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Department of Homeland Security Appropriations: FY2023 State of Play

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Introduction

Fiscal year 2023 marks the 20th annual appropriations cycle with a Department of Homeland Security (DHS) appropriations measure. Six of the first seven annual appropriations measures for DHS were enacted within the first month following the end of the fiscal year. Since FY2010, however, no annual appropriations measure for DHS was resolved within two months of the end of the fiscal year, and DHS received its annual appropriations within the first fiscal quarter in only two of those years. Lapses in annual appropriations for the department lasting more than a week have occurred twice in this period.

This report is a quick reference for tracking the status of DHS appropriations from the end of the August 2022 district work period until the resolution of the annual appropriations measure. It will be updated as events warrant.

For more in-depth analyses of the FY2023 DHS appropriations request and the House and Senate Appropriations Committee responses, see

- CRS Report R47123, *DHS Budget Request Analysis: FY2023*; and
- CRS Report R47220, *Comparing DHS Component Funding, FY2023: In Brief*.

If Annual Appropriations Are Not Enacted Before the New Fiscal Year Begins...

Under current federal budgeting practices, the federal government's fiscal year ends at midnight on September 30. As this deadline approaches, if any of the annual appropriations measures are not expected to be enacted, the Administration and Congress take steps to prepare stopgap appropriations legislation—known as a *continuing resolution* (CR)—to extend funding for federal government operations until the unresolved appropriations measures can be signed into law. CRs do not provide specific levels of budget authority to agencies: they provide *temporary* budget authority provided at a specified *rate for operations* (the annualized level of resources available for the period of time covered by the CR) through a fixed expiration date, or until annual appropriations are enacted. Further, the Office of Management and Budget generally apportions those resources gradually over the period of the CR, and there are certain restrictions placed on the use of that temporary budget authority beyond the most basic agency operations. The rate for operations is usually derived from the prior year's annual appropriations measures, and the terms and conditions of those appropriations continue to apply under the CR.[1]

These steps first become visible to the public when the Administration releases lists of necessary exceptions (anomalies) and extensions of authorizations that they either propose including, or would not object to including, in a CR. The Biden Administration provided such a list of anomalies on September 2, 2022, and authorization provisions the following week.[2] Congress weighs that information in formulating a CR, which is generally proposed by the majority without

[1] For more detailed information on continuing resolutions and how they work, see CRS Report R46595, *Continuing Resolutions: Overview of Components and Practices*.

[2] Shalanda Young, Office of Management and Budget (OMB) Director, *Meeting Critical Needs for the American People in the New Fiscal Year*, White House Briefing Room blog post, Washington, DC, September 2, 2022, https://www.whitehouse.gov/omb/briefing-room/2022/09/02/meeting-critical-needs-for-the-american-people-in-the-new-fiscal-year/.

going through a formal markup process. The CR may be considered as a stand-alone measure or attached to another bill.

It is not uncommon for a CR to only cover certain federal government agencies in cases when some annual appropriations have been enacted. For example, in FY2015, when disputes over immigration policy led to DHS being pulled from a consolidated appropriations measure, for almost three months DHS was the only federal department covered by the CR.[3]

If a Continuing Resolution Is Not Active...

A lapse in annual appropriations occurs if a CR is not passed prior to the end of a fiscal year, or is allowed to expire without passage of either an extension or the covered annual appropriations. A lapse results in a partial shutdown of government operations for those agencies without enacted annual appropriations. Immediately prior to the end of the fiscal year, agencies release shutdown plans that indicate, in broad terms, how the partial shutdown of operations will be implemented. Certain agency activities are allowed to continue, such as those funded by multi-year appropriations, or those specifically related to the protection of life and property. However, even for agencies like DHS, which conducts many of these excepted activities, lapses in annual appropriations can be highly disruptive.[4]

Occasionally, lapses in appropriations have occurred for a matter of hours, or over a weekend.[5] However, in 2013 (FY2014), a lapse resulted in a partial shutdown of DHS operations for 16 days. Also, in late 2018 and early 2019 (FY2019), annual appropriations for many departments, including DHS, lapsed for 34 days.[6]

Figure 1 shows a history of the timing of the annual Department of Homeland Security Appropriations Act, since its first development in 2003 (for FY2004). Tracked actions include

- the release of the budget request (green dot);
- full committee markups and passage of the House and Senate versions of the bill (orange and purple bars, respectively); and
- ultimate enactment of the measure (black bar).

