



Statement of

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to Support the Homeland”**

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Good morning Chairman Ratcliffe, Ranking Member Richmond, and Members of the Subcommittee.

I am privileged to appear before you today on behalf of CRS in response to your request to discuss how the budget situation for the Department of Homeland Security (DHS) could affect the efforts of its various components to develop new technologies and confront emerging threats.

Accordingly, my statement summarizes key portions of several CRS reports regarding DHS appropriations for fiscal year 2015, the impact of continuing resolutions (CRs), and the impact of a lapse in annual appropriations for DHS.

I will begin with a brief overview of the current status of the DHS appropriations process, and then discuss three potential scenarios and what each would entail for DHS developing technology and confronting emerging threats.

When discussing specific programs, I will explore the impact of various potential budget scenarios on the operations of the DHS components represented on the panel with me today, National Programs and Protection Directorate (NPPD), the Domestic Nuclear Detection Office (DNDO), the Science and Technology Directorate (S&T), and to a limited extent, the cybersecurity-related functions of the U.S. Secret Service (USSS). Unfortunately, the publicly available documentation regarding the USSS budget lacks the granularity necessary to discuss those functions in significant detail.

DHS Appropriations Current Status

DHS operated with an overall budget of \$59.2 billion for FY2014. \$47.9 billion, or 81%, was discretionary spending, which relied on budget authority provided through appropriations acts.¹ The FY2014 Homeland Security Appropriations Act (P.L. 113-76, Division F) enacted almost \$3 billion for DNDO, S&T, and NPPD.

The Administration requested \$60.9 billion for DHS for FY2015, of which \$49.0 billion was discretionary funding. DNDO, S&T and NPPD comprised \$2.9 billion of that request.

As fiscal year 2014 drew to a close, no annual appropriations bills for fiscal year 2015 had been enacted. On September 19, 2014, the President signed into law P.L. 113-164, which provided temporary funding for government operations as senior appropriators indicated they would pursue an omnibus appropriations package in the closing months of the 113th Congress, rather than stand-alone appropriations bills. The Consolidated and Further Continuing Appropriations Act, 2015, was signed into law as P.L. 113-235 on December 16, 2014. Congress did not include

¹ Department of Homeland Security, *Budget in Brief, Fiscal Year 2016*, p. 8.

full annual appropriations for DHS as part of the package, but provided an extension of continuing appropriations for the department through February 27, 2015.²

The Administration submitted its fiscal year 2016 budget request to Congress on February 2, 2015. According to the department, the request includes almost \$64.9 billion for DHS, more than \$51.9 billion of which is discretionary spending. When compared in fiscal year 2015, this represents a \$3.7 billion increase compared to the overall DHS budget request, and a \$2.8 billion increase in the DHS discretionary request. The requested appropriations for NPPD, S&T and DNDO total almost \$2.8 billion.

The annual appropriation for DHS was not finalized when the budget request was assembled. DHS does not directly compare in its public budget request documentation the fiscal year 2016 request with the legislation under consideration for fiscal year 2015. **Table 1** provides such a comparison for the selected agencies.

Table 1. Enacted, Requested, and Proposed Appropriations for Selected DHS Components, FY2014-FY2016

(budget authority in rounded millions of dollars)

Component / Appropriation	FY2014	FY2015		FY2016	Analysis of FY 2016 Request vs. H.R. 240	
	Enacted	Budget Request	H.R. 240	Budget Request	+/- \$	+/- %
U.S. Secret Service (USSS)						
Salaries and expenses	\$1,538	\$1,586	\$1,616	\$1,867	\$252	15.6%
Acquisition, construction, improvements, and related expenses	52	50	50	72	22	43.5%
USSS TOTAL	1,590	1,636	1,666	1,939	273	16.4%
National Protection and Programs Directorate (NPPD)						
Management and Administration	56	66	62	64	3	4.1%
Infrastructure Protection and Information Security	1,187	1,198	1,189	1,312	123	10.3%
Federal Protective Service (FPS) ³	[1,302]	[1,343]	[1,343]	[1,443]	101	7.5%

² Division L of P.L. 113-235.

