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H.R. 3326 — FY 2010 Department of Defense Appropriations Act

BY THE NUMBERS:

In Billions of Dollars

	FY09	FY10 Request	FY10 Committee	Cmte v. Request	Cmte v. FY09
Appropriations	489.0	511.5	508.2	-3.3	19.2
<i>War Funding</i>	<i>147.6</i>	<i>128.6</i>	<i>128.2</i>	<i>-0.4</i>	<i>-19.4</i>
Total	636.7	640.1	636.4	-3.7	-0.3

Excluding Emergency Appropriations, the Committee Bill is:

- **\$3.7 billion or 0.6% less than the request**
- **\$19.2 billion or 3.9% more than last year**

Spending Discussion: The bill provides a total funding level in FY 2010 of \$636.4 billion—\$508.2 billion of regular appropriations funding, and \$128.2 billion of funding for overseas deployment. The \$508.0 billion of regular funding is **\$19.2 billion or 3.9%** more than last year. This increase is substantially smaller than the overall spending increase for the FY 2010 appropriations process (nearly 8%).

Order of Business: The bill is scheduled to be considered on Wednesday, December 16th, subject to a highly structured (yet closed) rule ([H.Res. 976](#)). This one rule would provide for the consideration of four bills today, as follows:

1. The Senate-passed version of the Defense Appropriations bill ([H.R. 3326](#)) with a self-executing (i.e. automatically adopted) amendment in the nature of the substitute by the House. (*one hour of total debate; no further amendments allowed; no motion to commit or recommit*)
2. A continuing resolution (H.J.Res. 64) through December 23, 2009 (*one hour of total debate; no amendments allowed; one motion to recommit allowed*)

3. A bill (H.R. 4314) increasing the debt limit by \$290 billion (*one hour of total debate; no amendments allowed; one motion to recommit allowed*)
4. The Senate-passed version of the stand-alone Commerce, Justice, Science Appropriations (H.R. 2847) with a self-executing (i.e. automatically adopted) amendment in the nature of a substitute by the House. This amendment is the so-called “jobs” bill (being called by some as the “Son of Stimulus”), containing increased federal spending on such items as an ACORN-eligible housing slush fund, clean water programs, and public service job promotion. Furthermore, upon House passage of the newly amended H.R. 2847, the text of the Democrat “PAYGO” bill ([H.R. 2920](#)) would be automatically appended to H.R. 2847 without further consideration. (*one hour of total debate; no further amendments allowed; **no** motion to commit or recommit*)

The rule also contains a variety of additional provisions, unrelated to the consideration of these four bills, as follows:

- Allows the Appropriations Committee Chairman to insert in the Congressional Record at any time during the remainder of the first session of the 111th Congress such material as he may deem explanatory of the Senate amendments and the motions allowed for the Defense Appropriations and “jobs” bills. **In other words, earmark lists do NOT have to be provided before these bills are considered and passed.**
- Waives the requirement for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House for the remainder of the first session of the 111th Congress (referred to by some as a “**martial law rule**”).
- Makes it in order at any time during the remainder of the first session of the 111th Congress for the Speaker to entertain motions that the House suspend the rules.
- Allows the Speaker, on any legislative day of the first session of the 111th Congress, to declare the House adjourned at any time. Provisional dates for reconvening the House are listed in the rule.
- Allows the speaker, on any legislative day of the 2nd session of the 111th Congress before January 12, 2010, to dispense with organizational or legislative business, declare the House adjourned, or declare the House adjourned pursuant to an applicable concurrent resolution of adjournment.

Division A—Defense

Funding Summaries:

Dollars in Thousands

	FY 2009 Enacted	FY 2010 Request	H.R. 3326	H.R. 3326 Vs. FY 2009	H.R. 3326 Vs. Request	H.R. 3326 Vs. FY 2009	H.R. 326 Vs. Request
Regular Funding							
Military Personnel, Total.....	114,443,890	125,264,942	124,170,847	9,729,957	1,094,095	8.5%	-0.1%
Operations and Maintenance, Total.....	152,949,705	156,444,204	154,253,711	1,304,006	-2,190,493	0.8%	-1.4%
Procurement, Total.....	101,051,708	105,213,426	104,397,262	3,345,554	-816,164	3.3%	0.0%
Research, Develop., Test & Evaluation, Total	80,520,837	78,634,289	80,537,479	18,642	-1,903,190	0.0%	-2.4%
Revolving and Management Funds.....	3,155,806	3,119,762	3,127,762	-28,944	8,000	-0.9%	0.0%
Defense Health Program.....	25,825,832	27,903,163	29,243,428	3,417,596	1,340,265	13.2%	4.8%
Joint Improvised Explosive Device Fund.....	----	564,850	121,550	121,550	-443,300	NA	-78.5%
Office of the Inspector General.....	271,845	272,444	286,100	16,255	13,656	6.0%	5.0%
Chemical Agents.....	1,505,634	1,560,760	1,560,760	55,126	----	3.7%	3.5%
Drug Interdiction.....	1,096,743	1,058,984	1,158,228	51,463	99,244	4.7%	9.4%
Related Agencies (Intelligence, etc.).....	989,242	963,712	998,812	9,570	35,100	1.0%	3.6%
Overseas Deployment Funding							
Military Personnel, Total.....	----*	14,146,341	15,009,341	15,009,341	863,000	NA	6.1%
Operations and Maintenance, Total.....	----*	89,272,766	88,093,810	88,093,810	-1,178,956	NA	1.3%
Procurement, Total.....	----*	21,343,566	23,089,105	23,089,105	1,745,539	NA	8.2%
Research, Develop., Test & Evaluation, Total	----*	310,254	288,104	288,104	-22,150	NA	-7.1%
Revolving and Management Funds.....	----*	396,915	412,215	412,215	15,300	NA	3.9%
Defense Health Program.....	----*	1,256,676	1,256,676	1,256,676	----	NA	----
Drug Interdiction.....	----*	324,603	346,603	346,603	22,000	NA	6.7%
Joint Improvised Explosive Device Fund.....	----*	1,535,000	1,762,010	1,762,010	227,010	NA	14.8%

***Note:** Provided through a supplemental appropriations bill.

Defense Items of Note:

F-22 Raptor: The legislation does not provide any funding for procurement of additional F-22s, effectively ending the program.

Joint Strike Fighter (F-35): The report also authorizes \$6 billion for the purchase of 30 F-35s (House authorized 28) which is more than twice the number that will be purchased this year.

Joint Strike Fighter Engine Program: The conference report appropriates \$465 million to pay for a second, alternative engine for the F-35 Joint Strike Fighter produced by General Electric Co. and Rolls Royce. The engine is currently built solely by Pratt & Whitney.

Presidential Helicopter (VH-71) Program: The conference report contains approximately \$130 million in funding for the VH-71 presidential helicopter program. The House version eliminated funding for the program, as the President called it “a procurement process gone amok” because the original estimate to develop and build 28 of the new Marine One aircraft had doubled to \$13 billion. According to the press, \$30 million is designated for termination costs associated with the VH-71 program. The \$100 million would allow the primary contractor, Lockheed Martin, to continue some work on the already-built helicopters to preserve the technology development.

C-17: The report also contains approximately \$2.5 billion in appropriations to purchase 10 unrequested C-17 cargo planes. The House included three additional C-17s in its version.

MRAV: The bill contains \$6.3 billion to buy more than 6,600 mine-resistant all-terrain vehicles for Afghanistan.

Ship Purchasing: The conference report provides approximately \$15 billion to buy seven ships: a DDG-51 Arleigh-Burke class destroyer, a Virginia-class submarine, two Littoral Combat Ships, an Intra-theater Connector Ship, and two T-AKE auxiliary dry cargo carriers.

Guantanamo Bay: The report does not allocate any money to close the military prison at Guantánamo Bay, Cuba, but allows for the transfer of Guantanamo detainees to the U.S. soil for purposes of prosecution and detention. However, the conference report does not providing any funding to purchase facilities or prisons, like the Thomson Prison in Illinois, for the purpose of holding current GITMO detainees.

Division B—Other Matters

Sustainable Growth Rate (SGR): With a lack of agreement on how to once and for all fix the flawed SGR formula (and Democrat infighting stalling the passage of the government takeover of health care bill), the Congressional Democrats have tacked on a temporary “patch” to keep doctors from receiving a devastating 21.2% cut to reimbursement effective January 1, 2010. The SGR patch will delay the cuts by freezing the current rates in place through February 28, 2010. The legislation also reduces by \$1 billion funds in the Medicare Improvement Fund established in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). For more information on the background of SGR see the [RSC Legislative Bulletin: H.R. 3961 – Medicare Physician Payment Reform Act of 2009](#).

The Democrats detached the permanent “doc fix” provision from the larger [Pelosi Government Takeover of Health Care bill, H.R. 3962](#), and [passed](#) it separately (without being paid for) on November 19, 2009, so that the cost of the “doc fix” would not count against the cost of the underlying government healthcare takeover bill for the purposes of PAY-GO. Despite passage of H.R. 3961, the Senate had already rejected an unpaid for “doc fix” (S.1776) when the vote failed by a resounding [47-53](#) (well short of the 60 votes needed) with 12 Democrats and one Independent joining Republicans not to proceed.

