

## WATCHLISTING OVERVIEW

- Homeland Security Presidential Directive (HSPD) – 6: “*Integration and Use of Screening Information to Protect Against Terrorism*,” called for the establishment and use of a single consolidated watchlist to improve the identification, screening, and tracking of known or suspected terrorists (KST).
- The Terrorist Screening Database (TSDB) is the U.S. Government’s consolidated terrorist watchlist.
  - The TSDB contains unclassified identifiers for international and domestic terrorism subjects who meet the reasonable suspicion standard and minimum identifying watchlisting criteria. The TSDB points to – but does not contain – the underlying derogatory information, which is held in other U.S. Government Systems.
  - The TSDB is managed by the Terrorist Screening Center (TSC), a multi-agency organization administered by the Federal Bureau of Investigation (FBI).
- The TSDB is supported by the Terrorist Identities Datamart Environment (TIDE), the U.S. Government’s central repository of classified and unclassified information on individuals who have a nexus to international terrorism. TIDE records that meet certain watchlisting criteria are exported to the TSDB.
  - Additional TIDE records that do not meet the KST watchlisting criteria for export to the TSDB, but which do have certain links to terrorism or terrorists, are exported to DHS and the Department of State for use in immigration and other screening activities.
  - The National Counterterrorism Center (NCTC) manages TIDE.
- All nominations to the TSDB are thoroughly reviewed against established standards at each stage of the nominating process.
  - Any federal agency can nominate an individual for terrorist watchlisting.
  - TSC reviews all nominations to the TSDB for compliance with watchlisting criteria and determines which of the various screening and law enforcement agency systems should receive the TSDB record.
- The No Fly List, Selectee List, and Expanded Selectee List are subsets of the TSDB, which DHS uses to identify possible threats to civil aviation, the maritime domain, and/or national security.
- The interagency uses special considerations and procedures for U.S. Persons (USPERS) nominated for terrorist watchlisting. Cases involving USPERS comprise less than 1 percent of the TSDB. USPERS may not be nominated solely for engaging in constitutionally-protected activities, including First Amendment-protected activities.

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## CENTRAL AMERICAN MINORS PROGRAM

- In response to increased arrivals of unaccompanied children (UACs) on the U.S. border, the Administration sought to create a legal pathway for children to be reunited with their parents who are lawfully present in the United States.
- Vice President Biden announced the Central American Minors Refugee and Parole Program (CAM) publicly on November 14, 2014, at the Inter-American Development Bank as part of a broader U.S. commitment to working with Central American countries to help economic, social, governance, and citizen security conditions, addressing factors contributing to increases in migration to the United States.
- U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudication of individuals eligible for the CAM program. Eligible family members who receive access to the program are first reviewed for eligibility for refugee status in the United States.
- Individuals who receive access to the program and are found ineligible for refugee status, but are found to be at risk of harm, are considered on a case-by-case basis for parole into the United States. Unlike refugee status, parole does not lead to immigration status, but allows an individual to remain temporarily in the United States and apply for work authorization.
- CAM Eligibility Criteria: A parent is eligible to request program access for his or her child if the parent is at least 18 years old and is lawfully present in the United States in one of the following categories:
  - Permanent Resident Status;
  - Temporary Protected Status (TPS);
  - Parolee;
  - Deferred Action;
  - Deferred Enforced Departure; and
  - Withholding of Removal
- The qualifying child in El Salvador, Honduras, or Guatemala must be:
  - The child (i.e., genetic, step, or legally adopted child of the qualifying parent) (see INA Sec. 101(b));
  - Unmarried;
  - Under the age of 21;
  - A national of El Salvador, Guatemala, or Honduras; and
  - Residing in his or her country of nationality.
- The Administration recently announced on July 26, 2016, the expansion of the CAM Program to allow for the consideration of additional categories of applicants when they accompany a qualified child.
- The CAM program and its expansion are part of the nation's commitment to protecting Central Americans at risk and to expand resettlement opportunities in the region. While the intent is to minimize illegal entries along the southwest border, the CAM program may also be interpreted as a pull factor for parents to enter illegally and have their children petition for reunification through the CAM program.
- Individuals considered for the CAM program undergo the same rigorous background checks as all refugees. All CAM applicants are required to complete an in-person interview with a trained immigration officer and undergo biometric screening. DHS has not devoted additional funds to implement the CAM program, rather this program fits

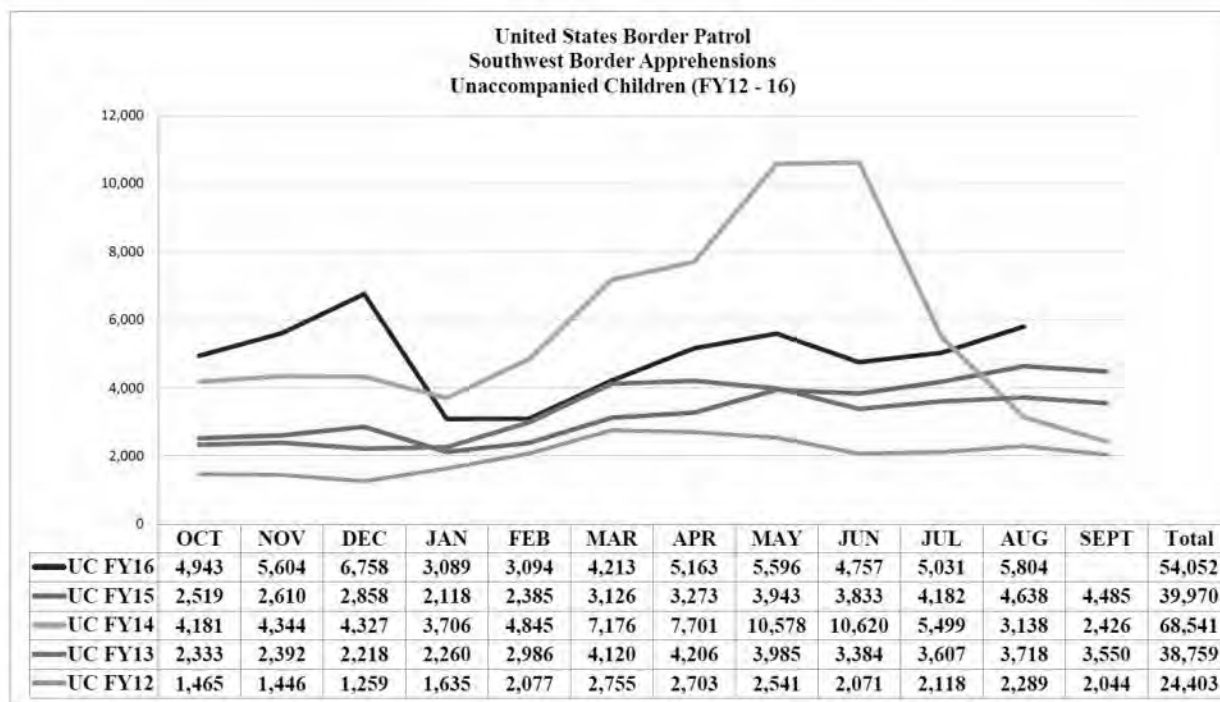
under the existing fee-funded budget structure that DHS allocates for refugee processing worldwide annually.

- Understanding the roles and responsibilities within DHS, DHS maintains a delicate balance between enforcement and humanitarian issues.

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## UNACCOMPANIED ALIEN CHILDREN

- Within the Department of Homeland Security (DHS), the primary component involved in the apprehension and custody transfer of UAC is U.S. Customs and Border Protection (CBP), comprised of the U.S. Border Patrol (USBP) and the Office of Field Operations (OFO).
- DHS components U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) play key roles in the transport, removal, and adjudication of UAC. The Federal Emergency Management Agency (FEMA) also plays a key role within the Unified Coordination Group (UCG), which was established in 2014 in response to the unprecedented influx of UAC.
- In cases where DHS has determined that a minor is a UAC, and that determination remains in place on the date an asylum application is filed, USCIS Asylum Officers generally adopt that determination and assume jurisdiction over the application. Asylum Officers do not conduct further fact finding about whether the applicant may no longer qualify as a UAC (e.g., the applicant has turned 18 years of age or a parent or legal guardian has become available to provide care for the child).



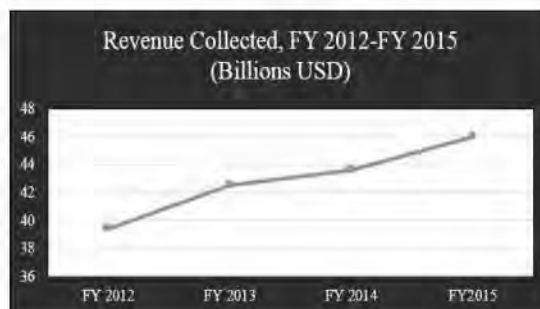
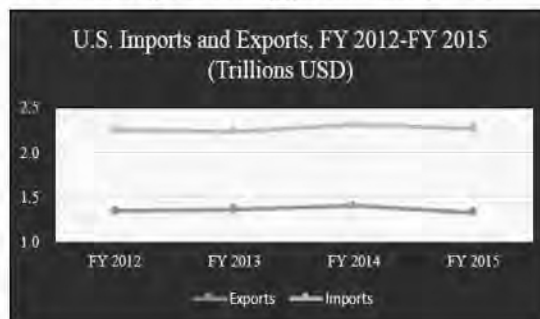
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## ENFORCEMENT, FACILITATION, AND SECURITY OF TRADE

With the creation of the U.S. Department of Homeland Security (DHS) by the Homeland Security Act of 2002, U.S. Customs and Border Protection (CBP) assumed responsibility for enabling legitimate trade and enforcing trade laws at the United States border, including its Ports of Entry (POEs). Additionally, U.S. Immigration and Customs Enforcement (ICE) assumed responsibility for the investigation of U.S. importers, companies, and other entities that attempt to circumvent lawful trade mechanisms, including payment of required duties. Finally, the U.S. Coast Guard (USCG) assumed responsibility for ensuring a secure international supply chain by performing security assessments of anti-terrorism measures at the ports of approximately 150 countries that conduct maritime trade with the United States.

CBP is the primary U.S. Government agency charged with monitoring, facilitating, and regulating the flow of goods imported through coordinated border management at our 328 POEs. Key challenges that CBP faces with the 21<sup>st</sup> century global supply chain include the exponential increase in use of e-commerce, the next generation of just-in-time delivery capabilities, and the ever-increasing complexity of the international trade environment. As the volume of international trade increases and technology advances, CBP must accommodate this growth while continuing to facilitate safe and legitimate trade in a timely manner. CBP meets these challenges through the following three distinct but interrelated efforts: *Trade Security*, *Trade Facilitation*, and *Trade Enforcement*.



ICE is the largest investigative component within DHS, with an extensive portfolio of enforcement authorities, including those related to commercial fraud. ICE aggressively pursues crimes and investigations related to dumping and countervailing duty evasion schemes, pharmaceutical smuggling, tobacco smuggling, and other border related trade crimes. Additionally, ICE investigates intellectual property violations involving the illegal importation and exportation of counterfeit merchandise and pirated works, as well as associated money laundering violations.

Recognizing the need to work with other law enforcement, as well as stakeholders, ICE leads the National Intellectual Property Rights Coordination Center (IPR Center), which brings together 23 partners in a task force setting. CBP holds a Deputy Assistant Director position at the IPR Center, and together, the two agencies work to enhance economic competitiveness, protect American consumers and the U.S. economy, and enforce laws and regulations against trade fraud in an increasingly complex international trade environment.

