



Legislative Bulletin.....June 6, 2012

H.R. 5855 — FY 2013 Homeland Security Appropriations Act

BY THE NUMBERS:

In Millions of Dollars

	FY12	FY13 Request	FY13 Committee	Cmte v. Request	Cmte v. FY12
Appropriations	39,600	39,514	39,117	-397	-483
<i>Emergency Approps</i>	6,658	5,481	5,481	0	-1,177
TOTAL	46,258	44,995	44,598	-397	-1,660

Excluding Emergency Appropriations, the Committee Bill is:

- **\$397 million or 1.0% less than the request**
- **\$483 million or 1.2% less than last year**

Spending Discussion: The bill provides a spending level of \$39.1 billion, \$483 million (1.2%) less than last year. The House Appropriations Committee approved the 302(b) allocations for the twelve appropriations bills that totals \$1.028 trillion—consistent with the 302(a) allocation provided under the [0HFY 2013 House-passed budget resolution](#). This allocation is a \$19 billion cut compared to the cap under the Budget Control Act, and a \$15 billion cut compared to last year. The RSC budget’s 302(a) allocation would have been \$931 billion (\$97 billion lower).

Emergency Spending: The legislation provides \$5.48 billion for the disaster relief category compared to \$6.4 billion last year.

Items of Note:

Prohibition on Abortion Funding: The legislation prohibits funding for elective abortion for detainees held in Immigration and Customs Enforcement detention centers.

Air Marshals: \$879 million—a decrease of \$86 million or 9.0% compared to last year, and \$50 million or 5.4% less than last year. The air marshals program deploys federal agents to U.S. flights for the purpose of preventing terrorist attacks. In 2010, CNN reported that: “Air marshals describe an agency in chaos, where bored and frustrated marshals focus more on internal squabbles than watching for bad guys. In 2009, the agency made 4 arrests at a cost of \$200 million per arrest.”

Restrictions on Fee Collections: Section 503 of the bill places certain conditions on how agencies can use any fees collected (for example, the bill prohibits these collections from being used to create a new program). Some conservatives may believe that offsetting receipts should be deposited into the Treasury for deficit reduction.

Buy America Act: The legislation prohibits funding in the bill from being used in contravention of the Buy America Act.

Immigration Oath of Allegiance: The legislation prohibits funds from being made available in the bill from being used to amend the oath of allegiance required by section 337 of the Immigration and Nationality Act.

E-Verify in Department of Homeland Security Hiring: The legislation prohibits funds made available to the Office of the Secretary and Executive Management under this Act from being expended for any new hires by the Department of Homeland Security that are not verified through the E-Verify Program as described in section 403(a) of 19 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

TSA E-Verify Waiver: If the Administrator of the Transportation Security Administration determines that an airport does not need to participate in the E-Verify Program (as described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), the Administrator shall certify to the Committees on Appropriations of the Senate and the House of Representatives that no security risks will result from such non-participation.

Prohibition on National ID Card: The legislation prohibits funds for planning, testing, piloting, or developing a national identification card.

Guantanamo Bay: Prohibits funds from being used to “transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions, including detaining, accepting custody of, or extending immigration benefits to, Khalid Sheikh Mohammed or any other detainee who--

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after June 24, 2009, at the United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.”

ACORN: The legislation prohibits funds from being made available under this bill, or prior bills, for the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations.

Restriction on Spending Taxpayer Money to Give Guns to Drug Cartels: Section 554 prohibits funds from being made available by a “Federal law enforcement officer to facilitate the transfer of an operable firearm to an individual if the Federal law enforcement officer knows or suspects that the individual is an agent of a drug cartel unless law enforcement personnel of the United States continuously monitor or control the firearm at all times.”

Limitation on Expenditures for Foreign Conferences: The legislation prohibits funds made available in the bill from being used to send or otherwise pay for the attendance of more than 50 employees from a Federal department or agency at any single conference occurring outside the United States, unless (1) such conference is a law enforcement training or operational conference for law enforcement personnel and the majority of Federal employees in attendance are law enforcement personnel stationed outside the United States; or (2) such attendance is pursuant to law enforcement, security, or military operations.

Funding Summaries:

In Thousands

	FY12 Enacted	FY12 Request	FY13 Cmte	Cmte vs. FY12	Cmte vs Request	% vs. FY12	% vs. Request
Departmental Operations	1,131,974	1,278,624	1,052,928	-79,046	-225,696	-7.0%	-17.7%
U.S Customs and Border Protection	11,651,140	11,973,557	11,683,317	32,177	-290,240	0.3%	-2.4%
U.S. Immigration and Customs Enforcement	5,550,584	5,332,192	5,473,787	-76,797	141,595	-1.4%	2.7%
Transportation Security Administration (Total)	7,841,019	7,644,585	7,498,055	-342,964	-146,530	-4.4%	-1.9%
<i>Federal Air Marshals</i>	966,115	929,610	879,600	-86,515	-50,010	-9.0%	-5.4%
U.S. Coast Guard	8,892,406	8,351,931	8,588,589	-303,817	236,658	-3.4%	2.8%
U.S. Secret Service	1,666,617	1,600,863	1,612,805	-53,812	11,942	-3.2%	0.7%
National Protection and Programs Directorate	1,245,740	1,216,954	1,347,131	101,391	130,177	8.1%	10.7%
Office of Health Affairs	167,449	166,458	132,003	-35,446	-34,455	-21.1%	-20.7%
FEMA	10,666,680	10,008,716	9,909,621	-757,059	-99,095	-7.1%	-1.0%
<i>Firefighter Assistance Grants</i>	641,250	----	638,805	-2,445	638,805	-0.4%	NA
<i>State and Local Programs</i>	1,257,903	2,620,908	1,638,893	380,990	-982,015	30.3%	-37.5%
U.S. Citizenship and Immigration Services	3,078,465	3,005,383	2,994,381	-84,084	-11,002	-2.7%	-0.4%
Federal Law Enforcement Training Center	271,413	258,324	255,852	-15,561	-2,472	-5.7%	-1.0%
Science and Technology	668,000	831,472	825,971	157,971	-5,501	23.6%	-0.7%
Domestic Nuclear Detection Office	215,000	236,830	226,830	11,830	-10,000	5.5%	-4.2%

Committee Action: H.R. 5855 was reported out of the House Appropriations Committee as an original measure on May 23, 2012.

Earmarks: According to the committee report, the legislation contains no earmarks.

Cost to Taxpayers: The bill appropriates a total of \$39.1 billion (non-emergency). This is a \$483 million cut versus last year.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score is available listing any possible mandates.

Constitutional Authority: The committee report cites:

“The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: ‘No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . .’ In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: ‘The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general welfare of the United States . . .’ Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability and to set forth terms and conditions governing their use.”

The committee did not cite constitutional authority for the various spending items themselves. Clearly the congressional power to spend money does not imply a power to spend money on anything. As Madison put it:

"If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions." --James Madison, letter to Edmund Pendleton, 1792

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