Dotted lines show the months covered by CRs. Unshaded, white gaps indicate lapses in annual appropriations.

[3] P.L. 113-235, Division L.

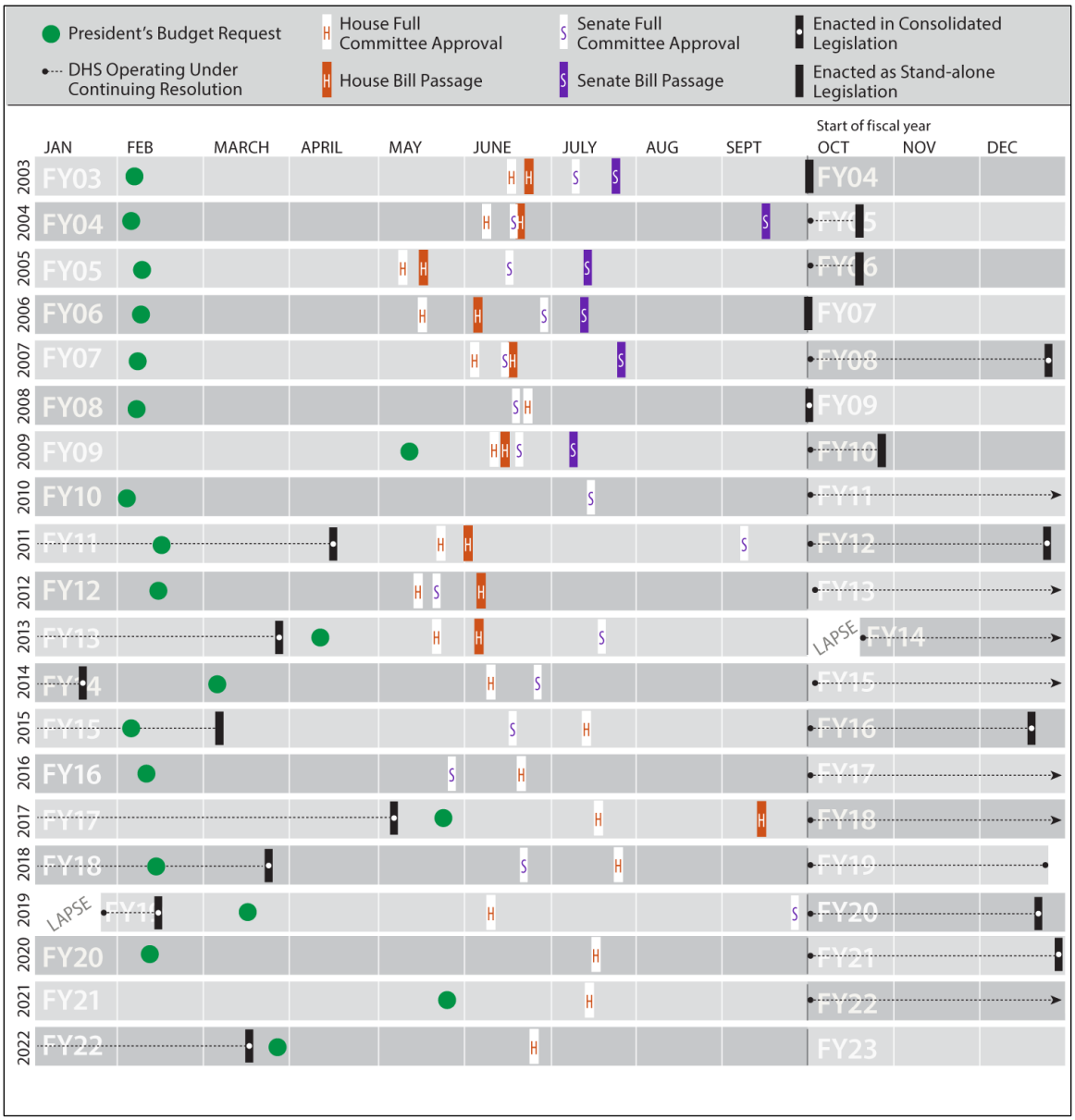
[4] For further information on the impact of the FY2014 lapse in appropriations on the Department of Homeland Security (DHS), see CRS Report R43252, *FY2014 Appropriations Lapse and the Department of Homeland Security: Impact and Legislation*, by William L. Painter.

