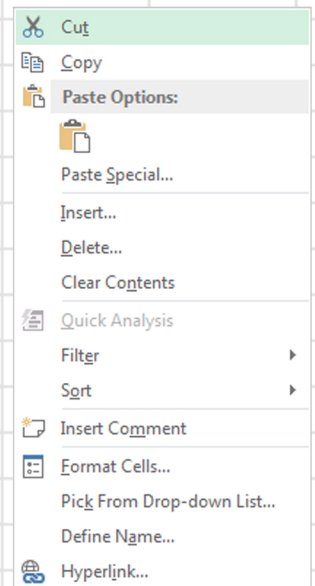


OVERRULED

White House Overrides Department of Homeland Security
Budget Requests for Counterterrorism Programs



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EXECUTIVE SUMMARY

The White House Office of Management and Budget (OMB) plays a critical role in the process of developing the President's Budget Proposal each year. The Democratic staff of the Senate Committee on Homeland Security and Governmental Affairs recently obtained a non-public document communicating OMB guidance from the President to the Department of Homeland Security regarding its upcoming budget proposal for Fiscal Year (FY) 2019.

The Department of Homeland Security (DHS) is responsible for advancing critical federal efforts to prevent and mitigate terror threats in the United States. DHS administers programs that assist state and local governments and other interested stakeholders in preventing and responding to terror threats and incidents. At the request of Ranking Member Claire McCaskill, this staff report summarizes budgetary information contained within the document that is related to federal efforts to prevent and mitigate terror threats. Key findings include:

- A document obtained by the Committee reveals that OMB overruled specific DHS budget requests for critical national security programs during the development of the FY 2019 President's Budget proposal.
- Rejecting DHS's request, OMB instructed DHS to completely eliminate Visible Intermodal Prevention and Response (VIPR) Teams and cut \$27 million for Federal Air Marshals.
- Denying DHS's request, OMB ordered DHS to seek \$11 million in additional cuts for the Domestic Nuclear Detection Office.
- The Administration intends to seek \$568 million in cuts to counterterrorism programs from FY 2017 enacted budget levels.

FISCAL YEAR 2019 BUDGET AND POLICY GUIDANCE DOCUMENT

Congress is vested with the power to raise revenue and borrow money under Article I of the U.S. Constitution.¹ Pursuant to 31 U.S.C. § 1105, the President submits a proposed budget of the U.S. government for the following fiscal year no later than the first Monday in February. In a document titled *The Budget of the United States Government*, the President includes budget summaries, information on the activities and functions of the government, and other related financial information.²

The White House Office of Management and Budget (OMB) plays an important role in the process of developing the President's budget. OMB Circular No. A-11 provides extensive information on the preparation and submission of budget requests and justification materials to Congress.³ Federal agencies develop their budgets for the following fiscal year and submit the documentation to OMB, typically in the fall. OMB examiners then review a department's proposed budget and ensure it aligns with the President's priorities. The President's decisions on an agency's proposed budget are communicated to the agency through a process referred to as "passback." OMB communicates guidance responding to an agency's proposed budget request and notifies an agency that particular budgetary line items will or will not receive the amounts requested by the department. At times, OMB provides less money than requested; in other instances it provides more.⁴ A department then has a short time period in which it may appeal OMB's decisions.⁵

In late November 2017, a whistleblower disclosed a critical budget document related to the Department of Homeland Security (DHS) to the Democratic staff of the Senate Homeland Security and Governmental Affairs Committee. This document is titled the *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* and is dated November 28, 2017.⁶ It communicates OMB guidance from the President to the Department regarding its budget proposal. As the document states: "The following document provides fiscal year 2019 discretionary budget and policy guidance for the Department of Homeland Security (DHS). ... The agency-specific discussions found below highlight those programs where budgetary levels reflect explicit changes in Administration policy."⁷ It is important to note that the totals reflected in this document may not represent the President's final budget. Any decisions communicated in this document are appealable and "[a]ppeals to the 2019 guidance, if any, are due by noon on Friday, December 1, 2017 and must be submitted in writing and approved by the Secretary."⁸

Unlike the final President's budget proposals, passback materials are typically not released to Congress or the public. The document disclosed to the Democratic staff of the Committee by the whistleblower is marked "PRE-DECISIONAL – NOT FOR PUBLIC RELEASE."⁹ Despite the secrecy with which the passback is held, this document contains information valuable to the decisionmaking interests of Congress and the public. This document provides an advance indication of the President's likely guidance on FY 2019 funding levels for DHS discretionary resources.¹⁰ Additionally, it provides information on the needs of DHS as developed by the agency itself, independent of White House involvement. Typically, once the President has issued his budget, all departments are expected to publicly support his budget proposal as appropriate policy.

¹ U.S. Constitution, Article I § 9.

² 31 U.S.C. § 1105.

³ OMB Circular No. A-11.

⁴ Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (New York: M.E. Sharpe, 1998).

⁵ *Id.*

⁶ Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

⁷ *Id.* Note that this passback document relates to the FY 2019 budget that will be issued in February 2018 and does not reflect the President's FY 2018 Budget Proposal that Congress has yet to approve.

