



Financial Services and General Government: FY2012 Appropriations

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Summary

The Financial Services and General Government (FSGG) appropriations bill includes funding for the Department of the Treasury, the Executive Office of the President (EOP), the judiciary, the District of Columbia, and more than two dozen independent agencies. Among those independent agencies are the General Services Administration (GSA), the Office of Personnel Management (OPM), the Small Business Administration (SBA), the Securities and Exchange Commission (SEC), and the United States Postal Service (USPS). The Commodity Futures Trading Commission (CFTC) is funded in the House through the Agriculture appropriations bill and in the Senate through the FSGG bill. CFTC funding is included in all FSGG funding tables in this report.

On February 14, 2011, President Obama submitted his FY2012 budget request. The request included a total of \$48.72 billion for agencies funded through the FSGG appropriations bill, including \$308 million for the CFTC. The President's request would increase funding \$4.03 billion above FY2011 enacted amounts.

On April 14, 2011, the House and the Senate passed H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act of 2011, which the President signed into law (P.L. 112-10) the following day. The act provides \$44.69 billion for FSGG agencies, including \$203 million for the CFTC, for FY2011, a decrease of \$1.74 billion below FY2010 enacted amounts.

On July 7, 2011, the House Appropriations Committee reported H.R. 2434, the Financial Services and General Government Appropriations Act, 2012. H.R. 2434 would provide \$42.97 billion for agencies funded through the House FSGG Appropriations Subcommittee. In addition, the CFTC would receive \$172 million through the FY2012 agriculture appropriations bill, H.R. 2112. Total FY2012 funding provided by the House would be \$43.14 billion, about \$5.58 billion below the President's FY2012 request and \$1.55 billion less than FY2011 enacted amounts. No further action has been taken by the House.

On September 15, 2011, the Senate Appropriations Committee reported its FY2012 financial services bill, S. 1573. The committee's bill would provide \$44.64 billion for FSGG agencies, including \$240 million for the CFTC, for FY2012, which would be \$4.09 billion below the President's FY2012 request and \$47.67 million less than FY2011 enacted amounts. No further action has been taken by the Senate.

On September 30, 2011, President Obama signed a continuing resolution, H.R. 2017 (P.L. 112-33), that funded the government through October 4, 2011. On October 5, President Obama signed a second continuing resolution, H.R. 2608 (P.L. 112-36), that funds the government through November 18, 2011, at a rate of 1.503% below FY2011 enacted levels.

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Most Recent Developments

On July 7, 2011, the House Appropriations Committee reported H.R. 2434, the Financial Services and General Government Appropriations Act, 2012.¹ H.R. 2434 would provide \$42.97 billion for agencies funded through the House Financial Services and General Government (FSGG) Appropriations Subcommittee. In addition, H.R. 2112, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2012, would provide \$172 million for the Commodity Futures Trading Commission (CFTC). Total FY2012 funding provided by the House would be \$43.14 billion, about \$5.58 billion below the President's FY2012 request and \$1.55 billion less than FY2011 enacted amounts.

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Table 1. Status of FY2012 Financial Services and General Government Appropriations

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conference Report	Conference Report Passed		Public Law
House	Senate						House	Senate	
06/16/11	09/14/11	H.Rept. 112-136	—	S.Rept. 112-79	—	—	—	—	—

Introduction

The House and Senate Committees on Appropriations reorganized their subcommittee structures in early 2007. Each chamber created a new FSGG Subcommittee. In the House, the jurisdiction of the FSGG Subcommittee was formed primarily of agencies that had been under the jurisdiction of the Subcommittee on Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies, commonly referred to as "TTHUD."² In

¹ U.S. Congress, House Appropriations Committee, *Financial Services and General Government Appropriations Bill, 2012*, report to accompany H.R. 2434, 112th Cong., 1st Sess., H.Rept. 112-136, at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt136/pdf/CRPT-112hrpt136.pdf>.

² The agencies previously under the jurisdiction of the TTHUD Subcommittee that did not become part of the FSGG subcommittee were the Department of Transportation, the Department of Housing and Urban Development, the Architectural and Transportation Barriers Compliance Board, the Federal Maritime Commission, the National Transportation Safety Board, the Neighborhood Reinvestment Corporation, and the United States Interagency Council (continued...)

addition, the House FSGG Subcommittee was assigned four independent agencies that had been under the jurisdiction of the Science, State, Justice, Commerce, and Related Agencies Subcommittee.³

In the Senate, the jurisdiction of the new FSGG Subcommittee was a combination of agencies from the jurisdiction of three previously existing subcommittees. The District of Columbia, which had its own subcommittee in the 109th Congress, was placed under the purview of the FSGG Subcommittee, as were four independent agencies that had been under the jurisdiction of the Commerce, Justice, Science, and Related Agencies Subcommittee.⁴ Additionally, most of the agencies that had been under the jurisdiction of the Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies were assigned to the FSGG Subcommittee.⁵ As a result of this reorganization, the House and Senate FSGG Subcommittees have nearly identical jurisdictions.⁶

Overview

The FSGG appropriations bill includes funding for the Department of the Treasury, the Executive Office of the President (EOP), the judiciary, the District of Columbia, and more than two dozen independent agencies. For each title of the regular FSGG appropriations bill, **Table 2** lists the enacted amounts for FY2010 and FY2011, the President’s FY2012 request, and amounts recommended by the House and Senate appropriations committees for FY2012.

**Table 2. Financial Services and General Government Appropriations,
FY2010-FY2012**
(in millions of dollars)

Title	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Title I: Department of the Treasury	\$13,465	\$13,097	\$14,040	\$12,168	\$12,239
Title II: Executive Office of the President	772	706	740	640	661
Title III: The Judiciary	6,871	6,907	7,294	6,759	6,934
Title IV: District of Columbia	752	699	717	637	658
Title V: Independent Agencies	24,585	23,280	25,937	22,936	24,149

(...continued)

on Homelessness.

³ The agencies are the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and the Small Business Administration (SBA).

⁴ The agencies are the FCC, FTC, SEC, and SBA.

⁵ The agencies that did not transfer from TTHUD to FSGG were Transportation, HUD, the Architectural and Transportation Barriers Compliance Board, the Federal Maritime Commission, the National Transportation Safety Board, the Neighborhood Reinvestment Corporation, and the United States Interagency Council on Homelessness.

⁶ The Commodity Futures Trading Commission is under the jurisdiction of the FSGG Subcommittee in the Senate but not in the House.

Title	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Total	\$46,444	\$44,689	\$48,727	\$43,140	\$44,640

Sources: Consolidated Appropriations Act, 2010 (Div. C, P.L. 111-117); Appendix, U.S. Government Budget, FY2011; S.Rept. 111-238; Appendix, U.S. Government Budget, FY2012; H.R. 1473; H.Rept. 112-136; S.Rept. 112-79.

Note: Totals include funding for the Commodity Futures Trading Commission (CFTC). The CFTC is funded in the House through the Agriculture appropriations bill and in the Senate through the Financial Services and General Government bill. Figures include rescissions and offsetting collections.

FY2012 Appropriations by Title

Title I: The Department of the Treasury⁷

This section examines FY2012 appropriations for the Treasury Department and its operating bureaus, including the Internal Revenue Service (IRS). **Table 3** lists the enacted amounts for FY2011, the Obama Administration's FY2012 request, and the amounts recommended by the House and Senate appropriations committees for FY2012.

Table 3. Department of the Treasury Appropriations, FY2010-FY2012
(in millions of dollars)

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Departmental Offices	\$305	\$306	\$325	\$186	\$306
Department-wide Systems and Capital Investments	10	4	0	0	0
Terrorism and Financial Intelligence	—	—	—	100	—
Office of Inspector General	30	30	30	30	30
Treasury Inspector General for Tax Administration	152	152	158	152	152
Special Inspector General for TARP	23	36	47	42	42
Community Development Financial Institutions Fund	247	227	227	183	200
Financial Crimes Enforcement Network	111	111	84	111	111
Financial Management Service	244	233	219	217	218
Alcohol and Tobacco Tax and Trade Bureau	103	101	98	97	100
Bureau of the Public Debt	182	175	166	164	166

⁷ This section was authored by Gary Guenther (x7-7742).

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Payment for Losses in Shipment	2	2	2	2	2
Internal Revenue Service (total)	12,146	12,122	13,284	11,516	11,663
<i>Taxpayer Services</i>	2,279	2,274	2,345	2,166	2,196
<i>Enforcement</i>	4,904	5,493	5,031	5,227	5,229
<i>Enhanced Tax Enforcement</i>	600	0	1,257	0	0
<i>Operations Support Activities</i>	4,084	4,076	4,299	3,794	3,893
<i>Business Systems Modernization</i>	264	264	334	330	330
<i>Health Insurance Tax Credit Administration</i>	16	16	18	0	15
Rescissions: Treasury Forfeiture Fund	(-90)	(-400)	(-600)	(-630)	(-750)
Total	\$13,465	\$13,097	\$14,040	\$12,168	\$12,239

Sources: Appendix, Budget of the U.S. Government, FY2012, H.Rept. 112-136; S.Rept. 112-79.

The Treasury Department performs a variety of critical governmental functions. They can be summarized as protecting the nation's financial system against a host of illicit activities (particularly money laundering and terrorist financing), collecting tax revenue and enforcing tax laws, managing and accounting for federal debt, administering the federal government's finances, regulating financial institutions, and producing and distributing coins and currency.

At its most basic level of organization, Treasury consists of departmental offices and operating bureaus. In general, the offices are responsible for formulating and implementing policy initiatives and managing Treasury's operations, while the bureaus undertake specific tasks assigned to Treasury, mainly through statutory mandates. In the past decade or so, the bureaus have accounted for more than 95% of the agency's funding and work force.

With one exception, the bureaus and offices can be divided into those engaged in financial management and regulation and those engaged in law enforcement. In recent decades, the Comptroller of the Currency, U.S. Mint, Bureau of Engraving and Printing, Financial Management Service, Bureau of the Public Debt, Community Development Financial Institutions Fund, and Office of Thrift Supervision have taken on responsibilities related to the management of the federal government's finances or the supervision and regulation of the U.S. financial system. In contrast, law enforcement arguably has been central to the responsibilities handled by the Alcohol and Tobacco Tax and Trade Bureau, Financial Crimes Enforcement Network, and the Treasury Forfeiture Fund. With the advent of the Department of Homeland Security in 2002, Treasury's direct involvement in law enforcement has shrunk considerably. The exception to this simplified dichotomy is the Internal Revenue Service, whose main responsibilities encompass both the collection of tax revenue and the enforcement of tax laws and regulations.

The operating budget for most Treasury bureaus and offices comes largely from annual appropriations. This is the case for the IRS, FMS, Bureau of Public Debt, FinCEN, ATB, Office of the Inspector General, Treasury Inspector General for Tax Administration, Special Inspector General for the Troubled Asset Relief Program, and the Community Development Financial Institutions Fund. By contrast, funding for the Treasury Franchise Fund, the U.S. Mint, the

Bureau of Engraving and Printing, Office of the Comptroller of the Treasury, and the Office of Thrift Supervision stems from the fees they receive for the services and products they provide.

In FY2011, appropriations for the Treasury Department are distributed among 11 accounts, each of which is described briefly below.

Departmental Offices (DO): covers the salaries and other expenses of offices in the department that formulate and implement policies in the areas of domestic and international finance, terrorist financing and other financial crimes, taxation, international trade, and the domestic economy. Also provides funding for the department's financial and personnel management, procurement operations, and information and telecommunications systems.

Department-Wide Systems and Capital Investments: covers salaries and other expenses associated with the development and operation of new systems to improve the efficiency of interactions among Treasury bureaus and offices or between Treasury and other federal agencies.

Office of Inspector General (OIG): covers the salaries and other expenses related to the audits and investigations conducted by OIG staff. These evaluations are intended to promote improved efficiency and effectiveness and prevent waste, fraud, and abuse among departmental operations and programs, as well as to inform the Treasury Secretary and Congress about problems or shortcomings in those activities.

Treasury Inspector General for Tax Administration (TIGTA): covers salaries and other expenses related to the audits and investigations conducted by TIGTA staff. These evaluations are intended to promote greater efficiency and effectiveness in the administration of tax law, deter or prevent fraud and abuse in IRS programs and operations, and recommend changes in those activities to resolve problems or remedy deficiencies.

Special Inspector General for the Troubled Asset Relief Program (SIGTARP): covers salaries and other expenses related to the audits and investigations into the management and effectiveness of TARP conducted by SIGTARP staff. The office was established by the same law that created TARP: the Emergency Economic Stabilization Act (P.L. 110-343).

Financial Crimes Enforcement Network (FinCEN): covers salaries and other expenses related to the activities of FinCEN, whose main responsibility is to protect the domestic financial system from illicit uses, such as money laundering and terrorist financing. The legal basis for this role is the Bank Secrecy Act (BSA; P.L. 91-508). FinCEN administers the act by developing and implementing regulations and other guidance and working with private financial institutions and eight federal agencies to ensure that the financial sector complies with the BSA's reporting requirements.

Financial Management Service (FMS): covers salaries and other expenses related to the operations of the FMS, which is responsible for developing and implementing payment policies and procedures for federal agencies, collecting debts owed to those agencies, and providing financial accounting, reporting, and financing services for the federal government and its agents.

Alcohol and Tobacco Tax and Trade Bureau (ATB): covers salaries and other expenses related to the activities of ATB, which was established by the Homeland Security Act of 2002 (P.L. 107-296). The bureau is responsible for enforcing certain laws regarding the domestic sale and

production of alcohol and tobacco products and preventing harm to consumers by ensuring that the products they regulate comply with federal consumer safety laws.

Bureau of the Public Debt (BPD): covers salaries and other expenses related to the conduct of public debt operations and the promotion of U.S. bonds.

Community Development Financial Institutions Fund (CDFI): provides funding for the activities of the CDFI, which makes investments (in the form of loans, grants, and equity acquisitions) in community development financial institutions. These institutions include community development banks, credit unions, and venture capital funds and provide financing for affordable housing projects, small businesses, and community development projects in eligible areas. CDFI also administers the Black Enterprise Award program and the New Markets tax credit.

Internal Revenue Service (IRS): covers salaries and other expenses related to the activities of the IRS, whose main responsibilities are to administer federal tax laws and collect revenue. Two critical components of IRS operations and programs are the services it offers to taxpayers to help them understand and meet their tax obligations and the enforcement activities it uses to improve voluntary taxpayer compliance and punish those who violate the law. Some appropriated funds are used to develop or upgrade business operations and information systems, as part of an ongoing effort to improve the effectiveness of taxpayer services and enforcement activities.

Brief Summary of FY2011 Appropriations for Treasury Offices and Bureaus

In FY2011, the Treasury Department is receiving \$13.097 billion in appropriated funds, or 2.7% less than the amount enacted for FY2010. As usual, the vast share (92.5%) of the funds is being used to finance the operations of the IRS, which is receiving \$12.122 billion in FY2011, or 0.2% less than the amount enacted for FY 2010. The remaining \$975 million is distributed among Treasury's other main appropriations accounts in the following amounts: DO (which includes the Office of Terrorism and Financial Intelligence—or TFI—and the Office of Foreign Assets Control), \$306 million; department-wide systems and capital investments, \$4 million; OIG, \$30 million; TIGTA, \$152 million; SIGTARP, \$36 million; CDFI, \$227 million; FinCEN, \$111 million; FMS, \$233 million; ATB, \$101 million; and the BPD, \$175 million.

FY2012 Appropriations for Treasury Offices and Bureaus: President's Budget Request and Congressional Action

President's Budget Request

The Obama Administration is requesting \$14.040 billion (including \$600 million in recessions) in appropriations for Treasury in FY2012, or 7.2% more than the amount enacted for FY2011. Under the budget proposal, the IRS would receive \$13.284 billion, or about 95% of the total amount. The remaining \$756 million would be split among Treasury's 10 other appropriations accounts in the following amounts: DO, \$325 million; departmental systems and capital investments, \$0 million; OIG, \$30 million; TIGTA, \$158 million; SIGTARP, \$47 million; CDFI, \$227 million; FinCEN, \$84 million; FMS, \$219 million; ATB, \$98 million; and BPD, \$166 million. All the accounts except FinCEN, FMS, ATB, and BPD would be funded at or above the amounts enacted for FY2011.

Relative to FY2011, funding for the IRS would rise by \$1.162 billion, while appropriations for all other Treasury accounts would fall by \$219 million.

Treasury's budget request is intended, in part, to make further progress in accomplishing the same three "high priority performance" objectives that guided its FY2010 and FY2011 budget requests: (1) repair and reform the U.S. financial system, (2) increase voluntary tax compliance, and (3) significantly increase the volume of paperless transactions with the public.⁸ The ways in which the proposed budget addresses each objective are examined below.

Repair and Reform the Financial System

According to Treasury budget documents, the FY2012 budget proposal would allow the Department to take a variety of steps aimed at encouraging the repair and reform of the financial system. Several deserve brief mention here. One step is the implementation of a few key provisions of the financial regulatory reform bill enacted in July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which is widely known as the Dodd-Frank Act. Under the act, Treasury is responsible for managing the creation of two new independent regulatory agencies (the Consumer Financial Protection Board and the Financial Stability Oversight Council) and is required to create two new offices (the Office of Financial Research and the Federal Insurance Office). Another step involves administering two new programs (the Small Business Lending Fund and the State Small Business Credit Initiative) established by the Small Business Jobs Act of 2010. They are intended to increase the availability of credit to small businesses. In addition, repair and reform of the financial system remains a primary objective of Treasury's continuing efforts to ensure the viability of government-sponsored enterprises such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, promote economic and community development through the CDFI, and manage the TARP program.

These initiatives provide part of the rationale for the Administration's request for an additional \$20 million in appropriations for DO and an additional \$11 million in appropriations for SIGTARP. Of the requested increase in DO funding, \$5.5 million would be used to acquire the expertise needed to carry out Treasury's responsibilities under the Dodd-Frank Act.

Improve Voluntary Tax Compliance

Improving taxpayer compliance remains a top priority for the Treasury Department in FY2012. As has been the case in recent years, the main concern is the size of the gross federal tax gap, which is the difference between taxes owed and taxes paid in full and on time, before collection actions are taken. This gap reached an estimated \$345 billion in 2001, the most recent year for which an estimate is available. Recent sharp rises in the federal budget deficit, coupled with a strong congressional interest in finding additional sources of revenue as part of an effort to eliminate projected budget deficits and shrink the burgeoning federal debt, have intensified the pressure on the Department to do more to collect delinquent taxes.

⁸ See executive summary of Treasury budget request, p. 2, available at http://www.treasury.gov/about/budget-performance/budget-in-brief/Documents/FY2012_BIB_Complete_508.pdf.

The budget request would improve voluntary tax compliance through the enactment of several changes in the tax code and targeted investments in IRS enforcement activities, taxpayer service, and business systems modernization. These initiatives are intended to boost tax collections by strengthening tax administration, improving business compliance, and expanding information reporting, “with minimum additional burden on taxpayers.” Treasury officials estimate that the initiatives could increase tax collection by more than \$10 billion over the next 10 years.⁹ Of the requested \$1.162 billion increase in IRS appropriations for FY2012, \$795 million (or about 68% of the total) would be used for new enforcement initiatives.

Significantly Increase Paperless Transactions with the Public

Treasury’s budget request also assigns a high priority to moving the Department closer to the goal of the paperless processing of all transactions, including payments and collections. Starting in calendar year 2012, individuals receiving Social Security, Supplemental Security Income, Veterans Administration, Railroad Retirement Board, Office of Personnel Management, and Black Lung benefits will be required to receive the payments electronically, through either direct deposit into a bank account or a Treasury Direct Express debit card. Moreover, Treasury will no longer issue paper savings bonds after December 31, 2011. Once the goal of the complete electronic processing of transactions is reached, Treasury expects to save \$525 million and 12 million pounds of paper over the following five years.¹⁰

While the FY2012 budget request seems to designate no funds for new initiatives to accelerate the move toward complete paperless transactions, funding remains available for two initiatives that are supposed to commence in FY2011. Treasury’s budget request for FY2011 included \$22 million in added funding for departmental systems and capital investments. The funds were to be used to create two new programs: Enterprise Content Management (ECM) and the Financial Innovation and Transformation (FIT).¹¹ ECM is intended to establish a common approach among Treasury offices and bureaus to modernizing their “document-based business processes.” FIT seeks to develop and expand shared government-wide solutions to issues in financial management, such as invoice processing, cash collections, and interagency agreements.

Other Noteworthy Initiatives

The Treasury Department’s budget request for FY2012 would do much more than fund activities aimed at achieving its three strategic goals. A substantial share of the requested funding is intended to enable Treasury’s bureaus to meet their statutory responsibilities and core missions even when budget planning is difficult. Of particular concern are satisfying conflicting demands to cut costs and improve or enhance services at the same time. The budget request addresses this concern in two ways: by providing the required services at a reduced cost in some cases, and by meeting a perceived need for expanded operations through an increase in funding in other cases. Several notable examples of each approach can be found in the budget request.

For instance, the budget request would allow the Treasury Department to reap about \$227 million in savings from efficiency improvements and program reductions in FY2012, relative to outlays

⁹ Treasury Department, *Budget in Brief*, p. 4.

¹⁰ *Ibid.*, p. 4.

¹¹ *Ibid.*, p. 17.

in FY2011.¹² Planned process improvements at the IRS could yield \$190 million in savings; \$10.1 million in savings could come from consolidating the administrative and data centers for the FMS; a proposed consolidation of information technology resources at the BPD could provide \$6.6 million in savings; consolidating the certification and accreditation operations and data center at TIGTA could produce \$2.6 million in savings; \$2.1 million could be saved through staffing reductions and improved efficiency in the use of information technology at FinCEN; and planned changes in the departmental offices could provide \$15.4 million in savings.

The FY2012 budget request also calls for \$92.6 million in appropriations for Treasury's Office of Terrorism and Financial Intelligence (TFI), or \$7.4 million less than the amount specified for that purpose in FY2011. TFI develops and implements strategies to counter terrorist financing, money laundering, and other financial crimes. It also imposes and enforces trade and financial sanctions on designated countries (e.g., Burma, Iran, and North Korea) in support of foreign policy goals, such as arresting the proliferation of nuclear weapons and combating Islamic terrorism. The proposed reduction in funding for TFI may have little impact on its ability to perform its functions, as the reduction would stem from savings from a cutback in staff travel, the elimination of overseas support for its Brussels liaison, and increased efficiency in the procurement of contracts, information technology licenses, subscriptions, and supplies.¹³

Appropriations for improving taxpayer services at the IRS would rise by \$114 million under the budget request for FY2012. About \$44 million of that amount would be used to raise the level of customer service provided through the agency's toll-free telephone services, while \$33 million would be invested in a multi-year effort to upgrade the IRS.gov website so it can handle expected growth in taxpayer demand for electronic tax information.¹⁴

In addition, the budget request would permanently cancel (or withdraw) \$600 million and transfer of \$30 million to FinCEN from the unobligated balances of the Treasury Forfeiture Fund (TFF). The fund serves as the receipt account for the deposit of assets held by criminal enterprises that have been seized by five federal agencies, including the IRS and the Immigration and Customs Enforcement Bureau at the Department of Homeland Security. Funds in the account normally are used to sustain and improve the capabilities of those agencies to conduct criminal investigations, seizures, and forfeitures, and to cover expenses related to those activities. Still, money may be withdrawn from the TFF to pay for other law enforcement activities undertaken by member bureaus, with the approval of the Secretary of the Treasury. Congress must be notified before such a withdrawal can be made.

The enactment of several tax bills in 2009 and 2010 has placed new demands on the administrative capabilities of the IRS. One such law is proving to be especially challenging: the Patient Protection and Affordable Care Act of 2010 (PPACA; P.L. 111-148). According to the IRS, the act contains more than 40 provisions that modify different aspects of federal tax law between 2010 and 2018.¹⁵ Some of the provisions needed to be implemented during the 2010 tax year, including a small business tax credit for health insurance, an expanded adoption credit, and a credit for qualified therapeutic discoveries. In 2011, the IRS is to take on the added

¹² Ibid., p. 6.

¹³ Ibid., p. 13.

¹⁴ Ibid., p. 66.

¹⁵ Internal Revenue Service, *FY 2012 Budget Request: Congressional Budget Submission* (Washington: Feb. 14, 2011), p. IRS-6. Available at http://www.treasury.gov/about/budget-performance/Documents/CJ_FY2012_IRS_508.pdf.

responsibilities of administering a 10% excise tax on indoor tanning services, an increased penalty for unqualified withdrawals from health savings accounts (HSAs), and a new definition of medical expenses that qualify for flexible spending accounts and HSAs.

To implement and administer the tax provisions in the act, the IRS has determined that additional resources are needed to construct new information technology systems; change existing tax processing systems; expand taxpayer services and outreach; enhance notices, collections, and case management systems to address and resolve taxpayer problems in a timely manner; and conduct properly focused examinations. Funding for these resources is spread mainly among three appropriations accounts: taxpayer services, enforcement, and operations support.

