

CRS Report for Congress

Consolidated Appropriations Act for FY2009 (P.L. 110-329): An Overview

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Summary

On September 30, 2008, President George W. Bush signed H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, into law as P.L. 110-329 (122 Stat. 3574-3716). The act included three of the 12 regular appropriations acts for FY2009, continuing appropriations for the remaining nine regular appropriations acts for that fiscal year (through March 6, 2009), and supplemental appropriations for disaster relief and recovery.

With the completion of action on H.R. 2638, the 110th Congress brought its consideration of the regular appropriations acts for FY2009 to a close. Early in the next session, however, the 111th Congress will have to address the issue of funding the nine regular appropriations acts for the remainder of the fiscal year.

According to the Congressional Budget Office, enactment of the Consolidated Appropriations Act for FY2009 brought total discretionary budget authority for the fiscal year to \$1,089.6 billion, including \$993.7 billion in non-emergency spending and \$95.9 billion in emergency spending. These amounts reflect \$65.9 billion in emergency spending in a FY2009 “bridge fund” for war activities, provided in P.L. 110-252, and \$2.2 billion in non-emergency advance appropriations for Bioshield, provided and adjusted in earlier laws.

On an annualized basis, continuing appropriations for FY2009 provided in the act amounted to \$420.0 billion, including \$390.9 billion in non-emergency spending and \$29.0 billion in emergency spending. (Continuing appropriations were provided only through March 6, 2009, so the annualized amounts may differ from the final amounts for the fiscal year depending on subsequent funding actions.)

Total budget authority for the three regular appropriations acts included in the act amounted to \$669.6 billion, including \$602.8 billion in non-emergency spending and \$66.9 billion in emergency spending (mostly from the “bridge fund” provided in P.L. 110-252).

Continued economic turmoil prompted Congress and the President to enact an economic stimulus measure early in the 2008 session and other legislation aimed at stabilizing the economy as the session progressed. Additional action on appropriations for FY2009 could occur in the 110th Congress if it convenes after the November 4 election in a lame-duck session to consider a second economic stimulus measure addressing such matters as infrastructure projects, energy development, unemployment compensation, job training, and Medicaid and food stamps assistance.

The report will be updated as developments warrant.

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Consolidated Appropriations Act for FY2009 (P.L. 110-329): An Overview

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With the completion of action on H.R. 2638, the 110th Congress brought its consideration of the regular appropriations acts for FY2009 to a close. Early in the next session, however, the 111th Congress will have to address the issue of funding the nine regular appropriations acts for the remainder of the fiscal year.

Additional action on appropriations for FY2009 could occur in the 110th Congress if it convenes in a lame-duck session to consider a second economic stimulus measure, as discussed below.

This report provides an overview of the Consolidated Appropriations Act for FY2009, including a brief discussion of the budgetary and legislative context in which the act was developed and considered, a short summary of its provisions, and a legislative history.

FY2009 Annual Appropriations Acts: Budgetary and Legislative Context

Each year, Congress and the President enact discretionary spending in the form of regular appropriations acts, as well as continuing and supplemental appropriations acts.¹ Discretionary spending, which accounts for more than one-third of total federal spending, is spending that is under the control of the House and Senate Appropriations Committees. For the most part, discretionary spending funds the routine operations of the federal government. It is distinguished from direct spending, which is controlled by the legislative committees in substantive law and

¹ For background on the appropriations process, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

funds such mandatory programs as Social Security and Medicare.² Discretionary spending and direct spending together make up total federal spending.

The number of regular appropriations acts had been fixed at 13 for several decades.³ A realignment of the House and Senate Appropriations subcommittees at the beginning of the 109th Congress reduced the number of regular appropriations acts considered each year to 11, and further subcommittee realignment at the beginning of the 110th Congress increased the number to 12.⁴

Over the past several decades, recurring difficulties in enacting many of the regular appropriations acts as freestanding measures have led to innovative changes in legislative practices. Beginning in the late 1970s, continuing appropriations acts sometimes took the form of omnibus legislation, in some instances incorporating the full text of multiple regular appropriations acts for full-year funding instead of providing short-term funding by formula.⁵ In more recent years, the House and Senate sometimes have combined multiple regular appropriations acts into omnibus appropriations measures, termed “consolidated” appropriations acts, to bring action on appropriations measures to a close at the end of a session.⁶

Congressional Action in 2007

In 2007, during the first session of the 110th Congress, the House and Senate had to deal with action on regular appropriations acts both for FY2007 and FY2008. Several aspects of the process that was employed for the two fiscal years, including the postponement of final action on appropriations measures for one fiscal year until the next session, and the use of an unfinished regular appropriations act as a vehicle for a consolidated appropriations act to wrap up action, proved to be harbingers of the process Congress would employ in 2008.

In addition, President Bush and the Democratic leadership in the House and Senate differed markedly over the appropriate level of total discretionary spending,

² Funding for some mandatory spending programs, such as Medicaid and veterans’ compensation, is provided in annual appropriations acts, but the spending levels for these programs are controlled by the substantive law that established them. Even though the funding is provided in annual appropriations acts, it is not considered to be discretionary spending.

³ For information on changes in the number of regular appropriations acts over the years, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by James V. Saturno.

⁴ In the 109th Congress, the Senate Appropriations Committee reported a twelfth regular appropriations act, for the District of Columbia, but in final legislative action it was incorporated into another bill.

⁵ For more information on practices relating to the use of continuing appropriations acts, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

⁶ For more information on this topic, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Robert Keith.

especially for FY2008. The President largely was successful in pressuring Congress, especially through veto threats, to hold the total level of non-emergency discretionary spending for FY2008 to the level that he recommended, which was roughly \$20 billion less than what could have been accommodated under the FY2008 budget resolution. The disagreement between the President and Democratic congressional leaders over the appropriate levels of total discretionary continued into the 2008 session.

Regular Appropriations Acts for FY2007. Two of the 11 regular appropriations acts for FY2007 were enacted into law before a lame-duck session of the 109th Congress was convened on November 9, 2006.⁷ The House and Senate were not able to complete action on any of the remaining regular appropriations acts for FY2007 before the lame-duck session ended in early December and congressional leaders decided to defer further action until the 110th Congress.

In order to accommodate this approach, the third continuing appropriations act for FY2007, P.L. 109-383, provided funding through February 15, 2007. Early in the 110th Congress, the House and Senate completed action on H.J.Res. 20, the Revised Continuing Appropriations Resolution for FY2007, a measure providing funding through the end of the fiscal year. President Bush signed the measure into law on February 15, 2007, as P.L. 110-5 (121 Stat. 8-60).⁸

Regular Appropriations Acts for FY2008. House and Senate action in 2007 on the regular appropriations acts for FY2008 followed a difficult course as well. In December 2007, as the first session of the 110th Congress drew to a close, action on only one of the 12 regular appropriations acts for FY2008 had been completed. The Defense Appropriations Act for FY2008, which was signed into law by President Bush on November 13, as P.L. 110-116, provided FY2008 funding for regular activities of the Defense Department, but largely left funding for activities pertaining to military operations in Afghanistan and Iraq for subsequent consideration in other legislation.

Another regular appropriations act, the Labor-Health and Human Services-Education Appropriations Act for FY2008, H.R. 3043, had passed both chambers and been sent to President Bush, but he vetoed the measure on November 13. On November 15, the House narrowly failed to override the veto, by a vote of 277-141 (lacking the necessary two-thirds margin).⁹

⁷ The Defense Appropriations Act for FY2007, H.R. 5631, was signed into law by President George W. Bush on September 29, as P.L. 109-289, and the Homeland Security Appropriations Act for FY2007, H.R. 5441, was signed into law on October 4, as P.L. 109-295.

