

DOD Authorities for Foreign and Security Assistance Programs

A Comparison of the FY 2010 House and Senate Armed Services Defense Authorization Bills

July 20, 2009*

The House Armed Services Committee (HASC) marked up its version of the Fiscal Year (FY) 2010 National Defense Authorization Act (NDAA) on June 18 and the Senate Armed Services Committee (SASC) concluded its markup on July 2. The Senate bill is currently under debate on the floor.

The president requested \$663.8 billion in discretionary funding for DOD, including \$533.8 billion for the base defense budget and \$130 billion in Overseas Contingency Operations (OCO) funds. The Senate bill authorized \$534.6 billion for the base budget and \$129.3 billion in OCO funds, providing \$800 million more than the base budget request and \$700 million less than the OCO request.

The House authorized a total of \$664 billion for the DOD, \$534 billion in base defense funding and \$130 billion in OCO funds. The House bill authorized \$200 million more in the base budget than the request but \$600 million less than the Senate bill.

FY 2010 National Defense Authorization Act Discretionary DOD Budget (\$ in billions)			
	Obama Request	Senate Bill	House Bill
Base Budget (051)	\$533.8	\$534.6	\$534.0
OCO Budget	\$130.0	\$129.3	\$130.0
Total	\$663.8	\$663.9	\$664.0
*Total excludes the Department of Energy component of the DOD Budget			

As authorizing bills, these two pieces of legislation deal with DOD authorities and programs. This report assesses how they deal with the growing number of DOD authorities, programs, and funding for foreign and security assistance, as proposed by the administration in its FY 2010 request.

* Authored by Rebecca Williams, Stephen Abbott, and Gordon Adams

Highlights

- **Section 1206 (Global Train and Equip)**

Section 1206 of the FY 2006 NDAA authorized the Secretary of Defense, with the concurrence of the Secretary of State, to conduct or support programs globally that build the capacity of a foreign country's military and maritime security forces. The FY 2009 Duncan Hunter NDAA authorized **\$350 million** for Section 1206, authority which expires at the end of FY 2011.

The Obama Administration requested an increase in Section 1206 funding levels to **\$400 million** for FY 2010, stressing that combatant commanders consider Section 1206 programs as the single most important tool in shaping the environment and counter terrorism.

The HASC bill viewed Section 1206 and traditional foreign assistance-related authorities as distinct, noting that the execution and growth of Section 1206 represents the Secretary of Defense's assessment of a combatant commander's need to build certain capacities in partner nations to satisfy specific security requirements. The HASC supported the current "dual key" approach that gives DOD the lead on Section 1206 but requires the Secretary of State concurrence. The HASC underlined the importance of DOD in generating Section 1206 requirements and the lack of capacity at the Department of State to execute such authorities. The HASC did not, however, increase the previously authorized funding level of **\$350 million**.

The SASC bill also held to the **\$350 million** level, but set a sub-limit within that amount. The bill sets a \$75 million ceiling on 1206 funding that can be used to support military and stability operations in which the US is a direct participant. The SASC sub-limit is intended to cap special operations and stability operations training for forces that operate with the US roughly at current levels. The committee emphasized that Section 1206 authority is temporary and funds are intended to address emerging needs and should not be used in ways that duplicate or substitute for funding under FMF authority.

- **Section 1207 (Security and Stabilization Assistance)**

Section 1207 of the FY 2006 NDAA authorized the Secretary of Defense to transfer defense articles and funds to the Department of State for the purposes of providing reconstruction, security or stabilization assistance to a foreign country. The FY 2009 Duncan Hunter NDAA authorized **\$150 million**, including \$50 million for Georgia, with the authority to expire at the end of FY 2009.

The Obama Administration requested an increase in Section 1207 budgeting authority from \$100 million to **\$200 million**, and extension of the authority through FY 2010. The administration justified the increased level of funding as a whole-of-government approach to providing civilian resources that avert crises that would require US military intervention.