In FY2010 and FY2011, the IRS is obtaining funds for implementing PPACA provisions through transfers from a fund (the Health Insurance Reform Implementation Fund) managed by the Department of Health and Human Services; a total of \$179 million had been transferred through late July 2011.¹⁶ The IRS reportedly has decided that it will not draw upon money in the Fund after FY2011.¹⁷ For FY2012, the IRS is asking Congress for \$473 million in appropriations for PPACA implementation. Most of that amount (\$391 million) would go into the budget for operations support and be used for the acquisition and development of information technology and infrastructure; about \$51 million would come from funds appropriated for enforcement; the remaining \$32 million would come out of funds appropriated for taxpayer services.¹⁸

Noteworthy Assessments of the Administration's Budget Request for the IRS in FY2012

IRS Oversight Board

The IRS Oversight Board was established by the IRS Reform and Restructuring Act of 1998 mainly to oversee the IRS's performance in administering the tax laws, managing its operations, and pursuing its strategic goals. Section 7802(d) of the federal tax code requires the Board to review and approve the annual budget proposal submitted by the IRS to the Treasury Department. A critical consideration in the assessment is the extent to which the proposal supports the annual and long-term strategic objectives of the agency. The same tax code provision requires the President to submit the Board's budget recommendation to Congress together with his budget request for the IRS.

For FY2012, the Board recommends that the IRS receive \$13.342 billion in appropriated funds, or \$1.220 billion more than the amount enacted for FY2011, nearly \$59 million more than the budget request for FY2012, and \$1.826 billion more than the amount recommended in the FY2012 appropriations bill (H.R. 2434) reported by the House Appropriations Committee on July 7, 2011.¹⁹ In the Board's view, its budget recommendation is the "minimum imperative for strong

¹⁶ Figure obtained through an email exchange with Floyd Williams of the IRS's congressional liaison office on July 26, 2011.

¹⁷ U.S. Government Accountability Office, *IRS Budget 2012: Extending Systematic Reviews of Spending Could Identify More Savings Over Time*, GAO-11-547 (Washington: April 2011), p. 36.

¹⁸ *Ibid.*, p. 37.

¹⁹ IRS Oversight Board, *FY2012 IRS Budget Recommendation: Special Report* (Washington: Mar. 2011), p. 3. Available at <http://www.treasury.gov/irsob/reports/2011/IRSOB%20FY12%20BUDGET%20REPORT.pdf>.

and responsible tax administration.” Of the recommended amount, \$2.35 billion would go to taxpayer services, \$5.97 billion to enforcement, \$4.67 billion to operations support, \$334 million to the BSM, and \$18 million to the administration of the health insurance tax credit. These amounts are mostly consistent with the budget request. The primary difference is that the Board favors putting more resources into upgrading IRS security systems.

Among its budget recommendations, the Board assigns the top priority to boosting funding for the BSM. This includes any funds in the operations support account used for the development of the information technology infrastructure needed to support the maintenance of BSM elements that already have been implemented. In the Board’s view, increased investment in modernizing the core taxpayer account system for individuals is vital to laying the technological foundation for future advances in IRS operational efficiency, taxpayer service, and tax law enforcement. Nearly 60% (or \$157 million) of the recommended BSM budget would go into the Customer Account Data Engine 2 (CADE 2) program.²⁰ At the current pace of progress, CADE 2 is expected to allow for the daily processing of individual taxpayer accounts beginning with the 2012 filing season. When fully operational, the program will have several tangible benefits for taxpayers, including more timely account balance information and faster refunds to the tens of millions of taxpayers who are due a refund each tax year.

Achieving an 80% level of service for IRS’s toll-free telephone lines during FY2012 is the Board’s second-highest priority. The level of service, or LOS, measures the percentage of calls that go through to an IRS customer service representative out of all incoming calls over a period. In FY2008, the LOS reached 53%, but it has been rising ever since and stands at 74% according to the IRS, in FY2011. In the Board’s estimation, appropriations for taxpayer service should be increased by at least \$23.3 million from the amount enacted for FY2011 in order to reach that level of service. Tens of millions of taxpayers still depend on the toll-free telephone service to understand their tax obligations and their eligibility for tax credits and other tax preferences, and to resolve their account balances. Recent changes to the tax laws have boosted demand for the service, a trend that is likely to continue in the next few years, as the IRS begins to implement certain PPACA provisions.

In addition, the Board agrees with the budget request’s estimate that the IRS will require additional funding of \$473 million in FY2012 and a staff of 1,269 full-time equivalent employees to implement PPACA provisions. About 83% of the funds would come from the operations support account.²¹

Congressional Action

House

On July 7, 2011, the House Appropriations Committee reported a bill (H.R. 2434) to fund financial services and general government accounts in FY2012. H.R. 2434 would provide \$12.168 billion in appropriations (including \$630 in rescissions) for the Treasury Department, or \$929 million less than the amount enacted for FY2011 and \$1.872 billion less than the amount requested by the Obama Administration. Details on recommended funding for each account and

²⁰ Ibid., p. 26.

²¹ Ibid., p. 4.

selected issues addressed by the House committee in its report (H.Rept. 112-136) on the bill follow.

Departmental Offices

In its report on H.R. 2434, the House committee recommends that DO receive \$186 million in appropriated funds in FY2012, or \$120 million less than the amount enacted for FY2011 and \$139 million less than the budget request. The report specifies that \$7 million of those funds be available until September 30, 2013, for information technology and use by the Office of Critical Infrastructure Protection and Compliance Policy.²²

The House committee also notes that it is creating a separate appropriations account for the Office of Terrorism and Financial Intelligence from the DO account beginning in FY2012. Though the report gives no explanation for the change, a likely motive is to give the appropriations committees more control over how much is spent on TFI operations and how those funds are used.

On the topic of terrorist financing, the House committee directs the Treasury Secretary to submit a report (with no specified deadline) to the House and Senate Appropriations Committees, the House Financial Services Committee, and the Senate Banking Committee on the “potential risks to U.S. financial markets and economy posed by economic warfare and financial terrorism.”

Office of Terrorism and Financial Intelligence

The House committee recommends an appropriation of \$100 million for TFI in FY2012, or the same amount of appropriated funds that is set aside for the Office in FY2011 and \$7.4 million more than the President’s budget request.²³

In its report on H.R. 2434, the House committee directs the Office of Foreign Assets Control (OFAC) to submit to the House committee a report (with no specified deadline) on the current number of pending applications seeking licenses for travel to Cuba related to educational exchanges not involving academic study, the number of these licenses issued to date, and OFAC’s plans for speeding up review of applications in the future.

Office of Inspector General

The House committee recommends that the OIG receive \$30 million in appropriations in FY2012, or the same amount that was enacted for FY2011 and \$214,000 less than the amount requested by the Treasury Department.²⁴

Treasury Inspector General for Tax Administration

The House committee recommends an appropriation of \$152 million to TIGTA in FY2012, or the same amount that was enacted for FY2011 and \$6 million less than the budget request.

²² U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2012*, report to accompany H.R. 2434, 112th Cong., 1st sess., H.Rept. 112-136 (Washington: GPO, 2011), p. 5.

²³ Ibid., p. 7.

²⁴ Ibid., p. 9.

In its report on H.R. 2434, the House committee directs TIGTA to submit a report to the House and Senate Appropriations Committees no later than 60 days after the enactment of the bill examining the extent to which IRS employees use tax preparation software or hire tax preparation professionals, how much they pay for those services, and how those fees compare to the fees charged the general public for the same services.

Special Inspector General for the Troubled Asset Relief Program

The House committee recommends that SIGTARP receive \$42 million in appropriated funds for FY2012, or \$5.6 million more than the amount enacted for FY2011 but \$5.6 million less than the budget request. According to the report on H.R. 2434, initial funding for the program was mandated in the legislation creating TARP (P.L. 110-343), but the funds were limited and decreased over time. Discretionary appropriations have increasingly filled the gap between those mandatory appropriations and the operating expenses of the program.²⁵

Financial Crimes Enforcement Network

The House committee recommends an appropriation of \$111 million for FinCEN in FY2012, or the same amount that was enacted for FY2011 and \$26.5 million more than the budget request. Of that amount, \$20 million is available until September 30, 2014.

In its report on the bill, the House committee says that the recommended funding is intended to continue the agency's multi-year effort to modernize its information systems and to ensure that FinCEN's information is readily accessible to state and local law enforcement personnel, field representative, and the intelligence community.²⁶ In its budget request, the Treasury Department proposes to reduce funding for making that information more accessible by \$3 million.

Treasury Forfeiture Fund

The House committee recommends a rescission of \$630 million of unobligated balances in the Fund, or \$230 million more than the amount that was enacted for FY2011 and \$30 million more than the budget request.

In its report on H.R. 2434, the House committee points out that the size of the Fund has grown rapidly in recent years because of the "exceptionally large" seizures of property and assets from criminal organizations.²⁷

Financial Management Service

The House committee recommends \$217 million in appropriations for FMS in FY2012, or \$16 million less than the amount enacted for FY2011 and \$2 million less than the budget request. Of that amount, \$4 million would be available until September 30, 2014, for upgrading the agency's information systems.

²⁵ Ibid., p. 10.

²⁶ Ibid., p. 11.

²⁷ Ibid., p. 12.

According to the report on H.R. 2434, funding for FMS can be reduced largely because of the savings in operating costs that FMS expects to realize in FY2012. These savings include greater use of paperless transactions, “space and data consolidation,” and a “reevaluation of new systems.”²⁸

Alcohol and Tobacco Tax and Trade Bureau

The House committee recommends that ATB receive \$97 million in appropriated funds in FY2012, or \$4 million less than the amount that was enacted for FY2011 and \$979,000 less than the budget request. According to the report on H.R. 2434, the reduction in funding should not affect the agency’s level of service, as recent efforts by ATB to simplify reporting requirements and reduce overhead expenses have lowered its operating costs.²⁹

Bureau of the Public Debt

The House committee recommends an appropriation of \$172 million for the BPD in FY2012, or \$13 million less than the amount enacted for FY2011 and about \$2 million less than the budget request. Of that amount, \$10 million would be available until September 30, 2013. H.R. 2434 contains language that reduces total appropriations by up to \$8 million as “definitive security issue fees and Treasury Direct Investor Account Maintenance fees” are collected.³⁰

Planned cost savings in FY2012 make it possible to reduce funding without affecting the level of service. The savings include greater use of paperless transactions, consolidating the agency’s data center, and “decommissioning its legacy information systems.”

Community Development Financial Institutions Fund

The House committee recommends that CDFI receive \$183 million in appropriated funds in FY2012, or \$43.5 million less than the amount enacted for FY2011 and \$44 million less than the budget request. Of that amount, \$12 million would be set aside for grants, loans, technical assistance, and job training for native American, Alaskan, and Hawaiian communities. No funds would be provided for two current programs: Bank on USA and the Health Food Financing Initiative (HFFI).³¹

In its report on H.R. 2434, the House committee directs the Government Accountability Office to conduct a study by April 2012 of the extent to which CDFI technical and financial assistance and New Markets Tax Credits (NMTC) are concentrated in urban areas and the contributions to that concentration of the design, administration, and history of the CDFI and the NMTC. The report also directs the Treasury Department to report to the House committee by May 2012 on the operation and effectiveness of the HFFI, including the criteria and processes used to make grant awards.

²⁸ Ibid., p. 12.

²⁹ Ibid., p. 13.

³⁰ Ibid., p. 13.

³¹ Ibid., p. 15.

Internal Revenue Service

The House committee recommends that the IRS receive \$11.516 billion in appropriated funds for FY2012, or \$606 million less than the amount enacted for FY2011 and \$1.768 billion less than the budget request. Funding for the IRS is spread among five accounts: taxpayer services, enforcement, operations support, BSM, and administration of the health insurance tax credit. Recommended appropriations for each are discussed here.

Of the \$11.516 billion in recommended appropriations for the IRS, \$2.166 billion would be used for taxpayer services. This amount is \$108.5 million less than the amount enacted for FY2011 and \$179 million less than the budget request. Several taxpayer service grant programs are funded through this account.³² Under H.R. 2434, “not less than” \$5.1 million would be provided for the Tax Counseling for the Elderly program, \$9.5 million in grants for low-income taxpayer clinics, and \$12 million in grants for Volunteer Income Tax Assistance (VITA). These amounts match the budget request with the exception of VITA grants, which would receive \$4 million less. The House committee further recommends that funding for the administration of the health insurance tax credit established by the Trade Act of 2002 (P.L. 107-210) be folded into appropriations for taxpayer services and that “not less than” \$15.5 million be used for that purpose in FY2012. In addition, the House committee expresses approval of the IRS’s decision not to develop a pre-filled or simple tax return and makes it clear that it expects the IRS to seek specific authority and appropriations from Congress before embarking on the development of a simple tax return pilot program.³³

As reported by the House committee, H.R. 2434 would provide \$5.227 billion in appropriations for tax law enforcement in FY2012, or \$266 million less than the amount enacted for FY2011 and \$740 million less than the budget request. Of that amount, at least \$60 million would be used to support IRS’s involvement in the Interagency Crime and Drug Enforcement program. In its report on the bill, the House committee expresses concern over the agency’s recent record of improper payments to taxpayers while administering the first-time home buyer tax credit and the earned income tax credit. As a step in the direction of reducing those erroneous payments, the House committee directs the IRS to submit a report within 180 days of the enactment of the bill on steps it has taken in the past year to reduce improper payments, and the steps it is planning to take in the coming year to prevent improper payments related to all refundable tax credits. Another matter of concern to the House committee is IRS’s role in the implementation of the Patient Protection and Affordable Care Act of 2010 (PPACA). During FY2010 and FY2011, the agency has received transfers totaling over \$90 million from the Department of Health and Human Services to implement certain provisions of the act. The House committee prohibits additional transfers. It also prohibits the IRS from using appropriated funds in FY2012 to verify that taxpayers have health insurance and to impose a penalty on those who lack coverage.³⁴ These prohibitions are included in the bill as Sections 107 and 108 of the administrative provisions for the IRS.

The House committee recommends that the IRS receive \$3.793 billion for operations support in FY2012, or \$282 million less than the amount enacted in FY2011 and \$827 million less than the budget request. At least \$2 million of that amount is intended for the operating expenses of the

³² *Ibid.*, p. 15.

³³ *Ibid.*, p. 16.

³⁴ *Ibid.*, p. 17.

IRS Oversight Board. In its report on H.R. 2434, the House committee expresses concern about the security of IRS's information systems, especially their vulnerability to identity theft by hackers trying to steal tax refunds.³⁵ To address this concern, it directs the IRS to submit a report within 30 days of the enactment of the bill on the number of taxpayers who have had their tax return rejected because someone else improperly used their Social Security numbers to commit tax fraud. The report should include such details as the average time taken to resolve such cases and provide a refund, when one is due, and the number of cases that were not resolved within 45 days.

H.R. 2434 would provide \$330 million in appropriations for the BSM program in FY2012, or \$67 million more than the amount enacted for FY2011 but \$4 million less than the budget request.³⁶ As has been the case since the start of the program, the release of those funds is contingent on approval by the House and Senate Appropriations Committees of expenditure plans that have been reviewed the GAO. In its report on the bill, the House committee notes the progress the IRS has made in recent years in developing a new customer account data engine known as CADE 2 and the likely productivity gains among IRS staff that it will make possible. When fully operational, the system would make it possible to store up to 140 million individual taxpayer account records and update them daily, if necessary.

Other Issues

In its report on the bill, the House committee expressed concern about two issues related to the Dodd-Frank Act that do not involve direct appropriations under current law.

One issue is funding in FY2012 for the operations of the Office of Financial Research (OFR), which was created by the Dodd-Frank Act to collect financial data and analyze financial market activities in support of the Financial Stability Oversight Council, which was also created by the act. While OFR's start-up costs have been covered by transfers of funds from the Federal Reserve, the Office has the authority to cover its operating expenses after it begins to operate on July 21, 2011, through assessments on bank holding companies with total consolidated assets of \$50 billion or more and on non-bank financial companies supervised by the Board of Governors of the Federal Reserve.

The House committee holds the view that the OFR should not have unlimited power to charge fees and obligate funds for administrative costs. Thus, language is included in H.R. 2434 that restricts OFR's obligations to \$64.5 million in FY2012.³⁷

A second issue concerns funding in FY2012 for the newly operational Consumer Financial Protection Bureau (CFPB) established by the Dodd-Frank Act. Under Section 1017 of the act, the Board receives funds for its start-up and operating costs through transfers from the Federal Reserve. These transfers are capped at 10% of the total operating expenses of the Federal Reserve System in FY2011 (or \$404 million), 11% of such expenses in FY2012 (or \$445 million), and 12% of such expenses in FY2013 and thereafter (or \$485 million). The dollar amounts in FY2013 and thereafter are adjusted for any increases in the employment cost index for total compensation by state and local government workers during the 12 months ending on September 30 of the year

³⁵ Ibid., p. 18.

³⁶ Ibid., p. 19.

³⁷ Ibid., p. 21.

before the transfer; the index is computed quarterly by the U.S. Department of Labor. Moreover, funding for the CFPB is not subject to review by the House and Senate Committees on Appropriations. Between early July 2010 and early March 2011, the CFPB requested three fund transfers totaling about \$60 million from the Federal Reserve. In its budget request for FY2012, the Treasury Department estimates that the Bureau's operating budget will amount to \$143 million in FY2011 and \$329 million in FY2012, as it works to phase in key functions and construct the necessary technological infrastructure.³⁸

Expressing disappointment that the Bureau has not been not more "forthcoming" about what it plans to do, how it proposes to accomplish those objectives, and how much it will cost to do so, the House committee recommends that fund transfers from the Federal Reserve and the Bureau's authority to obligate funds be limited to \$200 million in FY2012.³⁹ In addition, to gain more control over the Bureau's budget and operations in the future, the House committee has added a provision to H.R. 2434 that would subject funding for the CFPB to the annual appropriations process beginning in FY2013. The House committee also directs the Bureau to submit an operating plan to the House committee within 60 days of enactment of the bill that discusses how the CFPB plans to allocate resources by "type of financial institution, financial product and service, and consumer."

A third issue, which is unrelated to the Dodd-Frank Act, deals with funding for Treasury's Office of Financial Stability (OFS), which administers the Troubled Assets Relief Program (TARP). Under the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), which created OFS and TARP, no limits are placed on appropriations for the Office's administrative expenses. Since the House committee holds the view that no federal agency should have "unlimited spending authority for administrative expenses," it recommends that OFS's authority to obligate funds be limited to \$200 million in FY2012.⁴⁰ According to the report on H.R. 2434, this amount should be sufficient to meet the Office's operating costs, as the bill would also terminate a program that OFS has been administering: the Home Affordable Modification Program.

Senate

The Senate Appropriations Committee recommends \$12.237 billion for Treasury in FY2012. This amount is \$859 million less than the amount enacted for FY2011 and \$1.801 billion less than the President's budget request. In the case of the President's budget request, 90% of the difference stems from a lower recommendation for IRS appropriations. Details on recommended funding for each Treasury account and certain issues addressed in the committee's report follow.

Departmental Offices

The Senate committee recommends that DO receive \$306 million in appropriations in FY2012, or the same amount that was enacted for FY2011 and \$18.5 million less than the President's budget request. In its report on S. 1573, the Senate committee endorses a proposal included in the request that two offices funded through the account be renamed "international affairs and economic

³⁸ See written testimony of Elizabeth Warren, the Special Advisor to the Treasury Secretary for the Consumer Financial Protection Bureau, at a hearing held by the House Subcommittee on Financial Institutions and Consumer Credit on Mar. 16, 2011.

³⁹ House Committee on Appropriations, report to accompany H.R. 2434, p. 8.

⁴⁰ *Ibid.*, p. 22.

policy” and “domestic finance and tax policy,” respectively.⁴¹ Expressing concern about the continuing rash of home mortgage foreclosures, the Senate committee directs the department to focus its resources on finding more effective ways to convince mortgage servicers to grant reductions in loan principal to homeowners at risk of foreclosure so they can afford to remain in their homes, and to make better use of programs like Home Affordable Modification and the Hardest Hit Fund to lower foreclosure rates among homes financed by Fannie Mae and Freddie Mac. The Senate committee does not recommend that funding for the Office of Terrorism and Financial Intelligence be treated as an appropriations account separate from DO, unlike the House-passed version of H.R. 2434. At the same time, the Senate committee directs the department to fully implement all sanctions and divestment measures imposed on North Korea, Belarus, Burma, Iran, Sudan, and Zimbabwe, and to notify the Senate committee if a lack of resources is hampering the department’s ability to do so. To bolster its oversight of the department’s management of capital investments, the Senate committee directs it to prepare an annual report on the steps it is taking to improve its handling of those investments and submit it to the House and Senate appropriations committees within 30 days of the release of the President’s annual budget request. The Senate committee also directs the department, in consultation with the Department of Homeland Security, to submit a written report within 30 days of the enactment of the bill on the status of a proposed rule to redefine stored value cards as monetary instruments for the purpose of international transport reporting.

Office of Inspector General

The Senate committee recommends that OIG receive \$30 million in appropriations in FY2012, or the same amount that was enacted for FY2011 and \$214,000 less than the budget request. In its report on S. 1573, the Senate committee directs the office to undertake, when feasible, an audit of the Bank Secrecy Act Information Technology Modernization project being managed by FinCEN; it also requires OIG to submit a written report to the Senate committee by March 31, 2012 (and semi-annually thereafter), in the extent to which contractors for the project are adhering to its budget and production schedule.⁴² The committee also urges the office to perform audits, as its resources permit, of Treasury’s activities to thwart money laundering and terrorist financing, its management of capital investments, and the investment activities of the CDFI.

Treasury Inspector General for Tax Administration

The Senate committee recommends that TIGTA receive \$152 million in appropriations for FY2012, or the same amount that was enacted for FY2011 and \$6 million less than the budget request. In its report on S. 1573, the committee commends the office for its reviews of IRS’s BSM program and other technology-improvement projects. At the same time, it urges TIGTA to carefully monitor the IRS’s efforts to implement 56 tax provisions from the American Recovery and Reinvestment Act of 2009, as well as the 40 tax provisions in the Patient Protection and Affordable Care Act of 2010 (PPACA). In the case of the latter law, the Senate committee expresses an interest in having TIGTA maintain oversight of IRS’s implementation and administration of new requirements concerning taxpayer education and outreach, new tax credits, and the development of an information technology base to support the PPACA initiatives.⁴³

⁴¹ U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2012*, report to accompany S. 1573, 112th Cong., 1st sess. (Washington: GPO, 2011), p. 9.

⁴² *Ibid.*, p. 13.

⁴³ *Ibid.*, p. 15.

Provided resources and time allow, the Senate committee would also like TIGTA to undertake projects in FY2012 that evaluate the newly created Return Preparer Program, examine schemes like “phishing” that are intended to lure taxpayers into revealing personal information that could be used to steal their identity and harm tax administration, and identify the best practices and safeguards for reducing threats to the security of IRS employees and its databases and facilities.

Special Inspector General for the Troubled Asset Relief Program

Commending SIGTARP for the “quality of its audits and investigations” and the written material it has provided to the general public and Congress, the Senate committee recommends that the office receive \$42 million in appropriations for FY2012, or \$5.5 million above the amount enacted for FY2011, but \$5.6 million below the budget request. According to the report on S. 1573, a portion of FY2012 spending could be covered by funds carried over from the current fiscal year.⁴⁴

Financial Crimes Enforcement Network

The Senate committee recommends that FinCEN receive \$111 million in appropriations in FY2012, or the same amount that was enacted for FY2011 and \$26.5 million above the budget request. Acting on a request by Treasury, the Senate committee turns down a proposal to fund part of FinCEN’s budget in FY2012 through a transfer of funds from the Treasury Forfeiture Fund. As a result, the increase in appropriations relative to the budget request reflects the Senate committee’s view that the entire FinCEN budget be funded from the account designated for FinCEN salaries and expenses. In addition, the Senate committee rejects a proposal in the budget request to cut \$2.3 million from the office’s funding by reducing access to BSA information by state and local law enforcement agencies. In its report on S. 1573, the Senate committee defends the rejection on the grounds that it makes no sense to restrict the flow of data that “is a critical tool for investigating serious financial crimes, including money laundering, mortgage fraud, drug trafficking, and terrorist financing” to those authorities.⁴⁵ The Senate committee also expresses support for FinCEN’s efforts to modernize the information technology infrastructure for collecting and analyzing BSA data. In the Senate committee’s view, the “previous infrastructure is outdated and limits the capabilities of (these) users.” FinCEN is directed to continue to submit semi-annual reports to the Senate committee on the status of the modernization project; the reports should address “milestones planned and achieved, progress on cost and schedule, management of contractor oversight, strategies to involve stakeholders, and acquisition management efforts.”

Treasury Forfeiture Fund

The Senate committee recommends a rescission of \$750 million of unobligated balances in the fund for FY2012.

Financial Management Service

The Senate committee recommends that FMS receive \$218 million in appropriations for FY2012, or \$15 million less than the amount enacted for FY2011 and \$1 million less than the budget

⁴⁴ Ibid., p. 15.

⁴⁵ Ibid., p. 16.

request. In making such a recommendation, the Senate committee notes that the bureau can expect to have at its disposal an estimated \$97 million in FY2012 from the fees it charges agencies for its debt collection services.⁴⁶ Under Section 111 of S. 1573, FMS is given the authority to transfer funds from the salaries and expenses account to the Debt Collection Fund to cover the costs of debt collection. Those funds should be reimbursed from the amount of debt collected by FMS.

Alcohol and Tobacco Tax and Trade Bureau

The Senate committee recommends that TTB receive \$100 million in appropriations for FY2012, or \$920,000 less than the amount enacted for FY2011 and \$2 million more than the budget request. This amount includes \$2 million for the cost of hiring special law enforcement agents to combat tobacco smuggling and other criminal activities within the jurisdiction of TTB.

Bureau of the Public Debt

For FY2012, the Senate committee recommends appropriations of \$166 million for BPD, or \$9 million below the amount enacted for FY2011 and the same amount as the budget request.