Customs laws and recent legislative developments, namely the enactment of the **Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)**, play a significant role that

impacts the balance of trade security, facilitation, and enforcement. TFTEA, enacted on February 24, 2016, is the first comprehensive authorization of CBP since DHS was created in 2003.

The Act supports DHS' efforts to *protect U.S. economic security* through trade enforcement; *collaborate with the private sector* through direct industry engagement; and *streamline and modernize processes* through business transformation initiatives to meet the demands and complexities of a rapidly evolving global supply chain.

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## COUNTRIES THAT FAIL TO COOPERATE IN THE REPATRIATION OF THEIR CITIZENS

- Most countries adhere to international obligations to accept the timely return of their citizens.
- Countries that systematically refuse or delay the repatriation of their citizens are considered to be uncooperative. As of August 2016, U.S. Immigration and Customs Enforcement (ICE) considers 23 countries to be uncooperative and is closely monitoring 62 countries that, although not designated as uncooperative, are being engaged to improve their cooperation with the removal process because data reflect that these countries may delay issuance of travel documents or do not accept chartered removal flights.<sup>10</sup>
- Uncooperative countries significantly exacerbate the problems presented by the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001).
  - After *Zadvydas*, with narrow exceptions, aliens with final orders of removal, including aliens determined to pose a threat to the community or considered a flight risk, may not be detained beyond a presumptively reasonable period of 6 months if there is no "significant likelihood of removal in the reasonably foreseeable future."
  - Due to delays in travel document issuance or refusals by foreign governments to issue travel documents for the repatriation of their nationals, ICE has been legally required to release thousands of aliens, including those with serious criminal convictions.
- ICE engages its partners, foreign and domestic, to urge countries to comply with their obligation to accept their nationals for removal from the United States.
- Since April 2011, ICE and the Department of State (DOS) have had a memorandum of understanding (MOU) in place establishing a number of steps to gain compliance with repatriation from foreign countries. The MOU provides, in part, for the issuance of demarches (official notices that convey ICE's request for host governments to expeditiously issue travel documents for their citizens under orders of removal from the United States), for formally deeming countries noncompliant, for consideration of visa sanctions under § 243(d) of the *Immigration and Nationality Act* (INA), and for possible withholding of aid or other funding.
- In Fiscal Year (FY) 2015, ICE piloted its Removal Cooperation Initiative (RCI) and plans to fully implement it in October 2016. Under the RCI, ICE assesses countries to determine the level of cooperation received in the removal process. The assessment includes evaluating the following: whether the country conducts interviews for travel document issuance; data regarding aliens released compared to removed; the country's willingness to accept ICE charter flights for removal; and the amount of time from the removal order until the removal is executed. ICE uses the RCI to determine which nations it deems "uncooperative."

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<sup>10</sup> ICE considers the following 23 countries to be uncooperative: Afghanistan, Algeria, Burundi, Cape Verde, People's Republic of China, Cuba, Eritrea, Gambia, Ghana, Guinea, India, Iran, Iraq, Ivory Coast, Liberia, Libya, Mali, Mauritania, Morocco, Sierra Leone, Somalia, South Sudan, and Zimbabwe.

## **EMERGENCY AUTHORITIES OF THE SECRETARY OF HOMELAND SECURITY**

- The Secretary of Homeland Security has broad legal authorities to take actions to secure the Nation's borders, its waterways and coasts, and its transportation systems. During a domestic incident, such as a natural disaster, terrorist attack, or other emergency, the Secretary and the Department have additional responsibilities and authorities to augment their broad, standing homeland security authorities.
- This paper provides a high-level description of the actions the Secretary must or may take in response to an emergency situation. It first describes the emergency response roles of the Secretary and the Administrator of the Federal Emergency Management Agency (FEMA) and also provides an illustrative, non-exhaustive summary of key authorities underlying the Secretary's responsibilities and authorities during a domestic incident.
- The U.S. disaster relief system gives state, local, tribal, and territorial (SLTT) governments, not the Federal government, primary authority and responsibility for conducting response and recovery activities. Subject to limited exceptions of special Federal interest (e.g., Federal actions in response to a potential or actual Federal crime of terrorism), the Federal government's role in emergency response is to provide support and assistance to SLTT efforts. Several Federal statutes provide additional authority to the Federal government when SLTT governments are overwhelmed by an incident. This paper outlines the key authorities by which the Secretary provides assistance to state and local governments and, where appropriate, the Secretary takes a lead role in national-level decision-making as part of the overall response to an incident.
- Additionally, other Federal departments and agencies may assume a lead role in an overall Federal response, depending on the facts, circumstances, and legal authorities applicable to a particular incident. In such cases, and depending on the circumstances, the Secretary may provide personnel, technical assistance, or other support to that department or agency serving as the overall Federal lead in responding to an incident.

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## CONTINUITY OF OPERATIONS/CONTINUITY OF GOVERNMENT

- Enduring Constitutional Government (ECG) is the ability of the Executive, Legislative, and Judicial branches to discharge their constitutional roles under all conditions through robust Continuity of Operations (COOP) and Continuity of Government (COG) planning and capabilities.
- Within the ECG framework, the Secretary of Homeland Security, through the FEMA Administrator, coordinates continuity plans and programs across the federal Executive Branch.
- Continuity capability assessments reported monthly to the National Security Council (NSC) through FEMA, in combination with exercise after action reports, reflect the impact that leadership and resource limitations have on national continuity readiness, particularly with respect to the remediation of the continuity capability shortfalls reported each month.
  - Preparedness efforts with state, local, tribal, and territorial (SLTT) governments and the private sector have also provided information that shows continuity capability building is needed in these areas. One way to achieve these outcomes is through the integration of continuity into national programs, such as those associated with infrastructure protection and preparedness grants.
- The eight National Essential Functions (NEFs) are the foundation of all continuity programs and capabilities. They represent the overarching responsibilities of the Federal Government to lead and sustain the Nation before, during, and in the aftermath of a catastrophic emergency:
  1. Ensuring the continued functioning of our form of government under the United States Constitution, including the functioning of three separate branches of government;
  2. Providing leadership visible to the Nation and the world and maintaining the trust and confidence of the American people;
  3. Defending the United States against all enemies, foreign and domestic, and preventing or interdicting attacks against the United States or its people, property, or interests;
  4. Maintaining and fostering effective relationships with foreign nations;
  5. Protecting against threats to the homeland and bringing to justice perpetrators of crimes or attacks against the United States or its people, property, or interests;
  6. Providing rapid and effective response to and recovery from the domestic consequences of an attack or other incident;
  7. Protecting and stabilizing the Nation's economy and ensuring public confidence in its financial systems; and
  8. Providing for Federal Government services that address the national health, safety, and welfare needs of the United States.

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## **BORDER SECURITY AND MIGRATION**

- This paper focuses on border security issues at and between U.S. ports of entry, illegal crossings, and irregular migration. In addition, this paper focuses on disrupting and dismantling criminal activity with a border nexus.
- Along the more than 5,000 miles of land border with Canada and Mexico, and approximately 95,000 miles of shoreline, DHS works with our interagency, state/local/tribal, and international partners to secure our borders and the associated airspace and maritime approaches to protect the United States against terrorist threats and prevent illegal entry of people and goods into the United States while also facilitating lawful trade and travel.
- Over the last 15 years, the United States has invested substantially in border security and the investment has yielded positive results. Apprehensions by the U.S. Border Patrol – which are an indicator of total attempts to cross the border illegally – are a fraction of what they used to be. For example, in Fiscal Year (FY) 2000, the total number of southwest border apprehensions reached was 1.6 million. Over the last several years, the number of apprehensions has been a fraction of that – despite an improving economy, a traditional “pull factor” for illegal migration.
- The border regions of the United States – land, maritime, and air environments as well as the interior (border nexus) of the United States – cannot be effectively policed by a single DHS component or even a single governmental entity. A whole-of-government approach that leverages interagency and international partnerships as a force multiplier has been and will continue to be the most effective way to keep our border secure.
- The border and interior environment is dynamic and requires adaptation to respond to emerging threats and changing conditions. Detecting changes in threat levels and criminal flows across the border environment requires the use of various tactics to gather information and intelligence in both low and high threat areas.
- To detect and respond to criminal activity having crossed, crossing, or approaching our borders, DHS deploys sophisticated surveillance and detection technology and collaborates with domestic and international law enforcement, intelligence, defense, and local community partners.

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## COAST GUARD RECAPITALIZATION

- **Issue:** To meet evolving mission demands, the Coast Guard must continue to affordably recapitalize its aging and antiquated inventory of cutters, aircraft, and shore infrastructure; recapitalizing the fleet with modern technology and assets is paramount for the Service to meet 21<sup>st</sup> Century challenges.
- **Importance:** Many of the Coast Guard's operational assets are operating at or beyond their service lives. New acquisitions and planned service-life extension projects are critical to sustaining the Coast Guard's ability to execute its missions.
- **Drivers:** Capital investments are based on five areas of strategic focus aligning with National and Departmental strategies:
  - The rise and convergence of Transnational Organized Crime networks.
  - The imperative for southern maritime border security.
  - Meeting future challenges in the Polar Regions.
  - Emerging cyber risks.
  - Increasing maritime commerce.
- **Courses of Action:**
  - Continue recapitalization efforts as scheduled in the Department's Future Years Homeland Security Program (FYHSP).
  - Increase investment in recapitalization to accelerate the deployment of modern capability, reduce acquisition costs, and facilitate the retirement of aging and less capable assets.

FY 2017 - FY 2021 Five Year Capital Investment Plan Acquisition, Construction & Improvements					
(Thousands of dollars, budget year dollars)	FY 2017 PRESBUD	FY 2018	FY 2019	FY 2020	FY 2021
<b>Vessels</b>	<b>\$704,100</b>	<b>\$954,000</b>	<b>\$952,000</b>	<b>\$1,173,000</b>	<b>\$1,382,000</b>
Survey and Design - Vessel and Boats	\$6,500	\$1,000	\$3,000	\$5,000	\$5,000
In-Service Vessel Sustainment	\$79,000	\$85,000	\$54,000	\$73,000	\$113,000
National Security Cutter (NSC)*	\$127,000	\$95,000	\$65,000	\$65,000	\$21,000
Offshore Patrol Cutter (OPC)	\$100,000	\$530,000	\$430,000	\$530,000	\$770,000
Fast Response Cutter (FRC)	\$240,000	\$240,000	\$325,000	\$325,000	\$18,000
Cutter Boats	\$4,000	\$3,000	\$0	\$0	\$0
Polar Icebreaker	\$147,600	\$0	\$50,000	\$150,000	\$430,000
Polar Sustainment	\$0	\$0	\$25,000	\$25,000	\$25,000
<b>Aircraft</b>	<b>\$201,300</b>	<b>\$100,000</b>	<b>\$143,000</b>	<b>\$147,000</b>	<b>\$130,000</b>
HC-144A Conversion/Sustainment	\$25,500	\$0	\$17,000	\$0	\$0
HC-27J Conversion/Sustainment	\$130,000	\$70,000	\$80,000	\$100,000	\$100,000
HH-65 Conversion/Sustainment Projects	\$25,000	\$30,000	\$40,000	\$22,000	\$0
MH-60T Sustainment	\$0	\$0	\$0	\$1,000	\$5,000
HC-130J Acquisition/Conversion/Sustainment	\$20,800	\$0	\$0	\$18,000	\$0
Unmanned Aircraft System (UAS)	\$0	\$0	\$6,000	\$6,000	\$25,000
<b>Other</b>	<b>\$59,355</b>	<b>\$52,800</b>	<b>\$49,300</b>	<b>\$30,800</b>	<b>\$30,800</b>
Program Oversight and Management	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
C4ISR	\$24,300	\$24,300	\$22,300	\$7,300	\$7,300
CG-LIMS	\$7,000	\$5,000	\$3,500	\$0	\$0
Other Equipment and Systems	\$8,055	\$3,500	\$3,500	\$3,500	\$3,500
<b>Shore and ATON</b>	<b>\$51,100</b>	<b>\$35,000</b>	<b>\$80,000</b>	<b>\$93,000</b>	<b>\$180,000</b>
Major Shore Housing, ATON and S&D	\$18,100	\$10,000	\$30,000	\$38,000	\$85,000
Major Acquisition Systems Infrastructure	\$28,000	\$20,000	\$45,000	\$50,000	\$90,000
Minor Shore	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Military Housing	\$0	\$0	\$0	\$0	\$0
<b>Personnel and Management</b>	<b>\$120,933</b>	<b>\$117,845</b>	<b>\$115,638</b>	<b>\$116,730</b>	<b>\$117,993</b>
Direct Personnel Costs	\$120,933	\$117,845	\$115,638	\$116,730	\$117,993
<b>TOTAL</b>	<b>\$1,136,788</b>	<b>\$1,259,645</b>	<b>\$1,339,938</b>	<b>\$1,560,530</b>	<b>\$1,840,793</b>

