



FY2010 Supplemental for Wars, Disaster Assistance, Haiti Relief, and Court Cases

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Summary

The Administration requested \$63.4 billion in FY2010 supplemental appropriations:

- \$5.1 billion to replenish the U.S. Disaster Relief Fund administered by the Federal Emergency Management Agency (FEMA);
- \$33 billion for the Department of Defense (DOD) primarily for deploying 30,000 additional troops to Afghanistan;
- \$4.5 billion in war-related foreign aid to Afghanistan, Iraq, and Pakistan;
- \$2.8 billion for Haiti reconstruction and foreign aid in the wake of the earthquake;
- \$243 million for activities related to the Deepwater Horizon oil spill.
- \$13.4 billion to compensate veterans exposed to Agent Orange;
- \$3.4 billion to settle land trust claims of American Indians in the Cobell case and \$1.2 billion to pay for discrimination claims of 70,000 black farmers in the Pigford II case.

On March 23, 2010, the House passed H.R. 4899, the Disaster Relief and Summer Jobs Act with \$5.7 billion in funding to replenish FEMA's Disaster Assistance Fund, and \$600 million for a Labor Department summer jobs program. After four days of floor debate from May 24 through May 27, 2010, the Senate passed H.R. 4899 by a vote of 67-28, including not only the \$5.7 billion for FEMA but also \$36.6 for the Afghan and Iraq wars, \$2.9 billion for Haiti relief and reconstruction, \$193 million for expenses related to the Deepwater Horizon oil spill, and \$13.4 billion for veterans affected by Agent Orange. The Senate bill also adds about \$600 million in U.S. disaster aid, \$400 million for other foreign aid and deletes the \$600 million for summer jobs.

The \$58.9 billion total in the Senate bill is about \$4 billion below the Administration request primarily because funds for the federal two court settlements are not included. Funding for those settlements is included in the House but not the Senate version of H.R. 4213, the American Jobs and Closing Tax Loopholes Act of 2010, and is likely to be settled in conference.

The Defense Department, the State Department, FEMA, and the court plaintiffs have all cited funding deadlines in May and June but there appears to be some flexibility in these dates. The DOD war funding may not be needed until the end of July. Although Admiral Thad Allen, and Department of Homeland Security Secretary Jane Napolitano stated that the Coast Guard would run out of money that could be drawn from the Oil Spill Liability Trust Fund in two weeks to pay for its oil spill response activities, the Coast Guard may be able to tap other funding sources temporarily. While FEMA originally said it would run out of money for disaster relief projects in June, it currently has \$952 million in its Disaster Relief Fund because it has only paid claims for urgent needs. And while the plaintiffs in the Cobell and Pigford cases could reject the settlements, support in Congress and the Administration could persuade them to wait.

Senate debate focused on proposed ways to respond to the Gulf oil spill, border security, and cut spending to pay for the supplemental. The House Appropriations Committee cancelled its May 27, 2010 markup of their alternative version and another date has not yet been announced.

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Most Recent Developments

On May 27, 2010, by a vote of 67-28, the Senate passed H.R. 4899 with \$58.9 billion in funding for U.S. disaster assistance, DOD and war-related State/USAID programs, Haiti recovery and reconstruction funds, additional benefits for veterans with illnesses related to exposure to Agent Orange in Vietnam, and expenses related to the Deepwater Horizon oil spill after four days of debate.¹ The House Appropriations Committee cancelled its planned markup of the bill on May 27th, 2010 without announcing an alternate date. Both houses returned from the Memorial Day recess on June 7, 2010.

Senate debate began on May 24, 2010, and a cloture motion was filed on May 25, 2010.² On May 26, by unanimous consent, the Senate adopted an agreement proposed by Majority Leader Senator Reid that limited debate and confined votes to six individual amendments, to be followed by a cloture vote and the withdrawal of other amendments. None of the six amendments was adopted. On May 27, 2010, the Senate voted to invoke cloture by 69-29. On May 27, 2010, the Senate adopted a Managers' amendment made up of 16 amendments, passed the bill, appointed conferees, and sent the bill to the House.³

Except for an additional \$26 million for oil spill relief activities added in a floor amendment, the Senate-passed bill included the same funding recommended by the Senate Appropriations Committee:

- \$5.7 billion for FEMA;
- \$36.6 billion for the Afghan and Iraq wars primarily for DOD;
- \$2.9 billion for Haiti relief and reconstruction;
- \$219 million for expenses related to the Deepwater Horizon oil spill (with the floor amendment);
- \$13.4 billion for veterans affected by Agent Orange;
- \$600 million in additional U.S. disaster aid; and
- \$400 million for other foreign aid.

The President supported the Senate-reported version of H.R. 4899.⁴ On May 25, 2010, the White House announced that the Administration would be requesting an additional \$500 million to respond to the deteriorating situation on the border including the deployment of an additional 1,200 National Guard personnel but a budget amendment has not yet been submitted.⁵

¹ *Congressional Record*, p. S4507, May 27, 2010.

² CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth, Valerie Heitshusen, and Betsy Palmer.

³For cloture motion, see *Congressional Record*, p. S4197; for Reid agreement, p. S4435; for vote to invoke cloture, see p. S4483; for appointment of conferees, see p. S4171.

⁴ OMB, "Statement of Administration Policy on H.R. 4899," 5-24-10; http://www.whitehouse.gov/omb/assets/sap_111/saphr4899s_20100524.pdf.

⁵ White House, "Remarks by the President on the Gulf Oil Spill," May 27, 2010.

Highlights of Congressional Action

During the Senate debate from May 24 to May 27, 2010, Senators offered some 39 amendments including several to respond to the Deepwater Horizon oil spill, add funds for border security, cut other government programs to pay for the additional spending, and one that would require the President to give Congress a timetable to redeploy troops from Afghanistan.

The House Appropriations Committee cancelled its scheduled markup on May 27, 2010 and has not announced. Press reports suggest that the markup may have been cancelled because of concerns from some Members about the \$31 billion in additional spending for domestic programs included in the House bill, particularly because most of it is not offset (see below).⁶ When the HAC marks up its version of the FY2010 supplemental, that version could be substituted on the floor to the Senate-passed version of H.R. 4899 that was passed May 27, 2010.

House Appropriations Committee Press Release

On May 26, 2010, the House Appropriations Committee (HAC) issued a press release outlining the elements in its proposed version of the FY2010 supplemental before cancelling its markup scheduled for May 27, 2010. A new date has not yet been announced.

In future floor consideration, the HAC version of the FY2010 supplemental is likely to be proposed as a substitute to the Senate version, and would then supersede the earlier version of H.R. 4899 passed by the House in late March 2010, which addressed only the FEMA disaster relief request and added funds for summer jobs. By passing a substitute that covers all the funding areas, the House can ensure consideration of its funding recommendations for war-related, Haiti and other programs. Once House floor action is completed, that version would be sent to the Senate for its consideration, a process informally called “pingponging,” which has been used in recent years when the standard process of conferencing bills has not been considered desirable.

According to the HAC press release, the House substitute may include a total of \$85.2 billion. That would include not only \$37.5 billion in funds for DOD and State/USID’s war-related activities, \$2.8 billion for Haiti relief and reconstruction, \$224 million for the Gulf Coast oil spill, and \$13.4 billion for veterans with Agent Orange related diseases that were included in the Senate-passed version of H.R. 4899, but also \$31.3 billion in additional funding for several domestic programs. The HAC is not planning to include the \$5.1 billion for FEMA disaster relief included in its original version of H.R. 4899.

The HAC press release outlines the programs included in the additional \$31.3 billion:

- \$23 billion for an Education Jobs Fund that would provide emergency support to local school districts and prevent the layoff of up to 300,000 teachers;

⁶ BNA, *Daily Report for Executives*, “Appropriations: Senate Prepares to Pass \$60 Billion Supplemental; Measure on Hold in House,” May 28, 2010; *Congressional Quarterly*, Budget Tracker, “Morning Briefing: House Supp to Boost Domestic Programs,” May 26, 2010. CQ Budget Tracker includes the draft House bill and report which will be considered during markup.

- \$5.7 billion for additional funding of Pell grants to meet an unanticipated shortfall;
- \$1.2 billion to retain or hire an estimated 5,525 law enforcement officers for three years;
- \$677 million to enhance border security with additional customs and border protection officers and National Guard troops, tactical communications and infrastructure (offset by rescissions);
- \$500 million to hire or retain local firefighters;
- \$677 million (offset by rescissions) for border security;
- \$224 million for the Gulf Coast oil spill;
- \$173 million to support \$12 billion in loan guarantees for USDA Section 502 single-family housing loan program;
- \$180 million to support \$18 billion in loan guarantees split evenly between nuclear and renewable energy;
- \$100 million in Community Development Block Grant funding to help communities hurt by natural disasters this year;
- \$59 million for Coast Guard aircraft;
- \$50 million for food purchases to be distributed through The Emergency Food Assistance Program (TEFAP) at USDA;
- \$50 million to improve port facilities in Guam;
- \$48 million to increase mine safety enforcement, inspections, and other measures;
- \$27 million to support an additional \$850 million in direct loans and loan guarantees to family farmers under the USDA Farm Service Agency;⁷ and
- \$20 million for the GAO to audit Recovery Act funds.⁸

Senate Floor Action

The Senate debated H.R. 4899 from May 25-May 27, 2010 focusing primarily on border security concerns, responding to the Gulf oil spill, paying for supplemental spending, ensuring funding for recent national disasters, and setting a timeline to withdraw from Afghanistan. Based on a proposal by Majority Leader Senator Reid and adopted by unanimous consent on May 26, 2010, the Senate agreed to consider and vote on six amendments within strict time limits, to be followed by a vote on a cloture motion filed on May 25, 2010. If points of order were raised and sustained, the amendments would be withdrawn. The Senate rejected the six amendments.

⁷ CRS Report R41255, *FY2010 Supplemental Appropriations for Agriculture*, by Jim Monke.

⁸ House Appropriations Committee, "Summary of FY2010 Supplemental," and "Funding Summary," 5-26-10; http://appropriations.house.gov/images/Supplemental_Appropriations_Bill_Summary_-_War_Jobs_and_Other_needs_-_05.26.2010.pdf; http://appropriations.house.gov/images/FY2010_Supplemental_Funding_Table_-_05.26.2010.pdf.

Senators Kyl and McCain proposed additional funding for 6,000 National Guard and other personnel to reverse a deteriorating security situation on the border. While the White House announced that the President has authorized the deployment of an additional 1,200 National Guard and would be requesting \$500 million for border security, that amendment has not yet been submitted. Senators Landrieu and Cochran proposed various measures to respond to the Deepwater Horizon oil spill including providing relief to small businesses by delaying loan or principal payments or providing technical assistance. Senator Menendez proposed an amendment requiring oil polluters to pay the full cost of oil spills.

Senators McCain and Coburn proposed amendments to cut \$59 billion other federal funding to finance the additional spending in the deficit, arguing the spending did not qualify as an emergency and hence should be offset. Senator Inouye questioned whether these proposals to rescind unobligated balances, cap federal salaries and other measures were realistic.

The six amendments receiving individual votes were rejected as follows:

- McCain amendment to provide \$250 million for 6,000 National Guards to secure the southern land border of the United States offset by rescinding unobligated funds in the American Recovery and Reinvestment Act, P.L. 111-5) (S.Amdt. 4214 withdrawn after failure to receive the 60 votes necessary to waive the budget point of order raised; the vote was 51 to 46);⁹
- Kyl amendment to appropriate \$200 million to prevent illegal crossings at the southwest border with an offset from unobligated funds in the American Recovery and Reinvestment Act (S.Amdt. 4228, withdrawn after failure to receive the 60 votes necessary to waive the budget point of order raised; the vote was 54-44);¹⁰
- Cornyn amendment provides funds from unobligated balances to deploy National Guards on the border (S.Amdt. 4202, withdrawn after failure to receive the 60 votes necessary to waive the budget point of order raised; the vote was 54 to 43);¹¹
- Feingold amendment requiring the President to set a timetable to redeploy troops from Afghanistan (S.Amdt. 4204 rejected by a vote of 18 yeas to 80 nays);¹²
- Coburn amendment cutting \$59 billion in the supplemental bill over ten years to offset the cost of the supplemental by: a one-year freeze on federal civilian salaries, capping the number of federal employees, reducing “nonessential government travel” and other proposed cuts (S.Amdt. 4231 as modified, tabled by a vote of 53-45);¹³

⁹ For vote, see *Congressional Record*, p. 4479, May 27, 2010; for amendment text, see p. S4182, May 25, 2010.

¹⁰ For vote, see *Congressional Record*, p. S4479, May 27, 2010; for amendment text, see p. S4185, May 25, 2010.

¹¹ *Ibid*; for text, see p. S4419.

¹² For vote, see *Congressional Record*, p. S4482, May 27, 2010; for text., see p. S4181, May 25, 2010.

¹³ For vote, see *Congressional Record*, p. S4482, May 27, 2010; for text of modified version, see p. S4426, May 26, 2010.

- Coburn amendment to offset the \$59 billion in H.R. 4899 by reducing Congress' own budget and disposing of "unneeded Federal property and equipment; and rescinding unspent Federal funds (\$45 billion) (S.Amdt. 4232, tabled by a vote of 50 to 47);¹⁴

After these amendments were considered, the Senate invoked cloture by a vote of 69 to 20 on May 27, 2010. Other pending amendments were withdrawn. Later that day, by unanimous consent, the Senate voted to adopt 16 amendments in a Managers' amendment. H.R. 4899 as amended was then passed by a vote of 67 to 28, conferees were appointed, and the bill was sent to the House.¹⁵

Senate Markup of H.R. 4899

On May 13, 2010, the Senate Appropriations Committee (SAC) marked up and reported H.R. 4899, the Disaster Relief and Summer Jobs Act of FY2010 including \$58.9 billion in funding. On March 24, 2010, by a vote of 239-174, the House passed H.R. 4899 (no House report, S.Rept. 111-188) including \$5.7 billion to fund the Federal Emergency Management Agency (FEMA) requested by the Administration to replenish its Disaster Assistance Fund, plus \$600 million for the Department of Labor's summer jobs program, not requested by the Administration. The House total is offset by \$620 million in rescissions, which brings the amount scored for the bill to \$5.1 billion. This original House version of H.R. 4899 did not address much of the \$63.4 billion in supplemental requests from the Administration (see **Table 1**).

In its markup, the SAC did not include funds for summer jobs, but did include the \$5.1 billion for FEMA's Disaster Relief Fund. The SAC also provides \$36.6 billion for DOD's and State Department/USAID war-related activities, \$2.9 billion for Haiti relief and reconstruction activities, and about \$200 million to respond to the Deepwater Horizon oil spill, making a variety of adjustments to the Administration's requests. The SAC also includes \$13.4 billion in mandatory spending for additional benefits for Vietnam veterans exposed to Agent Orange that the Administration requested (see **Table 1**).

In addition, the SAC version also provided \$386 million for other U.S. disaster relief programs to respond to recent floods in Tennessee and Rhode Island, and other natural disasters and \$592 million for other foreign aid and humanitarian assistance programs. Together, this brings the funding in H.R. 4899 as reported by the SAC to \$59.3 billion, which is offset by \$300 million in rescissions for a total of \$58.9 billion (see **Table 1**). The SAC total is \$4.1 billion below the Administration's request, largely because the SAC did not address the Administration's requests for \$4.6 billion to two recently-settled court cases. The Administration supports passage of the version of H.R. 4899 reported by the SAC.¹⁶

The original House-passed version and the Senate-passed version of H.R. 4899 do not address the Administration's requests for \$4.6 billion to settle two recently-settled federal court cases—the Cobell v. Salazar case about U.S.G. management of Indian trust lands and the Pigford II case to

¹⁴ *Ibid*, p.S4483; for text, see S4195..

¹⁵ *Congressional Record*, p. S4507, May 27, 2010.

¹⁶OMB, "Statement of Administration Policy on H.R. 4899," 5-24-10; http://www.whitehouse.gov/omb/assets/sap_111/saphr4899s_20100524.pdf.

settle discrimination claims by black farmers. Funding for these court cases has been Senator Inouye has suggested that funding for these court cases could be added to other legislation.

Overview, Deadlines, and Potential Issues

The Administration requested a total of \$63 billion in supplemental funding in FY2010 to deploy more U.S. troops for the Afghan War, Disaster Assistance Funds, recovery and foreign aid funds for Haiti in response to the January 2010 earthquake, and to settle two recently-decided court cases for American Indians and black farmers. Specifically, the FY2010 supplemental requests include

- \$5.1 billion to replenish the U.S. Disaster Relief Fund administered by the Federal Emergency Management Agency;
- \$33.0 billion for the Defense Department, primarily to deploy 30,000 more troops to Afghanistan;
- \$4.5 billion in foreign assistance for Afghanistan, Iraq, and Pakistan;
- \$2.8 billion for Haiti reconstruction and foreign aid in the wake of January's earthquake;
- \$13.4 billion to compensate veterans exposed to Agent Orange;
- \$243 million for appropriations-related responses to the Deepwater Horizon oil spill; and
- \$3.4 billion to settle land trust claims of American Indians in the long-standing Cobell case and \$1.2 billion to settle the discrimination claims of 70,000 black farmers in the Pigford II case (see **Table 1**).¹⁷

The House passed H.R. 4899, the Disaster Relief and Summer Jobs bill on March 24, 2010, by a vote of 239-174 with \$5.1 billion to replenish FEMA's Disaster Relief Fund and \$600 million for the Labor Department's summer jobs program.¹⁸ On May 13, 2010, the Senate Appropriations Committee (SAC) marked up this bill by deleting the summer jobs monies, and including \$5.1 billion for FEMA, \$36.6 billion for Defense Department and State Department funding for the Afghan and Iraq wars, \$2.9 billion in relief and reconstruction funding for Haiti in response to the January 2010 earthquake, \$193 million for activities relating to the Deepwater Horizon oil spill, and \$13.4 billion for veterans affected by Agent Orange.

The Senate-passed bill also includes about \$600 million to fund other U.S. disaster activities, and \$400 million for other foreign assistance programs bringing the total in the reported bill to \$58.9 billion. This total is about \$4 billion below the request largely because the SAC did not include funds for the two court settlements (see **Table 1**).

¹⁷ This figures does not include the Administration's requests for several new programs of assistance for workers affected by the oil spill or a proposal to increase the tax per barrel of oil to replenish the Oil Spill Liability Trust Fund, that would be in the purview of other committees.

¹⁸ H.R. 4899 as referred to the Senate, May 17, 2010.

One of the issues arising as the Senate and House consider H.R. 4899 is the effect of this supplemental spending on the federal deficit. In its current version of H.R. 4899, the House bill offsets \$620 million of the \$5.7 billion in additional spending. The Senate-passed version of H.R. 4899 includes \$300 million in rescissions to offset the \$59.3 billion recommended in the bill. All of the funds in the original House-passed version of H.R. 4899 is designated emergency spending. Of the \$45.8 billion in discretionary spending in the Senate-reported version, all but \$173 million is designated as emergency spending. Emergency spending does not count against the budget caps set in the FY2010 concurrent resolution. If those caps are exceeded, the spending could be subject to a point of order, which would need to be waived for the spending to be approved (see below).¹⁹

Federal budget rules distinguish between two types of federal spending, discretionary spending (e.g., annual appropriations acts) and direct (or mandatory) (e.g., Medicare) spending.²⁰ Of the \$63.4 billion in the President's supplemental request, \$45.4 billion is discretionary spending and \$18.1 billion is mandatory or direct spending (see **Table 1**). The Administration submitted these requests to Congress in supplemental proposals included as part of the Administration's FY2011 budget, and in budget amendments submitted on February 12, 2010, March 24, 2010, and May 12, 2010.²¹

Many see emergency supplemental appropriations as undermining budgetary discipline because funding is not subject to annual caps in budget resolutions on overall discretionary spending that often require trade-offs between different types of spending. Section 403 (f) in S.Con.Res. 13, the FY2010 budget resolution, defines spending as emergency if it is "essential ... sudden ... compelling ... unanticipated," but it is a congressional prerogative to decide where the emergency designation is appropriate. Supplementals are also perceived as receiving less scrutiny than regular appropriations. In the current fiscal environment, some Members are concerned about the impact of this additional spending on the deficit.

¹⁹ See Sec. 3002 in Senate version of H.R. 4899, and Section 102 in House-passed version of H.R. 4899 for emergency designation; see CBO, "H.R. 4899, Supplemental Appropriations, FY2010, Non-Emergency by Title, Discretionary Only," 5/14/10.

²⁰ Discretionary spending is provided in appropriations acts generally on an annual basis. Direct spending, in contrast, is generally provided (in many cases, on a permanent basis, and in other cases, for a set number of fiscal years) in authorizing legislation that requires federal payments to individuals or entities, often based on eligibility criteria and benefit formulas set forth in statute. Some direct spending is provided in appropriations acts but is controlled by the authorizing statute(s) or provided by legislative language in an appropriations acts, such as legislative language authorizing a litigation settlement.

²¹ Office of Management and Budget, *Budget of the United States, FY2011*, "Supplemental Proposals," 2-1-10, hereinafter OMB, "FY2010 War-Related Supplemental;" <http://www.whitehouse.gov/omb/budget/fy2011/assets/sup.pdf>; OMB, FY2010 Supplemental, "Estimate No. 2, Request for Department of Homeland Security for Disaster Relief, for continued response and recovery efforts associated with prior large events, such as Hurricane Katrina and the Midwest floods; and for general provisions," February 12, 2010, hereinafter, OMB, "FY2010 Disaster Relief and Court Case Supplemental;" Request; Office of Management and Budget, "Estimate No. 3, March 24, 2010; FY2010 Emergency Supplemental Proposals in the FY2011 Budget for Costs Associated with Relief and Reconstruction Support for Haiti following the Earthquake of January 12, 2010, for the Departments of Agriculture, Defense, Health and Human Services, Homeland Security, State, and the Treasury," March 24, 2010, hereinafter, OMB, "FY2010 Haiti Supplemental," http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf; OMB, Estimate No. 5, "To provide critical funds and authorities for the Departments of Labor, Agriculture, Commerce, Justice, the Interior, the Environmental Protection Agencies, the Departments of Health and Human Services, Homeland Security, and the Treasury needed to respond to Deepwater Horizon Oil Spill in the Gulf of Mexico spill as well as changes to current law to better prepare the nation for any future spills, 5/12/10," hereinafter, OMB, "Oil Spill Request;" http://www.whitehouse.gov/omb/assets/budget_amendments/supplemental_05_12_10.pdf.

Budget Rules and Supplemental Requests²²

Congress may debate, as it does with any supplemental appropriations request, whether to increase spending above the existing level for FY2010 and, in some cases, levels for subsequent fiscal years. If Congress decides the additional spending is necessary, it must also decide whether the request warrants increasing the budget deficit or whether to offset the additional spending by either cutting federal spending or increasing revenues.

Congress considers all spending or revenue legislation, including supplemental appropriations bills, within rules and procedures that are intended to address these policy options.²³ In particular, Congress will consider this FY2010 supplemental appropriations request within the constraints set by the FY2010 budget resolution (S.Con.Res. 13, H.Rept. 111-89), as well as other budget rules, such as congressional pay-as-you-go rules and the recently enacted Statutory PAYGO Act of 2010 (P.L. 111-139).

Under these budget rules, Congress could exempt all or portions of the spending from these constraints by designating the spending as an emergency (or as being for “overseas deployments or other activities” in the House).²⁴ Alternatively, under congressional rules, the applicable points of order may be waived or simply not raised during consideration of the supplemental appropriation measure.

While an emergency designation would exempt spending from these budget rules, the emergency designation itself could be subject to a point of order.²⁵ This applicable point of order may be waived in both houses. In the House, it can be waived by a special rule reported by the House Rules Committee and agreed to by the House, and in the Senate, by waiver motion, which requires a three-fifths affirmative vote of Senators (60 votes if there is no more than one vacancy in the Senate).