Community Development Financial Institutions Fund

The Senate committee recommends \$200 million in appropriations for the CDFI in FY2012, or \$26.5 million less than the amount enacted for FY2011 and \$27 million below the budget request. Despite the recommended reduction in funding, the Senate committee expresses support for the basic aims of the fund, especially its role in expanding private investment in community development projects, such as affordable housing, community centers, and increases in lending to small firms. Of the \$200 million in funding, \$36 million would be used for the Bank on USA program, which promotes improved access to financial services and consumer credit for lower-income households; the Senate committee directs CDFI to submit a detailed spending plan for the program within 120 days of enactment of the bill.⁴⁷ Another \$22 million would be used to fund the Healthy Food Financing Initiative, which is intended to increase the supply of affordable, wholesome foods in urban and rural communities lacking access to such foods. In addition, the Senate committee recommends that \$12 million be set aside for grants, loans, and technical assistance and training programs for native American, Alaskan, and Hawaiian communities. Recognizing the difficulty of attracting private funding in the current economic environment, the Senate committee favors extending the current waiver of matching fund requirements for CDFI programs so they can continue to invest in and assist targeted communities. The requirements would be reinstated “when capital markets return to normal function.”

Internal Revenue Service

The Senate committee recommends that the IRS receive \$11.663 billion in appropriations for FY2012, or \$459 million less than the amount enacted for FY2011 and \$1.621 billion less than the budget request. In its report on S. 1573, the Senate committee directs the agency to include details on planned reorganizations, job cuts or increases, and changes to current service and

⁴⁶ Ibid., p. 18.

⁴⁷ Ibid., p. 21.

enforcement activities in the operating plan the IRS is required to submit along with its annual budget request. The plan should include comments from the IRS Oversight Board.

One IRS account provides funding for taxpayer services. The Senate committee recommends that it receive \$2.195 billion in FY2012, or \$78.5 million less than the amount enacted for FY2011 and \$150 million less than the budget request. Of the recommended funding, “not less than” \$6.1 million should be used for the tax-counseling for the elderly program, \$10 million for low-income taxpayer clinic grants, and \$12 million (over two years) for the community volunteer income tax assistance matching grant program. Another \$208 million would be used to fund the operations of the Taxpayer Advocate Service (TAS). The Senate committee deems it “imperative” that the IRS continues to staff TAS Centers in Alaska and Hawaii with collection and examination technical advisors, along with other needed staff. In addition, the Senate committee expresses concern about the ability of the agency to handle the added demands placed on its workload by PPACA without compromising the quality and effectiveness of its service to taxpayers. Reflecting the continuing controversy over the constitutionality of the health insurance mandates in the act, the Senate committee directs the IRS to identify in its budget request and operating plan for FY2013 any proposed increases in spending to implement the health care mandates in the law. It also directs the IRS to submit to the Senate committee within 30 days of the enactment of the bill a report addressing the amount and use of funds that the Department of Health and Human Services has transferred to the IRS in order to implement the PPACA provisions, as well as the provisions in the Health Care and Education Reconciliation Act of 2010 for which it is responsible.

The largest IRS account covers enforcement activities. For FY2012, the Senate committee recommends that the IRS receive \$5.229 billion in appropriations for such activities, or \$264 million less than the amount enacted for FY2011 and \$738 million less than the budget request. Of the recommended funding, “not less than” \$60 million would be transferred to the Interagency Crime and Drug Enforcement program. In its report on S. 1573, the Senate committee expresses support for current initiatives by the IRS to combat offshore tax evasion by companies and individuals, and to improve income reporting compliance through increased audits of non-corporate (or passthrough) business and high-income individual tax returns.⁴⁸ The report also draws attention to two specific compliance issues that may result in substantial losses of revenue. One concerns a series of recent TIGTA reports examining “fraudulent and erroneous payments in the First-Time Homebuyer and Residential Energy tax credit programs.” The Senate committee directs the IRS to increase its scrutiny of questionable claims for these and other credits. A second issue is the misclassification of workers as independent contractors. Such an error usually leads to the underreporting and underpayment of employment and payroll taxes by employers and workers. To get a better understanding of the extent of the problem, the IRS is undertaking a three-year study of worker classification and other employment tax issues. Underscoring its concern about the revenue effects from the misclassification of workers, the Senate committee urges the IRS to maintain adequate staffing in a program (SS-8) designed to assist employers in determining a worker’s employment tax status. On the matter of collecting overdue individual tax debt, the Senate committee extends a ban on using appropriated funds to administer a debt collection program involving the use of private debt collectors. (See Section 105 of the report.) The ban was first imposed on FY2010 appropriations and was intended to enforce a decision announced by the IRS in March 2009 to terminate a controversial private tax debt collection program that started three years earlier.⁴⁹

⁴⁸ Ibid., p. 27.

⁴⁹ Ibid., p. 31.

Operations Support

For FY2012, the Senate committee recommends that the IRS receive \$3.893 billion for operations support, or \$182.5 million below the amount enacted for FY2011 and \$727 million less than the budget request. Several stipulations apply to the use of these funds. Up to \$250 million would be available for information technology support through the end of FY2013. Another \$1 million would be available for research through the end of FY2014, and not less than \$2 million would be used to fund the activities of the IRS Oversight Board. In its report on S. 1573, the Senate committee expressed some concerns about IRS's management of its non-BSM information technology projects. Of particular concern are the classification of investment projects, oversight, risk management, contingency planning, and contractor performance and accountability.⁵⁰ As a result, the Senate committee directs the IRS to include in its FY2013 budget request a multi-year funding plan within the Operations Support account for upgrading and modernizing the agency's aging information technology infrastructure. In addition, the IRS must include in the budget justification documents for FY2013 an up-to-date cost and performance schedule for all major information systems funded through the account.

Business Systems Modernization

A separate account is maintained for funding for the BSM. The Senate committee recommends that the IRS receive \$330 million for the program in FY2012, or \$69 million more than the amount enacted for FY2011 and \$3.4 million below the budget request. To augment these funds, the Senate committee encourages the agency to draw upon user fees collected by the agency from services it provides. In the Senate committee's view, BSM is the IRS's "highest management and administrative priority." Completion of the new core taxpayer account database in time for the 2012 filing season would allow for daily processing of taxpayer accounts, leading to faster direct deposit of refunds for electronic filers, quicker account adjustments, and expedited resolution of taxpayer issues and transactions.⁵¹

Health Insurance Tax Credit Administration

The Senate committee recommends that the IRS receive \$15.5 million for administering the health insurance tax credit in FY2012, or the same amount that was enacted for FY2011 and \$2.5 million less than the budget request.

Title II: Executive Office of the President⁵²

The FSGG appropriations bill provides funding for all but three offices under the EOP.⁵³ The White House, the Office of Management and Budget, and the Office of National Drug Control Policy are among the EOP offices funded through FSGG appropriations. **Table 4** lists the enacted

⁵⁰ Ibid., p. 29.

⁵¹ Ibid., p. 30.

⁵² This section was authored by Barbara Schwemle (x7-8655).

⁵³ Of the three exceptions, the Council on Environmental Quality and the Office of Environmental Quality are funded in the House and Senate Interior, Environment, and Related Agencies Appropriations Act. The Office of Science and Technology Policy and the Office of the United States Trade Representative are funded in the House and Senate Commerce, Justice, Science, and Related Agencies Appropriations Act.

amounts for FY2010 and FY2011, the President's FY2012 request, and amounts recommended by the House and Senate appropriations committees for FY2012.

Table 4. Executive Office of the President, FY2010-FY2012

(in millions of dollars)

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
The White House (total)	\$208	\$207	\$207	\$195	\$205
<i>Compensation of the President</i>	0.5	0.5	0.5	0.5	0.5
<i>The White House Office (salaries and expenses)</i>	59	58	58	56	58
<i>Executive Residence, White House (operating expenses)</i>	14	14	14	13	14
<i>White House Repair and Restoration</i>	3	2	1	1	1
<i>Council of Economic Advisers</i>	4	4	4	4	4
<i>National Security Council and Homeland Security Council</i>	12	13	13	12	13
<i>Office of Administration</i>	115	115	116	109	115
Office of Management and Budget	93	92	92	83	91
Federal Drug Control Programs (total)	428	406	356	352	359
<i>Office of National Drug Control Policy (net of rescissions)</i>	30	27	12	12	15
<i>High Intensity Drug Trafficking Areas Program</i>	239	239	200	239	239
<i>Other Federal Drug Control Programs</i>	154	141	144	102	106
<i>Counterdrug Technology Assessment Center</i>	5	0	0	0	0
Unanticipated Needs	1	1	1	0	1
Partnership Fund for Program Integrity Innovation	38	(-5)	20	0	0
Integrated, Efficient and Effective Uses of Information Technology	—	0	60	5	0
Special Assistance to the President (salaries and expenses)	5	5	4	4	4
Official Residence of the Vice President (operating expenses)	0.3	0.3	0.3	0.3	0.3
Total: EOP and Funds Appropriated to the President	\$772	\$706	\$740	\$640	\$661

Sources: Consolidated Appropriations Act, 2010 (Div. C, P.L. 111-117), *FY2011 Budget, Appendix*, pp. 1145-1156 and 1267-1269, U.S. Executive Office of the President, *Fiscal Year 2011 Congressional Budget Submission* (Washington: February 2010), *FY2012 Budget Appendix*, pp. 1107-1118 and pp. 1235-1237, and U.S. Executive

Office of the President, *Fiscal Year 2012 Congressional Budget Submission* (Washington: February 2011), H.Rept. 112-136; S.Rept. 112-79.

Note: FY2011 enacted rescission was applied to the Partnership fund for program integrity account. FY2012 rescission for both the President's request and House committee approved amounts would apply to the Office of National Drug Control Policy.

President's Budget Request and Key Issues

The Administration's FY2012 budget requested an appropriation (discretionary funds) of \$739.3 million for the EOP and funds appropriated to the President, an increase of \$34.1 million or 4.8% above the \$705.2 million (discretionary funds) enacted for FY2011. The budget requested the same appropriation as that enacted for FY2011 for the Unanticipated Needs account and increased or decreased appropriations for the following accounts:

- The White House Office (-\$61,000 or -0.1%), the Executive Residence (-\$15,000 or -0.1%), the White House Repair and Restoration (-\$1.0 million or -50%).
- The Council of Economic Advisers (+\$211,000 or +5.0%), the National Security Council and Homeland Security Council (+\$26,000 or +0.2%), and the Office of Administration (+\$799,000 or +0.7%).
- The Office of Management and Budget (-\$90,000 or -0.1%).
- The Special Assistance to the President (-\$221,000 or -4.9%), and the Official Residence of the Vice President (-\$19,000 or -5.8%).

The justification that accompanied the EOP's budget submission noted that the increase requested for the National Security Council and Homeland Security Council "funds requirements commensurate with supporting the President's efforts on cybersecurity, Weapons of Mass Destruction, terrorism, transborder security, information sharing, resilience policy, including preparedness and response, and global engagement, as outlined in *Presidential Study-Directive I.*" According to the justification, the requested funding increase for the Council of Economic Advisers "supports additional economists required for monitoring the state of the economy for the President and his staff and assisting the President in developing economic policies promoting the growth of the economy, creating jobs, and increasing incomes and standards of living for all Americans."⁵⁴ The appropriation requested for the account entitled Integrated, Efficient and Effective Uses of Information Technology (IEEUIT) would be used "to establish a coherent Federal strategy for centralized, efficient provision of IT services and infrastructure across the Government."⁵⁵

Federal Drug Control Programs

For the accounts under the Federal Drug Control Programs, the President's FY2012 budget requested an appropriation of \$355.7 million, a decrease of \$50.5 million or 12.4% below the \$406.2 million enacted for FY2011. The FY2012 budget justification states that the proposed

⁵⁴ U.S. Executive Office of the President, *Fiscal Year 2012 Congressional Budget Submission* (Washington: February 2011), pp. NSC&HSC-4 and CEA-3.

⁵⁵ *Ibid.*, p. OMB-12.

reduction in funding “reflects a reprioritization of resources.”⁵⁶ Appropriations for all of the accounts follow.

- Office of National Drug Control Policy (ONDCP, -\$3.7 million or -13.5%).
- High Intensity Drug Trafficking Areas Program (HIDTAP, -\$38.5 million or -16.1%).
- Other Federal Drug Control Programs (OFDCP, +\$3.0 million or +2.1%).
- Counterdrug Technology Assessment Center (CTAC, a rescission of \$11.3 million is requested).

House Action

H.R. 2434, as reported by the House Committee on Appropriations would provide an appropriation of \$639.5 million for the EOP, which is \$65.7 million (-9.3%) less than the FY2011 enacted appropriation and \$99.8 million (-13.5%) less than the President’s request. The House report states the House committee’s disappointment “that the Administration’s request did not propose additional reductions for the EOP” and that “Therefore, the Committee has reduced the Salaries and Expenses appropriation for each organization.”

The appropriations for each of the EOP accounts, as recommended by the House Appropriations Committee are as follows:

- The White House Office: \$55.5 million; 2.9 million (-5%) less than the FY2011 enacted amount and almost \$2.9 million (-4.9%) less than the President’s request. The House committee report states that this amount includes “sufficient funds” for the Office of National AIDS Policy.
- Executive Residence, White House: \$13 million; \$684,000 (-5.0%) less than the FY2011 enacted amount and \$669,000 (-4.9%) less than the President’s request.
- White House Repair and Restoration: \$1 million; \$1 million (-50%) less than the FY2011 enacted amount and the same as the President’s request.
- Council of Economic Advisers: \$4.0 million; \$210,000 (-5.0%) less than the FY2011 enacted amount and \$421,000 (-9.6%) less than the President’s request.
- National Security Council and Homeland Security Council: \$12.4 million; \$652,000 (-5%) less than the FY2011 enacted amount and \$678,000 (-5.2%) less than the President’s request.
- Office of Administration: \$109.3 million; \$5.7 million (-5%) less than the FY2011 enacted amount and \$6.5 million (-5.6) less than the President’s request. Of the total, \$10.7 million would remain available until expended for continued modernization of the information technology infrastructure within the EOP. The office is directed to report annually to the House Committee on Appropriations, at the same time that the President’s budget is submitted, on progress on modernization of information technology, including the amounts obligated and

⁵⁶ Ibid. p. ONDCP-7.

- expended and for what purposes, specific milestones achieved, and requirements and specific plans for further investment.
- Office of Management and Budget: \$82.6 million; \$9.2 million (-10%) less than the FY2011 enacted amount and \$9.1 million (-9.9%) less than the President's request. The House committee encourages OMB and federal agencies to use business management techniques, including continuous process improvement methods, to improve the use of resources. OMB is directed to examine and revise Circular A-94 on cost-benefit analysis, incorporate life-cycle cost analysis, and report to the House Committee on Appropriations on the status of the review within 180 days of the act's enactment.
 - Unanticipated Needs: 0.0; \$1 million (-100%) less than the FY2011 enacted amount and the President's request.
 - Partnership Fund for Program Integrity Innovation: 0.0; \$20 million less than the President's request.
 - Integrated, Efficient and Effective Uses of Information Technology: 5.0 million; \$55 million less than the President's request. The OMB Director could transfer the funds to one or more agencies to carry out projects and would submit monthly reports to the House and Senate Committees on Appropriations identifying the savings achieved by the government-wide information technology reform efforts.
 - Special Assistance to the President: \$4.3 million; \$227,000 (-5.0%) less than the FY2011 enacted amount and \$6,000 (-0.1%) less than the President's request.
 - Official Residence of the Vice President: \$307,000; \$19,000 (-5.8%) less than the FY2011 enacted amount and the same as the President's request.

H.R. 2434, as reported, would fund the federal drug control accounts at the following levels:

- ONDCP: \$23 million; \$4.1 million (-15.1%) less than the FY2011 enacted amount and \$413,000 (-1.8%) less than the President's request. Of the total, \$250,000 would remain available until expended for policy research and evaluation. ONDCP is expected "to focus resources on the counter-drug policy development, coordination and evaluation functions which are the primary mission of the Office and the original reason for its existence."
- HIDTAP: \$238.5 million; the same as the FY2011 enacted amount and \$38.5 million (+19.3%) more than the President's request. Of the total, up to \$2.7 million could be used for auditing services and related activities. The ONDCP Director would notify the House and Senate Committees on Appropriations of the initial allocation of FY2012 funding among HIDTAs within 45 days after the act's enactment and of planned uses of discretionary HIDTA funding within 90 days after the act's enactment.
- OFDCP : \$102.0 million; \$38.6 million (-27.5%) less than the FY2011 enacted amount and \$41.6 million (-29%) less than the President's request. The appropriation would be allocated as follows: \$88.6 million for the Drug-Free Communities Program, \$8.9 million for anti-doping activities, \$1.9 million for the United States membership dues to the World Anti-Doping Agency, and \$2.5

million for competitive discretionary grants. An appropriation is not provided for the anti-drug media campaign.

Section 628(a)(1) of H.R. 2434, as reported, would provide the mandatory appropriation for the compensation of the President (\$450,000, including \$50,000 for expenses). According to the House Committee on Appropriations report, this is an account “where authorizing language requires the payment of funds.”

Administrative provisions under the appropriation for the EOP and funds appropriated to the President are the following:

- Section 201 would continue to authorize the OMB Director (or other official designated by the President) to transfer up to 10% of appropriations between the White House, Executive Residence at the White House, White House Repair and Restoration, Council of Economic Advisers, National Security Council and Homeland Security Council, Office of Administration, Special Assistance to the President, and Official Residence of the Vice President accounts, after the House and Senate Committees on Appropriations are notified at least 15 days in advance. An appropriation would not be increased by more than 50% by such transfers. The Vice President would approve transfers from the Special Assistance to the President or Official Residence of the Vice President accounts.
- Section 202 would rescind \$11.3 million in unobligated balances of prior year appropriations from the Counterdrug Technology Assessment Center.
- Section 203 would prohibit the use of funds to pay the salaries and expenses of any EOP officer or employee to prepare, sign, or approve statements abrogating legislation passed by the House of Representatives and the Senate and signed by the President.
- Section 204 would require the OMB Director to submit quarterly reports to the House and Senate Committees on Appropriations on the implementation of Executive Order 13563 relating to Improving Regulation and Regulatory Review. The reports would be submitted on January 2, April 2, July 2, and October 1, 2012, and would include information on increasing public participation in the rulemaking process and reducing uncertainty; improving coordination across federal agencies to eliminate redundant, inconsistent, and overlapping regulations; and identifying existing regulations that have been reviewed and determined to be outmoded, ineffective, or excessively burdensome.
- Section 205 would require the OMB Director to report to the House and Senate Committees on Appropriations, within 30 days after the act’s enactment, on the costs of implementing P.L. 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act. The report would include the estimated mandatory and discretionary obligations of funds through FY2016, by federal agency and by fiscal year, including (1) the estimated obligations by cost inputs such as rent, information technology, contracts, and personnel; the methodology and data sources used to calculate such estimated obligations; and the specific section of such act that requires the obligation of funds; and (2) the estimated receipts through FY2016 from assessments, user fees, and other fees by the federal agency making the collections, by fiscal year, including the methodology and

data sources used to calculate such estimated collections; and the specific section of such act that authorizes the collection of funds.

Section 632 of H.R. 2434, as reported, would prohibit the use of funds for the White House Director of the Office of Health Reform, the Assistant to the President for Energy and Climate Change, the Senior Advisor to the Secretary of the Treasury assigned to the Presidential Task Force on the Auto Industry and Senior Counselor for Manufacturing Policy, and the White House Director of Urban Affairs.

The House committee continues the provision that would prohibit funding for the EOP to request an FBI background investigation except with the express consent of the individual involved or in extraordinary circumstances involving national security at Section 610.

Senate Action

S. 1573, as reported by the Senate Committee on Appropriations, would provide an appropriation of \$660.7 million for the EOP, which is \$45 million (-6.4%) less than the FY2011 enacted appropriation and \$79.1 million (-10.7%) less than the President's request.

The appropriations for each of the EOP accounts, as recommended by the Senate Appropriations Committee, are as follows:

- The White House Office: \$57.8 million; \$584,000 (-1%) less than the FY2011 enacted amount and \$523,000 (-0.9%) less than the President's request. The Senate committee report directs the EOP "to allocate sufficient resources to continue the robust operation of the Office of National AIDS Policy" and "the administration to continue to coordinate a Government-wide effort to develop and implement a domestic AIDS strategy."
- Executive Residence, White House: \$13.5 million; \$137,000 (-1.0%) less than the FY2011 enacted amount and \$122,000 (-0.9%) less than the President's request.
- White House Repair and Restoration: \$990,000; \$1 million (-50.5%) less than the FY2011 enacted amount and \$10,000 (-1.0%) less than the President's request.
- Council of Economic Advisers: almost \$4.2 million; the same as the FY2011 enacted amount and \$211,000 (-4.8%) less than the President's request.
- National Security Council and Homeland Security Council: \$13 million; the same as the FY2011 enacted amount and \$26,000 (-0.2%) less than the President's request.
- Office of Administration: \$114.9 million; \$141,000 (-0.1%) less than the FY2011 enacted amount and \$940,000 (-0.8%) less than the President's request. Of the total, \$10.7 million would remain available until expended for continued modernization of the information technology infrastructure within the EOP. This initiative will "refresh the aging information technology infrastructure, strengthen disaster recovery and information security capabilities, and transition the [EOP's] communications architecture to integrate mobile devices while complying with security and records management requirements." The office is directed to "place a top priority on the implementation of comprehensive policies and procedures" to preserve all records, work closely with the National Archives

and Records Administration, and fully apprise the committee of funding needed to preserve and retain records.

- Office of Management and Budget: \$90.8 million; \$917,000 (-1.0%) less than the FY2011 enacted amount and \$827,000 (-0.9%) less than the President's request. The Senate report states that the committee "expects OMB to provide timely and complete responses ... to all requests for information" and directs the agency to report to the committee within 120 days after the act's enactment on "the current capabilities of and deficiencies in the Federal Government's core budgeting system."
- Unanticipated Needs: \$988,000; \$10,000 (-1.0%) less than the FY2011 enacted amount and \$12,000 (-1.2%) less than the President's request.
- Partnership Fund for Program Integrity Innovation: 0.0; \$20 million less than the President's request. The Administration is directed to leverage the FY2010 funding to continue the initiative. The Senate report reminds the interagency council that semiannual reports must be submitted to the committees, directs that the council "be the exclusive decisionmaking body," and directs the OMB director, as the council chair, "to seek consensus and input to the maximum extent possible from council members and participating Federal and State agencies."
- Integrated, Efficient and Effective Uses of Information Technology: 0.0; \$60 million less than the President's request. The Administration is directed to continue the current reform efforts using funding from the EOP and other sources, to regularly apprise the committee "of how Government-wide IT reform efforts affect agency-specific projects and missions on a case-by-case basis," and to immediately notify the committee of changes in agency spending plans for IT projects.
- Special Assistance to the President: \$4.3 million; \$221,000 (-4.8%) less than the FY2011 enacted amount and the same as the President's request.
- Official Residence of the Vice President: \$307,000; \$19,000 (-5.8%) less than the FY2011 enacted amount and the same as the President's request.

S. 1573, as reported, would fund the federal drug control accounts at the following levels:

- ONDCP: \$26.1 million; \$959,000 (-3.5%) less than the FY2011 enacted amount and \$2.7 million (+11.6%) more than the President's request. The increased funding "prevents a reduction-in-force of 20 FTE." Policy research is not funded. The office is directed to provide an update on the implementation of the National Academy of Public Administration's study within 30 days after the act's enactment and is urged to ensure that the staff in the Office of Demand Reduction are experts in drug abuse prevention. The EOP is urged to improve the office's responsiveness in providing critical budget information to the committee. Reports, to be submitted to the committee on a quarterly basis, are to discuss the "continued efforts to address prescription drug abuse."
- HIDTAP: \$238.5 million; the same as the FY2011 enacted amount and \$38.5 million (+19.3%) more than the President's request. The office is directed to consult with the HIDTA's prior to allocating funds. Of the total, up to \$2.7 million could be used for auditing services and associated activities and up to

\$500,000 is to be used to continue the operation and maintenance of the Performance Management System. HIDTA funds are to be expeditiously transferred to the appropriate drug control agencies and are to be withheld from a State “until such time as a State or locality has met its financial obligation.”

- OFDCP : \$105.9 million; \$34.7 million (-24.6%) less than the FY2011 enacted amount and \$37.6 million (-26.2%) less than the President’s request. The appropriation would be allocated as follows: \$92.6 million for the Drug-Free Communities Support Program (DFCSP), including \$2 million for National Community Anti-Drug Coalition training; \$8.9 million for anti-doping activities; \$1.9 million for the United States membership dues to the World Anti-Doping Agency; \$1.1 million for activities related to model State drug laws; and \$1.4 million for drug court training and technical assistance. For reasons of fiscal austerity and mixed reviews of the campaign’s effectiveness, an appropriation is not provided for the anti-drug media campaign.

Administrative provisions under the appropriation for the EOP and funds appropriated to the President are the following:

- Section 201 would continue to authorize the OMB Director (or other official designated by the President) to transfer up to 10% of appropriations between the White House, Executive Residence at the White House, White House Repair and Restoration, Council of Economic Advisers, National Security Council and Homeland Security Council, Office of Administration, Special Assistance to the President, and Official Residence of the Vice President accounts, after the House and Senate Committees on Appropriations are notified at least 15 days in advance. An appropriation would not be increased by more than 50% by such transfers. The Vice President would approve transfers from the Special Assistance to the President or Official Residence of the Vice President accounts.
- Section 202 would require the ONDCP Director to submit to the Senate and House Appropriations Committees, within 60 days after the act’s enactment, and prior to initially obligating more than 20% of the ONDCP funds, “a detailed narrative and financial plan on the proposed uses of all funds under the account by program, project, and activity.” The reports must be updated every six months and include any changes in the estimates and assumptions of the previous reports. New projects and changes in the funding for ongoing projects require advance approval by the committees.
- Section 203 would provide that up to 2% of ONDCP appropriations could be transferred between appropriated programs within ONDCP with advance approval by the Senate and House Committees on Appropriations, but such transfer could not increase or decrease an appropriation by more than 3%.
- Section 204 would provide that up to \$1 million of ONDCP appropriations could be reprogrammed within a program, project, or activity with advance approval by the Senate and House Appropriations committees.
- Section 205 would rescind \$11.3 million in unobligated balances of prior year appropriations from the Counterdrug Technology Assessment Center.