⁸ *Id.* The Democratic staff of the Committee has not received any materials reflecting DHS appeals.

⁹ Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

¹⁰ *Id.*

THE ADMINISTRATION INTENDS TO SEEK \$568 MILLION IN CUTS TO COUNTERTERRORISM PROGRAMS IN FY 2019

DHS plays a critical role in preventing and responding to terrorist threats and incidents. According to the Department, “[t]he United States is engaged in a generational fight against terrorists, who seek to attack the American people, our country, and our way of life.”¹¹ DHS administers a variety of important programs that assist state and local governments and other interested stakeholders in preventing and responding to terror threats and incidents. The *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* document indicates that DHS intends to eliminate certain counterterrorism programs and reduce funding for other critical programs. The document also details OMB's guidance as it relates to the Department's original budget request for FY 2019.

The Administration has proposed the elimination of \$568 million worth of counterterrorism funding from DHS since the introduction of the FY 2018 and FY 2019 budget proposals compared to FY 2017 enacted levels. In the Administration's FY 2018 budget proposal, \$524 million of cuts to counterterrorism funding was proposed, with an additional \$44 million in cuts proposed in the FY 2019 budget proposal (see the chart below).

| Proposed Cuts to DHS Counterterrorism Programs FYs 2018-2019 | | | |
|--|------------------------|-------------------------|-----------------------|
| | FY 2018 Budget Cuts | FY 2019 OMB Guidance | Total Cuts |
| Countering Violent Extremism (CVE) | -\$10,000,000 | \$0 | -\$10,000,000 |
| Visible Intermodal Prevention and Response (VIPR) | -\$43,000,000 | -\$11,700,000 | -\$54,700,000 |
| Homeland Security Grant Program (HSGP) | -\$273,794,000 | \$0 | -\$273,794,000 |
| Emergency Management Performance Grants (EMPG) | -\$70,665,000 | \$0 | -\$70,665,000 |
| Port Security Grant Program (PSGP) | -\$52,191,000 | -\$11,451,000 | -\$63,642,000 |
| Public Transportation Security Assistance (PTSA) | -\$52,191,000 | -\$11,451,000 | -\$63,642,000 |
| Domestic Nuclear Detection Office (DNDO) | -\$22,044,000 | -\$9,333,000 | -\$31,377,000 |
| Totals: | -\$523,885,000 | -\$43,935,000 | -\$567,820,000 |

OMB Instructed DHS to Completely Eliminate Visible Intermodal Prevention and Response Teams and Cut \$27 Million for Federal Air Marshals.

Visible Intermodal Prevention and Response (VIPR) teams are multi-disciplinary groups of security officers deployed to various locations to prevent and deter acts of terrorism.¹² VIPR teams typically consist of Federal Air Marshals, Behavioral Detection Officers, Transportation Security Specialists-Explosives, Transportation Security Inspectors, and canine teams.¹³ Based on current intelligence and threat information, VIPR teams are deployed to secure vulnerable areas by working closely with federal, state, and local law enforcement officials. In addition to VIPR's

¹¹ Department of Homeland Security, National Terrorism Advisory System Bulletin (May 15, 2017) (www.dhs.gov/sites/default/files/ntas/alerts/National%20Terrorism%20Advisory%20System%20Issued%20May%2015%2C%202017.pdf).

¹² Briefing to the Democratic staff of the Committee on Homeland Security and Governmental Affairs by Department of Homeland Security, *Visible Intermodal Prevention and Response* (June 1, 2017).

¹³ House Committee on Oversight and Government Reform, Testimony of Roderick Allison, *Hearing on Federal Air Marshal Service: Oversight*, 114th Cong. (Sept. 17, 2015).

primary deployments to airport terminals and mass transit hubs, the teams assist with security operations at high profile events with large crowds such as the Super Bowl and Presidential Inaugurations.¹⁴

VIPR teams play a critical role in keeping passengers safe. Since the program's inception in 2005, VIPR has conducted more than 92,000 security operations, over 50,000 of which were conducted on mass transit and other non-aviation venues.¹⁵

At a Homeland Security and Governmental Affairs Committee hearing in June 2017, Michael Leiter, the former Director of the National Counterterrorism Center, said the following about cuts to the VIPR teams:

*In terms of what the main threats are [that] we're facing today, largely low-technology attacks in scattered ways through internet radicalization a la London, Paris and the like, I believe the President's budget does real violence to some of those pieces, especially for this Committee. Potential cuts in funding to the VIPR teams, to the Coast Guard for port security, for rail transit, these are real issues, these are places that need to be defended, they have not been adequately defended, and they must be.*¹⁶

Despite the important work of VIPR teams deployed across the nation, the Administration's proposed FY 2018 budget reduced funding for VIPR teams by \$43 million. Under the President's proposed budget, 74% of the VIPR team budget was cut, resulting in a reduction in the number of VIPR teams from 31 teams to only 8, and the elimination of 277 full-time employees.¹⁷