The HASC bill would extend Section 1207 authority through FY 2010 but decreased funding to **\$25 million**. HASC argued that it was inappropriate to provide DOD with funds to transfer to State in order for State to fulfill its statutory responsibilities. The HASC also reasoned that DOD operations and maintenance (O&M) funding should go to core DOD missions. HASC stressed that Section 1207 was meant to be temporary and urged State to build its own capacity to make such transfers unnecessary.

The SASC authorized **\$100 million** for Section 1207 and extended the authority through FY 2010. The SASC cited increased coordination between the DOD and State one valuable aspect of Section 1207 authority. Like the HASC, the SASC also noted that Section 1207 was meant to be temporary and urged State to develop the internal capacity to provide such a program.

- **Section 1208 (Support to Foreign Forces)**

Section 1208 of the FY 2005 NDAA authorized DOD to reimburse foreign forces, groups, or individuals supporting or facilitating ongoing counter-terrorism military operations by U.S. special operations forces (SOF). The FY 2009 NDAA authorized **\$35 million** a year for this authority through FY 2013. The Obama Administration did not request a change to Section 1208.

The HASC bill increases the annual budgetary authority to **\$50 million** in order to limit funding restraints during the planning of Section 1208-funded operations. The HASC was generally supportive of Section 1208 programs and was pleased with more effective reporting of Section 1208-related activities. The HASC voiced concern, however, that Section 1208 should not become a “train and equip” program managed by Special Operations Command (SOCOM). The HASC also expressed uneasiness over the use of private contractors to carry out Section 1208 activities and thus required additional reporting requirements to track such contracting.

The SASC bill does not raise the Section 1208 funding level, and the committee expressed dissatisfaction with current reporting. SASC voiced concern that SOCOM may be using 1208 funds to leverage long-term engagement with partner nations rather than exclusively for supporting military operations by U.S. special operations forces to combat terrorism. The SASC asked SOCOM to review their Section 1208 execution to eliminate such leveraging.

- **Commander’s Emergency Response Program (CERP)**

The CERP program provides regional Combatant Commanders with flexible funding that lets them respond to urgent, small-scale humanitarian relief and reconstruction needs in Iraq, Afghanistan, and the Philippines. CERP is authorized and appropriated annually.

The Obama Administration requested **\$1.5 billion** for CERP in FY 2010 as a critical part of reconstruction and development efforts primarily in Afghanistan. The budget request

sought \$300 million for CERP in Iraq and \$1.2 billion for Afghanistan. The administration also requested an extension of the deadline for CERP reporting to Congress from the current 15 days to 45 days after the end of a quarter, which it described as a “more realistic due date.”

The HASC extended CERP authority through FY 2010 but provided **\$1.3 billion**, \$200 million less than the request. The HASC defended the decrease stating that the DOD had not adequately validated the \$1.5 billion CERP request. The HASC also expressed concern that the DOD would not be able to manage and oversee CERP funds in Afghanistan. The bill made no change in the current reporting requirements.

The SASC extended CERP authority through FY 2010 but authorized funding at **\$1.4 billion** (\$300 million for CERP in Iraq and \$1.1 billion for CERP in Afghanistan). The SASC voiced concern about the rapid growth of CERP funding in Afghanistan and (like the HASC) also questioned the DOD’s capacity to manage and oversee such funding. The SASC authorized the transfer of up to \$100 million to the Afghan National Solidarity Program to support counterinsurgency objectives in Afghanistan and extended the reporting requirement from 15 to 30 days.

