



Legislative Bulletin.....March 5, 2013

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Order of Business: The bill is scheduled to be considered on Wednesday, March 6, subject to a closed rule, [H. Res. 99](#).

Continuing Resolution Spending Summary

[H.R. 933](#) provides funding for the federal government through the end of Fiscal Year 2013 (September 30, 2013). This [continuing resolution](#) funds all activities of the federal government and includes full Department of Defense and Military Construction/Veterans Affairs appropriations language. The bill also contains a number of anomalies, which are special provisions that alter spending levels for specific programs.

This bill provides non-emergency discretionary funding at an annualized rate of \$984,000,000¹ factoring in the impacts of sequestration (\$1,043,000,000 before sequestration). This pre-sequestration level is in compliance with the FY 2013 spending caps provided in the Budget Control Act, which were lowered by \$4 billion (from \$1,047,000,000 to \$1,043,000,000) by [H.R. 8](#) (PL 112-240) – the so-called “Fiscal Cliff” package.

The \$984 billion rate of non-war, non-emergency, discretionary spending (post sequester) is:

- **\$63 billion below** the current [Continuing Resolution](#) (H.J. Res. 117, [PL 112-175](#)), which provides FY2013 funding through March 27, 2013;
- **\$53 billion above** the [RSC budget](#) discretionary levels for FY2013;
- **\$44 billion below** the House-passed FY2013 [budget resolution](#).

War Funding: This legislation provides an annualized, sequester-inclusive \$92 billion of FY 2013 funding for Overseas Contingency Operations (Global War on Terror), a decrease from the \$99.9 billion annualized level provided in H.J. Res. 117. This is down from FY 2012 Overseas Contingency Operations funding levels of [\\$126.5 billion](#).

¹ Figures in thousands unless otherwise specified

Hurricane Sandy Funding: Emergency and disaster spending related to Hurricane Sandy and other natural disasters is funded at a post-sequester level of \$51 billion. This compares to a total of \$10 billion of disaster funding provided in [FY 2012](#).

Total discretionary spending: Including regular discretionary, OCO, emergency, and disaster relief spending, H.R. 366 is \$51 billion *lower* post-sequester than in [FY 2012](#). The entirety of the \$51 billion in lower spending is due to the sequester. Without the \$68 billion in total discretionary sequester cuts, FY2013 total discretionary spending would be \$18 billion *higher* than in FY2012. This is due to large declines in OCO spending and small declines in non-emergency discretionary spending being overwhelmed by significant increases in non-war emergency and disaster spending.

DOD Appropriations

Spending Discussion: According to CBO’s score of [H.R. 933](#), the bill will fund base DOD discretionary at an annualized rate slightly lower than [FY 2012 enacted](#) (\$554 million less), and lower than the FY 2013 level set by [H.J. Res. 117](#) (\$2.28 billion).

	FY12 Enacted	FY13 (H.J. Res. 117)	FY13 (H.R. 933)
Appropriations	518,146	519,867	517,592*
<i>OCO Funding</i>	<i>115,083</i>	<i>88,480</i>	<i>87,226</i>
Total	633,229	608,347	604,906

*All numbers are pre-sequester, in millions of dollars. CBO has not provided a post-sequester score at this level of detail.

Other Items of Note:

- **Military Personnel and Pay:** In conformity with the notification by the Director of the Office of Management and Budget (OMB) in July last year, the legislation exempts military personnel accounts and salaries from sequestration. It also provides a 1.7% pay increase for military personnel.
- **Unmanned Aerial Vehicles (UAVs):** The legislation directs the Secretary of Defense to report to congressional defense committees on the policies and procedures in place across defense agencies governing the collection and disposition of information obtained over domestic airspace by UAVs.
- **Transfer Authority:** The legislation provides the Pentagon the ability to transfer as much as \$4 billion between accounts for purposes such as “unforeseen military requirements,” with advance notification to Congress (and the congressional defense committee) before June 30, 2013.
- **F-22 Sale Prohibition:** The legislation prohibits the sale of the F-22 to any foreign government.
- **War Powers Resolution:** The legislation prohibits funds from being used to violate the War Powers Resolution.
- **Guantanamo Bay:** The legislation prohibits funding to “transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions Khalid Sheikh Mohammed” or any other detainee who meet certain criteria in the legislation. Also, it requires certification to Congress from the Secretary of Defense prior to any detainee’s transfer to a foreign country.
- **Tricare:** The legislation prohibits funding for the implementation of enrollment fees for the Tricare for Life program that does not already exist under current law.
- **Pakistan Funding Limitation:** The legislation prohibits funds appropriated or otherwise made available by this Act under the heading ‘Operation and Maintenance, Defense-Wide’ for reimbursement to the Government of Pakistan unless the Secretary of Defense, in coordination

with the Secretary of State, certifies to the Committees on Appropriations that the Government of Pakistan is:

- (1) cooperating with the United States in counterterrorism efforts against the Haqqani Network, the Quetta Shura Taliban, Lashkar e-Tayyiba, Jaish-e-Mohammed, Al Qaeda, and other domestic and foreign terrorist organizations, including taking steps to end support for such groups and prevent them from basing and operating in Pakistan and carrying out cross border attacks into neighboring countries;
 - (2) not supporting terrorist activities against United States or coalition forces in Afghanistan, and Pakistan's military and intelligence agencies are not intervening extra-judicially into political and judicial processes in Pakistan;
 - (3) dismantling improvised explosive device (IED) networks and interdicting precursor chemicals used in the manufacture of IEDs;
 - (4) preventing the proliferation of nuclear-related material and expertise;
 - (5) issuing visas in a timely manner for United States visitors engaged in counterterrorism efforts and assistance programs in Pakistan; and
 - (6) providing humanitarian organizations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict.
- **Iraq & Afghanistan Funding Limitation:** The legislation prohibits funding in the bill or any other act to establish any military installation or base for the permanent U.S. Armed Forces stationing in Iraq or Afghanistan or to exercise U.S. control over any Iraqi oil resource.

Military Construction and Veterans Affairs Appropriations

Spending Discussion: H.R. 933 funds Military Construction and Veterans Affairs at [\\$71.9 billion](#), according to CBO.

Of that total, Military Construction is funded at \$10.6 billion, which is \$2.4 billion below last year's spending level. The Appropriations Committee reports that this is largely "due to the Air Force's deliberate pause in military construction and a continued decline in funding requirements for the BRAC 2005 process."

Veterans Affairs at a total level of \$133.9, of which \$61 billion is discretionary spending. The bill also provides \$54.5 billion in advanced FY 2014 appropriations, which do not count toward the FY 2013 Budget Control Act caps. All funding within the Department of Veterans Affairs is exempted from sequestration.

Other Items of Note:

- **American Steel:** The legislation prohibits funding for the procurement of steel unless American producers, fabricators, and manufacturers have been permitted to compete for such steel procurement.
- **Property Taxes in Foreign Nations:** The legislation prohibits funds for military construction or family housing to pay for real property taxes in any foreign nation in this current fiscal year.
- **Prohibition on New Bases:** The legislation prohibits funding to construct new bases overseas without prior notification to the Committees on Appropriations of both Houses of Congress.
- **Preference of American Firms:** The legislation prevents funds for architectural or engineering work in certain overseas nations unless the contracts are awarded to U.S. firms or U.S. firms in joint venture with host nation firms.
- **ACORN:** Section 510 prohibits funding in the legislation to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries or successors.