²² Written by William Heniff, Analyst on Congress and the Legislative Process, Government and Finance Division, CRS.

²³ For an overview of federal budget procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith; for more detailed information on points of order that apply to budgetary legislation, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno; for information on PAYGO rules, see CRS Report RL33850, *The House’s “Pay-As-You-Go” (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith, CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr., and CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Robert Keith.

²⁴ The emergency and overseas deployments designations are provided for in Sections 403 and 423 of S.Con.Res. 13, the FY2010 congressional budget resolution, as applicable to the Senate and House, respectively.

²⁵ For additional information on the emergency designation, see CRS Report RS21035, *Emergency Spending: Statutory and Congressional Rules*, by Bill Heniff Jr..

Table I. Overview: FY2010 Supplemental

in billions of dollars

Agency/Purpose	FY2010 Enacted	FY2010 Supp Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	Brief Description of Request
Federal Emergency Management Agency: Disaster Relief Fund	1.6	5.1	5.1	5.1	To replenish the Disaster Relief Fund which is low because of recent disasters and damage claims awarded.
Defense: Afghan and Iraq wars	129.6	33.0	0	32.9	\$30 billion for Afghanistan, \$1 billion for Iraq, and \$2 billion for baseline fuel costs.
State/USAID: Afghanistan, Iraq, and Pakistan war-related aid	5.6	4.5	0	3.7	Includes \$2 billion for Afghanistan, \$2.1 billion for Iraq and \$370 million for Pakistan for foreign aid and diplomatic operations.
State/USAID/DOD: Haiti humanitarian aid and reconstruction	0.9	2.8	0	2.9	Includes \$1.6 billion for disaster assistance, \$1 billion for foreign aid activities and \$250 million for diplomatic operations.
State/USAID: Other foreign aid and humanitarian assistance ^a	0	0	0	0.6	Not applicable.
Various Agencies: Other U.S. disaster assistance ^b	10.9	0	0	0.4	Not applicable.
Agriculture Department: Loan authorizations and subsidies	0	0	0	0.0	Not applicable.
Labor Department: Training and Employment Services	0	0	0.6	0	Provides additional funds for Labor Dept.'s summer Jobs program as did the American Economic Recovery Act.
Oil Spill Recovery Activities	0	.1	0	.1	Provides funds for inspections, studies and compensation for fishermen.
Various agencies: Rescissions	0	0	-0.6	-0.3	
DISCRETIONARY TOTAL WITH RESCISSIONS	148.6	45.5	5.1	45.4	
DISCRETIONARY TOTAL WITHOUT RESCISSIONS	148.6	45.5	5.7	45.8	
Department of Veterans' Affairs: Compensation and Pensions	0	13.4	0	13.4	Provides compensation for veterans likely to become eligible for new or additional benefits due to diseases caused by Agent Orange.

Agency/Purpose	FY2010 Enacted	FY2010 Supp Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	Brief Description of Request
Treasury: Settling Cobell v. Salazar	0	3.4	0	0	Would authorize and provide funding to pay for recent settlement of management and accounting claims for individual Indian trust funds and lands.
Agriculture: Settling Pigford Discrimination Claims	0	1.2	0	0	Would provide funding for recent court-approved settlement of discrimination claims by black farmers.
Oil Spill Recovery Activities ^c	0	0.1	0	0.1	Would allow Coast Guard to get one or more advances up to \$100 million each from the Oil Spill Liability Trust Fund up to \$1.5 billion in request and up to \$1 billion in SAC markup to finance response activities for Deepwater Horizon Spill, to be repaid.
MANDATORY TOTAL	0	18.1	0	13.5	
DISCRETIONARY AND MANDATORY TOTAL	148.6	63.5	5.1	58.9	
DISCRETIONARY AND MANDATORY TOTAL WITHOUT RESCISSIONS	148.6	63.5	5.7	59.3	

Source: OMB, “FY2010 War-Related Supplemental;” <http://www.whitehouse.gov/omb/budget/fy2011/assets/sup.pdf>; OMB, “FY2010 Disaster Relief and Court Case Supplemental;” hereinafter, OMB, “FY2010 Haiti Supplemental;” http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf; OMB, “Oil Spill Request;” http://www.whitehouse.gov/omb/assets/budget_amendments/supplemental_05_12_10.pdf; H.R. 4899 as passed by the House, 3-24-10, H.R. 4899 as reported by the Senate, 5-13-10, and S.Rept. 111-188.

Notes: CRS calculations based on sources above.

- a. Includes additional funding for Mexico, Democratic Republic of Congo, Jordan, Vietnam, El Salvador, Mexico, Avian flu and Migration and Refugee assistance.
- b. Includes additional funding for disaster relief for floods, storms, and other natural disasters.
- c. Includes funds for recovery planning grants for states, to compensate fisherman affected by the oil spill, for additional inspections and studies and to increase the amount of funding that the Coast Guard can draw upon or receive “advances” from the Oil Spill Liability Trust Fund to finance its recovery activities. Although the SAC and CBO show \$125 million for Sec. 2001 in FY2010, the advances authorized (of up to \$100 million each up to a total of \$1 billion) for the Coast Guard’s oil spill response activities associated with the Deepwater Horizon incident are not annual appropriations and could be replenished by charges collected from the “responsible parties” in later years; see CBO, “H.R. 4899, the Supplemental Appropriations Act, 2010, 5/14/10; by title, all years.”

Potential Deadlines

The Senate passed H.R. 4899 on May 27, 2010 before the Memorial Day recess. The House markup of its own version of the bill that could be substituted as an amendment on the floor to the Senate version was scheduled on May 27, 2010 but cancelled. A new date has not yet been announced. According to press reports, the delay may reflect concerns among some Members about the additional \$31 billion in spending proposed in the House Appropriations Committee press release including funds to prevent layoffs of teachers, law enforcement officers and Pell grants for students, some of which was funded in last year's American Recovery and Reinvestment Act.²⁶

The Coast Guard, the Defense Department, State Department, Federal Emergency Management Agency, and plaintiffs in the Cobell and Pigford II cases have all cited deadlines for when the supplemental funding would be needed, although there appears to be some flexibility in the dates.

Dedicated Funds for Coast Guard Oil Spill Response Activities Could Run Out in Mid-June

In a June 4, 2010 letter to Congressional leaders, Admiral Thad Allen, National Incident Commander for the Deepwater Horizon oil spill, and Department of Homeland Security Secretary Janet Napolitano urged Congress to act on the Administration's proposal to raise the cap on funds that can be drawn from the Oil Spill Liability Trust Fund for response activities. They stated that "at the current pace of BP/Deepwater Horizon response operations, funding available in the Emergency Fund [from the Oil Spill Liability Trust Fund] will be insufficient to sustain Federal response operations within two weeks."²⁷ This letter suggests that the Coast Guard could reach the current \$150 million cap on the amount that can be drawn from the Oil Spill Liability Trust Fund by June 18th, 2010. If Congressional action is not completed in two weeks or by June 18th, 2010, however, the Coast Guard may be able tap other funding sources (such as its regular operating account) to finance its oil spill response activities.

Defense Department Deadline Could Be End of July 2010

The Department of Defense (DOD) received \$129.6 billion, 80% of its total FY2010 war funding in bridge funds included in its regular appropriations acts enacted last December (P.L. 111-118 and P.L. 111-117), almost double the 45% received in the bridge the previous year. Secretary of Defense Gates recently reiterated that DOD would need the additional \$33 billion for the 30,000 troops deploying to Afghanistan by Memorial Day, the same date cited in previous years when the funding available was substantially lower.²⁸

²⁶ Congressional Quarterly, Senate Passes Supplemental Funding Bill; House Action Put on Hold, May 27, 2010; *Congress Daily*, "Supp Eyed as Vehicle for Ed Bill," May 4, 2010; *The Washington Post*, "The Congressional Black Caucus and the Politics of Summer Jobs," May 4, 2010.

²⁷ Letter to House Speaker Nancy Pelosi, Majority Leader Hoyer, Minority Leader Boehner, Senate Majority Leader Reid and Minority Leader McConnell from Secretary of Homeland Security Janet Napolitano and Admiral Thad Allen, National Incident Commander, June 4, 2010.

²⁸ CQ, Budget Tracker, "Morning Briefing," May 7, 2010.

In February testimony, the Secretary of the Army, which faces the greatest need for war funding, testified that the timeframe for the Army “in which we can comfortably fund this [war funding] would be at the end of June, beginning of July.”²⁹ Based on CRS calculations using Army data, it appears that the Army could, if necessary, cover both its regular base activities and war operations through July 2010 if obligations follow the pattern of recent years, and even later if funds were temporarily transferred from other appropriation accounts using currently available authority.³⁰

FEMA Limits Disaster Assistance to Extend Deadline

To make the Disaster Relief Fund last longer, the Federal Emergency Management Agency (FEMA) has limited the release of funds for claims, delayed interagency reimbursements, and recovered funds from previous years. Nevertheless, in May 2010, FEMA estimated that the Disaster Relief Fund would become insolvent the end of June assuming average monthly spending of \$350 million and the current balance of \$600 million.³¹

As of June 7, 2010, however, FEMA has a balance of \$952 million in the Disaster Relief Fund (DRF) including recoveries of funds from previous years. These funds may be available in part because FEMA earlier adopted a policy to pay only for those projects necessary to meet immediate needs or respond to life-threatening situations in order to ensure that funds would meet the most urgent needs. If FEMA spent at its normal rate of about \$350 million a month, these funds would last another three months or through August 2010. At the moment, FEMA has a backlog of \$1.4 billion in projects awaiting payment for existing or approved infrastructure and mitigation projects across the nation but these projects do not meet the policy's immediate needs criteria.

State Department Disaster Funding May Run Low by June

The State Department reports that in order to respond to future humanitarian crises, these resources would need to be replenished by June 1, 2010. If not replenished, U.S. capacity to respond to other emergencies could be curtailed.

Deadline for Funding Court Settlements Uncertain

Congress did not enact the \$1.15 billion appropriation by the mid-April 2010 deadline to settle the Pigford II court case to recompense black farmers. Although the claimants could theoretically void the settlement, plaintiffs are unlikely to exercise that right knowing that the settlement is clearly a priority of both the U.S. Department of Agriculture and the White House.

The latest deadline for Congress to approve the settlement of the Cobell suit for government mismanagement of funds and lands held in trust for individual American Indians is June 15, 2010.

²⁹ Senate Armed Services Committee, Transcript, “Fiscal 2011 Army Budget Request,” p. 16, February 23, 2010

³⁰ CRS calculation based on Army data on Operation and Maintenance obligations to date for both base funding and war operations compared to obligation patterns in FY2008 and FY2009.

³¹ CQ, Budget Briefing, “A Bit More Breathing Room for FEMA,” May 7, 2010; Statement of James L. Oberstar, Subcommittee on Economic Development, Public Buildings, and Emergency Management, May 5, 2010; telephone conversation with a legislative liaison for the Department of Homeland Security, April 28, 2010.

While deadlines have been extended several times by mutual agreement, it is not clear whether another extension will be accepted by the parties or the presiding judge.

Potential Issues: Emergency Designations, Timelines and Effectiveness

Members of Congress may raise several types of issues about these FY2010 Supplemental requests including whether

- a timeline to evaluate the Afghan War would be appropriate, the plans to accelerate training of Afghan security forces are achievable, and all of DOD's request qualifies as emergency war costs;
- DOD's ramp-up in basing requests signifies a permanent presence;
- additional foreign aid for Afghanistan and Iraq is likely to be effective and well-spent;
- the amount for FEMA disaster relief is justified;
- Haiti relief funding is adequate or appropriately shared; and
- the Haiti aid request is appropriately targeted; and
- some of the supplemental funding qualifies as emergency spending.

FY2010 Supplemental Request for U.S. Disaster Assistance³²

Federal Emergency Management Agency Request

The Administration requested \$5.1 billion for the Federal Emergency Management Agency's (FEMA) Disaster Relief Fund (DRF) because FEMA anticipates that this fund will run out of funds to meet expected disaster needs and pay unanticipated claims awarded by arbitrators to state, local, and nonprofits for Public Assistance (PA) recovery projects such as debris removal and rebuilding public structures (see **Table 1**).³³ According to FEMA, DRF spending averages about \$350 million a month and the current DRF balance is \$600 million. Based on these figures, FEMA projects the account will run out in May or June 2010.

In response to the anticipated shortage, FEMA sent guidance in February 2010 to reduce the rate of expenditures of the Disaster Relief Fund by limiting payments to arbitration awards and projects considered immediate needs and delaying payments for other projects, like mitigation work. Congressman James Oberstar noted in a recent hearing that FEMA has limited claims

³² Written by Bruce R. Lindsay, Analyst in American National Government, Government and Finance Division.

³³ PA provides for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain Private Non-Profit (PNP) organizations.

payments, delayed interagency reimbursements, and recovered funds from previous years in order to stretch its available funds.³⁴

Potential Issues

Two potential issues that may be addressed by Congress are (1) whether the FEMA monies are appropriately considered to be emergencies; and (2) whether current estimates that the Disaster Relief Fund is running low are reasonable. Some Members may challenge whether the FEMA disaster assistance qualifies as emergency spending in light of spending levels in the past several years. Members may have some concerns about the limited information FEMA has provided about why the Disaster Relief Fund is running low or the likely scope or timing of compensation payments that may result from arbitration rulings.

Regular vs. Emergency Budgeting for Disasters

In its first budget blueprint *A New Era of Responsibility*, the Obama Administration criticized previous Administrations as “irresponsible” for unrealistic budgeting practices.³⁵ In the FY2010 request, the Administration requested \$2.0 billion for the DRF. Congress then provided \$1.6 billion, \$400 million below the request. In FY2011 the Obama Administration is requesting \$1.9 billion for the DRF. Compared to previous years, it could be argued that neither request represents significant increases (see **Figure 1**)

The rationale for the request and the current moratorium provided by OMB is that 59 disasters have occurred in 2009 and another 18 have already taken place in 2010.³⁶ By comparison, 74 disasters were declared in 2008 and 63 in 2007. The need for the current supplemental request is mainly additional arbitration rulings, some related to the Katrina hurricane in 2005.

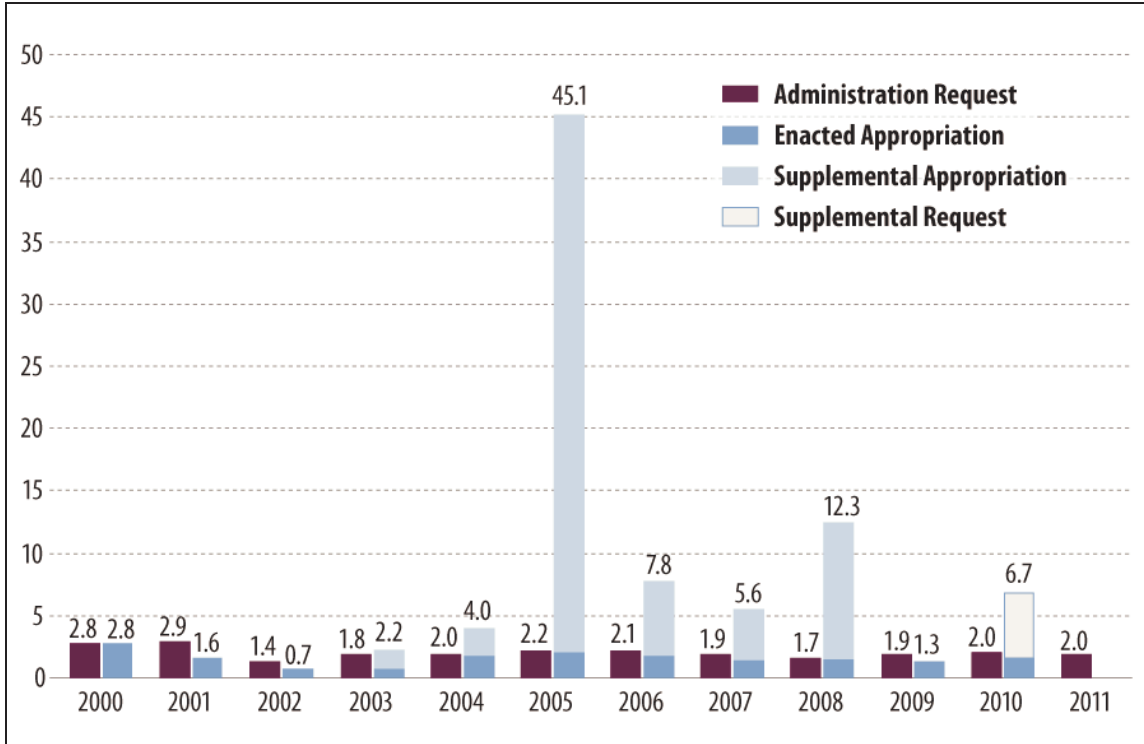
In recent years, regular requests have been insufficient to meet needs. Higher levels may continue to be necessary to meet the devastation wrought by Gulf Coast hurricanes in 2005 and 2008 because recovery could take five years or longer. Some might argue that given the number of disasters and carryover needs from the Gulf hurricanes, Congress might consider appropriating the DRF at a higher level to avoid the need for supplemental funding. On the other hand, others would argue that disasters are inherently unpredictable, and hence qualify as emergency needs. If this is so, Congress may choose to maintain the status quo if Members prefer waiting for large-scale disasters to occur before providing disaster funding for recovery.

³⁴ CQ, Budget Briefing, “A Bit More Breathing Room for FEMA,” May 7, 2010; Statement of James L. Oberstar, Subcommittee on Economic Development, Public Buildings, and Emergency Management, May 5, 2010; telephone conversation with a legislative liaison for the Department of Homeland Security, April 28, 2010; email received from a legislative liaison from the Department of Homeland Security.

³⁵ Office of Management and Budget, *A New Era of Responsibility: Renewing America’s Promise*, Washington, DC, February 26, 2009, p. 36.

³⁶ Office of Management and Budget, *Statement of Administration Policy*, Washington, DC, March 24, 2010, http://www.whitehouse.gov/omb/assets/sap_111/saphr4899h_20100324.pdf.

Figure I. U.S. Disaster Relief Funding, FY2000-FY2011 Request
(in billions of dollars)



Source: CRS data using Administration budget documents and appropriations statutes.

Notes: CRS calculations based on source above. Figure by Amber Wilhelm, CRS Graphics.

Justifying Current Estimate

Although the replenishment of the DRF may be justified, FEMA has provided little information to evaluate its request. The only example cited by FEMA in its current request is an arbitration ruling awarding \$475 million to the Charity Hospital which has been closed since Hurricane Katrina in 2005. If FEMA wishes to make the case that there is a need to supplement the DRF, it may need to provide more information about how the DRF was drawn down and the nature and the scope of the arbitration cases.

Congressional Action

Both the House-passed and the Senate-passed versions of H.R. 4899 provide the \$5.1 billion requested for FEMA’s Disaster Relief Fund (DRF). In its report, the SAC voiced dissatisfaction with OMB providing timely information about funding requirements for disaster relief activities, noting that the supplemental request was not submitted until February 2010 despite the fact that a shortfall was known in May 2009. The SAC also noted that the FY2011 request is expected to be \$1 billion to \$2 billion short of requirements for previous disasters including Hurricane Katrina.³⁷

³⁷ S.Rept. 111-188, p. 45-p. 46.

Other Disaster Assistance

In addition to the \$5.1 billion for the DRF, the Senate-passed version of H.R. 4899 would also provide an additional \$386 million in disaster assistance for recent floods in Tennessee and Rhode Island, fishery disasters in Alaska, tornado damages in the Midwest, and recovery projects related to the 2005 and 2008 Gulf Coast hurricanes. The House version did not include funding for these programs. The additional funds provided by the Senate version would be appropriated to agencies other than FEMA for disaster-relief activities.

Under the Senate-passed version, the following federal agencies would receive additional funds to respond to natural disasters:

- Housing and Urban Development would receive \$100 million for community development funds for long-term recovery, infrastructure repair, and economic revitalization;
- Army Corps of Engineers would receive \$217 million, including \$173 million to repair damage to federal projects, \$20 million for flood control and coastal emergencies, and \$18.6 million for recovery projects involving the Mississippi River and tributaries;
- Commerce Departments' economic development assistance program would receive \$49 million;
- Agriculture Department's emergency forest restoration would receive \$18 million program.

The committee also stipulated that the federal cost share for recovery from damages caused by the floods in Rhode Island and Tennessee be no less than 90 percent.

War-Related Supplemental Requests

The DOD and State Department/USAID supplemental requests provide funding primarily to deploy the additional 30,000 troops being deployed to Afghanistan and for economic assistance intended to reinforce military operations. These two elements are considered essential to the counterinsurgency strategy adopted by the Administration to "clear, build, hold, and transition" as DOD and the State Department focus on population centers in Afghanistan.³⁸

Department of Defense War Funding Request³⁹

In its FY2011 budget submission, the Obama Administration requested a supplemental appropriation of \$33 billion in FY2010 primarily to deploy the additional 30,000 troops to

³⁸ Secretary of Defense, "Report to Congress in accordance with Section 1230 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) as amended and United States Plan for Sustaining the Afghanistan National Security Forces Report to Congress in accordance with section 1231 of the National Defense Authorization for Fiscal Year 2008 (P.L. 110-181)," hereinafter DOD, "Section 1230 and Section 1231 Report; http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_26_10.pdf.

³⁹ Written by Amy Belasco, Specialist in U.S. Defense Policy and Budget, Foreign Affairs, Defense, and Trade Division.

Afghanistan announced by President Obama on December 1, 2009. According to the President, these additional troops are intended to reverse a deteriorating security situation and “break the Taliban’s momentum” by targeting the insurgency, securing key population centers, and training more Afghan forces, which, in turn, is expected to “help create the conditions” to transfer responsibility to the Afghans beginning in July 2011.⁴⁰ Frequent evaluations are promised.⁴¹

Increases in U.S., NATO Troops, and Afghan Security Forces

According to the DOD, as of early May 2010, some 15,000 of the 30,000 troops are in-country with the remainder expected to arrive by September 2010, several months later than originally anticipated by the White House.⁴² By this fall, some 98,000 troops would be deployed in Afghanistan trebling the number of U.S. troops since October 2008 (see **Figure 2**).