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## **SIGNIFICANT LITIGATION**

### **I. FLORES v. LYNCH, No. 85-4544 (C.D. Cal.)**

- In 1985, plaintiffs filed a class action lawsuit against the Immigration and Naturalization Service (INS), challenging the manner in which the INS handled the custody, treatment, and placement of Unaccompanied Alien Children (UACs). In 1997, the Court approved the *Flores* Settlement Agreement (FSA) and retained jurisdiction over the FSA for enforcement purposes.

### **II. UNITED STATES v. TEXAS, No. 15-674 (U.S.), No. 1:14-cv-254 (S.D. Tex.)**

- The State of Texas and 25 other states filed a constitutional and related Administrative Procedure Act (APA) challenge to guidance issued on November 20, 2014 by the Secretary of Homeland Security directing his subordinates to: (1) expand the coverage criteria under the 2012 Deferred Action for Childhood Arrivals (DACA) policy to encompass aliens with a wider range of ages and arrival dates, and to lengthen the period of deferred action from two years to three; and (2) establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis, for certain parents of U.S. citizens or lawful permanent residents (DAPA). The complaint alleges that the DAPA policy and the expansion of DACA violate the Take Care Clause of the U.S. Constitution and the Administrative Procedure Act.

### **III. TERRORIST WATCHLISTING LITIGATION**

- Numerous lawsuits have been filed against DHS and other federal agencies asserting constitutional and related APA challenges to the purported placements of individuals on the No Fly or Selectee Lists—subsets of the consolidated Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC)—and the redress procedures that are afforded them. The No Fly List prohibits known or suspected terrorists from boarding an aircraft, while the Selectee List requires such individuals to undergo enhanced screening before boarding.

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## **PLANNING, PROGRAMMING, BUDGETING, AND EXECUTION**

- In the first few months after the inauguration, DHS leadership will finalize its FY2018 budget and quickly pivot to developing the FY2019-23 Future Years Homeland Security Program (FYHSP) and FY2019 Budget, which began in April 2016.
- The annual process by which DHS allocates resources among its constituent organizations and programs is the Planning, Programming, Budgeting, and Execution (PPBE) system (see Figure 1), modelled after the Department of Defense approach and codified in the DHS Financial Accountability Act of 2004.<sup>11</sup>
- Because of the presidential transition, the standard calendar-driven PPBE process will adjust to allow for an amended submission of the FY2018 Congressional Justification to the DHS Appropriation Committees and a delayed commencement of the FY2019-2023 Program and Budget Review.
- Challenges include the short time available to incorporate leadership priorities into both the FY2018 and FY2019 budget cycles within resource constraints supported by OMB and with a reasonable expectation of Congressional support. In addition, per the requirements of the 9/11 Commission Act, the Department must coordinate budget development with its Quadrennial Homeland Security Review (QHSR) to ensure resource decisions are strategy-driven. DHS published the current QHSR in 2014 and is actively developing the 2018 QHSR.

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<sup>11</sup> The PPBE process is codified in DHS Directive 101-01 (July 2016) and DHS Instruction 101-01-001 (July 2016). Greater detail is provided in Office of the Chief Financial Officer's (OCFO) *Financial Management Policy Manual*. OCFO manages the overall PPBE system and leads the Programming, Budgeting, and Execution phases. The DHS Office of Policy (PLCY) leads the Planning phase.

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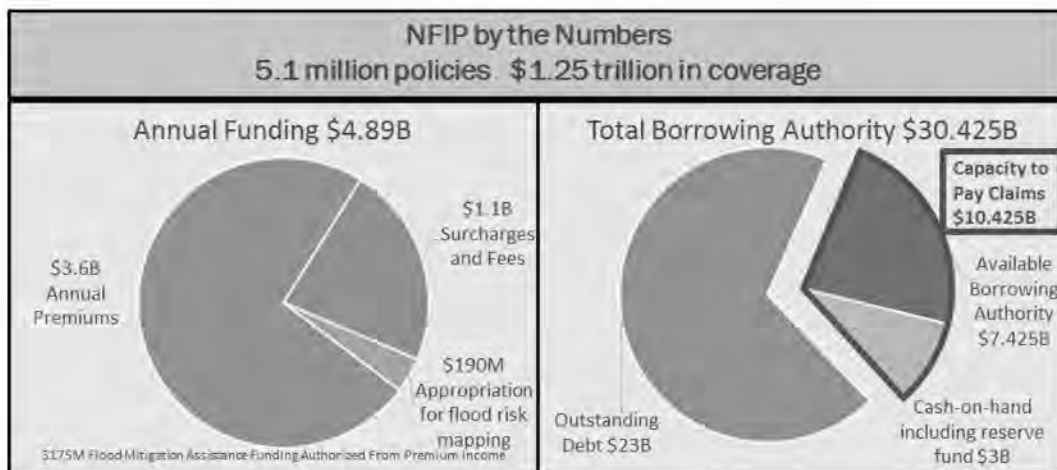
## DETENTION BED SPACE AND COST

- U.S. Immigration and Customs Enforcement's (ICE) Office of Enforcement and Removal Operations (ERO) administers the nation's largest civil detention system with an average of 34,000 detainees in nearly 200 facilities.
- The ERO budget accounts for 55 percent of ICE's \$6 billion annual budget, with Custody Operations being the largest program in the ICE portfolio (40 percent of ICE's annual budget). Over half of the ERO budget is used to purchase adult and family detention beds.
- ICE focuses its detention and removal funds on detaining aliens who fall into priority enforcement categories and those subject to mandatory detention, while placing low-risk, non-mandatory aliens in lower-cost alternatives to detention (ATD) programs.
- Due to factors outside of ICE's control (migration patterns, U.S. Customs and Border Protection border apprehensions, cooperation of local jurisdictions), forecasting ICE's detention requirement is challenging. In Fiscal Year (FY) 2015, the average daily population (ADP) was lower than projected, causing \$113 million to be reprogrammed out of ICE's budget to other Department of Homeland Security (DHS) components. In FY 2016, ICE had to internally reprogram dollars to address a Custody Operations budget shortfall due to a high ADP and higher-than-budgeted bed rate (cost).
- As a practical strategy to support enforcement operations, ICE procures a balanced mix of guaranteed beds and flexible beds. Guaranteed beds, known as a Guaranteed Minimum (GM), are dedicated for ICE and are paid for regardless of use, to ensure ICE always has a baseline of capacity available to detain aliens in custody throughout the entire year. Conversely, flexible beds are used and paid for on an as-needed basis. These beds support any fluctuations in the illegal alien population.
- Beginning in FY 2009, Congress has mandated a minimum level of detention beds that ICE is required to maintain (initially the mandate was 33,400 beds). In FY 2012, the mandate was raised to 34,000 beds. The exact appropriations language states: "*That funding made available under this heading shall maintain a level of not less than 34,000 detention beds . . .*" Achieving a yearly ADP of 34,000 is Congressionally-directed, and weekly reports are sent to Congress to demonstrate how far or close ICE is to achieving that goal.
- The House and Senate Appropriations Committees closely monitor ICE's detention costs, and have expressed displeasure in the past with how ICE manages its Custody Operations budget. They have also expressed displeasure that the Department does not request the appropriate amount of resources to fund the mandated 34,000 detention beds. This is because, in recent years, the President's Budget has requested resources for less than 34,000 detention beds, while directing more resources to the ATD program.

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## NATIONAL FLOOD INSURANCE PROGRAM

- The National Flood Insurance Program (NFIP) was established in 1968 to reduce the impact of flooding by providing affordable insurance to property owners, encouraging communities to adopt and enforce floodplain management regulations, and mapping flood hazards. The NFIP must be reauthorized by Congress no later than September 30, 2017 to continue the sale of flood insurance coverage for more than 5 million insured properties to avoid major consequences for individuals, families, businesses, and real estate markets. FEMA recommends reauthorization be on-time, and for at least five years to ensure continued stability.
- The Program faces several challenges including a large debt to the U.S. Treasury, criticisms from property owners on the affordability of the program, and recent issues surrounding the payment of claims following Hurricane Sandy.
  - Debt/Solvency: The NFIP is currently \$23 billion in debt. Designed by statute to offer insurance at discounted rates for older properties, the NFIP has been unable to offset these discounts through insurance premiums and has not received appropriations to cover losses.
  - Affordability: Certain property owners feel as though the requirement to purchase flood insurance is unjustified or unaffordable.
  - Hurricane Sandy Claims: Problems with adjusting claims following Sandy resulted in criticism of NFIP management. Policy holders felt that the private insurers handling claims for the NFIP underestimated their losses and FEMA's appeals process did not adequately address the problem. FEMA improved the customer experience and re-adjudicated policyholder claims.
- Despite these challenges, millions of homeowners and thousands of communities nationwide depend on the NFIP. Difficulty reauthorizing the program the last time and substantial reforms have caused significant disruptions over the past five years.
- FEMA's goal for the next reauthorization is stability of the program while Congress works to resolve some of the difficult public policy issues surrounding solvency and affordability.



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## STRENGTHENING OPERATIONS AND MANAGEMENT

- The lines of effort to improve and integrate department-wide operations and management are: (1) strengthen business processes; (2) enhance coordinated operations; (3) grow external partnerships; (4) build a collaborative, joint culture; and (5) drive strategy to results through management processes and evaluative and feedback mechanisms to guide future operation-driven initiatives. An underlying goal is to improve transparency across the Department.
- Objectives
  - Manage the Planning, Programming, Budgeting, and Execution system (PPBE) to efficiently and effectively link strategy to resources to achieve desired operational and programmatic outcomes.
  - Continue to strengthen management functions to address GAO High Risk List items, and ultimately be removed from the GAO High Risk List.
  - Enhance coordinated Departmental operations, including multi-Component operations along the U.S. Southwest Border.
  - Continue to support Congress to pass comprehensive authorizing legislation.
- Focus Areas:
  - Improve business management across the Department and further integrate business processes through internal DHS directives at the Headquarters and Component levels.
  - Develop and propose legislative changes to improve Departmental organization and align authorities with mission requirements and internal management processes.
  - Improve multi-Component operations along the U.S. Southwest Border and other regions, including developing joint plans and coordinating mechanisms that exploit and enhance Component capabilities, capacities, competencies, and partnerships.
  - Build a collaborative, joint DHS culture by establishing broad understanding among DHS leaders and opportunities for employees to gain experience across the Department's mission space.