⁸ CRS Report RL33681, *FY2007 Regular Appropriations Acts: Procedures for End-of-Session Wrap-Up*, by Robert Keith.

⁹ In earlier action on the measure, an effort by the House to incorporate the Military Construction and Veterans Affairs Appropriations Act for FY2008 (H.R. 2642) into H.R. 3043, as a separate division, was rejected by the Senate.

With regard to the remaining 10 regular appropriations acts, all of them had been passed by the House and five had been passed by the Senate (Commerce-Justice-Science; Homeland Security; Military Construction-Veterans Affairs; State-Foreign Operations; and Transportation-HUD), but by mid-October no further action occurred on them as separate, free-standing measures.

Following the failure on November 15 to override the President's veto of the Labor-HHS-Education Appropriations Act for FY2008, Democratic leaders in Congress signaled their intent to consider an omnibus appropriations act in December that would "split the difference" with regard to \$22 billion in additional spending to which President Bush objected.¹⁰ On December 8, Office of Management and Budget Director Jim Nussle issued a statement indicating that the President would veto the omnibus appropriations act being developed, in part because "according to press reports it would include 18 billion in additional domestic and emergency spending above the President's budget."¹¹ In response to the veto threat, the Democratic leaders abandoned their "split the difference" plan and developed an omnibus appropriations act that adhered to the President's limit of \$933 billion, with limited additional emergency funding.¹²

The Consolidated Appropriations Act for FY2008 was the measure used to wrap up action in late 2007 on the remaining 11 regular appropriations acts, as well as emergency funding for military operations in Iraq and Afghanistan.¹³ The measure, H.R. 2764, originated as the State-Foreign Operations Appropriations Act for FY2008, which passed the House in June and the Senate in September of 2007.

In deciding to use H.R. 2764 as the wrap-up vehicle for FY2008 appropriations, congressional leaders also decided to avoid conference procedures that often are used to bring the House and Senate into final agreement on a measure. Instead, congressional leaders decided to reach final agreement by means of an exchange of amendments between the two chambers, which occurred between December 17 and December 19.¹⁴ President Bush signed the bill into law on December 26, 2007 as P.L. 110-161 (121 Stat. 1844-2456).

¹⁰ See, for example, *BNA Daily Report for Executives*, "Reid Says Democrats to Bundle Bills, Offer to 'Split Difference' With President," by Nancy Ognanovich and Jonathan Nicholson, November 16, 2007, p. A-41.

¹¹ Office of Management and Budget, *Statement By White House Office of Management and Budget Director Jim Nussle* (press release), December 8, 2007, available on the OMB website at [http://www.whitehouse.gov/omb/pubpress/2007/120807_spending.html].

¹² *CQ Weekly Report*, "Democrats Relent on Spending," by David Clark and Liriel Higa, December 17, 2007, p. 3718.

¹³ CRS Report RL34298, *Consolidated Appropriations Act for FY2008: Brief Overview*, by Robert Keith.

¹⁴ For additional information on this topic, see (1) CRS Report RL34611, *Whither the Role of Conference Committees: An Analysis*, by Walter J. Oleszek; and (2) CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

President's FY2009 Budget Submission

In his February 2008 budget submission for FY2009, President Bush requested total non-emergency discretionary budget authority for the fiscal year of \$987.6 billion. Counting an advance appropriation of \$2.2 billion for Bioshield, provided in prior legislation, the total request for non-emergency discretionary budget authority for FY2009 amounted to \$989.8 billion.

With respect to emergency discretionary budget authority, the President requested \$75.8 billion, including \$70.0 billion for the "Global War on Terror" and \$5.8 billion for "Gulf Coast/Hurricane Recovery."¹⁵ Combining both emergency and non-emergency spending, the President's request for discretionary budget authority for FY2009 totaled \$1,065.6 billion,

The President's FY2009 request was reestimated by the Congressional Budget Office (CBO) in March at \$991.6 billion in non-emergency discretionary budget authority.¹⁶ The CBO reestimates did not change the additional amount of emergency discretionary funding (\$75.8 billion) requested by the President. In total, CBO estimated the President's request for discretionary budget authority at \$1,067.4 billion.

According to CBO, the President's request for non-emergency discretionary spending reflected varying rates of growth or decline by category:

If funding for operations in Iraq and Afghanistan was excluded from the comparison, discretionary budget authority under the President's proposals would grow by 3.8 percent, or \$37 billion, from 2008 to 2009. Appropriations for defense would increase by 7.2 percent, and funding for homeland security activities would rise by 7.8 percent. Other appropriations would decline overall by 0.5 percent.¹⁷

In the Mid-Session Review of his FY2009 budget, issued on July 28, 2008, President Bush indicated a "topline" request of \$991.6 billion in discretionary spending for FY2009, reflecting modest adjustments to his original request.¹⁸

Two days after submitting the Mid-Session Review, the President reiterated his request to Congress that discretionary budget authority for FY2009 (excluding emergency spending) not exceed \$991.6 billion. A Statement of Administration Policy (SAP) on the Military Construction-Veterans Affairs Appropriations Act for FY2009, which included a conditional veto threat against other FY2009 appropriations acts, stated:

¹⁵ Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009*, February 2008, Summary Table S-2, p. 140.

¹⁶ Congressional Budget Office, *An Analysis of the President's Budgetary Proposals for Fiscal Year 2009*, March 2008, Table 1-7, pp. 18-19.

¹⁷ CBO, *op. cit.*, p. 16.

¹⁸ Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009. Mid-Session Review*, July 28, 2008, Summary Table S-2, p. 22.

The Administration supports a discretionary limit of \$991.6 billion in FY 2009, which is a \$50 billion or 5.3 percent increase over the FY 2008 enacted level. If Congress believes additional spending is needed, that funding should be offset with reductions to lower-priority programs without adding to the Government's burden on taxpayers. Instead, the Appropriations Committee's spending allocations exceed the President's discretionary spending levels by nearly \$25 billion.

...If Congress increases VA funding above the President's request and does not offset this increase with spending reductions in other bills, the President will veto any of the other bills that exceed his request until Congress demonstrates a path to reach the President's topline.¹⁹

Congressional Budget Resolution for FY2009

The House and Senate consider annual appropriations acts, and other budgetary legislation, within constraints established in a yearly budget resolution required by the Congressional Budget Act of 1974, as amended. Budget resolution policies are enforced in large part by points of order that may be raised during House and Senate consideration of spending, revenue, and debt-limit legislation.²⁰

With regard to total discretionary spending for the upcoming fiscal year, the House and Senate Appropriations Committees are given an allocation in the joint explanatory statement accompanying the conference report on the budget resolution, as required by Section 302(a) of the 1974 act. Pursuant to Section 302(b) of the act, the two committees then subdivide their allocations among their subcommittees. In this way, the cost of each annual appropriations act developed by a subcommittee (and reported by the full committee) can be compared to its Section 302(b) suballocation of discretionary spending to determine compliance with the budget resolution.

On occasion, overall budget policies reflected in a budget resolution may be modified by agreements or understandings reached between congressional leaders and the President. Agreements or understandings that call for more discretionary spending than the budget resolution recommends may be accommodated during legislative action mainly through the use of waivers of points of order or emergency spending designations. In the case of agreements or understandings that involve less discretionary spending than the budget resolution otherwise would allow, the House and Senate simply may pass some or all of the appropriations acts at reduced levels.