Before leaving office in January 2009, then-President Bush increased the number of troops in Afghanistan in response to requests from the U.S. Commander in Afghanistan concerned about the deteriorating security situation, which brought troop levels close to 46,000 in May 2009.⁴³

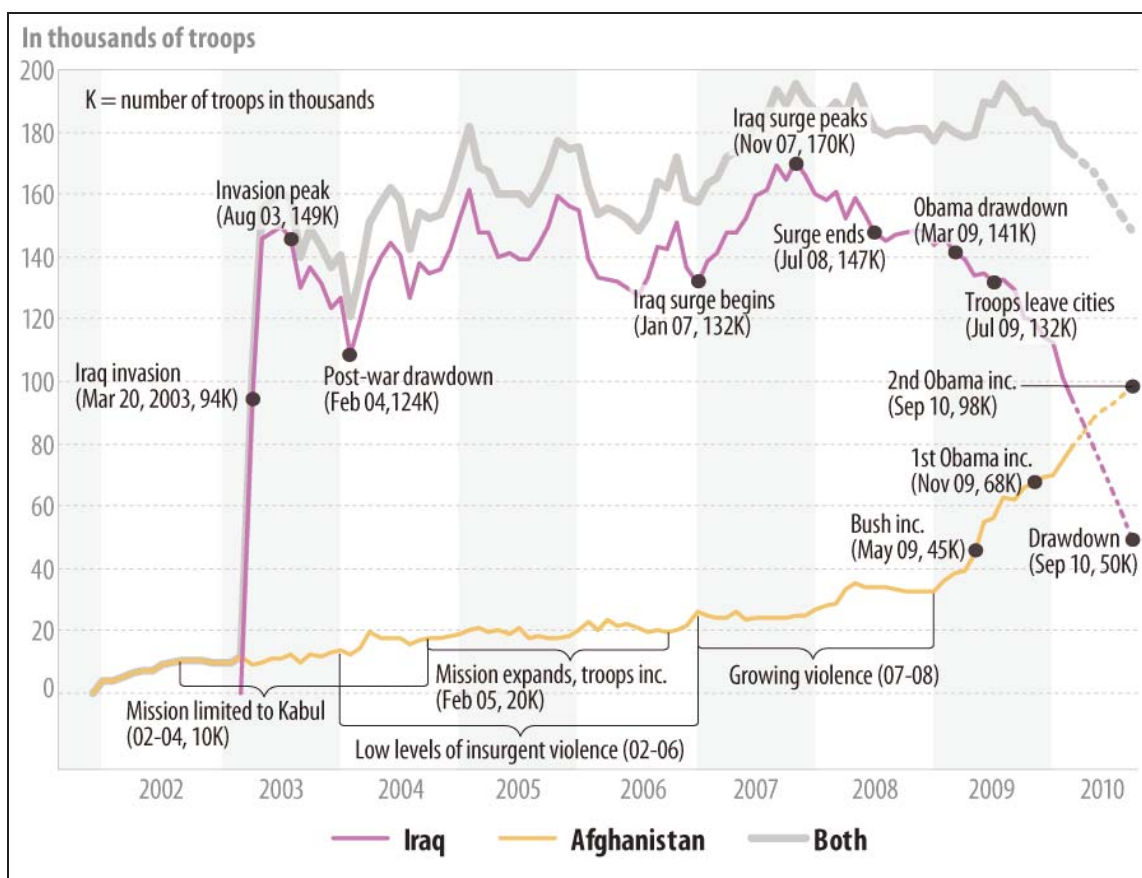
⁴⁰The White House, “Remarks by the President in Address to the Nation on the Way Forward in Afghanistan and Pakistan,” Delivered at West Point, December 1, 2009; <http://www.whitehouse.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan>. In the President’s speech, the additional troops were to be deployed in the first half of the year, but more recently, the Defense Department has estimated that all 30,000 troops will not be deployed until September 2010.

⁴¹The White House, Press Release, “What’s New in the Strategy for Afghanistan and Pakistan;” http://www.whitehouse.gov/the_press_office/Whats-New-in-the-Strategy-for-Afghanistan-and-Pakistan/THE-BRIEFING-ROOM, March 27, 2009.

⁴² PBS, The Charlie Rose Show, “All Eyes on Kandahar, Interview with General Petraeus,” April 22, 2010.

⁴³ DOD, “Boots on the Ground Report,” May 1, 2009 show a total of 45,000.

Figure 2. Boots on the Ground in Afghanistan and Iraq, 2001-2010



Sources: DOD, *Boots on the Ground Reports to Congress*; CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman; CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman; CRS Report RL34387, *Operation Iraqi Freedom: Strategies, Approaches, Results, and Issues for Congress*, by Catherine Dale; CRS Report R40156, *War in Afghanistan: Strategy, Military Operations, and Issues for Congress*, by Steve Bowman and Catherine Dale.

Note: Figure by Amber Wilhelm, CRS Graphics.

After completion of the Obama Afghanistan strategy review in March 2009, the President approved another increase of about 22,000 troops, bringing the total to 68,000 as of November 2009. The second Obama increase of 30,000 troops now underway will bring the U.S. total to 98,000 by this fall.⁴⁴ The FY2011 budget adds another 4,000 support troops in Afghanistan.⁴⁵

After repeated requests from the United States, NATO allies troop levels have grown from 38,370 in December 2009 to 48,000 troops in March 2010. By this fall, this will bring the total number of

⁴⁴ DOD, "Press Conference with Secretary of Defense Gates," December 14, 2009; <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4333>. The 21,000 increase was funded in the FY2009 Supplemental and the FY2010 DOD Appropriations Act (Title IX, P.L. 111-118, enacted December 16, 2009).

⁴⁵ Then-President Bush increased troops in Afghanistan by about 15,000. For FY2011 increase, see Figure 6-2, DOD, *FY2011 Budget Request: Overview*, February 1, 2010; http://comptroller.defense.gov/defbudget/fy2011/FY2011_Budget_Request_Overview_Book.pdf.

foreign troops in Afghanistan to about 148,000.⁴⁶ By that time, plans call for Afghan security forces to total 243,000, bringing the total number of foreign and Afghan forces to 389,000.⁴⁷

DOD Request Shifts Bulk of War Funding to Afghanistan

The Defense Department’s \$33 billion request would provide

- \$30 billion to support the additional troops deploying to Afghanistan;
- \$1 billion more to train Iraq Security Forces; and
- \$2 billion for higher-than-anticipated fuel costs in DOD’s regular (baseline) budget.

If enacted, total DOD war spending in FY2010 would rise from the \$129 billion already enacted to \$160 billion.⁴⁸ Of that total, \$99 billion would be for Afghanistan and \$61 billion for Iraq, reversing the funding shares for the two wars. The total in FY2010 would be about \$12 billion more than in FY2009 and almost the same as the FY2011 request (**Table 2**).⁴⁹

Currently, DOD appropriations enacted for the Afghan War totals \$284 billion. If the FY2010 Supplemental and the FY2011 request are enacted, that total would rise to \$428 billion. By comparison, the enacted total for Iraq is now \$705 billion and would increase to \$752 billion if the pending requests are enacted. These figures do not include war funding for State/USAID and VA Medical.⁵⁰

Table 2. DOD War Funding, FY2001-FY2011 Request
(in billions of dollars and shares of total)

Operation	Total: FY2001- FY2008	FY2009	FY2010 Enacted	FY2010 Supplemental Request	FY2010 Total with Request	FY2011 Request
IRAQ						
Funding	\$553.5	\$92.0	\$59.6	\$1.0	\$60.6	\$45.8
Share of Total	78%	62%	46%	3%	38%	29%

⁴⁶ International Security Assistance Force (ISAF): Facts and Figures, “International Security Assistance Force and Afghan National Army Strength & Laydown,” December 23, 2009, and February 1, 2010; <http://www.nato.int/isaf/docu/epub/pdf/placemat.pdf>.

⁴⁷ Figure 6-3, DOD, *FY2011 Budget Request: Overview*, February 1, 2010; http://comptroller.defense.gov/defbudget/fy2011/FY2011_Budget_Request_Overview_Book.pdf.

⁴⁸ This total includes funds enacted in the FY2010 DOD Appropriations Act (P.L. 111-118), and the FY2010 Veterans and Military Construction Appropriations Act (P.L. 111-117).

⁴⁹ FY2009 figure is CRS calculation excluding funding in supplementals not related to war, and including \$2.4 billion in funding that DOD tapped from its base budget for war needs; For FY2011 total, see Table 8-5 in DOD, *FY2011 Budget Request: Overview*, February 1, 2010; http://comptroller.defense.gov/defbudget/fy2011/FY2011_Budget_Request_Overview_Book.pdf.

⁵⁰ CRS calculations based on DOD data; see **Table 2**.

Operation	Total: FY2001- FY2008	FY2009	FY2010 Enacted	FY2010 Supplemental Request	FY2010 Total with Request	FY2011 Request
IRAQ						
AFGHANISTAN						
Funding	\$159.2	\$56.1	\$69.1	\$30.0	\$99.1	\$113.5
Share of Total	22%	38%	54%	97%	62%	71%
TOTAL						
Funding	\$712.7	\$148.2	\$128.7	\$31.0	\$159.7	\$159.3
Share of Total	100%	100%	100%	100%	100%	100%

Source: Table 8-5 in DOD, *FY2011 Budget Request: Overview*, February 1, 2010; http://comptroller.defense.gov/defbudget/fy2011/fy2011_Budget_Request_Overview_Book.pdf.

Notes: CRS calculations exclude non-war funding in supplementals, and include funds from DOD's regular budget used for war needs.

Timeline for U.S. Military's Role in Afghanistan

One potential issue in DOD's FY2010 Request is the timeline for evaluating the effectiveness of President's Obama's new strategy. When President Obama approved the new deployment, he warned that the U.S. commitment was not "open-ended," and "will allow us to begin the transfer of our forces out of Afghanistan in July of 2011" after a review in December 2010.⁵¹ Based on recent testimony and DOD statements, the timeframe could slip and the U.S. drawdown in July 2011 could be minor.⁵²

Both Secretary of Defense Gates and Admiral Mullen, Chair of the Joint Chiefs of Staff, have cautioned that the July 2010 date is "a day we start transitioning ... not a date that we're leaving," that would be based on "conditions on the ground."⁵³ Recently, Secretary Gates said, "I think this is a several-year process."⁵⁴ In March 2010, General Petraeus, now head of U.S. Central Command, characterized the initiative as "an 18-month campaign, as we see it,"⁵⁵ to be evaluated

⁵¹ The White House, "Remarks by the President in Address to the Nation on the Way Forward in Afghanistan and Pakistan," Delivered at West Point, December 1, 2009; <http://www.whitehouse.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan>.

⁵² Testimony of Robert Gates before the Senate Armed Services Committee, "Afghanistan Assessment," December 2, 2009: "we will have a thorough review in December 2010. If it appears that the strategy's not working and that we are not going to be able to transition in 2011, then we will take a hard look at the strategy itself. [The plan would be to] begin the transition [to Afghan forces] in local areas in July of 2011.... General Petraeus would tell you by six or seven months later [after the Iraq surge began], he had enough indications of things happening on the ground that he could tell that this effort was going to work within six months."

⁵³ *Ibid.*

⁵⁴ Department of Defense, Press conference with Secretary of Defense Gates and Chair, Joint Chiefs, Admiral Mullen, March 25, 2010; <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=4592>.

⁵⁵ Testimony of General Petraeus before the House Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies Budget Request for the U.S. Central Command," March 17, 2010.

according to JCS Chair Admiral Mullen “eighteen months from now,” which would be September 2011.⁵⁶

Members of Congress may be concerned about the timing of the initial evaluation, the length of the new campaign, and the long-term future of U.S. military involvement. The FY2010 Supplemental may provide another vehicle for looking at ways to increase congressional participation in decision making about the extent and nature of the U.S. military commitment.

The first operation using the additional U.S. troops was the re-taking of Marjah, a town of 85,000, in Helmand Province in southern Afghanistan launched on February 13, 2010. While DOD considers Marjah to be free of Taliban, recent press reports suggest a mixed picture. The key test is the campaign for Kandahar, a Taliban stronghold and city of 1 million in southern Afghanistan, expected to get fully underway by June 2010.⁵⁷ It is not clear whether the FY2010 Supplemental will be passed by then.

Most of DOD’s Request Is for Afghanistan

Of the \$33 billion in DOD’s supplemental request, \$30 billion is for Afghanistan, \$1 billion to train Iraqi Security Forces, and \$2 billion to pay for higher fuel prices in DOD’s base budget (see **Table 3**). The \$30 billion for Afghanistan includes

- \$19 billion for “Operations” including Military Personnel and Operation and Maintenance costs to pay, conduct operations and support deployed soldiers;
- \$3.3 billion for force protection;
- \$2.6 billion to accelerate the training of Afghan security forces;
- \$2.0 billion to pay for higher fuel costs in DOD’s regular budget;
- \$1.7 billion for reconstitution or reset of war-worn equipment;
- \$1.3 billion for military intelligence;
- \$1.2 billion for national intelligence;
- \$500 million for military construction;
- \$400 million to defeat Improvised Explosive Devices (IEDs) (see **Table 3**).

Questions May Be Raised About Per Troop Costs

Some policy makers have suggested that the DOD cost for deploying 30,000 more troops would average \$1 million per troop (including both the White House and Secretary of Defense Gates).⁵⁸ While dividing the \$30 billion request for Afghanistan by the 30,000 additional troops yields an

⁵⁶ House Appropriations Subcommittee on Defense, “Hearing on President Obama’s Fiscal 2011 Budget Request for the Defense Department,” March 24, 2010, p. 10 of transcript.

⁵⁷ DOD, “Transcript, Press conference with Geoff Morrell,” March 30, 2010; <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=4595>; *The New York Times*, “Elite U.S. Units Step Up Drive in Kandahar,” April 26, 2010.

⁵⁸ *The Los Angeles Times*, “Pricing an Afghanistan troop buildup is no simple calculation,” November 23, 2009.

average of \$1 million, this does not reflect the different types of activities and programs that DOD is requesting or the factors affecting the cost of these activities.

To describe its request, DOD developed functional categories ranging from “Operations,” which includes military personnel and O&M costs, to Coalition Support Funds for Pakistan’s counter-terror operations. Different categories increase at rates ranging from 123% for Operations to 35% for Coalition Support. **Table 3** shows funding between FY2009 and FY2011 for the Afghan war.

Unlike other categories, the Operations category would be expected to increase at least roughly in concert with troop levels. DOD estimates differ substantially from CBO estimates. Reported obligations from the first five months of the fiscal year also suggests that DOD’s estimates may be somewhat high.

DOD estimates for the FY2010 cost deploying 30,000 troops to Afghanistan reflect a per troop cost of \$875,000 based on the “Operations” category in the FY2010 Supplemental request and taking into account changes in funding since enactment (see **Table 3**). The DOD per troop cost is not quite double the \$467,000 in CBO’s estimate. Both DOD and CBO assume the same average monthly troop strength which reflects the gradual deployment of troops over the fiscal year, and CBO’s estimate builds on DOD reported war obligations.⁵⁹

Table 3. DOD Functional Categories for War Funding: Afghanistan, FY2009-FY2011
(in billions of dollars)

By DOD Functional Category	FY2009 Request ^a	FY2010 Enacted	FY2010 Supp. Request	FY2010 with Request	FY2010 Total vs. FY2009	FY2011	Cumulative Change, FY2011 vs. FY2009
Operations Request	23.9	36.0	19.0	55.0	130%	62.7	163%
Operations Adjusted ^b	24.6	41.0	14.0	55.0	123%	62.7	155%
Overseas Contingency Operations Fund (OCOTF) ^b	0	5.0	0	5.0	NA	[.4]	NA
Force Protection	4.7	7.8	3.3	11.1	135%	10.5	122%
Improvised Explosive Device (IED) Defeat Fund	0.7	0.9	0.4	1.3	78%	2.7	266%
Military Intelligence Program	1.9	3.7	1.3	5.0	156%	6.1	216%
Afghan National Security Forces	5.6	6.6	2.6	9.2	63%	11.6	107%

⁵⁹ The monthly average increase in troop levels as a result of the surge is assumed to be 16,000 by DOD and 15,000 by CBO, both averages taking into account the gradual deployment of additional troops during FY2010. For DOD, see DOD, *FY2011 Budget Request: Overview*, Figure 6-3, February 1, 2010; http://comptroller.defense.gov/defbudget/fy2011/FY2011_Budget_Request_Overview_Book.pdf. For CBO, see CBO, “Letter to Congressman Spratt on Analysis of Scenarios for Funding Iraq and Afghanistan,” January 21, 2010, Table 1; <http://www.cbo.gov/ftpdocs/109xx/doc10995/01-20-CostOfChangesinTroops.pdf>; DOD, *FY2011 Budget Request: Overview*, February 1, 2010, Figure 6-2; CBO’s estimate assumes that per person costs for operations, transportation, supplies, and services will be 50% higher in Afghanistan than in Iraq based on DOD data; http://comptroller.defense.gov/defbudget/fy2011/FY2011_Budget_Request_Overview_Book.pdf. This comparison is based on “Adjusted Operations” figures that exclude \$5 billion in the FY2010 Supp. Request that is intended to restore funds originally allocated to O&M that were used instead to purchase additional Mine-Resistant Ambush Protected Vehicles, as permitted P.L. 111-118, the FY2010 DOD Appropriations Act.

By DOD Functional Category	FY2009 Request^a	FY2010 Enacted	FY2010 Supp. Request	FY2010 with Request	FY2010 Total vs. FY2009	FY2011	Cumulative Change, FY2011 vs. FY2009
Pakistan Counterinsurgency Capability ^c	0.4	0	0	0	-100%	0	-100%
Coalition Support	1.4	1.8	0	1.8	35%	2.0	45%
Commanders Emergency Response Program (CERP)	0.7	1.0	0	1.0	39%	1.1	53%
Military Construction	0.9	1.4	0.5	1.9	117%	1.2	37%
Army Temporary End Strength	0	0.4	0	0.4	NA	1.1	NA
Navy Individual Augmentees	0	0.1	0	0.1	NA	0.2	NA
Subtotal: Ongoing Operations^c	41.0	69.7	27.1	91.8	124%	99.2	142%
Reconstitution/Reset	6.6	7.7	1.7	9.4	41%	11.2	68%
Total War-Related	47.6	72.4	28.8	96.2	102%	110.3	132%
Additional Requests							
Baseline Fuel/Add'l Requests ^d	0	0	2.0	2.0	NA	0	NA
Non-DOD Classified	NR	NR	1.2	NR	NA	NR	NA
Subtotal Additional Requests	NA	NA	3.2	NA	NA	NA	NA
TOTAL DOD REQUEST^c	47.6	69.2	32.0	96.2	102%	110.3	132%

Source: : DOD, *Fiscal Year 2010 Budget Request, Summary Justification*, May 2009, Table 5-11; Additional DOD tables provided to CRS, March 2010.

Notes: NR = Not reported; NA = Not applicable.

- a. FY2009 figures reflect DOD’s FY2010 Summary Justification, and adjustment to add \$2.4 billion that DOD used to cover war costs that came from DOD baseline accounts.
- b. The “Operations Adjusted” figure moves \$5 billion requested in the FY2010 Supplemental Request to FY2010 Enacted to reflect the fact that DOD used \$5 billion requested for operations and moved by Congress to the Overseas Contingency Operations Transfer Fund (OCOTF) to purchase Mine Resistant Ambush Protected (MRAP) vehicles as permitted by law (see OCOTF in P.L. 111-118).
- c. Total reflects amount requested for “Operations,” not amount allocated in the adjusted figure.
- d. Placeholder text. Please replace.

DOD would argue that operations costs in the FY2010 supplemental request are particularly high because the new troops will be deploying primarily to southern Afghanistan where the United States has had few troops, requiring DOD to set up, expand, and operate many more facilities. It is not clear, however, whether these factors are sufficient to account for the difference.

Last year, citing concerns about whether DOD could “accurately budget” for the Afghan and Iraq wars in light of significant changes in military operations, the FY2010 DOD Appropriations Act transferred \$5 billion of DOD’s request for Operation and Maintenance funding to the Overseas Contingency Operations Transfer Fund (OCOTF) to be held aside until DOD notified

congressional defense committees of where the funds were needed.⁶⁰ Similar concerns may be raised about DOD's FY2010 request for all of the reasons above.⁶¹

Another indicator that DOD's estimates may be high is the fact that obligations reported in the first five months of FY2010 for operational costs are about 22% of the total amount that DOD has requested assuming the FY2010 supplemental is enacted. To use all these funds, monthly spending would need to more than double in the next seven months, suggesting that DOD estimates—developed last fall—may be somewhat high.⁶² Although obligations are typically lower in the first few months of the fiscal year and only some of the 30,000 troops were in-country, the rate of spending still appears to be lower than would be expected. Congress could again choose to put aside some of DOD's O&M request in the OCOTF as they did last year.

Funds to Accelerate Training Afghan Security Forces

To accelerate the training and expand Afghan Security Forces Fund (ASFF), and hence be able to reduce the U.S. role, DOD is requesting an additional \$2.6 billion. If this request is approved, ASFF funding would total \$9.2 billion in FY2010, an increase of 63% (see **Table 3**).

Concerns that may be raised about this request include

- whether DOD needs all the additional funds requested in FY2010 to meet current plans in light of current spending rates.
- whether the ramp-up in DOD's plan is achievable and whether there is sufficient oversight given persistent training problems, recent contracting disputes, and possible shortages in trainers.

Relating DOD's Plan to Its Funding Request

Under the new plan, the Afghan Security forces would reach a total of 243,000 by October 2010—higher levels to be achieved over a year earlier—and 305,600 by FY2011. The Afghan Army would grow from 97,000 in November 2009 to 134,000 in October 2010 and 171,000 in October 2011, a 76% increase in two years. The Afghan Police would grow from 93,800 in November 2009 to 109,000 this October and to 134,000 in October 2011, a 43% increase over two years.⁶³ In January 2010, NATO partners endorsed these increases.⁶⁴

⁶⁰ House Appropriations Committee, *H.Rept. 111-230*, p. 329; the enacted version endorsed this House action.

⁶¹ Congressional Quarterly, "Extra War Funding Is Anticipated, But Lawmakers Are Not in Any Rush," April 20, 2010.

⁶² CRS average strength calculation is based on DOD's Boots on the Ground Report and Cost of War Reports.

Like DOD's Operations category, CRS adjusted reported obligations for O&M and Military personnel to exclude the following categories that are not related to changes in troop strength: coalition support, Commanders Emergency Response Program (CERP), depot maintenance, and body armor. DOD's Operations category, with a somewhat lower per troop cost, may exclude additional O&M costs that CRS cannot capture from the Cost of War Reports. O&M funds are only available for one year and so would lapse if not used by September 30, 2010.

⁶³ For prior plan, see DOD, *Fiscal Year 2010: Summary Justification*, May 2009, pp. 4-33-4-34; http://www.defenselink.mil/comptroller/defbudget/fy2010/fy2010_SJ.pdf. For current plan, see DOD, *FY2011 Budget Request: Overview*, February 1, 2010, p. 6-7 to 6-8; http://comptroller.defense.gov/defbudget/fy2011/FY2011_Budget_Request_Overview_Book.pdf.

⁶⁴ DOD, "Section 1230 and Section 1231 Report," p. 6; http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_26_10.pdf.

It is not clear whether DOD’s FY2010 supplemental request is necessary to meet these levels or entails some forward-financing or requirements—providing funds before they are needed. DOD states that the additional \$2.6 billion is necessary to “sustain the growth” of the Afghan Army “on a glide slope that exceeds 134,000,” to pay Afghan Army soldiers more, and provide additional infrastructure and equipment.⁶⁵ The same question can be raised about DOD’s FY2011 request.⁶⁶

Table 4. Funding for Afghan Security Forces (ASFF), FY2009-FY2011
(in billions of dollars)

Category	FY2009 Bridge (P.L. 110-252) and Supplemental (P.L. 110-32)	FY2010 Enacted (P.L. 111- 118)	FY2010 Supp. Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5- 27-10	FY2010 Total with Request	FY2011 Request	Pending Requests: FY2010 Supplemental and FY2011 Request
Afghan Police	1.5	2.5	1.1	0	1.1	3.6	4.1	5.2
Afghan Army	4.0	4.0	1.5	0	1.5	5.6	7.5	9.0
Related	0.1	0	0	0	0	0	0.1	0.1
TOTAL ASFF	5.6	6.6	2.6	0	2.6	9.2	11.6	14.2

Source: Department of Defense Budget, *Fiscal Year (FY) 2011, Justification for FY 2010 Supplemental, Afghanistan Security Forces Fund (ISFF)*, February 2010, p.2; <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY11/OCO/asff.pdf>.

Altogether, Congress has appropriated \$25.5 billion for the Afghan Security Forces thus far.⁶⁷ The pending requests for FY2010 and FY2011 would provide another \$14.2 billion and bring the total through FY2011 to \$39.8 billion (see **Table 4**). DOD has not provided an estimate of the ultimate cost or number of years that the United States would need to support Afghan Security forces.

