Congressional Research Service
Informing the legislative debate since 1914

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): Budget and Operations for FY2011

Updated June 6, 2011

Congressional Research Service
https://crsreports.congress.gov
R41206

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the lead federal law enforcement agency charged with administering and enforcing federal laws related to the manufacture, importation, and distribution of firearms and explosives. Congress transferred ATF's enforcement and regulatory functions for firearms and explosives from the Department of the Treasury to the Department of Justice (DOJ) as part of the Homeland Security Act (P.L. 107-296). ATF is also responsible for investigating arson cases with a federal nexus, as well as criminal violations of federal laws governing the manufacture, importation, and distribution of alcohol and tobacco. Congress authorized appropriations for ATF in the Department of Justice Authorization Act of 2005 (P.L. 109-162) for FY2006 through FY2009; however, the 111th Congress did not consider legislation to reauthorize annual appropriations for DOJ or ATF.

From FY2001 through FY2010, Congress increased direct appropriations for the ATF from $771.0 million to $1.158 billion. The FY2010 appropriation amount includes $37.5 million in supplemental appropriations for Project Gunrunner (P.L. 111-230). With this supplemental, Congress has provided ATF with $86.5 million in budget increases over three fiscal years, FY2008 through FY2010, to combat gun trafficking. Most of this funding has been allocated to Project Gunrunner, an ATF initiative to reduce gun trafficking across the Southwest border, or other projects to assist the government of Mexico.

For FY2011, the Administration requested $1.163 billion for ATF, an increase of 3.8% over the agency's initial FY2010 appropriation ($1.121 billion), which included $1.115 billion for salaries and expenses and $6 million for construction. For Project Gunrunner, the request included $11.8 million to annualize 37 positions that were previously funded by the American Recovery and Reinvestment Act (P.L. 111-5). It also included $1.2 million to enable ATF to coordinate state and local law enforcement efforts in the event of a national emergency and, thus, fulfill the Attorney General's Emergency Support Function (ESF) #13 obligations under the National Response Framework (NRF). The FY2011 request assumed $35.2 million and 46 FTE positions in base adjustments, less offsets and other reductions. The Senate Appropriations Committee reported a bill (S. 3636) that would have matched the FY2011 request, but no further action was taken on that bill. In the absence of an enacted FY2011 CJS appropriations bill, Congress passed a series of continuing resolutions (CRs) that temporarily funded ATF at its FY2010 enacted level.

On April 14, 2011, Congress passed the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (H.R. 1473; P.L. 112-10) and funded ATF for the rest of FY2011 at its FY2010 enacted level, reduced by two-tenths of a percent. Hence, ATF's FY2011 appropriation is $1.113 billion. Other emerging issues related to the ATF budget and operations include a proposal to require multiple rifle sales reports from Southwest border state gun dealers and the agency's conduct of a Phoenix, AZ-based investigation known as "Operation Fast and Furious." This report complements CRS Report RL34514, *The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): Budget and Operations for FY2008, FY2009, and FY2010*. For the FY2011 budget cycle, this report will be updated as needed. For coverage of ATF's FY2012 budget request, see CRS Report RL32842, *Gun Control Legislation*.

Contents

Legislative Developments 1
ATF Mission 1
ATF Appropriations 2
ATF Budget Structure 3
Administration's FY2011 Request and Appropriation 4
Funding and Staffing, FY1999-FY2010 6
Regulatory Backlogs 8
Firearms Budget Program 9
Violent Crime and Gangs 10
Compliance Inspections of Licensed Gun Dealers 11
Southwest Border Gun Trafficking 12
Project Gunrunner 13
Electronic Trace Submission System 15
DOJ OIG Report, Mexican Trace Data, and Multiple Long Gun Sales 17
Operation Fast and Furious 18
Related Legislation in the 110th and 111th Congresses 19
Arson and Explosives Budget Program 19
Safe Explosives Act 20
ATF and FBI Concurrent Jurisdiction over Explosives Investigations 20
Alcohol and Tobacco Budget Program 22
Alcohol Diversion 22
Tobacco Diversion 23
Related Legislation in the 110th and 111th Congresses 24

Figures

Figure 1. ATF Appropriations, FY2011 Request 4

Tables

Table 1. ATF Appropriations for Salaries and Expenses (S&E) and Construction Line Item Appropriations Accounts, FY2010 Enacted Compared to FY2011 Request 5
Table 2. ATF Appropriations, FY1999-FY2010 6

Table A-1. ATF Authorizations Compared to Appropriations 26

Appendixes

Appendix. Authorizations Compared to Appropriations 26

Contacts

Author Information..... 26

This report provides an overview of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) budget and operations. The report chronicles congressional action on the FY2011 Commerce, Justice, Science (CJS), and Related Agencies Appropriations bills, as well as an FY2010 supplemental appropriations bill, that have included funding for ATF.

Legislative Developments

On April 14, 2011, Congress passed the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (H.R. 1473; P.L. 112-10). Under this act, for FY2011 Congress has funded the ATF salaries and expenses account at slightly below its FY2010 enacted level of funding (reduced by two-tenths of a percent). Hence, ATF's FY2011 appropriation is $1.113 billion. In addition, during consideration of a Full-Year Continuing Appropriations Act, 2011 (H.R. 1) on February 19, 2011, the House adopted an amendment that would have prohibited funds provided under that act from being used to require federally licensed gun dealers in the four Southwest border states to submit multiple rifle or shotgun sales reports. The House went on to pass H.R. 1, but the Senate rejected this bill on March 9, 2011, for budgetary considerations that went well beyond concerns about this policy rider. Nevertheless, Congress did not include a similar rider as part of P.L. 112-10. Besides ATF's multiple rifle sales reporting proposal, another emerging issue related to the ATF budget and operations includes the agency's conduct of a Phoenix, AZ-based investigation known as "Operation Fast and Furious."

ATF Mission

Located in DOJ, the ATF is the lead federal law enforcement agency charged with administering and enforcing federal laws related to the manufacture, importation, and distribution of firearms and explosives. As part of the Homeland Security Act, Congress transferred ATF's enforcement and regulatory functions for firearms and explosives to DOJ from the Department of the Treasury (Treasury), adding "explosives" to ATF's title.[1] ATF is also responsible for investigating arson cases with a federal nexus, as well as criminal violations of federal laws governing the manufacture, importation, and distribution of alcohol and tobacco. The regulatory aspects of those alcohol and tobacco laws are the domain of the Tax and Trade Bureau (TTB), which was established at Treasury following ATF's transfer to DOJ.[2]

As a law enforcement agency within DOJ, ATF's first priority is preventing terrorist attacks within the United States.[3] ATF is responsible for countering the illegal use and trafficking of firearms and explosives, and the criminal diversion of alcohol and tobacco products as an illegal

[1] P.L. 107-296, 116 Stat. 2135, November 25, 2002, § 1111 (effective January 24, 2003).

[2] ATF was originally established as a separate bureau in the Department of the Treasury (DOT) in 1972 by Treasury Department Order No. 120-1. While ATF traces its origins back to the first federal tax on distilled spirits in 1791, its firearm regulatory responsibilities can largely be traced back to the 1934 National Firearms Act (NFA). As the NFA is essentially a tax law, it was administered initially by the Department of the Treasury's Bureau of Internal Revenue (BIR) and its Miscellaneous Tax Unit. In 1942, the firearm enforcement duties were transferred to BIR's Alcohol Tax Unit (ATU). In 1952, the BIR was reorganized and renamed the Internal Revenue Service (IRS) and the firearm and tobacco programs were transferred to ATU, which was renamed, the Alcohol and Tobacco Tax Division (ATTD). Following the Gun Control Act of 1968, the ATTD was given responsibility for explosives as well, and was renamed the Alcohol, Tobacco and Firearms Division (ATFD). See George Thomas Kurian, Editor in Chief, *A Historical Guide to the U.S. Government*, Vicki Herrmann, "Alcohol, Tobacco and Firearms, Bureau of," (New York, 1998), pp. 39-41.

[3] U.S. Department of Justice, Office of the Attorney General, *Stewards of the American Dream: FY 2007—FY 2012 Strategic Plan*.

source of funding for terrorist activities. In criminal investigations, ATF agents have reportedly uncovered foreign terrorists and their supporters bootlegging cigarettes as part of larger terrorist-financing operations in the United States.[4] With those responsibilities, ATF special agents are partners on DOJ's Joint Terrorism Task Forces.[5]

As shown below, however, the lion's share of ATF's resources are allocated to its firearms compliance and investigations program. While the ATF periodically checks the records of federally licensed gun dealers, the major focus of the firearms program is the reduction of firearms-related violence.

ATF Appropriations

In the 10-year period from FY2001 through FY2010, Congress increased direct appropriations for the ATF by 50.2%, from $771.0 million to $1.158 billion. Moreover, over three fiscal years, FY2008 through FY2010, Congress provided ATF with about $86.5 million in program increases to address firearms trafficking, or the diversion of firearms from legal to illegal markets. Most of this funding has been dedicated to ATF efforts to reduce firearms trafficking from the United States to Mexico.[6] To these ends, under the Mérida Initiative ATF released a Spanish-language version of its firearms trace request software (e-Trace 4.0) to Mexico, Guatemala, and Costa Rica and established a U.S.-Mexico ballistic evidence exchange capability under the National Integrated Ballistic Imaging Network (NIBIN) program.[7] For FY2010, Congress also provided ATF with nearly $30 million for the construction of a National Center for Explosives Training and Research (NCETR).[8]

In the 110th Congress, the House passed a bill (H.R. 6028) that would have authorized increasing ATF appropriations over three years, for FY2008 through FY2010, by nearly $74 million to address Southwest border gun trafficking. As a DOJ bureau, the ATF authorization of appropriations expired for FY2010. Previously, Congress provided annual appropriations authorizations, for FY2006 through FY2009, in the Department of Justice Authorization Act of 2005 (P.L. 109-162) (see **Appendix**). In the 111th Congress, no action was taken on bills to reauthorize or increase ATF appropriations. However, the 111th Congress granted ATF greater

[4] U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, The Bureau of Alcohol, Tobacco, Firearm and Explosives' Efforts to Prevent the Diversion of Tobacco, Report Number I-2009-005 (September 2009), p. 15.

[5] U.S. Department of Justice, Office of the Inspector General, *The Department of Justice's Terrorism Task Forces*, Report Number I-2005-007, June 2005.

[6] For further information on Operation Gunrunner, see CRS Report R40733, *Gun Trafficking and the Southwest Border*, by Vivian S. Chu and William J. Krouse.

