

Legislative Bulletin.....December 08, 2010

House Amendment to the Senate Amendment to H.R. 3082—FY 2010 Full-Year Continuing Appropriations Act (*Obey, D-WI*)

BY THE NUMBERS:

In billions

Division	FY 08	FY 10	H.R. 3082	% Increase from FY 08	% Increase from FY 10
Agriculture	18.1	23.3	22.6	24.9%	-3.0%
CJS	51.8	64.3	55.7	7.5%	-13.4%
Defense	459.3	508.1	513.0	11.7%	1.0%
Energy and Water	30.9	33.5	34.3	11.0%	-2.4%
Financial Services	20.6	24.2	23.3	13.1%	-3.7%
Homeland Security	34.9	42.5	42.5	21.8%	----
Interior	26.6	32.2	32.3	21.4%	0.3%
Labor-HHS	144.8	163.7	170.3	17.6%	4.0%
Legislative Branch	4.0	4.7	4.7	17.5%	----
Military Construction-VA	60.2	76.6	75.2	24.9%	-1.8%
State-Foreign Operations	32.8	48.8	51.0	55.5%	5.7%
T-HUD	48.8	67.9	64.9	33.0%	-4.1%
Total Spending	932.8	1,089.8	1,089.8	16.8%	----

Excluding Emergency Appropriations, the Bill is:

- **\$157.0 billion or 16.8% more than FY 2008**
- **The same as last year**

Background: More than two months into the current fiscal year, none of the twelve FY 2011 spending bills have been enacted. This legislation provides a full-year continuing resolution for all twelve bills at a total level equivalent to FY 2011 levels, \$1.09 trillion. This legislation marks the third time in American history that the regular appropriations spending level has exceeded \$1 trillion—*all three spending plans in excess of \$1 trillion will have been finalized by this Congress*. Within the total funding amount, there are well over a hundred pages worth of “anomalies” that make changes to individual program levels. In just the last three years, Congress will have increased spending just through the regular appropriations process by **\$157 billion or 16.8%**.

After the House passes this bill, the Senate Democrats will want to replace the CR with a full-fledged omnibus with higher spending levels. By contrast, the RSC has proposed a [Hspending planH](#) that would return domestic spending to FY 2008 levels, while defunding Obamacare, prohibiting earmarks, and protecting all of the pro-life and other values riders.

Key Conservative Concerns with the “CR”

Take-Away Points

- Too High of a Spending Level:** The legislation provides full-year spending authority through FY 2011 (September 30, 2011) generally in line with FY 2010—\$1.09 trillion. This is in contrast to the RSC continuing resolution plan (as well as proposals by other House Republicans) to keep non-security spending at FY 2008 levels. The RSC plan would lower domestic spending by \$84 billion compared to this plan.
- No Prohibition on Funding for Obamacare:** Unlike the RSC continuing resolution plan, the bill does not contain any restrictions on funding for implementation of the provisions of the government health care takeover law.
- START Treaty:** The legislation makes \$624 million of nuclear weapons modernization contingent on Senate passage of the START Treaty. Many conservatives have serious concerns with this treaty, and may therefore object to any funding being contingent on its adoption.
- Process:** The legislation comes to the floor on the same day that the legislative text is available, without a CBO score, and without any of the normal charts from the appropriations committee showing the changes in spending for individual programs. The bill is not open for amendment, and the Majority is bringing the bill forward as an amendment to a Senate-passed bill merely to prevent the Minority from having a Motion to Recommit. Further, the bill consists of two entirely unrelated pieces of legislation: a full-year CR and the food safety bill. The bill comes to the floor today, under this process, after the Majority neglected to consider FY 2011 appropriations bills under the regular process. Many conservatives would object to this process.

For more details, see below.

Order of Business: The legislation is scheduled to be considered on Wednesday, December 8, 2010 under a closed rule. The rule provides one hour of debate on the legislation with 40 minutes equally divided between the chair and ranking members of the Committee on Appropriations and 20 minutes equally divided between the chair and ranking member of the Committee on Energy and Commerce.

Full-Year CR

Summary: The legislation generally provides for a full-year continuing resolution (CR) at a total level equivalent to FY 2010 levels. The CR changes this spending level for many programs, and the bill has hundreds of pages of “anomalies” increasing or decreasing funding for a specific program. *Some* of these notable differences, as well as other notable provisions are below:

Veterans Affairs: The legislation provides an additional \$2.5 billion for the Department of Veterans Affairs Medical Services, an additional \$228 million for Department of Veterans Affairs Medical Support and Compliance, and an additional \$5.4 billion for the Department of Veterans Affairs Medical Facilities.