On March 13, 2008, the House passed H.Con.Res. 312, the FY2009 budget resolution, by a vote of 212-207. The next day, the Senate passed S.Con.Res. 70, its version of the FY2009 budget resolution, by a vote of 51-44.

¹⁹ See the SAP of July 30, 2008 on H.R. 6599, the Military Construction-Veterans Affairs Appropriations Act for FY2009, available on the OMB website at [<http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr6599-h.pdf>].

²⁰ For a general discussion of budget enforcement procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith.

A conference report on S.Con.Res. 70 was filed on May 20, 2008 (H.Rept. 110-659). The Senate adopted the conference report on June 4, by a vote of 48-45, and the House adopted it on June 5, by a vote of 214-210.

Like the previous year, the budget resolution for FY2009 recommended a total level of non-emergency discretionary spending that was more than \$20 billion above the President's request.²¹ Media accounts typically cited non-emergency discretionary budget authority of \$1,016 billion for FY2009, reflecting adjustments for advance appropriations and other factors; the amount was about \$24.5 billion above President Bush's request.²² Taking into account both emergency and non-emergency spending, the FY2009 budget resolution recommended total discretionary spending for FY2009 of \$1,088.447 billion.²³

Initial House and Senate Action on FY2009 Regular Appropriations Acts

The timing of initial House and Senate action on the regular appropriations acts for FY2009 was influenced largely by the consideration of two other measures.²⁴ First, the two chambers devoted considerable attention to H.R. 2642, the Supplemental Appropriations Act for FY2008. The bill originated in 2007 as the Military Construction and Veterans Affairs Appropriations Act for FY2008, passing the House in June and the Senate in September. Funding for the Military Construction and Veterans Affairs Appropriations Act was included in the Consolidated Appropriations Act for FY2008, and congressional leaders decided to use H.R. 2642 as the vehicle for supplemental appropriations and other matters.

Various complex and controversial issues were addressed during consideration of H.R. 2642, provoking veto threats from President Bush and complicating action on the measure. Through an exchange-of-amendments procedure that occurred between the two chambers during May and June of 2008, the bill was expanded to include not only \$162 billion in emergency funding for military operations in Iraq and Afghanistan for FY2008 (and a "bridge fund" for FY2009), but also more than \$20 billion in non-military emergency funding for FY2008, \$63 billion for a

²¹ For a discussion of the difficulties involved in making precise comparisons between the President's request and the budget resolution with respect to discretionary spending, see the *Budget Bulletin*, "Informed Budgeteer: Why Is It So Confusing To Figure Out What The Budget Resolution Includes For Discretionary Spending?", 110th Cong., 2nd sess., No. 3a and 3b, March 13, 2008

²² BNA *Daily Report for Executives*, "House Approves 2009 Budget; Democrats Claim Fiscal Victory," by Jonathan Nicholson, June 6, 2008, p. A-32; *CQ Today*, "House to Vote on Democrats' Blueprint; Appropriations Strategy Still Uncertain," by David Clarke, May 20, 2008; and *CQ Weekly Report*, "Congress Wraps Up Budget Resolution," by David Clarke, June 9, 2008, p. 1546.

²³ See the conference report to accompany S.Con.Res. 70, the FY2009 budget resolution, H.Rept. 110-659 (May 20, 2008), at p. 54.

²⁴ Detailed information on the status of annual appropriations acts for FY2009 and earlier years is provided in the Appropriations Status Tables available on the CRS website at [<http://www.crs.gov/products/appropriations/appover.shtml>].

veterans' education benefit over a multi-year period, and \$8 billion for a 13-week extension of unemployment benefits.²⁵ President Bush signed the measure into law on June 30, 2008, as P.L. 110-252 (122 Stat. 2323-2416).

The second measure affecting the timing of action on the regular appropriations acts was the FY2009 budget resolution, S.Con.Res. 70. The budget resolution set in place the blueprint for House and Senate action on budgetary legislation affecting FY2009 and later years, and determined the total allocation of discretionary spending to the Appropriations Committees. House and Senate action on S.Con.Res. 70 was completed on June 5, 2008, marking the first time that a budget resolution was agreed to in an election year since 2000.

Shortly after final agreement was reached on the FY2009 budget resolution, the House and Senate Appropriations Committees approved the Section 302(b) suballocations (on June 18 and June 19, respectively) and began the process of marking up individual regular appropriations acts with the intent of reporting all 12 of them. Continued disagreement between Democratic congressional leaders and President Bush over discretionary spending levels, and the impending presidential election toward the end of the session, however, made the issue of House and Senate floor action on the appropriations acts unclear:

Democrats don't plan to finish work on the spending bills before the election unless President Bush agrees to negotiate over spending. The White House earlier this year said Bush would veto spending bills that exceed his request — mirroring the stance that created last year's appropriations standoff. Democrats, who eventually capitulated to Bush's demand at the end of the year, don't want to go through the same exercise again and are hoping they can complete the process next year under a Democratic president. Bush has proposed a total of \$991.6 billion in discretionary spending, with an effective freeze on domestic programs, while the final Democratic budget adopted last week would allow an additional \$21.1 billion in fiscal 2009 discretionary spending (including cap adjustments), plus \$3.5 billion more than Bush proposed in advance appropriations. The Democrats' additional funding would be used for domestic programs.

... Both House and Senate Appropriations intend to mark up and report each of the 12 fiscal 2009 spending bills, however, in order to set the stage for later completion of the process. Those bills will reflect funding priorities that Democrats can point to before the November elections. And they are expected to become the base for final appropriations action early next year, when Democrats believe they will have larger majorities in both chambers. But it's uncertain how many bills will be considered by the full chambers.²⁶

The House Appropriations Committee approved five of the regular appropriations acts on June 24 and June 25. During a committee markup of the Labor-HHS-Education Appropriations Act for FY2009 on June 26, Republican

²⁵ BNA *Daily Report for Executives*, "Supplemental Heads to White House After Senate Approval; Bush to Sign Bill," by Jonathan Nicholson, June 30, 2008, p. A-21.

²⁶ *CQ Budget Tracker News*, "Budget Tracker Briefing: Unusual Appropriations Season Opens," by Chuck Conlon and Kerry Young, June 8, 2008.

Members of the committee attempted to offer the text of the pending Interior Appropriations Act for FY2009 and to pursue the offering of amendments pertaining to offshore drilling and other energy initiatives. The committee markup was suspended and no further markups of FY2009 regular appropriations occurred in the committee during the session.²⁷ The committee subsequently issued written reports for the two measures approved on June 24, the Military Construction and Veterans Affairs Appropriations Act for FY2009, H.R. 6599 (H.Rept. 110-775, July 24, 2008), and the Homeland Security Appropriations Act for FY2009, H.R. 6947 (H.Rept. 110-862, September 18, 2008).

The Senate Appropriations Committee marked up and reported nine of the 12 regular appropriations acts, concluding its action on them in late July.

The House began consideration of H.R. 6599, the Military Construction and Veterans Affairs Appropriations Act for FY2009, on July 31 and passed it, by a vote of 409-4, on August 1. No further action was taken by the House or the Senate on individual regular appropriations acts for FY2009, as freestanding measures, during the remainder of the session.