³ FPS is not included in the total resources because it is funded through collections from the agencies for whom FPS provides services.

Component / Appropriation	FY2014		FY2015		FY2016		Analysis of FY 2016 Request vs. H.R. 240	
	Enacted	Budget Request	H.R. 240	Budget Request	Budget Request			
						+/- \$	+/- %	
Office of Biometric Identity Management	227	252	252	284	31	12.5%		
NPPD TOTAL	1,471	1,515	1,502	1,659	157	10.5%		
Science and Technology (S&T)								
Management and Administration	129	130	130	132	2	1.6%		
Research, Development, and Operations	1,091	942	974	647	-327	-33.6%		
S&T TOTAL	1,220	1,072	1,104	779	-325	-29.4%		
Domestic Nuclear Detection Office (DNDO)								
Management and Administration	37	37	37	38	1	2.6%		
Research, Development, and Operations	205	199	198	196	-2	-1.0%		
Systems Acquisition	43	68	73	123	50	69.4%		
DNDO TOTAL	285	304	308	357	49	16.1%		

Sources: CRS analysis of FY2014 explanatory statement, FY2015 DHS congressional justifications, H.R. 240 (114th Congress), and the DHS *Budget in Brief, FY2016*.

Notes: Table displays rounded numbers for simplicity of presentation. To ensure validity of analysis, all operations, including calculations of percentages, were performed with unrounded data.

The evolution of funding levels across the three fiscal years reflected in this chart (as well as other changes below the appropriations level that are not reflected here) could be taken as evidence that DHS and congressional priorities in confronting emerging threats are evolving as well. The resolution of the fiscal year 2015 annual appropriations cycle will have a significant impact on the ability of the department to align its funding to those new priorities. Budgets that are based on prior year funding streams or that are more procedurally limiting than the annual appropriations process could present additional challenges to the department as it works to adjust to the evolving threat environment.

Fiscal Year 2015 DHS Appropriations: Potential Future Scenarios

At least three possible scenarios exist as the February 27 expiration date of the current DHS funding stream approaches:

- 1) extension of the continuing resolution;
- 2) enactment of a fiscal year 2015 annual appropriations bill for DHS; or
- 3) a lapse in discretionary appropriations.

Extension of the Continuing Resolution

Continuing resolutions (CRs) — the basis of the first possible scenario — come in two forms, distinguished by the duration of funding they provide. The most common type is an “interim” CR, which provides temporary funding for departments or agencies that lack enacted annual appropriations. Such funding is typically provided at a given rate for operations. This type of CR expires at a specified date prior to the end of the fiscal year. It may be extended through the enactment of further interim CRs, or superseded by annual appropriations laws. DHS has been operating under temporary CRs throughout fiscal year 2015, providing funding slightly less than the fiscal year 2014 rate for operations.

My colleagues have written extensively on the history, functions, and impacts of interim continuing resolutions, and I refer you to their work for detailed analysis.⁴ Usually funding is provided to sustain a rate for operations defined in terms of funding enacted in the previous fiscal year. That rate may be adjusted by formula or by specific “anomalies”⁵ carried within the law. Because CRs are intended to provide interim funding, that funding is usually made available to agencies on a pro-rated basis, which is calculated based on the CR’s duration. Any obligations or expenditures that are made using this temporary funding are typically deducted from the applicable full-year appropriation once enacted.

The second type of CR is a “full-year” CR, which provides funding through the end of the fiscal year. DHS has operated under the terms of such a CR only once, in FY2011. That year, Congress agreed only on the budget for the Department of Defense. The rest of the government operated under the terms of a full-year CR⁶ from mid-April to the end of September, 2011. Defined funding levels (as opposed to a rate of operations) were established, and were generally the amounts in the previous fiscal year’s appropriations laws (except when set by anomalies).

⁴ For information on the history and procedural aspects of CRs, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup; for information on the impacts of interim CRs, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

⁵ Anomalies are generally defined as provisions that alter the funding stream provided under a continuing resolution or the authorities under which that funding is utilized, i.e., increasing or decreasing the rate for operations for a specific program, barring the use of funds for a specific activity, or specifically authorizing an activity.

