing two (one of which was the rescission provision noted above), and including five that

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<sup>40</sup> “Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic” (87 *Federal Register* 20405 et seq.) and “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico” (87 *Federal Register* 24041), “or any successor rules.”

<sup>41</sup> Added in an en bloc amendment in full committee markup.

had not appeared in FY2023. The other 38 remained essentially unchanged under the SAC-reported bill. As noted above, the SAC-reported bill did not include the Administration's proposed new general provision.

### *Provisions Not Included*

SAC-reported S. 2625 did not carry forward nine general provisions that had been included in the FY2023 act. Two of these had been included in the Administration's request for FY2024: as in the House-reported bill, FY2023 Sections 510 and 521 were not carried forward. Six other general provisions not included in the Administration's request for FY2024 were also not included in the Senate committee-reported bill, as described above: Sections 530, 540, 541, 542, 543, 546, and 549.

### *Substantive Changes*

SAC-reported S. 2625 would make substantive changes to one provision that had been included in the FY2023 act, aside from the rescissions provision:

- **FY2023 Section 545 / S. 2625 Section 538:** This general provision, which first appeared in the FY2023 act, required the Secretary to develop and share bimonthly estimates on noncitizens anticipated to arrive at the U.S.-Mexico border, and use those estimates to inform policymaking and budget processes. The SAC-reported bill specifies that the estimates be used for budget materials submitted to Congress not only for annual appropriations (as originally required), but also for supplemental appropriations requests and reprogramming and transfer notifications.

### *Proposals for New Provisions*

SAC-reported S. 2625 included five new general provisions that had not been included in FY2022 or FY2023 DHS appropriations acts:

- **SAC Section 540:** This general provision would require the President to designate all emergency-designated funding in the bill as emergency requirements in order for the funding to be available for obligation. Similar provisions have appeared in emergency supplemental appropriations measures, such as the Emergency Security Supplemental Appropriations Act, 2021.<sup>42</sup>
- **SAC Section 541:** This general provision would extend the authority for DHS to conduct pilot programs for employment eligibility confirmation (such as E-Verify) through FY2024. Similar extensions have been provided in previous consolidated measures, including Division O of the Consolidated Appropriations Act, 2023.<sup>43</sup>
- **SAC Section 542:** This general provision would extend the availability of special immigrant status for certain non-ministerial religious workers. Similar extensions have been provided in previous consolidated measures, including Division O of the Consolidated Appropriations Act, 2023.<sup>44</sup>

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<sup>42</sup> P.L. 117-31, Section 606.

<sup>43</sup> P.L. 117-328, Div. O, Section 301.

<sup>44</sup> P.L. 117-328, Div. O, Section 302.

- **SAC Section 543:** This general provision would provide authority for an increase in the number of H-2B visas available under certain conditions. Similar extensions have been provided in previous consolidated measures, including Division O of the Consolidated Appropriations Act, 2023.<sup>45</sup>
- **SAC Section 544:** This general provision would extend through FY2024 the authority for the “Conrad 30” program—which allows foreign medical graduates to stay in the United States if they work in parts of the country with a shortage of medical professionals for at least three years. Similar extensions have been provided in previous consolidated measures, including Division O of the Consolidated Appropriations Act, 2023.<sup>46</sup>

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<sup>45</sup> P.L. 117-328, Div. O, Section 303.

<sup>46</sup> P.L. 117-328, Div. O, Section 304.

## **Appendix A. Glossary of Abbreviations**

<b>BRIC</b>	Building Resilient Infrastructure and Communities
<b>CBP</b>	U.S. Customs and Border Protection
<b>CISA</b>	Cybersecurity and Infrastructure Security Agency
<b>CRS</b>	Congressional Research Service
<b>DHS</b>	U.S. Department of Homeland Security
<b>DRF</b>	Disaster Relief Fund
<b>FEMA</b>	Federal Emergency Management Agency
<b>FLETC</b>	Federal Law Enforcement Training Centers
<b>HAC</b>	House Appropriations Committee
<b>ICE</b>	U.S. Immigration and Customs Enforcement
<b>OIG</b>	Office of Inspector General
<b>OMB</b>	Office of Management and Budget
<b>OSEM</b>	Office of the Secretary and Executive Management
<b>O&amp;S</b>	Operations and Support
<b>PC&amp;I</b>	Procurement, Construction, and Improvements
<b>R&amp;D</b>	Research and Development
<b>S&amp;T</b>	Science and Technology Directorate
<b>SAC</b>	Senate Appropriations Committee
<b>TSA</b>	Transportation Security Administration
<b>USCG</b>	U.S. Coast Guard
<b>USSS</b>	U.S. Secret Service



## Appendix B. Evolution of Administrative and General Provisions in the DHS Appropriations Act

The structure of the annual DHS appropriations act has evolved significantly since its initial development in the FY2004 cycle.