- **Pakistan Counterinsurgency Capability Fund (PCCF)**

The FY 2009 Emergency Supplemental authorized the Department of Defense (DOD), with concurrence of the Secretary of State, to assist the government of Pakistan in building the capacity of Pakistan's security forces to conduct counterinsurgency operations in support of US efforts in Operation Enduring Freedom (OEF).[†]

The FY 2009 Supplemental provided \$400 million in funding to DOD for Pakistan Counterinsurgency Fund (PCF) for FY 2009 which would remain available until FY 2010. The supplemental also provided \$700 million to State for Pakistan Counterinsurgency Capability Fund (PCCF) that will not become available until FY 2010 but remains available until FY 2011. The supplemental directed the Secretary of State and the Secretary of Defense to develop a joint plan for transitioning the PCCF from the Department of Defense to the Department of State in FY 2010, with the expectation that State will fully execute the program by FY 2011.

The supplemental preempted the administration’s FY 2010 PCCF budget requested of **\$700 million** for PCCF through DOD. With the supplemental action, State and Defense agreed that the FY 2010 funds provided in the supplemental for the PCCF would be transferred from the Function 150 (International Affairs) Account to the 050 (National Defense) Account.

The HASC bill specified that the PFC would include the FY 2009 appropriated amounts and amounts transferred by the Secretary of State, with the concurrence of the Secretary of Defense. The HASC allowed for the transfer of PFC funds to any Department of

[†] The FY 2009 Emergency Supplemental stipulated that up to \$2 million of PCCF may be provided for urgent humanitarian assistance to the Pakistani people only as part of civil-military training exercises.

Defense account, or to any non-intelligence related federal account (with the concurrence of the Secretary of State and the head of the relevant department or agency). The HASC reasoned that the PCF would provide US Central Command (CENTCOM) with the capacity to train and equip Pakistan's security forces, improve the counterinsurgency capabilities of Pakistani security forces and supply limited humanitarian assistance. The HASC bill did not give DOD the authority the administration requested to provide assistance to irregular security forces operating within Pakistan and directed the Secretary of Defense to submit a report to Congress on FY 2010 PCF efforts. The HASC encouraged State to develop its capacity to manage the PCF program.

The SASC also recommended a reporting requirement to Congress that would specify the uses of transferred funds by the Secretary of State to the Secretary of Defense during FY 2010 for the PCF. This provision would require the Secretary of Defense prior to the expenditure of PCF funds to assess the level of commitment by the Government of Pakistan to confronting the terrorist threat.

- **Iraq and Afghanistan Security Forces Fund**

Authority for training and equipping Iraq and Afghan security forces comes from Section 1209 of the FY 2006 NDAA and Section 1202 of the FY 2007 NDAA. As the security situation in Iraq and Afghanistan deteriorated, funding for these two "Train and Equip" programs increased dramatically. The appropriations were formalized in FY 2005 as Afghanistan Security Forces Fund (ASSF) and Iraq Security Forces Fund (ISFF) accounts.

Both the HASC and the SASC provided **\$7.463 billion** for ASSF, equal to the request. Both bills also recommended a provision requiring the ASSF to comply with the terms and conditions of the FY 2008 NDAA. Section 1513 of the FY 2008 NDAA specifies the general terms and conditions ASSF must follow including the use of funds, type of assistance authorized, the concurrence of the Secretary of State, type of transfer authority, and the submission of quarterly reports.

The administration did not request funds for the ISFF. The SASC recommended a an increase in the number of positions in professional military education courses at command and general staff colleges, war colleges, and the service academies available to personnel of the Iraq security forces. The HASC limited the funds available for ISSF to the terms and conditions of the FY 2008 NDAA; the Senate did not.

- **Coalition Support Funds (CSF)**

Coalition Support Funds reimburse cooperating countries for logistical, military and other expenses incurred while supporting U.S. military operations in Iraq, Afghanistan and other overseas contingency operations. CSF was originally created to reimburse the governments of Pakistan and Jordan for their support in counter-terror operations.

Pakistan has been the largest recipient of CSF receiving 81 percent of all CSF reimbursements as of May 2008.[‡]

The Obama Administration requested **\$1.6 billion** for CSF for FY 2010. Both bills authorized the requested amount and extend the authority through FY 2010.