While General McChrystal, U.S. NATO Commander in Afghanistan, has proposed doubling the Afghan Army and Police from the current goal of 243,000 to 400,000. General Mullen characterized this as “an aspirational goal out several years from now,” and one that has not been endorsed by the Obama Administration.⁶⁸

Problems in Training Afghan Security Forces

While DOD has responsibility to train the Afghan Army, DOD and the State Department jointly manage training of the Afghan police. The training of Afghan Security forces is actually carried out by U.S. military personnel, NATO coalition teams, and private contractors

⁶⁵ Office of the Secretary of Defense, Department of Defense Budget, *Fiscal Year (FY) 2010, “Justification for FY 2010 Supplemental Afghanistan Security Forces Fund (ASFF)*, p. 4, p.8, p.25, and *passim*, February 2010; <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY11/OCO/asff-sup.pdf>.

⁶⁶ DOD’s additional \$11.6 billion is “to procure long-lead items in fiscal year 2011 in order to remain on a growth glide slope for a force beyond 171,600 and 134,000;” see Office of the Secretary of Defense, Department of Defense Budget Fiscal Year (FY) 2011, “Justification for FY 2011 Afghanistan Security Forces Fund (ASFF);” <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY11/OCO/asff.pdf>.

⁶⁷ CRS Report R40699, *Afghanistan: U.S. Foreign Assistance*, by Curt Tarnoff.

⁶⁸ CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman, p. 46; House Armed Services Committee, Transcript, “Afghanistan Assessment,” p. 18, December 3, 2009.

DOD and the State Department have experienced a myriad of problems in carrying out this training. For the Afghan Army, problems include attrition rates of about 20%, deficiencies in leadership, frequent absenteeism that can reduce units to 50% of their strength, limited logistical capabilities, and questionable behavior. For the police, training has been hampered by illiteracy, corruption, and the targeting and killing of police recruits and police by insurgents.⁶⁹

A recent hearing on Afghan police training cited the following problems, which have also been identified in GAO, Special Inspector General Reports, audit reports by the State and Defense Departments, and press articles:

- Difficulties in coordinating DOD, State Department, and NATO coalition training;
- Persistent problems in relying on private contractors including poor performance and bad behavior, unauthorized use of firearms and inadequate vetting, and shortages of contractor personnel; and
- Lack of sufficient personnel to manage contracts and insufficient contract oversight including invalid invoices as well as inadequate performance.⁷⁰

Although DOD has sent additional trainers, and requested more from NATO allies, there still are reported shortages, which could increase reliance on contractors and raise more concerns among Members. Senator Levin recently cited his concern about a shortfall in trainers for the Afghan army and police, a shortfall acknowledged in DOD's April 1, 2010, Afghan Section 1230 Metrics report, which noted that 44% of the 4,083 trainers required are currently assigned.⁷¹

To gauge whether sufficient trainers are available and whether the current ramp-up is realistic, Members may want to know

- How many trainers are needed for initial and follow-on training to meet the higher targets funded in the FY2010 supplemental request for Afghanistan?
- How is that requirement to be met in terms of the number of U.S. military personnel, coalition partner teams, and contractor personnel?
- How many of those trainers are currently in-country, scheduled to arrive, pledged but not yet available, or still to be hired?

⁶⁹ *Ibid.* and p. 47-p. 48; GAO, *Afghanistan Security: U.S. Programs to Further Reform Ministry of Interior and National Police Challenged by Lack of Military Personnel and Afghan Cooperation*, GAO-09-280, March 2009; <http://www.gao.gov/new.items/d09280.pdf>; Office of the Special Inspector General for Afghanistan, *Quarterly Report*, January 2010; http://www.sigar.mil/pdf/quarterlyreports/jan2010/pdf/SIGAR_Jan2010.pdf.

⁷⁰ Senate Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight, "Hearing on Contracts for Afghan National Police Training," Transcript, April 15, 2010; statements and video of hearing at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=6ad2b464-2877-4107-9159-da85dc461030; Senate Armed Services Committee, "Contracting in a counterinsurgency: an examination of the Blackwater-Paravant contract and the need for oversight," February 24, 2010; http://armed-services.senate.gov/e_witnesslist.cfm?id=4419.

⁷¹ Congressional Quarterly, "Levin Pushes Back Against Veto Threat on F-35 Engine, Transport Plane," by Eugene Mulero, February 2, 2010; Secretary of Defense, "Report to Congress in accordance with section 1230 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) as amended and United States Plan for Sustaining the Afghanistan National Security Forces Report to Congress in accordance with section 1231 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181)," hereinafter DOD, "Section 230 and Section 1231 Report; http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_26_10.pdf.

- How would DOD's funding change if these personnel are not available as anticipated?

Since it is already halfway through FY2010, current shortfalls could hamper the ramp-up.

The plan to speed up training of the Afghan police could also be affected by a recently sustained bid-protest, which may delay contract award.⁷² When asked to describe DOD's plan for providing Afghan police training since there was no longer a contract in effect, DOD Assistant Secretary David Sedney stated that "We don't have a final answer for you on that," and suggested that DOD intended to do a full and open competition, which could take more time and delay training, and reduce the funding needed in FY2010.⁷³

Current Spending Rates

Based on DOD's February 2010, Cost of War obligation reports, DOD still has available almost \$6.4 billion in funding appropriated in FY2009 and FY2010. In the first five months of FY2010, DOD obligated \$1.6 billion, or an average of \$320 million per month, somewhat below the FY2009 average.⁷⁴ In order to obligate all funds requested, DOD's monthly obligation rate for ASFF would need to almost triple from \$320 million to \$920 million in the second half of FY2010. In light of these figures, it is not clear that DOD urgently needs the additional \$2.6 billion.

Whether Some of DOD's Request Could Be Funded in the Regular Bill

As the wars in Iraq and Afghanistan continue, some Members have raised concerns about whether emergency supplementals for war are still justified, or whether war spending should be included in regular appropriations acts. Because the February 2009 budget submission of FY2010 war funding preceded the Administration's decision in December 2009 to deploy 30,000 more troops, some would argue that an emergency designation for the FY2010 supplemental request is appropriate. Section 403 (f) in S.Con.Res. 13 defines spending as emergency if it is "essential ... sudden ... compelling ... unanticipated," but it is a congressional prerogative to decide where the emergency designation is appropriate. Some of DOD's request, however, including the \$1 billion for training in the Iraqi Security Forces Fund (ISFF), the \$2 billion to offset fuel increases, and the \$1.7 billion for reset or replacement of war-worn equipment is less clearly related to the new deployments, and some could argue should be considered as part of DOD's regular FY2011 appropriation request.

⁷²DynCorp protested being excluded from bidding on the contract; see GAO, "Matter of: DynCorp International LLC; File: B-402349; Date: March 15, 2010;" <http://www.gao.gov/decisions/bidpro/402349.pdf>.

⁷³ See Senate Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight, "Hearing on Contracts for Afghan National Police Training," Transcript, April 15, 2010, p. 18.

⁷⁴ CRS calculations based on DOD Table entitled FY 2010 Cost of War for FY 2010 Appropriations in "Cost of War Report As of February 28, 2010." To compute the funding available, CRS subtracted obligations as of February 28, 2010 (latest) reported in the Cost of War Report from the amounts appropriated. For example, of the \$6.6 billion appropriated in the FY2010 DOD Appropriations Act (P.L. 111-118), DOD has obligated \$793 million leaving \$5.9 billion still available. DOD still has available \$563 million from the \$3.6 billion appropriated in the FY2009 Supplemental (P.L. 111-32) for a total of \$6.4 billion.

With the turnover of responsibility for security to the Iraqi government, and the rise in oil prices in 2008, Congress has been less willing to pay for Iraqi security forces. DOD argues that the \$1 billion for the ISFF is necessary to complete and sustain modernization efforts underway, and ensure that Iraq can provide for its security particularly when faced with lower revenues as oil prices have fallen.⁷⁵ While these are important policy considerations, some may challenge whether the funds should be designated as emergency.

Some may also argue that providing \$2 billion to cover higher than expected fuel costs in DOD's base budget could be covered in other ways. Typically, DOD has financed unanticipated increases in fuel prices by using cash resources in the Working Capital Funds, which provide oil to the services, or by transferring funds from less urgent needs.⁷⁶ DOD may argue that these actions would be difficult so an infusion of budget authority is needed.

Another request that could be considered more loosely tied to the additional 30,000 troops is the \$1.7 billion for reset, to replace war-worn equipment, particularly losses. Some might argue that the effect of the additional combat operations on equipment in Afghanistan is likely to be gradual particularly with the phasing-in of troops over the course of the year making it particularly difficult to predict the need to replace war-worn equipment. Others would argue that replacement needs from the additional deployment of troops can be estimated based on past experience. As in the case of the ASFF, DOD also has a substantial backlog of war-related procurement that remains to be spent.

Congressional Action

The House version of H.R. 4899 did not address the DOD request for supplemental appropriations. The Senate-passed version (like the reported version) largely approved DOD's request, including amounts requested for training Afghan and Iraq security forces. The Senate bill adjusts DOD's Military Personnel and Operation and Maintenance accounts for amounts excess to requirements, pricing adjustments, or fuel pricing assumptions. In the case of Procurement accounts, the Senate version adds \$512 million to the request bringing the total to \$4.95 billion to cover additional battle losses, two more C-130J aircraft for the Coast Guard, as well as various pricing and transfer adjustments (see **Table 5**).⁷⁷

⁷⁵ Department of Defense Budget, *Fiscal Year (FY) 2010, Justification for FY 2010 Supplemental, Iraq Security Forces Fund (ISFF)*, February 2010.

⁷⁶ The Working Capital Funds are set up to include cash reserves to cover unanticipated price changes, with reserves replenished by charging service customers higher prices the following year.

⁷⁷ See *S.Rept. 111-188*, p. 7- p.39.

Table 5. Department of Defense War-Related Funding, FY2009-FY2011

Title/Service/Category	FY2009 Enacted	FY2010 Enacted Bridge (P.L. 111-117 and P.L. 111- 118)	FY2010 Supple mental Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	F2011 Request
AFGHANISTAN							
Military Personnel	7.2	6.3	1.9	0	1.8	8.2	9.4
Operation and Maintenance	27.2	39.4	20.8	0	20.3	60.1	69.9
Special Funds	6.7	7.5	3.0	0	2.6	10.5	14.3
Procurement	12.5	13.7	4.4	0	5.0	18.1	16.7
Research, Development, Test and Evaluation (RDT&E)	0.8	0.2	0.3	0	0.3	0.5	0.3
Revolving and Management Funds	0.2	0.2	1.0	0	1.1	1.2	0.3
Other Department of Defense Programs	0.5	0.9	0.1	0	0.1	1.0	1.5
Military Construction	0.8	1.4	0.5	0	0.7	1.9	1.3
General Provisions	0.2	0.0	0.0	0	0.0	0.0	0.0
Total, Department of Defense	56.1	69.5	32.0	0	31.9	101.5	113.5
IRAQ							
Military Personnel	11.0	8.7	0.0	0	0	8.7	5.9
Operation and Maintenance	55.0	40.1	0.0	0	0	40.1	31.7
Special Funds	3.4	0.9	1.0	0	1	1.9	2.6
Procurement	19.5	9.4	0.0	0	0	9.4	4.7
Research, Development, Test and Evaluation (RDT&E)	0.5	0.0	0.0	0	0	0.0	0.3
Revolving and Management Funds	0.7	0.2	0.0	0	0	0.2	0.2
Other Department of Defense Programs	1.6	0.7	0.0	0	0	0.7	0.4
Military Construction	0.1	0.0	0.0	0	0	0.0	0.0
General Provisions	0.3	0.0	0.0	0	0	0.0	0.0
Total, Department of Defense	92.0	60.1	1.0	0.0	1.0	61.1	45.8
AFGHANISTAN AND IRAQ							
Military Personnel	18.2	15.0	1.9	0.0	1.8	16.9	15.3

Title/Service/Category	FY2009 Enacted	FY2010 Enacted Bridge (P.L. 111-117 and P.L. 111-118)	FY2010 Supplemental Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	F2011 Request
Operation and Maintenance	82.2	79.5	20.8	0.0	20.3	100.3	101.6
Special Funds	10.1	8.3	4.0	0.0	3.6	12.3	16.9
Procurement	32.0	23.1	4.4	0.0	5.0	27.5	21.4
Research, Development, Test and Evaluation (RDT&E)	1.3	0.3	0.3	0.0	0.3	0.5	0.6
Revolving and Management Funds	0.9	0.4	1.0	0.0	1.1	1.4	0.5
Other Department of Defense Programs	2.1	1.6	0.1	0.0	0.1	1.7	1.9
Military Construction	0.9	1.4	0.5	0.0	0.7	1.9	1.3
General Provisions	0.5	0.0	0.0	0.0	0.0	0.0	0.0
Total, Department of Defense	148.2	129.6	33.0	0.0	32.9	162.7	159.3

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More Spending for Bases in Afghanistan Raises Questions of Permanency and Execution⁷⁸

The Administration’s supplemental war request for an additional \$521 million for military construction would bring the FY2010 total to \$1.9 billion—double the FY2009 level—and raises questions about whether DOD is building facilities to support the temporary stationing of warfighting troops or creating permanent bases in Afghanistan (see **Table 6**). In recent statutory language, Congress permitted spending for a “long-term presence” but prohibited spending for “permanent stationing” of U.S. troops in Afghanistan (see “War-Related Military Construction Provisions”). In light of current spending rates for military construction in Afghanistan, it is also not clear how urgently the current funds are needed.

DOD’s \$521 million request would create and expand basic infrastructure at various locations in Afghanistan including roads, runways, quarters, and other facilities to support the deployment of 30,000 additional U.S. troops. The justification for the request states that the construction “will

⁷⁸ Written by Daniel H. Else, Specialist in National Defense, and Amy Belasco, Specialist in U.S. Defense Policy and Budget, Foreign Affairs, Defense, and Trade Division.

expand airfield capacity for increased airlift and combat operations, increase logistics capacity at key locations, and provide the minimum infrastructure necessary....⁷⁹

The supplemental request is split roughly evenly between Army and Air Force construction. Army projects are focused in the southern provinces of Helmand, Nimruz, and Kandahar, the area of most new military operations, and Balkh and Kunduz provinces in the north, where Afghanistan borders the three former Soviet republics of Turkmenistan, Uzbekistan, and Tajikistan. Air Force construction is planned for Nimruz province in the south, Balkh province in the north, and Herand province in the west of the country in support of airlift and special operations forces.

Table 6. Military Construction for the Afghan War, FY2003-FY2011

(in billions of dollars)

	FY2003- FY2008 Total	FY2009 Enacted	FY2010 Enacted	FY2010 Supplemental Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5- 27-10	FY2010 Total	FY2011 Request	Total
Military Construction	1.3	0.9	1.4	0.5	0	.7	1.9	1.3	5.4
O&M- Funded Construction	0.8	0.4	TBD ^a	0	0	0	TBD ^a	0	0.5
TOTAL	1.4	1.3	1.4	0.5	0	0	1.9	1.3	5.9

Sources: Department of Defense budget justification materials (various years) and briefing to Senate Appropriations Committee staff.

- a. DOD can use up to \$500 million in previously appropriated O&M funds for military construction for contingency operations in Central Command according to Sec. 2806, P.L. 111-84, the FY2010 National Defense Authorization Act (see “War-Related Military Construction Provisions”).

Army construction includes waste and waste water management systems, fuel storage and distribution facilities, utilities infrastructure, gravel roads, and a command and control headquarters at Forward Operating Base (FOB) Tombstone near Lashkar Gah in Helmand in the south. Projects also include perimeter security facilities and a helicopter apron at Kunduz and Mazar e Sharif in the country’s extreme north.

Air Force construction includes a runway and associated apron at FOB Delaram, located in the west approximately halfway between Kandahar and the Iranian border, a Special Operations helicopter apron at FOB Dwyer (in southern Helmand province near the town of Garmsir), helicopter and airlift aprons at Mazar e Sharif in the north, and aircraft aprons and fuel and munitions storage at Shindad Airfield in the west.

A fundamental issue for Congress, expressed in legislation over a number of years, is whether spending on construction signals a long-term, indefinite U.S. troop commitment to Afghanistan.

⁷⁹ Office of the Under Secretary of Defense (Comptroller), *Fiscal Year 2011 Budget Request: Overview*, Department of Defense, Washington, DC, February 2010, pp. 6-8.

Building to Fight vs. Building to Stay: Congressional Restrictions

Both appropriators and authorizers in Congress have sought to distinguish between military construction intended to support expeditionary, short-term warfighting and military construction for permanent stationing of troops in Iraq and Afghanistan. As it did in the case of Iraq, Congress has adopted language intended to prevent the establishment of permanent bases in Afghanistan (see “War-Related Military Construction Provisions”).

In the FY2010 National Defense Authorization Act (P.L. 111-84), Congress banned “*any defense funds*” from being “obligated or expended by the United States Government to establish any military installation or base for the purpose of *providing for the permanent stationing of United States Armed Forces in Afghanistan* [italics added].”⁸⁰ The FY2009 Supplemental Appropriation adopted the same language but stated that none of the funds “*available by this or any other Act* shall be obligated or expended by the United States Government for the purpose of establishing any military installation or base for the purpose of providing for the *permanent stationing of United States Armed Forces in Afghanistan* [italics added].”⁸¹ There is no definition of the types of projects that would signal permanency.

At the same time, Congress carved out an exception to this ban in P.L. 111-84 to permit DOD to use Operation & Maintenance (O&M) funds for military construction that supports a “long-term presence” in Afghanistan, reversing language from prior years that limited such funding to “urgent ... temporary” facilities (see “War-Related Military Construction Provisions”). Where the line exists between funding for facilities to support permanent stationing of U.S. troops, which is banned, and facilities to support a long-term presence, which is permitted, may be unclear, as some projects (housing, waste treatment, etc.) could plausibly be devoted to either purpose.

Congress has periodically denied funds in supplemental appropriations requests for projects perceived as signaling a permanent presence—a permanent fuel facility and power generation plant at Bagram, for example, in the FY2005 supplemental appropriations request—without first seeing them justified as part of a comprehensive plan for troop stationing.⁸² Some of the projects proposed in the FY2010 Supplemental could fall into this category.

⁸⁰ P.L. 111-84, Secs. 1237 and 2806.

⁸¹ P.L. 110-32, Sec. 315.

⁸² For example, the Senate Committee on Appropriations wrote, “A longer-term presence with more permanent force structure may be in the interests of the United States, but plans for such a presence—and requests for the facilities to support that presence—should be presented to the Congress in the regular authorization and appropriation process.” U.S. Congress, Senate Appropriations, *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005*, Report to Accompany H.R. 1268, 109th Cong., 1st sess., April 6, 2005, S.Rept. 109-52 (Washington: GPO, 2005), pp. 35-36.

War-Related Military Construction Provisions

Prohibitions on Establishing Permanent Bases in Afghanistan [italics added]

FY2009 (Sec. 315, P.L. 110-32,)

The FY2009 Supplemental Appropriation Act states "None of the funds appropriated or otherwise made available by *this or any other Act* shall be obligated or expended by the United States Government for the purpose of establishing any military installation or base for the purpose of providing for the *permanent stationing* of United States Armed Forces in Afghanistan.

FY2010 (Secs. 1237 and 2806, P.L. 111-84)

The National Defense Authorization Act (NDAA) *bans any defense funds* from being "obligated or expended by the United States Government to establish any military installation or base for the purpose of *providing for the permanent stationing* of United States Armed Forces in Afghanistan

Using Operation and Maintenance Funds for Urgent, Temporary Operational Needs

FY2004 (Sec. 2808, P.L. 108-136)

NDAA temporarily authorizes DOD to obligate up to \$200 million of FY2004 O&M funds "to carry out a construction project outside the United States" that is necessary to meet "*urgent military operational requirements of a temporary nature* in support of a declaration of war, the declaration by the President of a national emergency ..., or a contingency operation [italics added]."

Authorization *does not apply* to a military installation "where the United States is reasonably expected to have a long-term presence"

FY2005 (Sec. 2810, P.L. 108-375)

NDAA extends authority to obligate up to \$200 million in O&M funds for urgent, temporary military construction through FY2005 contingent upon submitting FY2004 quarterly reports.

FY2006 (Sec. 2809, P.L. 109-163)

NDAA extends but halves authority to \$100 million in O&M funds for urgent, temporary military construction but only if DOD submits quarterly report by deadline.

FY2007 (Sec. 2802, P.L. 109-702)

NDAA extends authority to use \$100 million for urgent, temporary military construction for a year.

FY2008 (Sec. 2801, P.L. 110-181)

NDAA extends and raises authority to use \$200 million for urgent, temporary military construction for a year and requires 7-10-day advance notification for projects of \$2 million or more (i.e. "minor construction").

FY2009 (Sec. 2806, P.L. 110-417)

NDAA authorizes up to \$200 million in O&M funds for urgent, temporary military construction only for U.S. Central Command and U.S. Africa Command.

Exempts military installations located in Afghanistan from the ban on the use of O&M construction funds "deemed as supporting a long-term presence"[italics added].

Authorizes up to \$300 million of O&M funds for Afghanistan if the Secretary of Defense certifies to the congressional defense committees that additional construction "is required to meet urgent military requirements in Afghanistan."

FY2010 (Secs. 1237 and 2806, P.L. 111-84)

NDAA authorizes up to \$200 million of O&M funds until the later of September 30, 2010, or enactment of FY2011 military construction. Limits authority to U.S. Central Command.

FY2011 (DOD Legislative Proposals, April 1, 2010)

DOD requests authorization through FY2012 to spend from O&M funds "amounts necessary to carry out unspecified minor construction projects in support of contingency operations," and raises the threshold on these unspecified minor construction projects in support of contingency operations from \$750,000 to \$3 million.

“Permanent Stationing” and “Long-term Presence”

To respond to rapidly changing military situations in Iraq and Afghanistan, DOD requested and received additional flexibility to use already-appropriated O&M funds to build facilities to meet “urgent military operational requirements of a *temporary* nature[italics added]” starting in

FY2004.⁸³ Congress renewed this authority every year until FY2009 while at the same time capping the amount between \$100 million and \$200 million and forbidding funds from being used for construction at a military installation “where the United States is reasonably expected to have a long-term presence.”⁸⁴

Over the years, DOD planners have concluded that some form of U.S. military presence in Afghanistan is likely to continue for several years, possibly even after military operations end. In response, Congress changed the law in 2009 and permitted DOD to use \$200 million in O&M funds for projects in U.S. Central Command and an *additional \$300 million* in O&M funds for construction in Afghanistan to meet “urgent military requirements” as certified by the Secretary of Defense, and *exempted* installations there from the ban on the use of O&M construction funds “deemed as supporting a long-term presence.”⁸⁵ The FY2010 NDAA again extended the authority to use O&M funding for military construction and continued the \$500 million total limit on projects in Central Command (see “War-Related Military Construction Provisions”).

Higher Funding and DOD’s Proposed Legislative Change

Taking O&M funding for military construction into account increases the amount spent for military construction appreciably. For example, in FY2009, DOD added \$409 million from O&M accounts for construction in Afghanistan to the \$900 million appropriated, raising the total to \$1.4 billion. This amount nearly equaled the total spent on construction between FY2003 and FY2008 and in a single year, doubled DOD’s construction investment in Afghanistan (see **Table 6**).

If DOD dedicated the full \$500 million in O&M available to military construction in Afghanistan, the total in FY2010 would reach \$2.4 billion, which would again almost double the entire prior seven-year investment. DOD has also submitted new legislative proposal to use O&M monies for unspecified minor construction in support of contingency operations until October 1, 2012. If that proposal is approved by Congress, total funding for military construction in Afghanistan could rise further (see “War-Related Military Construction Provisions”).

Another possible sign of DOD’s commitment in Afghanistan is the amount invested in certain key bases of the more than 25 identifiable sites. This includes:

- \$1.3 billion invested in Bagram Air Base, \$248 million requested for a total of \$1.6 billion if the request is approved;
- \$767 million appropriated for Kandahar Air Base, \$181 million requested for a total of \$948 million if the request is approved;

⁸³ P.L. 108-136, Sec. 2808.