[5] In FY2018, two brief lapses of annual appropriations occurred with expirations of the continuing resolution: on January 20, 2018, appropriations lapsed until January 22; and on February 8, 2018, appropriations lapsed for several hours until an extension of the CR was enacted.

[6] At the time of the lapse, five of the 12 appropriations measures had been enacted. For more information on the impacts of past shutdowns, see CRS Report R41759, *Past Government Shutdowns: Key Resources*, by Jared C. Nagel and Justin Murray.

Figure 1. DHS Appropriations Process, FY2004-FY2023

(as of September 11, 2022)



Source: CRS analysis of presidential budget request release dates and legislative action from Congress.gov.

Notes: Final action on annual appropriations for FY2011, FY2013-FY2015, FY2017-FY2019, and FY2022 did not occur until after the beginning of the new calendar year. A three-day lapse in January of FY2018 and an hour-long lapse in February of that same year are not displayed due to limitations of scale. Please note that the FY2019 lapse began in December, 2018.

The FY2023 DHS Appropriations Process

Request

On March 28, 2022, the Biden Administration released its FY2023 annual budget request, including a $97.3 billion budget request for DHS. According to the Congressional Budget Office's (CBO's) initial estimation, the request included $56.64 billion in adjusted net discretionary appropriations and $19.74 billion in disaster relief-designated appropriations.[7] This was $0.99 billion less than was enacted for DHS in FY2022.

For additional analysis of the content of the FY2023 budget request for DHS, see CRS Report R47123, *DHS Budget Request Analysis: FY2023*.

Advance Appropriations

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law as P.L. 117-58. Division J of the IIJA included a number of supplemental appropriations, including a total of $7.96 billion for DHS in Title V. Of this amount, $3.08 billion was available in FY2022. The remaining appropriations were advance appropriations, which become available over the period of FY2023-FY2026.[8] $1.42 billion of that becomes available in FY2023.

Table 1 lists DHS accounts with advance appropriations provided by P.L. 117-58, and includes a breakdown of amounts coming available each fiscal year, with FY2023 highlighted.

Table 1. Accounts with Advance Appropriations for DHS provided in the Infrastructure Investment and Jobs Act (P.L. 117-58)

(emergency-designated budget authority, in thousands of dollars)

Component / Appropriation / PPA	Total Provided	FY2022	FY2023	FY2024	FY2025	FY2026
Cybersecurity and Infrastructure Security Agency (CISA)						
Cybersecurity Response and Recovery Fund	100,000	20,000	20,000	20,000	20,000	20,000
Federal Emergency Management Agency (FEMA)						
Federal Assistance						
Section 205 Grants (for establishing hazard mitigation revolving loan funds)	500,000	100,000	100,000	100,000	100,000	100,000

[7] This total evolved over the course of the appropriations process due, in part, to the changes in unobligated balances available for rescission. Analyses in this report refer to the Congressional Budget Office's (CBO's) estimates as outlined in the detail table at the end of H.Rept. 117-396.

[8] For more information on advance appropriations, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*, by Jessica Tollestrup and Kate P. McClanahan.

Component / Appropriation / PPA	Total Provided	FY2022	FY2023	FY2024	FY2025	FY2026
Grants For Cybersecurity and Critical Infrastructure	1,000,000	200,000	400,000	300,000	100,000	0
Disaster Relief Fund (for Building Resilient Infrastructure and Communities grants)	1,000,000	200,000	200,000	200,000	200,000	200,000
National Flood Insurance Fund	3,500,000	700,000	700,000	700,000	700,000	700,000

Source: P.L. 117-58, Division J, Title V.

Note: PPA = program, project, or activity. Title V included $1.86 billion in accounts and PPAs that did not receive advance appropriations, and thus are not shown in **Table 1**.

House Committee Action

On June 24, 2022, the House Committee on Appropriations marked up H.R. 8257, its version of the Department of Homeland Security Appropriations Act, 2023. H.Rept. 117-396 was filed on July 1, 2022. Committee-reported H.R. 8257 included $60.27 billion in adjusted net discretionary budget authority. This was $3.64 billion above the level requested by the Administration and $2.65 billion above the FY2022 enacted level of annual appropriations.