As discussed in a separate section below, three of the FY2009 regular appropriations acts, along with continuing appropriations for FY2009 and emergency supplemental appropriations for FY2008, were merged together into the Consolidated Appropriations Act for FY2009.

Possible Action in a Lame-Duck Session on Economic Stimulus Legislation

Continued economic turmoil prompted Congress and the President to enact an economic stimulus measure early in the 2008 session and other legislation aimed at stabilizing the economy as the session progressed.²⁸ Additional action on appropriations for FY2009 could occur in the 110th Congress if it convenes after the November 4 election in a lame-duck session to consider a second economic stimulus measure.²⁹ The Senate has continued to convene periodically in pro forma session and Senate Majority Leader Harry Reid has indicated that the Senate will meet on November 17 to begin consideration of a second stimulus proposal.³⁰

²⁷ BNA *Daily Report for Executives*, "Obey Mulls No More Markups, Says GOP 'Had Their Shot' on Appropriations Process," by Jonathan Nicholson, June 27, 2008, p. A-35.

²⁸ Economic stimulus proposals considered in 2008 are addressed in CRS Report RL34349, *Economic Slowdown: Issues and Policies*, by Jane G. Gravelle, Thomas L. Hungerford, Marc Labonte, N. Eric Weiss, Julie M. Whittaker.

²⁹ For background information on appropriations action in lame-duck sessions, see CRS Report RL34597, *Annual Appropriations Acts: Consideration During Lame-Duck Sessions*, by Robert Keith.

³⁰ *CQ Today*, "Reid Calls For Economic Stimulus Package After Election," by David Clarke, October 15, 2008.

The first stimulus measure, the Economic Stimulus Act of 2008, was signed into law on February 13, 2008, as P.L. 110-185. The act included only changes in revenues, including recovery rebates and incentives for business investment that amounted to combined revenue reduction of \$168 billion in FY2008 and FY2009.³¹

A second stimulus measure, the Job Creation and Unemployment Relief Act of 2008 (H.R. 7110), passed the House on September 26, 2008 by a vote of 264-158.³² On the same day, the Senate rejected a motion to proceed to the consideration of a similar measure, the Economic Recovery Act, 2008 (S. 3604), by a vote of 52-42 (under a unanimous consent agreement, the motion required 60 votes to be successful). No further action has been taken on either measure.

The Bush Administration issued Statements of Administration Policy (SAPs) on the measures on September 26, opposing them on various grounds and threatening a veto in each case.

While the first stimulus measure included only changes in revenue policy, the House and Senate versions of the second stimulus measure originated in the Appropriations Committees and entailed appropriations for such matters as infrastructure projects, energy development, unemployment compensation, job training, and Medicaid and food stamps assistance. Media reports indicate that the scope of any economic stimulus measure given further consideration in a lame-duck session could be expanded well beyond the roughly \$60 billion cost of the measures developed in late September.³³

Brief Summary of the FY2009 Consolidated Appropriations Act

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act for FY2009 is a relatively lengthy and complex annual appropriations act consisting of five separate components, referred to as divisions. Division A provides continuing appropriations for FY2009 for activities that were funded in the prior fiscal year by nine different regular appropriations acts. Division B provides supplemental appropriations for FY2008 to various departments and agencies for disaster relief and recovery activities. The remaining divisions each set forth one of

³¹ Joint Committee on Taxation, *Estimated Budget Effects of the "Economic Stimulus Act of 2008," as Passed by the House of Representatives and the Senate on February 7, 2008*, JCX-17-08, February 8, 2008.

³² BNA *Daily Report for Executives*, "House Passes \$60.7 Billion Stimulus But Prospects for Measure Uncertain," by Jonathan Nicholson and Nancy Ognanovich, September 29, 2008, p. A-28.

³³ *CQ Today Online News*, "Pelosi Calls for Stimulus, Hints at Lame Duck," by Liriel Higa, October 8, 2008, and "House Democrats Meet to Plan for Second Stimulus," by Molly K. Hooper, October 9, 2008; and BNA *Daily Report for Executives*, "House Democrats Reconvene Economists To Discuss Need for Economic Stimulus," by Jonathan Nicholson, October 10, 2008, p. A-22.

remaining three regular appropriations for FY2009: Division C, the Department of Defense Appropriations Act; Division D, the Homeland Security Appropriations Act; and Division E, the Military Construction and Veterans Affairs Appropriations Act.

According to the Congressional Budget Office, enactment of the Consolidated Appropriations Act for FY2009 brings total discretionary budget authority for the fiscal year to \$1,089.6 billion, including \$993.7 billion in non-emergency spending and \$95.9 billion in emergency spending (see **Table 1**). These amounts reflect \$65.9 billion in emergency spending in a FY2009 “bridge fund” for war activities, provided in P.L. 110-252, and \$2.2 billion in non-emergency advance appropriations for Bioshield, provided and adjusted in earlier laws.

On an annualized basis, continuing appropriations for FY2009 provided in the act amount to \$420.0 billion, including \$390.9 billion in non-emergency spending and \$29.0 billion in emergency spending. (Continuing appropriations are provided only through March 6, 2009, so the annualized amounts may differ from the final amounts for the fiscal year, depending on subsequent funding actions.)

Total budget authority for the three regular appropriations acts included in the act amounts to \$669.6 billion, including \$602.8 billion in non-emergency spending and \$66.9 billion in emergency spending (mostly from the “bridge fund” provided in P.L. 110-252).

As **Table 2** shows, the total amount of non-emergency discretionary budget authority for FY2009 provided in the three regular appropriations acts included in the act, \$600.6 billion (excluding the advance appropriation for Bioshield), exceeds the President’s request by \$2.0 billion. Defense appropriations are \$4.0 billion below the level the President requested, while appropriations for Homeland Security and for Military Construction and Veterans Affairs exceed his request by \$2.4 billion and \$3.6 billion, respectively.

Each of the opening sections and the five divisions of the act are summarized briefly below. Page references to the legislative text and explanatory statement for each section and division of the act are provided in **Table 3**.

Opening Sections (Sections 1-4)

The act begins with four sections, with the first three setting forth a short title (Section 1), a table of contents (Section 2), and a statement regarding references (Section 3), read as follows:

[e]xcept as expressly provided otherwise, any reference to ‘this Act’ or ‘this joint resolution’ contained in any division of this Act shall be treated as referring only to the provisions of that division.

Table 1. Summary of Discretionary Budget Authority for FY2009
(amounts in \$ billions)

House/Senate Appropriations Subcommittees	Non- Emergency	Emergency	Total
Continuing Appropriations			
1. Agriculture	20.385	0.405	20.790
2. Commerce/Justice/Science	53.591	0.083	53.674
3. Energy and Water	31.374	13.521	44.895
4. Financial Services	20.554	0.000	20.554
5. Interior and Environment	26.571	0.000	26.571
6. Labor/HHS/Education	150.248	11.350	161.598
7. Legislative Branch	3.969	0.000	3.969
8. State/Foreign Operations	33.326	3.679	37.005
9. Transportation/HUD	50.923	0.000	50.923
<i>Subtotal, Continuing Appropriations</i>	<i>390.941</i>	<i>29.038</i>	<i>419.979</i>
Regular Appropriations			
1. Defense	487.737	65.921	553.658
2. Homeland Security	42.164	0.000	42.164
3. Military Construction/Veterans Affairs	72.863	0.944	73.807
<i>Subtotal, Regular Appropriations</i>	<i>602.764</i>	<i>66.865</i>	<i>669.629</i>
Total	993.705	95.903	1,089.608

Source: Prepared using information provided by the Congressional Budget Office.

