

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

FPS Related Funds
Transferred From
GSA to DHS



Office of Audits

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U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our DHS oversight responsibilities to promote economy, effectiveness and efficiency within the department.

This report assesses the use of certain funds transferred by the General Services Administration to the Department of Homeland Security for the support of the Federal Protective Service. It is based on interviews with employees and officials of relevant agencies and institutions and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

OIG	Office of Inspector General
GSA	General Services Administration
DHS	Department of Homeland Security
FPS	Federal Protective Service
HSA	Homeland Security Act of 2002
ICE	Immigration and Customs Enforcement

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

At the request of Representatives James L. Oberstar and Eleanor Holmes Norton,¹ we reviewed certain funds transferred from the General Services Administration (GSA) to the Department of Homeland Security (DHS). Our objective was to determine whether DHS was in compliance with the Homeland Security Act of 2002 (HSA)². The HSA required that any GSA rents and fees transferred to DHS be used solely for the protection of buildings and grounds owned or occupied by the Federal government. The protection of Federal property is the primary mission of the Federal Protective Service (FPS), which was transferred to DHS from GSA on March 1, 2003.

We concluded that DHS did not violate the terms of the HSA in FY 2003 or FY 2005; however, the potential for a violation exists in FY 2004. In FY 2004, FPS paid ICE for support services out of fees it received from GSA for security services. FPS has disputed ICE's FY 2004 charges. If the ICE charges are ultimately found to be excessive, those charges could be construed as a violation of the HSA³ and the rules prohibiting augmentation of appropriations.⁴ An additional problem beginning in FY 2004 was that neither DHS' annual budget request nor DHS' appropriation set aside funding for FPS' support services, contrary to FPS' expectation and prior experience. Prior to its transfer to DHS, GSA budgeted and paid for FPS support costs.

We are recommending that DHS, ICE, and FPS identify a source of funding for FPS' administrative costs, including additional budget authority if appropriate, in DHS' annual budget request. We also are recommending that DHS and ICE research, support, and adjust, if necessary, the costs charged to FPS by ICE in FY 2004 and review transactions related to FPS support costs for compliance with appropriations law.

¹ See the letter from Representatives James L. Oberstar and Eleanor Holmes Norton, included as Appendix B.

² See Appendix A for Purpose, Scope, and Methodology.

³ Homeland Security Act of 2002, § 422(b)(2) codified at 6 U.S.C. § 232(b)(2).

⁴ For an explanation of the rules prohibiting augmentation of appropriations, please see the Government Accountability Office' *Principles of Federal Appropriations Law*, Chapter 6, Section E, "Augmentation of Appropriations" (GAO/OGC-92-13).

Background

Pursuant to the Homeland Security Act of 2002 (HSA), the Federal Protective Service (FPS) transferred to the Department of Homeland Security (DHS) from the General Services Administration (GSA) on March 1, 2003. Within DHS, FPS is organizationally a part of Immigration and Customs Enforcement (ICE). FPS' mission is to provide law enforcement and security to buildings and property owned or occupied by the Federal government. The HSA required that any GSA rents and fees transferred to DHS be used solely for the protection of buildings and grounds owned or occupied by the Federal government.

FPS is funded entirely from fees collected for its services, some of which are mandatory and others of which are optional. FPS provides optional security services at the request of agencies through direct reimbursable agreements. When FPS was part of GSA, GSA collected FPS' fees for mandatory security services through its rental invoices to tenant agencies. Payments were deposited into GSA's Federal Buildings Fund, from which GSA paid FPS its fees. After FPS moved to DHS, GSA continued collecting those security fees in FY 2003 and FY 2004 and transferred them to FPS. In FY 2005, GSA provided billing services for FPS, but payments from tenant agencies for FPS services went directly to FPS.