Initial appropriations structures were not consistent across the bill, and departmental reorganizations shifted parts and responsibilities across the department. Even so, some of the original general provisions from the FY2004 act are included in the current annual appropriations act.

The overall structure of the department stabilized with the FY2008 act, and for a decade, the structure of the bill was relatively stable from year to year. With the enactment of the FY2017 act, two major changes occurred: a common appropriations structure was applied over almost all of the DHS components; and directive language was shifted from individual appropriations provisions and some Title V General Provisions into groups of “administrative provisions” at the end of each title. The structure of the bill has remained relatively consistent since.

The following appendix looks at each of these years—FY2004, as the first year; FY2008, as the year of significant reorganization; and FY2017, as the first year of the Common Appropriations Structure and administrative provisions—to highlight where many of the long-standing provisions of the DHS appropriations act originated.

### The First DHS Appropriations Act: FY2004

The first annual appropriations measure for DHS was passed by Congress a week before the beginning of its fiscal year. Initial budget justification materials presented to Congress were minimal, but the bill moved relatively quickly and passed with near-unanimity.

While the titles of the DHS appropriations measure have changed slightly, and several components have been reorganized, the general structure of the titles of the measure has remained consistent:

- **Title I – Departmental Management and Operations**—headquarters functions;
- **Title II – Security, Enforcement, and Investigations**—law enforcement operational components;
- **Title III – Preparedness and Recovery**—FEMA and related functions;
- **Title IV – Research and Development, Training, Assessments, and Services**—specialized components; and
- **Title V – General Provisions.**

### Appropriations Titles I-IV

Within the first four titles, however, component appropriations were structured differently. New components, like DHS headquarters and management functions, and the U.S. Visitor and Immigrant Status Indicator Technology project received single appropriations. Others, like the U.S. Coast Guard, received appropriations in structures paralleling what they had received in FY2003. New major components—U.S. Customs and Border Protection and Immigration and Customs Enforcement—generally followed the structure of legacy Customs Service appropriations.

These appropriations included direction to the individual components through provisos within the statement of appropriations themselves, rather than as administrative or general provisions. Some of these were statutory directions to use certain amounts for certain activities, such as facilities improvements, while others were prohibitions on the use of funds, such as prohibitions on construction of border checkpoints. Some appropriations were withheld until certain conditions were met, such as providing a spend plan to the appropriations committees that met certain parameters. Administrative provisions were included in some appropriations measures at the time, often providing direction across multiple appropriations, but no such provisions appeared in the initial DHS appropriations act.

In what was standard practice for the time, rescissions, or cancellation of previously appropriated budget authority, were included immediately after the statement of appropriations for the target account.

## **General Provisions**

Twenty-one general provisions were included in the initial DHS appropriations act, and eight continue to be carried forward each year as general provisions in the annual act:

- **FY2004 Section 501**—Budget authority provided by the act is not available after the fiscal year unless the bill specifically provides for it (FY2023 Section 501);
- **FY2004 Section 502**—Budget authority provided in prior acts for activities funded in this act may be transferred to and merged with funds in the applicable accounts (FY2023 Section 502);
- **FY2004 Section 503**—Establishes parameters for reprogrammings and transfers of budget authority in the bill (a modified version continued as FY2023 Section 503);
- **FY2004 Section 504**—Authorizes continued availability of up to 50% of unobligated salaries and expenses balances at the end of the fiscal year to be used in the following fiscal year (FY2023 Section 505);
- **FY2004 Section 508**—Deems funding for intelligence programs to be authorized until an intelligence authorization act for the fiscal year was signed into law (a modified version continued as FY2023 Section 506);
- **FY2004 Section 511**—Blocks other agencies from building new federal law enforcement training facilities separate from existing ones without prior approval of the appropriations committees (FY2023 Section 508);
- **FY2004 Section 516**—Requires certain construction projects to have an approved prospectus to be funded (FY2023 Section 509); and
- **FY2004 Section 518**—No funds in the bill may be used in contravention of the Buy American Act (a modified version continued as FY2023 Section 512).

FY2004 Section 510, which required advance notification of grant awards, is still carried as an administrative provision (Section 306 in the FY2023 act) with some modifications.