- **Supporting/Defeating Legislation:** Section 503 prohibits the use of funds in the bill by any federal agency to support or defeat legislation pending before Congress.
- **Computer Network Prohibitions:** The legislation prohibits funds for maintaining or establishing a computer network unless it blocks the viewing, downloading, and exchanging of pornography.
- **Guantanamo Bay:** The legislation prohibits funds to renovate, expand, or construct any facility in the continental United States, its territories, or possessions, for the purpose of housing any individual who has been detained at the United States Naval Station, Guantanamo Bay, Cuba.
- **Funding Prohibition for Projects Named for Members:** The legislation prohibits funding for a project or program named for an individual serving as a Member, Delegate, or Resident Commissioner of the United States House of Representatives.
- **First Class Travel:** The legislation prohibits funding for first class travel where federal law does not authorize it.
- **E-Verify:** The legislation prohibits funding for contracts where the contractor has not complied with E-Verify requirements.
- **Conferences Outside the United States:** The legislation prohibits funding for any conference held outside of the United States for attendance of more than 50 employees from a Federal department or agency with certain exceptions.

Possible Conservative Concerns:

Obamacare: The legislation maintains current funding levels for agencies that are charged with implementing Obamacare, namely the Department of Health and Human Services (HHS), the IRS, and the Centers for Medicare and Medicaid (within HHS). Yesterday, thirty House Republicans signed a [letter](#) addressed to Speaker Boehner and Majority Leader Cantor asking the CR to defund Obamacare in “any continuing appropriations bill.”

CHIMPS: The legislation relies on \$18.8 billion in FY2013 “changes in mandatory programs,” or CHIMPS to meet the discretionary cap. This is a regularly used budget gimmick that reduces mandatory budget authority that is unlikely to be spent to free up room for additional discretionary spending.

Funding of Various Wasteful and Unconstitutional Programs: In 2012, conservatives brought dozens of cut amendments to the House floor under regular order, some of which prevailed, and many others of which received support from a majority of House Republicans. These spending priorities – including cuts to the International Trade Administration, the Economic Development Administration, the Legal Services Corporation – are not reflected in this bill. Other funding, such as military aid to Egypt and funding for Planned Parenthood continues as well.

Spending Level: Some conservatives have expressed concern that the bill is not explicitly written to the \$984 billion level, but is written at the \$1,043 level and relies on implementation of the sequester to reach the \$984 billion level. However, there is significant debate surrounding the feasibility of setting spending at \$984 billion in the underlying bill.

Possible Conservative Arguments in Favor:

Limited DOD Reprogramming: Operations and Maintenance accounts receive a \$10.4 billion increase relative to enacted levels. This is a step toward ensuring the Department of Defense can continue to operate as smoothly as possible under a sequester scenario.

Other Limited Reprogramming: A number of provisions have been added to the bill which ameliorate certain possible negative consequences of the sequester. Some conservatives may be encouraged that

these provisions will make it more likely that the sequester will remain in effect until equal or greater cuts can be agreed upon. These provisions (which can be read in full [here](#)) include:

- A provision allowing additional funding for nuclear weapons modernization efforts, to ensure the safety, security, and reliability of the nation's nuclear stockpile.
- A provision allowing Customs and Border Protection to maintain current staffing levels.
- A provision providing additional funding for the FBI to ensure current staffing levels and critical increases in cybersecurity and surveillance.
- A provision providing roughly \$2 billion above the current level for embassy security, which supports the full fiscal year 2013 request and increased security needs identified after the Benghazi attack.
- A provision allowing additional funding to ensure the safe and secure operation of Federal Prisons.
- A provision requiring Immigration and Customs Enforcement to sustain the mandated capacity of 34,000 detention beds.

Administration Position: The White House issued a statement of administration policy that expressed some praise and some concern regarding H.R. 933. The statement can be read [here](#).

Cost to Taxpayers: The total FY2013 cost of discretionary spending in H.R. 933 after sequester is \$1,127,618,000. Without the sequester, the total is \$1,195,618,000. (Figures in thousands)

What Is the Constitutional Authority for the Legislation?: By Rep. Rogers (R-KY): Congress has the power to enact this legislation pursuant to the following: The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . ." In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: "The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States . . ." Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use.

Outside Organizations: At press time the following groups have issued statements:

FreedomWorks is [negatively scoring](#) a vote in favor of the rule, on the grounds that it should be open.

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