Results of Review

We concluded that DHS did not violate the terms of the HSA in FY 2003 or FY 2005; however, the potential for a violation exists in FY 2004. In FY 2004, FPS paid ICE for support services out of fees it received from GSA for security services. FPS has disputed ICE's FY 2004 charges. If the ICE charges are ultimately found to be excessive, those charges could be construed as a violation of the HSA and the rules prohibiting augmentation of appropriations. An additional problem beginning in FY 2004 was that neither DHS' annual budget request nor DHS' appropriation set aside funding for FPS' support services, contrary to FPS' expectation and prior experience. Prior to its transfer to DHS, GSA budgeted and paid for FPS supports costs.

FY 2003: GSA and FPS Controlled The Transferred Fees

In FY 2003, DHS was compliant with the HSA provision regarding transferred GSA rents and fees because FPS and GSA controlled the relevant

funds, according to DHS, FPS, and GSA. When FPS transferred to DHS, GSA reported that it transferred \$255 million in unobligated funds from its Federal Buildings Fund to FPS for FPS' operations. However, the handling of administrative support costs was more complicated.

Before FPS transferred to DHS, GSA budgeted for FPS' administrative support costs and paid for them. Thus, when FPS transferred to DHS in March 2003, GSA transferred to DHS the portion of its budget authority set aside for FPS support services. GSA estimated annual FPS support costs at \$18 million for telecommunications and \$10 million for other administrative services, or \$28 million in total. By agreement, GSA continued to provide all of FPS' administrative support through the end of FY 2003. DHS, FPS, and GSA officials said that GSA did not transfer to DHS the funds related to the transferred budget authority. Instead, GSA kept the funds to cover the administrative support it still was providing FPS and would have otherwise had to collect back.

For FY 2003, DHS, GSA, and FPS officials were all in agreement with respect to the handling of funds between the entities. Based on the above, DHS was compliant with the relevant HSA provision. DHS did not control such funds in FY 2003, and FPS received the funds from or the support services paid for by GSA's rents and fees.

FY 2004: FPS Lost Its Outside Funding for Support Costs

In FY 2004, DHS was compliant with the relevant HSA provision with the possible exception of administrative support fees charged by ICE to FPS. Both ICE and GSA provided support services to FPS in FY 2004, and FPS had to pay for those services, contrary to FPS' expectation and prior experience.

Budget Adjustments Versus Transfers of Budget Authority

For FY 2004, GSA transferred \$424 million from its Federal Building Fund to FPS, but both GSA and FPS said that this amount did not include FPS' support costs. Unlike FY 2003, GSA did not transfer budget authority to DHS to cover FPS' administrative costs as it had in FY 2003. GSA's and FPS' position was that the budget authority transferred in FY 2003 had become part of DHS' budget base going forward, with a corresponding decrease in GSA's budget base. They held that the \$28 million for support costs was built into DHS' FY 2004 budget and intended for FPS' support.

The DHS' FY 2004 budget proposal and the corresponding appropriation legislation, however, did not include discussions on FPS support costs. DHS did not identify a portion of its budget for FPS support, and DHS' FY 2004 appropriation and the related conference report contained no earmark or direct funds for FPS support costs. FPS was then faced with costs for which it had not budgeted.

Paying for FPS' Administrative Support Costs

In FY 2004, GSA continued to provide most of FPS' administrative support. The Memorandum of Agreement between DHS and GSA specifically called for GSA to provide procurement, financial management, human capital, information technology, legal, and other administrative support to FPS. GSA estimated these service costs at \$26.3 million and requested payment, because its budget had been cut while DHS' budget had been increased by the \$28 million. After discussions between DHS and FPS, DHS paid \$18.6 million and FPS paid \$7.7 million to settle the bill.

In the meantime, ICE began charging FPS for technology transition services in anticipation of providing support services in FY 2005. ICE billed FPS \$16.1 million for these services. FPS paid \$8.1 million and requested support for ICE's charges. FPS officials said they only received a listing of personnel salary tables and no other information.