Several of these general provisions were one-time provisions that provided authorizations or restrictions beyond FY2004, or converted structure and functions of formerly independent components into DHS functions.

- **FY2004 Section 505**—Provided flexibility for DHS to use certain funds for specific types of purchases “in fiscal year 2004 and thereafter, unless otherwise provided”<sup>47</sup>;
- **FY2004 Section 506**—Made the FEMA “Working Capital Fund” account available to DHS, and renamed it as “Department of Homeland Security Working Capital Fund”;
- **FY2004 Section 507**—Made the FEMA “Bequests and Gifts” account available to DHS, and renamed it as “Department of Homeland Security, Gifts and Donations”;
- **FY2004 Section 513**—Required customs declarations to ask “whether the passenger had been in the proximity of livestock”;
- **FY2004 Sections 514 and 515**—Blocked funding for certain DHS actions that would prevent enforcement of certain laws against forced child labor,<sup>48</sup> or allow goods made with such labor to be brought into the country; and
- **FY2004 Section 520**—Authorized the Secretary to charge fees to pay for credentialing transportation workers.

Others provided direction to the department or its components:

- **FY2004 Section 509**—Directed FLETC to establish an accrediting body for assessing federal law enforcement training programs, facilities, and instructors;<sup>49</sup>
- **FY2004 Section 512**—Required the Director of FLETC to ensure all its facilities are operated at optimal capacity;
- **FY2004 Section 517**—Blocked regulations requiring airport sponsors to provide space or services to TSA without compensation other than for security checkpoints;
- **FY2004 Section 519**—Blocked deployment of a particular passenger prescreening system until GAO reported to Congress that the system met certain thresholds; and
- **FY2004 Section 521**—Directed the Secretary to get certified systems to inspect and screen air cargo on passenger aircraft, and until it is online, to use the known shipper program to prevent high-risk cargo from being carried on passenger planes.

## The Post-Katrina DHS Appropriations Act: FY2008

After several years of reorganization, and the refocusing of departmental priorities through the Post Katrina Emergency Management Reform Act (PKEMRA), the structure of DHS and its funding had shifted.

The DHS Appropriations Act, 2008, was enacted in a different fashion than its predecessors. The FY2004 act was a stand-alone measure, signed into law on the first day of the fiscal year. Each of

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<sup>47</sup> Future appropriations measures restated some of these authorities in different fashions: therefore, these should not be considered enduring authorities.

<sup>48</sup> As defined under section 307 of the Tariff Act of 1930 (19 U.S.C. §1307).

<sup>49</sup> This body, the Federal Law Enforcement Training Accrediting Board, was established, and has continued to receive direction from the administrative provisions under Title IV in the Department of Homeland Security Appropriations Act.

the next three years, the bill was enacted as a stand-alone measure within the first month of the fiscal year. The FY2008 act was signed into law as a division of a consolidated appropriations measure almost three months into the fiscal year. Some observers note this as an indicator of increasing challenges in passing the measure.

## Appropriations Titles I-IV

The FY2008 Act included several components that had not appeared in the first DHS appropriations act, as well as a reconstituted FEMA. New components are noted below, but the general structure of the titles of the measure remained, with slight changes to the names of Titles III and IV:

- **Title I – Departmental Management and Operations**—headquarters functions, now including specific appropriations for the Office of the Chief Financial Officer, the Office of the Chief Information Officer, Analysis and Operations, and Office of the Federal Coordinator of Gulf Coast Rebuilding;
- **Title II – Security, Enforcement, and Investigations**—law enforcement operational components;
- **Title III – Protection, Preparedness, Response and Recovery**—the new National Protection and Programs Directorate, the Office of Health Affairs, and the reconstituted FEMA;
- **Title IV – Research and Development, Training, and Services**—specialized components, including the Domestic Nuclear Detection Office;<sup>50</sup>
- **Title V – General Provisions**

The structure of direction through appropriations provisos remained unchanged. However, rescissions now were included in the general provisions in Title V, in part because the evolved structure of the appropriations themselves did not necessarily align with the desired rescissions, which by their nature, come from prior year accounts.

## General Provisions—Title V

Seventy-three general provisions were included in the FY2008 DHS appropriations act. They included several sections of significant length making changes to the *U.S. Code*, including legislation on the secure handling of ammonium nitrate (Section 563), modifications to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Section 564), and modifications to the International Registered Traveler Program (Section 565). In addition, a sixth title was included in the act, containing the “Border Infrastructure and Technology Modernization Act of 2007.”