⁶ Division B of P.L. 112-10.

To preserve congressional prerogatives, Congress generally places several key restrictions on the use of continuing funding under an interim CR. The current CR,⁷ as amended, includes those traditional restrictions, including:

- Section 101(a) — That appropriations are provided “under the authority and conditions” of the FY2014 appropriations laws, for projects or activities “that were conducted in fiscal year 2014”, and that were funded in those specified appropriations acts;⁸
- Section 104 — That funds may not be used to initiate or resume any project or activity not funded during FY2014;⁹
- Section 109 — That funding distributions or grant awards shall not be made that would impinge on Congress’s final funding prerogatives;¹⁰ and
- Section 110 — That only the most limited funding action permitted in the resolution shall be made to continue projects and activities.¹¹

The restrictions noted above in Sections 109 and 110 were not included in the fiscal year 2011 full-year CR, and the restrictions in Section 104 were modified, as the legislation was anticipated to be the final action on appropriations for the fiscal year.

An agency funded under an interim CR experiences several challenges in confronting a dynamic threat environment and developing new technologies. To some extent, a status quo funding level combined with the restrictions on the use of funds provided under the terms of a continuing resolution may result in federal agencies continuing to support existing priorities — rather than shifting to new ones — since only existing programs retain funding.

In reports stretching back several years, the Government Accountability Office (GAO) has noted multiple negative effects of interim continuing resolutions on efficient program management and execution. GAO variously cited: the inability to allocate funds to programs with current needs, rather than a (possibly no longer relevant) recent history of funding; delays in planning; hiring freezes; delays in construction projects; suspension of loan and grant activities; inability to finalize or renew contracts in a timely manner; reductions in technical assistance work; delays in funding that increased program costs; and reductions in otherwise justifiable travel.¹²

Other observers concur that interim CRs can have negative impacts. Past reporting by CRS regarding the impacts of interim CRs on the Department of Defense noted that interim CRs create challenges in the distribution of funds, requiring an “inordinate amount of time and

⁷ P.L. 113-164 as amended.

⁸ 128 Stat 1867.

⁹ 128 Stat 1868.

¹⁰ 128 Stat 1869.

¹¹ Ibid.

¹² Summarized in CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

paper,” and drawing resources from “more productive management.” The reporting also noted that interim CRs do not provide the authority to reestablish bonuses and allowances for personnel, which can negatively affect morale and retention of highly sought-after personnel.¹³

If full-year regular appropriations levels for FY2015 become law, thereby allowing new programs to receive funds, projects may have difficulty meeting their projected timelines because of the shortened time frame for obligating funds for these programs. With the midpoint of the fiscal year approaching, difficulties may emerge in obligating some of the new appropriations for NPPD, for example, before they expire at the end of the fiscal year. Most of the budget for DNDO and S&T does not expire for three or five years; however, 81% of NPPD’s Infrastructure Protection and Information Security appropriation in H.R. 240 expires at the end of fiscal year 2015.

One example of how either an interim or year-long CR that extends last year’s funding levels with no anomalies¹⁴ could affect DHS activities is the Chemical Facility Anti-Terrorism Standards (CFATS) activity at NPPD.

CFATS would be affected both in terms of its funding and its operations. In terms of funding, the Infrastructure Security Compliance Division (ISCD) requested an 8% increase in FY2015 from their appropriated level in FY2014 (\$87 million as opposed to \$81 million). In practice, DHS had reprogrammed an additional \$3 million to ISCD in FY2014. Under a clean CR, ISCD would be funded at a lower level than required to provide current services.

In terms of operations, in December 2014, ISCD received new statutory authorization to regulate chemical facilities for security purposes. The new authority contains new provisions for ISCD to implement, including increased information sharing, the commission of certain studies, and the establishment of a self-certification program for regulated entities. Not all of these activities were in place in FY2014. The costs of implementing them would not be represented in a funding stream based on FY2014 funding, and DHS may consider some of them as new activities that could not be initiated under the continuing resolution.