Note: Details may not add to total due to rounding. Continuing appropriations, available through March 6, 2009, are shown as annualized amounts (i.e., through September 30, 2009). Defense appropriations include a “bridge fund” of \$65.9 billion in emergency funding in P.L. 110-252. Homeland Security appropriations include an advance appropriation of \$2.2 billion for Bioshield (under Biodefense Countermeasures), as provided in P.L. 108-90 (117 Stat. 1148) and adjusted by other laws.

Table 2. Non-Emergency Discretionary Spending in Regular Appropriations Acts for FY2009 Compared to President's Request and FY2008 Levels
(budget authority in \$ billions)

Regular Appropriations Act	FY2008 Level	FY2009 President's Request	FY2009 Enacted Level	FY2009 Enacted Level Compared to President's Request
Defense (Division C)	459.3	491.7	487.7	-4.0
Homeland Security (Division D)	37.7	37.6	40.0	+2.4
Military Construction/ Veterans Affairs (Division E)	63.9	69.3	72.9	+3.6
Total	560.9	598.6	600.6	+2.0

Source: Prepared using information provided by the House Appropriations Committee.

Notes: Amounts exclude emergency funding. Homeland Security appropriations exclude advance appropriation for Bioshield (\$2.18 billion for FY2009).

Table 3. Page References to Legislative Text and Explanatory Statement

Section/ Division	Content	Public Law 110-329 (122 Stat. 3574-3716)	Congressional Record (September 24, 2008)	
			Legislative Text	Explanatory Statement
Sec. 1	Short Title	n/a	H9248	—
Sec. 2	Table of Contents	n/a	H9248	—
Sec. 3	References	n/a	H9248	—
Sec. 4	Explanatory Statement	n/a	H9248	H9427
Division A	Continuing Appropriations Resolution, 2009	n/a	H9248-H9251	H9427
Division B	Disaster Relief and Recovery Supplemental Appropriations Act, 2008	n/a	H9251-H9256	H9427-H9433
Division C	Department of Defense Appropriations Act, 2009	n/a	H9256-H9270	H9434-H9792
Division D	Department of Homeland Security Appropriations Act, 2009	n/a	H9270-H9282	H9792-H9825
Division E	Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2009	n/a	H9282-H9289	H9826-H9870

Sources: P.L. 110-329 (in enrolled bill form), available on the Legislative Information System at [<http://www.congress.gov/cgi-lis/query/D?c110:7:./temp/~c110BcZFiD::>]; and *Congressional Record* (daily ed.), vol. 154, no. 152, Book I and Book II, September 24, 2008.

Note: “N/a” means not yet available.

Section 4 indicates that explanatory material accompanying the legislation should be regarded as if it were a joint explanatory statement that would have accompanied a conference report on the measure, had conference procedures been used:

The explanatory statement regarding this legislation, printed in the House of Representatives section of the *Congressional Record* on or about September 24, 2008 by the Chairman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of this Act as if it were a joint explanatory statement of a committee of conference.

Representative David Obey, the chairman of the House Appropriations Committee, inserted explanatory materials into the *Congressional Record* of September 24, 2008, which included detailed tables on the discretionary spending provided in the measure.³⁴

The authority for the submission of the explanatory material was provided by Section 3 of H.Res. 1488, a special rule providing for the consideration of a motion by the chairman of the Appropriations Committee that the House concur in the Senate amendment to H.R. 2638 with a substitute amendment. Section 3 stated:

The chairman of the Committee on Appropriations shall insert in the daily issue of the *Congressional Record* dated September 24, 2008, such material as he may deem explanatory of the motion.

Continuing Appropriations for FY2009 (Division A)

Division A of the act, referred to as the “Continuing Appropriations Resolution, 2009,” provides continuing appropriations for roughly the first half of FY2009 for activities that were funded in nine of the 12 regular appropriations acts for FY2008.³⁵ Continuing appropriations in total amount to about \$420 billion (on an annualized basis), including \$391 billion in non-emergency funding and \$29 billion in emergency funding.

Section 101 appropriates “[s]uch amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for FY2008” and under the authority and conditions provided in those acts. The nine applicable acts, referenced by the division assigned to them in the Consolidated Appropriations Act for FY2008 (P.L. 110-161), include the:

³⁴ See the *Congressional Record* (daily ed.), vol. 154, no. 152, September 24, 2008. A summary table of defense appropriations is provided in Book I at pp. H9291-H9294. Additional explanatory material on the entire act is provided in Book II at pp. H9427-H9870.

³⁵ A brief summary of Division A is available on the website of the House Appropriations Committee, at [<http://appropriations.house.gov/pdf/CRSummary09-08.pdf>]. Also, the Senate Appropriations Committee provides a brief summary on its website, available at [http://appropriations.senate.gov/Press/2008_09_24_Continuing_Resolution_Highlights.pdf?CFID=65542758&CFTOKEN=49741756].

- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act;
- Commerce, Justice, Science, and Related Agencies Appropriations Act;
- Energy and Water Development and Related Agencies Appropriations Act;
- Financial Services and General Government Appropriations Act;
- Department of the Interior, Environment, and Related Agencies Appropriations Act;
- Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act;
- Legislative Branch Appropriations Act;
- Department of State, Foreign Operations, and Related Programs Appropriations Act; and
- Transportation, Housing and Urban Development, and Related Agencies Appropriations Act.

Section 102 excludes from the calculation of the rate for operations under each appropriations act any emergency funding that was provided previously, with the following five exceptions: (1) \$150 million for salaries and expenses of the Food and Drug Administration (provided in P.L. 110-252); (2) \$143.539 million for salaries and expenses of the Federal Bureau of Investigation (provided in P.L. 110-161); (3) \$110 million for State Unemployment Insurance and Employment Service Operations of the Employment and Training Administration (provided in P.L. 110-252); (4) \$272 million and \$206.632 million for Diplomatic and Consular Programs of the Department of State (provided in two provisions in P.L. 110-252); and (5) \$76.7 million for Embassy Security, Construction, and Maintenance of the Department of State (provided in P.L. 110-252).

Sections 103 through 110 set forth routine elements of continuing appropriations acts, including a bar against initiating or resuming activities that were not funded in FY2008 (Section 104); a restriction on funding activities with high initial rates of operation (Section 109); and a requirement that only the “most limited” funding actions occur during the course of continuing activities (Section 110).

Section 106 establishes the duration of the continuing appropriations. Under the section, continuing appropriations and authorities made available pursuant to the act remain in effect:

- ... until whichever of the following first occurs: (1) the enactment into law of an appropriation for any project or activity provided for in this joint resolution; (2)

the enactment into law of the applicable appropriations Act for fiscal year 2009 without any provision for such project or activity; or (3) March 6, 2009.

