

Overview of Continuing Appropriations for FY2018 (P.L. 115-56)

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Summary

This report provides an analysis of the continuing appropriations provisions for FY2018 in Division D of H.R. 601. The measure also included separate divisions that establish a program to provide foreign assistance concerning basic education (Division A—Reinforcing Education Accountability in Development Act), supplemental appropriations for disaster relief requirements for FY2017 (Division B), and a temporary suspension of the public debt limit (Division C). On September 8, 2017, the President signed H.R. 601 into law (P.L. 115-56).

Division D of H.R. 601 was termed a “continuing resolution” (CR) because it provided temporary authority for federal agencies and programs to continue spending in FY2018 in the same manner as a separately enacted CR. It provides temporary funding for the programs and activities covered by all 12 of the regular appropriations bills, since none of them had been enacted previously. These provisions provide continuing budget authority for projects and activities funded in FY2017 by that fiscal year’s regular appropriations acts, with some exceptions. It includes both budget authority that is subject to the statutory discretionary spending limits on defense and nondefense spending and also budget authority that is effectively exempt from those limits, such as that designated as for “Overseas Contingency Operations/Global War on Terrorism.”

Funding under the terms of the CR is effective October 1, 2017, through December 8, 2017—roughly the first 10 weeks of the fiscal year.

The CR generally provides budget authority for FY2018 for projects and activities at the rate at which they were funded during FY2017. Most projects and activities funded in the CR, however, are also subject to an across-the-board decrease of 0.6791% (pursuant to Section 101(b) of Division D).

According to the cost estimate prepared by the Congressional Budget Office (CBO), the annualized discretionary budget authority provided in the FY2018 CR, as enacted, and subject to the statutory discretionary spending limits is approximately \$1,070 billion. When spending that is effectively not subject to those limits (Overseas Contingency Operations, disaster relief, emergency requirements, and program integrity adjustments) is also included, the CBO estimate is \$1,183 billion.

CRs usually include provisions that are specific to certain agencies, accounts, or programs. These include provisions that designate exceptions to the formula and purpose for which any referenced funding is extended (referred to as “anomalies”) as well as provisions that have the effect of creating new law or changing existing law (often used to renew expiring provisions of law). The CR includes a number of such provisions, each of which is briefly summarized in this report. CRS appropriations process experts for each of these provisions are listed in Error! Reference source not found..

For general information on the content of CRs and historical data on CRs enacted between FY1977 and FY2016, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno and Jessica Tollestrup.

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Introduction

Congress uses an annual appropriations process to fund discretionary spending, which supports the projects and activities of most federal government agencies.¹ This process anticipates the enactment of 12 regular appropriations bills each fiscal year.² If regular appropriations are not enacted prior to the start of the fiscal year (October 1), continuing appropriations may be used to provide temporary funding until the annual appropriations process can be concluded. Continuing appropriations acts are often referred to as “continuing resolutions,” or “CRs,” because they are typically enacted in the form of a joint resolution. CRs may be enacted for a period of days, weeks, or months. If any of the 12 regular appropriations bills are not enacted by the time that the first CR for a fiscal year expires, further extensions of that CR might be enacted until all regular appropriations bills have been completed or the fiscal year ends.

None of the FY2018 regular appropriations bills was enacted prior to the enactment of H.R. 601, a temporary CR. The measure provides continuing appropriations for projects and activities covered by all 12 of the regular annual appropriations bills from the beginning of the fiscal year, October 1, 2017, through December 8, 2017 (Division D). The measure also included separate divisions that establish a program to provide foreign assistance concerning basic education (Division A—Reinforcing Education Accountability in Development Act), supplemental appropriations for disaster relief requirements for FY2017 (Division B), and a temporary suspension of the public debt limit (Division C). On September 8, 2017, the President signed H.R. 601 into law (P.L. 115-56).

This report provides an analysis of the continuing appropriations provisions in H.R. 601. The first two sections summarize the overall funding provided (“Coverage, Duration, and Rate”) and budget enforcement issues associated with the statutory discretionary spending limits (“The CR and the Statutory Discretionary Spending Limits”). The third section of this report provides short summaries of the provisions in this CR that are agency-, account-, or program-specific. These summaries are organized by appropriations act title. In some instances, additional information about those appropriations and how they operate under a CR is provided.

For general information on the content of CRs and historical data on CRs enacted between FY1977 and FY2016, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno and Jessica Tollestrup.

Coverage, Duration, and Rate

This section of the report discusses the three components of a CR that generally establish the purpose, duration, and amount of funds provided by the act:

1. A CR’s “coverage” relates to the purposes for which funds are provided. The projects and activities funded by a CR are typically specified with reference to regular (and, occasionally, supplemental) appropriations acts from the previous

¹ The federal budget process distinguishes between discretionary spending, which is controlled through annual appropriations acts, and direct (or mandatory) spending, which is controlled through authorizing laws. For further information on the appropriations process generally, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno.

² Under current practice, each House and Senate Appropriations subcommittee typically drafts one regular appropriations bill for the activities under its jurisdiction, for a total of 12 bills each fiscal year. The full Appropriations Committee subsequently considers and reports each bill to its respective parent chamber.

fiscal year. When a CR refers to one of those appropriations acts and provides funds for the projects and activities included in such an act, the CR is often referred to as “covering” that act.

2. The “duration” of a CR refers to the period of time for which budget authority³ is provided for covered activities.
3. CRs usually fund projects and activities using a “rate for operations” or “funding rate” to provide budget authority at a restricted level but do not prescribe a specified dollar amount. The funding rate for a project or activity is based on the total amount of budget authority that would be available annually for that project or activity under the referenced appropriations acts and is pro-rated based on the fraction of a year for which the CR is in effect.