⁸⁴ *Ibid.*

⁸⁵ P.L. 110-417, Sec. 2806.

- \$595 million for Forward Operating Base Tombstone/Bastion (U.S. and U.K. funding), \$299 million requested for a total of \$894 million if the request is approved.

DOD has also requested new language for the FY2011 DOD authorization that would permit DOD to use O&M funds in “*amounts necessary* to carry out unspecified minor military construction projects of up to \$3 million each *in support of contingency operations*” through September 30, 2012 [italics added].⁸⁶ If enacted, this would create a temporary two-year authority allowing DOD to draw on O&M funds up to any amount for unspecified military construction in support of contingency operations anywhere in the world.

For these projects, the proposal also raises the current per project cap for unspecified minor construction projects from \$750,000 to \$3 million, which DOD argues is necessary because construction costs in Afghanistan have grown.⁸⁷ Because the proposal says that DOD could spend “amounts necessary,” for these types of projects, there would be no limit on the total amount of O&M funds that could be drawn upon for military construction in support of contingency operations anywhere in the world. DOD proposes after-the-fact quarterly reporting to the four congressional defense committees within 60 days rather than the 7-10 day pre-notification required to use O&M funds for Central Command projects.

Like the current authority to use O&M funds for regular military construction, this would give DOD additional flexibility to respond to the need for projects that arise unexpectedly, but at the same time would reduce congressional oversight of those projects before construction begins.

Execution Issues

Another issue that could arise is whether the \$521 million supplemental request is urgently needed in light of DOD’s current spending rates for military construction projects in Afghanistan. While DOD’s request identifies individual projects the services consider needed, DOD currently has \$2.1 billion in budget authority available from previous appropriation acts that has not yet been obligated (i.e., placed on contract). In FY2009, DOD obligated about \$607 million for military construction projects in Afghanistan or an average of about \$50 million a month. For the first five months of FY2010, that average has fallen to \$26 million a month for reasons that are not identified in DOD’s report.⁸⁸

To obligate all of the \$2.1 billion in funds currently available by the end of this fiscal year, DOD would have to increase its monthly average obligations six-fold to \$300 million. Not all of those monies have to be obligated before the end of this fiscal year. The \$2.1 billion includes \$700 million that has to be obligated by September 30, 2010, or the monies return to the Treasury and another \$1.4 billion that has to be obligated by September 30, 2011.

⁸⁶ DOD, “Enhanced Authority for Use of Operation and Maintenance Funds for Unspecified Minor Military Construction Projects in Support of Contingency Operations,” 3rd package of Legislative Proposals, April 1, 2010.

⁸⁷ DOD, “Enhanced Authority for Use of Operation and Maintenance Funds for Unspecified Minor Military Construction Projects in Support of Contingency Operations,” 3rd package of Legislative Proposals, April 1, 2010.

⁸⁸ CRS calculations based on DOD, Cost of War Report, September 30, 2009; and DOD, Cost of War Report, February 28, 2010.

To spend all of the FY2009 monies before they lapse, DOD would need to increase its current \$26 million monthly obligation rate four-fold to \$100 million in the second half of this fiscal year. Similarly, to spend the \$1.4 billion already available for FY2010 projects, monthly obligations would need to average \$116 million, or more than four times as high as the current rate.

If DOD receives the additional supplemental funds, monthly obligations would have to treble from the FY2009 rate (to \$150 million a month) and increase six-fold from the current FY2010 rate.⁸⁹ Some may argue that in light of how quickly current monies are being spent, the FY2010 supplemental request could be considered as part of DOD's FY2011 war request when there could be additional evidence about current spending rates and the prospects for the Afghan war.

Congressional Action

The House version of H.R.4899 did not include any funding for war-related military construction. In its markup, the Senate bill approves \$657 million for military construction in Afghanistan, \$128 million above the request. The additional funding would accelerate projects that the Air Force proposed to fund in FY2011 using its authority to tap O&M monies for unanticipated contingency-related projects. In adding the funds to the FY2010 Supplemental, the Committee stated that "If the requirements for contingency construction are known at the time of the budget request, then they should be included in the Military Construction budget request. If they are not known at that time, then the Department of Defense should continue the practice of notifying the Committee when projects and their corresponding funding sources are identified."⁹⁰

War-Related Foreign Aid and Diplomatic Operations⁹¹

The Administration's FY2010 Supplemental request under the 150 international affairs budget function addresses specific foreign economic assistance and related civilian operational requirements of three strategic frontline nations—Afghanistan, Iraq, and Pakistan.⁹² In the case of Iraq, the request is meant to respond to the drawdown of U.S. military forces and the consequent shift of greater responsibility to civilian personnel. In the case of Afghanistan, it reflects a strategy that increases both U.S. military and civilian responsibilities. The Pakistan request addresses the Administration's desire to demonstrate U.S. support to Pakistan and to strengthen the Pakistan government's presence in insurgent areas of the country.

The total international affairs budget request for these war-related programs is \$4.46 billion, \$1.8 billion of which comes under the State Department portion of the account, and largely provides personnel and infrastructure to enable diplomatic and assistance programs. The Foreign Operations, i.e. foreign aid, segment of the request, amounting to \$2.6 billion, provides a wide range of aid in support of U.S. security, economic growth, social service, and democratization objectives. For each country, the Administration is only requesting funding in discrete sub-

⁸⁹ CRS calculations based on data in DOD's Cost of War reports for FY2009 and February 28, 2010.

⁹⁰ *S.Rept. 111-188*, p. 20

⁹¹ Written by Curt Tarnoff, Specialist in Foreign Affairs, and Kennon Nakamura, Analyst in Foreign Affairs, Foreign Affairs, Defense, and Trade Division.

⁹² U.S. Department of State and U.S. Agency for International Development, *Supplemental Budget Justification FY2010*, available at [<http://www.state.gov/f/releases/iab/fy2010supp/index.htm>].

accounts that address certain needs. It is not requesting funding for P.L.480 food aid, Global Health/Child Survival, or other accounts (see **Table 7**).

If the request is approved, the FY2010 total of those specific accounts for the three countries affected by the request would increase by more than two-thirds over the FY2009 figure from roughly \$6 billion to \$10 billion.

Congressional Action

The House-passed version of H.R. 4899 did not include any funding for the Administration's request for war-related foreign aid and diplomatic operations.

The Senate-approved legislation would provide total international affairs war-related foreign aid and diplomatic operations funding at \$3.7 billion, \$714 million less than the Administration request. Details of congressional action regarding each country are discussed below.

Table 7. War-Related Foreign Aid and Diplomatic Operations: FY2010 Supplemental

In millions of dollars

Accounts	FY2009	FY2010 Enacted	FY2010 Supp. Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	FY2011 Request
AFGHANISTAN							
Economic Support Fund (ESF)	2,048.0	2,037.0	1,576.0	0	1,309.0	3,613.0	3,316.3
Int'l Narcotics & Law Enforcement (INCLE)	484.0	420.0	200.0	0	169.0	620.0	450.0
State Diplomatic and Consular Programs—Operations (D&CP) ^a	368.6 ^a	485.6 ^a	211.0	0	200.0	696.6	754.1 ^b
State Inspector General	N/A ^c	4.5	3.0	0	3.6	7.5	7.1
SIGAR	12.2	23.0	14.0	0	7.2 ^d	37.0	35.3
USAID Inspector General	N/A	N/A	0.0	0	3.4	N/A	N/A
Total Afghanistan, FY2010 Supp. Request Accounts	2,912.8	2,970.1	2,004.0	0	1,692.2	4,974.1	4,562.8
IRAQ							
Int'l Narcotics & Law Enforcement (INCLE)	20.0	52.0	517.4	0	650.0	569.4	314.6
State Operations (D&CP) ^e	1,506.9 ^e	1,121.6 ^e	1,570.0	0	1,030.0	2,691.6	1,787.0 ^f

Accounts	FY2009	FY2010 Enacted	FY2010 Supp. Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	FY2011 Request
Total Iraq, FY2010 Supp. Request Accounts	1,526.9	1,173.6	2,087.4	0	1,680.0	3,261.0	2,101.6
PAKISTAN							
Economic Support Fund (ESF)	1,114.0	1,033.0	244.0	0	259.0	1,277.0	1,321.7
Int'l Narcotics & Law Enforcement (INCLE)	87.5	130.0	40.0	0	40.0	170.0	140.0
Foreign Military Financing (FMF)	300.0	238.0	60.0	0	50.0	298.0	296.0
State Operations (D&CP)	65.1	45.8	26.0	0	26.0	71.8	101.6
Total Pakistan, FY2010 Supp. Request Accounts	1,566.6	1,446.8	370.0	0	375.0	1,816.8	1,859.3
TOTAL INTERNATIONAL AFFAIRS: FY2010 SUPP. REQUEST ACCOUNTS	6,006.3	5,590.5	4,461.4	0	3,747.2	10,054.5	8,523.7

Source: Department of State, "FY2011 Executive Budget Summary," S. Rept. 111-188.

- a. \$25 million provided under the FY2009 supplemental (P.L. 111-32) and counted here as FY2009 funding was considered by appropriators forward funding to address in advance a portion of the FY2010 request.
- b. Figure does not include security.
- c. Breakdown for country specific Afghanistan/Pakistan oversight not available.
- d. Senate bill rescinds \$7.2 million from FY09 supplemental and re-appropriates it here.
- e. \$336 million provided under the FY2009 supplemental (P.L. 111-32) and counted here as FY2009 funding was considered by appropriators forward funding to address in advance a portion of the FY2010 request.
- f. Figure includes security.

Afghanistan⁹³

The Administration's international affairs State, Foreign Operations request for Afghanistan reflects a strategy that asserts the importance of civilian programs in governance, economic growth, and social services, provided in conjunction with U.S. military efforts in the country. While the approach of strengthening the U.S. civilian presence, increasing aid to local government, and enhancing the role of the national government in providing local services, has

⁹³ For further discussion on Afghanistan, see CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman, and CRS Report R40699, *Afghanistan: U.S. Foreign Assistance*, by Curt Tarnoff.

been in effect for nearly a year, the December 2009 “surge” strategy might be seen to have accelerated and heightened the need for civilian assistance delivery, especially as follow-up in insurgent areas presently being contested by the U.S. military. A major element of the new strategy is to rapidly increase stability and reduce the strength of the insurgency in problematic provinces by creation of jobs and provision of social services through a more capable and visible Afghan government.

The coming months will tell whether this strategy is working. However, key concerns include the extent to which the Afghan government is prepared to provide sufficient leadership, staff, and support to local communities in the forefront of the conflict, the ease of coordination between the U.S. military and civilian aid programs and personnel, and the level of cooperation offered by the local populace. One question is whether high levels of corruption in the Afghan government will impede its ability to provide services effectively. As increasing amounts of aid are made available through the supplemental, the ability of the U.S. government to monitor and insure accountability is an associated concern. The corresponding increase in numbers of U.S. aid personnel as well as an increase in the request for the offices of inspector general reflects U.S. government worries about the impact of corruption on aid programs.

The Afghanistan supplemental request would provide a significant boost to total U.S. international affairs funding levels for that country. The State Department diplomatic operations account, already under the regular FY2010 appropriations a third larger than in FY2009, would rise by nearly 90% above the previous year’s level if the request is approved.⁹⁴ If the foreign aid portion of the supplemental request is approved, it will raise total FY2010 levels of all the major non-humanitarian civilian aid accounts going to Afghanistan by 67% over the equivalent FY2009 level of assistance.

Elements of the Afghanistan Foreign Aid and Diplomatic Operations Supplemental

The Administration seeks \$1.6 billion in Economic Support Funds (ESF) and \$200 million in International Narcotics and Law Enforcement (INCLE) funding under the foreign operations portion of the request, and \$211 million in Diplomatic and Consular Programs (D&CP) funds under the State Department portion.

ESF is a main source of economic, political, and social aid, mostly channeled through the Agency for International Development (USAID). The ESF request breaks down as follows:

- Alternative development: \$135 million, mostly for agriculture in poppy-production areas;
- Conflict mitigation and reconciliation: \$216 million to support consultative processes in local communities, including quick impact, small grants projects;
- Rule of law: \$50 million to support the judicial system, especially in recently secured areas;
- Good governance: \$760 million to strengthen Afghan government agencies, including \$450 million in support of the Afghanistan Reconstruction Trust

⁹⁴ And rise by 110%, if amounts considered by appropriators as forward funded are counted in FY2010.

Fund which funnels funds to the National Solidarity Program, and \$115 million in direct budget support to the Ministry of Finance;

- Health: \$50 million to expand Ministry of Health services;
- Education: \$50 million to expand secondary and vocational education;
- Macroeconomic growth: \$7 million to help the Ministry of Finance improve revenue collection through tax administration reform;
- Trade and investment: \$19.5 million to support implementation of trade agreements and support trade infrastructure, such as industrial parks and border facilities;
- Financial sector: \$4.5 million to strengthen branches of the Central Bank;
- Agriculture: \$215 million to build capacity countrywide in the Ministry of Agriculture, and support watershed rehabilitation and irrigation, agriculture credit, extension services, and market development;
- Private sector development: \$60.4 million; and
- Economic opportunity: \$8.6 million to expand credit union services, including Islamic-compliant financing.

The INCLE account is implemented by the State Department. Three quarters of the \$200 million request is aimed at supporting the justice sector, especially to inject rule of law activities into the provinces. The remainder targets counter-narcotics programs. The request includes

- \$60 million to expand the corrections program;
- \$25 million for model prisons;
- \$50 million to increase the number of judges, prosecutors, criminal investigators;
- \$25 million for the Counter-Narcotics Justice Center, the Criminal Justice Task Force, the Anti-Corruption Unit and Anti-Corruption Tribunal;
- \$5 million to support legal aid;
- \$8 million specifically for women's justice activities;
- \$22 million for counternarcotics police; and
- \$2 million for drug treatment facilities and support for children.

Largely to support the full range of ongoing and proposed international affairs assistance programs, the FY2010 State Department Diplomatic and Consular Programs (D&CP) request of \$211 million furthers the growth of civilian personnel begun in the FY2010 regular request. The Supplemental proposes a 457 position increase, in addition to the 764 positions funded in the regular FY2010 appropriations, at a cost of \$211 million. These positions include 212 U.S. direct hires to work at the district level and startup funding to hire 245 staff for work with Kabul ministries and in Provincial Reconstruction Teams (PRTs). The Administration states that it is applying a "whole of government" approach with federal employees drawn on an as-needed reimbursable basis from the Department of State, USAID, Department of Agriculture, Department of Justice, and eight other federal agencies to provide the vital expertise in specialized skills. The Department also proposes the hiring of about 200 locally employed staff

(LES) to provide administrative and local knowledge support to American personnel working in the field.

A recent Department of State Inspector General's report praises management and personnel working at the U.S. embassy in Kabul, but expresses concern that they are overworked and struggling to meet the demands resulting from a tripling of staff over the past year.⁹⁵ The expansion proposed under the supplemental would further strain resources. This rapid expansion has its implications in management of staff and providing for their housing and office space in Kabul or just basic housing and sanitation in the field. Not addressed in the supplemental request are the added security needs that are a further consequence of increased civilian staff.

An additional \$14 million in funding for the Special Inspector General for Afghanistan Reconstruction (SIGAR) and \$3 million for the State Department Inspector General has also been requested to support their continuing oversight of the assistance program.

Congressional Action on the Afghanistan Request

The House-passed version of H.R. 4899 did not include any funds for Afghanistan foreign aid and diplomatic operations. The Senate-passed version of H.R. 4899 (S.Rept. 111-188) provides a total of \$1.7 billion for Afghanistan foreign aid and diplomatic operations compared with the \$2.0 billion request, making a few significant changes within requested accounts. The funding request for the SIGAR was rejected, because, as noted in the Appropriations Committee report, it was felt that sufficient funding was still available from previous appropriations. In order to extend the availability of that funding to the end of FY2011, the Senate bill rescinds \$7.2 million in FY2009 supplemental SIGAR appropriations and re-appropriates it in the FY10 supplemental. The bill also cuts the ESF request by \$267 million, most notably slashing proposed good governance activities by \$160 million and alternative development by \$35 million. The INCLE account is cut by \$31 million, in part because of concerns, as noted in the Committee report, that the political will may not exist in the Government of Afghanistan to justify large investments in reforming the "weak and corrupt" justice system (see **Table 7**).

The Senate bill contains a number of conditions on Afghanistan aid, many addressing concerns regarding corruption and the status of Afghan women. Among these conditions are that aid may be obligated only if the Secretary of State reports that Afghan local and national government representatives, local communities, and civil society have been consulted and have participated in the design of projects and will participate in their implementation, and that progress will be measured by specific benchmarks. Further, aid will only be made available if the Secretary determines that the Government of Afghanistan is cooperating in reform efforts, respecting internationally recognized human rights of women, and demonstrating a commitment to removing corrupt officials. The Senate bill makes aid available to support reconciliation with former combatants, i.e. members of the Taliban, only if the Secretary of State determines that Afghan women are participating in the reconciliation process in all levels of government and their rights are protected in this process and that funds will not protect from prosecution those responsible for war crimes. On the Senate floor, an amendment (no. 4249) was added requiring that support to the Electoral Commission may only be provided if it has no members or employees who participated in or covered up acts of fraud in the 2009 elections.

⁹⁵ Office of the Inspector General, *Report of Inspection: Embassy Kabul, Afghanistan*, Department of State, ISP-I-10-32A, Washington, DC, February 2010, <http://oig.state.gov/documents/organization/138084.pdf>.

An amendment was also agreed to on the Senate floor (no. 4245) that allows up to \$300 million in DC&P and Embassy Construction and Maintenance funding to Afghanistan, Iraq, and Pakistan from any year's appropriation to be transferred or merged with funding for activities supporting U.S. civilian security in any of these countries.

Iraq⁹⁶

The Administration's international affairs request for Iraq in the FY2010 supplemental has two components, both reflecting the new strategic environment created by the drawdown of U.S. military forces. The response to this dramatic change in the U.S. role in Iraq is, perhaps counter-intuitively, a significant increase in U.S. assistance and State Department operations. Counting all major non-humanitarian foreign economic aid accounts, the total FY2010 U.S. assistance program to Iraq would rise by 64% from the FY2009 level, if the supplemental request is approved (see **Table 7**). Taken alone, the State operations account would rise by 79%.⁹⁷

Elements of the Iraq Foreign Aid and Diplomatic Operations Supplemental

The most significant element in the international affairs component of the supplemental for Iraq is the request for \$517.4 million in INCLE funds, a down payment on the transition of responsibility for police training from the Department of Defense to the Department of State, effective October 1, 2011. While the State Department has responsibility for training police forces in most other countries, it ceded that role to DOD in the case of Iraq prior to the invasion. Its new duties will include advising the Ministry of Interior, police, and border forces. According to the State Department, a smooth transition from DOD to the State Department requires that a successor program be in place at the end of FY2010. Training of the Iraqi military remains in the hands of DOD.

The INCLE request includes the deployment of 350 advisors who will work at the Ministry and police colleges, academies, and headquarters throughout the country. It also supports construction of necessary infrastructure and security staff to support expert personnel—INCLE's program ultimately is expected to employ up to 2,000 U.S. government and contractor personnel. To permit efficient staff travel around the country, funding will provide aircraft and expanded aviation facilities.

The FY2010 supplemental request also includes funding for State Department operational costs under the D&CP account amounting to \$1.57 billion. This significant boost in Iraq operations funding is meant to address the problem of maintaining civilian outreach to the provinces following the U.S. military drawdown. Currently, the United States maintains over 1,200 direct-hire Americans employees from 14 civilian agencies in Iraq. These civilian federal employees are posted at the Embassy in Baghdad, the Regional Embassy Office in Basrah, or one of the 16 Provincial Reconstruction Teams (PRTs), often co-located with the military with the logistical and security costs supported by the military. During the 2007 surge, a number of embedded PRTs (ePRTs) were also established that allowed a civilian presence in additional locations protected by the combat battalions with which they were embedded. These civilian federal employees conduct

⁹⁶ For further discussion on Iraq, see CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

⁹⁷ And by 159%, if forward funded amounts are counted in FY2010.

business on a broad range of bilateral and multilateral missions from the regular diplomatic work of furthering U.S. economic and commercial interests, and providing U.S. policy makers with political analysis, public diplomacy outreach, and oversight of U.S. government assistance programs. These employees also support reconstruction and economic assistance efforts, rule of law programs supporting development in the legal and judicial areas, and training and liaison with various Iraqi ministry and local government personnel.

As combat battalions have withdrawn from the cities, the embedded PRTs are being phased out, and most regular PRTs are expected to be terminated by 2011. To enable a continued U.S. civilian presence outside of Baghdad, the State Department will establish, in their place, two consulates and three temporary Provincial Diplomatic Teams (PDTs). Additionally, two U.S. Forces-Iraq managed PRTs will remain through the end of 2011.

The supplemental funding would provide for:

- realigning infrastructure to transition to the presence of an Embassy, two consulates, three State managed PDTs and two interim Defense Department PRTs. As the State Department assumes greater responsibility for the interim and final infrastructure, costs previously borne by the military, which include utilities, storage, housing, furniture, information technology infrastructure and equipment, building leases, dining, and general support costs, ultimately will have to be assumed by the State Department (\$307.8 million);
- beginning the site and construction development for the planned consulate facilities to meet full Diplomatic Security and Overseas Buildings Operations standards (\$526.8 million); and
- phasing in the security requirements associated with the new field facilities, including physical and technical security and static and movement security (\$735.3 million).

As the Department of State takes over responsibilities from the Department of Defense for housing, protecting, and maintaining its staff, the Department will have to provide for large increases in contract employees who will provide a vast array of services from security and operations planning and implementation support to maintenance of vehicles in several motor pools, cleaning facilities, and food preparation. In the past, the Department has been criticized for not having appropriate numbers of personnel to manage and oversee its contracts and the implementation of these contracts. As more contracts and task orders are awarded to meet its growing responsibilities in Iraq, it is not clear whether the Department has sufficiently also expanded its capabilities in contract management.

Congressional Action on the Iraq Request

The House-passed version of H.R. 4899 did not provide any funds for Iraq aid and diplomatic operations. The Senate-approved version provides \$1.7 billion for Iraq aid and diplomatic operations, \$407 million below the request. It cuts the request for diplomatic operations by \$540 million, \$527 million of which had been intended for site development and construction of permanent consulates in Basrah and northern Iraq to prepare for a greater U.S. civilian presence in the country. The Appropriations Committee report suggests that these facilities be prioritized within amounts available in regular appropriations bills. The Senate legislation also raises the INCLE amount by \$133 million, but reconfigures the use of those funds, cutting the original \$517

million request for one-time start up expenses for police training by about \$67 million to \$450 million and adding \$200 million not requested by the Administration for implementation, management, and security for the police training program. This funding is subject to a determination and report by the Secretary of State that the Iraqi Government supports and is cooperating with such programs.

Pakistan

Unlike the requests for Afghanistan and Iraq, the Pakistan supplemental request does not appear to reflect any significant change in U.S. policy. Taking all funding sources into account, including DOD aid, there appear to be only modest shifts in funding for Pakistan from year to year between FY2009 and FY2011, assuming current requests are approved. The Administration's FY2010 supplemental request for Pakistan is largely aimed at specific infrastructure needs meant to demonstrate continued U.S. support to the government of Pakistan and bolster the perception that the Pakistan government is able to meet the needs of its population in areas vulnerable to insurgency and militant extremist ideologies.