The remainder of Division A, encompassing Sections 111 through 174, includes “anomalies” and other items, such as provisions that provide additional appropriations, extend expiring authorities, or otherwise modify the application of the continuing appropriations rules and procedures to individual activities or categories of activities. For example, these sections include:

- a rate for operations of \$6.658 billion for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) account, an amount \$1 billion above the FY2008 level (Section 114);
- a rate for operations of \$2.906 billion for the Periodic Censuses and Programs account of the Bureau of the Census, to accelerate activities in connection with the 2010 census (Section 120);
- an appropriation of \$7.510 billion for the Advanced Technology Vehicles Manufacturing Loan Program account of the Department of Energy, to support \$25 billion in loans to American automakers (Section 129);
- an appropriation of an additional \$250 million to the Energy Efficiency and Renewable Energy account of the Department of Energy for weatherization assistance for low-income homes (Section 130);
- a pay adjustment of 3.9 percent in 2009 for federal civilian employees, which matches the increase provided to military personnel in other legislation (Section 142);
- the termination of a moratorium on offshore oil drilling (Section 152);
- an appropriation of \$5.1 billion (\$2.5 billion above the FY2008 level) for the Low-Income Home Energy Assistance Program (LIHEAP) of the Department of Health and Human Services (Section 155); and
- a rate for operations of \$18.627 billion for the Student Financial Assistance account of the Department of Education, including \$16.761 billion in discretionary funding for Pell Grants, an amount \$2.5 billion above the FY2008 level (Section 158).

The explanatory material submitted by Chairman David Obey included a statement indicating that Division A contained no earmarks:

Neither the legislative text of division A nor the accompanying explanatory statement contains any congressional earmarks, congressionally directed spending items, limited tax benefits or limited tariff benefits (as defined in clause

9 of rule XXI of the Rules of the House of Representatives and rule XLIV of the Standing Rules of the Senate, respectively).³⁶

Disaster Relief and Recovery Supplemental Appropriations for FY2008 (Division B)

Division B, referred to as the “Disaster Relief and Recovery Supplemental Appropriations Act, 2008,” provides \$22.859 billion in supplemental appropriations for FY2008, mainly in response to extensive flooding in the Midwest, Hurricanes Gustav, Hanna, and Ike, and wildfires. The division consists of three titles: Title I (Relief and Recovery From Natural Disasters); Title II (Other Supplemental Appropriations); and Title III (General Provisions).

Section 30002 designates all of the appropriations provided in the division as emergency funding. Consequently, the amounts do not count for purposes of congressional budget enforcement provisions.

Section 30003 indicates that all of the supplemental appropriations are for FY2008, but would have designated them as supplemental appropriations for FY2009 had the act become law on or after October 1. Although the supplemental appropriations were enacted into law on the last day of the fiscal year (September 30), each appropriation includes an extension of availability into FY2009 or later, or “until expended.”

According to the House Appropriations Committee, supplemental appropriations contained in Division B include:

- Disaster Relief Fund (FEMA): \$7.9 billion;
- Community Development Block Grants: \$6.5 billion;
- Social Services Block Grants: \$600 million;
- Wildfires: \$910 million;
- Emergency Highway Relief (FHA): \$850 million;
- New Orleans Levees: \$1.5 billion;
- Army Corps of Engineers: \$1.3 billion;
- Small Business Administration: \$799 million;
- Economic Development Assistance Programs: \$400 million;

³⁶ *Congressional Record* (daily ed.), September 24, 2008, p. H9427.

- International Disasters: \$465 million (including \$365 million for the Republic of Georgia, and \$100 million for Haiti to recover from Ike and other hurricanes, through the Economic Support Fund); and
- International Food Aid: \$100 million.³⁷

Earmarks included in the text of Division B or the accompanying explanatory material are identified in the *Congressional Record*.³⁸

Department of Defense Appropriations Act for FY2009 (Division C)

Division C, referred to as the “Department of Defense Appropriations Act, 2009,” provides \$487.7 billion in regular appropriations for FY2009.³⁹

The House Defense Appropriations Subcommittee marked up the Defense Appropriations Act for FY2009 on July 30, 2008, and the Senate Defense Appropriations Subcommittee did the same on September 10, but neither of the two full committees considered the measure. The Defense Appropriations Act for FY2009 was not considered by the House or Senate as a freestanding measure. Both chambers considered at length, however, the Duncan Hunter National Defense Authorization Act for FY2009, H.R. 5658 and S. 3001, the latter becoming P.L. 110-417 on October 14, 2008.

CRS Report RL34473, *Defense: FY2009 Authorization and Appropriations*, by Pat Towell, Stephen Daggett, and Amy Belasco, provides extensive information on the content of Division C. In addition, Chairman David Obey inserted extensive explanatory materials, including detailed funding tables, in the *Congressional Record*.⁴⁰

Earmarks included in the text of Division C or the accompanying explanatory material are identified in the *Congressional Record*.⁴¹

³⁷ A brief summary of Division B is available on the website of the House Appropriations Committee, at [<http://appropriations.house.gov/pdf/DisasterSummary09-08.pdf>]. A detailed funding table is included in the explanatory material submitted by Chairman David Obey; see the *Congressional Record* (daily ed.), September 24, 2008, pp. H9428-H9431.

³⁸ *Congressional Record* (daily ed.), September 24, 2008, p. H9432-H9433.

³⁹ A brief summary of Division C is available on the website of the House Appropriations Committee, at [<http://appropriations.house.gov/pdf/DODFY09CONFSummary09-08.pdf>]. Also, the Senate Appropriations Committee provides a brief summary on its website, available at [http://appropriations.senate.gov/Press/2008_09_24_Summary_of_FY_2009_Defense_Appropriations.pdf?CFID=65543142&CFTOKEN=31929965].

⁴⁰ *Congressional Record* (daily ed.), September 24, 2008, pp. H9434-H9740.

⁴¹ *Congressional Record* (daily ed.), September 24, 2008, p. H9740-H9792.

Department of Homeland Security Appropriations Act for FY2009 (Division D)

Division D, referred to as the “Department of Homeland Security Appropriations Act, 2009,” provides \$40.0 billion in regular appropriations for FY2009 (excluding an advance appropriation of \$2.18 billion for Bioshield).⁴²

The Senate Appropriations Committee approved the Homeland Security Appropriations Act for FY2009, S. 3181, on June 19, 2008 (S.Rept. 110-396, June 23, 2008). The House Appropriations Committee approved its version of the measure, H.R. 6947, on June 24 (H.Rept. 110-862, September 18, 2008). The Homeland Security Appropriations Act for FY2009 was not considered by the House or Senate as a freestanding measure.

CRS Report RL34482, *Homeland Security Department: FY2009 Appropriations*, by Jennifer E. Lake and Blas Nuñez-Neto (Coordinators), provides extensive information on the content of Division D. In addition, Chairman David Obey inserted extensive explanatory materials, including detailed funding tables, in the *Congressional Record*.⁴³

Earmarks included in the text of Division D or the accompanying explanatory material are identified in the *Congressional Record*.⁴⁴

Military Construction and Veterans Affairs Appropriations Act for FY2009 (Division E)

Division E, referred to as the “Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2009,” provides \$73.8 billion in regular appropriations for FY2009, including \$72.9 billion in non-emergency funding and \$0.9 billion in emergency funding.⁴⁵

The Senate Appropriations Committee approved the Homeland Security Appropriations Act for FY2009, S. 3181, on June 19, 2008 (S.Rept. 110-396, June

⁴² A brief summary of Division D is available on the website of the House Appropriations Committee, at [<http://appropriations.house.gov/pdf/DHSFY09CONFSummary09-22-08.pdf>]. Also, the Senate Appropriations Committee provides a brief summary on its website, available at [http://appropriations.senate.gov/Press/2008_09_24_Summary_of_FY_2009_Homeland_Security_Appropriations.pdf?CFID=65544578&CFTOKEN=96922501].

⁴³ *Congressional Record* (daily ed.), September 24, 2008, pp. H9792-H9825.