[7] In the late 1990s, ATF developed NIBIN to enable law enforcement agencies to share computerized images of bullets and cartridge casings recovered by law enforcement, including crime scene evidence. To capture such images, ATF also deploys Integrated Ballistic Identification Systems to state and local law enforcement agencies. Those images are uploaded into several regional computer networks under the NIBIN program. For further information, see Daniel L. Cork et al., *Ballistic Imaging, Committee to Assess the Feasibility, Accuracy, and Technical Capability of a National Ballistic Database*, National Research Council, 2008, p. 133.

[8] NCETR (pronounced "en-SEE-der") was authorized under section 1114 of the Homeland Security Act of 2002 (P.L. 107-296; 116 Stat. 2280). Although this provision designated Fort A.P. Hill as the location for this center, it has been established at Redstone Arsenal in Huntsville, AL. At NCETR, ATF is providing explosives-related research and training to federal, state, local, and international law enforcement personnel. Hence, it is co-located with the FBI Hazardous Devices School, where the FBI has been providing explosives-related training to federal state, local, and international law enforcement personnel since the 1980s. In addition, the FBI is relocating the Terrorist Explosive Device Analytical Center (TEDAC) to Redstone Arsenal. It is located currently in Quantico, VA.

authority to inspect the businesses and records of "cigarette deliverers" in the Prevent All Cigarette Trafficking Act (P.L. 111-154).

For oversight purposes, it is also notable that in the fall of 2009 the DOJ Office of Inspector General (OIG) released three reports on ATF operations. The first examined Project Gunrunner, an ATF initiative to reduce illegal gun trafficking from the United States to Mexico.[9] The second examined ATF's efforts to investigate contraband cigarette trafficking.[10] The third examined ATF's concurrent jurisdiction with the Federal Bureau of Investigation (FBI) for explosives-related investigations.[11] In November 2010, moreover, the OIG released another review of Project Gunrunner, recommending among other things that ATF ought to work with DOJ to explore options to require reporting of multiple long gun sales from federally licensed gun dealers in the four Southwest border states.[12]

ATF Budget Structure

Congress appropriates funding annually for ATF in a salaries and expenses account and, for some, but not all years, in a construction account. Both accounts are given a line item in the CJS appropriations bill. With regard to salaries and expenses, the ATF subdivides this account into three budget decision units:

- firearms compliance and investigations,
- arson and explosives investigations, and
- alcohol and tobacco diversion.

Although Congress does not appropriate monies for the ATF (or any other DOJ agency) by decision unit, the appropriators often address whether program increases requested specifically by the Administration are to be provided in report language and more rarely in bill language for the salaries and expenses account itself. As a consequence, the amounts requested for decision units are binding in the sense that the appropriators are aware of the increases that were provided in the annual bureau appropriation and how those increases would affect the decision unit totals. If funding is shifted from one decision unit to another, statutory budget reprogramming requirements are usually triggered, under which DOJ and its agencies are required to notify the appropriations committees about such shifts.[13] ATF budget decision units are described in greater detail below.

[9] U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *Interim Review of ATF's Project Gunrunner*, Report Number I-2009-006, September 2009.

[10] U.S. Department of Justice, Office of the Inspector General, Evaluations and Inspections Division, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Efforts to Prevent the Diversion of Tobacco*, Report Number I-2009-0005, September 2009.

[11] U.S. Department of Justice, Office of the Inspector General, Audit Division, *Explosives Investigation Coordination Between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Audit Report 10-01, October 2009.

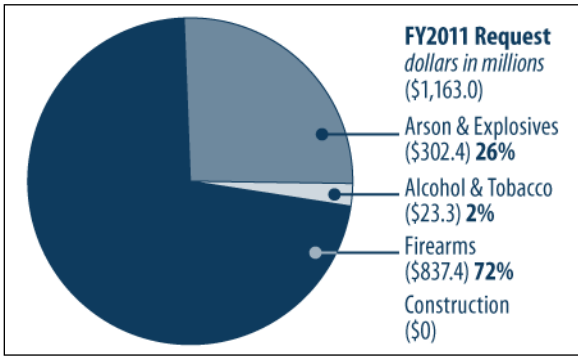
[12] U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *Review of ATF's Project Gunrunner*, Report Number 1-2011-001, November 2010.

[13] The Consolidated Appropriations Act, 2010 (P.L. 111-117, section 505 of the CJS general provisions [123 Stat. 3149-3159]), includes several requirements regarding the reprogramming of funding provided under Division B of the act. Among other things, these requirements prohibit any reprogramming that proposes to use funds directed for a specific activity by either the House or Senate Appropriations Committees, unless both Committees are notified 15 days in advance.

Administration's FY2011 Request and Appropriation

In February 2010, DOJ released the *ATF Congressional Budget Submission, Fiscal Year 2011*.[14] The FY2011 budget request included $1.163 billion for ATF. At the time of the budget request, this amount represented an increase of $42.2 million, or 3.8%, compared to the FY2010-enacted appropriation of $1.121 billion. **Figure 1** shows proposed budget decision unit allocations accompanying the FY2011 budget request. Of these programs, the firearms compliance and investigations decision unit was to be allocated the lion's share, 72%, of appropriated funding. The arson and explosives investigations decision unit and the alcohol and tobacco diversion decision unit were to be allocated 26% and 2%, respectively, of the requested appropriation.

Figure 1. ATF Appropriations, FY2011 Request



Source: *ATF Congressional Budget Submission, Fiscal Year 2011.*

As **Table 1** shows, the FY2010 appropriation of $1.121 billion included $1.115 billion for salaries and expenses and $6 million for construction. The Administration, however, requested no funding for ATF construction for FY2011. Compared to the $1.115 billion Congress initially appropriated for ATF salaries and expenses for FY2010, the Administration's FY2011 budget request proposed a net increase of $48.2 million and 86 full-time equivalent (FTE) positions for ATF. This amount included

- $35.2 million in base adjustments (less certain offsets and other reductions) and 46 FTE positions;[15]
- $11.8 million and 37 FTE positions for Project Gunrunner; and
- and $1.2 million and 3 FTE positions for Emergency Support Function #13.[16]

[14] Available at http://www.justice.gov/jmd/2011justification/pdf/fy11-atf-justification.pdf.

[15] For most DOJ agencies, the Administration of President George W. Bush had routinely proposed "base adjustments" to the number of FTE and permanent positions that were considered "authorized" (funded or appropriated for) as part of estimating an agency's base budget, which was a departure from past practices. For FY2010 and FY2011, the Obama Administration proposed making similar adjustments to the ATF base budget, as described above. The base budget essentially represents an estimated level of resources that an agency would need to provide the anticipated level of services for the current fiscal year in the next fiscal year. In the past, base budgets did not include adjustments to the number of permanent positions, and the number of "authorized" permanent positions was generally static, unless changed by Congress by increasing or decreasing funding associated with those positions. As happened in the FY2008 budget cycle, the Administration has periodically (about every 10 years) proposed eliminating "hollow" positions, for which the modular costs and underlying assumptions are no longer sufficient to fund those positions. Authorized or funded positions are generally displayed by job series in a "Table of Organization" in the agency's budget submissions to Congress. The ATF FY2011 proposed budget assumed base adjustments of $41.9 million that were reduced by $6.7 million in non-reoccurring costs and other offsets.

[16] Emergency Support Function #13 (ESF #13) falls under the Public Safety and Security Annex to the National Response Framework (NRF). The NRF sets broad responsibilities and lines of authority for federal agencies in the event of a national emergency or major disaster. Under the NRF, the Attorney General is responsible for ESF-13, which entails all hazards law enforcement planning and coordination for the entire United States and its territories. The Attorney General, in turn, has delegated his responsibility for ESF-13's implementation to the ATF. For more information, see CRS Report RL34758, *The National Response Framework: Overview and Possible Issues for Congress*, by Bruce R. Lindsay.

The $13.0 million in proposed program increases are broken out by budget decision unit in **Table 1** in the "FY2011 Increases" column. The $1.2 million for Emergency Support Function #13 is spread across all three budget decision units: $854,000 for firearms, $320,000 for arson and explosives, and $24,000 for alcohol and tobacco. The $35.2 million in base adjustments and other offsets is the difference between the "FY2010 Enacted" and "FY2011 Base" columns.

Table 1. ATF Appropriations for Salaries and Expenses (S&E) and Construction Line Item Appropriations Accounts, FY2010 Enacted Compared to FY2011 Request

(Dollars in thousands)

Decision Units	FY2010 Enacted[a]		FY2011 Base[b]		FY2011 Increases[c]		FY2011 Request	
	Dollars	FTE[d]	Dollars	FTE[d]	Dollars	FTE[d]	Dollars	FTE[d]
Firearms	$802,636	3,614	$824,651	3,660	$12,699	40	$837,350	3,700
Arson & Explosives	289,841	1,321	302,057	1,321	320	0	302,377	1,321
Alcohol & Tobacco	22, 295	90	23,235	90	24	0	23,259	90
S&E Subtotal	1,114,772	5,025	1,149,943	5,071	13,043	40	1,163,986	5,111
Construction	6,000	0	0	0	0	0	0	0
Total	1,120,772	5,025	1,149,943	5,071	13,043	40	1,163,986	5,111

Source: *ATF Congressional Budget Submission, Fiscal Year 2011*.

Notes: Amounts may not add to totals due to rounding.

a. The FY2010 enacted amounts do not reflect $37.5 million and 53 FTE positions provided by an emergency border security supplemental appropriation (P.L. 111-230).

b. The base budget essentially represents an estimated level of resources that ATF would need to provide the anticipated level of services for the current fiscal year (FY2010) in the next fiscal year (FY2011).

c. FY2011 increases are requested program increases over base. In other words, if appropriated, these resources will be for new activities and services.

d. A full-time equivalent (FTE) position represents the amount of funding necessary to provide for a single position for an entire year. Not all positions (new, temporary, and part-time) are fully funded for the entire year. New positions, for example, are often partially funded, as such positions are filled incrementally and at some point during the fiscal year. Hence, they do not require full funding for the first year.

In March 2010, the House CJS subcommittee held a hearing on the ATF FY2011 budget submission. Members of the subcommittee raised questions about gun trafficking on the Southwest border, regulatory backlogs, violent crime impact teams, and inter-agency coordination on gang violence. On July 22, 2010, the Senate Appropriations Committee reported its FY2011 CJS appropriations bill (S. 3636; S.Rept. 111-229). This measure would have provided ATF with $1.163 billion for FY2011, matching the Administration's request. However, no further action was taken on this measure.