2012 Advance Payments:

- Special Benefits for Disabled Coal Miners, \$41 million
- Grants to States for Medicaid, \$86 million
- Payments to States for Child Support, \$1.2 billion
- Payments to States for Foster Care and Permanency, \$1.8 billion
- Supplemental Security Income Program, \$13.4 billion

Securities and Exchange Commission (SEC), Salaries and Expenses: Makes available to the SEC \$1.25 billion derived from user fees.

Federal Communications Commission (FCC): The legislation authorizes the FCC to assess offsetting collections of up to \$350.6 million. This is an increase of 4.5% compared to last year.

Guantanamo: The legislation prohibits funds from being used to transfer, release, or assist in the transfer or release to or within the United States (or territories) Khalid Sheikh Mohammed or any other detainee who is not a United States citizen (or a member of the United States armed forces) or who is or was held on or after June 24, 2009 at Guantanamo Bay, Cuba.

Iran Sanctions Act: The legislation prohibits funds from being made available for any use in contravention of the Iran Sanctions Act.

START Treaty/Nuclear Weapons Program: The legislation provides \$7 billion for nuclear weapons modernization. \$624 million of this funding is contingent on Senate ratification of the START Treaty. That treaty is opposed by many conservatives.

Extension of Values Riders: H.R. 3082 contains language that continues all current pro-life riders. However, the gutted DC abortion ban will be continued. Historically, there has been a restriction on government funded abortion in DC due to the Dornan Amendment, which prohibited both federal and local appropriated funds from being used to pay for abortion. The FY2010 Omnibus contained language that only banned federal dollars and did not address local funding. Since Congress controls DC's entire budget, which includes all local revenues, Congress is allowing taxpayer funded abortion where it was previously prohibited.

TSA: The legislation provides \$5.3 billion of funding for Transportation Security Administration, Aviation Security. A portion of this funding would be dedicated to staffing for 500 Advance Imaging Technology (AIT) machines.

The Census: The legislation reduces Census funding by \$6 billion compared to last year, and rescinds a further \$1.7 billion of previously appropriated money. This savings is used to pay for new spending in FY 2011 instead of reducing the deficit.

Race to the Top: The legislation provides \$550 million for this program, which did not receive FY 2010 regular funding.

Pell Grants: The legislation provides \$5.7 billion more for Pell Grants compared to FY 2010, and provides a \$4,860 maximum award level.

Legislative Branch: The legislation provides an 18% increase to programs within the Legislative Branch subcommittee. This funding goes to congressional operations.

Health Care Provisions:

- An additional \$86.45 billion is made available for advance payments for the first quarter of FY2012 for the Centers for Medicare and Medicaid Services (CMS), Grants to States for Medicaid.
- For the first quarter of FY2012 an additional \$1.2 billion (an increase of \$100 million) is made available for advance payments for Administration for Children and Families, Payments to States for Child Support Enforcement and Family Support Programs, \$13.4 billion is made available for benefit payments under the Supplemental Security Income Program, and \$1.85 billion is made available for Payments to States for Foster Care and Permanency.
- Adds an additional \$60 million in funding for allocation to State AIDS Drug Assistance Program (ADAP) on top of FY2010 levels (\$1,992,865,000) for the HIV Health Care Services Program in order to reduce waiting lists.
- The bill removes several provisions, requirements and funding directives under the Consolidated Appropriations Act of 2010.
- The bill funds numerous programs created in the Patient Protection and Affordable Care Act (PPACA) but removes language controlling the way the grants or appropriations are delivered, including grants to train, or to employ, alternative dental health care providers in underserved areas, epidemiology and laboratory capacity grants, primary care training programs grants, grants and requirements for area health education centers, among others.
- Provides \$6.25 billion for Disease Control, Research, and Training under the Center for Disease Control and Prevention (CDC). Of this funding the bill requires that \$150.14 million is available until expended to provide screening and treatment for first responders, residents, students, etc. related to Sept 11th Attacks). The bill specifies that funds for CDC shall be made available for the following programs created under PPACA:
 - Sec 4001, “National Prevention, Health Promotion and Public Health Council.”
 - Sec 4004, “Education and outreach campaign regarding preventive benefits.”
 - Sec 4201, “Community transformation grants.”
 - Sec 4301, “Research on optimizing the delivery of public health services.”
- Provides \$4.82 billion for the National Institute of Allergy and Infectious Disease under the National Institutes of Health (NIH).
- Requires that of funds provided for NIH Office of the Director, \$25 million must be used for implementing CURES Acceleration Network. CURES was created under PPACA (sec. 10409) and would “award grants and contracts to eligible entities...to accelerate the development of high need cures, including through the development of medical products and behavioral therapies.”
- Increases the amount transferred from Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund for Program Management under CMS to \$3.62 billion dollars, up \$152.87 million from 2010 levels.
- Increases funding set aside for the Medicare Integrity Program at CMS and Office of the Inspector General (OIG) under HHS to conduct oversight activities to combat fraud, waste and abuse.
- Provides additional money for the Head Start program and increases payments to states for the Child Care and Development Block Grant program to \$2.5 billion (\$374 million increase over 2010 levels) and funding for Children and Family Services programs under HHS’ Administration for Children and families to \$9.64 billion (\$329 million increase over 2010).
- Provides additional funding for State Unemployment Insurance offices, Department of Labor and the Federal Mine Safety and Health Review Commission.
- Increases funding for Jobs Corps.