⁴⁴ *Congressional Record* (daily ed.), September 24, 2008, p. H9809-H9812.

⁴⁵ A brief summary of Division E is available on the website of the House Appropriations Committee, at [<http://appropriations.house.gov/pdf/MCFY09CONFSummary09-22-08.pdf>]. Also, the Senate Appropriations Committee provides a brief summary on its website, available at [http://appropriations.senate.gov/Press/2008_09_24_Summary_of_FY_2009_Milcon_V_A_Appropriations.pdf?CFID=65544706&CFTOKEN=40487362].

23, 2008). The House Appropriations Committee approved its version of the measure, H.R. 6947, on June 24 (H.Rept. 110-862, September 18, 2008). The Homeland Security Appropriations Act for FY2009 was not considered by the House or Senate as a freestanding measure.

CRS Report RL34558, *Military Construction, Veterans Affairs, and Related Agencies: FY2009 Appropriations*, by Daniel H. Else, Christine Scott, and Sidath Viranga Panangala, and CRS Report RL34598, *Veterans Medical Care: FY2009 Appropriations*, by Sidath Viranga Panangala, provide extensive information on the content of Division E. In addition, Chairman David Obey inserted extensive explanatory materials, including detailed funding tables, in the *Congressional Record*.⁴⁶

Earmarks included in the text of Division E or the accompanying explanatory material are identified in the *Congressional Record*.⁴⁷

Legislative History of the FY2009 Consolidated Appropriations Act

In deciding to merge regular and continuing appropriations for FY2009, along with supplemental appropriations for FY2008, into a single, consolidated appropriations act, the House and Senate Appropriations Committees chose an unfinished appropriations act to serve as the vehicle. Unlike in the 2007, when an unfinished regular appropriations act for FY2008 became the vehicle for the Consolidated Appropriations Act for FY2008, in 2008 an unfinished regular appropriations act for the prior fiscal year became the vehicle for the FY2009 omnibus measure.

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, H.R. 2638, originated as the Homeland Security Appropriations Act for FY2008 (H.Rept. 110-197, June 12, 2007, and S.Rept. 110-181, June 8, 2007). It passed the House on June 15, 2007 by a vote of 268-150, and passed the Senate with an amendment on July 26, 2007, by a vote of 89-4. On the same day that it passed H.R. 2638, the Senate requested a conference with the House and appointed conferees. The House did not respond to the Senate's request for a conference, and no further action was taken on H.R. 2638 for more than a year.

In deciding to use H.R. 2638 as the vehicle for omnibus appropriations for FY2009, congressional leaders also decided to avoid conference procedures that often are used to bring the House and Senate into final agreement on a measure. Instead, congressional leaders decided to reach final agreement by means of an exchange of amendments between the two chambers, as had been done the year before with respect to the Consolidated Appropriations Act for FY2008.

⁴⁶ *Congressional Record* (daily ed.), September 24, 2008, pp. H9826-H9870.

⁴⁷ *Congressional Record* (daily ed.), September 24, 2008, p. H9831-H9846.

The resolution of differences between the chambers focused on H.R. 2638, as passed by the House, and the single Senate amendment to the bill, in the form of a complete substitute thereto, that had been acted on a year earlier.

Action by the House

Under the first step, the House on September 24, 2008 considered and agreed to an amendment to the Senate amendment under the terms of H.Res. 1488, a special rule reported by the House Rules Committee.⁴⁸ The House amendment reflected the compromise language fashioned by the House and Senate Appropriations Committees in concert with the leadership.

The House Rules Committee reported H.Res. 1488 (H.Rept. 110-875) on September 24 and the House considered it the same day.⁴⁹ At the beginning of consideration of the resolution, Representative Jeff Flake raised a point of order under Section 426(a) of the Congressional Budget Act of 1974.⁵⁰ The section bars the House from considering a special rule that waives a point of order under Section 425 of the 1974 act, which pertains to legislation containing unfunded mandates. With one specified exception, H.Res. 1488 waived all rules of the House, which conceivably could have included Section 425 of the 1974 act. Representative Flake indicated that he raised the point of order in order to draw attention to the inclusion of earmarks in H.R. 2638 and the relatively brief time available to review them.⁵¹

As provided for under Section 426 of the 1974 act, the point of order was disposed of when the House voted on whether to consider H.Res. 1488; the House agreed to consider the resolution, by a vote of 242-168, thereby rejecting the point of order. At the conclusion of debate, the House ordered the previous question on H.Res. 1488, by a vote of 231-198, and agreed to the resolution, by a vote of 228-202.

Under the terms of the special rule, the House then considered a motion offered by Representative David Obey, the chairman of the House Appropriations Committee, to agree to the House amendment to the Senate amendment to H.R. 2638.⁵² The House amendment was agreed to by a vote of 370-58, and the legislation was returned to the Senate for further action by that chamber.

⁴⁸ The legislative text of the House amendment made in order under H.Res. 1488 was set forth in the Rules Committee's report, on pp. 3-146, and in the *Congressional Record* (daily ed.) of September 24, 2008, at pp. H9231-H9289.

⁴⁹ For House consideration of H.Res. 1488, see the *Congressional Record* (daily ed.) of September 24, 2008, at pp. H9218-H9231.

⁵⁰ Section 426 of the 1974 act is codified at 2 U.S.C. 658e.

⁵¹ According to Members' statements and media reports, the legislative text and explanatory material pertaining to the House amendment had been made available late in the previous day, September 23.

⁵² For House consideration of the amendment, see the *Congressional Record* (daily ed.) of September 24, 2008, at pp. H9231-H9305.

Action by the Senate

On September 26, the Senate took up by unanimous consent the House message regarding its action on H.R. 2638. Senator Sheldon Whitehouse, acting on behalf of Senate Majority Leader Harry Reid, moved to concur in the House amendment with a further amendment (number 5670), offered a second-degree amendment (number 5671) to amendment number 5670, and submitted a cloture motion on his motion to concur.⁵³ The amendments were pro forma in nature and changed the effective date of the act by one to two days.

The intent of these actions was to position the Senate to act expeditiously on the measure on the following day, with further amendments and debate restricted (should the cloture motion succeed).

On Saturday, September 27, the Senate completed action on the motion to concur in the House amendment.⁵⁴ Upon a successful vote, 83-12, to invoke cloture on the motion to concur, amendment number 5670 was withdrawn and amendment number 5671 thus fell. After a period of further debate, the Senate agreed to the motion to concur, by a vote of 78-12, thus clearing the measure for the President.

Action by the President

President Bush signed H.R. 2638 into law on September 30, 2008 (P.L. 110-329; 122 Stat. 3574-3716). The President issued a statement upon signing the bill, indicating his concern with some of its features.⁵⁵ First, he criticized the inclusion of continuing appropriations for FY2009:

I am disappointed that the Congress passed a long-term continuing resolution. There is much work to be done, and the Congress should not adjourn for the year without finishing important business on spending, taxes, and free trade agreements.

Second, he stated generally his objection to the inclusion in the act of the kinds of provisions often carried in appropriations acts (i.e., reporting requirements,

⁵³ See the *Congressional Record* (daily ed.) of September 26, 2008 at pp. S9850-S9851. Earlier in the day, the Senate took comparable actions with respect to Senate amendments number 5660 and 5661 and a cloture motion submitted by Senate Majority Leader Harry Reid, but those actions were vitiated. See the *Congressional Record* (daily ed.) of September 26, 2008 at pp. S9621-S9622 and p. S9850.