Also, on June 22, 2010, the Administration requested an FY2010 supplemental appropriation of $39.1 million for ATF to increase Southwest border gun trafficking investigations. The House Appropriations Committee included this amount in the Emergency Border Security Supplemental Appropriations Act, 2010 (H.R. 5875), and the House passed this measure on July 28, 2010. The Senate passed its version of H.R. 5875 (adopting the text of S. 3721 as a substitute amendment) on August 5, 2010. The Senate-passed version of H.R. 5875 included $37.5 million for ATF. On August 9, the House introduced a new border security supplemental bill (H.R. 6080), which was subsequently passed by the House on August 10. H.R. 6080 contains identical language to

Senate-passed H.R. 5875. Reportedly, the House took up the bill with a new number to avoid a dispute related to its constitutional obligation to originate all revenue measures.[17] This dispute arose with the addition of funding provisions in Senate-passed H.R. 5875 that were not included in the House-passed version. On August 12, the Senate passed H.R. 6080. On August 13, 2010, the President signed H.R. 6080 into law (P.L. 111-230). It provided ATF with an additional $37.5 million for Project Gunrunner.[18] This supplemental brought total FY2010 appropriated funding for the ATF to $1.158 billion.

In the absence of an enacted FY2011 CJS appropriations bill, the 112th Congress passed a series of CRs, which the President signed into law (P.L. 111-242, P.L. 111-290, P.L. 111-317, P.L. 111-322, P.L. 112-4, P.L. 112-6, and P.L. 112-8).[19] These CRs temporarily funded most federal agencies, including ATF, at their FY2010 enacted level of funding. On April 14, 2011, Congress passed the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (H.R. 1473; P.L. 112-10). Under this act, for FY2011 Congress has funded the ATF salaries and expenses account at slightly below its FY2010 enacted level of funding (reduced by two-tenths of a percent). ATF's FY2011 appropriation is $1.113 billion.

Funding and Staffing, FY1999-FY2010

As **Table 2** shows, from FY1999 to FY2010 Congress more than doubled ATF's appropriations from $541.6 million to nearly $1.158 billion. With some fluctuation, ATF staffing increased from 3,969 to 5,078 FTE positions, a 28% increase.[20] Since its transfer to DOJ in FY2003, ATF has also reported permanent positions, in addition to FTE positions.

Table 2. ATF Appropriations, FY1999-FY2010

(Dollars in thousands)

Fiscal Year	Appropriation(s)	Full-Time Equivalent (FTE) Positions[a]	Permanent Positions
1999	$541,574[b]	3,969	N/A
2000	$565,959[c]	4,221	4,492
2001	$771,143[d]	4,643	5,049
2002	$854,747[e]	5,029	5,143
2003	$826,801[f]	5,111	5,231
2004	$827,289[g]	4,735[h]	4,862[h]
2005	$882,465[i]	4,885	5,073
2006	$935,817[j]	5,040	5,128
2007	$988,097[k]	5,053	5,128
2008	$1,011,597[l]	4,880[m]	4,956[m]

[17] Theo Emery and Edward Epstein, "Border Security Bill Passes in House," *CQ Today*, August 10, 2010, online edition.

[18] According to ATF, this supplemental is two-year funding that will be fully expended by the end of FY2011. Only a portion ($13.2 million) is annualized as part of the President's FY2012 budget request: $7.2 million for two gunrunner teams and $6.0 million to increase tracing capacity at the National Tracing Center.

[19] See CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of Recent Practices*, by Sandy Streeter.

[20] These staffing amounts do not reflect FTE positions provided for law enforcement availability pay (LEAP), overtime pay, or FTE positions funded with reimbursable resources.

Fiscal Year	Appropriation(s)	Full-Time Equivalent (FTE) Positions[a]	Permanent Positions
2009	$1,078,215[n]	4,957	5,008
2010	$1,158,272[o]	5,078	5,206

Source: CRS presentation of ATF funding and staffing data presented in Department of the Treasury and Department of Justice budget submissions to Congress for FY2000-FY2011.

Notes: N/A = not applicable

a. A full-time equivalent (FTE) position represents the amount of funding necessary to provide for a single position for an entire year. Not all positions (new, temporary, and part-time) are fully funded for the entire year. New positions, for example, are often partially funded, as such positions are filled incrementally and at some point during the fiscal year. Hence, they do not require full funding for the first year.

b. For FY1999, an appropriation of $541.6 million was provided in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277). This amount, however, does not reflect $14.5 million in Y2K emergency funding that was transferred to ATF for FY1999.

c. For FY2000, an appropriation of $566.0 million was provided in the Treasury and General Government Act, 2000 (P.L. 106-58). This amount, however, does not reflect a transfer of $40.9 million from the Violent Crime Reduction Trust Fund, nor the effect of a $1.2 million rescission under the Consolidated Appropriations Act, 2000 (P.L. 106-113).

d. For FY2001, an appropriation of $768.7 million was provided in the FY2001Omnibus Appropriations Act (P.L. 106-554), $4.1 million in the FY2001 Transportation Appropriations Act (P.L. 106-346), and a rescission of $1.7 million under P.L. 106-554.

e. For FY2002, an appropriation of $823.3 million was provided in the FY2002 Treasury Appropriations Act (P.L. 107-67) and $31.4 million in the FY2002 Emergency Supplemental Appropriations Act (P.L. 107-117).

f. For FY2003, an appropriation of $886.4 million was provided in the Consolidated Appropriations Resolution, 2003 (P.L. 108-7). Under the Homeland Security Act of 2002 (P.L. 107-296), however, most of ATF was transferred to DOJ. Reflecting that transfer and the fact that part of ATF remained at Department of the Treasury as the Alcohol and Tobacco Tax and Trade Bureau (TTB), the FY2003 appropriation for ATF was $826.8 million, according to DOJ budget documents.

g. For FY2004, an appropriation of $836.1 million was provided by the Consolidated Appropriations Act, 2004 (P.L. 108-199). House Appropriations Committee tables showed the FY2004 ATF appropriation as $827.3 million (H.Rept. 108-576. p. 154).

h. The decrease of 376 FTE positions and 369 permanent positions for FY2004, as compared with FY2003, reflects TTB funding and staffing that remained at Treasury.

i. For FY2005, an appropriation of $886.4 million was provided in the Consolidated Appropriations Act, 2005 (P.L. 108-447). With rescissions, this amount was reduced to $878.5 million. Congress also provided ATF with $4.0 million in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13).

j. For FY2006, an appropriation of $911.8 million was provided in the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (P.L. 109-108). Congress also provided ATF with $20 million in the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act (P.L. 109-148) and $4 million in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery (P.L. 109-234).

k. For FY2007, an appropriation of $984.1 million was provided in the Continuing Resolution Act, 2007 (P.L. 110-5). Congress also provided ATF with a supplemental of $4.0 million in the Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28).

l. For FY2008, appropriations of $984.1 million for salaries and expenses and $23.5 million for construction were provided in the Consolidated Appropriations Act, 2008 (P.L. 110-161). Congress also provided ATF with $4.0 million in the Supplemental Appropriations Act, 2008 (P.L. 110-252).

m. The decrease of 173 FTE positions and 172 permanent positions for FY2008, as compared with FY2007, reflects adjustments to base and other technical adjustments to the ATF budget that were made to eliminate "hollow" or "unfunded" positions.

n. For FY2009, an appropriation of $1.054 billion was provided in the Omnibus Appropriations Act, 2009 (P.L. 111-8). Congress also provided ATF with $24.0 million in supplemental appropriations, of which $10.0 million was provided under the American Recovery and Reinvestment Act, 2009 (P.L. 111-5) and $14.0 million under the Supplemental Appropriations Act, 2009 (P.L. 111-32).

- For FY2010, under the Consolidated Appropriations Act, 2010 (P.L. 111-117), Congress provided ATF with $1.021 billion (5,025 FTE positions and 5,101 permanent positions). This amount included $6 million for construction. Under the FY2010 border security emergency supplemental appropriation (P.L. 111-230), Congress provided ATF with an additional $37.5 million (53 FTE positions and 105 permanent positions).

The FY2010 appropriation under P.L. 111-117 initially funded 5,101 permanent positions, including 2,485 special agents (SAs), 834 industry operations investigators (IOIs, formerly inspectors) and investigative research specialists (IRIs), and 1,782 "other" positions.[21] For FY2010, Congress also provided ATF with an additional 105 positions through a $35.5 million supplemental appropriation to address Southwest border gun trafficking. These positions included 77 SAs, 14 IOIs, and 14 other positions. In addition, as has been the case in recent years, 55 ATF permanent positions (54 SAs and one other position) were funded through reimbursable resources.[22]

Regulatory Backlogs

On March 4, 2010, the House CJS Appropriations Subcommittee held a hearing on the Administration's FY2011 ATF budget request.[23] As in past hearings, the subcommittee chair, Representative Alan Mollohan, observed that the request did not include any additional positions dedicated to regulation writers, despite a regulatory backlog.[24] He observed that 15 of 16 ATF positions previously associated with such duties had remained at Treasury, following ATF's transfer to DOJ in January 2003.[25] (With the exception of two positions, those positions have not been backfilled.) If ATF previously needed anywhere near 16 positions for such purposes, Representative Mollohan asked rhetorically, was not the ATF request "woefully inadequate?"[26]

[21] U.S. Department of Justice, *ATF Congressional Budget Submission, Fiscal Year 2011*, Exhibit I—Detail of Permanent Positions by Category.

[22] Ibid.

[23] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[24] In the conference report accompanying the Consolidated Appropriations Act, 2010, conferees expressed their concern generally with regulatory backlogs at DOJ agencies, and particularly at the ATF. Conferees noted, "While ATF and other relevant bureaus hold primary responsibility for getting their regulations drafted, reviewed and disposed of in a timely manner, the Department also plays a significant role, and lengthy delays in the Department's consideration of proposed regulations are contributing to the larger timeliness problem." With regard to reducing regulatory backlogs, conference report language directs DOJ to report within 120 days of enactment (April 16, 2010) to the Appropriations Committees on recommended process reforms and resource investments. (H.Rept. 111-366, p. 659.)

[25] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[26] Ibid.

ATF Deputy Director Kenneth Melson[27] did not comment on the regulatory backlog, but conceded that the agency needed additional "regulation writers."[28]

With regard to the regulatory backlog, it is significant to note that, in most cases, ATF IOIs serve as the "subject area experts," who are usually tasked with drafting regulations. ATF's capabilities to regulate U.S. firearms and explosives commerce adequately and deter the illegal use of these commodities is undergirded by its ability to promulgate clear and concise regulations. Although most of the ATF subject area experts on alcohol and tobacco remained with the Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB), ATF is still responsible for the bulk of enforcement of criminal statutes related to these commodities. Other issues raised by subcommittee members included the scope of gun trafficking on the Southwest border, the effectiveness of violent crime impact teams, and inter-agency coordination on gang violence. These issues are discussed below.

