

DHS BUDGET UPDATE: SEPTEMBER 2018

Slow progress on DHS funding bill as appropriators kick deadline to December: As expected since August, Congress in late September passed into law a continuing resolution (CR) to hold FY 2018 funding levels for the Department of Homeland Security (DHS) in place past the end of the fiscal year on September 30. This CR funding will run out on December 7. While a CR is not as disruptive as a shutdown, federal contractors should be aware that a CR could force DHS to put off new projects scheduled for FY 2019 until Congress strikes a final funding deal.

DHS isn't the only agency running on a CR through December 7. Congress put off final deals on bills to fund the Departments of Commerce and Justice along with science agencies including NASA; the Department of State and foreign aid activities; the Department of Agriculture and the Food and Drug Administration; and the Departments of Transportation and Housing and Urban Development.

The CR delays an expected fight over the President Trump's promised border wall, immigration enforcement policies, and the fate of the Deferred Action for Childhood Arrivals (DACA) program. Senate Appropriations Chairman Richard Shelby (R-AL) told Bloomberg on September 27 that appropriators have so far only held "informal talks" on a final deal. The House and Senate versions of the DHS funding bill differ especially on President Trump's promised border wall: the Senate's version allots \$1.6 billion (the same provided in FY 2018), with the House proposing a whopping \$5 billion.

ICE lobbies for \$1 billion increase in FY 2019: ICE in September sought its own funding increase for FY 2019. The [Washington Post reported September 13](#) the agency requested an extra \$1 billion (bringing their total to \$8.2 billion) to deport an estimated 253,000 people in FY 2019. ICE hoped to get this funding immediately by asking appropriators to fold it into the continuing resolution passed in late September, writing, "[ICE] is at risk of having to suspend enforcement and removal operations during the CR period, which would result in increased threats to public safety and reductions in services to those in detention." The Administration also sought extra funding for CBP and the Secret Service in the CR for the same reasons. Despite this, Congress did not provide any extra funding for ICE in the CR and instead merely maintained level funding as usual. It remains unclear whether congressional appropriators will instead provide a funding increase to ICE in a final FY 2019 DHS funding deal.

POTUS backs off veto threat over wall, for now: Congress DID manage to pass other major FY 2019 appropriations bills on time before FY 2018 ended on September 30. These completed bills fund the Department of Defense and military construction as well as key domestic agencies including the Department of Health and Human Services, the Department of Veterans Affairs, and others. Collectively, these bills make up most of the U.S.'s annual discretionary funding.

President Trump, however, once again was uncertain until almost the last minute on whether he would sign these bills into law. President Trump has since last March threatened to veto funding bills that don't fund his border wall by the end of the fiscal year on September 30, to the chagrin of congressional Republicans who feared a pre-midterm federal shutdown would hurt the GOP's chances in the November 6 elections.

The dance began again on September 20. Despite several meetings with GOP leaders this year to convince him to keep the government funded, President Trump again raised fears of a shutdown when he [tweeted](#), "Where is the money for border security and the WALL" in developing funding bills. Washington scrambled to read what the President might do as Congress prepared to send him two funding bill packages covering most federal spending. A veto may have triggered a shutdown hitting national security agencies like the Pentagon, and upended Republicans' plan to leave Washington to

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spend October campaigning. President Trump finally appeared to back off, signing [one package on September 21](#) and a second containing national security funding and the CR for DHS on September 28.

Wall to be center of lame-duck battle: Washington will quiet in October as Congress prepares for the midterm elections. The House left on September 28; the Senate is slated to remain through October 26 but may take off early. Both chambers will return on November 13 for a frantic month-long “lame duck” session where they will race to wrap up year-end business including DHS funding before the new 116th Congress begins in January 2019.

President Trump’s chances of funding his border wall and immigration priorities in the lame duck may be waning. President Trump has already lost leverage by signing funding bills supporting much of the federal government, meaning any shutdown he causes in December may have a muted impact. Trump may also face re-invigorated opponents in the Democrats, who expect to make big gains in the midterms and would take favorable results as a mandate to refuse negotiations with Trump. Similarly, many of President Trump’s Republican allies are on the way out: House Speaker Paul Ryan (R-WI), House Appropriations Chairman Rodney Frelinghuysen (R-NJ), and House Judiciary Committee (overseeing immigration policy) Chairman Bob Goodlatte (R-VA) are set to retire at the end of the session.

How might this December fight end?

- **Compromise:** While intra-party acrimony makes this option seem the most unlikely, Democrats have repeatedly offered to trade immigration policy concessions, such as continuing DACA, for border security and wall funding. President Trump has so far not shown the same willingness to compromise, but he may opt for such an exchange in the lame duck rather than take his chances with an empowered Democratic Party in 2019.
- **DHS Shutdown:** A lapse in appropriations for DHS probably would not trigger mass furloughs or work stoppages because DHS’s national security mission exempts most of its workforce. However, administrative functions including contract administration would slow as DHS shifts resources to its core national security mission.
- **Another CR:** If Democrats win back control of either CR chamber in the November midterms, they could force another CR to put off a final deal until the new Congress is seated in January, allowing Democrats to push through a dramatically different FY 2019 DHS funding deal. Republicans made a similar move after winning back the Senate in 2014.

Hurricane Florence returns focus to FEMA: FEMA re-entered the national spotlight in September as Hurricane Florence threatened the East Coast. Florence made landfall in the Carolinas on September 14. Florence fortunately did not inflict as many casualties or property damage as Hurricanes Harvey, Maria, and Irma did in 2017, but the storm re-inflamed partisan arguments over the Trump Administration’s handling of those storms and overall [approach to disaster relief](#).

As Florence approached, Democrats released documents showing the Trump Administration transferred (or “reprogrammed” in appropriations-speak) about [\\$10 million within DHS from FEMA to ICE](#) with approval from House Appropriations DHS Subcommittee Chairman Kevin Yoder (R-KS) and Senate Appropriations DHS Chair Shelley Moore Capito (R-WV). The reprogrammed funds went from disaster recovery, mitigation, and preparedness to ICE’s immigration enforcement activities. The transferred amount was small, less than 1 percent of FEMA’s overall budget, but triggered a wave of critical media coverage.

Partisan bickering bled into Congress’ efforts to develop a “supplemental” appropriations bill sending extra money to post-Florence relief. Democrats urged Republican appropriators to send more money to support long-term recovery. FEMA and congressional Republicans initially insisted that FEMA is flush with \$25.6 billion in ready-to-spend relief after Congress passed three separate supplementals containing \$50 billion in 2017. By late September, however, House Appropriations Committee Chairman Frelinghuysen planned a “series” of post-hurricane supplementals to support recovery. The first of these, \$1.6 billion to the Department of Housing and Urban Development, passed the House in late September and is expected to pass the Senate in early October.