Coverage

Division D covers all 12 of the regular annual appropriations bills by providing continuing budget authority for projects and activities funded in FY2017 by that fiscal year’s regular appropriations acts—as specified in Section 101 of P.L. 115-56, this includes primarily Divisions A-K of the FY2017 Consolidated Appropriations Act (P.L. 115-31) for 11 of the 12 regular bills and Division A of P.L. 114-223 for the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, as well as some additional specified measures and provisions.

Statutory limits on discretionary spending are in effect for FY2018 as established by the Budget Control Act of 2011 (BCA; P.L. 112-25). The CR includes both budget authority that is subject to those limits and also budget authority that is effectively exempt from those limits—including that designated or otherwise provided as “Overseas Contingency Operations/Global War on Terrorism” (OCO/GWOT), “continuing disability reviews and redeterminations,” “disaster relief,” and “emergency requirements.”

Budget authority is provided by the CR under the same terms and conditions as the referenced FY2017 appropriations acts. Effectively, this requirement extends many of the provisions in the FY2017 acts that stipulated or limited agency authorities during FY2017. In addition, in general none of the funds are to be used to initiate or resume an activity for which budget authority was not available in FY2017. A goal of these and similar provisions in other CRs, as well as many of the other provisions discussed in the sections below, is to protect Congress’s constitutional authority to provide annual funding in the manner it chooses in whatever final appropriations measures are enacted.

Duration

Section 106 provides that funding in the CR is effective October 1, 2017, through December 8, 2017—about the first 10 weeks of the fiscal year. The CR provides that, in general, budget authority for some or all projects and activities could be superseded by the enactment of the applicable regular appropriations act or another CR prior to or on December 8.⁴ For projects and

³ Appropriations bills provide agencies with budget authority, which is defined as authority provided by federal law to enter into contracts or other financial obligations that will result in immediate or future expenditures (or outlays) involving federal government funds. For explanations of these terms, see Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 20-21. For the purposes of this report, the terms *budget authority* and *funding* are used interchangeably.

⁴ The subsequent enactment of a regular appropriations bill would also supersede the level of funding provided in the CR. Section 107 provides that obligations and expenditures made between October 1 and the enactment of any subsequent full-year appropriations would be charged to the applicable appropriation.

activities funded in the CR that a subsequent appropriations act does not fund, budget authority would immediately cease upon such enactment, even if prior to December 8.

Rate

The CR provides budget authority for projects and activities funded in FY2017 appropriations acts at a rate based on the amount of funding provided in those acts for the duration of the CR (through December 8). The rate is based on the net of all funding provisions applicable to FY2017, including those that had the effect of reducing budget authority. For entitlement and other mandatory spending that is funded through appropriations acts, Section 111 provides funding to maintain program levels under current law.

Most projects and activities funded in the CR are subject to an across-the-board decrease in Section 101(b) that would reduce the rate by 0.6791% below the level of FY2017 funding. Under Section 114, this decrease does not apply to appropriations designated or otherwise provided as OCO/GWOT, disaster relief, and emergency requirements. This decrease does apply, however, to advance appropriations enacted in previous fiscal years that first become available in FY2018.⁵

The CR and the Statutory Discretionary Spending Limits

Background

Appropriations for FY2018 are subject to statutory discretionary spending limits on categories of spending designated as “defense” and “nondefense” spending pursuant to the BCA. The defense category includes all discretionary spending under budget function 050 (defense); the nondefense category includes discretionary spending in the other budget functions.⁶ If discretionary spending is enacted in excess of a statutory limit in either category, the BCA requires the level of spending to be brought into conformance through “sequestration,” which involves primarily across-the-board cuts to non-exempt spending in the category of the limit that was breached (i.e., defense or nondefense). The Office of Management and Budget (OMB) provides a preview report at the beginning of the calendar year calculating any adjustments to the existing statutory spending limits.⁷ For FY2018 the adjusted discretionary spending caps are \$549.057 billion for defense and \$515.749 billion for nondefense. Once discretionary spending is enacted, OMB evaluates that spending relative to the spending limits and determines whether sequestration is necessary. For FY2018 discretionary spending, the first such evaluation (and any necessary enforcement) is to occur within 15 calendar days after the 2017 congressional session adjourns *sine die*.⁸ For any

⁵ Section 115.

⁶ For more on the BCA generally, see CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*, by Grant A. Driessen and Megan S. Lynch.

⁷ Available at <https://www.whitehouse.gov/omb/public-releases/sequestrationreports>.

⁸ Section 251(a)(1) of the Balanced Budget and Emergency Deficit Control Act. In general, an adjournment *sine die* terminates an annual session of Congress. Unless otherwise specified by law, the latest this adjournment can occur is January 3 each year. For further information with regard to *sine die* adjournments of a congressional session, see CRS Report R42977, *Sessions, Adjournments, and Recesses of Congress*, by Richard S. Beth and Valerie Heitshusen.

FY2018 discretionary spending that becomes law after the session ends, the OMB evaluation and any enforcement of the limits would occur 15 days after enactment.⁹

FY2018

The Congressional Budget Office (CBO) estimates the budgetary effects of interim CRs on an “annualized” basis, meaning that those effects are measured as if the CR were providing budget authority for an entire fiscal year. According to CBO,¹⁰ the annualized amount for discretionary budget authority for regular appropriations subject to the BCA limits (including projects and activities funded at the rate for operations and anomalies) is \$551.489 billion for defense and \$518.109 for nondefense. Although the estimate of the annualized amount for each category exceeds the statutory spending limit, a sequester order would not yet be required. As noted by CBO, the authority to determine whether a sequestration is required—and, if so, how to make the necessary cuts in budget authority—rests with OMB. In addition, because the earliest that the statutory discretionary spending limits could be enforced by a sequester is 15 days after the end of the congressional session, and the CR expires on December 8, 2017, these amounts can be adjusted prior to that time by further appropriations legislation for FY2018.