Firearms Budget Program

ATF's firearms budget program funds activities related to administering and enforcing federal laws related to the manufacture, importation, and distribution of firearms. The principal focus of ATF's firearms-related activities, however, is the reduction of firearms-related violence. As part of this focus, the ATF has dedicated increased resources in recent years toward investigating the criminal activities of violent street gangs, ensuring that federally licensed gun dealers comply with the law, and suppressing gun trafficking. ATF's authority to regulate firearms commerce in the United States is derived generally from three statutes: (1) the National Firearms Act of 1934 (NFA),[29] (2) the Gun Control Act of 1968 (GCA),[30] and (3) the Arms Export Control Act of 1976.[31] The proposed FY2011 firearms program allocation accompanying the Administration's

[27] Section 504 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (P.L. 109-177; March 9, 2006; 120 Stat. 247) requires the ATF Director to be appointed by the President with the advice and consent of the Senate. The position of ATF Director, however, has not been filled permanently since August 2006, after ATF Director Carl J. Truscott resigned due to preliminary findings by the DOJ OIG that he had engaged in questionable expenditures and management practices while serving as ATF Director. In September 2006, President George W. Bush appointed the U.S. Attorney for the District of Boston, Michael J. Sullivan, acting ATF Director. Sullivan served in both posts concurrently. In February 2008, his confirmation as ATF Director was blocked in the Senate, when several Senators voiced their concern about ATF's "overly aggressive" enforcement of gun laws and the nominee's views on such matters. Sullivan resigned as acting ATF Director on January 20, 2009. Ronnie Carter served as acting Director until April 2009, when Kenneth Melson was appointed acting Director. In November 2009, Melson was appointed acting Deputy Director, because the 210-day statutory limit on the acting Director's tenure had expired. On November 17, 2010, the Obama Administration nominated Andrew Traver, the ATF Special Agent in Charge in Chicago, to be ATF Director. Because the Senate did not act on this nomination in the 111th Congress, Traver was renominated by the Administration on January 5, 2011. See U.S. Department of Justice, Office of the Inspector General, Oversight and Review Division, *Report of Investigation Concerning Alleged Mismanagement and Misconduct by Carl J. Truscott, Former Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives* (October 2006). Jonathan Saltzman, "Sullivan ATF Confirmation Blocked; La. Senator Objects to Gun-License Stance," *Boston Globe*, February 14, 2008, p. B1. Jonathan Saltzman, "US Attorney To Resign Sooner Than Expected: List of Finalists for Post Not Yet Sent To Obama," *Boston Globe*, April 16, 2009, p. 2. Andrew Ramanos, "Senate Returns ATF Nomination to White House," *Main Justice: Politics, Policy and the Law*, December 23, 2010. The White House, Office of the Press Secretary, "Presidential Nominations Sent to the Senate," January 5, 2011.

[28] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[29] P.L. 73-474; June 26, 1934; 48 Stat. 1236, codified, as amended, at 26 U.S.C., Chapter 53, § 5801 et seq.

[30] P.L. 90-618; October 22, 1968; 82 Stat. 1213; codified, as amended, at 18 U.S.C., Chapter 44, § 921 et seq.

[31] P.L. 94-329, June 30, 1976; 90 Stat. 729; codified, as amended, at 22 U.S.C. § 2778 et seq.

budget request is $837.4 million, or 72% of the FY2011 budget request ($1.163 billion). The proposed allocation includes an increase of $12.7 million over base ($11.8 million for Project Gunrunner and $854 thousand for Emergency Support Function #13).

Violent Crime and Gangs

As a full partner in the President's Project Safe Neighborhoods (PSN), which was initiated in FY2001, ATF has joined with DOJ attorneys and other federal law enforcement agencies, along with state, local, and tribal authorities, to investigate and prosecute offenders, with a particular focus on armed violent and career criminals. ATF also leads the Attorney General's Violent Crime Impact Teams (VCITs) in 31 cities[32] in an effort to reduce the number of homicides and other violent crimes committed with firearms.[33] According to ATF, the VCITs assist state and local authorities by

- systematically investigating all firearms-related leads;
- responding to all street recoveries of firearms and interviewing those involved to determine the source of the firearms;
- targeting and investigating violent and career criminals, and removing them from the streets;
- infiltrating criminal groups through undercover operations and confidential informants;
- tracing all recovered guns used in crime to determine their origin;
- imaging and storing all ballistic evidence in the National Integrated Ballistic Information Network (NIBIN); and
- inspecting and, when appropriate, investigating corrupt federal firearms licensees.[34]

Under the VCIT initiative, defendants referred by ATF for prosecution in gang-related investigations have increased from 403 in FY2000 to 4,381 in FY2007, nearly a tenfold increase.[35] In FY2008, ATF referred over 4,100 gang members and their associates for prosecution.[36] For FY2010, Congress provided ATF with a $10 million increase to expand VCITs.

During the March 4, 2010, CJS appropriations hearing, Representative Frank Wolf questioned ATF Deputy Director Melson about how the FBI and ATF divided their anti-gang responsibilities.[37] Melson responded that, when operating in the same city, the two agencies

[32] Those cities are Albuquerque, NM; Atlanta, GA; Baltimore, MD; Baton Rouge and New Orleans, LA; Birmingham, AL; Camden, NJ; Columbus, OH; Fresno, Los Angeles, and San Bernardino, CA; Greensboro, NC; Hartford, CT; Houston and Laredo, TX; Las Vegas, NV; Miami, Orlando, and Tampa, FL; Milwaukee, WI; Minneapolis, MN; Philadelphia and Pittsburgh, PA; Richmond, VA; Mesa and Tucson, AZ; San Juan, PR; Tulsa, OK; Memphis and Nashville, TN; and Jackson, MS.

[33] U.S. Department of Justice, Bureau of Alcohol, Tobacco, and Firearms, "ATF Fact Sheet: Violent Crime Impact Teams Initiative," March 2010.

[34] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2007* (February 2006), p. 47.

[35] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2009* (February 2008), p. 22.

[36] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2011* (February 2010), p. 9.

[37] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related

usually divide their respective operational areas geographically, so that an ATF-led VCIT would work one high-crime area and an FBI-led Safe Streets Task Force would work another.[38] Representative Wolf also asked about ATF's presence at the FBI-led National Gang Intelligence Center (NGIC).[39] Melson responded that ATF has a presence at NGIC, as well as at the DOJ-led National Gang Targeting Enforcement and Coordination Center (GangTECC), and that ATF and its partner agencies were satisfied that the center was a success.[40] It is noteworthy that FY2010 conference report language accompanying the FY2010 Consolidated Appropriations Act directs ATF to coordinate with the FBI and other DOJ entities on efforts to maximize the effectiveness of anti-gang efforts and to report back to the Appropriations Committees within 120 days (April 16, 2010).[41] ATF indicated that the report's target release date was May 16, 2010.[42] Also, for FY2008, Congress appropriated $373,000 for ATF to assign two positions to GangTECC. This program increase was incorporated into ATF's base budgets for FY2009, FY2010, and the FY2011 request.

Compliance Inspections of Licensed Gun Dealers

ATF inspects federal firearms licensees (FFLs) to monitor their compliance with the GCA and to prevent the diversion of firearms from legal to illegal channels of commerce. In the past, despite its crime-fighting mission, ATF's business relationships with the firearms industry and larger gun-owning community have been a perennial source of tension, which from time to time has been the subject of congressional oversight.[43] Nevertheless, under current law, ATF Special Agents (SAs) and Industry Operations Investigators (IOIs) are authorized to inspect or examine the inventory and records of an FFL *without search warrants* under three scenarios:[44]

- in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the FFL;
- to ensure compliance with the record keeping requirements of the GCA—not more than once during any 12-month period, or at any time with respect to

Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[38] Ibid.

[39] Ibid.

[40] Ibid. Also, for more information on the NGIC and GangTECC, see U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *A Review of the Department's Anti-Gang Intelligence and Coordination Centers*, Report Number I-2010-001, November 2009.

[41] H.Rept. 111-366, p. 670.

[42] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2011* (February 2010), Exhibit M – Status of Congressionally Requested Studies, Reports, and Evaluations.

[43] For example, in the 109th Congress, the House Judiciary Crime, Terrorism, and Homeland Security Subcommittee held two oversight hearings examining ATF firearms enforcement operations at gun shows in Richmond, VA, in 2005. ATF agents reportedly provided state and local law enforcement officers with confidential information from background check forms (ATF Form 4473s), so that those officers could perform residency checks on persons who had otherwise legally purchased firearms at those gun shows. Questions were also raised as to whether ATF agents had profiled gun purchasers at those gun shows on the basis of race, ethnicity, and gender. See U.S. Congress, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Oversight Hearing on the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Parts I & II: Gun Show Enforcement*, February 15 and 28, 2006. Also see Department of Justice, Office of the Inspector General, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows*, Report Number I-2007-007, June 2007.

[44] 18 U.S.C. § 923(g)(1)(B).

records relating to a firearm involved in a criminal investigation that is traced to the licensee; or

- when such an inspection or examination is required for determining the disposition of one or more firearms in the course of a criminal investigation.

By inspecting the firearms transfer records that FFLs are required by law to maintain, ATF investigators are able to trace crime guns from their domestic manufacturer or importer to the first retail dealer that sold those firearms to persons in the general public, generating leads in homicide and other criminal investigations.[45] In addition, by inspecting those records, ATF investigators are often able to uncover evidence of corrupt FFLs transferring firearms "off the books," straw purchases,[46] and other patterns of suspicious behavior.

In July 2004, the DOJ Office of Inspector General (OIG) reported on ATF inspections of FFLs. Among other things, the OIG reported that ATF inspected the operations of 4.5% of the 104,000 FFLs in FY2002.[47] Since then, according to ATF, 10,106 firearms compliance inspections were conducted in FY2007, covering about 9.3% of the nearly 109,000 FFLs in that fiscal year;[48] 11,169 compliance inspections in FY2008, covering nearly 10% of the 111,600 FFLs; and 11,375 compliance inspections in FY2009, covering nearly 10% of the 115,101 FFLs.[49] Notwithstanding progress, at a March 2010 CJS Appropriations Subcommittee hearing, ATF Deputy Director Melson testified that many FFLs are not inspected for five years or more because of a lack of ATF personnel.[50]

Southwest Border Gun Trafficking[51]

On the Southwest border with Mexico, firearms violence has reportedly spiked in recent years as drug trafficking organizations (DTOs) have competed for control of key smuggling corridors into the United States.[52] Beginning in December 2006, Mexican President Felipe Calderón responded by deploying elements of the Mexican Army and federal police to trouble spots around Mexico,

[45] U.S. Department of Justice, Bureau of Alcohol, Tobacco, and Firearms, "ATF Fact Sheet: ATF's National Tracing Center," March 2010.