The Senate committee continues the provision at Section 610 that would prohibit the use of funds appropriated to the EOP to request an FBI background investigation except with the written

consent of the individual involved, within six months prior to the date of the request and during the same presidential administration, or in extraordinary circumstances involving national security.

Title III: The Judiciary⁵⁷

As a co-equal branch of government, the judiciary presents its budget to the President, who transmits it to Congress unaltered. The President's FY2012 budget request for \$7.29 billion is \$423 million more than appropriated for FY2010 and \$387 million above FY2011 enacted amounts. **Table 5** lists the enacted amounts for FY2010 and FY2011, the President's FY2012 request, and amounts recommended by the House and Senate appropriations committees for FY2012.

Table 5. The Judiciary Appropriations, FY2010-FY2012
(in millions of dollars)

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Total: Supreme Court (total)	\$89	\$82	\$84	\$83	\$83
<i>Salaries and Expenses</i>	74	74	75	75	75
<i>Building and Grounds</i>	15	8	9	8	8
U.S. Court of Appeals for the Federal Circuit	33	33	35	31	32
U.S. Court of International Trade	21	21	23	21	21
Courts of Appeals, District Courts, and Other Judicial Services (Subtotal)	6,519	6,554	6,913	6,403	6,569
<i>Salaries and Expenses</i>	5,011	5,004	5,236	4,791	4,971
<i>Defender Services</i>	978	1,026	1,099	1,050	1,034
<i>Fees of Jurors and Commissioners</i>	62	52	60	57	59
<i>Court Security</i>	453	467	513	500	500
<i>Vaccine Injury Trust Fund</i>	5	5	5	5	5
Administrative Office of the U.S. Courts	83	83	88	80	82
Federal Judicial Center	27	27	29	26	27
United States Sentencing Commission	17	17	18	16 ^c	17
Judicial Retirement Funds	82	90	104 ^b	99 ^d	104 ^e
Total: The Judiciary	\$6,871^a	\$6,907	\$7,294	\$6,759	\$6,934

⁵⁷ This section was authored by Lorraine Tong (x7-5846).

Sources: Consolidated Appropriations Act, 2010 (Division C, P.L. 111-117). H.Rept. 112-136, pp. 110-112, H.Rept. 112-136, and S.Rept. 112-79. *The Judiciary Fiscal Year 2012, Congressional Budget Summary* (Washington: February 2011) was also examined. All figures are rounded. Columns also may not equal the total due to rounding.

Notes: *The Judiciary Fiscal Year 2012, Congressional Budget Summary* (Washington: February 2011) was also examined. According to the *Summary*, the FY2012 request for the Judicial Retirement Funds was \$103.8 million, and the total judiciary request was \$7,293.9 million. All figures are rounded. Columns also may not equal the total due to rounding.

- a. Total for the FY2010 enacted amount reflects \$10 million (to remain available until September 30, 2011) to assist the federal courts along the southwest border with increased workload, as part of P.L. 111-230 (FY2010 emergency supplemental appropriations for border security, and for other purposes).
- b. According to *The Judiciary Fiscal Year 2012, Congressional Budget Summary*, the FY2012 request for the Judicial Retirement Funds was \$103.8 million, and the total judiciary request was \$7,293.9 million.
- c. The United States Sentencing figure for the House recommendation of \$16.1 included a \$0.1 million rescission.
- d. The House did not include appropriations for judicial retirement funds in Title III, as it has in previous years. Instead, these mandatory funds were included in Section 628 of H.R. 2434. The House provided an additional \$334 million in mandatory funding for other judiciary accounts in Title III. Judicial retirement funds recommended in H.R. 2434 are counted in Title III totals in this report to be consistent with prior year calculations.
- e. The Senate provided \$103.8 million (rounded to \$104 million) in Section 628 of S. 1573.

The Judiciary Budget and Key Issues

Appropriations for the judiciary—about two-tenths of 1% (0.2%) of the entire federal budget—are divided into budget groups and accounts. Two accounts that fund the Supreme Court (salaries and expenses of the Court and expenditures for the care of its building and grounds) together total about 1% of the total judiciary budget. The structural and mechanical care of the Supreme Court building, and care of its grounds, are the responsibility of the Architect of the Capitol. The rest of the judiciary’s budget provides funding for the “lower” federal courts and related judicial services. The largest account, about 73% of the total budget—the Salaries and Expenses account for the U.S. Courts of Appeals, District Courts, and Other Judicial Services—covers the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the U.S. Court of Federal Claims, bankruptcy judges, magistrate judges, and other officers and employees of the federal judiciary not specifically provided for by other accounts. It also covers the necessary expenses of the courts. The remaining 26% of the judiciary budget is disbursed among these accounts: U.S. Court of Appeals for the Federal Circuit, U.S. Court of International Trade, Administrative Office of the U.S. Courts, Federal Judicial Center, U.S. Sentencing Commission, and Judicial Retirement Funds.

The judiciary budget does not fund three “special courts” in the U.S. court system: the U.S. Court of Appeals for the Armed Forces (funded in the Department of Defense appropriations bill), the U.S. Court of Appeals for Veterans Claims (funded in the Military Construction, Veterans Affairs, and Related Agencies appropriations bill), and the U.S. Tax Court (funded under Independent Agencies, Title V, of the FSGG bill). Federal courthouse construction is funded within the General Services account under Independent Agencies, Title V, of the FSGG bill.

The judiciary also uses non-appropriated funds to offset its appropriations requirement. The majority of these non-appropriated funds are from fee collections, primarily from court filing fees. These monies are used to offset expenses within the *Salaries and Expenses* account. In some

instances, the judiciary also has funds which may carry forward from one year to the next. These funds are considered “unencumbered” because they result from savings from the judiciary’s financial plan in areas where budgeted costs did not materialize. According to the judiciary, such savings are usually not under its control (e.g., the judiciary has no control over the confirmation rate of Article III judges and must make its best estimate on the needed funds to budget for judgeships, rent costs based on delivery dates, and technology funding for certain programs).

The judiciary also has “encumbered” funds—no-year authority funds for specific purposes, which are used when planned expenses are delayed, from one year to the next (e.g., costs associated with space delivery, and certain technology needs and projects).⁵⁸

Judge Julia S. Gibbons, chair of the Budget Committee of the Judicial Conference of the United States,⁵⁹ expressed the judiciary’s recognition that the country was undergoing very serious financial difficulties and the need to reduce federal spending. In her April 6, 2011, written testimony submitted to the House Subcommittee on the judiciary’s FY2012 budget request, Judge Gibbons stated that the Judicial Conference proposed a FY2012 budget that reflects the judiciary’s smallest requested percentage increase on record (an estimated 4.3% over the previous year). She asked that “Congress take into account the impact of the legislative process and law enforcement on the jurisdiction and workload of the federal courts, and ensure that the Judiciary continues to have the resources required to perform its statutory duties and to address a growing workload.”⁶⁰ She noted that the workload of the federal courts could further increase if the budgets of the Department of Justice and Department of Homeland Security are increased. Judge Gibbons also stated noted that 80% of the judiciary’s costs are spent on salaries and rent, and that a funding shortfall would see significant staffing reductions in court clerks and probation and pretrial services nationwide.⁶¹

Cost Containment Initiatives

According to Judge Gibbons, the judiciary has adopted a comprehensive strategy since 2004 to contain costs and allow for more modest budget requests. At the FY2012 budget hearing, she stated that one of the biggest cost-containment efforts has been to limit space costs through process improvements and redesigns so that projected rent payments to the General Services Administration are “nearly \$400 million below the 2012 rent projection made prior to initiating our cost-containment efforts.”⁶² The judiciary has also taken steps to control personnel costs by changing salary and performance policies for court staff in order to reduce future compensation costs. These policies are estimated to save compensation costs by \$300 million through FY2019. According to Judge Gibbons, containing information technology costs, such as the consolidation

⁵⁸ Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2012 Congressional Budget Summary* (Washington: February 2011), p. 33.

⁵⁹ The Judicial Conference of the United States is the principal policymaking body for the federal courts system. The Chief Justice is the presiding officer of the conference, which comprises the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade.

⁶⁰ Statement of Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States, U.S. House, Committee on Appropriations Subcommittee on Financial Services and General Government, April 6, 2011, p. 3. The testimony was given prior to the enactment of the FY2011 FSGG budget.

⁶¹ *Ibid.*, pp. 2-3.

⁶² *Ibid.*, p. 6.

of computer servers at a single location, is expected to save \$65 million in cost avoidance.⁶³ Director of the Administrative Office of the U.S. Courts James Duff, who also testified, stated that a task force had been formed—comprising representatives from every directorate—to examine ways to curtail spending while maintaining court services to the public.⁶⁴

Judicial Security⁶⁵

The safe conduct of court proceedings and security of judges in courtrooms and off-site continue to be a concern. The 2005 Chicago murders of family members of a federal judge; the Atlanta killings of a state judge, a court reporter, and a sheriff's deputy at a courthouse; and the 2006 sniper shooting of a state judge in his Reno office spurred efforts to improve judicial security. In the 110th Congress (2007-2008), the President signed into law the Court Security Improvement Act of 2007 (P.L. 110-177), which was designed to enhance security for judges and court personnel as well as courtroom safety for the public. Legislation enacted in the 109th Congress (P.L. 109-13) included a provision that provided intrusion detection systems for judges in their homes. Threats against judges and the courts, however, have not abated. On January 4, 2010, a lone gunman wounded a deputy U.S. marshal and killed a court security officer at the Lloyd D. George U.S. Courthouse and Federal Building in Las Vegas.⁶⁶ The judiciary has been working closely with the U.S. Marshals (USMS) to review the incident to ensure that adequate protective policies, procedures, and practices are in place. USMS has primary responsibility for the protection and security of more than 2,000 sitting federal judges, as well as approximately 5,250 other court officials at over 400 court facilities in the United States and its territories. According to the USMS, the Marshals Service now “Assesses, mitigates and deters approximately 1,400 threats and inappropriate communications against the judiciary each year.”⁶⁷

The FY2012 budget request would reauthorize a pilot program for the USMS to assume responsibility for perimeter security at selected courthouses that were previously the responsibility of the Federal Protective Service (FPS). This pilot was first authorized in FY2009 as a result of the judiciary's stated concerns that FPS was not providing adequate perimeter security. After the initial planning phase, USMS implemented the pilot program on January 5, 2009, and assumed primary responsibility for security functions at seven courthouses located in Chicago, Detroit, Phoenix, New York, Tucson, and two in Baton Rouge. The judiciary and USMS have been evaluating the program and identifying areas for improvement. The judiciary reimburses USMS for the protective services.

Increased court security enhancements might be necessary should more suspects charged with terrorism be tried in federal courts rather than military tribunals.

⁶³ Ibid.

⁶⁴ Statement of James Duff, Director, Administrative Office of the U.S. Courts, U.S. House, Committee on Appropriations Subcommittee on Financial Services and General Government, April 6, 2011, p. 4.

⁶⁵ For an analysis of court security and federal building security in general, see CRS Report R41138, *Federal Building, Courthouse, and Facility Security*, by Lorraine H. Tong and Shawn Reese.

⁶⁶ Steve Friess, “Two Killed in Las Vegas Courthouse,” *New York Times*, January 4, 2010, available at <http://www.nytimes.com/2010/01/05/us/05vegas.html>.

⁶⁷ U.S. Marshals Service, *Fact Sheet, Judicial Security 2011*, April 5, 2011, <http://www.usmarshals.gov/duties/factsheets/jsd-2011.pdf>.

Workload and Southwest Border Issues

In her April 6, 2011, written testimony to the subcommittee, Judge Gibbons stated that bankruptcy filings are at near record levels due to the downturn in the economy. Such filings increased 29% in 2008, 35% in 2009, and 20% in 2010 to 1,572,597 filings. For 2011, the judiciary projected an additional 20,000 case filings nationwide.⁶⁸ She also highlighted the increase in probation and pretrial services. Convicted offenders under the supervision of federal probation officers reached a record 126,642 in 2010 and is projected to increase to 131,000 cases in 2011. Pretrial supervision cases have also grown—110,671 cases in 2010, and a projected increase to 113,000 in 2011.⁶⁹

Judge Gibbons also stated at the hearing, “After several years of steady growth, our criminal workload nationally is projected to decline 2 percent, from 78,213 filings in 2010—an all-time high—to 76,500 filings in 2011.” Between 2000 and 2010, criminal case filings grew 25% nationally with immigration prosecutions in the judicial districts along the southwest border spurring the increase.⁷⁰ She emphasized that the federal judiciary does not determine the workload of the courts but must handle the cases that are brought before the courts.⁷¹

Judicial Pay

Judicial pay has been an issue of concern to the judiciary for many years. Chief Justice John G. Roberts, Jr. reaffirmed his support for significant increases in judicial salaries in his *2008 Year-End Report on the Federal Judiciary*. Chief Justice Roberts maintained that the salary of judges had not kept pace with inflation over the years and led judges to leave the bench in increasing numbers. However, the judicial pay issue was not mentioned in the Chief Justice’s last two year-end reports on the federal judiciary.

During the 110th Congress, legislation was introduced in both the House and Senate to substantially increase judicial salaries, but no final action was taken on the bills before Congress adjourned.⁷² However, federal judges received a salary adjustment in 2009. In the FY2011 request, the judiciary proposed that federal judges receive the same automatic cost-of-living

⁶⁸ Statement of Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States, U.S. House, Committee on Appropriations Subcommittee on Financial Services and General Government, April 6, 2011, pp. 3-4.

⁶⁹ *Ibid.*, pp. 4-5.

⁷⁰ *Ibid.*, 4.

⁷¹ In August 2010, Congress passed H.R. 6080, legislation making FY2010 emergency supplemental appropriations for border security, to provide \$600 million to enhance southwest border security.⁷¹ H.R. 6080 also contained \$10 million (to remain available until September 30, 2011) to assist the federal courts along the border with the expected increased workload. The president signed the bill into law (P.L. 111-230) on August 13, 2010.

⁷² On June 15, 2007, Senator Patrick Leahy introduced S. 1638, the “Federal Judicial Salary Restoration Act of 2008,” that, before markup, would have provided a 50% pay adjustment for justices and judges. Representative John Conyers Jr. introduced a companion bill, H.R. 3753, “Federal Judicial Salary Restoration Act of 2007,” on October 4, 2007. The House bill, before markup, would have provided for a 41.3% pay adjustment. As amended in markup, and ordered to be reported by the respective committees, S. 1638 and H.R. 3753, would have authorized pay increases of 28.7% to 28.8% respectively. On November 14, 2007, Senator Richard J. Durbin introduced S. 2353, the Fair Judicial Compensation Act of 2007, to authorize a 16.5% increase in the annual salaries of the Chief Justice of the United States, Associate Justices of the Supreme Court, courts of appeals judges, district court judges, and judges of the United States Court of International Trade, and to increase fees for bankruptcy trustees. S. 2353 was referred to the Senate Judiciary Committee. No further action was taken on any of these bills.

adjustments that Members of Congress are authorized to receive. However, no cost-of-living adjustment was provided to Members of Congress or judges in FY2011. Near the end of the first session of the 111th Congress on November 3, 2009, Senator Dianne Feinstein introduced (for herself and Senators Orrin Hatch, Patrick Leahy, and Lindsey Graham) S. 2725, the Federal Judicial Fairness Act of 2009. The bill would have repealed a law requiring that salary increases for federal judges and Supreme Court Justices be specifically authorized by acts of Congress, and would have applied the same automatic annual cost-of-living adjustment to judicial salaries as takes effect under the General Schedule for civilian federal employees. No further action was taken prior to the adjournment of the 111th Congress. Although the Senate Appropriations Committee recommended a 2010 salary adjustment for Justices and judges under Section 307 (S.Rept. 111-43),⁷³ the enacted FY2010 legislation (P.L. 111-117) did not provide for the salary adjustment.

In the 112th Congress, on March 14, 2011, Senator Dianne Feinstein introduced, S. 569, the Federal Judicial Fairness Act of 2011, legislation similar to S. 2725. The bill, with nine cosponsors, has been referred to the Senate Judiciary Committee where it is pending. The judiciary did not propose a cost-of-living adjustment for federal judges for FY2012.

FY2012 Request⁷⁴

For FY2012, the judiciary requested \$7.29 billion in total appropriations, an increase of \$386.9 million over the \$6.90 billion enacted FY2011. Approximately 86.1% of the requested increase would cover pay adjustments, benefits, and inflation to maintain current services. The FY2012 request included funding for an additional 523 full-time-equivalent (FTE) positions, including 264 FTEs to meet increased workload requirements, 16 FTE magistrate judges and staff, and 9 FTE police officers and associated costs for the Supreme Court. A total of 35,695 FTEs were requested for FY2012, an increase of 1.5% from the estimated 35,172 FTEs in 2011.⁷⁵

The following summarizes the FY2011 enacted amount, the FY2012 judiciary budget request, and the amounts recommended by the House and Senate appropriations committees for FY2012.

Supreme Court

The total FY2012 request for the Supreme Court was \$84.1 million contained in two accounts: (1) Salaries and Expenses: \$75.6 million was requested, a \$1.7 million increase over the \$73.9 million enacted for FY2011; and (2) Care of the Building and Grounds: \$8.5 was requested, a \$0.3 million increase over the \$8.2 million enacted for FY2011. The total budget FY2012 request was a \$2.0 million increase over the FY2011 appropriation of \$82.1 million. The request included pay and benefits increases to maintain FY2011 services, and 9 FTE additional police officers and associated costs (e.g., training) to enhance the Court's security to staff new posts needed after

⁷³ For further details about these bills and judicial pay issues, see CRS Report RS20388, *Salary Linkage: Members of Congress and Certain Federal Executive and Judicial Officials*, by Barbara L. Schwemle, and CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, by Barbara L. Schwemle.

⁷⁴ U.S. Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2012 Congressional Budget Justification* (Washington: February 2011).

⁷⁵ *The Judiciary Fiscal Year 2012 Congressional Budget Summary*, p. 5, and *The Judiciary Fiscal Year 2012 Congressional Budget Justification*, p. 6.

completion of the Supreme Court Building Modernization Project. The House committee recommendation for FY2012 was \$74.8 million for the Salaries and Expenses account, and \$8.2 million for the Care of Building and Grounds account for a total of \$83.0 million, which would include funds for additional police officers as requested. The Senate committee recommended the same amounts recommended by the House committee.

U.S. Court of Appeals for the Federal Circuit

This court, consisting of 12 judges, has jurisdiction and reviews, among other things, certain lower court rulings on patents and trademarks, international trade, and federal claims cases. The FY2012 budget request was \$35.1 million, which was \$2.6 million more than the FY2011 appropriation of \$32.5 million. The House committee recommendation for FY2012 was \$31.5 million. The Senate committee recommendation for FY2012 was \$31.9 million.

U.S. Court of International Trade

This court has exclusive jurisdiction nationwide over the civil actions against the United States, its agencies and officers, and certain civil actions brought by the United States arising out of import transactions and the administration as well as enforcement of federal customs and international trade laws. The FY2012 request was \$22.9 million, a \$1.5 million increase over the FY2011 appropriation of \$21.4 million. The budget request would pay for standard pay and other inflationary adjustments, and to maintain current services. The House committee recommendation for FY2012 was \$20.6 million. The Senate committee recommendation for FY2012 was \$21.0 million.

Courts of Appeals, District Courts, and Other Judicial Services

The FY2011 funding request for this budget group covers 12 of the 13 courts of appeals and 94 district judicial courts located in the 50 states, District of Columbia, Commonwealth of Puerto Rico, territories of Guam and the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The appropriations requested for this budget group comprises about 90% of the judiciary budget for salaries and expenses, court security, defender services, and fees of jurors and commissioners which fund most of the day-to-day activities and operations of the circuit and district courts. The FY2012 request was \$6,912.7 million, a \$359.0 million increase over the FY2011 appropriation of \$6,553.7 million. The House recommendation for FY2012 was \$6,402.9 million. The Senate committee recommendation for FY2012 was \$6,568.6 million.

The total of this budget group comprised the following accounts:

Salaries and Expenses

The FY2012 request for this account was \$5,236.2 million, an increase of \$232 million over the FY2011 appropriation of \$5,004.2 million. According to the budget request, this increase is needed primarily for inflationary and other adjustments to maintain the courts' current services. The House recommendation for FY2012 was \$4,790.9 million. The Senate committee recommendation for FY2012 was \$4,970.6 million.

Vaccine Injury Compensation Trust Fund

Established to address a perceived crisis in vaccine tort liability claims, the Vaccine Injury Compensation Program funds a federal no-fault program that protects the availability of vaccines in the nation by diverting substantial number of claims from the tort arena. The FY2012 request for the Trust Fund account was \$5.0 million, a \$0.2 million increase from the FY2011 appropriation of \$4.8 million. The House committee recommendation for FY2012 was \$4.8 million. The Senate committee recommended the same amount as the House committee.

Court Security

This account provides for protective guard services, security systems, and equipment needs in courthouses and other federal facilities to ensure the safety of judicial officers, employees, and visitors. Under this account, the majority of funding for court security is transferred to the U.S. Marshals Service to pay for court security officers under the Judicial Facility Security Program. The request would fund salary adjustments and inflationary increases to maintain current services. The FY2012 request was \$513.1 million, a \$46.4 million increase over the FY2011 appropriation of \$466.7 million. The request included 50 additional court security officers for new and renovated existing space expected to be delivered in FY2012, changes in operating expenses based on anticipated billings from the Federal Protective Service, and improvements, and enhancements to security systems and equipment. The House recommendation for FY2012 was \$500.0 million. The Senate committee recommendation was the same as the House recommendation.

Defender Services

This account funds the operations of the federal public defender and community defender organizations, and compensation, reimbursements, and expenses of private practice panel attorneys appointed by federal courts to serve as defense counsel to indigent individuals. The cost for this account is driven by the number and type of prosecutions brought by U.S. Attorneys. The FY2012 request for these services was \$1,098.7 million, a \$73.0 million increase over the FY2011 appropriation of \$1,025.7 million. The request includes an additional 61 FTE positions to handle 206,200 defense representations and complex caseloads. The House recommendation for FY2012 was \$1,050 million. The Senate committee recommendation for FY2012 was \$1,034.2 million.

Fees of Jurors and Commissioners

This account funds the fees and allowances provided to grand and petit jurors, and compensation for jury and land commissioners. The FY2012 request was \$59.7 million, a \$7.4 million increase over the FY2011 appropriation of \$52.3 million. The requested increase would be primarily for adjustments to allow payment for statutory fees and expenses. The House recommendation for FY2012 was \$57.3 million. The Senate committee recommendation for FY2012 was \$59.0 million.

Administrative Office of the U.S. Courts

As the central support entity for the judiciary, the AOUSC provides a wide range of administrative, management, program, and information technology services to the U.S. courts. AOUSC also provides support to the Judicial Conference of the United States, and implements conference policies and applicable federal statutes and regulations. The FY2012 request for AOUSC was \$88.5 million, a \$5.6 million increase over the FY2011 appropriation of \$82.9 million. The request would fund adjustments to its base, and maintain current services, including recurring costs such as travel, communications, service agreements, and supplies. Three new positions (two FTEs) were requested for a six-month period to address high priority court support functions (including modernization and consolidation of the judiciary's nationwide accounting system). AOUSC also receives non-appropriated funds from fee collections and carry-over balances to supplement its appropriations requirements. The House recommendation for FY2012 was \$80.0 million. The Senate committee recommendation for FY2012 was \$82.0 million.

Federal Judicial Center

As the judiciary's research and education entity, the Federal Judicial Center undertakes research and evaluation of judicial operations for the Judicial Conference committees and the courts. In addition, the center provides judges, court staff, and others with orientation and continuing education and training. The center's FY2012 request was \$29.0 million, a \$1.7 million increase over the FY2011 appropriation of \$27.3 million. The request would cover standard pay and other inflationary adjustments, the hiring of one FTE (two positions), and enhanced education and training initiatives. The House recommendation for FY2012 was \$26.3 million. The Senate committee recommendation for FY2012 was \$27.0 million.

United States Sentencing Commission

The commission promulgates sentencing policies, practices, and guidelines for the federal criminal justice system. The FY2012 request was \$17.9 million, an \$0.8 million increase over the FY2011 appropriation of \$16.8 million. The increase would cover pay and other inflationary adjustments. The House recommendation for FY2012 was \$16.1 million (which included a rescission of \$0.1 million). The Senate committee recommendation for FY2012 was \$16.5 million.

Judiciary Retirement Funds

This mandatory account provides for three trust funds that finance payments to retired bankruptcy and magistrate judges, retired Court of Federal Claims judges, and the spouses and dependent children of deceased judicial officers. According to the House report, the FY2012 request was \$99.0 million,⁷⁶ an \$8.6 million increase over the FY2011 appropriation of \$90.4 million. The House recommendation for FY2012 was \$99.0 million. The Senate recommendation for FY2012 was \$103.8 million.