RSC CR Alternative: The RSC has introduced legislation (H.J.Res. 96) to close out this year’s appropriations process by providing for a full-year continuing resolution for FY 2011 that protects defense and veterans spending, while returning all other discretionary spending to FY 2008 levels—the amounts in effect prior to this Congress’s spending spree. Additionally, the plan will defund Obamacare, prohibit any FY 2011 appropriations from being used for earmarks, and protect all of the pro-life and other values riders. For more information, see [here](#).

Table: Domestic Savings Proposed by RSC Continuing Resolution
(In Millions of Dollars)

Bill	RSC Plan	Democrat FY 11 Plan	Savings
Agriculture	18,093	23,304	5,211
CJS	51,803	60,536	8,733
Energy and Water	30,888	34,669	3,781
Financial Services	20,599	24,500	3,901
Interior	26,555	32,240	5,685
Labor-HHS	144,841	176,412	31,571
Legislative Branch	3,970	4,656	686
State-Foreign Ops	32,800	53,983	21,183
Transportation-HUD	48,841	67,400	18,559
Total	378,450	477,860	99,410

Food Safety Enhancement Act

Summary: On July, 30, 2009, the House passed [H.R. 2749](#) the Food Safety Enhancement Act by a vote of [283 – 142](#). On November 30, 2010, the Senate passed its version of the legislation (S. 510) involving the increased regulation of the U.S. food supply by a vote of 73-25. The two versions have a number of policy differences, however, it is reported that House Democrat leadership is willing to accept the Senate version. However, since S. 510 contains provisions involving revenue-raising fees that violate the Constitution’s origination clause, that bill cannot be considered by the House. In an attempt to rectify this issue, the House has added the text of S. 510 into part D of the continuing resolution. Democrats will assert that this satisfies the constitutional requirement that revenue bills originate in the House. Some of the key provisions of the legislation are as follows:

Food Inspection & Facility Registration: The bill permits the Secretary of Agriculture to have access to, and review of, all records relating to food product, including information on distribution, packaging, transport, if he or she believes that there is a “reasonable probability” that the use of or exposure to an article of food will cause serious adverse health consequences or death to humans or animals. The bill requires the registration of all “food facilities” and gives the Secretary the authority to suspend the registration of a facility if he or she determines that food manufactured, processed, packed, received, or held by a facility has a reasonable probability of causing serious adverse health consequences or death to humans or animals. The bill grants an appeals process. Some conservatives have expressed concern over these provisions because they grant the FDA the authority to conduct warrantless searches of businesses..” The bill requires owners and operators of registered facilities to “evaluate reasonably foreseeable hazards,” including “biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, decomposition, parasites, and unapproved food and color additives,” at risk for contamination. The bill requires the facility to provide the Secretary with verification

that the facility is in compliance and preventive measures are in place to prevent contamination. The bill requires the facility to keep at least two years of records on file.

Performance Standards: The bill requires the creation of “performance standards” established by the FDA in coordination with U.S. Department of Agriculture (USDA) to review and evaluate “the most significant food-borne contaminants” and issue regulations.