Elements of the Pakistan Foreign Aid and Diplomatic Operations Supplemental

The largest portion of the request is for \$244 million in ESF, including

- \$50 million for cash payments made through the government of Pakistan to help people displaced by the military actions taken against extremists in recent months;
- \$65 million for water and sanitation infrastructure;
- \$65 million for agriculture irrigation systems; and
- \$64 million for solutions to Pakistan's energy crisis, including hydro/irrigation infrastructure and alternative energy.

The request also includes \$40 million in INCLE funds, for police training and related infrastructure (\$32 million), training and support for the corrections administration (\$4 million), and program administration and police advisor positions (\$4 million). Foreign Military Financing assistance amounting to \$60 million will provide five Bell-412 utility and troop transport helicopters to enhance the Pakistan military's ability to support counterinsurgency operations.

In its FY2010 supplemental, the Administration is requesting \$26 million for State Department operations to increase staffing at U.S. diplomatic facilities in Pakistan by 56 positions in addition to the 58 new positions already funded under the FY2010 regular appropriations. These positions would include both U.S. direct-hire personnel and Locally Employed Staff (LES). The increased staffing is to serve several purposes including

- to better manage and support the increased military and economic assistance being provided to Pakistan by providing more contracting and management officers;
- to increase embassy staff to enhance logistical support with housing, general service, and financial officers to meet the embassy's needs in accommodating the rapid growth of U.S. government civilian personnel in Pakistan;

- to increase staffing at the U.S. consulates in the provincial capitals of Lahore, Karachi, and Peshawar. The Administration states that the increased staffing is to strengthen U.S. outreach and programs at the provincial and local levels; and
- to begin meeting FY2011 staffing requirements earlier.

Congressional Action on the Pakistan Request

The House-passed version of H.R. 4899 did not provide any funds for Pakistan aid and diplomatic operations. The Senate-passed version provides \$375 million for Pakistan aid and diplomatic operations, \$5 million more than the request. It adds \$15 million to the ESF request in the areas of human rights and programs assisting families affected by military operations, and subtracts \$10 million from the FMF request. It also includes language providing \$1.5 million for leasing of aircraft in order to help USAID and the State Department better monitor its programs in the country. The Senate bill further requires submission of a human rights strategy in Pakistan before any ESF funds can be obligated.

Haiti FY2010 Supplemental Proposal⁹⁸

The Obama Administration is requesting \$2.8 billion in FY2010 supplemental funding to cover costs associated with relief and reconstruction support for Haiti following the earthquake that devastated parts of Haiti, primarily the capital, Port-au-Prince, on January 12, 2010.

The Administration has requested that all of the proposed funds be considered as emergency requirements, in response to urgent and essential needs in Haiti. Some of the funds are available until September 30, 2012, others until expended. The supplemental request covers both reimbursement of obligations already incurred and new activities by various U.S. agencies. CRS estimates that 55% percent of the total Haiti supplemental request is for reimbursement of relief activities related to the earthquake disaster, 40% for new recovery and reconstruction activities, and 6% for diplomatic operations administration (see **Table 8**).⁹⁹

⁹⁸ Prepared by Maureen Taft-Morales, Specialist in Latin American Affairs, and Rhoda Margesson, Specialist in International Humanitarian Policy, Foreign Affairs, Defense and Trade Division.

⁹⁹ In the Haiti Supplemental Budget Justification, some of the accounts listed under Relief Funding, such as Logistics/Non-Food, Shelter/Settlement/Livelihoods, Health and Nutrition, and Child Protection programs, include programs continuing in the recovery phase. Funding for these programs had to be obligated at the program's outset, often from other countries' programs and other accounts, so requires reimbursement. Similarly, under the Recovery and Reconstruction Funding accounts, the Economic Support Fund account allows for some reimbursement for expenses incurred in responding to the Haitian earthquake. According to the State Department, this would allow for reimbursement for expenses incurred, if any, between the time calculations were made for the supplemental proposal, and when the supplemental is passed.

Table 8. Haiti Supplemental: Relief, Reconstruction and Diplomatic Operations, FY2009-FY2011

(rounded to millions of dollars)

Category	FY2009 Enacted	FY2010 Enacted	FY2010 Supplemental Request	FY2010 Supp. Request as Share of Total	FY2010 Total with Request	FY2011 Request
Relief	184	210	1,532	55%	1,742	213
Reconstruction ^a	619	705	1,114	40%	1,820	646
Diplomatic Operations	12	13	155	6%	168	17
TOTAL	816	929	2,801	100%	3,730	876

Sources: OMB, “FY2010 Haiti Supplemental,” http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf. State Department, USAID, FY2010 Haiti Supplemental Budget Justification, April 2010; <http://www.state.gov/documents/organization/141243.pdf>.

Notes: CRS calculations based on sources above.

- a. Reconstruction funds in FY2009, FY2010 Enacted and FY2011 Request include development accounts such as Global Health and Child Survival that are not funded in the FY2010 Supplemental request; see **Table 9** for details.

According to an Inter-American Development Bank study, the Haiti earthquake may have been the most devastating catastrophe that any country has ever experienced.¹⁰⁰ Approximately 3 million people, roughly one-third of the overall population in Haiti, have been affected by the earthquake with more than 2 million displaced. The government of Haiti is reporting an estimated 230,000 deaths and 300,600 injured.¹⁰¹ The relief effort is expected to last for many months. Prior to the earthquake, the United Nations had already designated Haiti as one of the 50 least developed countries in the world, facing higher risk than other countries of failing to come out of poverty, and therefore needing the highest degree of attention from the international community.¹⁰²

Protection of the displaced population is currently one of the most challenging and critical issues. It is estimated that there may be as many as 1.69 million displaced in Port-au-Prince, and up to 597,000 thought to have relocated in areas outside the capital that largely escaped earthquake damage, but were already poverty-stricken and lacking in basic services. Much smaller numbers of Haitians have left the country, some as refugees, for other countries such as the Dominican Republic, nearby islands, and the United States.

In Haiti, aid workers are delivering basic necessities to areas with concentrations of Internally Displaced Populations (IDPs), but emergency shelter is in short supply. As the rainy season begins (and with the hurricane season not far behind), providing adequate shelter and sanitation

¹⁰⁰ Eduardo A. Cavallo, Andrew Powell, and Oscar Becerra, *Estimating the direct economic damage of the Earthquake in Haiti*, Inter-American Development Bank, February 11, 2010, available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35072649>; and Mary Beth Sheridan, “Haiti earthquake damage estimated up to \$14 billion,” *The Washington Post*, February 17, 2010.

¹⁰¹ USAID/OFDA, Haiti-Earthquake, Fact Sheet #52, FY2010, April 30, 2010.

¹⁰² United Nations Office for Least Developed Countries. Facts About Least Developed Countries (LDCs) available at <http://www.unohrls.org/UserFiles/File/Publications/Factsheet.pdf>, accessed January 15, 2010.

for the displaced has become an urgent priority. Attention is focused on providing waterproof emergency shelter, improving sanitation, and meeting basic needs of the displaced and other vulnerable Haitians.

According to the Haiti Post Disaster Needs Assessment conducted by Haiti and international institutions, the total value of recovery and reconstruction needs is \$11.5 billion¹⁰³ At the international donors conference held March 31, 2010, 48 countries, multilateral institutions, and a coalition of non-governmental organizations pledged nearly \$10 billion toward the long-term reconstruction efforts in Haiti. The U.S. pledge of \$1.2 billion is included in the FY2010 supplemental request.

The Obama Administration, other international donors, the Haitian government, and others have all stated the need for improved accountability of all donor assistance to Haiti, to improve aid effectiveness and reduce the potential for corruption. The government of Haiti made major progress in recent years in reducing corruption, increasing transparency, and improving fiscal management. These improvements qualified Haiti for Heavily Indebted Poor Country (HIPC) debt relief last year. To ensure transparency further, the U.S. Agency for International Development has helped Haiti establish an online system to monitor both donor pledges, and spending and implementation of assistance.¹⁰⁴

Congressional Action

The House-passed version of H.R. 4899 did not include funding for Haiti. Like the reported version, the Senate bill recommends a total of \$2.930 billion in its markup, \$134 million more than requested. The Senate bill total includes \$1.647 billion for relief activities (\$115 million above the request); \$1.140 billion for recovery and reconstruction (\$26 million above the request); and \$147 million for diplomatic operations (\$8 million less than the request) See **Table 9**, **Table 10**, and **Table 11**. More details are below.

Humanitarian Relief Funding¹⁰⁵

The Administration is requesting a total of \$1.5 billion in relief and disaster assistance funding for Haiti, which would reimburse U.S. government agencies for services provided and for funds already obligated for ongoing relief activities. The humanitarian relief funding request also covers other relief-related assistance. The \$1.5 billion request includes \$350.7 million for USAID International Disaster Assistance (IDA); \$150 million for Agriculture Department emergency food assistance; \$96.5 million for State Department: Contributions to International Peacekeeping Activities; \$655 million for Department of Defense and \$45 million for U.S. Coast Guard relief activities; \$220 million for Department of Health and Human Services to provide grants to States to cover services to Haitian evacuees; and \$15 million for Department of Homeland Security immigration fees (see **Table 9**).

¹⁰³ Government of Haiti, the United Nations, the European Union, the Inter-American Development Bank, and the World Bank, "Haiti Post Disaster Needs Assessment: draft executive summary," March 10, 2010; <http://www.haitisantodomingo2010.org/hsd2010/content/documents>.

¹⁰⁴ The Haiti Reconstruction Platform is available at <http://www.refondation.ht/index.jsp?sid=1&id=1&pid=1>.

¹⁰⁵ This section prepared and coordinated by Rhoda Margesson, CRS Specialist in International Humanitarian Policy, Foreign Affairs, Defense, and Trade Division.

Relief Funding: International Disaster Assistance and Emergency Food Aid

On January 14, 2010, President Obama announced \$100 million in humanitarian assistance (in addition to pre-existing funding appropriated for Haiti) to meet immediate needs. As of April 2, 2010, USAID reported that the United States has provided more than \$1 billion in humanitarian funding for Haiti.¹⁰⁶

The FY2010 supplemental request includes \$350.7 million for International Disaster Assistance (IDA). This amount includes \$126.6 million for USAID, as the lead agency, to reimburse five other U.S. government agencies for providing earthquake relief to Haiti through interagency agreements.¹⁰⁷ In addition, IDA funding would cover other support, mostly for services already provided, in the amount of \$35.6 million for Search and Rescue (SAR) agreements (\$11 million); USAID/Disaster Assistance Response Team (DART) Program Support (\$0.6 million); and USAID/Office of Foreign Disaster Assistance (OFDA) Relief Commodities (\$24 million.)¹⁰⁸

Table 9. Haiti Relief Funding, FY2009-FY2011
(rounded to millions of dollars)

Account/Agency	FY2009 Enacted	FY2010 Enacted	FY2010 Supp. Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	FY2011 Request
International Disaster Assistance, State/USAID	6	0	351	0	465	351	0
Food for Peace, Agriculture	64	46	150	0	150	196	36
Operation and Maintenance, Army, DOD	0	0	133	0	218	133	0
Operation and Maintenance, Navy, DOD	0	0	115	0	188	115	0
Operation and Maintenance, Marine Corps, DOD	0	0	19	0	31	19	0
Operation and Maintenance, Air Force, DOD	0	0	133	0	218	133	0

¹⁰⁶ USAID/OFDA, Haiti-Earthquake, Fact Sheet #52, FY2010, April 30, 2010.

¹⁰⁷The five agencies (with request amounts in parentheses) are: Federal Emergency Management Agency/Department of Homeland Security (\$49 million); Department of Health and Human Services (\$36.2 million); Department of Defense, (\$40.5 million); the Peace Corps (\$0.32 million); and the U.S. Geological Survey (\$0.59 million). Most of the reimbursement to DOD is for the provision and transportation of ready-to-eat meals and does not include costs of transportation and logistical support, which is addressed later in this section.

¹⁰⁸ The USAID/DART is also ongoing as it is transitioning to a liaison role in working with the Government of Haiti on emergency programming and recovery phase activities.

Account/Agency	FY2009 Enacted	FY2010 Enacted	FY2010 Supp. Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	FY2011 Request
Overseas Humanitarian, Disaster, and Civic Aid, DOD	0	0	255	0	0	255	0
US Coast Guard Operating Expenses, DHS	0	0	45	0	50	45	0
Public Health and Social Services Emergency Fund, HHS	0	0	220	0	220	220	0
Immigration Examinations Fee, DHS	0	0	15	0	11	15	0
Contributions to International Peacekeeping, State/USAID ^a	114	164	97	0	97	261	177
Any Federal Agency, Sec. 11	NA	NA	NA	0	0	NA	NA
DOD, Sec. 12	NA	NA	NA	0	0	NA	NA
RELIEF TOTAL	184	210	1,532	0	1,647	1,742	213

Sources: OMB, “FY2010 Haiti Supplemental,” http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf. State Department, USAID, FY2010 Haiti Supplemental Budget Justification, April 2010; <http://www.state.gov/documents/organization/141243.pdf>; *S. Rept. 111-188*.

Notes: CRS calculations based on source above.

- a. The CIPA account funds U.S. assessed contributions to MINUSTAH, a U.N. peacekeeping operation established by the U.N. Security Council in 2004. In response to the earthquake, the Council emphasized MINUSTAH’s support of “recovery, reconstruction and stability efforts” in Haiti. Assessments funded for FY2009 and FY2010, and requested for FY2011, prior to the earthquake, were directed to the MINUSTAH mandates set by the Council in 2004, which for the most part did not focus on relief activities. In its FY2010 supplemental request, the Administration placed MINUSTAH assessed contributions under the Relief category. The amounts listed under CIPA for FY2009, FY2010, and FY2011 have been left in the Relief category for ease of comparison across years.

The balance of \$188.5 million of the IDA request would cover ongoing humanitarian assistance activities that have already been obligated. The United States is working closely with the Government of Haiti, the United Nations, other donor nations, non-governmental organizations (NGOs), and the private sector through the U.N. cluster system.¹⁰⁹ In Haiti, relief activities have been organized into twelve clusters led by various agencies. IDA funding is targeting several of these, including humanitarian coordination programs (\$9 million); logistics and non-food item programs (\$20.7 million); shelter/settlement/livelihoods programs (\$93.43 million); health and

¹⁰⁹ Humanitarian relief sectors or clusters are typically established by the United Nations during humanitarian crises to help coordinate partners, prioritize resources, and facilitate planning.

nutrition programs (\$42 million); water, sanitation and hygiene programs (\$18 million); and child protection programs (\$5.4 million).

Under Food for Peace (FFP) Title II Grants, the request includes \$150 million for emergency food assistance, \$68 million of which would be to supply the World Food Program (WFP) with 55,000 metric tons of Title II Emergency Food Assistance and \$55 million of which would fund proposals from Private Voluntary Organizations. It is currently estimated that up to two million people may need food assistance in Haiti due to the earthquake. As recovery and reconstruction proceed, it is expected that overall food needs will decline, at which time food activities would target the most vulnerable and would also focus on food-for-work programs.

Relief operations in Haiti will continue at least through 2010. It is typical in most natural disasters that as recovery begins, there is an overlap in activities that might otherwise be considered purely relief or purely reconstruction. In the recovery and reconstruction part of the supplemental request discussed below, it should be noted that some activities will address humanitarian concerns as well.¹¹⁰

Key Concerns and Priorities

Consequences of Natural Disasters

A number of natural disasters have struck Haiti in the last decade, mostly in the form of hurricanes.¹¹¹ The international community has provided significant humanitarian assistance in response to these disasters and their ongoing impact.¹¹² The United Nations, along with other partners, including the United States, has had a strong presence in Haiti, and remains at the forefront of the on-the-ground response for humanitarian assistance. Disaster risks in Haiti are significant. Experts recognize that finding ways to overcome the cycle of disaster and develop a disaster response capacity are critical not only to minimize humanitarian consequences, but also to sustain reconstruction efforts in the future.

¹¹⁰ For example, USAID's Office of Transition Initiatives, through its Community Stabilization Program, would provide resettlement support to IDPs in Port-au-Prince, and to other areas that have received large influxes of IDPs; and the program to enhance citizen participation would provide support to vulnerable groups and to IDP-camp based recovery initiatives. The Economic Support Fund (ESF) would provide funding for investments in new settlements for the displaced; some of the funding for health would also focus on critical populations displaced by the earthquake and those in need of long-term rehabilitation and disability care. Programs through ESF and International Narcotics Control and Law Enforcement (INCLE) would in part address security concerns among the displaced, the capacity of local government authorities to deliver essential services to IDPs, and the protection of human rights among the most vulnerable Haitian citizens.

¹¹¹ Previous disasters include floods in May 2002 and November 2006; tropical storms in September 2004, October 2007, and September 2008; and hurricanes in August and September 2007 and September 2008.

¹¹² Many international actors have provided humanitarian relief to Haiti, either through financial contributions to the government of Haiti or aid organizations or by directly providing relief supplies and emergency personnel. International recovery efforts are typically complex because they require coordination among numerous different actors, including other governments and international entities. Apart from U.N. agencies, those responding to humanitarian crises include international organizations, non-governmental organizations (NGOs), Private Voluntary Agencies (PVOs), and bilateral and multilateral donors.

Replenishing Disaster Accounts

Humanitarian assistance generally receives strong bipartisan congressional support and the United States is typically a leader and major contributor to relief efforts in humanitarian disasters.¹¹³ When disasters require immediate emergency relief, the Administration may fund pledges by depleting its disaster accounts intended for worldwide use throughout a fiscal year. To date, disaster accounts are being drawn down to provide relief to Haiti. The State Department reports that in order to respond to future humanitarian crises, these resources would need to be replenished by June 1, 2010. If not replenished, U.S. capacity to respond to other emergencies could be impacted. The relief funding in the current request would provide reimbursement for funding already provided or obligated.

Burdensharing and Donor Fatigue

The earthquake disaster in Haiti has received worldwide attention and focus. On February 19, 2010, the United Nations put forward its Revised Humanitarian Appeal for Haiti in the amount of \$1.44 billion and extended the humanitarian operation through 2010. As of April 29, 2010, commitments of \$831 million (55.4%) had been received. It is not always evident whether figures listing donor amounts represent pledges of support or more specific obligations. Furthermore, pledges made by governments do not necessarily result in actual contributions. It also cannot be assumed that the funds committed to relief actually represent new contributions, since the money may previously have been allocated elsewhere. It will take time for a more complete picture to reveal how the actual costs of the Haiti disaster will be shared among international donors. As the situation in Haiti stabilizes, sustaining donor interest in Haiti (and commitment to honor existing pledges) could be a challenge. Moreover, this challenge is compounded by the need to maintain funding priorities and secure funds needed for other disaster areas worldwide.

Coordinating the Relief Response in Haiti

Some have criticized the initial response by the international community in the actual delivery of humanitarian assistance as far too slow. Others have argued that there has been a great deal of unfair criticism of the pace of the international aid effort. The weakened capacity of the Haitian government, critically damaged infrastructure, and logistical challenges posed by the influx of massive aid into a city largely destroyed by the earthquake all contributed to delay and difficulties on the ground. Evaluations of the relief response in Haiti will likely continue to be conducted and debated as the humanitarian and recovery efforts move ahead. Some experts remain concerned about bureaucratic red tape in the humanitarian response, the capacity of the Haitian government, the role of the United States, and overall coordination issues between and among members of the international community, including the United Nations. Response to a disaster of this scope is almost certain to run into many obstacles because the challenges on the ground are so daunting. While managing expectations of what is possible under these circumstances is important, so too, are the observations and lessons learned that with time and hindsight may benefit the actions and plans of ongoing relief efforts in Haiti.

¹¹³ For background information, see CRS Report RL33769, *International Crises and Disasters: U.S. Humanitarian Assistance, Budget Trends, and Issues for Congress*, by Rhoda Margesson.

Department of Defense and U.S. Coast Guard Relief Activities¹¹⁴

The DOD requested \$655 million and the U.S. Coast Guard requested \$45 million to cover its humanitarian relief efforts in Haiti in Operation Unified Response (OUR) (see **Table 9**). This includes funds to reimburse the services the U.S. Coast Guard for drawing down funds from other accounts as well as additional funds for the Humanitarian, Disaster, and Civic Aid Account (OHDACA), the account used by DOD for humanitarian relief efforts.¹¹⁵ The request largely covers expenses already incurred though operations are expected to continue through June 15, 2010. The funding provided soldier subsistence; personal, operational, and transportation support; humanitarian relief supplies; and several humanitarian relief projects. The Senate Committee on Appropriations recommended fully funding the Administration's request for the Department of Defense, and recommended adding an additional \$5 million to the Coast Guard request to provide for continuing operations in Haiti. (S.Rept. 111-188)

DOD's response to the Haitian earthquake was both rapid and extensive. At the height of the operation, over 20,000 U.S. military personnel were in the operational area, both ashore and afloat, transporting emergency relief personnel and supplies, evacuating people including U.S. citizens residing in Haiti, providing security for the distribution of humanitarian supplies; making repairs to the Port-au-Prince airport and seaports, and recovering the remains of U.S. citizens.

Over the last few weeks, there has been a substantial drawdown of U.S. military personnel and by June 15, 2010, a withdrawal is expected to be complete. Some have voiced concerns that this date may be premature, and could worsen the security situation, given the weakened state of Haitian security forces and the limited capabilities of the United Nations security personnel. Should the security situation deteriorate significantly, the Administration may change that date, which could then require additional supplemental appropriations.

State Department's Contributions to International Peacekeeping Activities (CIPA)¹¹⁶

The Administration is requesting \$96.5 million for the State Department's Contributions to International Peacekeeping Activities (CIPA) account to fund U.S. assessed contributions to the United Nations Stabilization Mission in Haiti (MINUSTAH), a peacekeeping operation. The increased assessment responds to the U.N. Security Council's January increase in MINUSTAH levels by 3,500, after the earthquake, with military personnel growing from 6,940 to 8,940 and the police component growing from 2,211 to 3,711.¹¹⁷

¹¹⁴ Written by Steven Bowman, CRS Specialist in National Security, Foreign Affairs, Defense, and Trade Division.

¹¹⁵ Title X U.S. Code, Sections 2561 and 404 direct that DOD's humanitarian relief and foreign disaster assistance operations be funded through the Overseas Humanitarian, Disaster, and Civic Aid Account.

¹¹⁶ Written by Marjorie Ann Browne, CRS Specialist in International Relations, Foreign Affairs, Defense, and Trade Division.

¹¹⁷ This information is taken from the U.S. Department of State and Agency for International Development. FY2010 Haiti Supplemental Budget Justification. p. 17. For more detailed information on MINUSTAH, see CRS Report R41023, *Haiti Earthquake: Crisis and Response*, by Rhoda Margesson and Maureen Taft-Morales. Another \$45 million is provided for MINUSTAH through the INCLE account to fund additional U.S. personnel in MINUSTAH, construction of a temporary camp, enough supplies to make them self-sustaining, as well as emergency supplies, replacement uniforms and equipment, and training and equipping a police unit in crowd/riot control and protection of U.N. facilities and personnel.

Congressional Action

The House version of H.R. 4899 did not address the Administration's request for Haiti relief funding. The Senate bill recommends an additional \$114 million for Haiti relief activities and makes a number of recommendations.¹¹⁸ These include \$465 million for the IDA account, an increase of \$114.3 million above the Administration's request. The Committee matched the Administration's request for \$150 million for the P.L. 480-Title II assistance to meet food needs in Haiti, and the \$655 million request for the Department of Defense, transferring funds from the OHDCA account and the individual services. The Committee also recommended an additional \$5 million to the Coast Guard's request in view of its continuing operations in Haiti. The Committee also endorsed the request for peacekeeping operations (CIPA).¹¹⁹

Assistance to Haitian Evacuees and Migrants¹²⁰

In addition to relief and reconstruction aid provided in Haiti, the Administration is requesting funds to aid Haitian evacuees and migrants to the United States, including making them eligible for various benefits programs and waiving fees for processing immigration requests that are described below.