Another potential effect of a CR that extended fiscal year 2014 levels would be on the S&T Laboratory Facilities appropriation. In fiscal year 2014, the construction of the National Bio- and Agro-defense Facility received \$404 million in appropriations. The request for fiscal year 2015 was \$300 million, which was included in both the House and Senate draft bills in the previous Congress and in H.R. 240. Despite what appears as consensus on a funding level, a CR at fiscal year 2014 levels would provide more for NBAF construction than either Congress or the Administration have proposed.

¹³ Ibid.

¹⁴ In practice, interim and full-year CRs usually contain at least some anomalies.

DNDO's Human Portable Radiation Detection Systems program would have the opposite issue. This program purchases commercially available technology for front-line DHS personnel to detect radiological or nuclear materials in the field. The fiscal year 2015 request of \$51 million was almost triple the fiscal year 2014 funding level of \$14 million. Again, the House and Senate generally concurred on providing most of the increase, but an anomaly would be required to provide that increase if the CR generally extended the fiscal year 2014 funding level.

Given the structure of appropriations for S&T, funding shifts below the level of the Project, Program, and Activity level are common. Such shifts can provide the resources needed to carry out work under existing authorities. However, given the level of budget uncertainty, even in cases where S&T has the legal ability to engage in new work, there may be a hesitancy to make a commitment of resources when operating under a temporary CR.

Enactment of Fiscal Year 2015 Annual Appropriations

The second potential next scenario — enactment of an annual appropriations bill — would arguably allow DHS to carry out its mission with more transparent and explicit direction from Congress in terms of funding levels and funding limitations for many of its missions. DHS may perceive more freedom to engage in certain activities, such as the hiring of staff. It would also be able to initiate certain new projects, as is the case for the other government agencies funded through the consolidated appropriations act enacted in December, 2014.

For the purposes of discussion, let us assume that the annual appropriation includes the funding levels outlined in H.R. 240, the FY2015 Homeland Security Appropriations bills introduced in the House in the 114th Congress.

Under the terms of H.R. 240, in fiscal year 2015, DNDO would receive an almost 8% increase overall above fiscal year 2014. A \$7 million reduction in the Research Development and Operations account would be offset by an increase of \$35 million in the Human Portable Radiation Detection Program. While \$2 million less than requested by the Administration, the resources provided would still support the purchase of portable radiation detectors for Customs and Border Protection, the Transportation Security Administration, and the U.S. Coast Guard.

S&T would be funded \$116 million below fiscal year 2014 levels under H.R. 240 as passed by the House. The major driver in this reduction is the smaller tranche of funding for the construction of the National Bio- and Agrodefense Facility. A 1% reduction in the Research, Development and Innovation subappropriation also is present. As with DNDO, the funding levels included in the two bills are higher than the Administration's request for FY2015.

In House-passed H.R. 240, NPPD would be funded at slightly more than \$1.5 billion—almost \$32 million above the fiscal year 2014 level, and \$13 million below the Administration's request. Most of the increase from the previous fiscal year is driven by a \$32 million increase in the Next

Generation Networks program and rejection of an \$8 million proposed reduction in the Global Cybersecurity Management subappropriation. This would maintain funding levels for cybersecurity education.

The explanatory statement for H.R. 240 notes that USSS “cyber activities, including electronic crimes investigations and state and local cybercrime training” would receive more than \$108 million under the terms of H.R. 240. A similar figure was not presented in the explanatory statement for the FY2014 appropriation to allow for definitive overall comparison, although the support for training rose from \$7.5 million in the FY2014 act to \$12 million in H.R. 240.

Potential FY2015 Funding Lapse for DHS

The third scenario — a default option which will occur if neither of the first two scenarios occur — is a lapse in annual appropriations for the department. DHS will be required to implement a shutdown furlough. The events of October 2013 provide a reasonable understanding of this case. The shutdown affected operations of different DHS components to varying degrees. Roughly 85% of the department’s workforce continued with their duties during the shutdown, because of exceptions identified in long-standing interpretations of the Anti-Deficiency Act. Some DHS employees were also recalled to work after the furloughs began on the basis of unanticipated needs (such as disaster response activities) and the enactment of an appropriations law that temporarily covered certain personnel costs.