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## CONGRESSIONAL OVERSIGHT

- The Office of Legislative Affairs (OLA) serves as the primary liaison to Members of Congress and their staff, and leads the confirmation process for all presidential nominated positions for DHS, while working closely and directly with White House Legislative Affairs. The office coordinates and responds to oversight inquiries from Congress; notifies Congress about Department initiatives, policies, and programs; and keeps the Department's senior leaders informed about the activities of Congress.
- Congressional oversight of executive branch agencies is one of the essential features of government and how the legislative branch holds agencies accountable for complying with and enforcing laws. Congress's oversight of the Department is wide-ranging; currently more than 90 Congressional committees and subcommittees have some jurisdiction to conduct oversight of DHS. The Congressional Research Service (CRS) reported that "there is no single accepted methodology for making an authoritative count, due in part to the flexibilities inherent in the rules and precedents of each chamber."
- Hundreds of legislators across both chambers of Congress, including dozens of Committee chairs and Ranking members, have the power to oversee, question, and set priorities for DHS. This wide-ranging jurisdiction creates challenges both for Congress and DHS. For example, authorization legislation is routine for many government organizations, and is the mechanism by which Congress sets agency priorities, authorities, and comprehensive policy direction. However, a comprehensive DHS Authorization Bill has not been passed by Congress since the Homeland Security Act created the Department in 2002.
- The 9/11 Commission recommended that Congress consolidate oversight of the Department of Homeland Security (DHS) into a single, principal point of oversight. Congress has only partially implemented this recommendation.
  - Congress consolidated appropriations jurisdiction in the House and Senate Appropriations Subcommittees on Homeland Security.
  - Jurisdiction has not been consolidated among the authorization committees.
- DHS has been criticized regarding its ability to effectively respond to the vast number of committees with jurisdiction over its operations. DHS leadership have commented on how the existing oversight structure can be unnecessarily burdensome and impractical. The breadth of oversight requests are often duplicative and can impede DHS's ability to carry out its missions.
- In the 114<sup>th</sup> Congress, between January of 2014 and September 30, 2016, over 295 Department and Component witnesses have testified at 206 congressional hearings. In total, DHS has either testified before or provided a statement for the record to over 51 congressional committees and subcommittees, and conducted approximately 3,791 briefings or meetings with Members of Congress, their staffs, and professional committee staffs. The numbers do not include emails exchanged between DHS and congressional staff members, and DHS reports prepared at Congress's request. Annually, there are over a hundred congressionally required reports, which often necessitate briefings as well.

Reporting to this large number of committees also places an extraordinary administrative load on DHS and its principals; which must prepare witnesses, numerous written testimonies and respond to countless questions for the record, as well as responses to a considerable number of Hill staff inquiries. Additionally, preparation of reports and written responses to hundreds of letters consumes thousands of staff hours. Importantly, this workload diverts resources from other priority tasks associated with DHS missions.

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## **ARMED SERVICE SECRETARY ROLES AND RESPONSIBILITIES**

- For more than 226 years, the Coast Guard has served the Nation as an Armed Service. The Coast Guard operates in the joint military arena and functions as a specialized service under the Navy in time of war or when directed by the President. As an Armed Service, and the only one outside the Department of Defense (DOD), the Coast Guard presents unique aspects separate from those of other components.
- The Secretary of the Department of Homeland Security is designated the Coast Guard's Service Secretary by Title 10 of the United States Code (10 U.S.C. § 101).
- The Coast Guard Service Secretary, as a Cabinet Official, has direct access to the President. As Service Chief, the Coast Guard Commandant reports directly to the Secretary of Homeland Security and is involved regularly with the Chairman of the Joint Chiefs of Staff who serves as the President's principal military advisor.
- The Coast Guard is the only Armed Service with both law enforcement and military responsibilities codified in law. The Coast Guard possesses unique multi-mission, maritime, and military capabilities, and contributes to a broad range of civil and military operations. The Coast Guard is able to transcend conventional military boundaries through unique law enforcement authority, membership and involvement in the Intelligence Community, and multi-mission capabilities.
- The Coast Guard's defense role is defined in statute (14 U.S.C. §§ 1 & 2 and 10 U.S.C. § 101). Essential military tasks may be performed by the Coast Guard as an element of joint and combined forces in peacetime, crisis, and war. The Coast Guard participates with the other military services and the Combatant Commanders in DOD's deliberate and crisis planning processes via the Joint Operational Planning and Execution System. Coast Guard forces are routinely requested by DOD's Combatant Commanders and regularly participate in joint and combined military operations.
- The Coast Guard has National Defense responsibilities for the U.S. maritime domain, most notably as Commander of Coast Guard Defense Force East and West, and has extensive involvement in coastal and port maritime functions through delegated authorities to senior leaders as Captain of the Port and Federal Maritime Security Coordinator. The USCG is interoperable with DOD forces and performs domestic and international Defense-related missions including theatre security cooperation, humanitarian support, peacekeeping and peace-enforcement, crisis-response, and combat operations.
- Beyond the Title 10 mission, the Coast Guard has Title 14 (Law Enforcement and Marine Inspection), Title 19 (Customs Officers Authority), Title 33 (Captain of the Port Authority), Title 46 (Waterways/Coastal Security authority, limited Law Enforcement "marine facility" authority), and Title 16 (Natural Resources, Fisheries) authorities.

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## IMMIGRATION DATA MODERNIZATION AND GOVERNANCE

The Department of Homeland Security (DHS) lacks a modern, end-to-end information technology (IT) system to manage immigration processes and data, which results in operational inefficiency, an impaired ability to meet DHS leadership, Congressional and public demands for data and statistics, significant data quality concerns, and costly and time-consuming upgrades to an outdated architecture. One challenge is that roughly 3 dozen legacy and post-9/11 immigration data systems were never integrated following the Department's creation in 2003. A second challenge is that the core IT system supporting U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) immigration enforcement operations, the Enforcement Integrated Database, dates back to 1995. Two major initiatives are underway to address these concerns.

Immigration Data Integration Initiative (IDII): A part of DHS's Unity of Effort Initiative, IDII was launched by Secretary Johnson on September 6, 2016. The goals of the IDII are to:

- establish uniform DHS-wide immigration data standards and practices;
- ensure that each of the DHS immigration data stakeholders has real-time or near real-time access to relevant immigration data from across DHS; and
- establish linkages across DHS's immigration data systems so that DHS can analyze immigration enforcement and benefits data at the person-centric level.

Immigration Data Modernization Program (IDMP): ICE initiated this program after a 2015 study that examined immigration enforcement data management and reporting challenges. The goals of IDMP are to:

- improve accuracy and timeliness in identifying an alien, identifying potential risk factors, ensuring proper processing, and resolving conflicting identity information;
- improve complex statistical reporting involving multiple search criteria and operational research capabilities;
- implement more robust, mission-focused IT environments for immigration enforcement that streamline data collection, storage, management, sharing, and reporting operations; and
- establish a more flexible IT architecture to support cost-efficient and rapid system changes as needed in response to executive, legislative, or judicial direction.

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## **NATIONAL CAPITOL REGION CONSOLIDATION / ST. ELIZABETHS CAMPUS**

- In this era of declining budgets and scarce resources, consolidation of DHS real estate in the National Capital Region (NCR) and across the country is vital to deliver seamless and integrated support for current and future DHS operations at an affordable cost.
- Continued execution of the Enhanced Headquarters Consolidation Plan contributes to Unity of Effort by consolidating leadership, policy, management, and operations on the St. Elizabeths West Campus (as possible) and reduces our 50 locations in the NCR to 6-8; driving down real property costs to DHS.
- What are the trends/drivers requiring a change in operational posture, policy, and/or resource allocation?
  - Trend 1: Executive Orders to reduce real property occupied by federal agencies require continued effort to reduce real property, including:
    - Environmental, Energy, and Economic Performance
    - OMB's "Reduce the Footprint" Initiative
    - Emerging trend in the workplace towards "flexible workspace" designs and proliferation of remote teleworking, where appropriate.
    - Severe pressure to reduce budgets.
  - Trend 2: An estimated 69 percent of DHS and Component Headquarters leases will expire during the FY 2016–FY 2020 timeframe.
    - These leases must be re-competed as they come due unless they are programmed and funded for St. Elizabeths in the short term.
    - Lease replacements require new, smaller space standards, increasing the likelihood that a move will be necessary.
- What are the major risks associated with enacting the Enhanced Headquarters Consolidation Plan?
  - The execution is synchronized to lease expirations. Without full funding each year for both GSA and DHS, leases will have to be either extended (at premium costs) or re-competed with DHS costs incurred.
  - While DHS received strong funding support, GSA funding is often challenging.
  - GSA executes the program on behalf of DHS. Schedule adherence is a challenge based on progress of the Center Building (Secretary's immediate office) and FY 2016 program.
  - Some Components are not enthusiastic about moving to St. Elizabeths for a variety of reasons.
- Briefly describe the potential courses of action to address this issue and when action is needed.
  - Course of Action 1: Continue execution of the Enhanced Consolidation Plan with full development of the St. Elizabeths West Campus and reduction in total DHS HQ locations from 50 to 6-8.
    - Requires full DHS and GSA funding of the President's FY 2017 Budget request and out-year budget support.

- Requires continued leadership direction and communication to all Components that the Enhanced Plan is the Department's plan.
- Course of Action 2: Cease St. Elizabeths development after final action on the FY 2017 Budget request, and pursue commercial lease consolidation for ICE, CBP, and FEMA (if federal construction is not funded).
- Requires DHS be funded in FY 2017 for replacement leases for FEMA, CIS Ombudsman, and the Office of Privacy if federal construction is not funded.

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## **DHS Transition Issue Paper**

### **Activities to Mitigate the Risk of Chemicals Used as Weapons**

#### **OVERVIEW**

- (U//FOUO) DHS assesses that ISIL is increasingly interested in conducting and inspiring more complex attacks against the West<sup>1</sup>. ISIL-linked adversaries may consider incorporating toxic materials into attacks in the West with the aspiration of increasing fear, enhancing attack lethality, and adding greater complexity to response efforts. DHS believes that ISIL-inspired homegrown violent extremist (HVEs), or other domestic actors, who choose to pursue attacks with toxic materials most likely would employ commercially available toxic industrial chemicals (TICs) and use crude dissemination methods such as explosive dispersal, contaminating surfaces, poisoning food or water, or releasing gasses from pressurized tanks or via improvised chemical devices.
- When responding to a chemical attack, time matters for saving lives and managing resources. The window of opportunity to positively impact the response occurs in the first 2-4 hours. Most Federal resources are not available to support the immediate state and local response during that time. Therefore, the greatest Federal government impact to save lives must be made long before the incident occurs.
- Courses of action:
  - Work with chemical industry and the private sector to secure toxic chemicals in the supply chain.
  - Expand programs to train state and local first responders and leadership.
  - Maintain border and transportation security to stop bad actors before they have a chance to deploy chemicals as weapons.
  - Provide threat information and guidance to the state and local response community to enable a timely response and efficient decision making in the event of a chemical release.

#### **Detailed Discussion**

Events in the Middle-East indicate that both state and non-state use of either traditional chemical weapons (Mustard, Sarin) or toxic industrial chemicals (Chlorine, pesticides and others) is on the rise. When coupled with overseas terrorist group's stated intent to strike the WEST it is prudent for the United States to increase domestic efforts to mitigate the risk from this threat.