Extension of Premium Subsidies and Eligibility for Consolidated Omnibus Budget Reconciliation Act (COBRA): Extends COBRA (extended post-employment health care policy) subsidies, established under the ARRA, from nine to 15 months and extends eligibility for individuals who lost their jobs through February 28, 2010 (currently eligibility is set to expire on December 31, 2009). The unpaid for COBRA provision is given “emergency designation” so that under the Democrats’ rules it does not have to comply with PAYGO. Conservatives may be concerned that the legislation extends new government subsidies, leaving an ever shrinking portion of the population with truly private health care coverage. Some conservatives may be concerned with the increased uptake of COBRA as it will add to the already high cost of coverage due to adverse selection creating the opposite of a stimulus effect. It could cause employees to spend more out of their wages on health care instead of in the economy and force employers to spend more time and money to administer COBRA to former employees and pay rising premiums.

The 2009 economic stimulus package (ARRA) established a 9 month employer-provided subsidy for unemployed workers under COBRA. Individuals pay 35% of the COBRA premium while employers pick up the remaining 65%, which is reimbursed by the government through a payroll tax credit. The bill capped the eligibility for receiving premium assistance at \$145,000 for an individual and \$290,000 for a family. Finally the bill picks up a Senate provision that allows individuals to opt-into a lower cost plan, if one was previously provided under the employer.

HHS Poverty Guidelines and Assistance Eligibility: Prohibits the Secretary of HHS from publishing poverty guidelines for 2010 before March 1, 2010 and keeps in place 2009 guidelines until such date. This provision aims to keep 2010 poverty guidelines from being lower than those established 2009 (at a cost of \$305 million) in order to prevent a reduction in eligibility for individuals in certain means-tested programs, such as Medicaid, Supplemental Nutrition Assistance Program (SNAP), and child nutrition.

SBA Loan Program Extension: The conference report provides \$125 million in additional funds to reduce fees paid by borrowers under the SBA 7(a) guaranteed loan program. Funding for the program was exhausted in November. The bill also extends loan guarantee of up to 90 percent through February, 28, 2010. The SBA’s 7(a) Loan Program gets its name from section 7(a) of the Small Business Act, which authorizes the SBA to provide loans to small businesses.

Satellite Provision: Under current law, satellite and cable television carriers pay royalties to the Copyright Office so they can transmit signals to subscribers. The Copyright Office distributes those fees to owners of copyrights. The requirement that satellite companies pay royalty fees to owners of copyrighted material for retransmitting that material to their subscribers is set to expire on December 31, 2009. The conference report would provide a temporary extension of current law through February 28, 2010. Earlier this year, the House passed a five-year satellite TV reauthorization (HR 3570), but the Senate has yet to bridge the differences between bills.

PATRIOT Act Extensions: In the USA PATRIOT Improvement and Reauthorization Act of 2005, Congress extended the sunset on FISA roving wiretaps (Section 206), FISA business records (Section 215), and the “lone-wolf” provision (Section 6001). Each of these provisions is set to expire on December 31, 2009. The Defense Appropriations bill

extends these provisions for two months through February 28, 2010. For more information on the PATRIOT Act and these provisions, see the [RSC bulletin on the PATRIOT Act](#) from 2005.

- *Section 206: Roving surveillance authority under FISA.* This section permits roving FISA surveillance orders (roving wiretaps). Orders do not need to specifically identify or name individuals when targets take actions to thwart surveillance. Thus, a roving wiretap may cover multiple locations, establishments, or neighborhoods because the target is being evasive and intentionally using multiple telephones for communication (rather than a single cell phone that could be more easily wiretapped). This provision allows for a surveillance order without authorities having to name a specific person under surveillance.
- *Section 215: Access to records and other items under FISA.* This section permits access to tangible items under FISA, including business records for hotels, motels, automobile rentals, storage facilities, library activities, internet service provider records, and other tangible items, regardless of the individual holding the item. This provision is widely referred to as the “library” provision since libraries’ records are included in the type of tangible items available under a FISA order.
- *Section 6001: “Lone Wolf” provision.* This section allows the government to conduct surveillance on a non-U.S. citizen who is preparing for or engaging in international terrorism, even if that individual is not an agent of a foreign power. This provision was enacted to allow the government to follow individuals who are not explicitly affiliated with a terrorist organization.

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