In the event of a lapse, DHS personnel who continue to work without passage of annual appropriations or a continuing resolution generally fall into two categories: those whose activities are not funded through one-year appropriations, and those whose work is necessary for the preservation of the safety of human life or the protection of property. The former generally continue to be paid as scheduled—contingent on the availability of funds, whereas the latter are not paid while the lapse in annual appropriations continues. Of DHS’s estimated 231,117 civilian and military employees, nearly 200,000 were projected to be exempted from the shutdown furlough, according to the department. Most of these employees relied on annual appropriations for their salaries, and therefore were not paid during the funding lapse.

Among the components of interest today, only the Office of Biometric Identity Management and Federal Protective Service under NPPD continued to operate during the furlough with funding made available through fee revenues and multi-year appropriations. Elements of the Secret Service engaged in protection of persons and facilities and NPPD’s cybersecurity function continued to work in the absence of annual appropriations.

Table 2 provides a breakdown of the initial exemption and furlough data provided by DHS for the four components under discussion:¹⁵

Table 2. DHS Projected Initial Exemption and Furlough Data for Selected Components, FY2014 Lapse

Component	Employees (as of 7/31/2013)	Projected Exempt	Projected Furlough	Projected % of Component Furloughed
U.S. Secret Service	6,537	6,003	534	8.17%
National Protection and Programs Directorate	2,835	1,617	1,218	42.96%
Science and Technology Directorate	469	20	449	95.74%
Domestic Nuclear Detection Office	115	6	109	94.78%

Source: CRS analysis of DHS “Procedures Relating to a Federal Funding Hiatus,” September 27, 2013.

While DHS did not associate numbers of furloughed employees with specific programs, the department identified several activities that would be subject to furloughs and curtailment of activities, including:

- all non-disaster grant programs;
- NPPD’s Critical Infrastructure Protective Security Advisor Program;
- chemical site security regulatory program; and
- research and development activities.¹⁶

Most of the research and development activities funded by S&T and DNDO are performed by contractors. Even if its work was funded prior to the shutdown, a contractor might be prevented from continuing its work if it required access to a closed DHS facility or interaction with a furloughed DHS employee. If the shutdown persisted for an extended period, some contractors might suspend their work because of uncertainty or cash flow issues.¹⁷

One difference from the consequences of the FY2013 shutdown would be in the CFATS program. Since DHS has received new statutory authority to regulate chemical facility security,¹⁸

¹⁵ A complete breakdown of DHS projected furloughs is available in CRS Report R43252, *FY2014 Appropriations Lapse and the Department of Homeland Security: Impact and Legislation*, by William L. Painter.

¹⁶ “DHS Lapse Contingency Plan Summary,” September 27, 2013. Provided by DHS Legislative Affairs.

¹⁷ For additional information on how contracted work may be affected by a lapse in annual appropriations, see CRS Report WSLG681, *What Would a Government Shutdown Mean for Federal Contractors?*, by Kate M. Manuel.

¹⁸ P.L. 113-254.

the statute underlying chemical facility security regulation would remain in force. The previous authority had a sunset date that was typically extended each year in appropriations acts. In the prior shutdown, DHS furloughed the staff of ISCD, which implements the program. If ISCD staff were again furloughed, the regulatory program they implement would pause, even though the statutory authority would continue in force.

A lapse in annual appropriation and the shutdown furlough that would follow could represent a disruption in certain DHS operations, and potentially raise more obstacles to efficient management and oversight than those raised by an interim continuing resolution.

I would be remiss if I did not close by noting that while I sit before you today, the testimony I have provided would not have been possible without the contributions of a number of my colleagues as well, especially Clinton Brass, Jessica Tollestrup, Dana Shea, Daniel Morgan, John Moteff, and Eric Fisher.

On behalf of CRS, thank you for the opportunity of appearing before you today. I am happy to respond to your questions.