The guidance document indicates that OMB overruled DHS's request for continued VIPR program funding and instead instructed the Department to completely eliminate the program in the FY 2019 budget request to Congress.¹⁸ OMB has instructed the Department to reduce the program by \$11.7 million, and reduce the number of teams from 8 teams to zero. This constitutes a reduction of an additional 85 full-time employees.¹⁹ OMB instructed the DHS: "TSA [the Transportation Security Administration] should plan to achieve reductions in VIPR staffing through attrition at FAMS [Federal Air Marshals] and continue to provide quarterly updates on after action reports for VIPR deployments."²⁰ This is a total reduction from the FY 2017 Enacted Budget of \$54.7 million and 362 full-time employees.²¹

¹⁴ Briefing to the Democratic staff of the Committee on Homeland Security and Governmental Affairs by Department of Homeland Security, *Visible Intermodal Prevention and Response* (June 1, 2017).

¹⁵ *Id.*

¹⁶ Senate Committee on Homeland Security and Governmental Affairs, Testimony of Michael Leiter, *Hearing on Ideology and Terror: Understanding the Tools, Tactics, and Techniques of Violent Extremism*, 115th Cong. (June 14, 2017).

¹⁷ Department of Homeland Security, Transportation Security Administration, *Budget in Brief* (May 2017).

¹⁸ OMB stated that the subtraction of \$11.7 million in the FY 2019 guidance would "eliminate" the VIPR program, although based on the Administration's proposed FY 2018 budget proposal of \$15.1 million for the VIPR program, this would still leave \$3.4 million unaccounted for. Office of Management and Budget, *Department of Homeland Security: Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017); Department of Homeland Security, Transportation Security Administration, *Budget in Brief* (May 2017).

¹⁹ Office of Management and Budget, *Department of Homeland Security: Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017). OMB also suggested that responsibilities for surface security inspection be moved from TSA to the Department of Transportation (DOT). OMB said, "Guidance requests an evaluation and recommendation from DHS and DOT about possible efficiencies in their activities to regulate and inspect surface transportation." *Id.*

²⁰ *Id.*

²¹ Department of Homeland Security, Transportation Security Administration, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017); Office of Management and Budget, *Department of Homeland Security: Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017). The House and Senate FY 2018 appropriations language does not directly address the VIPR program.

The elimination of the VIPR teams runs contrary to the testimony of Ms. Nielsen, informing the Committee:

I believe it is important that the Department have some specially trained personnel who are deployable anywhere for enhanced deterrence or response to threats against critical mass transportation modes. The Visible Intermodal Prevention and Response (VIPR) teams of TSA serve that role.²²

OMB instructed the Department to cut an additional \$27 million in FY 2019 to Federal Air Marshals. DHS requested \$806 million for the total FY 2019 FAMS budget; slightly more than the Administration's FY 2018 proposal of \$804 million.²³ The guidance from OMB instructs the Department to make reductions through a 5% payroll reduction as opposed to the Department's request of 2.3%.²⁴

OMB Ordered DHS to Seek \$11 Million in Additional Cuts for Domestic Nuclear Detection Office

The Domestic Nuclear Detection Office (DNDO) is an office within DHS whose mission is to prevent acts of nuclear terrorism by improving our capability to deter, detect, respond to, and attribute attacks in conjunction with domestic and international partners.²⁵ DNDO distributes federal assistance through grants, contracts, cooperative agreements, and other activities for programs that support to detection, forensics, and prevention of radiological and nuclear threats, and for those that seek to prevent, protect against, respond to, and mitigate bombing incidents.²⁶

The Administration's FY 2018 budget proposal cut funding for DNDO by \$22 million, or about 6%.²⁷ DHS requested a relatively small restoration of funding in FY 2019, seeking about \$1.4 million more. OMB instead instructed DHS to seek a new cut of \$9.3 million below the Administration's FY 2018 budget proposal. This is a cut of \$10.8 million from the Department's FY 2019 budget request. OMB directs that portions of this cut be removed from federal assistance directed to protecting American cities under the "Securing the Cities" Program.²⁸

²² Senate Committee on Homeland Security and Governmental Affairs, *Responses to Questions for the Record, Nomination Hearing for Kirstjen M. Nielsen to be Secretary, United States Department of Homeland Security* (Nov. 8, 2017).

²³ Office of Management and Budget, *Department of Homeland Security: Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017); Senate Appropriations Committee, Homeland Security Subcommittee, *Explanatory Statement for the Homeland Security Appropriations Bill, 2018* (Nov. 21, 2017) (115th. Cong.).

²⁴ Office of Management and Budget, *Department of Homeland Security: Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

²⁵ Department of Homeland Security, Domestic Nuclear Detection Office (www.dhs.gov/domestic-nuclear-detection-office) (accessed Dec. 1, 2017).

²⁶ Department of Homeland Security, Domestic Nuclear Detection Office, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

²⁷ *Id.* The total enacted appropriation for DNDO in FY 2017 was \$352 million. The FY 2018 House Appropriations set DNDO at \$309 million and the FY 2018 Senate Appropriations set DNDO at \$330 million.

²⁸ Office of Management and Budget, *Department of Homeland Security: Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).