After FPS paid the \$8.1 million, ICE charged FPS the remaining \$8 million and withdrew it from FPS' account. Table 1 provides a summary of the administrative support costs billed for FPS in FY 2004 and who paid.

Table 1
FPS Support Costs for FY 2004

Service Provider	Billed	FPS Paid	DHS Paid	Total Paid
GSA	\$26.3	\$7.7	\$18.6	\$26.3
ICE	<u>\$16.1</u>	<u>\$16.1</u>	<u>\$0</u>	<u>\$16.1</u>
Total	\$42.4	\$23.8	\$18.6	\$42.4

FPS was understandably concerned about the costs for administrative support that it had to begin paying directly. First, FPS said that it paid almost \$24 million for support costs that it had never paid before and had not anticipated. Second, without DHS' help, it would have otherwise had to pay \$42 million for support services that historically had been estimated at only \$28 million. FPS considered the \$42 million excessive for the services it had received.

If ICE overcharged FPS for support services and FPS did not receive commensurate benefits for those charges, DHS could possibly be in violation of the HSA provision that any GSA rents and fees transferred to DHS be used solely for the protection of buildings and grounds owned or occupied by the Federal government. FPS' FY 2004 funds came from rents and fees that GSA collected and transferred to FPS for its mission, and excessive payments to ICE likely would be a transfer for other purposes. Excessive payments to ICE could also be construed as an improper augmentation of ICE's appropriation. For these reasons, DHS needs to ensure that ICE can thoroughly justify its charges to FPS in FY 2004 to demonstrate DHS' compliance with the HSA.

On the other hand, Congress appropriated \$424 million to FPS for its necessary expenses, with those funds to be transferred from GSA's Federal Building Fund.⁵ DHS' \$18.6 million payment to GSA for FPS expenses could be construed potentially as an augmentation of FPS' appropriation.

DHS and ICE need to research the precise services that ICE provided to FPS and determine whether ICE has adequate support for the amounts charged. If adequate support is not available, DHS and ICE may need to compare the type and costs of services ICE provided to similar services provided by GSA and other federal agencies to assess reasonableness. If necessary, ICE will need to adjust the amount charged to FPS in FY 2004.

⁵ Department of Homeland Security Appropriations Act, 2004, Pub. L. 108-90, 117 Stat. 1137, 1140 (2003)

FY 2005: GSA No Longer Transferred Funds to FPS

In FY 2005, GSA no longer collected fees for FPS but billed its tenants on FPS' behalf, who paid FPS directly. Therefore, the relevant section of the HSA no longer applied because FPS collects its own fees with no transfer from GSA.

GSA continued to provide and charge for support to FPS for financial management and information technology in FY 2005. ICE and FPS officials reported that ICE agreed to absorb the costs of FPS support services for FY 2005. However, DHS, ICE, and FPS officials should review these transactions for compliance with appropriations law.

Recommendations

We recommend that the DHS Chief Financial Officer, in consultation with the ICE Chief Financial Officer and FPS officials:

1. Ascertain the impact of administrative costs on FPS' operating budget and identify a source of funding for FPS' administrative costs, including additional budget authority if necessary, in the annual DHS budget request.
2. Obtain a thorough justification of FY 2004 ICE charges to FPS and require ICE to return any overcharge, if identified, to FPS to ensure compliance with the HSA.
3. Obtain a legal opinion on the legitimacy of the transactions discussed in this report, i.e., were the transactions in compliance with appropriations law, and take appropriate corrective actions, as necessary.

Management Comments and OIG Analysis

ICE commented on our report through the Department and concurred with the recommendations. ICE said that efforts are underway to evaluate the impact of administrative costs on FPS to identify whether additional budget authority or other funding is needed. ICE said that it is committed to reviewing FY 2004 administrative support charges to FPS and will remedy the matter if needed. ICE said that it would review the legitimacy of transactions to ensure

compliance with appropriation law and take any needed corrective actions. Appendix C includes ICE's comments in their entirety.