When spending effectively not subject to those limits—because it was designated or otherwise provided as OCO/GWOT, disaster relief, emergency requirement, or a program integrity adjustment—is included, CBO estimates total annualized budget authority in the CR of \$1,183.058 billion.

Agency, Account, and Program-Specific Provisions

In addition to the general provisions that establish the coverage, duration, and rate, CRs typically include provisions that are specific to certain agencies, accounts, or programs. These provisions are generally of two types. First, certain provisions designate exceptions to the formula and purpose for which any referenced funding is extended. These are often referred to as “anomalies.” The purpose of anomalies is to preserve Congress’s constitutional prerogative to provide appropriations in the manner it sees fit, even in instances when only short-term funding is provided. Second, certain provisions may have the effect of creating new law or changing existing law. Most typically, these provisions are used to renew expiring provisions of law or extend the scope of certain existing statutory requirements to the funds provided in the CR. Substantive provisions that establish major new policies have also been included on occasion. Unless otherwise indicated, such provisions are temporary in nature and expire when the CR sunsets.

These anomalies and provisions that change law may be included at the request of the President. Congress could accept, reject, or modify such proposals in the course of drafting and considering appropriations measures that provide continuing appropriations. In addition, Congress may identify or initiate any other anomalies and provisions changing law that they wish to be included in the CR.

⁹ Section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act. This requirement is in effect for spending enacted after the end of the congressional session but before July 1. For spending enacted between July 1 and the end of the fiscal year, Section 251(a)(5) provides for “look-back” budget enforcement, through which the relevant spending limit for the following fiscal year would be reduced by the amount of the breach of the current year limit.

¹⁰ For further information, see CBO, CBO Estimate for Division D of H.R. 601—The Continuing Appropriations Act, 2018, As Enacted (P.L. 115-56) (Discretionary Spending Only), <https://www.cbo.gov/publication/53112>.

This section of the report summarizes provisions in this CR that are agency-, account-, or program-specific, alphabetically organized by appropriations act title for 11 of the 12 regular appropriations acts covered in Section 101. (There are no anomalies concerning items funded in the State Foreign Operations, and Related Programs Appropriations Act.) The summaries generally provide brief explanations of the provisions. In some cases they include additional information, such as whether a provision was requested by the President or included in prior year CRs. For additional information on specific provisions in the CR, contact the CRS appropriations experts listed in Error! Reference source not found. at the end of the report.

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies

Section 116—Commodity Assistance Program¹¹

For the duration of the CR, Section 116 increases funding for the Commodity Supplemental Food Program, a domestic food assistance program that predominantly serves the low-income elderly.¹² Instead of basing funding for the program on the FY2017 funding level (\$236.1 million), this CR provision would use a base of approximately \$238.1 million. This anomaly is typically included to maintain current caseload and participation while accounting for increased food costs.

Section 117—Section 32¹³

This section makes a technical correction for the computation of a rescission to Section 32 funds in light of the availability that is allowed for carryover funds, especially for disaster payments that are at the discretion of the Secretary of Agriculture.

Other Related Issues¹⁴

In addition to extending the funding levels provided in Division A of P.L. 115-31, the CR explicitly extends \$20 million for the FDA Innovation Account that was made available by the second CR of FY2017 (P.L. 114-254, Division A, Section 193), pursuant to the 21st Century Cures Act (P.L. 114-255), which established the account.

The FY2018 CR continues \$29 million of funding for the Emergency Conservation Program that was in Division A of P.L. 115-31 (Section 714). However, the CR does not extend the disaster funding for agricultural land rehabilitation programs that was provided in the second CR of FY2017 (P.L. 114-254).

¹¹ This section was authored by Randy Alison Aussenberg, Specialist in Nutrition Assistance Policy.

¹² For more program background, see CRS Report R42353, *Domestic Food Assistance: Summary of Programs*, by Randy Alison Aussenberg and Kirsten J. Colello.

¹³ This section was authored by Jim Monke, Specialist in Agricultural Policy.

¹⁴ This section was authored by Agata Dabrowska, Analyst in Health Policy, and Megan Stubbs, Specialist in Agricultural Conservation and Natural Resources Policy.

Commerce, Justice, Science, and Related Agencies

Section 118—Bureau of the Census¹⁵

This section allows the Census Bureau to draw on money from the Periodic Censuses and Programs account—which includes the decennial census and other major programs such as the economic census, the census of governments, and intercensal demographic estimates, together with geographic and data-processing support—at the rate necessary to maintain the 2020 census schedule.

Department of Defense

Section 102—Prohibition on ‘New Starts’ and Increasing Production Rates¹⁶

Section 102 is similar to provisions typically included in CRs in previous years. It prohibits the Department of Defense from funding either so-called new starts—that is, procurement or research and development of a major program for which funding was not provided in FY2017—or acceleration of rate of production for any major program for which FY2017 procurement funding was provided.

Section 119—Authorization Extension¹⁷

This section would extend the authorization (that would otherwise have expired at the end of FY2017) for the Office of Security Cooperation with Iraq, originally established by Section 1215(f)(1) of P.L. 112-81, the FY2012 National Defense Authorization Act. This extension would apply until the earlier of the end date for this CR or the date of enactment of a new authorization for military activities of the Department of Defense.

Energy and Water Development and Related Agencies

Section 120—Uranium Enrichment Decontamination and Decommissioning Fund¹⁸

Section 120 would authorize the Department of Energy (DOE) to apportion funding for the Uranium Enrichment Decontamination and Decommissioning Fund through December 8, 2017, up to the rate for operations that would be necessary to avoid disruption of continuing projects or activities. This account primarily funds the decommissioning and environmental remediation of three federal uranium enrichment facilities in Kentucky, Ohio, and Tennessee administered by the DOE Office of Environmental Management. DOE would be required to notify the House and Senate appropriations committees within three days after each use of this authority. This provision is similar to provisions included in CRs for previous fiscal years.