Senate Committee Action

On July 28, 2022, Senate Appropriations Committee Chairman Senator Patrick Leahy released drafts of twelve appropriations measures that had yet to be marked up by the committee, along with draft explanatory statements for each.[9] The Senate Appropriations majority draft bill for DHS for FY2023 included $59.89 billion in adjusted net discretionary budget authority. This was $3.25 billion above the level requested by the Administration, and $2.26 billion above the enacted annual level for FY2022.

Chairman Leahy said,

> It is my hope that by releasing these bills, and making clear what the priorities of Senate Democrats are, we can take a step closer toward reaching a bipartisan compromise after months of stalled negotiations.... I look forward to continuing to work with my dear friend, Vice Chairman Shelby, and I encourage good faith, bipartisan negotiations on toplines to resume with the urgency that this moment requires.[10]

Vice Chairman[11] Senator Richard Shelby criticized the move as partisan, stating,

[9] The draft bills and explanatory statements can be found on the Senate Appropriations Committee website at https://www.appropriations.senate.gov/news/majority/chairman-leahy-releases-remaining-nine-senate-appropriations-bills.

[10] U.S. Senate Committee on Appropriations, "Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills," press release, July 28, 2022, https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills.

[11] Vice Chairman is the title for the leader of the minority party on the Senate Appropriations Committee.

> Democrats must commit to a bipartisan framework that abandons poison pills, preserves legacy riders, and demonstrates a serious commitment to our military.[12]

Consolidated Appropriations

On December 19, 2022, Senator Leahy submitted an amendment to H.R. 2617 (an unrelated measure) that contained the text of the Consolidated Appropriations Act, 2023. Division F of the measure was the Department of Homeland Security Appropriations Act, 2023.[13] At the same time, explanatory statements were released by the House and Senate Appropriations Committees, in lieu of a conference report.[14] As of the date of publication, the Senate has the measure under consideration.

Continuing Resolutions

Proposed Anomalies and Authorization Extensions

On September 2, 2022, the Biden Administration released technical assistance documents providing "guidance to lawmakers on funding and legislative adjustments that are necessary to avoid disruptions to a range of important public services," in the event of a short-term CR.[15] The request included five adjustments to the rate of spending allowed under the CR to accommodate certain situations:

- increased fuel costs (U.S. Coast Guard);
- potential disaster activity (Federal Emergency Management Agency (FEMA));
- the ongoing situation at the U.S.-Mexico border (U.S. Immigration and Customs Enforcement and FEMA); and
- increased operational costs for seasonal activity (Transportation Security Administration).

The Administration also requested permission for DHS to use modified account structures for its new Office of Health Security, and legislative authority to adjust the immigration status of certain Afghans and their families who are resettling in the United States.[16]

A second list of authorization extensions was released later that week, noting that in the event other legislation did not resolve the matter first, extensions would be necessary for nine DHS-related programs (including the National Flood Insurance Program, the E-Verify program, and raising the H-2B visa cap), and that the Administration did not object to the inclusion of two other immigration program extensions as well.[17]

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[12] U.S. Senate Committee on Appropriations, "Shelby: Democrats' Partisan Bills Threaten FY23 Appropriations Process," press release, July 28, 2022, https://www.appropriations.senate.gov/news/minority/shelby-democrats-partisan-bills-threaten-fy23-appropriations-process.

[13] S.Amdt. 6552.

[14] See https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Division-F-Homeland-Statement-FY23.pdf and https://www.appropriations.senate.gov/download/division-f_-homeland-statement-fy23, which present identical documents.

[15] Young, blog post.

[16] OMB, *FY2023 Continuing Resolution (CR) Appropriations Issues*, September 2, 2022, pp. 15-19. https://www.whitehouse.gov/wp-content/uploads/2022/09/CR_Package_9-2-22.pdf.

[17] The document, while available through Congressional Quarterly, has not been presented on the OMB website. It is available to subscribers at https://jukebox.cq.com/www/graphics/file/2022/09/06/file20220906-242456.pdf.