- **Defense Coalition Support Fund (DCSF)**

First requested (and denied) in FY 2008, the administration requested **\$22 million** for this new account that would allow the DOD to stockpile defense articles such as helmets, body armor, and night vision devices for potential use by coalition partners, circumventing lengthy procurement time frames. The DCSF would be funded through the Operation and Maintenance, defense-wide budget and would become self-financed through sales of the equipment.

Authority for such a fund was denied in FY 2008 and was not included in either bill for FY 2010.

- **Combatant Commander Initiative Fund (CCIF)**

The CCIF account supports unforeseen contingency requirements critical to the combatant commanders' joint warfighting readiness and national security interests. The CCIF enables Combatant Commander's to fund short-term, low-cost projects that meet the requirements of unforeseen situations. The FY 2007 NDAA expanded CCIF to include programs that provided "urgent and unanticipated humanitarian relief and reconstruction assistance." CCIF has permanent authority established by Title 10, Section 166a and is a **\$25 million** a year-program. In recent years CCIF has received supplemental appropriations which have roughly doubled this amount.

The administration, the HASC and the SASC did not change the \$25 million amount provided by permanent authority. The HASC did increase, however, the CCIF purchase authority from \$10 million to \$20 million. The US Code currently limits the purchase of items with a unit cost in excess of \$15,000 to not more than \$10 million. The HASC required "coordination" with the Secretary of State when the funds are to be used for humanitarian or civic assistance purposes; the SASC offered no such addition. The SASC bill increased the unit cost threshold for CCIF items, from \$15,000 to \$250,000; the HASC bill also increased the unit cost threshold but did not specify an amount.

- **Cooperative Threat Reduction (CTR)**

The CTR, administered in DOD's Defense Threat Reduction Agency (DTRA), partners with willing countries to reduce the threat from weapons of mass destruction (WMD) and related materials, technologies and expertise. This has included providing for the safe destruction of Soviet era WMD, associated delivery systems and related infrastructure.

[‡] Government Accountability Office, "Combating Terrorism: Increased Oversight and Accountability Needed Over Pakistan Reimbursement Claims for Coalition Support Funds," GAO-08-806, June 2008.

The administration's FY 2010 CTR request was **\$404.2 million**. The SASC bill authorizes **\$424.2 million**, \$20 million more than the request. The increase includes \$10 million for increased CTR initiatives outside the former Soviet Union, \$7 million for strategic offensive arms elimination, and \$3 million for additional expenses associated with Russian and other chemical weapons destruction activities.

The HASC bill provided **\$434.1 million** for CTR or \$30 million more than the request. The HASC authorized CTR to accept international contributions for CTR activities, and submission of a report by the National Academy of Sciences on metrics to measure the impact and effectiveness of CTR activities.

- **Building the Capacity of Coalition Partners; Building the Capacity of NATO and Partner Special Operations Forces**

The Obama Administration requested **\$32 million in operations and maintenance funding to** assist nations that are willing to deploy resources and skills to assist the US in coalition operations (Operation Iraqi Freedom or Operation Enduring Freedom) or operations conducted by the NATO International Security Assistance Force. This limited, one-year proposal specifically targets stability operations with coalition partners. No existing law provides such authority.

The administration also requested **\$12 million in operations and maintenance** funding to enhance the capabilities and expand capacity for special operations within the North Atlantic Treaty Organization (NATO) partners, including NATO aspirant nations. The proposed one-year authority would authorize the Secretary of Defense, with the concurrence of the Secretary of State, to permit US special operations forces to provide training to the special operations of NATO partners (and NATO aspirant nations).

The HASC and the SASC viewed both the stability and special operations requests as activities to be conducted within Section 1206. Both houses expressed that they would consider using Section 1206 to build the capacity of NATO and other coalition partners in stability and special operations in which the US is a direct participant. To limit the potential impact of such multi-year programs the SASC placed a \$75 million ceiling on Section 1206 funding that can be used to support stability and special operations.