[46] A "straw purchase" occurs when a person, who is otherwise eligible to purchase a firearm, purchases a firearm from a federally licensed dealer for another person, who is either prohibited from possessing a firearm or does not want a paper trail linking him to the purchased firearm. Under 18 U.S.C. § 922(a)(6), it is illegal to a make a false statement to a federally licensed firearms dealer. Both the dealer and the buyer are required to fill out an ATF Form 4473, on which the buyer (transferee) attests to the dealer (transferor) that he is buying the firearm for himself and that he is not otherwise prohibited from possessing a firearm. Knowingly making a false statement on a ATF Form 4473 is punishable under 18 U.S.C. § 924(a)(2) by a fine or imprisonment for 10 years or both.

[47] U.S. Department of Justice, Office of the Inspector General, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Report Number I-2004-005, (July 2004), p. xi.

[48] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2008*, (February 2007), p. 29.

[49] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2010*, May 2009, p. 5.

[50] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[51] For further information, see CRS Report R40733, *Gun Trafficking and the Southwest Border*, by Vivian S. Chu and William J. Krouse.

[52] For further information, see CRS Report R41075, *Southwest Border Violence: Issues in Identifying and Measuring Spillover Violence*, coordinated by Kristin M. Finklea.

including on the northern frontier.[53] The DTOs and other criminals, however, are reportedly buying semiautomatic versions of AK-47 and AR-15-style assault rifles, other military style firearms, and .50 caliber sniper rifles in the United States.[54] With those rifles and other small arms, the DTOs are reportedly achieving parity in terms of firepower in shootouts with the Mexican Army and law enforcement.[55] In March 2008, President Calderón called upon the United States to increase its efforts to suppress the flow of illegal U.S. firearms into Mexico.[56]

ATF reports that there are 6,647 FFLs in the United States operating in the Southwest border region of Texas, New Mexico, Arizona, and California.[57] Moreover, ATF reports that DTOs are increasingly using surrogates (straw purchasers) in the United States to buy 10 to 20 military-style firearms at a time from FFLs. These firearms are reportedly routinely smuggled into Mexico in smaller shipments of four or five firearms as part of a process known as the "ant run."[58]

Project Gunrunner

For FY2006, ATF dedicated 84 SAs and 15 IOIs to a Southwest border initiative known as "Project Gunrunner" to disrupt the illegal flow of guns from the United States to Mexico.[59] For FY2007, ATF increased those numbers to 103 SAs and 36 IOIs for this effort.[60] Those agents investigated 187 firearms trafficking cases and recommended 465 defendants for prosecution.[61] By the end of FY2008, ATF had deployed 148 SAs and 47 IOIs to the Southwest border to bolster Project Gunrunner[62] at an estimated cost of $32.2 million.[63] According to the DOJ Office of Inspector General, ATF has established five main objectives for Project Gunrunner:

- investigate individuals responsible for illicit firearms trafficking along the Southwest border;
- coordinate with U.S. and Mexican law enforcement along the border in firearms cases and violent crime;
- train U.S. and Mexican law enforcement officials to identify firearms traffickers;
- provide outreach education to gun dealers; and
- trace all firearms to identify firearms traffickers, trends, and patterns, and networks.[64]

---

[53] Ibid.

[54] Sara Miller Llana, "US Guns Arm Mexico's Drug Wars," *Christian Science Monitor*, July 19, 2007, p. 1.

[55] Oscar Becera, "Firing Line—Tracking Mexico's Illegal Weapons," *Jane's Intelligence Review*, April 28, 2008.

[56] Ibid.

[57] ATF briefing provided to CRS on May 5, 2008.

[58] Oscar Becera, "Firing Line—Tracking Mexico's Illegal Weapons," *Jane's Intelligence Review*, April 28, 2008.

[59] U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *Review of ATF's Project Gunrunner*, I-2011-001, November 2010, p. 6.

[60] Ibid.

[61] Statement of William Hoover, Assistant Director for Field Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives, before the Subcommittee on the Western Hemisphere, Committee on Foreign Affairs, House of Representatives, concerning "U.S. Obligations under the Mérida Initiative," February 7, 2008.

[62] U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *Review of ATF's Project Gunrunner*, I-2011-001, November 2010, p. 6.

[63] CRS conversations with Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Legislative Affairs, May 14, 2008.

[64] U.S. Department of Justice, Office of the Inspector General, *Interim Review of ATF's Project Gunrunner*, Report

The ATF FY2009 budget request was $1.028 billion, including $948,000 to fund 12 industry operations investigator positions to bolster efforts already underway as part of Project Gunrunner.[65] This was the only program increase/budget enhancement in the ATF FY2009 budget request. As described above, the Omnibus Appropriations Act, 2008 (P.L. 111-8) included $1.054 billion for ATF, including an increase of not less than $5.9 million for Project Gunrunner.[66] Also, to ramp up Project Gunrunner, the American Recovery and Reinvestment Act (ARRA; P.L. 111-5) included $10 million for ATF and $30 million to assist state and local law enforcement with counter-narcotics efforts. In addition, the Supplemental Appropriations Act, 2009 (P.L. 111-32), included $6 million for Project Gunrunner. As a result, Congress provided a total of $21.9 million in increasing funding for Project Gunrunner for FY2009.[67] In congressional testimony, ATF Deputy Director Kenneth Melson summed up the results of Project Gunrunner:

> Between fiscal year 2005 and fiscal year 2009, ATF has had [a] significant impact on the trafficking in Southwest Border States. ATF has recommended 984 cases involving 2,034 defendants for prosecution. To date, 1,397 defendants have been arrested, 1,303 defendants have been indicted, 850 defendants have been convicted, and 636 defendants have been sentenced to an average of 86 months incarceration. Three-hundred and seven of the cases and 881 of the defendants recommended for prosecution involve gang related offenses. Four hundred and ninety-seven cases have [been] charged [with] violations related to trafficking of an estimated 14,923 firearms. One hundred and fifty-nine of these cases involved gang-related trafficking of over 3,665 firearms. In all investigations, over 6,688 firearms have been seized and are no longer available to violent criminals and gang members.[68]

The ATF FY2010 budget request was $1.121 billion for ATF, including a proposed increase of $17.9 million and 92 permanent positions (including 34 SAs) to support Project Gunrunner.[69] Congress matched this request in the Consolidated Appropriations Act, 2010 (H.R. 3288), including the $17.9 million for Project Gunrunner.[70] According to the House Committee, this increase would bring total funding for Southwest border firearms trafficking efforts to $59.9 million. This amount includes one-time stimulus funding of $10 million provided in the American Recovery and Reinvestment Act (ARRA; P.L. 111-5).[71] By comparison, Senate report language

---

Number I-2009-006, September 2009, p. 3.

[65] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submission, Fiscal Year 2009* (February 2008), Exhibit C—Program Increases/Offsets by Decision Unit.

[66] House reported language accompanying the FY2009 CJS appropriations bill indicated that the House bill (H.R. 7322; H.Rept. 110-919) would have provided $5 million for Project Gunrunner. Corresponding report language accompanying a Senate bill (S. 3182; S.Rept. 110-397) was silent as to whether such an increase would be provided under that bill. The Senate, however, had included $15 million for Project Gunrunner in the FY2008 supplemental appropriations bill (H.R. 2642), but that funding was not included in the enacted appropriation (P.L. 110-252).

[67] According to DOJ, ATF allocated 187 SAs, 142 IOIs, and 25 other positions for FY2009. See U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *Review of ATF's Project Gunrunner*, I-2011-001, November 2010, p. 6.

[68] Statement of Kenneth E. Melson, Deputy Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, before the House Appropriations Committee, Subcommittee on Commerce, Justice, Science, and Related Agencies, on the Fiscal Year 2011 Appropriations, March 4, 2011.

[69] U.S. Department of Justice, Justice Management Division, *FY2010 Budget and Performance Summary* (May 2009), p. 139. Available at http://www.usdoj.gov/jmd/2010summary/.

[70] The House-reported FY2010 CJS appropriations bill (H.R. 2847; H.Rept. 111-149) would have provided ATF with $1.106 billion, including the requested $17.9 million for Project Gunrunner. The Senate-reported version of this bill (H.R. 2847; S.Rept. 111-34) would have provided ATF with the same amount as requested by the Administration ($1.121 billion), including the $17.9 million increase for Project Gunrunner.

[71] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related

noted that this increase would bring total Project Gunrunner funding to over $61 million. By mid-February 2010, ATF reported that it had deployed approximately 190 SAs, 145 IOIs, and 25 support staff to Project Gunrunner in the four contiguous border states.[72] DOJ reported that the final FY2010 allocation for Project Gunrunner included 224 SAs, 165 IOIs, and 32 other positions.[73]

The ATF FY2011 budget request included $1.163 billion, including $11.8 million to annualize the 37 positions (21 SAs) previously funded under the ARRA (P.L. 111-5). During a March 2010 CJS appropriations hearing, Representative Mollohan questioned ATF Deputy Director Melson about emerging gun trafficking patterns and ATF initiatives, like Project Gunrunner, undertaken to respond to related criminal activity.[74] Melson observed that while firearms were being illegally trafficked principally from Southwest border states into Mexico, they were also being trafficked from other states within the interior of the United States.[75] Representative Mollohan noted that, despite the apparent success of ATF's efforts, the request did not include any additional positions to bolster ongoing efforts to address illegal gun trafficking.[76] As described above, Congress provided ATF with $37.5 million in supplemental appropriations for FY2010 (P.L. 111-230) for Project Gunrunner, as requested by the Administration.

Electronic Trace Submission System

ATF maintains a foreign attaché in Mexico City to administer an Electronic Trace Submission System (ETSS), also known as the eTrace program, for Mexican law enforcement authorities. From FY2005 through FY2007, ATF traced just over 11,700 firearms recovered by Mexican authorities, and approximately 90% of those firearms were either manufactured in, or imported into, the United States.[77] Caution should be exercised when drawing conclusions from ATF firearm trace data, however. Although it is valid to say that 90% of traced firearms originated in the United States, it would be incorrect to conclude that 90% of all guns used in crime in Mexico originated in the United States. Although crime gun trace data are useful measurements of crime gun trends, in most cases the issues of consistent, random, and unbiased data collection have not been adequately addressed through comprehensive tracing and other controls. Hence, it is often not possible to test for statistical significance.[78] Nevertheless, even though a statistically valid

---

Agencies, *Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2010*, to accompany H.R. 2847, 111th Cong., 1st sess., June 12, 2009, H.Rept. 111-149, p. 66.

[72] Statement of Kenneth E. Melson, Deputy Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, before the House Appropriations Committee, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Fiscal Year 2011 Appropriations*, March 4, 2011.

[73] U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *Review of ATF's Project Gunrunner*, I-2011-001, November 2010, p. 6.

[74] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[75] Ibid.

[76] Ibid.

[77] ATF briefing provided to CRS on May 5, 2008.