The DHS Chief Financial Officer did not provide separate comments, although we recommended that he take action in consultation with ICE and FPS. The DHS Chief Financial Officer retains overall responsibility for ensuring that these recommendations are addressed in a fair manner in compliance with appropriations law. To that effect, ICE's lead role in addressing these recommendations that pertain to itself and its FPS component is acceptable. We will consider these recommendations resolved when we receive a timetable for specific corrective actions.

Appendix A

Purpose, Scope, and Methodology

In response to a letter dated February 11, 2005, from Representatives James Oberstar and Eleanor Holmes Norton, we reviewed funds transferred from GSA to DHS to determine whether DHS was in compliance with the HSA. They noted that according to the HSA, funds transferred from rents and fees collected by GSA were to be used solely for the protection of buildings or grounds owned or occupied by the Federal government. They requested that the OIG review all transfers from GSA to DHS for compliance.

To address the concerns of Representatives Oberstar and Holmes Norton, we performed the following procedures:

- Interviewed officials from DHS, FPS, GSA, and ICE with respect to the transfers identified by Representatives Oberstar and Holmes Norton;
- Reviewed documentation provided to us by DHS, FPS, GSA, and ICE;
- Focused on those transactions identified in the letter from Representatives Oberstar and Holmes Norton.

Our review was limited to inquiries and analytical procedures and did not include search, verification, and internal control procedures, or a complete review of compliance with appropriation law, as would be required for an audit conducted according to generally accepted government auditing standards. Our review was sufficient to identify issues and make recommendations as to next steps.

We conducted our review between March 2005 and November 2005 under the authority of the Inspector General Act of 1978, as amended.

Appendix B
Congressional Request Letter



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

Lloyd A. Jones, Chief of Staff
Michael Eronchuk, Deputy Chief of Staff

February 11, 2005

David Weynszweig, Democratic Chief of Staff

The Honorable Richard L. Skinner
Inspector General
Department of Homeland Security
Stop 2600
245 Murray Drive, Building 410
Washington, D.C. 20405

Dear Mr. Skinner:

We are very concerned with the use of funds transferred by the General Services Administration to the Department of Homeland Security for the support of the Federal Protective Service. We write to specifically request that you conduct an audit of all funds transferred from GSA to DHS to ensure that all transfers comply with the Homeland Security Act of 2002.

The Homeland Security Act of 2002 (P.L. 107-296), transferred the Federal Protective Service (FPS) from the General Services Administration (GSA) to the newly created Department of Homeland Security (DHS). FPS was assigned to the Immigration and Customs Enforcement (ICE) agency of DHS. Further, pursuant to section 422 of the Act, Congress directed that rents and fees that are collected by GSA that are transferred to DHS shall be used solely for the protection of buildings and grounds owned or occupied by the Federal government. Based on a "fee for service" calculation, GSA is authorized to transfer those amounts from the Federal Building Fund to DHS to pay for the security of public buildings owned by the Federal government and used by the public. Moreover, the Act specifically prohibits DHS from obligating any amounts in the Federal Buildings Fund.

On March 1, 2003, GSA transferred \$255 million from FPS to DHS for the protection of Federal buildings for FY2003. In FY2004, GSA transferred \$452 million from FPS to DHS for FY2004. The transferred amounts included \$424 million for Base Protection, \$18 million for Telecommunications Support, and \$10 million for Administrative Support. The combined \$28 million of Support funding was provided directly to the appropriate DHS office. Thus, FPS received the remaining \$424 million.

Recent press accounts as well as internal ICE newsletters have identified severe budget shortfalls in DHS and in particular within ICE. Moreover, in a December 2004 report, DHS

Appendix B
Congressional Request Letter

The Honorable Richard L. Skinner
February 11, 2005
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Inspector General Clark Ervin expressed serious concerns that ICE did not maintain its accounting records during FY2004 and identified a void in the financial management infrastructure at ICE.