DHS chemical threat mitigation efforts are spread across several components and include prevention, threat awareness, preparedness, and response and recovery activities.

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<sup>1</sup> (U//FOUO) For more information please see DHS-FBI-Delaware Information Analysis Center-Ohio Strategic Analysis & Information Center Joint Intelligence Assessment "(U//FOUO) Toxic Materials Unlikely but Possible Weapon Choice for ISIL- Inspired or Directed Homeland Attacks" dated 23 May 2016



- The Office of Health Affairs (OHA) Chemical Defense Program (CDP) aims to enhance Federal, state and local risk awareness, planning and response mechanisms in the event of a chemical incident.
  - CDP's medical and technical expertise is a resource for DHS and other Federal agencies. Most importantly, the program works directly with communities to help integrate threat-based risk assessments and response capabilities, and help communities understand their strengths, limitations, and needs.
  - Recently, CDP used a structured approach in five US cities, engaging nearly every part of their community response, studying different, high-risk venues using plausible chemical scenarios. The key finding from this work is - In response to a chemical incident, timely decisions and actions save lives and manage resources. Therefore, the program's efforts focus on optimizing the local response to large scale chemical incidents during those first crucial hours through direct engagements and providing guidance and responder tools.
- The Chemical Security Analysis Center (CSAC) was established by DHS to assess, identify vulnerabilities, and respond to potential chemical threats to the homeland. The CSAC primary goals are to provide a comprehensive knowledge management capability of chemical threat information, a science based, analysis of chemical threats, and a robust technical based reach back capability. CSAC integrates information from the scientific community, intelligence, and the private sector to provide the operational community to timely actionable information. CSAC's biennial chemical terrorism risk assessment (CTRA) is used nationally and internationally to determine the risk associated with different terrorist scenarios, and to assess the how proposed mitigation strategies might "buy down" that risk. CSAC's reach back capability provides real time scientific and technical responses to the operational community.
- The Federal Emergency Management Agency (FEMA) views chemical preparedness as a subset of overall preparedness, and chemical emergency response leverages all hazard core capabilities in place in all communities. The FEMA Administrator serves as the principal emergency management advisor to the President and the Secretary. The Administrator would coordinate federal support to state, local, tribal, and territorial (SLTT) governments during chemical incidents that have been declared major disasters or emergencies by the President of the United States under the Stafford Act. In addition, FEMA may provide support to Lead Federal Agencies (LFAs) and other responsible agencies in non-Stafford Act chemical incidents consistent with law and policy (as embodied in presidential directives, the National Response Framework, and the National Disaster Recovery Framework).
  - FEMA also operates the Chemical, Ordnance, Biological, and Radiological Training Facility (COBRATF) at the Center for Domestic Preparedness, which is the Nation's only toxic agent training facility for civilian responders (more than 50,000 since 1998) that allows them to train using military nerve agents and live biological materials in a safe and realistic environment.

- FEMA, on behalf of the Secretary, has developed the Oil and Chemical Incident Annex to the Response and Recovery Federal Interagency Operations Plans. This Annex lays out the unified and coordinated actions the federal government will take in anticipation of or in response to a large scale chemical incident or an oil spill.
- Through the Chemical Stockpile Emergency Preparedness Program, FEMA supports national efforts to enhance the emergency preparedness and response capabilities to protect public health and safety of the public, workforce, and environment from the effects of a chemical stockpile accident or incident involving the Department of the Army.
- FEMA's Modeling Capabilities: The Interagency Modeling and Atmospheric Assessment Center (IMAAC) provides a single point for the coordination and dissemination of Federal dispersion modeling and Chemical hazard prediction products that represent the Federal position during actual or potential incidents involving hazardous chemical atmospheric releases.
- The Infrastructure Security Compliance Division (ISCD) of the National Protection and Programs Directorate's (NPPD) Office of Infrastructure Protection is responsible for implementing the Chemical Facility Anti-Terrorism Standards (CFATS) Program. CFATS is a non-prescriptive regulatory program focused on security at high-risk chemical facilities ensuring they meet and maintain appropriate performance-based security standards. DHS uses a multi-tiered risk assessment process to determine a facility's risk profile by requiring facilities in possession of specific quantities of designated chemicals of interest to complete an online questionnaire, known as a Top-Screen. If DHS makes a determination that a facility is high-risk, the facility must submit a Site Security Plan or an Alternative Security Program for DHS approval that includes security measures to meet applicable risk-based performance standards established by DHS.
- The Sector Outreach and Programs Division (SOPD) of the Office of NPPD's Infrastructure Protection, partners with the Critical Infrastructure Sectors to enhance critical infrastructure security and resilience through voluntary partnerships. DHS coordinates with the chemical sector through the Chemical Sector Coordinating Council, which works collaboratively with the private sector to identify goals and priorities that guide the sector's security and resilience efforts.
- United States Customs and Border Protection (CBP) enforces regulations (DOT, EPA, DOJ, DOC, FDA, CDC, etc.) regarding the legal importation of millions of tons of chemicals each year and prevents the illegal importation of dangerous chemical materials.
  - CBP provides intelligence information to response operations, crafting threat analysis when appropriate and supporting officers and agents with targeting research for import and export inspections.

- CBP Laboratories and Scientific Services (LSS) provides field personnel with guidance to determine legitimacy of questionable chemical commodities.
- United States Coast Guard (USCG) forces are provided tools to survive while conducting or supporting initial response and consequence management operations during a chemical release incident. Under the National Contingency Plan (NCP), which covers both oil and chemical releases, the USCG is the lead federal agency in responding to chemical releases in the coastal zone or where the threat may impact a navigable waterway of the United States. USCG initial response operations to mitigate chemical threats include Search and Rescue, Chemical Incident Response, Ports, Waterways and Coastal Security, and Homeland Defense/Security.
  - The National Response Center is a part of the federally established National Response System and staffed 24 hours a day by the USCG. It is the sole national point of contact for reporting all oil, chemical, radiological, biological and etiological discharges into the environment, anywhere in the United States and its territories. The NRC also takes maritime reports of suspicious activity and security breaches at Maritime Transportation Security Act (MTSA)-regulated facilities within the United States and its territories. Consequence management (e.g., site characterization, decontamination) for coastal impacts would be conducted under NCP authority and under the NRF structure.
- The Transportation Security Administration (TSA) collaborates with surface transportation stakeholders to develop capability gaps, and sponsors a robust operational testbed program with several of the highest risk transportation venues. In conjunction with DHS S&T Chemical and Biological, and First Responder Divisions TSA facilitates the introduction of prototype or pre-production systems into various facilities for operational use.
- DHS S&T's Chemical and Biological Defense Division (CBD) works to strengthen the nation's security and resiliency by providing knowledge products and innovative technology solutions to enhance National preparedness against both current and future chemical and biological threats. CBD does this through research and development programs in threat characterization, advanced agent/disease surveillance, agent detection, event attribution and post-event response and restoration support.

#### *Key Partnerships*

- Chemical industry.
- United States Government Partners with large programmatic and/or policy equities include, but are not limited to, the National Security Council, Department of Defense, Department of State, Department of Agriculture, Environmental Protection Agency, Department of Commerce, Department of Health and Human Services, Department of Justice and the Intelligence Community.

- State and local partners include a wide array of State, Local, Tribal and Territorial health departments and other public health officials, as well as the full range of emergency response entities across the country. On these issues, DHS also works closely with groups like the Association of State and Territorial Health Officials (ASTHO) National Association of County and City Health Officials (NACCHO) through multiple channels, including support through the fusion centers and biological preparedness workshops.



## **DHS Transition Issue Paper**

### **Emergency Authorities of the Secretary of Homeland Security**

#### **OVERVIEW**

- The Secretary of Homeland Security has broad legal authorities to take actions to secure the Nation's borders, its waterways and coasts, and its transportation systems. During a domestic incident, such as a natural disaster, terrorist attack, or other emergency, the Secretary and the Department have additional responsibilities and authorities to augment their broad, standing homeland security authorities.
- This paper provides a high-level description of the actions the Secretary must or may take in response to an emergency situation. It first describes the emergency response roles of the Secretary and the Administrator of the Federal Emergency Management Agency (FEMA) and also provides an illustrative, non-exhaustive summary of key authorities underlying the Secretary's responsibilities and authorities during a domestic incident.
- The U.S. disaster relief system gives state, local, tribal, and territorial (SLTT) governments, not the Federal government, primary authority and responsibility for conducting response and recovery activities. Subject to limited exceptions of special Federal interest (e.g., Federal actions in response to a potential or actual Federal crime of terrorism), the Federal government's role in emergency response is to provide support and assistance to SLTT efforts. Several Federal statutes provide additional authority to the Federal government when SLTT governments are overwhelmed by an incident. This paper outlines the key authorities by which the Secretary provides assistance to state and local governments and, where appropriate, the Secretary takes a lead role in national-level decision-making as part of the overall response to an incident.
- Additionally, other Federal departments and agencies may assume a lead role in an overall Federal response, depending on the facts, circumstances, and legal authorities applicable to a particular incident. In such cases, and depending on the circumstances, the Secretary may provide personnel, technical assistance, or other support to that department or agency serving as the overall Federal lead in responding to an incident.

#### **DETAILED DISCUSSION**

##### **The Roles of DHS Officials in Emergency Response**

- *Role of the Secretary of Homeland Security in Domestic Incident Management.* As the focal point for crises and emergency planning and the principal Federal official for domestic incident management, the Secretary is responsible for coordinating preparedness activities and operations within the United States to respond to and recover from terrorist attacks, major disasters, and other emergencies.
  - *Coordination of Federal Resources.* Pursuant to Homeland Security Presidential Directive 5, the Secretary is responsible for coordinating the Federal government's resources utilized in response to or recovery from major disasters or other emergencies if and when



any one of the following conditions is satisfied: (1) a Federal department or agency acting under its own authority has requested the assistance of the Secretary; (2) the resources of state and local authorities are overwhelmed and Federal assistance has been requested by the appropriate state and local authorities; (3) more than one Federal department or agency has become substantially involved in responding to the incident; or (4) the Secretary has been directed to assume responsibility for managing the domestic incident by the President.

- *Role of FEMA and the FEMA Administrator.* FEMA's mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. The Administrator has broad authorities and significant capabilities to carry out this mission and fulfills a statutory role as the principal advisor to the President, National Security Council, and Secretary for all matters relating to emergency management in the United States.
  - *Lead the Nation's Efforts.* The Administrator leads the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.
  - *Assist the President.* The Administrator is responsible for assisting the President in carrying out the functions under the Stafford Act (see below) and carrying out all functions and authorities assigned to the Administrator under the Stafford Act.

### **Key DHS Authorities in Emergency Response**

- Because the authorities utilized in the Department's response to a particular emergency depend on the facts and circumstances underlying the specific incident, the authorities discussed below may or may not be applicable to a particular type of event (i.e., a significant cybersecurity incident versus a hurricane or other natural disaster). In any event, the Secretary may invoke his non-emergency authorities in support of the Federal response.
  - *Stafford Act Assistance.* Following a Presidentially-declared "major disaster" or "emergency," the Stafford Act is the primary statutory mechanism for providing Federal assistance to SLTT governments. Under the the Stafford Act, the President may issue "major disaster" or "emergency" declarations upon the request of a state or territorial governor or chief tribal executive in response to incidents that overwhelm SLTT governments. These declarations enable the Federal government, through FEMA, to pre-position and surge resources, as well as provide a wide range of financial assistance to individuals and families, certain non-profit organizations, and SLTT governments. Additionally, these declarations enable FEMA to direct Federal assistance to SLTT governments for emergency protective measures. A major disaster declaration may authorize comprehensive Stafford Act assistance, whereas an emergency declaration provides only a limited scope of Federal assistance. FEMA also has authority to take proactive steps in anticipation of incidents and absent a SLTT request.
  - *Public Communications.* The Secretary is responsible for ensuring that, as appropriate, information related to domestic incidents is gathered and provided to the public, the private sector, SLTT authorities, Federal departments and agencies, and the President. For

example, in response to a domestic terrorist threat or attack, the Secretary may utilize the National Terrorism Advisory System to alert stakeholder communities of interest and the public of credible, specific terrorist threats and to recommend protective measures based on the nature of the threat.