⁷⁶ According to *The Judiciary Fiscal Year 2012, Congressional Budget Summary*, the FY2012 judiciary request was for \$103.8 million.

General Provision Changes

The House committee recommended new and continuing language under general provisions. The recommended continuing language contained in Sections 301-Section 305 were as follows.

- Section 301, which would continue language to permit funds for salaries and expenses to be available for employment of experts and consultant services (as authorized by 5 U.S.C. 3109). (The judiciary also proposed this section.)
- Section 302, which would continue language to permit up to 5% of any appropriation made available for FY2012 to be transferred between judiciary appropriations accounts, provided that no appropriation shall be decreased by more than 5% or increased by more than 10% by any such transfer except in certain circumstances. In addition, the language would provide that any such transfer shall be treated as a reprogramming of funds under Sections 604 and 608 of the bill and shall not be available for obligation or expenditure except in compliance with the procedures set forth in those sections. (The judiciary also proposed this section.)
- Section 303, which would continue language authorizing not to exceed \$11,000 to be used for official reception and representation expenses incurred by the Judicial Conference of the United States. (The judiciary also proposed this section.)
- Section 304, which would continue language enabling the judiciary to contract for repairs under \$100,000.
- Section 305, which would continue language to authorize a court security pilot program. (The judiciary also proposed this section.)

The House Committee added new language for Sections 306-308, as follows.

- Section 306, which would extend a temporary judgeship in Kansas.
- Section 307, which would rescind \$100,000 of prior year unobligated balances from the United States Sentencing Commission.
- Section 308, which would require that the President submit to Congress, without change, proposed supplemental appropriations submitted to the President by the legislative branch and the judicial branch.

The Senate committee recommended the same provisions (Sections 301, 302, 303, and 305, listed above). In addition, it recommended the following:

- Section 304, which would require the Administrative Office to submit an annual financial plan for the judiciary within 90 days of enactment of this act.
- Section 305, which would grant the judicial branch the same tenant alteration authorities as the executive branch.
- Section 307, which would extend for one year the authorization of a temporary judgeship in Hawaii and a temporary judgeship in Kansas.

Title IV: District of Columbia⁷⁷

The authority for congressional review and approval of the District of Columbia's budget is derived from the Constitution and the District of Columbia Self-Government and Government Reorganization Act of 1973 (Home Rule Act).⁷⁸ The Constitution gives Congress the power to "exercise exclusive Legislation in all Cases whatsoever" pertaining to the District of Columbia. In 1973, Congress granted the city limited home rule authority and empowered citizens of the District to elect a mayor and city council. However, Congress retained the authority to review and approve all District laws, including the District's annual budget. As required by the Home Rule Act, the city council must approve a budget within 56 days after receiving a budget proposal from the mayor.⁷⁹ The approved budget must then be transmitted to the President, who forwards it to Congress for its review, modification, and approval.⁸⁰

On April 1, 2011, the mayor of the District of Columbia submitted a proposed \$9.6 billion general operating fund budget, including enterprise funds, to the District of Columbia Council. The mayor's budget includes a proposed plan intended to address a projected \$322 million budget shortfall for FY2012.⁸¹

Both the President and Congress may propose financial assistance to the District in the form of special federal payments in support of specific activities or priorities. **Table 6** shows details of the District's special federal payments, including the FY2011 enacted amounts, the amounts included in the President's FY2012 budget request, and the amounts recommended by the House and Senate appropriations committees for FY2012.

Table 6. District of Columbia Special Federal Payments, FY2010-FY2012
(in millions of dollars)

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Resident Tuition Support	\$35	\$35	\$35	\$30	\$30
Emergency Planning and Security	15	15	15	15	15
District of Columbia Courts	261	243	229	224	230
Defender Services	55	55	55	55	55
Court Services and Offender Supervision Agency	212	212	217	213	213
Public Defender Service	37	37	42	37	37
Criminal Justice Coordinating Council	2	2	2	2	2

⁷⁷ This section was authored by Eugene Boyd (x7-8689).

⁷⁸ See Article I, Sec. 8, clause 17 of the U.S. Constitution and Section 446 of P.L. 93-198, 87 Stat. 801.

⁷⁹ 120 Stat. 2028.

⁸⁰ 87 Stat. 801.

⁸¹ Government of the District of Columbia, Executive Office of the Mayor, *FY2012 Budget Overview*, Washington, DC, April 1, 2011, p. 3, <http://budget.dc.gov/budget-overview>.

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Judicial Commissions	0.5	0.5	0.5	0.3	0.5
St. Elizabeth Hospital Campus	0	0	18	0	0
HIV/AIDS Prevention	0	0	5	0	0
Water and Sewer Authority	20	11	25	0	15
Office of the Chief Financial Officer	2	0	0	0	0
School Improvement	75	78	67	60	60
D.C. National Guard	0.4	0.4	2	0.4	0.4
Perm. Supportive Housing	17	10	0	0	0
Arts and Humanities	0	0	5	0	0
Total: Special Federal Payments	\$752	\$699	\$717	\$637	\$658

Sources: H.Rept. 111-202; Appendix, Budget of U.S. Government Budget, Fiscal Year 2011; S.Rept. 111-238; Appendix, Budget of the U.S. Government, FY2012, H.Rept. 112-136; S.Rept. 112-79.

The District of Columbia Budget and General Provisions

The President's Budget Request

On February 14, 2011, the Obama Administration released its detailed budget requests for FY2012. The Administration's proposed budget requested \$716.7 million in special federal payments to the District of Columbia. Approximately three-quarters (\$544.7 million) of this budget request would be targeted to the courts and criminal justice system. The President's budget also requested \$104.1 million in support of education, including \$67 million to support elementary and secondary education, \$2 million for a National Guard retention and college access program, and \$35.1 million for college tuition assistance. This comprises 14.5% of the Administration's budget request. The President's total budget request of \$716.7 million represents a 2.4% increase from the FY2011 appropriations of \$700.1 million.

District's Budget

On April 1, 2010, the mayor of the District of Columbia submitted a proposed budget to the District of Columbia Council. The mayor proposed a general fund operating budget of \$9.6 billion. After its review, the council revised and approved the District's budget on May 25, 2011, and forwarded it to the mayor for his signature. The mayor signed the measure on June 29, 2011, and it was transmitted to Congress for its review on July 8, 2011.

House Appropriations Committee

The Financial Services and General Government Appropriations Act of FY2012, as reported by the House Appropriations Committee (H.Rept. 112-136) includes \$592.3 million in special federal payments to the District of Columbia. This is \$107.9 million less than appropriated in

FY2011, and \$124.4 million less than requested by the President. The bill would reduce federal support for court operations by \$19 million below the amount appropriated for FY2011. It would continue to support elementary and secondary education initiatives in the District, including school vouchers, but at a level \$17.7 million less than the amount appropriated for FY2011.

The bill would prohibit the use of federal funds for a needle exchange program, or to enact rules governing medical marijuana, or to support efforts to achieve congressional voting representation for residents of the District. In addition, it would restrict the use of District and federal funds for abortion services except in cases of incest, rape, or the life of the mother was threatened.

Senate Appropriations Committee

S. 1573, as reported, includes \$658 million in special federal payments to the District of Columbia. This is \$41 million less than appropriated in FY2011, and \$59 million less than requested by the President, but \$21 million more than recommended by the House committee bill. The bill would reduce federal support for court operations by \$13 million below the \$243 million appropriated for FY2011. Like its House counterpart, the bill would continue to support elementary and secondary education initiatives in the District, including school vouchers, but at a level \$18 million less than the amount appropriated for FY2011.

The Senate committee bill would continue several controversial general provisions included in previous years' appropriations acts that are also included in the House version of the bill. These include provisions that would prohibit the use of federal funds for a needle exchange program, or to enact rules governing medical marijuana, or to support efforts to achieve congressional voting representation for residents of the District. In addition, it would restrict the use of District and federal funds for abortion services except in cases of incest, rape, or if the life of the mother was threatened. The bill also includes two new general provisions. One would allow the Public Defender Service to purchase liability insurance for its attorneys, staff, and board members. The other provision would change, from 2 years to 5 years, the frequency that the Government Accountability Office would conduct management audits of the entities charged with chartering District of Columbia public charter schools.

Title V: Independent Agencies

Title V provides funding for more than two dozen independent agencies which perform a wide range of functions, including the management of federal real property (GSA), the regulation of financial institutions (SEC), and mail delivery (USPS). **Table 7** lists the enacted amounts for FY2010 and FY2011, the President's FY2012 request, and amounts recommended by the House and Senate appropriations committees for FY2012.

Table 7. Independent Agencies Appropriations, FY2010-FY2012
(in millions of dollars)

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Administrative Conference of the United States	\$2	\$3	\$3	\$3	\$3

	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Christopher Columbus Fellowship Foundation	1	0.5	0	0	0.5
Civilian Property Realignment Board	—	—	88	0	0
Commodity Futures Trading Commission ^a	169	203	308	172	240
Consumer Product Safety Commission	118	115	122	111	115
Election Assistance Commission	93	16	14	7	15
Federal Communications Commission ^b	(356)	(336)	(359)	(319)	(354)
Federal Deposit Insurance Corporation: Office of Inspector General (by transfer) ^c	(38)	(43)	(45)	(45)	(45)
Federal Election Commission	67	66	67	66	66
Federal Labor Relations Authority	25	25	26	24	25
Federal Trade Commission	169	175	199	155	142
General Services Administration	653	-986 ^d	617	-1,758 ^d	-850 ^d
Harry S. Truman Scholarship Foundation	1	1	0	1	1
Merit Systems Protection Board	43	43	44	42	43
Morris K. Udall Foundation	6	6	6	3	6
National Archives and Records Administration	457	417	408	360	383
National Credit Union Administration	1	1	2	0.5	1
Office of Government Ethics	14	14	14	14	14
Office of Personnel Management (total)	20,378	20,828	21,151	21,128	21,128
Office of Special Counsel	18	18	19	18	19
Postal Regulatory Commission	14	14	14	14	14
Privacy and Civil Liberties Oversight Board (net of rescissions)	2	1	2	-1 ^e	0
Recovery and Accountability Transparency Board	—	—	32	25	28
Securities and Exchange Commission	1,095	1,185	1,407	1,185	1,407
Selective Service System	24	24	25	24	24
Small Business Administration	824	730	985	978	955
United States Postal Service	363	331	323	316	320
United States Tax Court	49	52	60	51	51
Total: Independent Agencies	\$24,585	\$23,280	\$25,937	\$22,936	\$24,149

Sources: Consolidated Appropriations Act, FY2010 (Div. C, P.L. 111-117); Appendix, Budget of the U.S. Government, FY2011; H.Rept. 111-181; S.Rept. 111-238; Appendix, Budget of the U.S. Government, FY2012, H.Rept. 112-136; S.Rept. 112-79.

Notes: All figures are rounded, and columns also may not equal the total due to rounding.

- a. The CFTC is funded in the House through the Agriculture appropriations bill and in the Senate through the Financial Services and General Government bill.
- b. The FCC received all of its funding through the collection of regulatory fees in FY2010 resulting in no direct appropriation. The FCC is expected to be funded entirely by regulatory fees in FY2011 and FY2012 as well. Therefore, the amounts shown for the FCC represent budgetary resources made available to the agency but those amounts are not included in the table totals.
- c. Budget authority transferred to FDIC is not included in total FSGG appropriations; it is counted as part of the budget authority in the appropriation account from which it came.
- d. GSA's real property activities are funded through the Federal Buildings Fund (FBF), a multi-billion dollar revolving fund into which rental payments from federal agencies that lease GSA space are deposited. Revenue in the FBF is then made available by Congress each year to pay for GSA's real property activities. A negative total for the FBF occurs when the amount of funds made available for expenditure in a fiscal year is less than the amount of new revenue expected to be deposited. GSA funding levels for FY2011 as enacted and FY2012 as approved by the House Committee on Appropriations are negative because, in each instance, rent paid into the FBF exceeded the amount of new budget authority provided to GSA.
- e. Rescission of prior year unobligated balances.

Civilian Property Realignment Board⁸²

The President requested \$88 million for a new Civilian Property Realignment Board (CPRB), which would develop recommendations for the President as to which civilian federal properties should be consolidated, reconfigured, redeveloped, leased, sold, or conveyed. In the House, a similar body would be established under H.R. 1473, the Civilian Property Realignment Act of 2011.⁸³ House appropriators recommended no funding for the CPRB, but wrote that “the Committee believes a Civilian Property BRAC is a meritorious idea deserving of serious consideration. Should the Congress move forth with legislation to create a Civilian Property BRAC, the Committee will lend its support as able.”⁸⁴ The Senate Appropriations Committee also recommended no funding for the Board.

Commodity Futures Trading Commission⁸⁵

The Commodity Futures Trading Commission (CFTC) is the independent regulatory agency charged with oversight of derivatives markets. The CFTC's functions include oversight of trading on the futures exchanges, registration and supervision of futures industry personnel, prevention of fraud and price manipulation, and investor protection. Although most futures trading is now related to financial variables (interest rates, currency prices, and stock indexes), congressional oversight remains vested in the agriculture committees because of the market's historical origins as an adjunct to agricultural trade. Appropriations for the CFTC are under the jurisdiction of the Agriculture Subcommittee in the House, and the Financial Services and General Government

⁸² This section was authored by Garrett Hatch (x7-7822).

⁸³ H.R. 1473 was introduced on May 4, 2011, and was reported by the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management on May 25, 2011. No further action has been taken. For more information on H.R. 1473, see CRS Report R41830, *Civilian Property Realignment Act of 2011 (H.R. 1734): Analysis of Key Provisions*, by Garrett Hatch.

⁸⁴ U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2012*, report to accompany H.R. 2434, 112th Cong., 1st sess., H.Rept. 112-136 (Washington: GPO, 2011), p. 48.

⁸⁵ This section was written by Mark Jickling (x7-7784).

Subcommittee in the Senate. P.L. 112-10 provides \$203 million for the CFTC for FY2011. The President requested \$308 million for the CFTC for FY2012, which would be \$105 million more than FY2011 enacted appropriations. The House Appropriations Committee recommended \$172 million for FY2012, which would be \$136 million less than the President's request and \$31 million below FY2011 enacted appropriations.

The Senate Appropriations Committee has recommended \$240 million, an increase of about \$37 million from FY2011, but \$38 million below the Administration's request. The House Appropriations Committee recommended \$172 million for FY2012, which would be \$136 million less than the President's request and \$31 million below FY2011 enacted appropriations.

Consumer Product Safety Commission⁸⁶

The Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency whose mission is to reduce the risk of injury from using consumer products. It endeavors to do so by developing safety standards for consumer products; promoting uniformity between state and local regulations; and conducting or encouraging research into the causes of product-related deaths, illnesses, and injuries and ways to prevent them in the future.

For FY2011, the CPSC is receiving \$115 million in appropriated funds, or about \$3 million less than the amount enacted for FY2010. The decrease follows several years of substantial growth in CPSC funding. As recently as FY2007, the largest appropriation CPSC ever received (in nominal dollars) was about \$62 million. But in fiscal years 2008 through 2010, Congress approved significant increases in funding for the agency, largely to support major reforms initiated by Consumer Product Safety Improvement Act of 2008 (CPSIA, P.L. 110-314). The 110th Congress passed the act largely in response to a series of highly publicized recalls of imported products, particularly unsafe toys and other items manufactured for children.

Section 1574 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10) directs the Government Accountability Office to conduct a study of the usefulness and reliability of the information on consumer product safety collected by the CPSC through a publicly accessible database that has been up and running since March 11, 2011; the study must be submitted to the House and Senate Committees on Appropriations no later than October 12, 2011. The database was established by Section 6A of the CPSIA and is intended to provide a mechanism for consumers to both report problems with consumer products and investigate the risk of harm associated with specific products. In addition, the database is designed to help the CPSC identify trends in particular product hazards more quickly and efficiently.

For FY2012, the Obama Administration has requested \$122 million in appropriations for the CPSC. Such a level of funding would allow the agency to hire an additional 34 full-time equivalent employees (FTEs), bringing the total size of FTE staff to about 584.⁸⁷ Relative to the FY2011 budget request, the FY2012 proposal would reduce the budget for information technology capital and development by \$3.1 million. But it would increase funding for data intake, incident review and investigation by \$3.1 million to hire 20 new FTEs; the added funds represent the estimated cost of operating the new public database on consumer product hazards in

⁸⁶ This section was written by Gary Guenther (x7-7742).

⁸⁷ See written testimony by Inez Tenenbaum, the Chairman of the Consumer Product Safety Commission, for a hearing held by the House Appropriations Subcommittee on Financial Services and General Government on March 31, 2011.

FY2012. Under the budget request, funding for the replacement of information technology equipment and software would rise by \$0.5 million to \$1.5 million. In addition, the proposal would allocate \$400,000 to the creation of an Office of Education, Global Outreach, and Small Business Ombudsman and set aside \$665,000 to hire three FTEs to support financial management oversight.⁸⁸

Action in the House.

In its report on H.R. 2434, the House Appropriations Committee recommends an appropriation of \$111 million for the CPSC in FY2012, or \$4 million less than the amount enacted for FY2011 and \$11 million less than the budget request. Of that amount, \$0.5 million would be available until September 30, 2013, for the pool and spa grants program established by the Virginia Graeme Baker Pool and Spa Safety Act (P.L. 110-140).⁸⁹

The House committee has “strong concerns” about the accuracy and reliability of the information that is being collected through the new public database for consumer product safety information. More specifically, it believes the database is “of little value to consumers and manufacturers” because the information needed to file a report about harm associated with a product through the database is “insufficient.” So until changes are made in the reporting requirements to improve the reliability and accuracy of reports of harm, the House committee wants the \$3 million that has been requested to cover expenses linked to the database in FY2012 to be used for other, more effective purposes, such as risk assessment and enforcement. Section 622 of the bill would prohibit the use of appropriated funds to manage the database in FY2012.⁹⁰

In addition, the House committee has misgivings about the application of Section 101 of the CPSIA to youth off-road vehicles. Section 101(a) of the act sets declining limits on the lead content of products designed or intended for children 12 years of age or younger. But Section 101(b) authorizes the CPSC to exclude specific products that exceed the lead limits from those limits if it determines on the basis of sound scientific evidence that the lead in such products will not harm the health of children or have an adverse effect on public health or safety. In early 2009, the Specialty Vehicle Institute of America filed a petition to exclude certain parts used in youth motorized recreational vehicles from the lead limits under Section 101(b). Though the CPSC denied the petition, it decided to issue a stay of enforcement that lasted from March 11, 2009, to May 1, 2011. In its report on H.R. 2434, the House committee expresses concern that enforcement of the limits under Section 101(a) would lead to greater use of adult off-road vehicles by children, and that such an outcome would pose a greater risk of harm to children than exposure to the lead in the components of such vehicles. Section 630 of the bill would exclude youth off-road vehicles and bicycles from the lead limits in the CPSIA.⁹¹

⁸⁸ Ibid.

⁸⁹ House Appropriations Committee, report to accompany H.R. 2434, p. 41.

⁹⁰ Ibid., p. 71.

⁹¹ Ibid., p. 72.

Action in the Senate

The Senate Appropriations Committee recommends in its report (S.Rept. 112-79) to accompany S. 1573 that the CPSC receive \$114.5 million in appropriations for FY2012, or \$288,000 less than the amount enacted for FY2011 and \$7.5 million less than the budget request.

One issue the report addresses is the performance of the Consumer Product Safety Information Database during the six months following its launch in March 2011. The committee asserts that SaferProducts.gov has been “quite successful in its first 6 months, even resulting so far in a recall of a children’s product in July that was demonstrated to have caused serious laceration injuries to children.”⁹²

The committee also directs the commission to submit drywall reports quarterly in FY2012, rather than monthly, and encourages it to collect and report data annually on playground injuries and deaths.

Section 502 of the bill gives the CPSC the authority to “compel” foreign manufacturers to provide it with requested information on product defects. A lack of such authority is seen to have hindered the commission’s investigations in the recent past into reported problems with some imported products, such as drywall imported from China.

Section 503 requires the CPSC to issue a safety standard for button cell batteries, which are used in many consumer products and pose a health hazard to small children who swallow them. The committee asserts in the report that the standard should require the batteries to be securely enclosed in compartments and the products containing them to display a warning label.

Section 506 mandates that the CPSC issue a rule eliminating the risk of strangulation from the cords of window coverings. The commission has identified the cords as one of the top five hidden household hazards. In recent years, it has recalled tens of millions of window coverings for this reason. In the committee’s view, though a voluntary standard is in place for window blinds, it has not eliminated the risk of strangulation from their cords.⁹³

Election Assistance Commission⁹⁴

The Election Assistance Commission (EAC) was established under the Help America Vote Act of 2002 (HAVA; P.L. 107-252). The commission provides grant funding to the states to meet the requirements of the act and election reform programs, provides for testing and certification of voting machines, studies election issues, and promulgates voluntary guidelines for voting systems standards and issues voluntary guidance with respect to the act’s requirements. The commission was not given express rule-making authority under HAVA, although the law transferred responsibilities for the National Voter Registration Act (NVRA; P.L. 103-31) from the Federal Election Commission to the EAC; these responsibilities include NVRA rule-making authority. The Department of Justice is charged with enforcement responsibility.

⁹² U.S. Congress, Senate, Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2012*, report to accompany S. 1573, 112 Cong., 1st sess. (Washington: GPO, 2011), p. 72.

⁹³ *Ibid.*, p. 73.

⁹⁴ This section was written by Kevin Coleman (x7-7878).

For FY2011, the President's budget request included \$16.8 million for the EAC, of which \$3.25 million was to be transferred to the National Institute of Standards and Technology (NIST). P.L. 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, provided \$16.3 million for the EAC, of which \$3.25 million was to be transferred to NIST.

For FY2012, the President's budget request includes \$13.7 million for the EAC, of which \$3.25 is to be transferred to NIST for its work to support the development of testing guidelines for voting equipment. The House Committee on Appropriations recommends \$6.9 million for the EAC and notes that the amount is \$9.4 million less than in FY2011 and \$6.9 million less than the budget request. The House committee recommends the transfer of \$1.6 million to NIST, which is \$1.8 million less than in FY2011 and \$1.6 less than the request. The House committee also expresses its concern about the EAC's high management operating costs and the effectiveness of the agency. The Senate Appropriations Committee recommends \$14.8 million for the EAC, \$1 million above the budget request, of which \$3.25 million is to be transferred to NIST.

Federal Communications Commission⁹⁵

The Federal Communications Commission, created in 1934, is an independent agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC is also charged with promoting the safety of life and property through wire and radio communications. The mandate of the FCC under the Communications Act is to make available to all people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communications service. The FCC performs five major functions to fulfill this charge: spectrum allocation, creating rules to promote fair competition and protect consumers where required by market conditions, authorization of service, enhancement of public safety and homeland security, and enforcement. The FCC obtains the majority—and sometimes all—of its funding through the collection of regulatory fees pursuant to Title I, Section 9, of the Communications Act of 1934; therefore, its direct appropriation is considerably less than its overall budget; sometimes, as is the case for FY2012, there is no direct appropriation.

For FY2012, the House Appropriations Committee approved \$319,004,000 for agency salaries and expenses with no direct appropriation (all funding will be obtained through the collection of regulatory fees). This level is \$16,790,000 less than FY2011 and \$39,797,000 less than the administration requested.

The House committee recommendation includes bill language, similar to that included in previous Appropriations Acts, which allows

- collection of \$319,004,000 in Section 9 (regulatory) fees;
- a prohibition on amounts collected in excess of \$319,004,000 from being available for obligation;
- a prohibition on remaining offsetting collections from prior years from being available for obligation;
- retention of \$85,000,000 of proceeds from the use of a competitive bidding system;

⁹⁵ This section was written by Patricia Moloney Figliola (x7-2580).

- up to \$4,000 for official reception and representation expenses;
- purchase and hire of motor vehicles; and
- special counsel fees.

The House committee wrote that it remains concerned with the Commission's decision to begin regulating the Internet, specifically the precedent that this decision sets and its impact on future innovation. Therefore, the House committee included Section 621 to prohibit funds for implementation of the Commission's net neutrality order.

The House committee also wrote that it is aware of concerns related to possible interference to Global Positioning System (GPS) devices due to terrestrial broadband service. The House committee wrote that it remains engaged on this issue and awaits the final report by the Technical Working Group. The House committee approved an amendment introduced by Representatives Austria and Yoder that would prohibit funding for the FCC to remove conditions on or permit certain commercial broadband operations until the FCC has resolved concerns of interference by these operations on GPS devices. The amendment was adopted on a voice vote.

The House committee wrote that it believes that FCC involvement in cybersecurity should not result in regulations or activities that duplicate or contradict the multi-agency cybersecurity mitigation and response efforts being lead by the Departments of Defense and Homeland Security.

The House committee also wrote that it understands the FCC is promulgating a rule to address abuses in intercarrier compensation related to the modernization of the Universal Service Fund. In addition, the House committee wrote it believes that the service that local exchange carriers provide to rural Americans was "important" and encouraged the Commission to maintain a reasonable intercarrier compensation system for rural local exchange carriers.

The House committee wrote that it is concerned about the disparity in access to broadband between Puerto Rico and the 50 states. It cited recent studies that have found that only 31–37 percent of residents of Puerto Rico have adopted broadband measured at the lowest speed tracked by the Commission. The House committee encouraged the Commission to implement policies that increase broadband accessibility and adoption in Puerto Rico.

For FY2012, the Senate Appropriations Committee approved the FCC's requested budget of \$354,181,000,⁹⁶ all of which is to be derived from the collection of fees. This budget level is \$18,387,000 above the FY2011 enacted level and \$35,177,000 more than what was approved by the House committee.