¹⁵ This section was authored by Jennifer D. Williams, Specialist in American National Government.

¹⁶ This section was authored by Pat Towell, Specialist in U.S. Defense Policy and Budget.

¹⁷ This section was authored by Pat Towell, Specialist in U.S. Defense Policy and Budget.

¹⁸ This section was authored by David M. Bearden, Specialist in Environmental Policy.

Section 121—Bureau of Reclamation¹⁹

Section 121 would extend the authority for the Reclamation States Emergency Drought Relief Act (P.L. 102-250, 43 U.S.C. 2201 et seq.) from the end of FY2017 to the date of the CR's expiration. This authority allows the Bureau of Reclamation to undertake activities that minimize or mitigate drought damages or losses within the 17 Reclamation States (including tribes within those states) and Hawaii. Authorized activities include, among other things, authority for construction to alleviate the adverse impacts of drought (typically in the form of drilling private wells), acquisition of water for specified purposes, and preparation of drought contingency plans with state and local entities.

Section 122—Power Marketing Administrations²⁰

Section 122 would provide for the crediting of offsetting collections by three of DOE's Power Marketing Administrations at alternative rates than would otherwise be provided for pursuant to rates based on FY2017 enacted appropriations. This language is to account for annual variation in these collections.²¹

Financial Services and General Government

Section 123—District of Columbia Local Funds²²

This section grants congressional approval of the District of Columbia general fund and capital budgets for FY2018 through December 8, 2017, consistent with the requirements of the District of Columbia home rule act (P.L. 93-198), which requires congressional approval of the District's budget. Section 123 grants the District the authority to expend locally raised funds only for those programs and activities that received funding the previous year under the District of Columbia Appropriations Act, 2017 (Title IV of P.L. 115-31, Division E). District officials may expend locally raised funds at the rate set forth under "Part A—Summary of Expenses" as included in the Fiscal Year 2018 Local Budget Act of 2017 (D.C. Act 22-99).

Section 124—Presidential Transition Funding

These provisions change the basis for calculating the rate of operations under Section 101 for several accounts. Section 124(a) specified that the basis for the rate of operations for FY2018 for General Services Administration—Allowances and Office Staff for Former Presidents be based on \$4.754 million.²³

The rate for FY2018 for two other accounts is to be based on a reduction of the actual amount provided for FY2017 by a specified amount corresponding to the amount that was appropriated for expenses related to the presidential inauguration and transition.

¹⁹ This section was authored by Charles V. Stern, Specialist in Natural Resources Policy.

²⁰ This section was authored by Charles V. Stern, Specialist in Natural Resources Policy.

²¹ For more information on Power Marketing Administration appropriations, see CRS Report R44895, *Energy and Water Development: FY2018 Appropriations*, by Mark Holt and Corrie E. Clark.

²² This section was authored by Eugene Boyd, Analyst in Federalism and Economic Development Policy.

²³ For more information, see CRS Insight IN10759, *Allowances and Office Staff for Former Presidents, FY2016-FY2018 Appropriations*, by Barbara L. Schwemle.

- Section 124(c) specifies that the rate be based on \$14.900 million rather than \$34.895 million for District of Columbia—Federal Payment for Emergency Planning and Security Costs in the District of Columbia; and
- Section 124(d) specifies that the rate be based on \$375,784 million rather than \$380,634 million for National Archives and Records Administration—Operating Expenses.

In addition, Section 124(b) specifies that no funds in the CR are provided for

- General Services Administration—Expenses, Presidential Transition; and
- Executive Office of the President and Funds Appropriated to the President—Presidential Transition Administrative Support.

See also Section 124(e) of P.L. 115-56 for treatment of FY2017 National Park Service appropriations associated with the presidential inauguration.

Department of Homeland Security

Section 125—Modification of Rate for Title I Components to Address Working Capital Fund Changes²⁴

This section allows apportionment of funds for the Office of the Secretary and Executive Management, Management Directorate, and Intelligence, Analysis, and Operations Coordination to be apportioned at a higher rate. The Trump Administration's budget request for FY2018 had envisioned shifting the costs for certain shared functions from the Department of Homeland Security (DHS) Working Capital Fund to the budget of these particular components.

In its request for this section, the Administration indicated that without this section, funds would be provided in the FY2017 structure at the FY2017 rate, and manual accounting adjustments would have to be made if this transfer of functions were allowed to go ahead in the FY2018 annual appropriations for DHS.²⁵

Section 126—Apportionment of Personnel Funding for Four DHS Operational Components²⁶

This section is similar to provisions from past years' CRs for U.S. Customs and Border Protection (CBP) and allows DHS to adjust the apportionment of FY2018 funds in order to maintain the staffing levels for four operational components of DHS at the level they were at the end of FY2017.

The Administration requested this flexibility for CBP and U.S. Immigration and Customs Enforcement. As in Section 163 of P.L. 114-254, the second CR for FY2017, Congress broadened the reach of the provision to include the Transportation Security Administration and the U.S. Secret Service. Two key differences in this provision from this last appearance is that in this CR, it is solely for personnel costs to maintain staffing levels, not for other operational expenses, and it does not describe any specific purposes for which the funding is provided.

²⁴ This section was authored by William L. Painter, Specialist in Homeland Security and Appropriations.

²⁵ The House-passed DHS appropriations bill for FY2018 was silent on the matter.

²⁶ This section was authored by William L. Painter, Specialist in Homeland Security and Appropriations.