Congressional Action

The House version of H.R. 4899 did not address the Administration's request for \$220 million to provide services and extend various benefits to Haitian evacuees and migrants. The Senate bill approves the request.

The House did not address the request for \$15 million to cover the cost of waiving fees for Haitian migrants levied by the U.S. Customs and Immigration Service (USCIS). The Senate bill recommends \$10.6 million for USCIS in H.R. 4899, \$4 million below the request on the basis that application requests have been lower than anticipated.¹²¹

Department of Health and Human Services¹²²

The President's request would provide \$256.2 million, to be available until expended, for activities of the Department of Health and Human Services (HHS). Of this amount, \$220.0 million would be provided directly to HHS for certain completed and ongoing activities.¹²³ The

¹¹⁸ See S.Rept. 111-188.

¹¹⁹ Under INCLE, the Committee recommended the requested \$45 million for MINUSTAH- related expenses in the Peacekeeping subaccount.

¹²⁰ Written by Sarah A. Lister, Specialist in Public Health and Epidemiology, and Ruth Ellen Wasem, Specialist in Immigration Policy, Domestic Social Policy Division.

¹²¹ See p. 47, *S.Rept. 111-188*.

¹²² Written by Sarah A. Lister, Specialist in Public Health and Epidemiology, and Ruth Ellen Wasem, Specialist in Immigration Policy, Domestic Social Policy Division.

¹²³ OMB, "FY2010 Haiti Supplemental," pp. 13-14; http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf. Funds would be provided to the HHS Public Health and Social Services Emergency Fund (PHSSEF), an account administered by the HHS Secretary that has been used to provide annual or emergency supplemental appropriations for one-time or short-term activities in a variety of HHS agencies and offices. For more information, see CRS Report RL33579, *The Public Health and Medical Response to Disasters: Federal Authority and* (continued...)

additional \$36.2 million would be provided to USAID to reimburse HHS for certain activities conducted under interagency agreements.¹²⁴

According to the President's request, the \$220.0 million amount would fund four types of activities, which are described further below: (1) the state share of Medicaid and Children's Health Insurance Program (CHIP) costs for eligible evacuees; (2) costs associated with medical evacuations; (3) cash, medical, and repatriation assistance for eligible evacuees; and (4) costs for HHS public health activities in Haiti. The request does not specify how much funding would be allocated to each of these activities. Also, the request does not propose any changes or expansions in eligibility for assistance or benefits.

First, supplemental funds would provide payment of the state share of Medicaid and CHIP costs for health care services for eligible medical and non-medical evacuees. (Typically, each state is required to "match" or pay a portion of the costs of care for eligible individuals in the state.) Those Haitians who enter the United States with humanitarian parole status are deemed to be Cuban-Haitian Entrants, and thus are eligible for Medicaid until they have been in the United States for seven years.¹²⁵ After the initial seven years, states have the option to continue to provide Medicaid.¹²⁶ The request does not specify the proposed duration of this assistance to states.¹²⁷

Second, requested funds would be used to reimburse the HHS National Disaster Medical System (NDMS) for costs associated with medical evacuation of seriously injured earthquake victims to the United States, and their subsequent care in U.S. hospitals.¹²⁸ Under HHS policy for this incident, NDMS will reimburse hospitals for the costs of care, for 30 days, for any individual who was medically evacuated from Haiti by NDMS, regardless of citizenship or nationality.¹²⁹ NDMS does not pay costs beyond 30 days, costs for services provided by non-hospital facilities (such as

(...continued)

Funding, by Sarah A. Lister.

¹²⁴ This amount is included in the \$350.7 million requested for USAID for International Disaster Assistance, OMB, "FY2010 Haiti Supplemental," p. 25, and as described in U.S. Department of State and USAID, *FY2010 Haiti Supplemental Budget Justification*, p. 23.

¹²⁵ For a complete explanation, see CRS Report RS21349, *U.S. Immigration Policy on Haitian Migrants*, by Ruth Ellen Wasem, pp. 8-11.

¹²⁶ CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem. Haitians who enter the United States as legal permanent residents (LPRs) may become eligible for Medicaid after five years in the United States, at the state's option. Under current law, states also have the option of providing Medicaid and CHIP to children and pregnant women who are LPRs and battered individuals lawfully residing in the United States during the first five years that they are living in the United States. CRS Report R40144, *State Medicaid and CHIP Coverage of Noncitizens*, by Ruth Ellen Wasem.

¹²⁷ Federal coverage of the state matching requirement is likely to be temporary. For example, following Hurricane Katrina, Congress waived the state matching requirement for eligible individuals displaced by the disaster for a period of six months. Specific information regarding Medicaid reimbursement for Haitian earthquake victims can be found at Centers for Medicare and Medicaid Services (CMS), "Questions and Answers," https://questions.cms.hhs.gov/cgi-bin/cms_hhs.cfg/php/enduser/std_alp.php?p_sid=5MTSe8Tj&p_lva=&p_li=&p_redirect=&p_page=1&p_cv=&p_pv=4.1122&p_prods=1,476,1122.

¹²⁸ See "Medical Evacuation" in CRS Report R41023, *Haiti Earthquake: Crisis and Response*, by Rhoda Margesson and Maureen Taft-Morales.

¹²⁹ HHS, "Payments for National Disaster Medical System (NDMS) Patients and Other Medical Evacuees from Haiti," questions and answers, March 19, 2010, provided to CRS by the HHS Office of the Assistant Secretary for Legislation.

rehabilitation facilities), or costs for the care of individuals who were not evacuated through the NDMS system.

Third, requested funds would be used to provide cash and medical assistance to Haitian humanitarian parolees, and repatriation costs as appropriate. These Haitian parolees are eligible for the federal resettlement assistance program for refugees and entrants, which is partially funded through the Office of Refugee Resettlement (ORR) in HHS.¹³⁰ In addition to providing a range of social services, primarily administered by states, the ORR provides funding to states for transitional cash and medical assistance through the Transition and Medical Services program.¹³¹ Haitian parolees who meet the income and resource eligibility requirements for Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or Medicaid, but are not otherwise eligible (e.g., single males or childless females and couples), may receive benefits under the ORR-funded Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) programs.¹³²

Finally, requested funds would be used to support certain public health activities in Haiti, including disease surveillance, the reestablishment of laboratory capacity, and environmental health activities.¹³³

The \$36.2 million requested for USAID reimbursements to HHS would pay for a number of medical, surgical, and mortuary assistance teams and associated assets that were deployed to Haiti, including personnel and supplies for a 250-bed hospital.¹³⁴

U.S. disaster assistance to other nations does not typically involve the acceptance of large numbers of disaster victims into the United States. Some forms of assistance rendered to Haitian earthquake victims may be without precedent. For example, NDMS was developed to provide the capability for mass medical evacuation of injured U.S. combat forces for treatment in U.S. hospitals, and is also intended as a domestic civilian mass casualty management system. The system had not previously been used to airlift victims of foreign disasters into the United States for medical care. Its use for this purpose required the rapid development of policies regarding patient selection, assignment to domestic hospitals, hospital reimbursement, and other logistical matters.

U.S. Citizens and Immigration Services (USCIS): Waiving Fees¹³⁵

The President's supplemental request includes \$15 million for the U.S. Citizens and Immigration Services (USCIS) to enable the agency to cover the immigration-related costs associated with Haitian migrants affected by the January 12, 2010, earthquake.¹³⁶ USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits almost

¹³⁰ CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

¹³¹ ORR cannot reimburse states for SSI, TANF, or Medicaid programs.

¹³² HHS, Administration for Children and Families, *Annual ORR Reports to Congress-2005*, <http://www.acf.hhs.gov/programs/orr/data/arc.htm>.

¹³³ For more information, see HHS, "Haiti—HHS Relief and Support Activities," at <http://www.hhs.gov/haiti/>.

¹³⁴ U.S. Department of State and USAID, *FY2010 Haiti Supplemental Budget Justification*, p. 23.

¹³⁵ Written by Ruth Ellen Wasem, Specialist in Immigration Policy, Domestic Social Policy Division.

¹³⁶ For a full discussion of the immigration issues arising in the aftermath of the January 12, 2010, earthquake in Haiti, see CRS Report RS21349, *U.S. Immigration Policy on Haitian Migrants*, by Ruth Ellen Wasem.

entirely through monies generated by the Examinations Fee Account.¹³⁷ USCIS charges fees for almost all adjudications and services. Foreign nationals applying for Temporary Protected Status (TPS) pay as well.¹³⁸ USCIS traditionally has not charged the Examination Fee for refugees and asylum seekers.

For FY2010, UCIS has a budget authority of \$2,727 million, of which \$2,503 million comes from the fees collected (mandatory fee funded offsets). The Department of Homeland Security Appropriations Act 2010 (P.L. 111-83) also provided \$224 million in direct appropriations to USCIS, including \$50 million for processing refugee applications and asylum claims.¹³⁹ The Administration proposes to use the \$15 million requested in the supplemental appropriations for fee waivers for eligible Haitians granted TPS; those given humanitarian parole to bring medical evacuees and certain categories of Haitians into the United States; and to cover costs associated with processing the adoption of Haitian orphans.

The prospects for the \$15 million request is unclear, given how Congress has responded to previous requests for direct appropriations to cover fees waived for humanitarian reasons. For example, USCIS received only 24% of the amount it requested (\$206 million) for processing refugee applications and asylum claims in FY2010, and the Senate-passed bill for FY2010 would have provided no direct appropriations for processing refugee applications and asylum claims.

Recovery and Reconstruction Funding for Haiti¹⁴⁰

The total request for Recovery and Reconstruction funding in this supplemental proposal is \$1.1 billion. This is primarily for new activities (see **Table 9**).¹⁴¹

The 111th Congress has expressed bipartisan support for providing Haiti with substantial assistance in response to the crisis generated by the January earthquake. At hearings in both the Senate and the House, Members and witnesses alike stressed the need for a massive, coordinated international effort not only for immediate humanitarian needs, but also for long-term development. Moving forward, they said, strategies must consider new approaches, aim to create a more sustainable Haiti, and increase Haitian capacity to utilize foreign aid effectively and to provide services and direct its own economy.

¹³⁷ Most notably, §286(m) of the Immigration and Nationality Act [8 USC §1356(m)] states that “fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” For further discussion and analysis, see CRS Report RL34040, *U.S. Citizenship and Immigration Services’ Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context*, by Chad C. Haddal.

¹³⁸ CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

¹³⁹ CRS Report R40642, *Homeland Security Department: FY2010 Appropriations*, coordinated by Jennifer E. Lake and Chad C. Haddal.

¹⁴⁰ This section prepared and coordinated by Maureen Taft-Morales, Specialist in Latin American Affairs, Foreign Affairs, Defense and Trade Division.

Table 10. Haiti recovery and Reconstruction Funding, FY2009-FY2011

in millions of dollars

Category/Account/Fiscal Year	FY2009 Enacted	FY2010 Enacted	FY2010 Supp. Request	H.R. 4899 as passed by the House 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	FY2011 Request
RECOVERY AND RECONSTRUCTION FUNDING: FY2010 SUPPLEMENTAL ACCOUNTS							
Economic Support Fund (ESF) ^a	134.3	160.8	749.3	0.0	770.0	910.1	146.3
International Narcotics Control and Law Enforcement (INCLE)	17.5	21.1	143.5	0.0	148.0	164.6	19.4
USAID Inspector General ^b	0.0	0.0	1.5	0.0	3.0	1.5	0.0
Salaries and Expenses	0.0	0.0	0.7	0.0	1.0	0.7	0.0
International Affairs Technical Assistance Program	0.0	0.0	7.1	0.0	7.0	7.1	0.0
Heavily Indebted Poor Countries Trust Fund, Sec. 4 (HIPC) ^{Error!} Reference source not found.	0.0	[40.0] ^b	[40.0] ^b	0.0	[40.0] ^b	[40.0] ^b	0.0
International Debt Cancellation, Sec.5	0.0	0.0	212.0	0.0	212.0	212.0	0.0
Subtotal: FY FY2010 Supplemental Accounts	151.8	181.9	1,114.1	0.0	1,141.0	1,295.9	165.7
OTHER FOREIGN ASSISTANCE ACCOUNTS							
Foreign Military Financing	2.8	1.6	0.0	0.0	0.0	1.6	1.6
Global Health & Child Survival	134.8	144.0	0.0	0.0	0.0	144.0	156.0
Intern'l Mil. Ed. & Training	0.2	0.2	0.0	0.0	0.0	0.2	0.2
Transition Initiatives	0.0	5.0	0.0	0.0	0.0	5.0	0.0
Subtotal: OTHER FOREIGN ASSISTANCE ACCOUNTS	137.8	150.9	0.0	0.0	0.0	150.9	157.9
RECONSTRUCTION TOTAL: ALL ACCOUNTS	289.5	332.7	1,114.1	0.0	1,141.0	1,446.8	323.6

Sources OMB, FY2010 Supplemental, "Disaster Relief," February 12, 2010; OMB, "Haiti Relief," March 24, 2010;" http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf; State Department, USAID, FY2010 Haiti Supplemental Budget Justification, April 2010; <http://www.state.gov/documents/organization/141243.pdf>; S.Rept. 111-188.

Notes: CRS calculations based on sources above. Notes: amounts in square brackets [] do not require additional budget authority.

- Includes \$120 million to be transferred by a general provision to the Treasury Department to a multi-donor trust fund for Haiti.
- The IG allocates resources to Haiti from its total funding.
- The HIPC Trust Fund did not set aside monies for Haiti in FY2009 and in FY010. The FY2010 supplemental request proposes that \$40 million of these already available funds be allocated to Haiti. For this reason, no additional budget authority would be needed. At the same time, total resources available to Haiti would be understated by that amount in this table.

Key Concerns: Priorities, Decentralization, Poverty Reduction, and Capacity Building

Choosing Priorities

To coordinate aid programs better, donors have agreed to focus on certain areas of assistance. For this reason, the U.S. programs in the supplemental focus on urgent infrastructure repairs, especially in the energy and agricultural sectors; critical health care; governance; and security. Some observers have expressed concern that U.S. assistance is neglecting other areas crucial to Haitian recovery, such as improving the educational system, which is to be the focus of Canada and France. While advocates say this approach avoids duplication among donors, critics question the priorities, or the limited approach to aid.

Decentralization and Economic Growth: Will they lead to Poverty Reduction?

A key element of the revised Haitian development strategy, supported by the supplemental request, is to catalyze economic growth and provide services and opportunities outside of Port-au-Prince. The Haitian government and donors agree that the current crisis provides an opportunity to correct what had become an unsustainable urban-rural imbalance in the country, with the rest of the country suffering neglect while people, resources, and services were concentrated in the capital.

Funds in the supplemental request would address both short- and long-term elements involved in this decentralization strategy—meeting the immediate needs of newly displaced populations that have migrated to less developed areas of the country, and strengthening local governance, infrastructure, and agriculture to develop new “growth poles” outside of Port-au-Prince. Scientists are helping Haitian authorities to select areas for development that are less vulnerable to natural disasters. While there is general support of this strategy, officials also note that developing areas long-neglected will be costly. Some also warn that populations should not be forcibly relocated in executing these plans. Experts also warn that economic growth is not sufficient to reduce poverty in Haiti, and that programs specifically targeted at poverty reduction are needed.

Effective Capacity Building?

Most observers agree that one goal of aid to Haiti should be to build the capacity of Haitians so they can eventually assume responsibility for the project at hand. Yet there is a tension between the standard definition of effectiveness and efficiency, and the time and money required for capacity building. Aid organizations are pressed to have measureable outcomes and usually operate on short-term contracts. If thorough training and coordinating with Haitian ministries is to be an element of all foreign aid programs, which many experts advocate, there will have to be a recognition that those programs may require more time, funding, and personnel, and measureable results may take longer to achieve.

Economic Support Funds for Infrastructure

The supplemental proposal requests \$749 million in Economic Support Funds (ESF) for International Assistance programs in Haiti, to remain available until September 30, 2012. Programs will focus on helping the Haitian government to rehabilitate infrastructure and provide

technical assistance to help improve its public outreach, as well as working on reconstruction projects that provide essential services such as shelter and infrastructure for water, sanitation, healthcare, and electricity, as well as finance projects in agriculture, farm to market roads, and major roads, bridges, and ports.

The Administration requests that up to \$120 million of the ESF be transferred to the Department of the Treasury to a multi-donor trust fund for Haiti, that could be used to leverage the contribution of significant resources from other donors. The proposal would also allow ESF monies to be transferred to USAID's Operating Expenses account for unanticipated staffing needs and other related expenses. To ensure that other projects are not displaced, the Administration requests that any transfers to the Development Credit Authority (DCA) account would be in addition to already appropriated amounts.

Key Concerns

Some experts suggest developing small-scale, alternative or clean energy sources at the local level rather than trying to rebuild the previously ineffectual Haitian electricity service would increase the quality of life of many Haitians and have a positive impact on economic growth.¹⁴² Some Members have expressed concern that insufficient funding is being focused on the needs of children, or on psychological support for the traumatized population. There is no additional funding for Global Health and Child Survival in the supplemental request.

International Narcotics Control and Law Enforcement Funds for Security

Under the Haiti supplemental request, the State Department would receive about \$144 million for International Narcotics Control and Law Enforcement (INCLE) activities to meet a renewed need for security in broader areas of Haiti. This funding would strengthen law enforcement by purchasing equipment and adding police advisors for the United Nations Stabilization Mission in Haiti (MINUSTAH) to re-establish and expand its presence in Haiti. Many of MINUSTAH's troops had shifted to development work because security had improved dramatically.¹⁴³

INCLE funds would strengthen the Haiti National Police (HNP) by restoring training capacity, providing equipment, supplies, and infrastructure, and by re-building prisons destroyed by the earthquake. Other programs would enhance criminal justice sector support; restore the ability of the HNP and the Haitian Coast guard to conduct counter-narcotics operations; and help prevent and combat human trafficking.

USAID and Treasury Funds for Oversight and Advisors

To improve accountability and oversight, and reduce corruption as funding for relief, rehabilitation and reconstruction in Haiti rises, the supplemental requests \$1.5 million for the Office of the Inspector General of USAID.

The Administration also requested \$690,000 for a Treasury Department attaché to work with the Ambassador, senior Haitian officials, and other donors, and oversee additional technical advisors.

¹⁴² Dan Schnitzer, "Avoid the Old Poverty Traps," *Foreign Policy*, January 19, 2010.

¹⁴³ Jonathan M. Katz, "Largest UN force in Haiti to focus on development," Associated Press, April 25, 2009.

The request includes a further \$7.1 million for these advisors, who would work with the government to restore basic treasury processes; continue to reduce corruption through improved procurement processes and fiscal transparency; and enhance economic management skills. Because the earthquake killed government officials and destroyed Ministry of Finance and other government buildings, along with records and equipment, much of the financial management progress that had been made has been set back.

Congressional Action

The original House bill passed in March did not address the Haiti request. The Senate bill recommends \$1.140 billion for all FY10 recovery and reconstruction activities for Haiti, \$26 million more than the Administration requested. The Committee also imposed restrictions and reporting requirements on the two biggest categories of that funding. Neither Economic Support Funds (ESF) nor International Narcotics Control and Law Enforcement (INCLE) funds—in this supplemental request or in prior appropriations acts—may be disbursed until the Secretary of State reports that Haitian national, provincial or local governments will be involved in the design and execution of programs. ESF and INCLE may only be provided to the Haitian government if the Secretary of State determines that the government of Haiti is carrying out reform, including removing corrupt officials. Direct budget support to the Haitian government requires written agreements with clear goals, and mechanisms to prevent the misuse of funds. The Committee states that any of this funding to the Haitian government should be suspended if those conditions are no longer being met.

The Senate bill recommends \$770 million for ESF, \$21 million more than requested. Up to \$10 million was added for the development of “quality, publicly funded” children’s education. The Senate version directs U.S. agencies to collaborate with Haiti on renewable energy and energy efficient programs. The Committee would prohibit any funding for “justice programs” until a credible investigation into alleged extrajudicial killings of prisoners by Haitian police in January 2010 is carried out and the Haitian government takes appropriate action.

The Senate bill recommends \$148 million for INCLE funding, \$4 million more than requested with \$2 million more for the construction and improvement of “deplorable conditions” of correction facilities; \$2 million more to combat human trafficking and slavery and replenishment of funds borrowed from other countries’ anti-human trafficking programs.

The Senate bill recommends \$3 million, double the request, for USAID’s Office of the Inspector General for oversight of increased funding for Haiti, approves the request for a Treasury Department attaché and Treasury Department technical advisors, and authorizes the requested \$120 million contribution for the multi-donor trust fund, requiring consultation on accountability mechanisms before making the contribution.

U.S. Funds for International Donor Trust Fund and Debt Relief

The Administration is requesting that up to \$120 million in Economic Support Funds be contributed to a Multi-Donor Trust Fund for Haiti to facilitate better coordination, implementation, and tracking of foreign assistance to Haiti. Although some in Haiti criticize the trust fund as giving too much control to foreign entities, both Haitian President Rene Preval and Prime Minister Jean-Max Bellerive have acknowledged that Haitian capacities were already

limited, and considerably diminished by the earthquake. A development authority, with Haitian government and international officials guiding long term development, is also being set up.

Providing Multilateral Debt Relief to Haiti¹⁴⁴

To help Haiti in its recovery from the earthquake, the Administration is proposing U.S. contributions of \$252 million to help cancel Haiti's debts of \$781 million to three international organizations: the Inter-American Development Bank, World Bank, and International Fund for Agriculture and Development. The Administration requests reallocating up to \$40 million from the Treasury Department's Debt Restructuring Account appropriated for the multilateral Heavily Indebted Poor Countries (HIPC) Trust Fund from this or subsequent fiscal years.¹⁴⁵ The Administration also seeks new contributions of \$212 million for multilateral debt relief. Congressional authorization is required for the \$40 million reallocation, and both authorization and appropriations are required for the additional \$212 million.

Congressional Action

For debt relief for Haiti, the Senate bill authorizes the requested reallocation of \$40 million in HIPC funds and up to \$252 million in U.S. contributions for multilateral debt relief. The Senate version would require the Secretary of State to submit a report within 90 days, and every 180 days afterwards, until September 30, 2012, assessing progress and U.S. contributions made toward meeting the goals of the Haitian development strategy, and donor coordination.

Funding for Diplomatic Operations in Haiti¹⁴⁶

The Administration is requesting \$155 million for diplomatic and broadcasting operations in Haiti (see **Table 11**). The \$149.5 million requested for the State Department would provide \$65 million for logistical support and assistance for the additional U.S. government personnel posted to Haiti, and \$84.5 million to repair or replace staff housing and other buildings associated with the Embassy.

A portion of these funds could be used to reimburse accounts for evacuation of Embassy family members and non-essential personnel, and for repatriation loans to American citizens who needed assistance to return to the United States. The State Department funds would reimburse accounts used for this emergency and also continue staffing support for the relief and reconstruction efforts. Without these reimbursements, shortages would develop in other countries for diplomatic and consular programs and embassy construction and repair.

¹⁴⁴ Written by Martin Weiss, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division

¹⁴⁵ The HIPC Trust Fund, administered by the World Bank, provides grants to eligible heavily indebted poor countries (HIPCs) to make debt payments on multilateral debt on behalf of the indebted country. More information is available in: "Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI)—Status of Implementation," September 15, 2009, available at <http://www.imf.org/external/np/pp/eng/2009/091509.pdf>. Haiti was graduated from this program in 2009.

¹⁴⁶ Written by Ken Nakamura, Analyst in Foreign Affairs, Foreign Affairs, Defense, and Trade Division.