[78] With regard to the limitations of firearms trace data, Congress has included a general provision in the annual CJS appropriations act for the last several years that prohibits ATF from releasing "tracing studies" without adequate disclaimers that make it clear that broad conclusions about firearms-related crime cannot be made from such data, because: "(1) Firearm traces are designed to assist law enforcement authorities conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any reason, and those reasons are not necessarily reported to the Federal Government. Not all firearms used in crime are traced and not all firearms traced are used in crime. (2) Firearms selected for tracing are not chosen for purposes of determining which

percentage estimate of U.S.-sourced firearms used in crime in Mexico cannot be made based on trace data, criminal investigations have documented that there is great demand for certain firearms that are available in normal (non-military) commercial channels in the United States and that those firearms have been illegally trafficked to Mexico in large numbers.

Moreover, successful firearm traces are instrumental in developing investigative leads in homicide and gun trafficking cases. According to ATF, some of those cases uncover corrupt FFLs who were involved in larger criminal conspiracies to smuggle firearms into Mexico.[79] In January 2008, ATF announced that e-Trace technology would be deployed to an additional nine U.S. consulates in Mexico (Mérida, Juarez, Monterrey, Nogales, Hermosillo, Guadalajara, Tijuana, Matamoros, and Nuevo Laredo).[80] The number of traces performed by ATF for Mexican authorities during FY2008 increased markedly. For FY2008, preliminary data showed that ATF had traced 7,743 firearms recovered by Mexican authorities, as compared with the 11,700 firearms traced over a three-year period, FY2005-FY2007.[81] Of those firearms, 63.5% were determined to have been manufactured in the United States and 29.5% were determined to have been manufactured abroad, but imported into the United States.[82] Consequently, 93% of firearms traced by ATF during FY2008 for Mexican authorities were either made in, or imported to, the United States.[83]

In March 2010, ATF released eTrace 4.0, a Spanish language version of the software, to Mexico, Guatemala, and Costa Rica.[84] ATF anticipates that trace requests from these countries will increase markedly in FY2010 and FY2011 with this new software.[85] Also, as part of the National Integrated Ballistic Imaging Network (NIBIN) program, ATF is currently establishing a U.S.-Mexico ballistic information exchange capability that will allow firearms technicians to acquire and compare digital images of markings left on fired bullets and cartridges either gathered in test-firings or recovered at crime scenes.[86] Canada already participates in ATF's NIBIN program.

---

types, makes, or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should not be considered representative of the larger universe. Firearms are normally traced to the first retail seller, and sources reported for firearms do not necessarily represent the sources and methods by which firearms in general are acquired for use in crime." For FY2010, see §516 of P.L. 111-117; December 16, 2009; 123 Stat. 3151-3152.

[79] ATF briefing provided to CRS on May 5, 2008.

[80] Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Public Affairs, "ATF Expands Efforts to Combat Illegal Flow of Firearms to Mexico," January 16, 2008.

[81] ATF briefing provided to CRS on April 16, 2009.

[82] Ibid.

[83] Ibid.

[84] U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on President Obama's Fiscal Year 2011 Budget Request for the Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 111th Congress, 2nd Session, March 4, 2010 (CQ Congressional Transcripts).

[85] Ibid.

[86] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submission, Fiscal Year 2011* (February 2010), p. 60.

DOJ OIG Report, Mexican Trace Data, and Multiple Long Gun Sales[87]

In November 2010, the OIG released another review of Project Gunrunner, in which updated Mexican firearms trace data were reported.[88] According to the new data, ATF traced 64,510 firearms for Mexican authorities that were reportedly seized during FY2006-FY2009.[89] For firearms traced between December 1, 2006, and December 31, 2009, and sold for the first time, OIG analysis showed that those firearms included 973 rifles (77%) and 279 handguns (23%).[90] It also indicated that traced long guns had a shorter time-to-crime interval than handguns.[91]

While the OIG was somewhat critical of ATF's eTrace progam for yielding little "usable investigative leads,"[92] the OIG recommended that ATF work with DOJ to develop a reporting requirement for multiple long gun sales[93] because Mexican DTOs have demonstrated a marked preference for military-style firearms capable of accepting high-capacity magazines.[94] The IG also recommended that ATF focus its investigative efforts on more complex criminal conspiracies involving high-level traffickers rather than on low-level straw purchasers.

On December 17, 2010, DOJ and ATF requested that the Office of Management and Budget approve on an expedited basis a "60-day emergency notice of information collection" by January 5, 2011.[95] This expedited approval was requested under provisions of the Paperwork Reduction Act.[96] Under the proposal, ATF would require federal firearms licensees (FFLs) to report whenever they make multiple sales or other dispositions of more than one rifle within five consecutive business days to an unlicensed person. Such reporting would be limited to firearms that are (1) semiautomatic, (2) chambered for ammunition of greater than .22 caliber, and (3) capable of accepting a detachable magazine. On December 20, 2010, acting ATF Director Kenneth Melson later clarified that the proposed multiple rifle sales reporting requirement would be (1) limited to FFLs operating in Southwest border states (Texas, New Mexico, Arizona, and California) and (2) confined initially to a one-year pilot project.[97]

On February 4, 2011, OMB informed ATF that it would not grant the emergency approval.[98] Nevertheless, the notice's 60-day comment period ran through February 16, 2011. When DOJ and

---

[87] This section was coauthored by the report's author, William J. Krouse, and Vivian S. Chu and Vanessa K. Burrows, CRS Legislative Attorneys. Questions on case law related to demand letters should be referred to Ms. Chu. Questions on the Paperwork Reduction Act (PRA) of 1995 should be referred to Ms. Burrows.

[88] U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division, *Review of ATF's Project Gunrunner*, 1-2011-001, November 2010.

[89] Ibid., p. 25.

[90] Ibid., p. 38.

[91] Ibid.

[92] Ibid, p. 73.

[93] Ibid, p. 40.

[94] Ibid, p. 38.

[95] Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, "60-Day Emergency Notice of Information Collection Under Review: Report of Multiple Sale or Other Disposition of Certain Rifles," 75 *Federal Register* 79021, December 17, 2010.

[96] For further information, see CRS Report RL40636, *Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates*, by Curtis W. Copeland and Vanessa K. Burrows (out-of-print; available to congressional clients upon request).

[97] Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, "Acting Director Announces Demand Letters for Multiple Sales of Specific Long Guns in Four Border States," News Release, December 20, 2010.

[98] Mike Lillis, "House Dems Upset with Delay on Gun Proposal Along Border," *The Hill*, February 9, 2011, p. 3.

ATF finished considering an initial round of comments, a subsequent 30-day comment period was initiated on April 29, 2011.[99] Following this period, OMB will have up to 30 days (until the end of June 2011) to issue a decision on the ATF proposal. Several Members of Congress strongly oppose this proposal.[100] They maintain that if Congress authorized multiple handgun sales reporting in statute in 1986, then it is incumbent upon ATF to request from Congress similar statutory authority for multiple rifles sales reporting.[101]

Operation Fast and Furious

In February 2011, ATF and Project Gunrunner came under renewed scrutiny for a Phoenix, AZ-based investigation known as Operation Fast and Furious.[102] ATF whistleblowers have alleged that suspected straw purchasers were allowed to amass relatively large quantities of firearms as part of long-term gun trafficking investigations.[103] As a consequence, some of these firearms are alleged to have "walked," meaning that they were trafficked to gunrunners and other criminals before ATF moved to arrest the suspects and seize all of their contraband firearms.[104] Some of these firearms were possibly smuggled into Mexico.[105] Two of these firearms—AK-47 style rifles—were reportedly found at the scene of a shootout near the U.S.-Mexico border where U.S. Border Patrol Agent Brian Terry was shot to death.[106] Press accounts assert that ATF has acknowledged that as many as 195 firearms that were purchased by persons under ATF investigation as part of Operation Fast and Furious were recovered in Mexico.[107] Questions, moreover, have been raised about whether a firearm—an AK-47 style handgun—that was reportedly used to murder U.S. ICE Special Agent Jamie Zapata and wound Special Agent Victor Avila in Mexico on February 15, 2011, was initially trafficked by a subject of a Houston, TX-based ATF Project Gunrunner investigation.[108]

U.S. and Mexican policymakers have expressed their dismay over the circumstances surrounding Operation Fast and Furious.[109] Senator Charles E. Grassley, the ranking minority member on the

---

[99] Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, "Agency Information Collection Activities; Proposed Collection Comments Requested: Report of Multiple Sale or Other Disposition of Certain Rifles," 76 *Federal Register* 24058, April 29, 2011.

[100] Congressional Documents and Publications, "Rehberg Leads Bipartisan Letter to ATF Questioning New Firearm Dealer Regulations," Representative Dennis Rehberg (R-MT) News Release, December 23, 2010. On February 19, 2011, the House adopted an amendment to the Full-Year Continuing Appropriations Act, 2011 (H.R. 1) that would have prohibited ATF from implementing this requirement. While the House passed H.R. 1, the Senate rejected this bill on March 9, 2011, for budgetary considerations that went well beyond concerns about this policy rider. Meanwhile, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (H.R. 1473; P.L. 112-10) does not include a similar rider.

[101] Ibid.

[102] James V. Grimaldi and Sari Horwitz, "ATF Probe Strategy Is Questioned," *Washington Post*, February 2, 2011, p. A04.

[103] Ibid.

[104] Ibid.

[105] John Solomon, David Heath, and Gordon Witkin, "ATF Let Hundreds of U.S. Weapons Fall Into Hands of Suspected Mexican Gunrunners: Whistleblower Says Agents Strongly Objected to Risky Strategy," *Center for Public Integrity*.

[106] Ibid.

[107] Kim Murphy and Ken Ellingwood, "Mexico Demands Answers on Guns," *Chicago Tribune*, March 11, 2011, p. 13.

[108] Ibid.

[109] Ken Ellingwood, "Mexico: U.S. Never Said Guns Came Across; Washington Didn't Reveal Tracked Arms Were Passing the Border, Agency Asserts," *Los Angeles Times*, March 12, 2011.