Produce Standards: The bill also creates a comprehensive produce safety standard to establish standards for the production and harvesting of certain fruits and vegetables in order to minimize the risk of serious adverse health consequences or death. While the FDA’s intention is to identify what causes outbreaks, many conservatives have expressed concern that the provision would allow the FDA to regulate how crops are raised, essentially dictating to farmers the best way to farm.

Tester Amendment: The so-called “Tester Amendment” exempts facilities that do less than \$500,000 in sales a year, that sell only within 275 miles of the farm, and sell only on the farm or to farmers markets, restaurants or grocery stores. Additionally, the bill exempts certain organic forms of production. Some conservatives argue that exemptions should be based on science or risk, and not based on farms proximity to the state or income. Most major food and agricultural organizations opposed the inclusion of this amendment in the Senate version of the bill.

Fees: The bill allows the collection of fees for the purpose of covering the cost of recall activities and reinspections. Recall fees would be capped at \$20 million and applied to companies that do not comply with recall. Reinspection fees would be applied to companies and importers, and capped at \$25 million annually. The bill also authorizes appropriations in the amount determined by fees on export certification on food and animal feed.

Dietary Guidelines: The bill gives the authority to the FDA to determine the safety of dietary supplements if it believes it contains anabolic steroids, and is required to notify the Drug Enforcement Agency if a product is believed to contain a steroid. Within 180 days of enactment the FDA is required to publish guidance that clarifies when a dietary supplement ingredient is a new dietary ingredient, the evidence needed to document the safety of new dietary ingredients, and the appropriate methods for establishing the identify of a new dietary ingredient.

Exemptions: The bill contains a small number of exemptions limiting the scope of the FDA’s jurisdiction so as to not apply to certain facilities already regulated by the USDA, and alcohol related facilities, among other facilities. However, many conservatives still view many of these exemptions to be inadequate, and the bill still allows the FDA to regulate agricultural production practices.

Inspection Frequency: The bill requires the Secretary to increase the number of inspections on domestic facilities, foreign facilities (minimum 600 a year), and ports of entry to evaluate risk for contamination, the affect of rigor on foods, and the overall packaging process. The bill requires the Secretary to establish a new program for the testing of food by accredited laboratories to address or identify suspected food safety problems. Additionally, the bill requires the Secretary, in coordination with other federal agencies, to submit a report on the progress in implementing a national food emergency response laboratory network. The report must provide ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, develops and implements a methods repository for use by federal, State, and local officials, and responds to food-related emergencies.

Recordkeeping & Traceability: Within 270 days, the bill requires the FDA to conduct several pilot projects to explore methods to improve the tracking and tracing of food. At the conclusion of the projects, the FDA would be required to assess the cost and benefits associated with adoption of product tracing technologies and feasibility of implementing a national system. Within two years of enactment, the bill requires the Secretary to publish a notice of proposed rulemaking to establish recordkeeping requirements for facilities that manufacture, process, pack, or hold foods that the Secretary designates as “high-risk foods.” Some conservatives may argue that the traceability requirements only add enormous regulatory burdens on businesses with little reason to believe it will prevent outbreaks within the food supply.

Surveillance: The bill authorizes \$24 million per year between FY 2011 and FY 2015 for foodborne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses.

Mandatory Recall Provisions: The bill allows the Secretary to issue a recall order if he or she has *any reason to believe* a product has been adulterated or misbranded. The bill strikes the current requirement that the FDA must have “credible evidence or information indicating that such article presents a threat of serious adverse health consequences” and allows the agency to act upon merely a “reasonable belief.”

Grant Programs: The bill authorizes “such sums” to create several grant programs eligible to a wide variety of entities, including farms, state agencies, local governments, non-profit food distributors, among others, for improve educational outreach on tactics to increase food safety. The bill also authorizes “such sums” to create “Food Safety Integrated Centers of Excellence” to provide resources, including timely information concerning symptoms and tests, for frontline health professionals interviewing individuals as part of routine surveillance and outbreak investigations, among other duties.

Imported Foods: The bill requires the FDA, within one year of enactment, to promulgate regulations requiring the foreign supplier verification program provide assurances that each foreign supplier processes and procedures that provide the same level of public health protection as those required under current law.

The bill creates a new program to allow the FDA to provide expedited review for importers who voluntarily participate in a qualified inspection program and are certified by a third party. The program requires records of an importer related to a foreign supplier to be maintained for at least two years and be made available promptly to a duly authorized representative of the Secretary, upon request.