Section 127—Department of Homeland Security Special Procurement Authority²⁷

This section extends special procurement authorities for research and development activities at DHS, known as “other transaction authority.” Similar provisions have previously been included in CRs covering DHS, including, most recently, Section 132 of the FY2017 CR (P.L. 114-223).

Section 128—Expedited Hiring Authority for U.S. Coast Guard Acquisition Workforce²⁸

This section extends through the term of the CR special authority for the Commandant of the Coast Guard to designate any of the Coast Guard’s acquisition positions as having a critical hiring need and thus provides for the use of special expedited hiring authorities to fill those positions. This specific authority was granted in Section 404 of P.L. 111-281, the Coast Guard Authorization Act of 2010, and extended by later legislation through FY2017.²⁹

While the Administration did not specifically request this extension, it specifically indicated that it had no objection to its inclusion.³⁰

Section 129—Disaster Relief Fund Apportionment³¹

This section will allow funding provided by the CR for the Federal Emergency Management Agency’s Disaster Relief Fund to be used at a faster rate than would have otherwise been allowed under the CR. While this provision was not included in the Administration’s list of proposed anomalies, the director of OMB expressed the Administration’s support for such a provision as a part of its request for supplemental appropriations submitted in the wake of Hurricane Harvey.³²

Section 130—Extension of the National Flood Insurance Program³³

This section extends the authorization of two parts of the National Flood Insurance Program (NFIP), which had been set to expire at the end of FY2017, through the term of the CR: Section 1309(a), which provides a borrowing limit for the NFIP of \$30.425 billion, and Section 1319, which provides the authority to execute new flood insurance contracts. This provision does not increase the borrowing limit for the NFIP: It maintains its current limit.³⁴

²⁷ This section was authored by L. Elaine Halchin, Specialist in American National Government.

²⁸ This section was authored by Ronald O’Rourke, Specialist in Naval Affairs.

²⁹ Senate Appropriations Committee, “Continuing Appropriations Act, 2018: Section-by-Section Summary,” September 6, 2017, p. 5, <https://www.appropriations.senate.gov/imo/media/doc/090617-CONTINUING-APPROPRIATIONS-ACT-FY18-SECTION-BY-SECTION.pdf>.

³⁰ OMB, “Authorization Issues”, September 6, 2017, p. 2.

³¹ This section was authored by William L. Painter, Specialist in Homeland Security and Appropriations.

³² Letter from Mick Mulvaney, Director, OMB, to the Honorable Paul D. Ryan, Speaker of the House of Representatives, September 1, 2017, <https://www.whitehouse.gov/omb/public-releases/omb-letters>.

³³ This section was authored by Diane P. Horn, Analyst in Flood Insurance and Emergency Management.

³⁴ For more information, see CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by Diane P. Horn and Jared T. Brown.

Department of the Interior, Environment and Related Agencies

Section 101(a)(7)—Transfer of FLAME Wildfire Suppression Funds³⁵

This provision authorizes the Department of Agriculture (through the Forest Service) and the Department of the Interior (DOI) to transfer funds from their respective FLAME accounts to repay funds previously transferred from other accounts and used for wildfire suppression purposes. The Forest Service and DOI FLAME accounts were established by the Federal Land Assistance, Management, and Enhancement Act³⁶ to be a source of reserve funds for emergency wildfire suppression purposes. Previously, FLAME funds were available to be transferred only to the respective Forest Service and DOI Wildland Fire Management (WFM) accounts and used for wildfire suppression operations upon a Secretarial Declaration and in specific circumstances.³⁷ Section 101(a)(7) expands the authority to allow FLAME funds in the CR to be transferred to any Forest Service or DOI account if funds from that account were previously used to pay for suppression operations—called “fire borrowing.” Such fire borrowing occurs when WFM and FLAME suppression funds are depleted.³⁸ The appropriations to the FLAME accounts are designated as emergency spending under Section 114(b) of the CR and, thus, are not subject to the 0.6791% across-the-board reduction.

Section 124(e)—National Park Service, Operation of the National Park System³⁹

This provision reduces by \$4.2 million the basis for calculating the rate of operations under Section 101 for the National Park Service’s (NPS) Operation of the National Park System budget account. The total FY2017 appropriation for this NPS account is treated as though it were \$2.421 billion, as compared with the actual appropriation of \$2.425 billion. The amount of the reduction is corresponds to the amount that was appropriated in FY2017 for expenses related to the presidential inauguration.⁴⁰

See also Section 124(a)-(d) of P.L. 115-56 for treatment of other FY2017 appropriations associated with the presidential transition.

Section 131—Recreation Fee Authority Extension⁴¹

This provision extends, through September 30, 2019, the authority in the Federal Lands Recreation Enhancement Act⁴² for five agencies to establish, collect, and retain recreation fees on federal recreational lands and waters. The five agencies are the Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, and National Park Service in the Department

³⁵ This section was authored by Katie Hoover, Specialist in Natural Resources Policy.

³⁶ Title V of Division A of P.L. 111-88 (43 U.S.C. §§1748a et seq.).

³⁷ 43 U.S.C. §1748a(e)(2).

³⁸ For additional information on wildfire suppression funding, see CRS Report R44082, *Wildfire Suppression Spending: Issues and Legislation in the 114th Congress*, by Katie Hoover and Bruce R. Lindsay.

³⁹ This section was authored by Laura B. Comay, Analyst in Natural Resources Policy.

⁴⁰ For additional information on appropriations for National Park Service accounts, see CRS In Focus IF10122, *National Park Service: Appropriations in Focus*, by Laura B. Comay.

⁴¹ This section was authored by Carol Hardy Vincent, Specialist in Natural Resources Policy.