The Administration provided technical assistance to Congress in early December outlining needs for a CR extending to the end of FY2023. The list of needs included

- $34 million for the U.S. Secret Service to begin preparations for the 2024 campaign cycle;
- $4.85 billion for management of the situation at the U.S.-Mexico border (about $3.5 billion more than under the initial CR), including
  - $2 billion for CBP border processing,
  - $2 billion for ICE transportation, removal, detention, and ATD, and
  - $850 million for FEMA EFSP humanitarian grants;
- $765 million for U.S. Citizenship and Immigration Services ($490 million more than under the initial CR), including
  - $375 million for asylum processing/adjudication,
  - $256 million for backlog reduction, and
  - $134 million for refugee processing.

More detailed historical analyses of DHS anomalies and authorization extensions are available upon request for congressional clients.

Floor Action

On September 29, 2022, the Senate passed by a vote of 72-25[18] an amended version of H.R. 6833, replacing the original text of the bill with a consolidated piece of legislation that included the Continuing Appropriations Act, 2023 as Division A.[19] The amended bill passed the House on September 30, 2022, by a vote of 230-201.[20] It was enacted the same day as P.L. 117-180.

Detailed descriptions of the CR and its functionality can be found in CRS Report R47283, *Overview of Continuing Appropriations for FY2023 (Division A of P.L. 117-180)*, by Drew C. Aherne and Sarah B. Solomon.

While appropriators and leadership continued to work on a consolidated appropriations bill to resolve the outstanding annual measures, an extension of P.L. 117-180 was required to avoid a lapse in annual appropriations.

On December 14, operating under a special rule, the House brought up and amended H.R. 1437 (an unrelated Senate-passed bill), replacing its text with an amendment to the Continuing Appropriations Act, extending its expiration date to December 23, 2022. The House-amended version of H.R. 1437 also included a provision to extend the authorization for DHS's cyber intrusion and detection program, and the congressional reporting requirement for it, for the life of the CR.[21] No additional funding was provided beyond the extension of the existing CR.

[18] Senate Record Vote Number 351, available at https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00351.htm.

[19] Other legislation included in the measure were the Biosimilar User Fee Amendments of 2022, the FDA User Fee Reauthorization Act of 2022, the Generic Drug User Fee Amendments of 2022, the Hermit's Peak/Calf Canyon Fire Assistance Act, the Medical Device User Fee Amendments of 2022, the Prescription Drug User Fee Amendments of 2022, the Ukraine Supplemental Appropriations Act, 2023, and the United States Parole Commission Extension Act of 2022.

[20] House Roll no. 476, available at https://clerk.house.gov/Votes/2022476.

[21] P.L. 117-209, Division A. The authority and reporting requirement (6 U.S.C. §1525) would have expired on

The House passed H.R. 1437 in its amended form on December 14, 2022, by a vote of 224-201.[22] The Senate agreed to the House amendment on December 15, 2022, by a vote of 71-19.[23] President Biden signed the bill on December 16, 2022, and it became P.L. 117-229.

Supplemental Appropriations for DHS

Requested Supplemental Appropriations

The Administration's technical assistance document on a possible CR, provided in September 2022 (for FY2023), also included a request for $47.1 billion in supplemental appropriations, including $2.9 billion for the Disaster Relief Fund.[24]

On November 18, 2022, the White House provided a second technical assistance document regarding funding that was needed to address recent disasters.[25] The list of funding needs included

- $39 million in Operations and Support appropriations, and $123.5 million in Procurement, Construction, and Improvements appropriations for the U.S. Coast Guard for costs related to Hurricanes Ian and Fiona;
- $11 billion in appropriations for the Disaster Relief Fund;
- $2.9 billion for FEMA to address outstanding claims from the Hermit's Peak fire; and
- $4 billion for the National Flood Insurance Fund for the National Flood Insurance Program to pay claims.

No supplemental appropriations have been enacted for DHS or its components for FY2023 as of the date of publication.

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December 18, 2022, without such an extension.

[22] House Roll Call 523, available at https://clerk.house.gov/Votes/2022523.

[23] Senate Record Vote Number 399, available at https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00399.htm.

[24] OMB, *FY2023 CR Appropriations Issues*, p. 49.

[25] OMB, "Technical Assistance Regarding Funding Needs to Address Recent Natural Disasters," November 18, 2022, https://www.whitehouse.gov/wp-content/uploads/2022/11/FY-2023-Supplemental-funding-request-for-disasters.pdf.

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