The Senate committee recommendation includes bill language, similar to that included in previous appropriations acts, which would

- extend FCC's exemption from the Anti-deficiency Act until December 31, 2013.

⁹⁶ The FCC's original budget request specified an estimate of \$358,801,000. The FCC subsequently notified the committee that its original estimate had been erroneous and that the correct estimate is \$354,181,000.

- prohibit the FCC from enacting certain recommendations regarding universal service that were made to it by the Universal Service Joint Board. The Joint Board's recommendation would limit universal support to one line, which the Committee believes would be harmful to small businesses, especially in rural areas, which need a second line for a fax or for other business purposes.
- encourage the FCC to maintain a reasonable intercarrier compensation system for rural local exchange carriers as it prepares to promulgate a rule to address compensation rates from the Universal Service Fund.

Federal Deposit Insurance Corporation: Office of the Inspector General⁹⁷

The FDIC's Office of the Inspector General is funded from deposit insurance funds; the OIG has no direct support from federal taxpayers. Before FY1998, the amount was approved by the FDIC Board of Directors; the amount is now directly appropriated (through a transfer) to ensure the independence of the OIG.

P.L. 112-10 provides \$43 million for the FDIC OIG for FY2011. The President requested, and the House and Senate appropriations committees both recommended \$45 million for FY2012, an increase of \$2 million from FY2011 enacted appropriations.

Federal Election Commission⁹⁸

The FEC is an independent agency that administers, and enforces civil compliance with, the Federal Election Campaign Act (FECA) and campaign finance regulations. The agency does so through educational outreach, rulemaking, and litigation, and by issuing advisory opinions.⁹⁹ The FEC also administers the presidential public financing system.¹⁰⁰ In recent years, FEC appropriations have generally been noncontroversial and subject to limited debate in committee or on the House and Senate floors.¹⁰¹

For FY2012, the President requested \$67.0 million for the FEC. As in recent years, personnel and information technology (IT) expenses are expected to consume much of the agency's budget in FY2012.¹⁰² The Commission requested no new full-time equivalent positions over the current allocation of 375.¹⁰³ Among other points, the IT budget is expected to cover ongoing improvements to the FEC website and additional hardware and software to manage and publicly disclose campaign finance data.

⁹⁷ This section was written by Darryl Getter (x7-2834).

⁹⁸ This section was written by Sam Garrett (x7-6443).

⁹⁹ FECA is 2 U.S.C. §431 et seq. The FEC can refer criminal cases to the Justice Department.

¹⁰⁰ The Treasury Department and IRS also have administrative responsibilities for presidential public financing. However, Congress does not appropriate funds for the program. For additional discussion, see CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett.

¹⁰¹ For additional discussion of current campaign finance issues, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett.

¹⁰² Federal Election Commission, *FY2012 Congressional Budget Justification*, Washington, DC, February 14, 2011, pp. 5-6, http://www.fec.gov/pages/budget/fy2012/FY_2012_Cong_Budget_Justification_final.pdf.

¹⁰³ *Ibid.*, p. 5.

The House Appropriations Committee recommended an FY2012 appropriation of \$66.4 million, \$0.65 million less than the President's requested amount and the same amount appropriated in FY2011. The House committee report and legislative language contain no additional instructions except a \$5,000 limit on "reception and representation," a prohibition that has long been included in FEC appropriations provisions.

A separate section of the FSGG bill also addresses campaign finance issues. Section 738 of the FY2012 bill (concerning government-wide provisions) contains a prohibition on requiring government contractors to provide information about their or their employees' federal campaign contributions, electioneering communications, or independent expenditures as a condition of receiving the contract. As CRS has noted elsewhere, the Obama Administration has reportedly considered issuing an executive order to require additional disclosure of government contractors' political expenditures. Similar language to that in the FSGG bill has also appeared in other legislation currently before Congress.¹⁰⁴

The Senate Appropriations Committee also recommended a \$66.4 million appropriation with a \$5,000 cap on reception and representation expenses. The Senate committee bill and committee report do not contain additional instructions for the agency. The Senate committee bill appears not to contain the House committee bill's provisions concerning contractor disclosure.

Federal Trade Commission¹⁰⁵

The Federal Trade Commission (FTC) is an independent agency whose mission is to protect consumers and maintain or enhance competition in a wide range of industries. It does so mainly by enforcing laws that prohibit anticompetitive, deceptive, or unfair business practices, and by educating consumers and business owners to foster informed consumer choices, compliance with the law, and a better understanding of the competitive process.

Operating funds for the agency come from three sources, listed here in descending order of importance: (1) appropriations, (2) pre-merger filing fees under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and (3) Do-Not-Call registry fees.

In FY2011, appropriations for the FTC totaled \$291 million, or \$23 million less than the amount requested by the Administration for that year. Pre-merger filing fees are expected to bring in another \$93 million, while fees for the Do-Not-Call registry should contribute \$21 million. According to an FTC budget document, the agency is allocating 57% of its FY2011 operating funds (or \$231 million) to the goal of protecting consumers; the remaining \$174 million goes to the goal of maintaining and enhancing competition.¹⁰⁶

For FY2012, the Obama Administration is requesting \$326 million in appropriations for the FTC, or \$37 million more than the amount enacted for FY2011. The additional funds would be used to pay for mandatory contract and building replacement costs, hire 25 new full-time equivalent employees, support increased demand for the FTC's Consumer Response Systems and Services,

¹⁰⁴ For additional discussion, see the "Potential Policy Considerations for Congress" section of CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett.

¹⁰⁵ This section was written by Gary Guenther (x7-7742).

¹⁰⁶ Federal Trade Commission, *Fiscal Year 2012 Congressional Budget Justification Summary*, p. 44. Available at <http://www.ftc.gov/ftc/oed/fmo/budgetsummary12.pdf>.

improve its ability to investigate and litigate complex cases, acquire up-to-date data on the pharmaceutical industry for use in agency cases and reports, and streamline and modernize the agency's information systems.¹⁰⁷ It is assumed in the budget request that pre-merger filing fees will provide \$110 million in added funds, and that Do-Not-Call fees will contribute another \$19 million, giving the FTC a total budget in FY2012 of \$455 million.

Action in the House

The House Appropriations Committee recommends in the report on H.R. 2434 that the FTC receive \$284 million in appropriations in FY2012, or \$7 million less than the amount enacted for FY2011 and \$42 million less than the budget request. This amount would be supplemented by an estimated \$108 million in pre-merger filing fees and \$21 million in Do-Not-Call fees, giving the agency an operating budget of \$413 million.

Though the House committee's report says little about the use of the recommended appropriated funds, it does direct the FTC not to issue "principles or guidelines" concerning food marketed to children, unless a "peer-reviewed scientific study" conclusively proves that the most effective way to alter eating habits and reduce the obesity rate is to regulate the marketing of food to children.¹⁰⁸ The House committee also expressed the view that the FTC should not rely on any guidance issued by the federal Interagency Working Group on Food Marketed to Children "to engage in enforcement actions under the (Commission's) existing authority."

Action in the Senate

The Senate Appropriations Committee recommends in its report (S.Rept. 112-79) on H.R. 1573 that the FTC receive \$312 million in funding in FY2012, or \$20 million more than the amount enacted for FY2011 and \$14 million below the budget request. Of the recommended funds, \$149 million would come from Hart-Scott-Rodino pre-merger filing fees and \$21 million from Do-Not-Call fees, leaving a direct appropriation of \$142 million.¹⁰⁹

Slightly more than \$20 million of the proposed budget is set aside to replace two "satellite office buildings" in Washington, D.C., that the FTC occupies. Funding is also provided to continue the Do-Not-Call initiative in FY2012. The cost of implementing a related initiative, the Telemarketing Sales Rule, should be covered from the collection of fees.

Expressing concern about the potential for anti-competitive behavior by oil and gas companies, the committee directs the FTC to keep it informed about any findings from investigations of gas prices and other aspects of competition in the oil and gas industries.

The FTC is responsible for enforcing the provisions in Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act that concern payment card network companies. In essence, its role is to prevent larger companies in the industry from undermining the small issuer exemption and other benefits for consumers in that section of the act. Mindful of this

¹⁰⁷ Ibid., pp. 37-41.

¹⁰⁸ House Appropriations Committee, report to accompany H.R. 2434, p. 46.

¹⁰⁹ U.S. Congress, Senate, Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2012*, report to accompany S. 1573, 112th Cong., 1st sess. (Washington: GPO, 2011), p. 77.

responsibility, the committee directs the FTC to submit a report one year after the enactment of the bill that discusses the steps it has taken to enforce compliance by payment card network companies with Section 1075 and related regulations. Of particular concern to the committee is evidence that those companies are engaging in practices that diminish the ability of small banks and credit unions to compete with large financial institutions in the debit card market.

A legislative proposal to transfer control of the FTC's headquarters building to the National Gallery of Art (NGA) is also addressed in the report. The committee expresses concern that the transaction would deprive taxpayers of a valuable asset without compensation. Under the proposal, private money would be raised to pay for renovation of the building, but federal money would be needed to cover the cost of maintenance and repairs. As noted in the report, significant costs could be incurred in building a new facility, or leasing commercial space, for the FTC staff that would be displaced, moving the staff to another facility, and the continuing expenses associated with NGA's use of the headquarters building. To address these concerns, Section 623 of the bill prohibits the transfer of ownership of the headquarters building to another entity unless the federal government receives fair market value for the property.¹¹⁰

General Services Administration¹¹¹

The General Services Administration (GSA) administers federal civilian procurement policies pertaining to the construction and management of federal buildings, disposal of real and personal property, and management of federal property and records. It is also responsible for managing the funding and facilities for former Presidents and presidential transitions.

GSA's real property activities are funded through the Federal Buildings Fund (FBF). The FBF is a revolving fund, into which rental payments from federal agencies that lease GSA space are deposited. Revenue in the fund is then made available by Congress each year to pay for specific activities: construction or purchase of new space, repairs and alterations to existing space, rental payments for space that GSA leases, installment payments, and other building operations expenses. These amounts are referred to as "limitations" because GSA may not obligate more funds from the FBF than permitted by Congress, regardless of how much revenue is available for obligation. Certain debts may also be paid for with FBF funds. A negative total for the FBF occurs when the amount of funds made available for expenditure in a fiscal year is less than the amount of new revenue expected to be deposited. A negative total does not mean that no funds are available from the FBF, only that there is a net gain to the fund under the proposed spending levels.

GSA's operating accounts are funded through direct appropriations, separate from the FBF. The total amount of funding for GSA is calculated by adding the amount of FBF funds made available to the amount of direct appropriations provided. **Table 7** shows GSA appropriations as enacted for FY2010 and FY2011, as requested by the President for FY2012, and as recommended by the House and Senate appropriations committees for FY2012.

¹¹⁰ Ibid., p. 79.

¹¹¹ This section was written by Garrett Hatch (x7-7822).

Table 8. General Services Administration Appropriations, FY2010-FY2012
(in millions of dollars)

Account	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Federal Buildings Fund	\$387	-\$1,227	\$286	-\$1,999	-1,078
Limitations on Availability of Revenue	8,544	7,598	9,509	7,224	8,145
<i>Construction and Acquisition</i>	894	82	840	0	65
<i>Repairs and Alterations</i>	414	280	869	280	280
<i>Installment Payments</i>	141	136	127	127	127
<i>Rental of Space</i>	4,805	4,830	5,285	4,700	5,285
<i>Building Operations</i>	2,290	2,270	2,388	2,117	2,388
Repayment of Debt	66	71	80	80	80
Rental Income to Fund	-8,223	-8,871	-9,303	-9,303	-9,303
Rescission	0	-25	0	0	0
Operating Accounts	\$263	\$242	\$332	\$241	\$228
Government-wide Policy	60	67	105	65	62
Operating Expenses	73	70	70	68	70
Office of Inspector General	59	59	62	59	58
e-Government Fund	34	8	34	0	0
Acquisition Workforce Fund	—	0	17	0	0
Federal Citizens Info. Center	37	34	40	0	0
Former Presidents	4	4	4	4	4
Citizen Information and Engagement	—	—	—	50	39
Rescission	—	—	—	-5	-5
Grand Total	\$653	-\$985	\$618	-\$1,758	-850

Sources: S.Rept. 111-238, H.R. 1, H.R. 1473, and H.Rept. 112-136.

Note: Figures in columns may not equal totals due to rounding.

The President proposed a limit of \$9.509 billion from the FBF's available revenue for GSA's real property activities in FY2012, \$1.911 billion more than was provided in FY2011. The President also requested \$332 million for GSA's operating accounts, an increase of \$90 million from FY2011 enacted levels.

The House Appropriations Committee has recommended \$7.224 billion from the FBF be made available to GSA for FY2012, \$2.285 billion less than the President's request and \$374 million below the amount provided for FY2011. The House committee has also recommended \$241 million for GSA's operating accounts, \$1 million less than FY2011 enacted amounts and \$91 million less than the President requested. The House committee would establish an Information and Engagement for Citizens account, which would replace the e-Government fund and the

Federal Citizens Information Center accounts. The House committee wrote that the new account would “provide access and understanding of Federal information, benefits, and services to citizens, businesses, other government, and the media.”¹¹²

The Senate Appropriations Committee has recommended \$8.145 billion from the FBF be made available to GSA for FY2012, \$1.364 billion less than the President requested and \$547 million more than was enacted for FY2011. The Senate committee also recommended \$228 million for GSA’s operating accounts, \$104 million less than the President requested and \$14 million less than was enacted for FY2011. The Senate committee, like the House committee, would replace the e-Government fund and the Federal Citizens Information Center accounts with an Information and Engagement for Citizens account.

Electronic Government Fund¹¹³

Originally unveiled in advance of the President’s proposed budget for FY2002, the Electronic Government Fund (E-Government Fund) and its appropriation have been a somewhat contentious matter between the President and Congress. The E-Government Fund was created to support interagency e-government initiatives approved by the Director of OMB.¹¹⁴ The fund and the projects it sustains historically have been closely scrutinized by congressional appropriators. The President’s initial \$20 million request for FY2002 was cut to \$5 million, which was the amount provided for FY2003, as well. Funding thereafter was held at \$3 million for FY2004, FY2005, FY2006, FY2007, and FY2008. In FY2009, President George W. Bush requested \$5 million for the E-Government Fund. Congress, however, appropriated no appropriation to the E-Government Fund in FY2009.¹¹⁵

For FY2012, President Obama requested \$34 million for the Electronic Government Fund, \$24 million more than the \$8 million that was appropriated for FY2011. House appropriators, however, recommended that the Electronic Government Fund be combined with the Federal Citizen Services Fund and renamed the “Information and Engagement for Citizens” account and be appropriated \$50 million.¹¹⁶ House appropriators’ said that “[t]he Committee expects the funds provided for these activities, combined with efficiency gains and resource prioritization, will result in increased delivery of information to the public and in the ease of transaction with the

¹¹² H.Rept. 112-136, p. 51.

¹¹³ This section was written by Wendy Ginsberg (x7-3933).

¹¹⁴ Pursuant to 44 U.S.C. §3604, the E-Government Fund projects “may include efforts to make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments); make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.”

¹¹⁵ The E-Gov Fund, in previous years, was not spending its full appropriation. For FY2009, therefore, House appropriators recommended no additional funding for the account, and Senate appropriators recommended \$1 million for the fund. The consolidated continuing appropriations act temporarily returned the E-Gov Fund to a \$3 million appropriation for FY2009. The omnibus budget, however, eliminated all FY2009 E-Gov Fund appropriations. The E-Gov Fund received no FY2009 appropriations.

¹¹⁶ H.Rept. 112-136, p. 52. According to S.Rept. 111-238, the Federal Citizen Services Fund provides salaries and expenses for the Office of Citizen Services, which “provides citizens, businesses, other governments, and the media with access points to easily obtain Government information and services,” including USA.gov. See U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2011*, 111th Cong., 2nd sess., July 29, 2010, S.Rept. 111-238 (Washington: GPO, 2010), p. 98.

government.”¹¹⁷ In FY2011, the Federal Citizen Services Fund was appropriated \$34 million. The combined appropriation for both the Electronic Government Fund and the Federal Citizen Services Fund in FY2011 was \$42 million, or \$8 million less than House appropriators’ FY2012 recommendation.

Senate appropriators also recommended combining the Electronic Government Fund and the Federal Citizen Services Fund to make the Information and Engagement for Citizens account. According to the Senate report accompanying the bill, the two existing funds “share a common objective—making it easier for citizens to understand and interact with their Government.”¹¹⁸ The report added, “[t]he purpose of this new office is to provide electronic or other methods of providing access and understanding of Federal information, benefits, and services to citizens, businesses, other governments, and the media.” Senate appropriators recommended nearly \$39.1 million be appropriated to the new account, which was roughly \$10.9 million less than was recommended by House appropriators—and \$3.0 million less than was appropriated in FY2011 to the Electronic Government Fund and the Federal Citizens Services Fund combined (\$42.1 million).¹¹⁹

At a September 21, 2011, hearing before the House Committee on Science, Space, and Technology’s Subcommittee on Technology and Innovation, David McClure, associate administrator at the General Services Administration—the federal agency that serves as a steward for many E-Gov Fund projects—testified that a reduction in the agency’s appropriation could force the federal government to limit work to “existing projects rather than fueling new creative ways to save money for the government.”¹²⁰

Independent Agencies Related to Personnel Management Appropriations

The FSGG appropriations bill includes funding for four agencies with personnel management functions: the Federal Labor Relations Authority (FLRA), the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), and the Office of Special Counsel (OSC). **Table 8** shows appropriations enacted for FY2011, amounts requested by the President for FY2012, and amounts recommended by the House and Senate appropriations committees for FY2012, for each of these agencies.

¹¹⁷ H.Rept. 112-136, p. 52.

¹¹⁸ S.Rept. 112-79, p. 86.

¹¹⁹ Ibid.

¹²⁰ U.S. Congress, House Committee on Science, Space, and Technology, Subcommittee on Technology and Innovation, *The Next IT Revolution?: Cloud Computing Opportunities and Challenges*, 112th Cong., 1st sess., September 21, 2011. A webcast of the hearing is available at the House Science, Space, and Technology’s website: <http://science.house.gov/hearing/technology-and-innovation-subcommittee-hearing-cloud-computing>. Mr. McClure’s comment was made during the question and answer period of the hearing, soon after the 1 hour, 8 minute mark.

Table 9. Independent Agencies Related to Personnel Management Appropriations, FY2011-FY2012

(in millions of dollars)

Agency	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Committee	FY2012 Senate Committee
Federal Labor Relations Authority	\$24.8	\$24.7	\$26.4	\$24.1	\$24.7
Merit Systems Protection Board (total)	42.9	42.8	44.5	41.8	42.6
Salaries and Expenses	40.3	40.3	42.1	39.4	40.3
Limitation on Administrative Expenses	2.6	2.6	2.3	2.3	2.3
Office of Personnel Management (total)	20,378.1	20,827.6	21,151.0	21,128.0	21,128.0
Salaries and Expenses	103.0	97.8	100.0	97.8	97.8
Limitation on Administrative Expenses	112.7	112.5	132.5	112.5	112.5
Office of Inspector General (salaries and expenses)	3.1	3.1	3.8	3.1	3.1
Office of Inspector General (limitation on administrative expenses)	21.2	21.2	21.5	21.2	21.2
Government Payments for Annuity, Employee Health Benefits ^a	9,814	10,467.0	10,862.0	10,862.0 _b	10,862.0
Government Payments for Annuity, Employee Life Insurance ^a	48.0	50.0	52.0	52.0 _b	52.0
Payment to Civil Service Retirement and Disability Fund ^a	10,276.0	10,076.0	9,979.0	9,979.0 _b	9,979.0
Office of Special Counsel	\$18.5	\$18.5	\$19.5	\$19.5	\$19.0

Sources: H.Rept. 112-136, S.Rept. 112-79, *FY2012 Budget, Appendix*, pp. 1241-1242, 1252-1253, 1149-1160, and 1279-1280, and the respective agency FY2012 congressional budget submissions were examined, but the House report numbers were used in the table.

Note: All figures are rounded, and columns also may not equal the total due to rounding.

- a. Mandatory appropriations. For FY2011, the appropriations act provides “such sums as may be necessary” for the health benefits, life insurance, and retirement accounts. The Office of Personnel Management’s *Congressional Budget Justification* for FY2012 states the FY2012 amounts for these accounts as \$10,817.0 million (health benefits), \$47 million (life insurance), and \$10,978.0 million (retirement) at pp. 161-163. The *FY2012 Budget Appendix*, at pp. 1151-1153, states the same amounts as the budget justification.
- b. In FY2012, the House Appropriations Committee did not include funding for three OPM accounts—health benefits, life insurance, and retirement—in Title V of the FSGG bill, as it has in previous years. Instead, funding for these accounts—which are mandatory—was provided in Section 628 of H.R. 2434. In this report, funding for health benefits, life insurance, and retirement is included in Title V to be consistent with prior year calculations. According to the House Committee on Appropriations report, “These are accounts where authorizing language requires the payment of funds.” The report states that the Congressional Budget Office estimates the following costs: \$10,862.0 million for the Government Payment

for Annuity, Employee Health Benefits; \$52 million for the Government Payment for Annuity, Employee Life Insurance; and \$9,979.0 million for Payment to the Civil Service Retirement and Disability Fund.

Federal Labor Relations Authority¹²¹

The FLRA is an independent federal agency that administers and enforces Title VII of the Civil Service Reform Act of 1978. Title VII is also called the Federal Service Labor-Management Relations Statute (FSLMRS). The FSLMRS gives federal employees the right to join or form a union and to bargain collectively over the terms and conditions of employment. Employees also have the right not to join a union that represents employees in their bargaining unit. The statute excludes specific agencies and gives the President the authority to exclude other agencies for reasons of national security. Agencies that are excluded from the statute include the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), Government Accountability Office (GAO), National Security Agency (NSA), Tennessee Valley Authority (TVA), Federal Labor Relations Authority (FLRA), Federal Service Impasses Panel (FSIP), and the Secret Service.

The FLRA consists of a three-member authority, the Office of General Counsel, and the FSIP. The three members of the authority and the General Counsel are appointed to five-year terms by the President with the advice and consent of the Senate.

The authority resolves disputes over the composition of bargaining units, charges of unfair labor practices, objections to representation elections, and other matters. The General Counsel's office conducts representation elections, investigates charges of unfair labor practices, and manages the FLRA's regional offices. The FSIP resolves labor negotiation impasses between federal agencies and labor organizations.

The President's FY2012 budget proposed an appropriation of \$26.4 million for the FLRA, about \$1.7 million, or 6.9%, more than the agency's FY2011 appropriation of \$24.7 million.

H.R. 2434 would provide the FLRA with \$24.1 million in funding for FY2012, which is \$0.6 million less than the FY2011 appropriation and \$2.3 million less than the amount requested by the President.

S. 1573, as reported, would provide an appropriation of \$24.7 million, which is the same as the FY2011 appropriation and \$1.7 million (-6.5%) less than the amount requested by the President.

Merit Systems Protection Board¹²²

The Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency established to protect the civil service merit system. The MSPB adjudicates appeals primarily involving personnel actions, certain federal employee complaints, and retirement benefits issues.

The President's budget requested an FY2012 appropriation of \$44.5 million, including \$42.1 million for Merit Systems Protection Board (MSPB) salaries and expenses, an amount that is \$1.7

¹²¹ This section was written by Gerald Mayer (x7-7815).

¹²² This section was written by Barbara L. Schwemle (x7-8655).

million or 4.0% above the FY2011 funding of \$42.8 million. The agency's FTE employment level is estimated to be 217 for FY2012, six more than the estimated FTE level of 211 for FY2011.

MSPB's authorization expired on September 30, 2007.¹²³ The 110th Congress considered, but did not act upon, legislation (S. 2057, H.R. 3551) that would have reauthorized the MSPB for three years and enhanced the agency's reporting requirements. Legislation to reauthorize the agency was not introduced in the 111th Congress and has not been introduced in the 112th Congress.

H.R. 2434, as reported, would provide an appropriation of \$41.8 million, including \$39.4 million for salaries and expenses, that is \$1.1 million (-2.5%) less than the FY2011 enacted amount and \$2.7 million (-6.1%) less than the President's request.

S. 1573, as reported, would provide an appropriation of \$42.6 million, including \$40.3 million for salaries and expenses, which is the same as the FY2011 enacted amount, and \$1.9 million (-4.4%) less than the President's request.

Office of Personnel Management¹²⁴

The President's budget requested an FY2012 appropriation of \$100 million for OPM salaries and expenses, an increase of \$2.2 million or 2.3% above the FY2011 enacted appropriation of \$97.8 million. This amount includes funding of \$6 million for the Enterprise Human Resources Integration (HRI) project and \$1.4 million for the Human Resources Line of Business (HRLOB) project. The budget also requested appropriations of \$132.5 million for trust fund transfers; \$3.8 million for Office of Inspector General (OIG) salaries and expenses; and \$21.5 million for OIG trust fund transfers for FY2012. These amounts are \$20 million (+17.8%), \$662,000 (+21.1%), and \$385,000 (+1.8%), respectively, above the FY2011 enacted appropriations. The agency's FTE employment level is estimated to be 5,405 for FY2012, one more than the estimated FTE level for FY2011.