Senate Judiciary Committee, wrote letters to ATF Acting Director Kenneth E. Melson[110] and U.S. Attorney General Eric H. Holder[111] voicing his concerns about Operation Fast and Furious and the whistleblower allegations that were brought to him. Attorney General Holder instructed the DOJ OIG to review ATF's gun trafficking investigations.[112] On March 8, 2011, however, Senator Grassley called for an independent review of the related allegations because the DOJ OIG had made recommendations about Southwest border gun trafficking investigations in its November 2011 audit that might possibly influence its future findings.[113]

On March 9, 2011, Representative Lamar Smith, chair of the House Judiciary Committee, wrote the Attorney General and commended him for tasking the OIG with a review of ATF's firearms trafficking investigatory methods.[114] On April 1, 2011, Representative Darrell Issa, chair of the House Oversight and Government Reform Committee, issued a subpoena to DOJ and ATF for documents related to Project Gunrunner following several unanswered requests for information related to ATF's anti-gun trafficking efforts on the Southwest border.[115]

Related Legislation in the 110th and 111th Congresses

In the 110th Congress, the House Committee on Foreign Affairs reported the Mérida Initiative to Combat Illicit Narcotics and Reduce Organized Crime Authorization Act of 2008 (H.R. 6028; H.Rept. 110-673) on May 14, 2008.[116] This bill would have authorized a total of $73.5 million to be appropriated over three years, for FY2008 through FY2010, to increase the number of ATF positions dedicated to Project Gunrunner ($45 million) and assign ATF agents to Mexico ($28.5 million). The House passed this bill on June 10, 2008, by a roll call vote: 311 to 106 (Roll no. 393). Similar authorizations were included in the Southwest Border Violence Reduction Act of 2008 (S. 2867, H.R. 5863, and H.R. 5869). In the 111th Congress, similar bills were introduced (S. 205, H.R. 495, H.R. 1448, and H.R. 1867). The three-year Mérida Initiative expired at the end of FY2010. In recent talks, Mexican and U.S. officials have agreed to refocus and continue the initiative, however.[117]

Arson and Explosives Budget Program

ATF's arson and explosives budget program covers activities related to administering and enforcing federal laws governing the manufacture, importation, and distribution of explosives, as well as investigating arson cases with a federal nexus. The federal statutory provisions regulating explosives commerce in the United States were enacted under Title XI of the Organized Crime

[110] Jerry Seper, "Lawmaker Suspects ATF Not Compliant with Probe of Death," *Washington Times*, April 11, 2011, p. 3.

[111] Kim Murphy, "Dealers Under Federal Gun To Sell To Suspects; Emails Show ATF Pushed Sales That Made It To Mexico, linked to U.S. Deaths," *Chicago Tribune*, April 15, 2011, p. 22.

[112] Pete Yost, "Justice IG to Look into Anti-Gun Efforts on Border," *Associated Press Online*, March 4, 2011.

[113] James V. Grimaldi, "ATF Faces Federal Review Over Tactics to Foil Gunrunning Rings," *Washington Post*, March 10, 2011, p. A04.

[114] A copy of that letter is available at http://judiciary.house.gov/news/pdfs/HJC%20Gunrunner%20Letter.pdf.

[115] House Committee on Oversight and Government Reform, "Chairman Issa Subpoenas ATF for 'Project Gunrunner' Documents," press release, April 1, 2011.

[116] For further information, see CRS Report R41349, *U.S.-Mexican Security Cooperation: the Mérida Initiative and Beyond* , by Clare Ribando Seelke and Kristin M. Finklea.

[117] Ibid.

Control Act of 1970 (often referred to as the Explosives Control Act of 1970).[118] The Anti-Arson Act of 1982 amended this act to create a federal crime of arson.[119] The act was amended further by the Safe Explosives Act, which was included in the Homeland Security Act of 2002.[120] The proposed FY2011 allocation for the ATF arson and explosives program is $302.4 million, or about 26% of the FY2011 budget request ($1.163 billion). The proposed FY2011 allocation includes a program increase of $320,000 for Emergency Support Function #13.

Among law enforcement agencies, the ATF is recognized for its investigative expertise in responding to both arson and explosive incidents. The Attorney General (AG), for example, made the ATF responsible for maintaining a consolidated database of all arson and explosive incidents that occur in the United States. Reportedly, as part of the department's law enforcement information-sharing program, this and other databases are to be linked and made Web-accessible, and first responders anywhere in the United States are to have access to critical information about arson and explosive cases nationwide.[121] Nevertheless, as described below, both ATF and the FBI share concurrent jurisdiction over federal criminal investigations involving explosives, and both bureaus have maintained separate databases on explosives incidents. At times, this shared jurisdiction appears to have resulted in an inter-agency rivalry.

Safe Explosives Act

Under the Safe Explosives Act,[122] Congress made ATF responsible for more closely regulating the U.S. explosives industry. This act made ATF responsible for fully investigating all explosive thefts and losses, as well as providing background checks for licensees and permittees to prevent prohibited persons from acquiring explosives. In FY2008, ATF completed 68,645 explosives employee/possessor background checks and 3,231 responsible persons background checks. The act also requires ATF to inspect explosive licensees and permittees every three years to ensure that all explosive materials are properly stored and accounted for. ATF reports that there are about 12,000 licensees and permittees nationwide, so that to comply with the act, about 4,000 inspections would need to be conducted by ATF annually.[123] ATF conducted 3,291 explosives compliance inspections in FY2007 (or about 28% of licensees/permittees), 3,055 in FY2008 (27%), and 2,640 in FY2009 (22%).[124]

ATF and FBI Concurrent Jurisdiction over Explosives Investigations

As described above, ATF was transferred from Treasury to DOJ in January 2003. This transfer, however, did little to ameliorate the perennial source of tension between the ATF and FBI over

[118] P.L. 91-452; October 15, 1970; 84 Stat. 952; codified, as amended, at Chapter 40, 18 U.S.C. § 841 et seq.

[119] P.L. 97-298; October 12, 1982; 96 Stat. 1319.

[120] P.L. 107-296; November 25, 2002; 116 Stat. 2280 (Title XI, Subtitle C of the Homeland Security Act of 2002).

[121] The Federal Bureau of Investigation reportedly continues to maintain its own bomb data center despite the AG's memorandum. See Jerry Markon, "FBI, ATF Battle for Control of Cases: Cooperation Lags Despite Merger," *Washington Post*, May 10, 2008, p. A1.

[122] P.L. 107-296; November 25, 2002; 116 Stat. 2280 (Title XI, Subtitle C of the Homeland Security Act of 2002).

[123] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2007* (February 2006), p. 53.

[124] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2011* (February 2010), p. 60.

their concurrent jurisdiction over explosives. In March 2003, then Attorney General John Ashcroft convened an Explosives Review Group (ERG) to develop recommendations to improve coordination between the ATF and FBI. In August 2004, the Attorney General responded to the ERG's report and directed (1) the ATF and FBI to consolidate all of DOJ's arson and explosives incidents databases into a single database; (2) that all consolidated arson and explosives incident databases be maintained by the ATF; and (3) both agencies coordinate post-blast explosives training and explosives detection canine training.[125] In response to this directive, ATF established the U.S. Bomb Data Center (USBDC) as the sole repository of arson and explosives related incident data.[126] On the other hand, the Attorney General also directed the FBI to take the lead on any terrorism-related cases (domestic and international) that involved explosives, and directed ATF to take the lead on all other criminal cases involving explosives.

Notwithstanding the Attorney General's directives, the partnership on federal explosives-related investigations between the FBI and ATF continues to be marked by what has been described as an acrimonious rivalry and competition for mission share and resources.[127] The FBI apparently had not transferred its bomb data to the ATF, arguing that such a transfer would be detrimental to the FBI's ability to conduct counterterrorism investigations.[128] In response to this, the Senate Judiciary Committee chair, Senator Patrick Leahy, and ranking minority member of that committee, Senator Arlen Specter, wrote a letter to the then Attorney General, Michael Mukasey, urging that an end be brought to this inter-agency rivalry.[129] Meanwhile, FBI and ATF officials at the headquarters level have maintained that their partnership produces examples of interagency cooperation on a daily basis. They point to their jointly administered Terrorist Explosive Device Analytical Center (TEDAC), which is based at the FBI laboratory in Quantico, VA. This center was established to process and evaluate evidence from improvised explosive devices (IEDs) that have been recovered in Iraq and Afghanistan.[130]

In October 2009, the DOJ OIG found that ATF and FBI are not adequately coordinating explosives investigations and related operations and that the two agencies have developed parallel capabilities to respond to explosives incidents.[131] As noted above, both agencies maintain separate explosives-related databases, despite the Attorney General's May 2004 directives. Nor have the agencies coordinated post-blast explosives training and explosives detection canine training, despite a directive from the Attorney General to do so. The OIG also observed that investigative jurisdictional disputes, lack of information sharing, and lack of coordination between the two agencies hinders DOJ's ability to effectively respond, investigate, and prevent explosives crimes. The OIG underscored that these circumstances could increase the risk that DOJ would not meet the requirements set out by then President George W. Bush in Homeland Security Directive

[125] U.S. Department of Justice, Office of the Inspector General, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases*, Audit Report 05-01, October 2004, p. 34.

[126] Bureau of Alcohol, Tobacco, Firearms and Explosives, "ATF Fact Sheet: U.S. Bomb Data Center," September 2008.

[127] Jerry Markon, "End FBI-ATF Rift, Senators Urge," *Washington Post*, May 17, 2008, p. A03.

[128] Ibid.

[129] Ibid.

[130] Federal Bureau of Investigation, Fact Sheet on Terrorist Explosive Device Analytical Center, revised June 15, 2009, available at http://www.fbi.gov/page2/june09/tedac061709.html.

[131] U.S. Department of Justice, Office of the Inspector General, Audit Division, *Explosives Investigation Coordination Between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Audit Report 10-01, October, 2009, p. 12.

(HSPD)-19, which envisions a comprehensive U.S. government strategy to mitigate the threat, and prevent the use, of explosives by terrorists.[132]

Alcohol and Tobacco Budget Program

The ATF alcohol and tobacco budget program covers expenses related to agency efforts to counter a rising trend in the illegal diversion of tobacco products, as well as the illegal movement of distilled alcohol products. The FY2010 allocation for the Alcohol and Tobacco program totals $22.3 million, or about 2% of ATF's direct appropriation ($1.115 billion) for salaries and expenses, which is in line with historical budget trends (FY2004 through FY2010). The proposed FY2011 allocation accompanying the Administration's budget request is $23.3 million, or again about 2% of the request ($1.163 billion). In addition, through DOJ's asset forfeiture authority, ATF also has "churning budget authority," or the authority to obligate the proceeds of seized assets to fund tobacco diversion and other long-term, complex undercover investigations.[133]

Notwithstanding this additional funding authority, in September 2009, the DOJ OIG issued a report on ATF's efforts to prevent tobacco diversion, which includes contraband cigarette trafficking. In this report, the Inspector General found that tobacco diversion investigations, along with alcohol diversion investigations, are accorded a low priority at ATF, as compared to its other mission areas, such as investigating firearms- and explosives-related crime, particularly violent crime, and arson.[134] This low priority is partly the result of the view that tobacco diversion is largely a nonviolent crime, despite its connections with terrorist financing and organized crime.[135] Between FY2004 and FY2008, ATF conducted 645 alcohol and tobacco diversion investigations, or about 1% of ATF's investigative caseload. Of these cases, 566 investigations (88%) involved tobacco and 79 (12%) involved alcohol.[136] With regard to the greater number of tobacco cases than alcohol cases, ATF observed that tobacco diversion is much more lucrative to criminal enterprises than is alcohol, as the latter is much more difficult to transport in large quantities. Alcohol diversion, moreover, is also limited to certain geographic areas and generally such cases today are handled by state and local authorities.