- *Maritime Authorities.* The Secretary, through the U.S. Coast Guard, has legal authority to ensure the safety and security of vessels and waterfront facilities and manage the Nation's navigable waterways. Coast Guard officials have broad authority, usually exercised by officials designated as Captains of the Port, to control ports and vessels. The Captains of the Port can use these authorities to control, direct, and should the situation dictate, restrict the flow of maritime traffic into, out of, and within a specific area, as necessary.
- *Transportation Authorities.* The Secretary, through the Transportation Security Administration (TSA), has broad authority to order security enhancements at airports and other key transportation sites and systems. This includes the authority to order the cessation of specific flights or categories of flights, including those arriving from or departing to foreign countries. The TSA Administrator also has substantial authority to enhance the security of railways and mass transit systems.
- *Security and Control Measures at Ports of Entry.* The Secretary, through U.S. Customs and Border Protection, may implement any number of measures to control the movement of people, vehicles, and conveyances at ports of entry. The Secretary may close and consolidate ports of entry, or take other actions at ports of entry necessary to respond to a threat. The Secretary may also rely upon his broad authority to designate other Federal, state, and international agency personnel as customs officers, to demand assistance from any person to enforce customs laws, to authorize other Federal personnel to act with all the powers, privileges, or duties of immigration officers, and in certain circumstances, to authorize state and local law enforcement officers to assist in Federal immigration enforcement.
- *Cyber Incident Response and Critical Infrastructure Protection.* The Secretary, through the National Protection and Programs Directorate, coordinates the Federal government's response to significant cyber incidents that impact critical infrastructure. The Department is the lead Federal agency for so-called "asset response activities." These activities include furnishing technical assistance to affected entities (both governmental and private sector) and identifying other entities that may be at risk, during significant cyber incidents. The Department also serves as the primary Federal agency responsible for developing plans for and coordinating the national effort to protect critical infrastructure in the United States.
- *Continuity of Operations and Continuity of Government.* During a crisis, the Federal government may implement measures to ensure that its mission essential functions continue to be performed during a wide range of emergencies. The Secretary, through the FEMA Administrator, serves as the President's lead agent for coordinating overall continuity operations and activities of Executive Branch departments and agencies, and the Administrator is responsible for preparing and implementing the Federal government's continuity plans and programs.

# FEDERAL EMERGENCY MANAGEMENT AGENCY



**FEMA**

## PRESIDENTIAL TRANSITION OVERVIEW DECEMBER 2016

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# Our Mission

*To support our citizens and first responders to ensure that as a nation we work together to build, sustain and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.*

*DHS Mission 5: Strengthen National Preparedness and Resilience*

## Today's Agenda

- Who we are and what we do
- What are our near & long-term opportunities and risks



# Our Culture & People

Every employee is an emergency manager

Lean forward & pre-position

Survivor-centric in program design and delivery

Engage and partner with the whole community

**14,750**

employees

**5,090**

Permanent

**9,660**

CORE & Reservists

**56.9%**

2016 FEMA  
satisfaction score

**+7.7%**

Higher than DHS

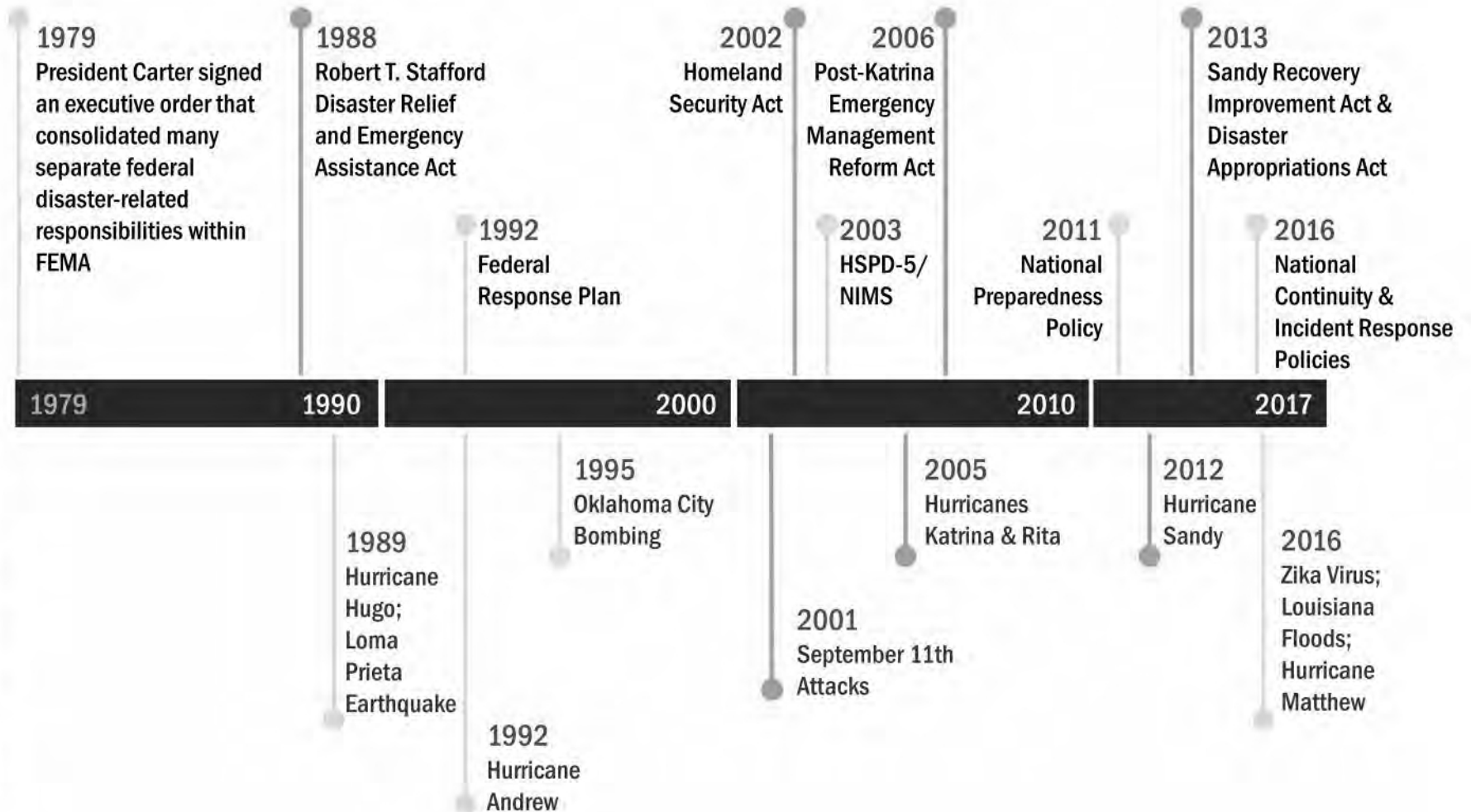
**-4.4%**

Lower than U.S.  
Government average



# Our History

## KEY DISASTERS & AUTHORITIES



# Our Work (expenditures Oct 1, 2006 to Sept 30, 2016)

## *Prepare & Protect*

**\$28.6**

billion in  
preparedness  
grants  
awarded  
(2007-2016)

**90%**

of U.S.  
population  
covered by  
Integrated  
Public Alert and  
Warning System  
(up from 67% in 2007)

## *Respond & Recover*

**386.2**

million liters of  
water\*

**195.1**

million meals\*

**9,888**

generators\*

(\*deployed)

**\$7.6**

billion in Individual  
Assistance

**\$46.1**

billion in Public  
Assistance

**721**

new major and  
emergency decs

## *Insure & Mitigate*

**\$20.6**

billion in National Flood  
Insurance Program  
claims paid  
(thru Aug 31, 2016)

**\$8.9**

billion in hazard  
mitigation assistance



# FY 2017 Budget

*FEMA requested \$17 billion to support its mission in FY 2017*

**Disaster Relief Fund**  
**\$7.35 billion**

**DRF:** Provide disaster response, recovery, and mitigation assistance to individuals and communities

**Federal Assistance:** Provide preparedness and mitigation assistance through grants and training to SLTT partners and emergency managers

**Federal Assistance**  
**\$2.41 billion**

**Operations  
& Support**  
**\$1.04 billion**

Radiological Emergency  
Preparedness Program  
\$38.7 million

Procurement Construction  
& Improvement  
\$35.3 million

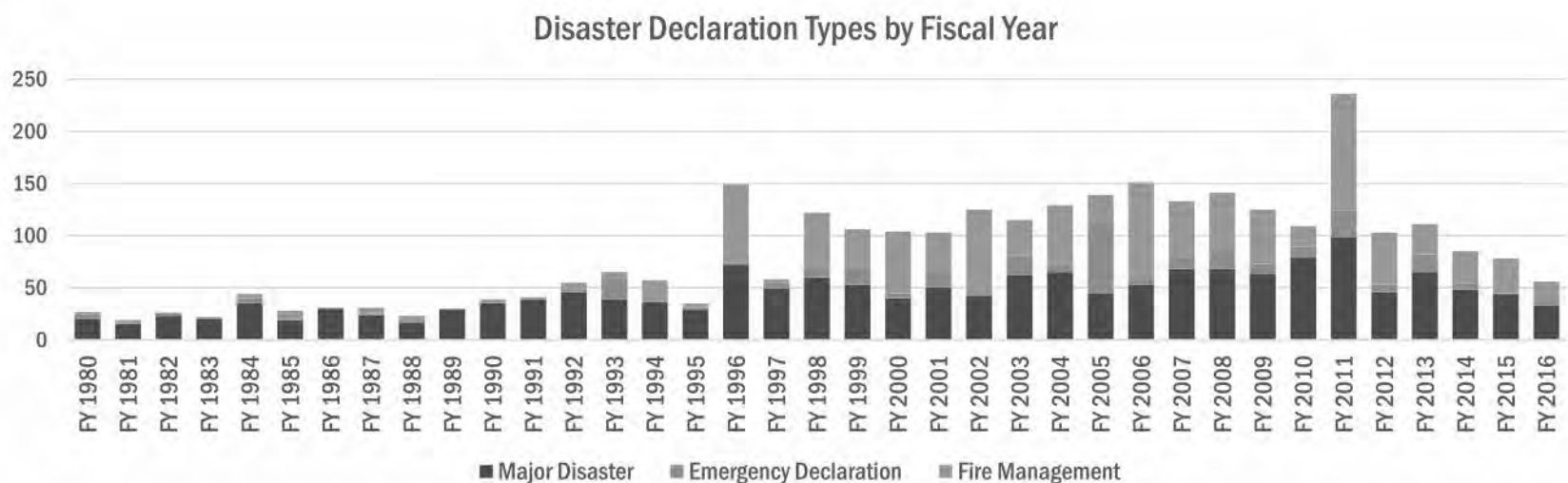


# Coordinating the Federal Response

*The FEMA Administrator assists the President to carry out the Stafford Act functions and serves as the principal advisor to the President and the Secretary of Homeland Security for all matters relating to emergency management in the United States.*