OPM's budget submission states that the budget "will permit OPM to pursue long-term human resources strategies that deliver results and enhance the values of the civil service," and includes "funding to maintain timely processing of retirement claims and provide services to annuitants."¹²⁵ In addition, it allows the Office of Inspector General to "continue to advance its prescription drug audit program, which includes audits of pharmacy benefit managers," and to continue the Federal Employees' Health Benefits Program (FEHBP) "claims data warehouse initiative" that "streamlines and enhances the various administrative and analytical procedures involved in the oversight of the FEHBP."¹²⁶

H.R. 2434, as reported, would provide appropriations (at the same levels as the FY2011 enacted amounts) of \$97.8 million for OPM salaries and expenses, \$112.5 million for trust fund transfers, \$3.1 million for OIG salaries and expenses, and \$21.2 million for OIG trust fund transfers. These amounts are, respectively, \$2.2 million, \$20 million, \$662,000, and \$385,000 less than the President's request.

¹²³ 5 U.S.C. §5509.

¹²⁴ This section was written by Barbara L. Schwemle (x7-8655).

¹²⁵ *FY2012 Budget, Appendix*, pp. 1149-1150.

¹²⁶ *Ibid*, p. 1151.

Section 628(a)(3)(4)(5) of H.R. 2434 would provide the mandatory appropriations for the health benefits, life insurance, and retirement accounts. According to the House Committee on Appropriations report, “These are accounts where authorizing language requires the payment of funds.” The report states that the Congressional Budget Office estimates the following costs: \$10,862.0 million for the Government Payment for Annuity, Employee Health Benefits; \$52 million for the Government Payment for Annuity, Employee Life Insurance; and \$9,979.0 million for Payment to the Civil Service Retirement and Disability Fund.

The House committee report directs OPM to provide a report on the ongoing activities to promote diversity among the workforce and managers and executives to the House and Senate Committees on Appropriations within 180 days after the act’s enactment. The report also states that the House committee encourages federal agencies to increase recruitment efforts within the United States territories.

S. 1573, as reported, would provide appropriations (at the same levels as the FY2011 enacted amounts) of \$97.8 million for OPM salaries and expenses, \$112.5 million for trust fund transfers, \$3.1 million for OIG salaries and expenses, and \$21.2 million for OIG trust fund transfers. These amounts are, respectively, \$2.2 million (-2.2%), \$20 million (-15.1%), \$662,000 (-17.4%), and \$385,000 (-1.8%) less than the President’s request.

The Senate report requests that the committee be kept apprised of developments as they occur with regard to the expedited processing of retirement claims and receive quarterly reports and briefings on developments related to modernization of the retirement records system. Updates are to be provided every six months on OPM efforts to use the Intergovernmental Personnel Act Mobility Program to address shortages in nurses and nurse faculty members. The committee also directs OPM to submit a report on options and recommendations to remedy inappropriate use by federal agencies of temporary hiring authority, within 90 days after the act’s enactment; to report on the agency’s pilot program on wellness, within 90 days after the act’s enactment; and to provide quarterly updates on the operation of the Consolidated Business Information System for managing OPM’s trust funds.

Office of Special Counsel¹²⁷

The President’s budget requested an FY2012 appropriation of \$19.5 million for the Office of Special Counsel (OSC), an amount that is \$1 million, or 5.6% above, the FY2011 funding of \$18.5 million. The agency’s FTE employment level is estimated to be 112 for FY2012, three more than the estimated FTE level of 109 for FY2011. The agency’s budget submission projected a continued increase in the number of whistleblower disclosure, Hatch Act, and prohibited personnel practice cases received. According to OSC, it will continue to focus on improved performance in the timely handling of cases, the quality of agency products and decisions, and fulfilling responsibilities for education and outreach.

OSC’s authorization expired on September 30, 2007.¹²⁸ The 110th Congress considered, but did not act upon legislation (S. 2057, H.R. 3551) that would have reauthorized the agency for three years and included provisions to enhance OSC’s reporting requirements. Legislation to

¹²⁷ This section was written by Barbara L. Schwemle (x7-8655).

¹²⁸ 5 U.S.C. §5509.

reauthorize the agency was not introduced in the 111th Congress and has not been introduced in the 112th Congress.

H.R. 2434, as reported, would provide an appropriation of \$18.0 million that is \$461,000 (-2.5%) less than the FY2011 enacted amount and \$1.5 million (-7.6%) less than the President's request. S. 1573, as reported, would provide an appropriation of \$19.0 million that is \$514,000 (+2.8%) more than the FY2011 enacted amount and \$514,000 (-2.6%) less than the President's request. The Senate report states that the agency "continues to experience dramatic growth in its caseload" and expresses the committee's concern that the unit administering the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires two additional staff to ensure that the pilot demonstration program is "minimally viable."

National Archives and Records Administration¹²⁹

President Obama requested \$422.5 million in FY2012 operating expenses for the National Archives and Records Administration (NARA), which is slightly more than its FY2011 appropriation.¹³⁰ Unlike previous recommendations from the Administration, President Obama combined his requests for operating expenses and the Electronic Records Archive (ERA) because development of ERA was largely completed.¹³¹ The Administration recommended that appropriators provide \$430.7 million for operations and ERA. In FY2011, the President recommended \$348.7 million for operating expenses and \$85.5 million for the ERA, for a total of \$434.2 million—or 7.5% more than his FY2012 recommendation. According to NARA, the ERA will sustain most of the decrease in appropriations because NARA said it cut costs in other areas by "reducing or eliminating a variety of programs."¹³² The President also recommended reduction from FY2011 appropriation levels for NARA's inspector general (a 3.3% decrease, from \$4.2 million in FY2011 to \$4.1 million in FY2012), repairs and restorations (an 18.3% decrease, from \$11.8 million in FY2011 to \$9.7 million in FY2012), and the National Historic Publications and Records Commission (NHPRC) (a 28.4% decrease, from \$7.0 million in FY2011 to \$5.0 million in FY2012).

House appropriators recommended NARA receive \$360.0 million in FY2012, \$57.0 million or 13.7% less than the \$417.0 million appropriated in FY2011.¹³³ The House committee recommended that NARA receive \$361.0 million in operating expenses, which would include operation of the ERA. This recommendation is \$57.0 million (16.8%) less than the FY2011

¹²⁹ This section was written by Wendy Ginsberg (x7-3933).

¹³⁰ *The Budget for 2012: Appendix*, p. 1255

¹³¹ Appropriation levels for the ERA were reduced in FY2011. In FY2010, the ERA was appropriated \$85.5 million. In FY2011, the appropriation was reduced to \$71,856,000. The reduction in ERA appropriation levels for FY2011 followed the release of two Government Accountability Office (GAO) reports that raised serious concerns about the implementation of the ERA. One report said that NARA's oversight of the acquisition processes related to creating the Electronic Record Archive had "weaknesses . . . in most areas." See U.S. Government Accountability Office, *Electronic Records Archive: National Archives Needs to Strengthen Its Capacity to Use Earned Value Techniques to Manage and Oversee Development*, GAO 11-86, January 2011, Highlights, <http://www.gao.gov/new.items/d1186.pdf>; and U.S. Government Accountability Office, *Electronic Government: National Archives and Records Administration's Fiscal Year 2011 Expenditure Plan*, GAO 11-299, March 4, 2011, Highlights, <http://www.gao.gov/new.items/d11299.pdf>.

¹³² The National Archives and Records Administration, "President Requests \$423M for National Archives FY12 Budget," press release, February 1, 2010, <http://www.archives.gov/press/press-releases/2011/nr11-78.html>.

¹³³ H.Rept. 112-136, p. 55.

appropriation for both operating expenses and ERA combined and \$47.7 million (11.1%) less than the President's FY2012 request.

House appropriators recommended the same funding level as requested by the President for NARA's Office of the Inspector General (\$4.1 million). The appropriators, however, recommended \$8.7 million for repairs and restoration, \$3.1 million (26.5%) less than the FY2011 appropriation and \$1.0 million (10.0%) less than the President's request. Appropriators also recommended that NARA direct cost savings from construction projects at the John F. Kennedy Library and the Military Personnel Records Center "toward priorities in NARA's Capital Improvement Plan for the critical repairs, alterations, and improvements to Archives facilities and Presidential Libraries nationwide."¹³⁴ Appropriators recommended \$1 million in appropriations for the NHPRC, which is \$6.0 million (85.7%) less than appropriated in FY2011 and \$4.0 million (80.0%) less than the President's FY2012 recommendation. The House committee report does not provide a reason for the reduction.

Senate appropriators recommended more than \$378.8 million for NARA operating expenses in FY2012, which is roughly \$24.9 million (6.2%) less than was requested by the President—but nearly \$17.9 million (5.0%) more than was recommended by House appropriators. The recommendation is also nearly \$39.8 million (11.7%) more than was appropriated for operating expenses in FY2011. Like the President's request, the Senate appropriation recommendation includes appropriations for the ERA, which was previously appropriated as a separate line-item.¹³⁵

Senate appropriators matched both the President's request and House appropriators' recommendations for the OIG at \$4.1 million. Senate appropriators matched the President's nearly \$9.7 million request for repairs and restorations, which is \$966,000 (11.1%) more than was recommended by House appropriators. The Senate recommendation is nearly \$2.2 million less than was appropriated in FY2011 (18.3%). According to the Senate report accompanying the recommendation, the Senate reiterated House appropriators' recommendation to remove restrictions on more than \$6.3 million from projects at the John F. Kennedy Presidential Library and Museum and the Military Personnel Records Center so the money can be used for "other capitol endeavors, particularly the top priority National Archives Experience Phase II project."¹³⁶ The Senate matched the President's \$5.0 million request for the NHPRC, which is \$4.0 million (400%) more than the House appropriators' recommendation. The \$5.0 million request is almost \$2.0 million (28.4%) less than was appropriated in FY2011.

¹³⁴ Ibid., p. 56.

¹³⁵ Senate appropriators wrote the following of concerns that consistently surrounded the creation of the ERA:

... NARA and [the Office of Management and Budget] mutually decided to discontinue the contractual developmental component at the close of fiscal year 2011. This will allow NARA to focus its attention on promoting Federal agency use of the current system's functionalities rather than making further investments in building a system that encountered cost increases, schedule slippage, and strategic management challenges.

S.Rept. 112-136, p. 95.

¹³⁶ Ibid.

National Credit Union Administration¹³⁷

The NCUA is an independent federal agency funded entirely by the credit unions that the agency charters, insures, and regulates. The NCUA manages the Community Development Revolving Loan Fund Program (CDRLF). Established in 1979, the CDRLF assists officially designated “low-income” credit unions in providing basic financial services to low-income communities. Low-interest loans and deposits are made available to assist these credit unions. Loans or deposits are normally repaid in five years, although shorter repayment periods may be considered. Technical assistance grants are also available to low-income credit unions. Earnings generated from the CDRLF are available to fund technical assistance grants in addition to funds provided for specifically in appropriations acts. Grants are available for improving operations as well as addressing safety and soundness issues. P.L. 112-10 provides \$1.25 million for technical assistance grants for FY2011. The President’s budget proposal includes \$2 million for FY2012, an increase of \$750,000 over FY2011 enacted appropriations. The House Committee on Appropriations has recommended \$500,000 for FY2012, which would be \$1.5 million below the President’s request and \$500,000 less than FY2011 enacted appropriations. The Senate Appropriations Committee has recommended \$1.25 million for FY2012, the same as enacted in FY2011 and \$750,000 less than the President’s request.

Privacy and Civil Liberties Oversight Board¹³⁸

Originally established in 2004 by the Intelligence Reform and Terrorism Prevention Act as an agency within the EOP,¹³⁹ the Privacy and Civil Liberties Oversight Board (PCLOB) was reconstituted as an independent agency within the executive branch by the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53).¹⁴⁰ The board assumed its new status on January 30, 2008; its FY2009 appropriation was its first funding as an independent agency.¹⁴¹ Among its responsibilities, the five-member board is to (1) ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the nation against terrorism; (2) review the implementation of laws, regulations, and executive branch policies related to efforts to protect the nation from terrorism, including the implementation of information sharing guidelines; and (3) analyze and review actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties. The board is to advise the President and the heads of executive branch departments and agencies on issues concerning, and findings pertaining to, privacy and civil liberties. The board is to provide annual reports to Congress detailing its activities during the year, and board members appear and testify before congressional committees upon request. The PCLOB is currently without members, although President Obama has nominated two people to serve on the board.

¹³⁷ This section was written by Darryl Getter (x7-2834).

¹³⁸ This section was written by Garrett Hatch (x7-7822).

¹³⁹ 118 Stat. 3638 at 3684.

¹⁴⁰ 121 Stat. 266 at 352.

¹⁴¹ See CRS Report RL34385, *Privacy and Civil Liberties Oversight Board: New Independent Agency Status*, by Garrett Hatch.

The President's FY2012 request for the PCLOB is \$1.7 million, which is \$700,000 above FY2011 enacted appropriations of \$1.0 million. The House Committee on Appropriations has recommended no new appropriations for FY2012 and a rescission of the \$1.0 million appropriated for FY2011. The Senate Appropriations Committee has recommended \$1.0 million for the PCLOB for FY2012 and a rescission of \$1.0 million of funds appropriated for FY2011.

Recovery Accountability and Transparency Board

The Recovery Accountability and Transparency Board (Recovery Board) was established by the American Recovery and Accountability Act of 2009 (P.L. 111-5) to provide oversight and transparency in the expenditure of Recovery Act funds. The Recovery Board is funded through the FSGG appropriations bill for the first time in FY2012. In previous fiscal years, the board was funded by a Recovery Act appropriation which is now exhausted. The President requested \$31.5 million for the Recovery Board for FY2012. The House Appropriations Committee has recommended \$25.0 million, which is \$6.5 million less than the President's request. The Senate Appropriations Committee has recommended \$28.4 million, which is \$3.1 million less than the President's request.

Securities and Exchange Commission¹⁴²

The Securities and Exchange Commission (SEC) administers and enforces federal securities laws to protect investors from fraud, to ensure that sellers of corporate securities disclose accurate financial information, and to maintain fair and orderly trading markets. The SEC's budget is set through the normal appropriations process, but funds for the agency come from fees on sales of stock and certain other securities transactions. Under the Dodd-Frank Act (P.L. 111-203), these transaction fees are divided between an offsetting account available to appropriators, from which funds for the SEC are drawn, and the Treasury's general fund.

For FY2012, the Administration has requested \$1.407 billion, an increase of \$222 million over FY2011 appropriations, which were \$1.185 billion (and included a supplementary appropriation of \$41 million under P.L. 112-10). The House Appropriations Committee has recommended that the SEC's FY2012 budget remain at FY2011 levels, that is, \$1.185 billion, or \$222 million (16%) below the Administration's request. The Senate Appropriations Committee recommended \$1.407 billion, the amount of the Administration's request.

Selective Service System¹⁴³

The Selective Service System (SSS) is an independent federal agency operating with permanent authorization under the Military Selective Service Act.¹⁴⁴ It is not part of the Department of Defense, but its mission is to serve the emergency manpower needs of the military by conscripting personnel when directed by Congress and the President.¹⁴⁵ All males ages 18 through 25 and living in the United States are required to register with the SSS. The induction of men into

¹⁴² This section was written by Mark Jickling (x7-7784).

¹⁴³ This section was written by David Burrelli (x7-8033).

¹⁴⁴ 50 U.S.C. App. §451 et seq.

¹⁴⁵ See <http://www.sss.gov/>.

the military via Selective Service (i.e., the draft) terminated in 1972. In January 1980, President Carter asked Congress to authorize standby draft registration of both men and women. Congress approved funds for male-only registration in June 1980. Efforts are underway to allow women to serve in combat units which may lead to the modification of registration to include women.

Since 1972, Congress has not renewed any President's authority to begin inducting (i.e., drafting) anyone into the armed services. In 2004, an effort to provide the President with induction authority was rejected.¹⁴⁶

Funding of the Selective Service System has remained relatively stable over the years in terms of absolute dollars, but has decreased in terms of inflation adjusted funding. P.L. 111-117 provided \$24.28 million for FY2010, an increase of \$2.28 million over FY2009 enacted appropriations. For FY2011, it received \$24.23 million. For FY2012, the Senate Appropriations Committee recommended a Selective Service System appropriation of \$23.98 million.

Small Business Administration¹⁴⁷

The Small Business Administration (SBA) administers a number of programs intended to assist small firms. Arguably, the SBA's four most important functions are to guarantee—principally through the agency's Section 7(a) and 504/Certified Development Company general business loan programs—business loans made by banks and other financial institutions; to make long-term, low-interest loans to small businesses, nonprofit organizations, and households that are victims of hurricanes, earthquakes, floods, other physical disasters, and acts of terrorism; to finance training and technical assistance programs for small business owners, and to serve as an advocate for small business within the federal government.

The SBA's FY2011 appropriation was \$729.7 million (after an across-the-board rescission of 0.2%), a reduction of \$94.3 million from the FY2010 appropriated amount of \$824.0 million (P.L. 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011). The SBA's FY2011 appropriation included \$433.4 million for salaries and expenses, \$16.3 million for the SBA's Office of Inspector General (not including \$1.0 million to be transferred from the Disaster Loans Program account), \$236.0 million for business loans (\$3.0 million for microloan subsidy costs, \$80.0 million for other loan subsidy costs, and \$153.0 million for administrative costs), and \$45.5 million for the disaster loans program account.

The SBA's FY2011 appropriation supported up to \$28.0 billion in business loan guarantees (up to \$17.5 billion for 7(a) loans, up to \$7.5 billion for 504/Certified Development Company loans, and up to \$3.0 billion for Small Business Investment Company debentures) and up to \$12.0 billion in guarantees of trust certificates for the secondary market guarantee program.

For FY2012, the Obama Administration requested that the SBA receive an appropriation of \$985.4 million, an increase of \$255.7 million (35%) over the FY2011 enacted amount of \$729.7 million (P.L. 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011). The Administration recommended an appropriation of \$427.3 million for salaries and expenses. Included in that amount is \$160.2 million for non-credit programs, such as Historically Underutilized Business Zones (HUBZones), Microloan Technical Assistance, the National

¹⁴⁶ See H.R. 163, October 5, 2004, failed by Yeas and Nays (Roll no. 494).

¹⁴⁷ This section was written by Robert Dilger (x7-3110).

Women's Business Council, Native American Outreach, the Service Corps of Retired Executives (SCORE), Small Business Development Centers, Veteran's Business Development, and Women's Business Centers.

The Administration also requested \$18.4 million for the SBA's Office of Inspector General (not including \$1.0 million to be transferred from the Disaster Loans Program account), \$9.1 million for the SBA's Office of Advocacy, \$0.0 for the SBA's surety bond guarantees revolving loan fund (the Administration indicated that there are sufficient funds in reserve to cover the cost of claim defaults), \$363.3 million for the SBA's business loan programs (\$3.765 million for microloan subsidy costs, \$211.6 million for other loan subsidy costs, and \$147.9 million for administrative costs), and \$167.3 million for the SBA's disaster loan programs.

The Administration's budget request would also support up to \$27.0 billion in business loan guarantees (up to \$16.5 billion for 7(a) loans, up to \$7.5 billion for 504/Certified Development Company loans, and up to \$3.0 billion for Small Business Investment Company debentures) and up to \$12.0 billion in guarantees of trust certificates for the secondary market guarantee program.

The House Committee on Appropriations recommended that the SBA receive a FY2012 appropriation of \$978.3 million, a \$248.6 million (34.1%) increase over the FY2011 enacted amount of \$729.7 million and a decrease of \$7.1 million (-0.7%) from the Administration's request of \$985.4 million.

The House committee also recommended that the SBA receive an appropriation of \$422.3 million for salaries and expenses (\$5.0 million less than the Administration's request). Included in that amount is \$170.75 million for non-credit programs (\$10.5 million more than the Administration's request), such as Historically Underutilized Business Zones (HUBZones), Microloan Technical Assistance, the National Women's Business Council, Native American Outreach, the Service Corps of Retired Executives (SCORE), Small Business Development Centers, Veteran's Business Development, and Women's Business Centers.

The House committee recommended \$16.3 million for the SBA's Office of Inspector General (not including \$1.0 million to be transferred from the Disaster Loans Program account), \$9.1 million for the SBA's Office of Advocacy, \$0.0 for the SBA's surety bond guarantees revolving loan fund (the Administration indicated that there are sufficient funds in reserve to cover the cost of claim defaults), \$363.3 million for the SBA's business loan programs (\$3.765 million for microloan subsidy costs, \$211.6 million for other loan subsidy costs, and \$147.9 million for administration), and \$167.3 million for the SBA's disaster loan programs. The Administration had requested \$18.4 million for the SBA's Office of Inspector General (not including \$1.0 million to be transferred from the Disaster Loans Program account) and the amounts the House Committee on Appropriations recommended for the remaining accounts.

The House committee's recommendation would support up to \$28.0 billion in business loan guarantees (up to \$17.5 billion for 7(a) loans, up to \$7.5 billion for 504/Certified Development Company loans, and up to \$3.0 billion for Small Business Investment Company debentures) and up to \$12.0 billion in guarantees of trust certificates for the secondary market guarantee program. The Administration had recommended up to \$27.0 billion in business loan guarantees (up to \$16.5 billion for 7(a) loans, up to \$7.5 billion for 504/Certified Development Company loans, and up to \$3.0 billion for Small Business Investment Company debentures) and up to \$12.0 billion in guarantees of trust certificates for the secondary market guarantee program.

The Senate Committee on Appropriations recommended that the SBA receive a FY2012 appropriation of \$955.4 million, a \$225.7 million (30.9%) increase over the FY2011 enacted amount of \$729.7 million, a decrease of \$30.0 million (-0.3%) from the Administration's request of \$985.4 million, and a decrease of \$22.9 million (-2.3%) from the House Committee on Appropriations' recommendation of \$978.3 million.

The Senate committee also recommended that the SBA receive an appropriation of \$404.2 million for salaries and expenses (\$23.1 million less than the Administration's request). Included in that amount is \$165.7 million for non-credit programs (\$5.5 million more than the Administration's request), such as Historically Underutilized Business Zones (HUBZones), Microloan Technical Assistance, the National Women's Business Council, Native American Outreach, the Service Corps of Retired Executives (SCORE), Small Business Development Centers, Veteran's Business Development, and Women's Business Centers.

The Senate committee also recommended \$16.3 million for the SBA's Office of Inspector General (not including \$1.0 million to be transferred from the Disaster Loans Program account), \$9.1 million for the SBA's Office of Advocacy, \$0.0 for the SBA's surety bond guarantees revolving loan fund, \$358.5 million for the SBA's business loan programs (\$3.678 million for microloan subsidy costs, \$206.8 million for other loan subsidy costs, and \$148.0 million for administration), and \$167.3 million for the SBA's disaster loan programs. The Administration had requested \$18.4 million for the SBA's Office of Inspector General (not including \$1.0 million to be transferred from the Disaster Loans Program account), \$363.3 million for the SBA's business loan programs, and the amounts the Senate Committee on Appropriations recommended for the remaining accounts.

The Senate committee's recommendation would support up to \$28.0 billion in business loan guarantees (up to \$17.5 billion for 7(a) loans, up to \$7.5 billion for 504/Certified Development Company loans, and up to \$3.0 billion for Small Business Investment Company debentures) and up to \$12.0 billion in guarantees of trust certificates for the secondary market guarantee program. The Administration had recommended up to \$27.0 billion in business loan guarantees (up to \$16.5 billion for 7(a) loans, up to \$7.5 billion for 504/Certified Development Company loans, and up to \$3.0 billion for Small Business Investment Company debentures) and up to \$12.0 billion in guarantees of trust certificates for the secondary market guarantee program.

United States Postal Service¹⁴⁸

The U.S. Postal Service (USPS) generates nearly all of its funding—about \$67 billion annually—by charging users of the mail for the costs of the services it provides.¹⁴⁹ However, Congress does provide an annual appropriation to compensate the USPS for revenue it forgoes in providing free mailing privileges to the blind¹⁵⁰ and overseas voters.¹⁵¹ Congress authorized appropriations for

¹⁴⁸ This section was written by Kevin Kosar (x7-3968). Also see CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by Kevin R. Kosar.

¹⁴⁹ U.S. Postal Service, *United States Postal Service Annual Report 2011* (Washington: USPS, 2010), p. 3.

¹⁵⁰ 84 Stat. 757; 39 U.S.C. 3403. See also USPS, *Mailing Free Matter for Blind and Visually Handicapped Persons: Questions and Answers*, Publication 347 (Washington: USPS, May 2005), available at <http://www.usps.com/cpim/ftp/pubs/pub347.pdf>.

¹⁵¹ Members of the Armed Forces and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (42 U.S.C. 1973ff-ff-6). See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and (continued...)*

these purposes in the Revenue Forgone Reform Act of 1993 (RFRA).¹⁵² This act also permitted Congress to provide the USPS with a \$29 million annual reimbursement until 2035 to pay for the costs of postal services provided at below-cost rates to not-for-profit organizations in the early 1990s.¹⁵³ Funds appropriated to the USPS are deposited in the Postal Service Fund, a revolving fund at the U.S. Department of the Treasury.

The Postal Accountability and Enhancement Act (PAEA), which was enacted on December 20, 2006, first affected the postal appropriations process in FY2009.¹⁵⁴ Under the PAEA, both the U.S. Postal Service Office of Inspector General (USPSOIG) and the Postal Regulatory Commission (PRC) must submit their budget requests to Congress and to the Office of Management and Budget (120 Stat. 3240-3241), and the agencies must be paid from the Postal Service Fund. The law further requires USPSOIG's budget submission to be treated as part of USPS's total budget, while the PRC's budget, like the budgets of other independent regulators, is treated separately.¹⁵⁵

For FY2012, the

- USPS has requested \$130 million, with \$101 million for revenue forgone, and \$29 million for the annual RFRA reimbursement.¹⁵⁶ The President requested \$78.2 million and no \$29 million RFRA reimbursement, and both the House Appropriations Committee and the Senate Appropriations Committee have concurred with the President's request;¹⁵⁷
- PRC and the President have requested \$14.5 million. The House Appropriations Committee has authorized \$13.9 million; and the Senate Appropriations Committee has authorized \$14.3 million;¹⁵⁸ and
- USPSOIG and the President have requested \$244.4 million. The House Appropriations Committee has authorized \$237.8 million and the Senate Appropriations Committee has authorized \$241.5 million.¹⁵⁹

The President's budget proposes terminating the \$29 million annual RFRA reimbursement payment,¹⁶⁰ and it would direct the Office of Personnel Management to refund to the USPS \$6.9

(...continued)

Issues, by Kevin J. Coleman.