⁴² 16 U.S.C. §§6801-6814.

of the Interior and the Forest Service in the Department of Agriculture. In FY2016, the agencies collected approximately \$377 million in recreation fees under the program. Each agency can retain and spend the collected fees without further appropriation. Most of the monies are retained at the site where collected for on-site improvements to benefit visitors. Without this extension, the authority of the agencies would expire on September 30, 2018.⁴³

Section 132—Dwight D. Eisenhower Memorial⁴⁴

Section 132 relates to the Dwight D. Eisenhower Memorial Commission and the Dwight D. Eisenhower Memorial. It extends, through the end of the CR (December 8, 2017), the Eisenhower Memorial Commission’s authorization to establish a “permanent” memorial to President Eisenhower in the District of Columbia.⁴⁵ Without the extension, the commission’s authority to establish the Eisenhower Memorial would have expired on September 30, 2017.

Section 133—Environmental Protection Agency—Water Infrastructure Finance and Innovation Program Account⁴⁶

Section 133 provides an additional \$3.0 million⁴⁷ to the Environmental Protection Agency (EPA) for administrative expenses of issuing direct loans and guaranteed loans for water infrastructure projects as authorized under the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014.⁴⁸ These additional funds are provided “notwithstanding section 5033” of WIFIA, which specifies a cap on administrative costs.⁴⁹

Section 134—Environmental Protection Agency—Pesticide Fee Collection Authorities⁵⁰

Through the duration of the CR, Section 134 extends the authority for EPA to collect and use two categories of fees under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).⁵¹ Pursuant to the Pesticide Registration Improvement Extension Act of 2012 (PRIA 3),⁵² EPA’s authority to collect pesticide maintenance fees from registrants under FIFRA expires at the end of

⁴³ For additional background on the program, see CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues*, by Carol Hardy Vincent.

⁴⁴ This section was authored by Jacob R. Straus, Specialist on the Congress.

⁴⁵ Under the Commemorative Works Act (40 U.S.C. §§8901-8909), a sponsor group (e.g., the Eisenhower Memorial Commission) is authorized for seven years, beginning on the date of enactment of such authority, to complete the memorial’s design and construction. For more information on these statutory limits and past extensions for memorial sponsor groups, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus. For more information on the Dwight D. Eisenhower Memorial, see CRS Report R43744, *Monuments and Memorials Authorized Under the Commemorative Works Act in the District of Columbia: Current Development of In-Progress and Lapsed Works*, by Jacob R. Straus.

⁴⁶ This section was authored by Robert Esworthy, Specialist in Environmental Policy.

⁴⁷ WIFIA appropriations for FY2017 provided in Division G of P.L. 115-31 included \$8.0 million to be applied toward loan subsidy costs and \$2.0 million for EPA’s administrative expenses.

⁴⁸ 33 U.S.C. §§3901 et seq.

⁴⁹ For additional information on WIFIA, see CRS Report R43315, *Water Infrastructure Financing: The Water Infrastructure Finance and Innovation Act (WIFIA) Program*, by Jonathan L. Ramseur and Mary Tiemann.

⁵⁰ This section was authored by Robert Esworthy, Specialist in Environmental Policy.

⁵¹ 7 U.S.C. §§136 et seq.

⁵² P.L. 112-177.

FY2017; the authority to collect pesticide registration service fees begins to phase out at the end of FY2017.⁵³ Section 134 also extends the PRIA 3 prohibition on EPA collection of fees from any person seeking that the agency establish, or grant an exemption from, a pesticide tolerance (i.e., maximum residue levels on food or feed) under the Federal Food, Drug, and Cosmetic Act.⁵⁴

Departments of Labor, Health and Human Services, and Education, and Related Agencies

Section 135—National Advisory Committee on Institutional Quality and Integrity⁵⁵

Section 135 extends the duration of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) through December 8, 2017. NACIQI is a committee tasked with assessing the process of accreditation in higher education and the institutional eligibility and certification of institutions of higher education to participate in federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (HEA).⁵⁶ Section 114(f) of the HEA provides that NACIQI shall terminate on September 30, 2017.

Section 422 of the General Education Provisions Act (GEPA)⁵⁷ generally provides an automatic one-year extension of the authorization of appropriations for, or the duration of, programs administered by the Department of Education. This automatic extension would occur only if Congress and the President—in the regular session that ends prior to the beginning of the terminal fiscal year of authorization or duration of an applicable program—do not enact legislation extending the program. GEPA Section 422 also explicitly states that the automatic one-year extension does not apply to the authorization of appropriations for, or the duration of, committees that are required by statute to terminate on a specific date. Thus, the automatic one-year extension does not apply to NACIQI, and NACIQI would have terminated on September 30, 2017, had it not been extended.

Section 136—Head Start⁵⁸

Section 136 ensures that the \$80 million in cost-of-living adjustments provided to Head Start and Early Head Start grantees in FY2017 is included in the formula for each grantee's "base grant" for FY2018. This allows grantees to maintain program enhancements (e.g., salary increases) that had been supported by these funds in the previous year, consistent with common practice. The Head Start Act defines a base grant as the "amount of permanent ongoing funding" provided to Head Start agencies for a given fiscal year.

⁵³ For additional information on pesticide fees, see CRS Insight IN10787, *Pesticide Registration Fees: Reauthorization and Proposed Amendments*, by Jerry H. Yen and Robert Esworthy.

⁵⁴ 21 U.S.C. §346a.

⁵⁵ This section was authored by Alexandra Hegji, Analyst in Social Policy.

⁵⁶ For additional information on NACIQI, see CRS Report R43826, *An Overview of Accreditation of Higher Education in the United States*, by Alexandra Hegji.

⁵⁷ GEPA contains a broad array of statutory provisions that are applicable to the majority of federal education programs administered by the Department of Education. 20 U.S.C. §§1221 et seq.

⁵⁸ This section was authored by Karen E. Lynch, Specialist in Social Policy.