Table 11. Diplomatic Operations Funding for Haiti, FY2009-FY2011

(rounded to millions of dollars)

Account	Agency	FY2009 Enacted	FY2010 Enacted	FY2010 Supp. Request	H.R. 4899 as passed by the House, 3-24-10	H.R. 4899 as passed by the Senate, 5-27-10	FY2010 Total with Request	FY2011 Request
Diplomatic and Consular Programs	State/ USAID	11	12	65	0	65	77	13
Embassy Security, Construction, and Maintenance	State/ USAID	0	0	85	0	79	85	0
International Broadcasting Operations	Broadcasting Board of Governors	1	1	5	0	3	6	4
TOTAL		12	13	155	0	147	168	17

Sources: OMB, FY2010 Supplemental, “Disaster Relief,” February 12, 2010; OMB, “Haiti Relief,” March 24, 2010;” http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf; and State Department FY2011 Budget Justification materials.

Note: CRS calculations based on sources above.

The request also includes \$5 million for the Broadcasting Board of Governors’ (BBG) Creole Language Service which increased its broadcasts five-fold—from 2 to 10.5 hours a day—after the earthquake. The funds would be used to repair and support the affiliate broadcasting stations used by the Creole Service, hire additional staff, and establish a Reporting Center in Port-au-Prince. These broadcasts have been and continue to be a major source of accurate information for the people of Haiti regarding relief, recovery, and family reunification efforts (see **Table 11**).

Congressional Action

The House version of H.R. 4899 did not include any funding for Haiti diplomatic operations. In its markup, the Senate cut \$8 million from the request.

Other Programs

Foreign Aid and Humanitarian Assistance

Although the Administration request was limited to Pakistan, Afghanistan, Iraq, and Haiti, the Senate bill adds \$592 million for foreign aid and humanitarian assistance programs for a number of other countries. This additional funding includes \$302 million for foreign aid programs and \$290 million for humanitarian programs. The House version of H.R. 4899 did not include any funding for these programs.

Foreign Policy and Development Issues

Under the Senate bill, Mexico would receive \$5 million in State Department Diplomatic and Consular Program funding for emergency security support for U.S. diplomats in the country and \$175 million in INCLE funds for judicial reform, anti-corruption, and other activities related to the Merida Initiative. Jordan would be provided \$50 million in FMF to address “urgent security needs,” and Vietnam would receive \$12 million in ESF funds for the remediation of dioxin contamination at the Da Nang Airport. USAID’s Global Health and Child Survival account would receive \$45 million to address the worldwide threat of pandemic influenza.

Humanitarian Assistance

The Senate version provides the following additional humanitarian assistance: ESF funds including \$100 million to meet needs of Iraqi refugees, \$15 million and the Democratic Republic of Congo to assist civilians, particularly victims of rape and other violence, in the eastern region of the country, and \$25 million for El Salvador aimed at relief and reconstruction related to Hurricane Ida. The Senate bill also proposes that \$165 million be provided to the State Department’s Migration and Refugee Assistance (MRA) account to assist Iraqi, Afghan, Pakistani, Congolese, Burmese, and Somali refugees and Internally Displaced Persons (IDPs).

Deepwater Horizon Oil Spill Provisions¹⁴⁷

The Administration submitted its request for supplemental appropriations to respond to the Deepwater Horizon oil spill in the Gulf of Mexico in a budget amendment on May 12, 2010.¹⁴⁸ In its budget amendment, the Administration proposed a total of \$118 million in discretionary supplemental appropriations much of which would pay the costs of activities that may not be recoverable from the responsible parties under the liability provisions of the Oil Pollution Act of 1990.¹⁴⁹ The Administration also proposed a mandatory funding provision that would increase the current limitation on the amount that the U.S. Coast Guard can receive as “advances” from the Oil Spill Liability Trust fund to pay for its response activities, discussed later in the report.

The Administration request included the following programs:

- \$50 million to create an Oil Spill Relief Employment Assistance program to provide National Emergency Grants for temporary employment and expanded employment search assistance, to be paid for by the parties responsible for the oil spill;¹⁵⁰
- \$29 million for the Department of the Interior to conduct additional inspections, enforcement, studies, and other activities related to the oil spill;

¹⁴⁷ Written by David M. Bearden and Jonathan L. Ramseur, Specialists in Environmental Policy, Resources, Science, and Industry Division.

¹⁴⁸ OMB, “Oil Spill Request;” http://www.whitehouse.gov/omb/assets/budget_amendments/supplemental_05_12_10.pdf.

¹⁴⁹ 33 U.S.C. § 2702.

¹⁵⁰ This program would be set up under Section 173 of the Workforce Investment Act of 1998. The Oil Pollution Act of 1990 requires that these expenses be paid by the responsible parties. David Bradley contributed to this section.

- \$13 million for the National Oceanic and Atmospheric Administration (NOAA) to “mitigate economic impact” on fishermen and fishery-related businesses affected by the oil spill, if the Secretary of Commerce determines that resources provided under other authorities are not sufficient;¹⁵¹
- \$10 million for the Department of Justice to carry out enforcement actions under the Oil Pollution Act and Clean Water Act, and defensive litigation under the Federal Tort Claims Act;
- \$7 million for the National Oceanic and Atmospheric Administration for research, including scientific investigations and sampling, in support of the oil spill response;
- \$5 million for the Economic Development Administration to award grants to state and local governments and non-profit entities in affected areas for economic assistance, including the development of economic recovery plans;
- \$2 million for the Environmental Protection Agency to study the long-term impacts of the oil spill and the use of dispersants as part of the cleanup effort; and
- \$2 million for the Food and Drug Administration to purchase new technologies to enhance seafood inspection capabilities.

Congressional Action

The original House version of H.R. 4899 did not address these oil-spill related proposals address these Administration request because they were submitted on May 12, 2010 after House passage in late March. The Senate-passed bill approved \$68 million of the \$118 million requested by the Administration, rejecting the proposal for \$50 million for a new unemployment assistance program for individuals affected by the oil spill.¹⁵²

In floor debate, the Senate passed amendments that would provide additional appropriations to respond to the oil spill, including:

- \$26 million for NOAA (\$15 million additional funding for fisheries disaster relief for fishermen and fishery-related businesses, \$10 million for an expanded stock assessment of fisheries in the Gulf of Mexico, and \$1 million for the National Academy of Sciences to conduct a study of the long-term impacts of the oil spill on “ecosystem services;”);¹⁵³ and
- authority for the Army Corps of Engineers to use a portion (dollar amount not specified) of the \$129 million in discretionary supplemental appropriations provided elsewhere in H.R. 4899 for dredging, to fund at full federal cost the placement of dredged material to mitigate the impacts of the oil spill.

¹⁵¹ See S.Rept. 111-188, p. 71; this includes claims for economic damages against the responsible parties under the Oil Pollution Act of 1990.

¹⁵² The Senate did not change the amounts in Title II of H.R. 4899, as reported by the Senate, and S.Rept. 111-188, p. 71-72.

¹⁵³ Although the availability of the \$13 million is conditional upon the Secretary of Commerce determining that other sources of funds would not be sufficient to address the economic impacts, the \$15 million for fisheries disaster relief does not appear to be subject to this condition.

Mandatory Spending for Veterans' Benefits, Settling Court Cases, and Oil Spill Response Activities

The Administration is requesting a total of \$17.9 billion in additional mandatory spending including

- \$13.4 billion to provide additional benefits for veterans exposed to Agent Orange in Vietnam;
- \$3.4 billion to settle the longstanding Cobell case about government responsibility for handling Indian land trusts;
- \$175 million to increase funding available to the Coast Guard for its response activities and for a proposed new unemployment program for those affected by the spill; and
- \$1.2 billion to settle the Pigford II case about discrimination claims of black farmers.

In the case of the VA benefits, the Secretary of the Department of Veterans' Affairs (VA) currently has the statutory authority to determine whether certain circumstances—such as exposure to hazardous substances like Agent Orange—merit a presumption that specific later health problems are service-connected. Under current scorekeeping conventions, spending for new benefits that is based on exercising current authority is not counted as new, or an increase in, federal spending for budget enforcement purposes. Therefore, the spending for the VA benefits presumably would not be subject to budget procedural constraints, such as PAYGO rules.

The Administration is proposing that the additional mandatory funding to respond to the Deepwater Horizon oil spill be categorized as emergency funding and thus exempt from PAYGO rules.

Spending for the two court settlements, however, requires new legislative authority as well as funds and therefore would count as new spending for budget enforcement purposes, and may be subject to certain budget rules, such as PAYGO rules (see “Budget Rules and Supplemental Requests”). Some Members have proposed finding offsets and others have suggested designating the funding as emergency.¹⁵⁴

Additional Benefits for Veterans Exposed to Agent Orange¹⁵⁵

The Secretary of the Department of Veterans Affairs (VA) has statutory authority to determine presumptions of service-connection for conditions determined to be associated with exposure to Agent Orange.¹⁵⁶ On October 13, 2009, the Secretary of the VA announced his intention¹⁵⁷ to

¹⁵⁴ Congressional Quarterly, “Content, Costs and Timetable for War Supplemental Remain Uncertain,” April 30, 2010. For more information on budget rules and offsets, see CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr., and CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

¹⁵⁵ Written by Christine Scott, Specialist in Social Policy, Domestic Social Policy Division.

¹⁵⁶ For more information on service-connection of conditions associated with Agent Orange, see CRS Report RL34370, (continued...)

establish a presumption of service connection for Parkinson's disease, ischemic heart disease, and hairy cell/B cell leukemia for veterans who served in the Republic of Vietnam and were exposed to Agent Orange compounds.¹⁵⁸ Proposed regulations were issued on March 25, 2010.¹⁵⁹ OMB estimates that the costs for the new presumptions of service connection for these conditions will be \$13.4 billion in FY2010 (see **Table 1**).¹⁶⁰

The VA estimates that there are approximately 86,000 veterans who will be able to receive retroactive benefits for the new presumptive conditions. In addition, there are veterans who will be eligible for an increase in their current disability rating, or will be able to begin disability compensation based on the new presumptions.¹⁶¹ Payments of disability compensation related to the new presumptions will begin when final regulations are published. The impact of the presumptions on disability compensation and pensions is in the baseline for FY2011.

While the Administration has requested the \$13.4 billion as a supplemental appropriation for FY2010 in its FY2011 budget, the Secretary of the VA already has the authority under current law to make this determination, which requires the VA to compensate veterans once regulations are issued.

Potential Change in the Estimate

CBO has estimated that \$5 billion rather than \$13.4 billion would be needed in FY2010.¹⁶² The differences between the CBO and OMB estimate for FY2010 is due to the uncertainty about when the final regulations for the service connection presumptions will be released and the length of time for processing disability compensation claims by the VA (179 days in FY2009 for initial disability compensation claims). The appropriators may consider adjusting the OMB estimate in light of these factors.

(...continued)

Veterans Affairs: Health Care and Benefits for Veterans Exposed to Agent Orange, by Sidath Viranga Panangala and Douglas Reid Weimer.

¹⁵⁷ See Department of Veterans Affairs news release on October 13, 2009, available at <http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1796>.

¹⁵⁸ In 1991, the Agent Orange Act (P.L. 102-4) established for the first time a presumption of service-connection for diseases associated with herbicide exposure. P.L. 102-4 authorized the Department of Veterans Affairs (VA) to contract with the Institute of Medicine (IOM) to conduct a scientific review of the evidence linking certain medical conditions to herbicide exposure. Under this law, the VA is required to review the reports of the IOM and issue regulations, establishing a presumption of service-connection for any disease for which there is scientific evidence of a positive association with herbicide exposure.

¹⁵⁹ Federal Register, Vol. 75, No. 57, March 25, 2010, 14391-14401.

¹⁶⁰ *Ibid.*

¹⁶¹ Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011, Appendix*, p. 1345.

¹⁶² Congressional Budget Office, *An Analysis of the President's Budgetary Proposals for FY2011*, page 17, available at <http://www.cbo.gov/ftpdocs/112xx/doc11280/03-24-apb.pdf>; and CBO, *Budget Projections, Data, Table 1-7, Changes in CBO's Baseline Projections of the Deficit or Surplus Since January 1, 2010*, available at <http://www.cbo.gov/budget/budproj.shtml>.

Congressional Action

The House version of H.R. 4899 did not address the Administration's request for \$13.4 billion for additional veterans' benefits related to Agent Orange. The Senate bill approves the request.

Resolving Black Farmers and American Indian Trust Lands Court Cases

The Administration is requesting \$4.6 billion to settle two longstanding cases against the government:

- \$1.15 billion for the Pigford Black Farmers Discrimination Case; and
- \$3.4 billion for the Cobell Indian Trust Litigation Settlement.

In both cases, the claimants argue that unless funds are appropriated before a certain date, the settlements could be voided, but it is not clear that these are hard deadlines. Unsuccessful attempts have been made in the Senate to attach the provisions to other bills, so the FY2010 War and Haiti supplemental could provide another vehicle.

Settlement of the Black Farmers Discrimination Case¹⁶³

The FY2010 budget supplemental requests \$1.15 billion in emergency appropriation to settle the Pigford II discrimination case brought by 70,000 black farmers against the U.S. Department of Agriculture, who were not covered by the original 1999 *Pigford* class-action settlement.¹⁶⁴ A settlement in the *Pigford II* case was announced on February 18, 2010, by Secretary of Agriculture Tom Vilsack and Attorney General Eric H. Holder, Jr.¹⁶⁵ The Administration had requested \$1.15 billion for the claimants in its FY2010 Budget but funds were not appropriated.

The *Pigford II* settlement is final and non-appealable. A provision of the settlement states that should Congress fail to make the \$1.15 billion appropriation by March 31, 2010, the claimants could void the settlement. No funds were appropriated by this deadline. Because the settlement is clearly a priority of both the USDA and the White House, plaintiffs are unlikely to exercise their right to void the settlement in the near term.

Indian Trust Litigation Settlement¹⁶⁶

The Administration is requesting \$3.4 billion in FY2010 supplemental appropriations to settle litigation over mismanagement of individual Indian trust fund accounts in the *Cobell v. Salazar*

¹⁶³Written by Tadlock Cowan, Analyst in Natural Resources and Rural Development Policy, Resources, Science, and Industry Division.

¹⁶⁴For details on the Pigford settlement, see CRS Report RS20430, *The Pigford Case: USDA Settlement of a Discrimination Suit by Black Farmers*, by Tadlock Cowan and Jody Feder.

¹⁶⁵U.S. District Court for the District of Columbia, *In re Black Farmers Discrimination Litigation*. Misc. No. 08-mc-0511.

¹⁶⁶Written by Roger Walke, Specialist in American Indian Policy, Domestic Social Policy Division; for details, see CRS Report RL34628, *The Indian Trust Fund Litigation: An Overview of Cobell v. Salazar*, by Yule Kim.

case (Civil No. 96-1285 (JR), D.D.C.).¹⁶⁷ Of that total, \$1.4 billion would be transferred to a fund to distribute to plaintiffs and \$2 billion would be used to purchase and consolidate fractionated trust land interests (owned by the plaintiffs) and to award \$60 million in education scholarships. The settlement, agreed to by the plaintiffs and the departments of the Interior, Treasury, and Justice on December 7, 2009, requires legislative authorization by June 15, 2010, a deadline recently extended for a fourth time.¹⁶⁸ It is not clear whether further extensions will be accepted by the parties or the presiding judge.

The Cobell lawsuit arose from Interior's inability to account accurately for payments into and from Individual Indian Monies (IIM) trust accounts set up in the 19th century to deposit income from individuals' trust lands as well as other payments. Interior management of these accounts was difficult, not only because of the allotments' age, but also because of the splitting of interests in each tract as each generation of heirs divided their allotments, creating an estimated 384,000 IIM accounts with a current total asset value over \$460 million.¹⁶⁹

Both the plaintiffs and the defendants may have reason to support the Cobell settlement in order to end 14 years of "contentious and acrimonious litigation"¹⁷⁰ that has cost both parties millions of dollars. Some Indian organizations and plaintiffs oppose Congressional approval of the Cobell settlement, and some approve.¹⁷¹

Congressional Action

Neither the House-passed nor the Senate-passed version of H.R. 4899, the FY2010 Supplemental address the Cobell or Pigford II court settlements. Monies for those settlements were, however, included in the House version of H.R. 4213, the American Jobs and Closing Tax Loopholes Act of 2010 (Tax Extenders bill) that was passed on May 28, 2010 in Section 607 and Section 608. These funds were not designated as emergency spending.

Since the Senate-passed version of the Tax Extenders bill does not include funding for either settlement, this issue is likely to be settled in conference. The conference may also address whether funding for these settlements should be designated as emergency spending. If all of the funding in the conference version is not offset or designated as emergency, a point of order could be raised against the funding for these settlements because they are mandatory appropriations subject to PAYGO rules.¹⁷²

¹⁶⁷ The Judgment Fund, authorized at 31 U.S.C. § 1304, is a permanent, indefinite appropriation from the Treasury for paying judgments against, and settlements by, the U.S. government.

¹⁶⁸ *Cobell v Salazar* settlement agreement, pp. 12, 15; http://www.justice.gov/civil/cases/cobell/docs/pdf/settlement_12082009.pdf; Mike Scarcella, "Cobell Case is Reassigned After Senior Judge Robertson's Retirement," *The BLT: The Blog of Legal Times*, June 2, 2010; <http://legaltimes.typepad.com/blt/2010/06/cobell-case-is-reassigned-after-senior-judge-robertsons-retirement.html>.

¹⁶⁹ U.S. Department of the Interior, Budget Justifications and Performance Information, Fiscal Year 2011, Office of the Special Trustee for American Indians, p. OST-78

¹⁷⁰ "Statement of David J. Hayes, Deputy Secretary of the Interior, on the Proposed Settlement of Cobell v. Salazar," at U.S. House Committee on Natural Resources, "Proposed Settlement of the Cobell v. Salazar Litigation," oversight hearing held March 10, 2010, p. 1; http://resourcescommittee.house.gov/images/Documents/20100310/testimony_hayes.pdf.

¹⁷¹ See for instance the testimony presented to the House Natural Resources Committee at its March 10, 2010, hearing; http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=27&extmode=view&extid=333.

¹⁷² See section, "Budget Rules and Supplemental Requests." Congressional Quarterly, Budget Tracker, "Morning (continued...)"

Additional Funds for Coast Guard Response Activities and New Unemployment Benefit

In addition to discretionary supplemental appropriations to respond to the Deepwater Horizon oil spill discussed earlier in this report, the Administration proposed to expand the funds that the Coast Guard can draw from the Oil Spill Liability Trust Fund to finance its response activities, and to set up a new unemployment assistance program for individuals who are not entitled to other unemployment benefits (such as the self-employed).¹⁷³

The Oil Spill Liability Trust Fund is supported by an excise tax on domestic petroleum and petroleum imported for use in the United States. The Administration also proposed a 1 cent increase in the tax per barrel of oil that replenishes the trust fund and a new unemployment benefit program for those affected by the spill, but these proposals are outside the responsibility of the Appropriations Committees. CBO estimated that the change in the authorization for the Oil Spill Liability Trust Fund would require \$125 million; no estimate was included for the new unemployment benefit program. Although the Administration proposal would appropriate "such sums as would be necessary," for the new unemployment benefit program, the parties responsible for the oil spill under the Oil Pollution Act would be liable for reimbursing the U.S. Treasury for all costs of the benefit and its administration.¹⁷⁴

Oil Spill Liability Trust Fund: Advance of Funds for Federal Response Efforts¹⁷⁵

The Administration's proposal would authorize mandatory appropriations as "advances" from the trust fund. Later withdrawals from the trust fund would not require appropriations. These funds could later be recouped by the federal government from the responsible parties under the liability provisions of the Oil Pollution Act of 1990.¹⁷⁶ CBO estimates that the Administration's proposal would result in \$125 million in mandatory appropriations including \$150 million in spending offset by \$25 million that would be recovered from the responsible parties.¹⁷⁷

The Administration's proposal would authorize the Coast Guard to make one or more advances of \$100 million each from the Oil Spill Liability Trust Fund to respond to the Deepwater Horizon oil spill. The existing limitation on the advance of monies from the trust fund is \$150 million

(...continued)

Briefing, Lawmakers Return to Familiar Challenges," June 7, 2010.

¹⁷³ This new entitlement would be funded as a mandatory appropriation with funds administered by the U.S. Department of Labor and the individual benefits paid through the state unemployment programs. Julie Whittaker contributed to this section.

¹⁷⁴ See 26 U.S.C. § 4611 for trust fund authorization. For Administration request, see OMB, "Oil Spill Request;" http://www.whitehouse.gov/omb/assets/budget_amendments/supplemental_05_12_10.pdf; the Administration did not include an estimate of the effect on funding of the proposed new unemployment benefit.

¹⁷⁵ Written by David M. Bearden and Jonathan L. Ramseur, Specialists in Environmental Policy, Resources, Science, and Industry Division.

¹⁷⁶ 33 U.S.C. § 2702.

¹⁷⁷ See [http://www.congress.gov/cgi-lis/cpquery/R?cp111:FLD010:@1\(sr188\):S.Rept. 111-188](http://www.congress.gov/cgi-lis/cpquery/R?cp111:FLD010:@1(sr188):S.Rept. 111-188) to accompany H.R. 4899, p. 101. The \$125 million estimate is presented in a table displaying the amount of funding that would be provided under the bill.

annually.¹⁷⁸ Although the Coast Guard may continue to draw this amount each fiscal year if needed, the total expenditure to respond to an individual incident is limited to a cap of \$1 billion in current law.¹⁷⁹ The Administration proposed to increase this cap to \$1.5 billion to make more funds available if necessary to respond to the Deepwater Horizon oil spill. The Office of Management and Budget (OMB) has estimated that a total of \$1.575 billion in the trust fund would be available for obligation by the end of FY2010.¹⁸⁰

The proposed increase in the limitation on annual advances of monies from the Oil Spill Liability Trust Fund would apply exclusively to the Deepwater Horizon oil spill to enhance federal emergency response capabilities. The limitation on annual advances in existing law would continue to apply to other spills. The Coast Guard would be required to notify Congress of any advanced funds for the Deepwater Horizon oil spill within 7 days, whereas the advance of funds for other spills would continue to require 30 days notice, as in existing law.

Congressional Action

Neither house includes the proposed new unemployment program. The original House-passed bill does not address the proposed new authorization for the Oil Spill Liability Trust Fund. As passed by the Senate, Section 2001 of H.R. 4899 includes a modified version of the Administration's proposal. This section of the bill would authorize the Coast Guard to make one or more advances of \$100 million each from the Oil Spill Liability Trust Fund to respond to the Deepwater Horizon oil spill, as the Administration proposed. However, the Senate bill would limit the total amount of these advanced funds to the \$1 billion per-incident cap in current law, whereas the Administration had proposed to increase the cap to \$1.5 billion.

In its report on H.R. 4899, the Senate Appropriations Committee indicated that an estimated \$125 million would be required in FY2010 if the authorization to use funds from the Oil Spill Liability Trust Fund was modified as proposed in the bill.¹⁸¹ CBO estimated \$150 million in budget authority under Section 2001 offset by \$25 million in reimbursements from the responsible parties for a net of \$125 million in FY2010, with full reimbursement by FY2012. The actual amount made available to the Coast Guard under Section 2001 would depend on the number of \$100 million advances drawn from the trust fund, up to the \$1 billion per-incident cap. The reimbursements would depend on the enforcement of liability under the Oil Pollution Act.

¹⁷⁸ 33 U.S.C. § 2752(b).

¹⁷⁹ 26 U.S.C. § 9509(c)(2).

¹⁸⁰ Office of Management and Budget, *Budget of the U.S. Government for Fiscal Year 2011*, Appendix, p. 548.

¹⁸¹ See S.Rept. 111-188 to accompany H.R. 4899, p. 101. The \$125 million estimate is presented in a table displaying the amount of funding that would be provided under the bill. The bill does itself does not include a specific amount, presumably because of the uncertainty in knowing how much the Coast Guard will need.

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