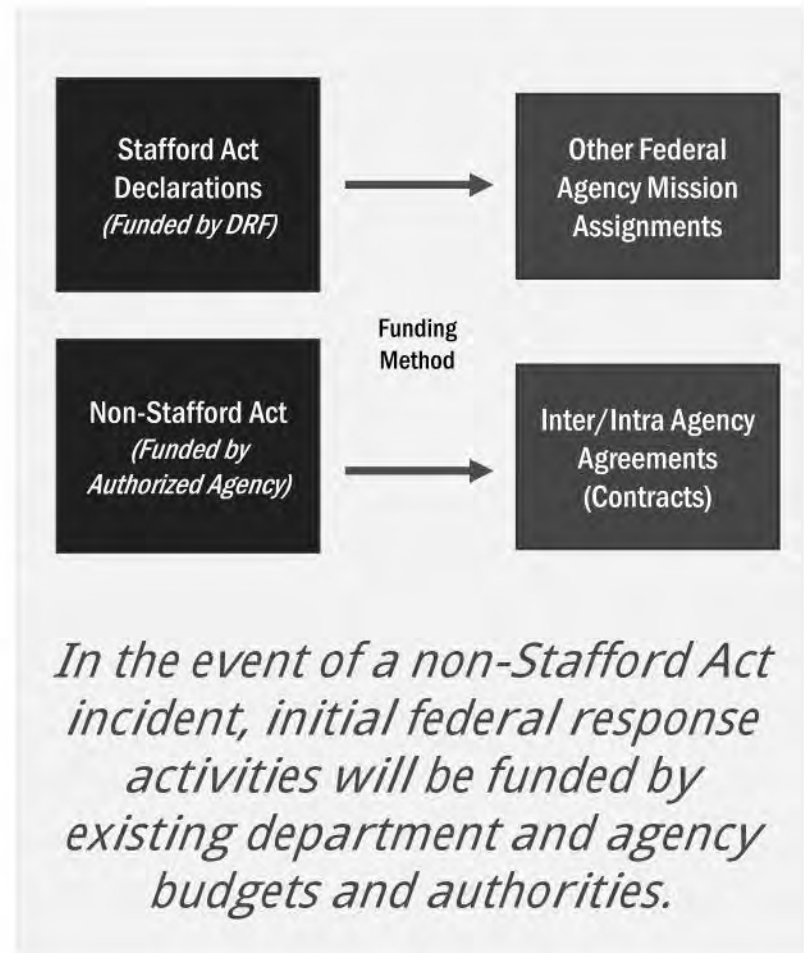
## *Robert T. Stafford Disaster Relief and Emergency Assistance Act*

*Authorizes the President to issue a Major Disaster Declaration or Emergency Declaration to authorize federal aid to states/tribes overwhelmed by catastrophes.*



# Support for Non-Stafford Incidents

- Since 2014, FEMA's incident management capability has led to support in a number of response operations outside of Stafford Act declared incidents.
- Examples include the earthquake in Haiti, influx of unaccompanied children across the Southwest border, Ebola and Zika virus responses, and water contamination in Flint, Michigan.
- The national policy for *Enhancing Domestic Incident Response* formalizes the construct for providing support in such events.



# Opportunities and Risks

# Catastrophic Readiness

*FEMA's primary emergency management responsibility is to strengthen the ability of our Nation to respond to an unprecedented catastrophic event; however, despite significant progress we are still underprepared as a Nation and Agency.*

## Background

A complex set of risks and interdependencies will challenge established safety systems, routine emergency management approaches, and increase our vulnerability

FEMA continues to make progress reducing the Nation's gaps:

- Agency culture change - boldness in response
- Implementation of the National Preparedness System
- \$47 billion dollars in preparedness grants since 2002
- Robust training and exercises

## Opportunities

- Develop and empower leaders to make quick decisions and understand the dynamics of large incidents
- Establish the National Qualification System to facilitate rapid deployment of trained, credentialed, and qualified personnel across the Nation
- Build and maintain readiness of federal, state, tribal, territorial, and local capabilities
- Establish actionable options to address large-scale housing needs
- Supporting emergent behavior of survivors



# Incident Workforce

*In the event of a significant disaster, FEMA faces strategic risk due to gaps in our disaster workforce. The Agency's current readiness rating is between 60 to 65 percent.*

FEMA has faced consistent challenges maintaining a ready workforce that is appropriately trained, qualified, and equipped. In recent years, FEMA:

- established a national force planning model;
- increased the availability requirements associated with its Reservist (intermittent employee) program;
- centralized management; and
- standardized training and qualification requirements.

Since 2014, efforts have concentrated on building a ready workforce and establishing personnel readiness requirements.

The Agency aims to achieve an 80 percent readiness rating by the end of FY 2018.

- Continued over the next three years of workforce development programs for the Reservist (i.e., intermittent disaster workforce) program with the RAND Corporation to inform programmatic and policy advancements

# National Flood Insurance Program

*NFIP faces several challenges including a large debt to the U.S. Treasury, criticisms from property owners on the affordability of the program, and recent issues surrounding the payment of claims following Hurricane Sandy.*

## Background

Established in 1968 to reduce the impact of flooding by providing affordable insurance to property owners, encouraging communities to adopt and enforce floodplain management regulations, and mapping flood hazards.

Today:

5.1 million policies

\$1.25 trillion in coverage; \$8 billion capacity to pay claims

\$23 billion in debt

The NFIP must be reauthorized by Congress no later than September 30, 2017.

## Opportunities

- Work with Congress on **tradeoffs** between fiscal solvency, fairly allocating risk, and costs
- Congress must find the **right balance of public and private involvement** in flood insurance
- Enhancements to NFIP in response to the **Hurricane Sandy claims**

# National Continuity

*Executive departments and agencies are required to develop and maintain continuity programs; however, effectiveness varies due to uneven leadership emphasis and prioritization.*

## Background

Enduring Constitutional Government (ECG) is the ability of the Executive, Legislative, and Judicial branches to discharge their constitutional roles under all conditions through robust Continuity of Operations (COOP) and Continuity of Government (COG) planning and capabilities.

The Secretary of Homeland Security, through the FEMA Administrator, coordinates continuity plans and programs across the federal Executive Branch.

## Opportunities

- Coordinate with National Security Council and the Office of Management and Budget (OMB) to \_\_\_\_\_ within the Executive Branch
- Affirm continuity as a \_\_\_\_\_
- Resource continuity programs on the basis of \_\_\_\_\_
- Promote and \_\_\_\_\_ and within critical infrastructure sectors

# Additional Topics

Additional in-depth materials and/or briefings are available on requested topics including:

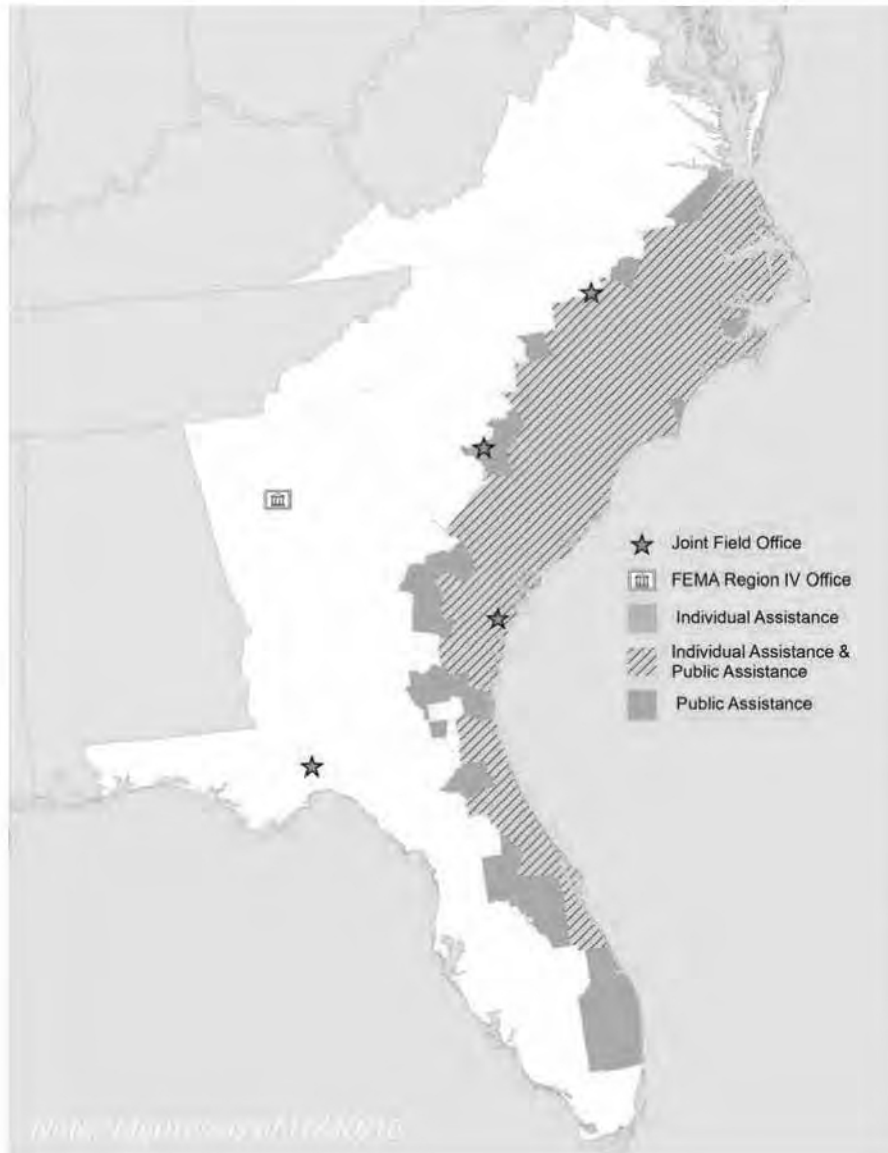
- In-Depth FEMA Overview
- Emergency Management Authorities
- National Preparedness System
- Preparedness Grants
- Budget & Workforce
- Catastrophic Disaster Capability
- FEMA's Incident Workforce
- Disaster Declaration Trends and Considerations
- National Disaster Recovery Framework
- Emergency Response in the National Capital Region
- Protection and Preparedness
- Response and Recovery
- Disaster Relief Fund Challenges
- National Continuity
- National Flood Insurance Program
- Risk Reduction
- Non-Stafford Act Incidents
- New Public Assistance Delivery
- Optimizing Disaster Assistance
- Preparing for Coordinated Attacks
- High-Profile Audits
- Mission Support Functions
- Business Systems
- IT Modernization
- Data-Driven Decision Making

# QUESTIONS?

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# Support for Hurricane Matthew