Section 137—Unemployment Insurance (UI) State Consortia⁵⁹

Section 137 extends the period during which certain funds, obligated in FY2011 through FY2014 to consortia of state workforce agencies that administer Unemployment Insurance (UI), may be expended. These funds support information technology upgrades to improve state administration of UI benefits. Previously, authority was provided to expend these UI state consortia funds for six fiscal years after the fiscal year of obligation.⁶⁰ This section extends that period one additional year (for a total of seven fiscal years after the fiscal year of obligation).

Section 138—NIH Indirect Costs⁶¹

Section 138 directs the National Institutes of Health (NIH) to continue reimbursing research universities and institutions for indirect costs (facilities and administrative, or F&A, costs) according to the rules and procedures in place during the third quarter of FY2017.⁶² It also prohibits funds appropriated in the CR from being used to develop or implement any further limitations of F&A cost reimbursements. Over the last 10 years, NIH data indicates that direct costs (project-specific expenses) have averaged about 72% of the total grant award, while indirect costs have averaged about 28%.⁶³ The FY2018 Trump Administration budget request proposed capping the indirect cost rate for NIH grants at 10%.

Section 139—State Children’s Health Insurance Program (CHIP)⁶⁴

Section 139(a) would make the funding deposited in the State Children’s Health Insurance Program’s (CHIP) Child Enrollment Contingency Fund prior to the beginning of FY2018—and income derived from investment of those funds—unavailable for obligation. Section 139(b) would rescind \$2.7 billion of mandatory spending from amounts previously appropriated for FY2017 CHIP allotments to states.⁶⁵ Funds for FY2017 had previously been appropriated by Sections 301(a) and 301(b)(3) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).⁶⁶ First, Section 301(a) of MACRA provided two semi-annual appropriations of \$2.85 billion for the first and second halves of FY2017, respectively.⁶⁷ Second, Section 301(b)(3) of MACRA appropriated an additional \$14.7 billion for the first half of FY2017, and this funding remains available until expended.⁶⁸ Section 139(b) rescinds \$2.7 billion in unobligated national

⁵⁹ This section was authored by Katelin Isaacs, Analyst in Income Security; and Julie Whittaker, Specialist in Income Security.

⁶⁰ This can be found within Division G, Title I, Department of Labor, Employment and Training Administration, Training and Employment Services, of P.L. 113-235 (the Consolidated and Further Continuing Appropriations Act, 2015). “Provided that Funds provided under this heading for fiscal year 2011 through fiscal year 2014 for automation acquisitions that are being carried out by consortia of States shall be available for expenditure by the States for six fiscal years after the fiscal year in which the funds were obligated to the States.”

⁶¹ This section was authored by Judith A. Johnson, Specialist in Biomedical Policy.

⁶² 45 C.F.R. 75.

⁶³ NIH, FY2018 Justification of Estimates for Appropriations Committees, vol. I, Overview, “Statistical Data: Direct and Indirect Cost Awarded,” p. 95.

⁶⁴ This section was authored by Alison Mitchell, Specialist in Health Insurance Financing.

⁶⁵ For more information about CHIP financing, see CRS Report R43949, *Federal Financing for the State Children’s Health Insurance Program (CHIP)*, by Alison Mitchell.

⁶⁶ P.L. 114-10, Sections 301(a) (amending 42 U.S.C. §1397dd(a)), and 301(b)(3).

⁶⁷ 42 U.S.C. §1397dd(a)(20).

⁶⁸ P.L. 114-10, §301(b)(3).

allotments from the additional appropriation in Section 301(b)(3) of MACRA. Previously, multiple appropriations laws rescinded a total of \$42.8 billion from FY2011 through FY2017 from the CHIP Program, including CHIP performance bonus payments fund, the Child Enrollment Contingency Fund, and unobligated national allotments.

Other Related Issues

While Section 101(a)(8) generally continues funding for programs funded in the Departments of Labor, Health and Human Services, and Education appropriations act through a formula based on the FY2017 omnibus (P.L. 115-31), there are three exceptions to that formula that effectively continue certain funding instructions or additional appropriations that were enacted in the second FY2017 CR (P.L. 114-254).⁶⁹

In the cases of the NIH Innovation Account and the Account for the State Response to the Opioid Abuse Crisis, the rate for operations for these additional appropriations is subject to the across-the-board reduction of 0.6791%. In addition, the amounts appropriated to these accounts are to be subtracted from any cost estimates provided for purposes of budget controls.⁷⁰

Prevention and Public Health Fund Transfers⁷¹

Section 101(a)(8) applies FY2016 requirements to the transfer of funds previously appropriated to the Prevention and Public Health Fund (PPHF) (see Section 171, P.L. 114-254). Specifically, the Secretary of the Department of Health and Human Services (HHS) is required, within 10 days of enactment, to transfer PPHF funds for FY2018 to HHS agencies in the same amounts as per the comparable transfer of FY2016 appropriations, except that the amount transferred to the Centers for Disease Control and Prevention shall be \$1 million less than the amount transferred for FY2016.

NIH Innovation Account⁷²

Section 101(a)(8) appropriates FY2018 funds in the NIH Innovation Account. Under the terms of Section 1001 of the 21st Century Cures Act (P.L. 114-255), the funds in this account must be appropriated in order to be available for expenditure. However, instead of specifying a rate for operations based on the amount in the account for FY2018 (\$496 million), the FY2018 CR specifies a rate for operations based on the FY2017 appropriation (\$352 million) provided in the second FY2017 CR (Section 194).

The purpose of the NIH Innovation Account is to create a funding mechanism for four NIH Innovation Projects authorized by the Cures Act:

⁶⁹ For more information on the second CR for FY2017, see CRS Report R44723, *Overview of Further Continuing Appropriations for FY2017 (H.R. 2028)*, coordinated by James V. Saturno.