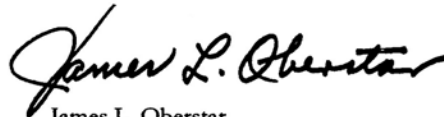
In light of those concerns and given the specific statutory requirements, we request that you conduct an audit of all funds transferred from GSA to DHS, as authorized in P.L. 107-296. Furthermore, we request that you determine whether any additional funds have been transferred from FPS to DHS and for what purpose.

The Committee on Transportation and Infrastructure will soon begin consideration of various aspects of the Administration's GSA and DHS budget requests for FY2006 and, thus, we request that the audit be completed as soon as possible. If you have any questions regarding this request, please call us, or Susan Brita of the Committee staff (202/225-9961).

Sincerely,



Eleanor Holmes Norton
Ranking Democratic Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management



James L. Oberstar
Ranking Democratic Member

Appendix C
Management Comments to the Draft Report

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

JAN 30 2006



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Richard L. Skinner
Inspector General
Department of Homeland Security

THRU: Steven J. Pecinovsky *Steven J. Pecinovsky*
Director
Department GAO/OIG Liaison Office

FROM: Julie L. Myers *Julie L. Myers*
Assistant Secretary

SUBJECT: OIG Report Titled "FPS Related Funds Transferred from GSA to DHS"

Thank you for the opportunity to review and comment on the draft report titled "FPS Related Funds Transferred from GSA to DHS." One of my top goals as the Assistant Secretary for Immigration and Customs Enforcement (ICE) is to strengthen the agency's financial infrastructure and ensure fiscal integrity throughout the agency. We acknowledge the financial challenges inherent in the transfer of the Federal Protective Service (FPS) to ICE and we remain firmly committed to establishing a future course of action built upon a solid financial and accounting foundation. It is in this context that we respond to the report's recommendations.

Your report raises specific issues that will be reviewed to ensure compliance with appropriations law and the Homeland Security Act (HSA) as it relates to the provision of administrative support to the Federal Protective Service (FPS), a component within ICE. We take this matter seriously and will work closely with the Department of Homeland Security to address the concerns raised.

RECOMMENDATION 1: Ascertain the impact of administrative costs on the FPS' operating budget and identify a source of funding for FPS' administrative costs, including additional budget authority if necessary, in the annual DHS budget request.

CONCUR: Efforts are underway to evaluate the impact of administrative costs on the FPS budget. The results will help to identify whether additional budget authority and/or other funding sources are needed.

RECOMMENDATION 2: Obtain a thorough justification of FY 2004 ICE charges to FPS and require ICE to return any overcharge, if identified, to FPS to ensure compliance with the HSA.

CONCUR: We are committed to reviewing the administrative support charges to FPS in Fiscal Year (FY) 2004 and will remedy this matter if needed. Information will be reviewed to ensure compliance with HSA. Moreover, as suggested in the report, we will review the support service costs that were absorbed by ICE in FY 2005 on behalf of FPS.

Appendix C Management Comments to the Draft Report

Subject: OIG Report Titled “FPS Related Funds Transferred from GSA to DHS”
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RECOMMENDATION 3: Obtain a legal opinion on the legitimacy of the transactions discussed in this report, i.e., were the transactions in compliance with appropriations law, and take appropriate corrective actions, as necessary.

CONCUR: We will review the legitimacy of the transactions to ensure compliance with appropriations law. All necessary corrective actions will be taken accordingly.

We appreciate your team’s effort in the development of this report. If you have questions or require additional information, please contact Debra Bond, ICE Chief Financial Officer, at (202) 305-9863.

Appendix D
Major Contributors to this Report

Sue Schwendiman, Director, Financial Management
Sunday Okurume, Audit Manager, Financial Management
Pauletta Battle, Auditor, Financial Management

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Office of Management and Budget

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Congressional Oversight and Appropriations Committees, as appropriate

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