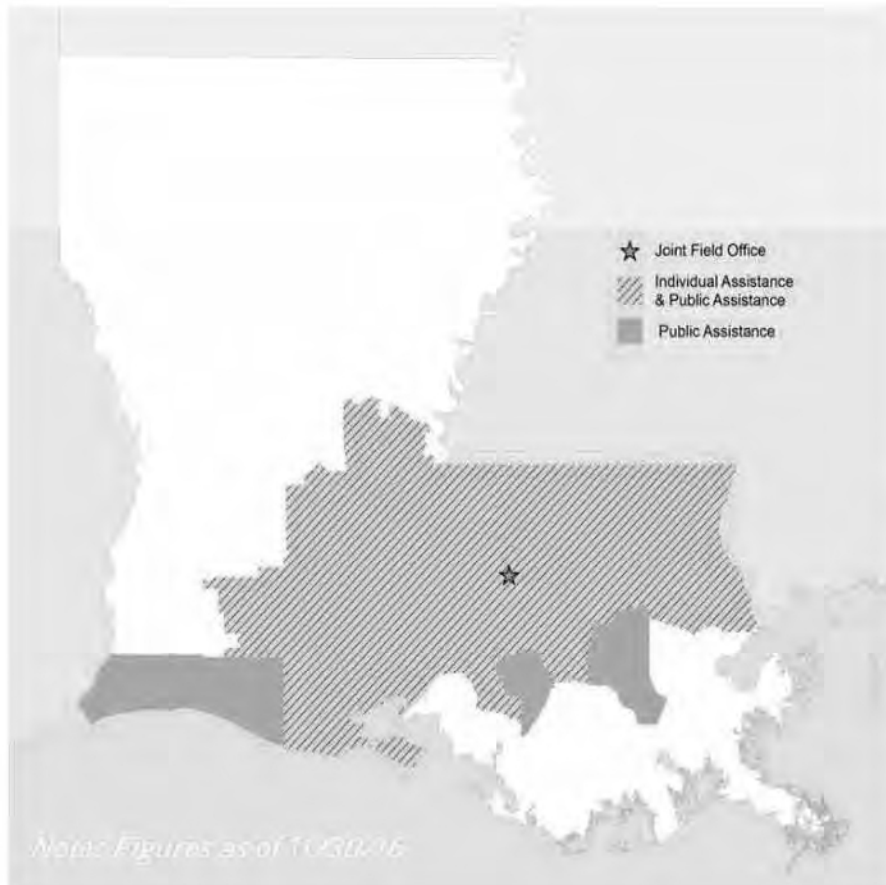
Working with state, tribal, and local partners to assess damage, and helping survivors register for assistance

2,200+ FEMA Staff *on the ground*

## Opportunities & Risks

- Implementation of temporary sheltering and housing solutions
- Planning for temporary sheltering and housing depopulation
- Implementation of the new Public Assistance Delivery Model in GA

# Support for 2016 Louisiana Floods



Working with state, tribal, local, and federal partners to develop long-term recovery solutions

950+ FEMA Staff *on the ground*

## Opportunities & Risks

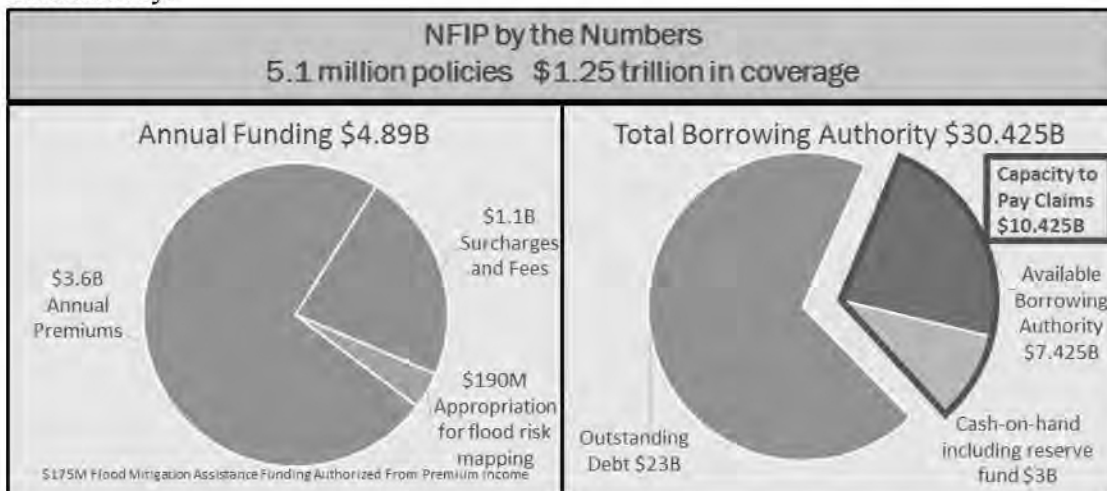
- Planning for temporary sheltering and housing depopulation
- Long-term housing
- State and Parish efforts to ensure continuity of social services and restore economy

## DHS Transition Issue Paper

### National Flood Insurance Program (NFIP) Reauthorization

#### OVERVIEW

- The National Flood Insurance Program (NFIP) was established in 1968 to reduce the impact of flooding by providing affordable insurance to property owners, encouraging communities to adopt and enforce floodplain management regulations, and mapping flood hazards. The NFIP must be reauthorized by Congress no later than September 30, 2017 to continue the sale of flood insurance coverage for more than 5 million insured properties to avoid major consequences for individuals, families, businesses, and real estate markets. FEMA recommends reauthorization be on-time, and for at least five years to ensure continued stability.
- The Program faces several challenges including a large debt to the U.S. Treasury, criticisms from property owners on the affordability of the program, and recent issues surrounding the payment of claims following Hurricane Sandy.
  - Debt/Solvency: The NFIP is currently \$23 billion in debt. Designed by statute to offer insurance at discounted rates for older properties, the NFIP has been unable to offset these discounts through insurance premiums and has not received appropriations to cover losses.
  - Affordability: Certain property owners feel as though the requirement to purchase flood insurance is unjustified or unaffordable.
  - Hurricane Sandy Claims: Problems with adjusting claims following Sandy resulted in criticism of NFIP management. Policy holders felt that the private insurers handling claims for the NFIP underestimated their losses and FEMA's appeals process did not adequately address the problem. FEMA improved the customer experience and re-adjudicated policyholder claims.
- Despite these challenges, millions of homeowners and thousands of communities nationwide depend on the NFIP. Difficulty reauthorizing the program the last time and substantial reforms have caused significant disruptions over the past five years.
- FEMA's goal for the next reauthorization is stability of the program while Congress works to resolve some of the difficult public policy issues surrounding solvency and affordability.



## **DETAILED DISCUSSION**

### *Role of DHS*

- The NFIP supports Quadrennial Homeland Security Review (QHSR) Mission 5, “Strengthen National Preparedness and Resilience,” by helping to mitigate hazards and vulnerabilities and enable rapid recovery.

### *Issue Background*

- The \$5 billion annual NFIP helps provide resources to property owners to repair, rebuild, and recover from flood disasters. Most property owners in FEMA-designated high-hazard areas are required to buy flood insurance to get a mortgage.
- Responsibility for implementation is shared across federal, state, local, tribal, and territorial government, and private sector insurers. FEMA identifies flood risk, establishes baseline building codes and land use policies, underwrites and manages the insurance program, and works to ensure communities’ compliance with the regulatory requirements of NFIP. Federal lending regulators mandate mortgage holders’ purchase of flood insurance, while state offices provide technical assistance to local governments and stakeholders on NFIP implementation. Local governments adopt and implement land use policies, and private companies sell and service flood insurance policies.
- Congress has taken previous steps to reform the program:
  - In 2012, after a series of short-term reauthorizations and disruptive lapses, NFIP was reauthorized and reformed by the Biggert-Waters Flood Insurance Reform Act. Provisions to address the program’s fiscal solvency included eliminating or phasing out most premium discounts, and establishing a reserve fund. Individuals, businesses, and communities expressed alarm at the increased insurance premiums and the effect on real estate values and markets.
  - In 2014, the Homeowner Flood Insurance Affordability Act (HFIAA) restructured the phase-out of some of the discounts over a longer time period, and added surcharges and premium increases.
    - HFIAA addressed many of the most immediate financial impacts on property owners of the 2012 reform, but premiums will continue to increase over time, putting financial pressure on many policy holders.
    - HFIAA introduced a new discount for newly mapped properties that continues to prevent the NFIP from collecting enough premiums to cover the risk.
- Affordability: Property owners often object to the cost of flood insurance, the mapping of their property within a high flood hazard area, or the requirement to purchase insurance. This generates controversy around the accuracy of flood maps and premiums. Most NFIP insurance is priced to be self-sustaining, but discounts have been included for older properties. The majority of these discounts are being phased out. Additionally, HFIAA required FEMA to study flood insurance affordability and provide recommendations for an affordability framework. FEMA is performing an analysis of premiums relative to policy holder incomes and soliciting expert advice on affordability options.
- Debt/Solvency: The NFIP is currently \$23 billion in debt because the statute does not allow the NFIP to generate sufficient revenues to cover catastrophic losses like the billions of dollars paid on claims from the 2005 and 2012 hurricanes. It is also important to note that the



NFIP's ability to borrow from the U.S. Treasury to pay claims exceeding program funds creates a structural advantage for the NFIP compared to private, non-NFIP insurers.

- GAO High Risk List: The NFIP has been the subject of numerous GAO reports and remains on the GAO's High Risk List due to structural challenges in repaying debt, how FEMA sets premium rates, and oversight of the private insurers who sell and service NFIP policies.
- Hurricane Sandy Claims: More than 140,000 flood insurance claims were filed following Hurricane Sandy. For approximately 1,694 of these claims, lawsuits were filed, raising criticism of NFIP management. Policy holders felt the private insurers handling claims for the NFIP underestimated their losses and the FEMA appeals process did not adequately address the problem. Nearly all of the lawsuits have been settled. FEMA also provided an opportunity for anyone who had filed a claim to request a re-review. Most of the 19,340 cases have been reviewed at this point, and as a result many policy holders received additional payments (averaging \$13,000).

#### *Potential Courses of Action*

- Reauthorization provides an opportunity for DHS and FEMA to work with Congress to address the large program debt, balance the public and private involvement, and enable some enhancements to the NFIP that FEMA cannot implement with existing authorities. Areas to consider in conversations with Congress include:
  - Program Debt/Affordability: Tradeoffs between fiscal solvency, fairly allocating risk, and the cost of mandated insurance are difficult to resolve, but DHS and FEMA must be prepared to discuss and debate with Congress as reauthorization is on the horizon.
  - Balance between public and private involvement: Congress must find the right balance of public and private involvement in flood insurance. There will always be a segment of the at-risk population that the private sector will not insure, so the NFIP will need to serve them. An NFIP that only serves those policy holders unable to obtain private insurance will be much more expensive to operate.
    - A large percentage of homes in high and moderate risk areas remain uninsured. Expanding insurance coverage in this market through private sector involvement has significant benefits for everyone.
    - In addition, FEMA is planning to pilot the purchase of reinsurance for the NFIP over the next year. Significant questions remain regarding how much reinsurance is available and how to pay for the increased stability provided.
  - Enhancements to NFIP: In response to the Hurricane Sandy claims, FEMA is implementing a series of NFIP changes, within existing laws and regulations, to improve the customer experience through simplicity, ease, value, and trust. FEMA improved the claims appeals process, enhanced oversight of NFIP-related litigation, and is developing a payment methodology for the private insurance companies based on their actual expense data. The three major improvement areas are: product simplification, redesign of the risk rating, and improving our customer communication on program and flood mapping changes.
  - Additional considerations for DHS, FEMA, and Congress going forward, which would require Congressional action, include:
    - Raising the NFIP coverage limits;
    - Reevaluating the recently added policy surcharges;



- Allowing coverage of additional living expenses;
- Reducing the waiting period for insurance coverage; and
- Addressing payments for expenses to rebuild in compliance with current building codes.

#### *Key Partnerships*

- Congress, NFIP policy holders, state, local, tribal, and territorial governments, private insurance companies and insurance agents supporting the NFIP, other private property and casualty or surplus insurers, private reinsurers, state insurance commissioners, companies that perform flood risk determinations for the industry.