¹⁵² P.L. 103-123, Title VII; 107 Stat. 1267, 39 U.S.C. 2401(c)-(d).

¹⁵³ See CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by Kevin R. Kosar.

¹⁵⁴ P.L. 109-435; 120 Stat. 3198. On PAEA's major provisions, see CRS Report R40983, *The Postal Accountability and Enhancement Act: Overview and Issues for Congress*, by Kevin R. Kosar.

¹⁵⁵ While the PAEA did not authorize any additional appropriations to the Postal Service Fund, it did alter the budget submission process for the USPS's Office of Inspector General (USPSOIG) and the Postal Rate Commission (PRC). In the past, the USPSOIG and the PRC submitted their budget requests to the USPS's Board of Governors. Accordingly, past presidential budgets did not include the USPSOIG's or PRC's funding requests or appropriations therefore.

¹⁵⁶ U.S. Postal Service, "Fiscal Year 2012 Budget Congressional Submission," undated, pp. I-2-I-4.

¹⁵⁷ The USPS received an appropriation of \$115.7 million in FY2011, \$86.7 million for revenue forgone, and the annual \$29 million RFRA reimbursement.

¹⁵⁸ The PRC received an appropriation of \$14.3 million in FY2011.

¹⁵⁹ The USPSOIG received an appropriation of \$243.9 million in FY2011.

¹⁶⁰ Office of Management and Budget, *Terminations, Reductions, and Savings: Budget of the U.S. Government* (continued...)

billion in Federal Employees Retirement System overpayments. These funds would be transferred to the USPS over a 30-year period and would provide it with \$550 million in FY2011. The President's budget also has advocated revising the USPS's Retiree Health Benefits Fund payment schedule to reduce the USPS's required FY2011 payment of \$5.5 billion (due September 30, 2011) by \$4 billion.¹⁶¹ In his subsequent deficit reduction plan, the President has proposed

- restructuring Retiree Health Benefit pre-funding schedule;
- refunding to the USPS approximately \$6.9 billion in overpayments to the Federal Employee Retirement System;
- allowing the USPS to move to five-day mail delivery;
- allowing the USPS to expand its product and service offerings; and
- increasing the USPS's authority to raise postage rates.¹⁶²

The House Appropriations Committee's legislation (H.R. 2434; H.Rept. 112-136) would require "that 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level." The Committee's report also "commends the efforts of the USPS to be fiscally responsible," but

strongly urges the USPS to hold public meetings, take into consideration the input of residents, and provide fiscal justification before any major changes in delivery service are made. The USPS is one of the few Federal government entities that every American depends on a daily basis and it is important that their service is reflective of the world's premier mail delivery organization. The Committee urges the USPS to continue its efforts at achieving cost reductions without compromising services.

Similarly, the Senate Appropriations Committee's legislation (S. 1572; S.Rept. 112-79) states "that 6-day mail delivery is one of the most important services provided by the Federal Government to its citizens. Especially in rural and small-town America, this critical postal service is the linchpin that serves to bind the Nation together." The committee report also expresses concerns regarding the USPS's closure of mail sorting plants.

While the Committee acknowledges that it may be costly for the Postal Service to continue to operate all of these large plants in its network given declining mail volume, the Committee has serious concerns about the potential impact on mail delivery service, jobs, and the local economy of the affected communities of the proposed shuttering of these facilities. The Committee directs the Postal Service to suspend any consolidations, closings, or job reductions at area mail processing facilities that have not had the benefit of a full AMP study and those where previous Postal Service analyses have found that no significant cost savings or efficiencies would be gained by such action. The Committee directs the Postal Service to include an economic impact assessment in its analyses.¹⁶³

(...continued)

FY2012, p. 60.

¹⁶¹ Office of Management and Budget, *Appendix: Budget of the U.S. Government Fiscal Year 2012*, pp. 1282 and 1285. On the RHBF, see CRS Report R41024, *The U.S. Postal Service's Financial Condition: Overview and Issues for Congress*, by Kevin R. Kosar, pp. 3-5.

¹⁶² Office of Management and Budget, *Living Within Our Means and Investing in the Future: The President's Plan for Economic Growth and Deficit Reduction* (OMB: September 2011), p. 23.

¹⁶³ Section 302 of the Postal Accountability in Enhancement Act of 2006 (120 Stat. 3219) found the USPS had "more facilities than it needs" and directed the USPS to expeditiously reduce their number. On the USPS and non retail (continued...)

United States Tax Court¹⁶⁴

A court of record under Article I of the Constitution, the United States Tax Court (USTC) is an independent judicial body that has jurisdiction over various tax matters as set forth in Title 26 of the *United States Code*. The court is headquartered in Washington, DC, but its judges conduct trials in many cities across the country.

H.R. 1473 provides \$52 million for the USTC for FY2011. The President has requested \$60 million for FY2012, an increase of \$8 million increase over FY2011 enacted appropriations. The House Committee on Appropriations has recommended \$51 million for FY2012, which would be \$9 million less than the President's request and \$1 million less than FY2011 enacted appropriations. The Senate Appropriations Committee has recommended \$51 million for the USTC for FY2012, the same as the House committee recommendation and \$9 million less than the President requested.

General Provisions Government-Wide¹⁶⁵

The Financial Services and General Government appropriations language includes general provisions which apply either government-wide or to specific agencies or programs. An Administration's proposed government-wide general provisions for a fiscal year are generally included in the Budget Appendix.¹⁶⁶ Most of the provisions continue language that has appeared under the General Provisions title for several years because Congress has decided to reiterate the language rather than making the provisions permanent.

Selected Government-wide General Provisions for FY2012

- Prohibits the use of funds to implement, administer, enforce, or apply the rule entitled "Competitive Area" published by the Office of Personnel Management in the *Federal Register* on April 15, 2008. (Section 732 of the budget proposal and Section 740 of S. 1573, as reported. Not included in H.R. 2434, as reported.)
- During FY2012, for each employee who retires under the Civil Service Retirement System or the Federal Employees Retirement System during workforce restructuring or receives a payment as an incentive to separate, the separating agency would remit to the Civil Service Retirement and Disability Fund an amount equal to the Office of Personnel Management's average unit cost of processing a retirement claim for the preceding fiscal year. (Section 733 of the budget proposal and Section 743 of S. 1573, as reported. Not included in H.R. 2434, as reported.)
- Funds made available and used for Pay for Success projects in this or any other Act would support performance-based awards that are designed to promote

(...continued)

facility closures, see CRS Report R40983, *The Postal Accountability and Enhancement Act: Overview and Issues for Congress*, by Kevin R. Kosar.

¹⁶⁴ This section was written by Garrett Hatch (x7-7822).

¹⁶⁵ This section was written by Barbara L. Schwemle (x7-8655).

¹⁶⁶ For FY2012, the provisions are listed in the *Budget, Appendix* at pp. 9-13.

innovative strategies to reduce the aggregate level of government investment needed to achieve successful outcomes and impose minimal administrative requirements on service providers, so as to allow for maximum flexibility to improve efficiency and effectiveness. The OMB Director would issue guidance to federal agencies on carrying out such projects. (Section 734 of the budget proposal. Not included in H.R. 2434, as reported or S. 1573, as reported.)

- Prohibits the use of funds to require any entity submitting an offer for a federal contract to disclose political contributions. (Section 738 of H.R. 2434, as reported. Not included in the budget proposal or in S. 1573, as reported.)
- Beginning with FY2012, federal employees in each agency would be managed solely on the basis of, and consistent with, the workload required to carry out the functions and activities of the agency and the funds made available to the agency. The management of federal employees would not be subject to any limitation in terms of work years, full-time equivalent positions [FTE], or maximum number of federal employees, and an agency could not be required to make a reduction in the number of FTE positions, unless such is necessary due to a reduction in funds available to the agency or required under a statute that is enacted after the enactment date of this act and specifically refers to this section. The head of each agency would ensure that federal workers are employed in the number and with the combination of skills and qualifications that are necessary to carry out the functions within the applicable budget activity for which funds are provided. Not later than February 1 of each year, the OMB Director would submit a report to the Senate and House Appropriations Committees on the management of the federal workforce. (Section 744 of S. 1573, as reported. Not included in the budget proposal or in H.R. 2434, as reported.)

Government Procurement¹⁶⁷

The financial services appropriations bill often contains provisions that relate to government procurement. With regard to FY2012, the Senate bill includes three such provisions. Section 734 of the Senate bill would prohibit the use of any funds appropriated by this act, or any other appropriations act, to begin or announce a public-private competition for the same fiscal year (FY2012).¹⁶⁸ The prohibition would apply to a “public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.”¹⁶⁹ That is, this section apparently would apply only to competitions that involve work being performed by federal employees, but it would not apply to public-private competitions involving work being performed by contractor employees. Conversion to contractor performance is only one of the possible outcomes of a public-private competition, however, which might lead some observers to conclude that the provision is somewhat ambiguous.

¹⁶⁷ This section was authored by Elaine Halchin (x7-0646).

¹⁶⁸ Section 734 states: “[n]one of the funds appropriated or otherwise made available by this act *or any other Act* may be used....” (Sec. 734 of S. 1573.) (Italics added for emphasis.) The words in this phrase—“or any other act”—are “not words of futurity. They merely refer to any other appropriations act of the same fiscal year.” (U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume I*, GAO-04-261SP, January 2005, p. 2-36, at <http://www.gao.gov/special.pubs/d04261sp.pdf>.)

¹⁶⁹ Sec. 734 of S. 1573.

Section 741 of the Senate bill would amend Section 743 of P.L. 111-117, Consolidated Appropriations Act for FY2010, which requires agencies subject to the Federal Activities Inventory Reform (FAIR) Act (P.L. 105-270), except for the Department of Defense,¹⁷⁰ to prepare and submit annual inventories of their service contracts to OMB. Section 741 would expand the scope of the inventory requirement to include task orders associated with service contracts, and specify certain data to be provided by and about contractor and subcontractor employees.¹⁷¹ Currently, Section 743(e)(2)(B) of P.L. 111-117, requires agencies to give “special management attention” to agency functions that are closely associated with inherently governmental functions (“closely associated”). If enacted, Section 741 would strike this text and replace it with language that would require agencies to ensure, to the maximum extent practicable, that contracts exclude “closely associated” functions.¹⁷² Finally, Section 741, if enacted, would create a reporting requirement. Before an agency could begin, plan for, or announce a public-private competition involving converting an agency function to contractor performance, it would have to submit a report to OMB that contains information about actions taken to convert work from contractor to federal employee performance.

Under Section 742 of the Senate bill, OMB would be required to issue guidance, consistent with several statutory provisions,¹⁷³ that prohibits the use of direct conversions for work performed by federal employees.¹⁷⁴ The guidance would address agency activities or functions that have been reengineered, upgraded, or expanded, and activities or functions “performed by Federal employees ... who have retired or been reassigned.”¹⁷⁵ The guidance would also prohibit modifying, reorganizing, or changing any agency function or activity for the purpose of avoiding the prohibition against direct conversions.¹⁷⁶

Cuba Sanctions¹⁷⁷

The House Appropriations Committee-approved and Senate Appropriations Committee-approved versions of the FY2012 Financial Services and General Government Appropriations bills, H.R. 2434 and S. 1573 respectively, have several provisions regarding Cuba sanctions. Both bills have a provision, in Section 618 of the House committee bill and Section 620 of the Senate committee bill, that would continue to clarify during FY2012 the definition of “payment of cash in advance” for U.S. agricultural and medical sales to Cuba to “be interpreted as payment before the transfer

¹⁷⁰ Section 807 of P.L. 110-181, National Defense Authorization Act for FY2008, requires the Department of Defense to prepare and submit inventories of the department’s service contracts to Congress.

¹⁷¹ A task order is “an order for services placed against an established contract or with Government sources.” (48 C.F.R. § 2.101(b).)

¹⁷² Office of Federal Procurement Policy Policy Letter 11-01, at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf>, provides guidance to agencies on, among other things, how to handle functions that are closely associated with inherently governmental functions.

¹⁷³ Sec. 735 (Division D) of P.L. 111-8, Omnibus Appropriations Act FY2009; Sec. 739(a)(1) (Division D) of P.L. 110-161, Consolidated Appropriations Act FY2008; and Sec. 327 of P.L. 110-181, 2008 National Defense Authorization Act.

¹⁷⁴ A direct conversion is a method used to convert work from government performance to contract, or contract to government performance, without conducting a public-private competition.

¹⁷⁵ Sec. 742 of S. 1573.

¹⁷⁶ *Ibid.*

¹⁷⁷ This section was written by Mark P. Sullivan (x7-7689). For additional information, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, and CRS Report R41617, *Cuba: Issues for the 112th Congress*.

of title to, and control of, the exported items to the Cuban purchaser.” Such a provision had first been included in the FY2010 omnibus appropriations measure (P.L. 111-117, Section 619 of Division C) and was continued in FY2011 in the full-year continuing appropriations measure (P.L. 112-10).

The Senate bill has another Cuba provision, in Section 624, related to payment for U.S. exports to Cuba. The provision prohibits restrictions on direct transfers from a Cuban financial institution to a U.S. financial institution in payment for licensed agricultural and medical exports to Cuba. The provision was added during the Senate Appropriations Committee’s markup on September 15, 2011, when the committee approved an amendment offered by Senator Jerry Moran by a vote of 20-10.

The House bill has a Cuba provision in Section 901 that would roll back President Obama’s easing of restrictions on family travel and remittances in 2009 and the President’s easing of restrictions on remittances for non-family members and religious institutions in 2011. This provision became part of the bill during the House Appropriations Committee’s markup on June 24, 2011, when the House committee approved an amendment offered by Representative Mario Diaz-Balart by voice vote.

Payment Provisions for U.S. Exports to Cuba

Since the early 1960s, U.S. policy toward communist Cuba has consisted largely of efforts to isolate the island nation through comprehensive economic sanctions, including prohibitions on U.S. financial transactions—the Cuban Assets Control Regulations (CACR)—that are administered by the Treasury Department’s Office of Foreign Assets Control (OFAC).

Despite current U.S. economic sanctions policy, some U.S. commercial agricultural exports to Cuba have been allowed since 2001 pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000, or TSRA (Title IX of P.L. 106-387). However, there are numerous restrictions and licensing requirements for these exports. For instance, exporters are denied access to U.S. private commercial financing or credit, and all transactions must be paid for in cash in advance or with financing from third countries. The Bush Administration tightened sanctions on Cuba in February 2005 by further restricting how U.S. agricultural exporters may be paid for their product. OFAC amended the CACR to clarify that the term “payment of cash in advance” for U.S. agricultural sales to Cuba means that the payment is to be received prior to the shipment of the goods. This differed from the practice of being paid before the actual delivery of the goods, a practice that had been utilized by many U.S. agricultural exporters to Cuba since such sales were legalized in late 2001. U.S. agricultural exporters and some Members of Congress strongly objected to this “clarification” on the grounds that the action constituted a new sanction that violated the intent of TSRA, and could jeopardize millions of dollars in U.S. agricultural sales to Cuba. Then-OFAC Director Robert Werner maintained that the clarification “conforms to the common understanding of the term in international trade.”¹⁷⁸

Since 2002, the United States has been one of Cuba’s largest suppliers of food and agricultural products, although the level of U.S. exports has declined in the past two years. Cuba has

¹⁷⁸ U.S. Department of the Treasury, Testimony of Robert Werner, Director, OFAC, before the House Committee on Agriculture, March 16, 2005.

purchased over \$3.6 billion in products from United States since the enactment of TSRA.¹⁷⁹ U.S. exports to Cuba rose from about \$7 million in 2001 to \$404 million in 2004 and to a high of \$712 million in 2008, far higher than in previous years, in part because of the rise in food prices and because of Cuba's increased food needs in the aftermath of several hurricanes and tropical storms that severely damaged the country's agricultural sector. In 2009, however, U.S. exports to Cuba declined to \$533 million, 25% lower than the previous year, and in 2010, they fell again to \$368 million, a 31% drop from 2009. In the first half of 2011, U.S. exports to Cuba amounted to about \$174 million, almost a 20% drop from the same period in 2011. Analysts cite Cuba's shortage of hard currency as the main reason for the decline.

As noted above, Congress took action in FY2010 and FY2011 appropriations measures to define "payment of cash in advance" as used in TSRA as payment before the transfer of title to, and control of, the exported item to the Cuban purchaser. This overturned OFAC's February 2005 clarification that payment had to be received before vessels could leave U.S. ports. Both H.R. 2434 (Section 618) and S. 1573 (Section 620) would continue this interpretation of the term "payment of cash in advance" for agricultural and medical exports to Cuba under TSRA in FY2012.

S. 1573 would go further with a provision (Section 624) that would prohibit restrictions on direct transfers from a Cuban financial institution to a U.S. financial institution in payment for licensed agricultural and medical exports to Cuba. In the 111th Congress, such a provision was included in H.R. 4645, a measure reported by the House Agriculture Committee in September 2010 that also would have made permanent the clarification of the definition of "payment of cash in advance" and also would have prohibited restrictions on U.S. travel to Cuba. The House Agriculture Committee held a hearing reviewing U.S. agricultural sales to Cuba in March 2010 in which U.S. agricultural exporters argued that a prohibition on direct transfers between Cuban and U.S. financial institutions for payments for U.S. exports made sales transactions more complicated and costly for U.S. businesses.¹⁸⁰ These views were echoed during September 15, 2011, debate on the provision at the markup of the bill by the Senate Appropriations Committee. Supporters of the direct transfers provision also argued that U.S. exports to Cuba have declined, while those opposed maintained that the United States should not open up such direct financial linkages while Cuba is on the State Department's list of states sponsoring international terrorism.¹⁸¹

U.S. Restrictions on Travel and Remittances

Restrictions on travel to Cuba have been a key and often contentious component in U.S. efforts to isolate Cuba's communist government since the early 1960s. Under the George W. Bush Administration, restrictions on travel and on private remittances to Cuba were tightened. In 2003, the Administration eliminated travel for people-to-people educational exchanges unrelated to academic coursework. In 2004, the Administration further restricted family and educational travel, eliminated the category of fully-hosted travel, and restricted remittances so that they could only be sent to the remitter's immediate family. Initially there was mixed reaction to the

¹⁷⁹ U.S. trade statistics are from *Global Trade Atlas*, which uses Department of Commerce Statistics.

¹⁸⁰ U.S. Congress, House Committee on Agriculture, *Hearing to Review U.S. Agricultural Sales to Cuba*, 111th Cong., 2nd sess., March 11, 2010, Serial No. 111-44 (Washington: GPO, 2010), available at <http://agriculture.house.gov/testimony/111/111-44.pdf>.

¹⁸¹ Charlene Carter, "Financial Services Spending Bill Advanced by Senate Panel," *CQ Markup & Vote Coverage*, September 15, 2011.

Administration's 2004 tightening of Cuba travel and remittance restrictions, but opposition to the policy grew, especially within the Cuban American community regarding the restrictions on family travel and remittances.

Under the Obama Administration, Congress took action in 2009 to ease some restrictions on travel to Cuba by including two provisions in the FY2009 omnibus appropriations measure (P.L. 111-8), which President Obama signed into law on March 11, 2009. The first provision eased restrictions on family travel, which the Treasury Department implemented by issuing a general license for such travel as it existed prior to the Bush Administration's tightening of family travel restrictions in 2004. The second provision eased travel restrictions related to the marketing and sale of agricultural and medical goods to Cuba, and required the Treasury Department to issue a general license for such travel. Subsequently, in April 2009, President Obama announced that his Administration would go further and allow unlimited family travel and family remittances. Regulations implementing these changes were issued in September 2009. The new regulations also included the authorization of general licenses for travel transactions for telecommunications-related sales and for attendance at professional meetings related to commercial telecommunications.

In January 2011, the Obama Administration announced policy changes further easing restrictions on travel and remittances. The measures (1) increase purposeful travel to Cuba related to religious, educational, and people-to-people exchanges; (2) allow any U.S. person to send remittances to non-family members in Cuba (up to \$500 per quarter) and make it easier for religious institutions to send remittances for religious activities; and (3) permit all U.S. international airports to apply to provide services to licensed charter flights. These new measures, with the exception of the expansion of eligible airports, are similar to policies that were undertaken by the Clinton Administration in 1999, but subsequently curtailed by the Bush Administration in 2003-2004.

The Obama Administration maintains that the policy changes will increase people-to-people contact, help strengthen Cuban civil society, and make Cuban people less dependent on the Cuban state.¹⁸² The changes are being taken at the same time that the Cuban government is laying off thousands of state workers and increasing private enterprise through an expansion of the authorized categories for self-employment.

Policy groups in favor of increased U.S. engagement with Cuba largely praised the Administration's action as a significant step forward in reforming U.S.-Cuban relations and as an important means to expand the flow of information and ideas to Cuba and to increase the income of Cubans working in the expanding private sector. The Miami-based Cuban American National Foundation (CANF) strongly supported the Administration's policy changes. According to CANF President Francisco "Pepe" Hernández: "A greater ability to send remittances in conjunction with increased contact and communication with those on the island will help to break the chains of dependency that the Castro regime has used to oppress those inside Cuba."¹⁸³

In contrast, policy groups opposed to easing U.S. sanctions have criticized the Administration, maintaining that the policy changes will help prop up Cuba's repressive government when it is

¹⁸² Mary Beth Sheridan, "Obama Loosens Travel Restrictions to Cuba," *Washington Post*, January 15, 2011.

¹⁸³ Cuban American National Foundation, Press Release, "Cuban American National Foundation Supports New Cuba Policy Measures," January 14, 2011.

most vulnerable because of the difficult economic situation. Opponents of the policy changes argue that sending dollars via increased travel by Americans and increased remittances will actually help the Cuban government maintain in place its repressive policies. They also argue that easing the restrictions on travel and remittances will not bring about respect for human rights in Cuba.

As noted above, Section 901 of H.R. 2434 would roll back President Obama's easing of restrictions on family travel and remittances, remittances for non-family members, and remittances for religious institutions. (S. 1573 does not contain a similar provision.) Specifically, the House provision would repeal any amendments to certain sections of the Cuban Assets Control Regulations relating to family travel (31 CFR 515.560(a)(1) and 31 CFR 515.561), carrying remittances to Cuba (31 CFR 515.560(c)(4)(i)), and sending remittances to Cuba (31 CFR 515.570) made since January 2009. According to the provision, such regulations would be restored and carried out as in effect on January 19, 2009, "notwithstanding any guidelines, opinions, letters, Presidential directives, or agency practices relating to such regulations issued or carried out after such date." If the measure were enacted: family travel would again be limited to once every three years for a period of up to 14 days to visit immediate family members only, and would require a specific license from OFAC; licensed travelers would be allowed to carry just \$300 in remittances compared to the \$3,000 currently allowed; family remittances would be limited to \$300 per quarter compared to no limits today; non-family remittances restored by the Obama Administration in 2011, up to \$500 per quarter, would not be allowed; and the general license for remittances to religious organizations would be eliminated, although such remittances would still be permitted via specific license on a case-by-case basis.¹⁸⁴

The White House's Statement of Administration Policy on H.R. 2434, issued July 13, 2011, stated that the Administration opposes Section 901 because it would reverse the President's policy on family travel and remittances, and that the President's senior advisors would recommend a veto if the bill contained the provision. According to the statement, Section 901 "would undo the President's efforts to increase contact between divided Cuban families, undermine the enhancement of the Cuban people's economic independence and support for private sector activity in Cuba that come from increased remittances from family members, and therefore isolate the Cuban people and make them more dependent on Cuban authorities."¹⁸⁵

The House Appropriations Committee report to the bill (H.Rept. 112-136) requires a report from OFAC on the current number of pending applications seeking specific licenses to conduct people-to-people exchanges, i.e. educational exchanges not involving academic study pursuant to a degree program under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact. The report would also require information on the number of these licenses that OFAC has approved to date, its plan for getting through the current queue of license applications, and its plan for expeditiously reviewing those applications in the future. This reporting requirement was added to the report via an amendment offered by Representative Jeff Flake approved by voice vote during the House committee's June 24, 2011, markup of the bill. In

¹⁸⁴ For activities authorized under a general license, there is no need to obtain special permission from OFAC, while for those activities requiring a specific license, OFAC reviews applications on a case-by-case basis.

¹⁸⁵ Executive Office of the President, Office of Management and Budget, Statement of Administration Policy, H.R. 2434 – Financial Services and General Government Appropriations Act, 2012, July 13, 2011.

early July 2011, OFAC confirmed that it had approved the first licenses for U.S. people-to-people organizations to bring U.S. visitors to Cuba, and the first such trips began in August 2011.¹⁸⁶

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¹⁸⁶ Peter Orsi, "U.S. Licensing Travel Operators to Start Up Legal Cuba Trips, Treasury Department Says," *Associated Press*, July 1, 2011; Mimi Whitefield, "People-to-People Tours to Cuba Take Off Thursday," *Miami Herald*, August 10, 2011; and Jeff Franks, "Purposeful Cuba Trips Resume," *Chicago Tribune*, August 18, 2011.

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