- **Authority to Provide Additional Support for Counter-Drug Activities of Certain Foreign Governments**

The FY 1998 NDAA first provided additional support for counter-drug activities by expanding the list of countries that could qualify for assistance to include Colombia and Peru. Funding has since increased and broadened over the last decade. The administration requested **\$75 million** for FY 2010 and sought to expand the list of countries that could qualify for assistance to Indonesia, Philippines, Nicaragua, Ghana, Nigeria and Sierra Leone.

The HASC extended for one year the reporting requirements on expenditures to support foreign counter-drug activities, the “unified counter-drug and counterterrorism campaign” in Colombia, and support for counter-drug activities of certain foreign governments.[§] The HASC report did not mention the addition of any countries that could qualify for assistance and did not change the funding level.

The SASC increased spending authority for FY 2010 to **\$100 million** and made technical changes to the reporting requirements to include requiring the Secretary of Defense to report to the congressional defense committees on an annual basis. The SASC explicitly denied expanding the list countries that could qualify for assistance.

- **One-Year extension of Authority for Funds Available to a Joint Task Force to Support Counter-Drug Activities to also be used to Provide Support to Law Enforcement Agencies Conducting Counterterrorism Activities**

The FY 2004 NDAA authorized a DOD joint task force that provided support to law enforcement agencies conducting counter-drug activities to also provide support for counter-terrorism operations. The administration requested an extension of this authority through FY 2010.

Both the HASC and SASC have provided this extension.

- **Authority to Transfer Articles no Longer Needed in Iraq to provide Defense Services to the Security Forces of Iraq, Afghanistan, and Pakistan.**

As US forces begin to leave Iraq, the DOD is shaping policy on the US defense articles already in Iraq. The DOD must decide which defense articles are needed by the Iraq security forces and which are essential to the US military (excess versus non-excess). The requested authority would allow the Secretary of Defense to transfer excess and non-excess material and services to these other countries, particularly materials that would be uneconomical to return to the US or that may be of value to Iraq, Afghanistan, or Pakistan. The proposal limited the value of non-excess defense articles and services transferred in FY 2010 to **\$750 million**.

Current authorities do not allow the DOD to transfer US equipment on a case-by-case basis to the governments of Iraq, Afghanistan, and Pakistan. Section 516 of the Foreign Assistance Act (FAA) of 1961 authorizes the transfer of excess defense articles to foreign countries. In the case of Iraq, the DOD has non-excess defense articles it wants to transfer. Section 506 (A)(2) of the FAA authorizes the President to order the drawdown of defense articles and provide defense assistance to foreign governments. Section 506 caps total fiscal year drawdowns at \$200 million, and not more than \$75 million may be provided by the DOD.

[§] These governments include: Colombia, Peru, Afghanistan, Bolivia, Ecuador, Pakistan, Tajikistan, Turkmenistan, Uzbekistan, Azerbaijan, Kazakhstan, Armenia, Guatemala, Belize, Panama, Mexico, Dominican Republic, Guinea-Bissau, Senegal, El Salvador and Honduras.

Neither the HASC nor the SASC acted on this request.

- **Civilian Ministry of Defense Advisor Program**

The administration requested authority and **\$13.1 million** for a new Civilian Ministry of Defense Advisor Program, which would be linked to the Civilian Expeditionary Workforce (CEW) initiated in January 2009. The Defense Advisor Program would draw personnel from the CEW, with the concurrence of the Secretary of State, to provide civilian advisors to the ministries of defense in Iraq and Afghanistan. The program is meant to strengthen Iraqi and Afghani governmental capacities to formulate and support stabilization and irregular warfare efforts.

The HASC provided **\$13.1 million** for the provision in FY 2010. The HASC noted that the provision increased coordination between the DOD and State Department. The HASC voiced concern that the present effort to provide advisors is not well coordinated and that a one-year authorization may be insufficient to reach the program's goals. It asked the Secretary of Defense to report to the committee on the need for an expanded program in the future.

The SASC did not include this provision.