⁵⁴ See the *Congressional Record* (daily ed.) of September 27, 2008 at pp. S9883-S9897 and p. S9901-S9966.

⁵⁵ See White House press release, "Statement by the President on H.R. 2638, the 'Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009'" (September 30, 2008), available on the White House website at [<http://www.whitehouse.gov/news/releases/2008/09/20080930-7.html>].

legislative vetoes, and similar provisions) that he regards as undermining his constitutional authority:⁵⁶

Finally, this legislation contains certain provisions similar to those found in prior appropriations bills passed by the Congress that might be construed to be inconsistent with my Constitutional responsibilities. To avoid such potential infirmities, the executive branch will interpret and construe such provisions in the same manner as I have previously stated in regard to similar provisions.

President Bush did not cite the specific provisions to which he objected.

Implementation of the FY2009 Consolidated Appropriations Act

The Office of Management and Budget (OMB) has taken action in two areas — apportionment of continuing appropriations and guidance on earmarking — with regard to the implementation of the Consolidated Appropriations Act for FY2009. These two areas are discussed separately below.

Apportionment of Continuing Appropriations

One of the key roles played by OMB in the implementation of appropriations acts involves the apportionment of funds, which is intended mainly to prevent agencies from using all of the funds appropriated to their accounts before the fiscal year (or other period of availability) expires. Under the apportionment process, OMB makes appropriated funds available to an account in increments, typically one-quarter of the annual amount for each quarter of the fiscal year.⁵⁷

Because continuing appropriations acts commonly provide funds for a portion of the fiscal year, OMB usually issues special instructions to agencies regarding apportionments whenever such a measure is enacted.

On September 30, 2008, OMB issued Bulletin No. 08-02, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2009*, instructing agencies with respect to apportionments for continuing appropriations provided in Division A of P.L. 110-

⁵⁶ For background information on this topic, see CRS Report RL33667, *Presidential Signing Statements: Constitutional and Institutional Implications*, by T. J. Halstead.

⁵⁷ The apportionment process was established pursuant to the Antideficiency Act. For more discussion of the process and the Antideficiency Act, see (1) Section 120 of OMB Circular A-11, *Preparation, Submission and Execution of the Budget* (6/26/08), available on the OMB website at [http://www.whitehouse.gov/omb/circulars/a11/current_year/s120.pdf]; and (2) Government Accountability Office, *Antideficiency Act Background*, available on the GAO website at [<http://www.gao.gov/ada/antideficiency.htm>].

329.⁵⁸ The bulletin supplemented instructions regarding apportionments under continuing resolutions provided in Section 123 of OMB Circular A-11.⁵⁹

In the bulletin, OMB Director Jim Nussle indicated that, with a limited number of exceptions, appropriations for accounts included under Division A would be apportioned automatically based on the annualized amount multiplied by the **lower** of the percentage of the fiscal year covered by the act (43.01%) or the historical seasonal rate of obligations for the period of the year covered by the act.⁶⁰ Thus, an account with an annualized appropriation of \$100 million for FY2009 under the act automatically would be apportioned \$43.010 million (or a lesser amount if the historical seasonal rate of obligations so indicated) through March 6, 2009.

Guidance on Earmarking

Earmarking, which generally may be defined as the allocation of appropriations, either in statute or in accompanying committee report language or other documentation, on the basis of specified projects, activities, entities, or geographic areas (and typically at the request of the President or one or more Members of Congress), has been a regular feature of the annual appropriations process for many years. During the 110th Congress, after several Congresses in which the use of earmarks increased significantly, the House and Senate adopted new rules governing their use.⁶¹

The appropriations cycle for FY2008 was marked by contention between President George W. Bush and Congress over the number and dollar amount of earmarks. The Consolidated Appropriations Act for FY2008 brought action on the regular appropriations bills for that fiscal year to a close.⁶² President Bush signed the measure into law on November 13, 2007, as P.L. 110-161 (121 Stat. 1844-2456). Upon signing the bill, he issued a statement indicating his concern with some of its features, including the inclusion of “nearly 9,800 earmarks that total more than \$10 billion,” according to his estimates.⁶³

⁵⁸ The bulletin is available on the OMB website at [<http://www.whitehouse.gov/omb/bulletins/fy2008/b08-02.pdf>].

⁵⁹ Section 123 of the current OMB Circular A-11 is available on the OMB website at [http://www.whitehouse.gov/omb/circulars/a11/current_year/s123.pdf].

⁶⁰ For a discussion of some of the issues confronted by federal agencies when operating under a continuing resolution, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

⁶¹ For additional information on the new earmarking rules, see CRS Report RL34462, *Earmark Reform: Comparison of New House and Senate Procedural Rules*, by Sandy Streeter.

⁶² The content and legislative history of the act is discussed briefly in CRS Report RL34298, *Consolidated Appropriations Act for FY2008: Brief Overview*, by Robert Keith.

⁶³ “Statement on Signing the Consolidated Appropriations Act, 2008” (December 26, 2007), *Weekly Compilation of Presidential Documents*, vol. 43, no. 52, p. 1638.

On January 28, 2008, in his State of the Union Address to Congress, President Bush indicated that he would veto future annual appropriation acts if the number and cost of earmarks were not reduced substantially.⁶⁴ On the next day, he issued Executive Order 13457, entitled “Protecting American Taxpayers From Government Spending on Wasteful Earmarks.”⁶⁵ In general, E.O. 13457 instructed agency officials not to spend funds earmarked by Congress on a non-statutory basis, “except when required by law or when an agency has itself determined a project, program, activity, grant, or other transaction to have merit under statutory criteria or other merit-based decisionmaking.”⁶⁶

On October 23, 2008, OMB issued Memorandum No. 09-03, *Guidance on Implementing P.L. No. 110-329 in accordance with Executive Order 13457 on “Protecting American Taxpayers From Government Spending on Wasteful Earmarks.”*⁶⁷ With respect to continuing appropriations provided in the Consolidated Appropriations Act for FY2009, the memorandum instructed agencies to fund a statutorily-based earmark only if it: (1) was in the text of enacted appropriations for FY2008; (2) was of a continuing nature (i.e., not of a one-time, non-recurring nature); and (3) could not be executed by funding it in the remainder of FY2009, after the continuing appropriations had expired. Earmarks provided on a non-statutory basis, according to the memorandum, were not to be funded. OMB guidance for the funding of earmarks for the three regular appropriations acts included in the Consolidated Appropriations Act for FY2009 similarly adhered to the requirements of E.O. 13457.

⁶⁴ The 2008 State of the Union Address, as inserted into the *Congressional Record*, is available on the GPO Access website at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2008_record&docid=cr28ja08-94.pdf].

⁶⁵ Executive Order 13457 (January 29, 2008), “Protecting American Taxpayers From Government Spending on Wasteful Earmarks,” *Federal Register*, vol. 73, no. 22, February 1, 2008, pp. 6417-6418.

⁶⁶ Extensive background on the order is provided in: (1) CRS Report RL34373, *Earmarks Executive Order: Legal Issues*, by Thomas J. Nicola and T. J. Halstead; and (2) CRS Report RL34648, *Bush Administration Policy Regarding Congressionally Originated Earmarks: An Overview*, by Clinton T. Brass, Garrett Hatch, and R. Eric Petersen.

⁶⁷ The bulletin is available on the OMB website at [<http://www.whitehouse.gov/omb/memoranda/fy2009/m09-03.pdf>].