⁷⁰ Under Sections 1001(b)(3) and 1003(b)(3) of the 21st Century Cures Act (P.L. 114-255), the amounts subsequently appropriated under these headings, up to a certain amount for specified fiscal years, are to be subtracted from any cost estimates provided for purposes of budget controls. Effectively, the appropriations from these accounts are not to be counted against any spending limits, such as the statutory discretionary spending limits. That is, the amounts appropriated from these accounts will be considered outside the limits for FY2018. For further information as to how these appropriations were treated for the purposes of the FY2018 CR, see the *CBO Estimate for Division D of H.R. 601—The Continuing Appropriations Act, 2018, As Enacted (P.L. 115-56) (Discretionary Spending Only)*, note f to Table 1.

⁷¹ This section was authored by Sarah A. Lister, Specialist in Public Health and Epidemiology. For more information see CRS Report R44796, *The ACA Prevention and Public Health Fund: In Brief*, by Sarah A. Lister.

⁷² This section was authored by Judith A. Johnson, Specialist in Biomedical Policy.

1. The Precision Medicine Initiative (\$40 million for FY2017);
2. The Brain Research through Advancing Innovative Neurotechnologies Initiative (\$10 million for FY2017);
3. Cancer research (\$300 million for FY2017); and
4. Regenerative medicine using adult stem cells (\$2 million for FY2017).

The NIH director may transfer these amounts from the NIH Innovation account to other NIH accounts but only for the purposes specified in the Cures Act. If the NIH director determines that the funds for any of the four Innovation Projects are not necessary, the amounts may be transferred back to the NIH Innovation account. This transfer authority is in addition to other transfer authorities provided by law.

Account for the State Response to the Opioid Abuse Crisis⁷³

Section 101(a)(8) appropriates FY2018 funds in an account created by the 21st Century Cures Act to support grants to states “for the purpose of addressing the opioid abuse crisis.” Under the terms of Section 1003 of the 21st Century Cures Act, the funds in this account must be appropriated in order to be available for expenditure. The rate for operations for the account in the FY2018 CR is based on the FY2017 appropriation (\$500 million) provided in the second FY2017 CR (Section 195).⁷⁴

Legislative Branch

Section 140—Amounts Available for Senate Cybersecurity Capabilities⁷⁵

This section allows for amounts made available for salaries for employees in the Office of the Senate Sergeant at Arms and Doorkeeper to be apportioned at rates necessary to maintain current Senate cybersecurity capabilities. In general, 2 U.S.C. §4577 prohibits spending more than one-quarter of the total amount available for employees covered by this line-item in the first quarter of a fiscal year.

Military Construction and Veterans Affairs, and Related Agencies

Section 141—Rescission and Reappropriation⁷⁶

This section would rescind unobligated funds that were provided for the Department of Veterans Affairs (VA) Major Construction account in the Disaster Relief Appropriations Act, 2013 (P.L. 113-2), for costs associated with Hurricane Sandy.⁷⁷ These rescinded funds would be reappropriated to the VA Major Construction account and would be available until September 30, 2022. These funds would be in addition to the FY2017 level of funding for the VA Major Construction account and the funding provided in the CR for FY2018 for the same account.

⁷³ This section was authored by Erin Bagalman, Analyst in Health Policy.

⁷⁴ Section 1003(b)(2)(A) of the 21st Century Cures Act authorized \$500 million for each of FY2017 and FY2018.

⁷⁵ This section was authored by Ida A. Brudnick, Specialist on the Congress.

⁷⁶ This section was authored by Sidath Viranga Panangala, Specialist in Veterans Policy.

⁷⁷ For more information see CRS Report R42518, *Veterans' Medical Care: FY2013 Appropriations*, by Sidath Viranga Panangala.

Other Related Issues⁷⁸

Section 101(a)(10) of the CR would fund some accounts of the VA for FY2018 though a formula using the FY2017 level of appropriations provided in the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017 (Division A of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act; P.L. 114-223), minus an across-the-board rescission of 0.6791%. The Medical Community Care account, and the Medical Services account's additional \$50 million that was provided in the Military Construction and Veterans Affairs—Additional Appropriations Act, 2017 (Division L of P.L. 115-3), available until September 30, 2018, would not be included in the funding rate of operations under the CR for FY2018.

The VA is funded through a combination of budget year and advance appropriations. Currently seven accounts are funded as advance appropriations:⁷⁹ (1) compensation and pensions, (2) readjustment benefits, (3) insurance and indemnities, (4) medical services, (5) medical community care, (6) medical support and compliance, and (7) medical facilities. P.L. 114-223 provided \$170.32 billion in advance appropriations for these seven accounts for FY2018, which would be available on October 1, 2017.

Transportation, Housing and Urban Development, and Related Agencies

Section 142—Extension of Mark-to-Market Program⁸⁰

Section 142 extends authorization for the Department of Housing and Urban Development's (HUD) Mark-to-Market program for the duration of the CR. Through the program, which was created in 1997, HUD may renew expiring project-based Section 8 rental assistance contracts and take other steps to preserve the long-term affordability of properties receiving HUD rental assistance. The original statutory authorization for the program had a repeal date of October 1, 2001, but that date has been extended by Congress several times. Most recently, the FY2015 Consolidated and Further Continuing Appropriations Act (P.L. 113-235) extended it through October 1, 2017. The President's FY2018 budget request and both the House and Senate committee-passed FY2018 HUD appropriations bills all included an extension of the program.

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⁷⁸ This section was authored by Sidath Viranga Panangala, Specialist in Veterans Policy.

⁷⁹ For more information see CRS Report R44625, *Department of Veterans Affairs FY2017 Appropriations*, by Sidath Viranga Panangala.

⁸⁰ This section was authored by Maggie McCarty, Specialist in Housing Policy.

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