The FY2011 budget request includes a program increase of $24,000 for Emergency Support Function #13. It is significant to note that the OIG reported that the FY2010 departmental budget request to the Office of Management and Budget (OMB) included $28.3 million for tobacco diversion, but this request was denied by OMB and was not included in the ATF's FY2010 congressional budget submission (request).[137]

Alcohol Diversion

The federal statutes that address the diversion of distilled spirits (alcohol) are many. They include, but are not limited to, the Internal Revenue Code (IRC),[138] the Federal Alcohol Administration

[132] Ibid., p. 33.

[133] U.S. Department of Justice, Office of the Inspector General, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Efforts to Prevent the Diversion of Tobacco*, Report Number I-2009-005, September 2009, p. 6.

[134] Ibid., p. 35.

[135] Ibid., p. 15.

[136] Ibid., p. 1.

[137] Ibid., p. 22.

[138] See 26 U.S.C., Chapter 51, Alcohol Excise Taxes.

(FAA) Act,[139] the 21st Amendment, the Webb-Kenyon Act,[140] the Federal Criminal Code,[141] and federal Indian laws.[142] Although ATF has primary jurisdiction for illegal interstate transportation of liquor and related racketeering activities, the regulatory statutes underlying those violations are found in the IRC. In addition, the Department of the Treasury has primary jurisdiction over the IRC, as well as the FAA and Webb-Kenyon Act. While historically ATF traces its roots back to Eliot Ness and other Treasury agents who battled organized crime during the era of prohibition and illegal liquor production (moonshining), since its transfer to DOJ, ATF's role in enforcing liquor laws has been diminished, as is evident in part by its small investigative caseload. Most of the ATF personnel dedicated to the regulation of alcohol and tobacco remained at Treasury within the Alcohol and Tobacco Tax and Trade Bureau (TTB).[143]

Tobacco Diversion

According to ATF, it has primary jurisdiction over criminal provisions related to tobacco in the Contraband Cigarette Trafficking Act (CCTA) of 1978.[144] In May 2004, the General Accounting Office (now the Government Accountability Office) reported that the illegal diversion and smuggling of cigarettes in the United States results in an unknown but significant loss in tax revenues.[145] ATF criminal intelligence indicates that cigarette bootlegging is a lucrative criminal venture that terrorist groups have used and would possibly use to finance their future criminal activities,[146] including drug and weapons trafficking, identity theft, and various types of fraud. ATF has investigated Armenian, Chinese, Middle Eastern, Russian, Taiwanese, Ukrainian, and Native American organized crime groups engaged in diverting large quantities of contraband and counterfeit cigarettes and counterfeit tax stamps.[147] These activities have become increasingly lucrative as states and the federal government have raised excise taxes on cigarettes.[148] According to the Inspector General, transporting contraband cigarettes from low-tax states to high-tax states, and reselling those cigarettes on the black market, can yield high profits:

- a car load of 10 cases can yield an estimated $18,000 to $23,000;

[139] See 27 U.S.C., Chapter 8, Federal Alcohol Administration Act.

[140] The Liquor Law Repeal and Enforcement Act of 1913 (37 Stat. 699), otherwise known as the Webb-Kenyon Act, prohibits a person from receiving, possessing, selling, or in manner using, intoxicating liquor of any kind that has been transported from one state into another in violation of any law of any state. See 27 U.S.C., Chapter 9.

[141] See 18 U.S.C., Chapters 59 and 95, which are related liquor traffic and racketeering.

[142] See 18 U.S.C., Chapter 53.

[143] For FY2010, Congress appropriated $103 million for the TTB, of which $3 million was provided to hire, train, and equip SAs and related support personnel. When ATF was transferred to DOJ, all its SAs were also transferred to DOJ as part of the newly constituted ATF. Consequently, until FY2010, the TTB had no funded SA positions, with which to hire criminal investigators to conduct alcohol- or tobacco-related investigations.

[144] P.L. 95-575; November 2, 1978; 92 Stat. 2463; codified, as amended, at 18 U.S.C., Chapter 114, § 2341 et seq. The Department of the Treasury, however, has primary jurisdiction of the Internal Revenue Code (IRC) provisions related to excise taxes on cigarettes that have to be violated in order to trigger the criminal provisions in the CCTA. See 26 U.S.C., Chapter 52, Tobacco Excise Taxes.

[145] U.S. General Accounting Office, *Cigarette Smuggling: Federal Law Enforcement Efforts and Seizures Increasing*, GAO-04-641 (May 2004), p. 7.

[146] Ibid.

[147] U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Efforts to Prevent the Diversion of Tobacco*, Report Number I-2009-005, September 2009, p. 15.

[148] Ibid., p. 11.

- a van load of 50 cases, an estimated $90,000 to $115,000; and
- a small truck load of 200 cases, an estimated $360,000 to $465,000.[149]

Nonetheless, the Inspector General described the ATF's tobacco diversion efforts as "ad hoc,"[150] and underscored that there is no systematic method within the agency to share intelligence and information between field divisions.[151] The Inspector General reported, moreover, that ATF headquarters is not facilitating information sharing between its field agents and personnel at Treasury's TTB, which maintains a database on tobacco licensees, and had not coordinated with tobacco companies, which often provide cigarettes for undercover operations.[152]

Related Legislation in the 110th and 111th Congresses

The 110th and 111th Congresses considered legislation to strengthen federal laws that address contraband cigarette trafficking. Representative Anthony Weiner introduced the Prevent All Cigarette Trafficking (PACT) Act (H.R. 1676). The House Judiciary Committee reported this measure (H.Rept. 111-117) on May 18, 2009, and the House passed it on May 21, 2009, by a recorded vote (two-thirds required): 397-11 (Roll no. 287). Senator Herb Kohl introduced a similar measure (S. 1147). The Senate Judiciary Committee amended the bill with substitute language and reported it without a written report on November 11, 2009. It was passed by the Senate on March 11, 2010. It was passed by the House on March 17, 2010, by a recorded vote (two-thirds required): 387-25 (Roll no. 124). On March 31, 2010, President Obama signed S. 1147 into law (P.L. 111-154).

The House-passed H.R. 1676 included two sections that addressed ATF's tobacco diversion mission, but only one of these sections (section 5) was included in the Senate- and House-passed bill (S. 1147) that was signed into law by the President. Section 7 of the House-passed H.R. 1676, which was not included in P.L. 111-154, would have authorized ATF to establish

- six regional contraband tobacco trafficking teams over a three-year period in New York City; Washington, DC; Detroit; Los Angeles; Seattle; and Miami;
- a tobacco intelligence center to serve as the "nerve center" for all ongoing tobacco diversion investigations;
- a covert national warehouse for undercover operations; and
- a computer database to track the retail sale of tobacco products through the Internet, by mail-order, or in any other non-face-to-face transaction.

For these purposes, section 7 would have also authorized to be appropriated $8.5 million for five years beginning with FY2010. By comparison, the other section, which was included in P.L. 111-154, authorizes ATF to enter the business premises of "delivery sellers" and inspect their records and information and any cigarettes or smokeless tobacco stored at such premises. It also authorizes federal district courts to compel such inspections, and imposes a civil penalty for failure to comply with inspections. In the 110th Congress, the House passed a similar bill (H.R. 4081) on September 10, 2008, by a recorded vote (two-thirds required): 379 to 12 (Roll no. 584). This bill was reported by the House Judiciary Committee on the previous day (H.Rept. 110-836).

[149] Ibid., p. 13.

[150] Ibid., p. 26.

[151] Ibid., p. 26.

[152] Ibid., p. 23.

The Senate Judiciary Committee reported a similar bill on September 11, 2007 (S. 1027; S.Rept. 110-153), but the Senate took no further action on this bill.

Appendix. Authorizations Compared to Appropriations

Congress last provided authorizations for ATF's annual appropriation in the Violence Against Women and Department of Justice Reauthorization Act of 2005.[153] This act authorized appropriations for DOJ as a whole and ATF as a DOJ agency for FY2006 through FY2009. Congress did not associate authorized dollar amounts with FTE or permanent positions. The annual authorization for appropriations lapsed for FY2010, as the 110th and 111th Congresses have not considered legislation to reauthorize appropriations for either DOJ or ATF. As **Table A-1** shows, Congress has generally appropriated more money for ATF than has been authorized.[154]

Table A-1. ATF Authorizations Compared to Appropriations

(Dollars in millions)

	FY2006	FY2007	FY2008	FY2009	FY2010
Authorization	923.6[a]	960.6[a]	999.0[a]	1,038.9[a]	NA
Appropriation	935.8[b]	988.1[c]	1,011.6[d]	1,078.2[e]	1,158.3[f]

Source: FY2006 CJS Appropriations Act (P.L. 109-108); Gulf Hurricanes and Pandemic Influenza Supplemental Appropriations Act, 2006 (P.L. 109-148); Global War on Terror and Hurricane Recovery Supplemental Appropriations Act, 2006 (P.L. 109-234); Revised Continuing Appropriation Resolution, 2007 (P.L. 110-5); Katrina-Iraq Supplemental Appropriations Act (P.L. 110-28); Consolidated Appropriations Act, 2008 (P.L. 110-161); Supplemental Appropriations Act, 2008 (P.L. 110-252); Omnibus Appropriations Act, 2009 (P.L. 111-8); Supplemental Appropriations Act, 2009 (P.L. 111-32); American Recovery and Reinvestment Act of 2009 (P.L. 111-5); Consolidated Appropriations Act, 2010 (P.L. 111-117); and FY2010 border security emergency supplemental appropriation (P.L. 111-230).

Notes: NA = no authorization.

a. Authorizations for appropriations provided in the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

b. Includes a supplemental appropriation of $20 million provided under P.L. 109-148 and $4 million under P.L. 109-234.

c. Includes a supplemental appropriation of $4.0 million provided under P.L. 110-28.

d. Includes a supplemental appropriation of $4.0 million provided under P.L. 110-252.

e. Includes supplemental appropriations of $10 million provided under P.L. 111-5 and $14 million under P.L. 111-32.

f. Includes a supplemental appropriation of $37.5 million provided under P.L. 111-230.

Author Information

William J. Krouse
Specialist in Domestic Security and Crime Policy

[153] P.L. 109-162, January 5, 2006, 119 Stat. 2960.

[154] For further information, see CRS Report RS20371, *Overview of the Authorization-Appropriations Process*, by Bill Heniff Jr.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.