Federal Employees: The bill authorizes the appropriations of funds for the FDA to hire 17,800 additional employees through 2014 to carry out the requirements enacted under the Food Safety Enhancement.

Additional Background: Over the past few years, several widely reported food-related contamination incidents have raised public concern over food safety. The Democrat Congress has introduced a number of measures to increase regulations on the industry.

According to the Congressional Research Service, between April and July of 2008 “more than 1,300 persons in 43 states, the District of Columbia, and Canada were found to be infected with the same unusual strain of bacteria” (a type of Salmonella). Public health officials originally believed the strain came from domestically grown tomatoes, however, it was later determined

through genetic testing the strain originated from samples of Serrano pepper and irrigation waters in Mexico. It is estimated this error cost the tomato industry close to \$100 million in lost revenues.

Within the past year, another Salmonella outbreak was traced to the Peanut Corporation of America that produces industrial peanut butter and other products containing peanut ingredients. The Centers for Disease Control (CDC) have identified this outbreak as causing more than 700 cases of Salmonella poisoning and possibly contributing to nine deaths. This outbreak comes on the heels of another outbreak detected by Peter Pan and Great Value brand of peanut butter produced by ConAgra, that caused hundreds of individuals illness beginning in August of 2006.

The Government Accountability Office cites approximately 30 different laws related to food safety that are administered by 15 federal agencies. However, the vast majority of oversight is conducted by the Food Safety and Inspection Service (FSIS) under the Department of Agriculture, which inspects mostly meat and poultry. The FSIS had a budget of more than \$1 billion in FY 2009. The FDA also conducts oversight for many other food products.

In 2007, the Bush Administration called for a major overhaul of the system after the Salmonella outbreaks first appeared. President Obama has continued to call for reform and announced the creation of a “Food Safety Working Group” in March of 2009. In the 111th Congress, House Democrats introduced a number of proposals the make major changes to the system.

Conservative Concerns: Some conservatives have expressed concern that the legislation only imposes significant regulatory burdens on small businesses and does little to enhance food safety. In the same spirit of cap and tax or nationalizing health care, this is another example of Congress expanding the scope of bureaucracy and increasing the government’s involvement in the personal lives of Americans. As Sen. Tom Coburn, R-OK, stated: the bill will “grow the government, increase food prices, and drive small producers out of business without making our food any safer.” As the *Wall Street Journal* [editorializes](#) that under the bill, “the Food and Drug Administration will gain new powers over the 2.2 million farms and 28,000 food producers in America—including federal standards for agricultural practices and food processing, transportation and storage—as well as the authority to mandate nationwide recalls.”

Duplication: Specifically, some conservatives have expressed concerns over the duplicative nature of the bill in which the FDA would be tasked with many responsibilities already administered by the USDA and other federal agencies. Additionally, there are an extremely high number of mandates.

Some conservatives have expressed concerns over the bill’s provisions to grant the FDA the authority to inspect the records of grain farmers and ranchers because they believe the FDA lacks the expertise to adequately review the conditions of a facility. This is because the provision allows the FDA to conduct random audits, without needing reasonable cause, this regulation is obtrusive and overly burdensome for many small businesses.

User Fees: Some conservatives have expressed concern that imposing fees on production facilities that hold or possesses food is the equivalent of an additional tax on food. Many conservatives believe that the fees will be passed onto the consumer, and raise the price of food. Additionally, the bill does not permit the government the ability to indemnify companies or commodities it wrongfully implicates in a food borne illness outbreak.

Committee Action: The legislation, as combined by the Democrat leadership, has not been considered by any committee.

Earmarks: No committee report listing earmarks is available, but the legislation does not appear to contain any earmarks.

Cost to Taxpayers: There is no CBO score, but according to Appropriations Committee Democrats, the legislation generally provides funding levels equivalent to FY 2010 for the period covering FY 2011. This total funding level is \$1.09 trillion. The legislation marks the third time in American history that the regular appropriations spending level has exceeded \$1 trillion—all three such spending plans will have been finalized by this Congress.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill leads to a \$1.09 trillion spending level in FY 2011.

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

Constitutional Authority: The version of the legislation being considered today does not include a citation of constitutional authority. Presumably, the House Appropriations Committee would cite: Clause 7 of Section 9 of Article I of the Constitution (the power of Congress to appropriate money), though this would not have covered the constitutional authority for the various spending items themselves.

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