Several other general provisions that are still part of the current structure of the DHS appropriations act appeared in FY2008:

- **FY2008 Section 514**—Barred funding in the bill from being used to amend the Oath of Allegiance (FY2023 Section 513);
- **FY2008 Section 515**—Blocked funding for privatization of certain jobs at USCIS (a modified version appears in the FY2023 act as Section 402);

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<sup>50</sup> The Information Analysis and Infrastructure Protection Directorate, which had appeared in this title in FY2004, was reorganized into Analysis and Operations and the National Protection and Programs Directorate, and no longer appeared in this title in the FY2008 Act.

- **FY2008 Section 520**—Blocked employees from serving as a contracting officer’s technical representative (COTR) or in a similar role if they have not gotten COTR training (FY2023 Section 510);
- **FY2008 Section 526**—Required a monthly budget and staffing report (a modified version appears in the FY2023 act as Section 102);
- **FY2008 Section 529**—Classifies FLETC instructor staff positions as inherently governmental functions (FY2023 Section 407);
- **FY2008 Section 537**—Blocks alteration of operations withing the Civil Engineering Program of the Coast Guard absent prior legislative authorization (a modified version appears in the FY2023 act as Section 229);
- **FY2008 Section 539**—Blocked obligation of funding from DHS headquarters accounts for grants or contracts not awarded under full and open competition, with some exceptions, which require reporting (a modified version appears in the FY2023 act as Section 101, requiring reporting on such contract awards);
- **FY2008 Section 541**—Blocked the use of funding for “any position designated as a Principal Federal Official” for Stafford Act-declared incidents (a modified version appears in the FY2023 act as Section 533);
- **FY2008 Section 546**—Blocked the Secretary’s authority to reorganize the Department under Section 872 of the Homeland Security Act (FY2023 Section 514);
- **FY2008 Section 548**—Blocked reductions of the Coast Guard’s Operations Systems Center mission or its staffing levels (a modified version appears in the FY2023 act as Section 227);
- **FY2008 Section 549**—Blocked funding for privatization of certain jobs at USCG National Vessel Documentation Center (FY2023 Section 228);
- **FY2008 Section 558**—Blocked CBP from preventing private individuals from importing certain prescription drugs for their personal use (FY2023 Section 201); and
- **FY2008 Section 567**—Blocked the use of funds “for planning, testing, piloting, or developing a national identification card” (FY2023 Section 515).

## **The Common Appropriations Structure DHS Appropriations Act: FY2017**

When DHS was established in 2003, components of other agencies were brought together over a matter of months, in the midst of ongoing budget cycles. Rather than developing a new structure of appropriations for the entire department, Congress and the Administration continued to provide resources through existing account structures when possible.

At the direction of Congress, in 2014 DHS began to work on a new Common Appropriations Structure (CAS), which would standardize the format of DHS appropriations across components. This would be the most significant restructuring of DHS appropriations since its establishment. In an interim report in 2015, DHS noted that operating with “over 70 different appropriations and over 100 Programs, Projects, and Activities ... has contributed to a lack of transparency, inhibited

comparisons between programs, and complicated spending decisions and other managerial decision-making.”<sup>51</sup>

After several years of work and negotiations with Congress, DHS made its first budget request in the CAS for FY2017, and implemented it while operating under the continuing resolutions funding the department in October 2016.<sup>52</sup> Part of the restructuring of the appropriations included the addition of administrative provisions, shifting instructions that had been included in language of specific appropriations or in general provisions into sections at the end of each title. **Table B-1** shows total general provisions and administrative provisions for the last ten enacted DHS appropriations acts.

**Table B-1. Tally of General and Administrative Provisions, FY2014-FY2023**  
(Annual appropriations measures)

Fiscal Year	General Provisions Title V	Administrative Provisions				Total
		Title I	Title II	Title III	Title IV	
2014	77					77
2015	78					78
2016	75					75
2017	44	8	28	12	9	101
2018	45	7	31	8	8	99
2019	40	6	31	9	8	94
2020	40	5	36	7	7	95
2021	42	6	35	11	7	101
2022	48	8	36	11	8	111
2023	49	8	36	11	7	111

**Source:** CRS analysis of enacted DHS appropriations.

**Note:** Administrative provisions first appeared in DHS annual appropriations in the FY2017 act (P.L. 115-56, Division F).

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<sup>51</sup> Office of the Chief Financial Officer, *A Common Appropriations Structure for DHS: FY2016 Crosswalk*, U.S. Department of Homeland Security, February 2, 2015, p. 2.

<sup>52</sup> The Coast Guard, due to limitations of its financial management system, did not implement the system until FY2019.

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