



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

December 12, 2016

GENERAL MEMORANDUM 16-076

FY 2017 Second Continuing Resolution Enacted through April 28, 2017

On December 10, 2016, President Obama signed a second Continuing Resolution (second CR) which will provide FY 2017 funding for federal agencies from December 10, 2016 through April 28, 2017, thus averting a government shutdown. A public law number has not yet been assigned. The House approved the bill on December 8 and then the Senate late the night of December 9. The Memorandum we sent on December 9, (General Memorandum 16-074) was drafted before the late night agreement was reached in the Senate which resulted in the enactment of the second CR.

The first FY 2017 CR (PL 114-223) extended from October 1, 2016 through December 9, 2016, and it provided funding for all federal agencies (including full fiscal year funding for Military Construction-Veterans Administration programs) (General Memorandum 16-059 of September 29, 2016). The text and summaries of the *second* CR as posted by the Senate Appropriations Committee are here:

Continuing Resolution Text: <http://bit.ly/2h4qT6C>

Section-by-Section Summary: <http://bit.ly/2ginOOZ>

Security Assistance Appropriations Act Summary: <http://bit.ly/2h4sBEV>

Disaster Relief Summary: <http://bit.ly/2g8n7o0>

The second CR will, by and large, provide funding on a pro rata basis at the FY 2016 levels and under the authority and conditions of the FY 2016 Appropriations. It also continues via reference provisions contained in the first CR, i.e., that it "shall be implemented so that only the most limited funding action of that permitted in the Act shall be taken in order to provide for continuation of projects and activities."

Accelerated Funding. The second CR accommodates an accelerated apportionment of funds for upfront needs for a number of programs. Three such examples are Indian Health Service funding for "the rate of operations necessary to provide for costs of staffing and operating newly constructed facilities" (Section 166); the Department of Housing and Urban Development Public and Indian Housing funding for Tenant-Based Rental Assistance "necessary to renew grants for rental assistance and administrative costs..." (Section 183); and the Census Bureau to maintain the required schedule for the 2020 Decennial Census Program. (Section 152).

Cures Bill Funding. The second CR contains \$872 million as authorized by the 21st Century Cures Funding Act (HR 34) which the House and Senate approved the week of December 4 and which the President will sign. It is divided as follows: \$500 million for State

Response to the Opioid Crisis; \$352 million for biomedical research at the National Institutes of Health including on brain diseases and President Obama's cancer "moonshot" and Precision Medicine initiatives; and \$20 million toward the Food and Drug Administration's efforts to speed up approval of drugs and medical devices. These are part of three new "Innovation Accounts" established by the Cures Act whose funds are located in the Treasury Department. While the Appropriations Committees must annually establish the amount to be drawn down from the Innovation Accounts, the funds are not counted against the Committees' funding allocations. Funds from the Innovation Accounts are to be *in addition to* any other funding made available under the regular appropriations process where Congress can determine the terms and conditions. For example, the opioid funding in the Innovation Account is directed at states, but the FY 2017 appropriations bill reported out by the House Labor-HHS-Education Subcommittee would have made tribes directly eligible for SAMHSA opioid funding.

Other things of note in the second CR:

- \$4.1 billion in supplemental funds for disaster relief;
- \$170 million for water infrastructure and related health programs in Flint, Michigan;
- \$10 billion in uncapped funds for military operations (\$5.9 billion for the Overseas Contingency Operations; \$4.3 billion for the Global War on Terror); and
- The Temporary Assistance for Needy Families (TANF) program is reauthorized and funded through April 28, 2017, but will require another extension next year.

What's Ahead. Given that the second CR ends five months before the end of the fiscal year (September 30, 2017) we expect federal agencies to be conservative in how they spend their funds, not knowing at this point the total amount of FY 2017 funding that will be appropriated for their agencies.

Funding via a CR, and the possibility that the entire fiscal year will be funded via a CR, makes very difficult the realization of hard-fought for increases in the Indian Health Service and Indian Affairs budgets which were included in the recommendations of the House and/or Senate Appropriations Committees (for example; IHS Purchased/Referred Care; clinic leases; built-in costs; behavioral health and further increases for Bureau of Indian Education school construction).

Because the CR provides funds on a pro rata basis at FY 2016 levels, we list for your convenience our General Memoranda (GM) on selected agencies' final FY 2016 appropriations:

Indian Health Service	GM 16-005 of January 12, 2016
Indian Affairs (BIA/BIE)	GM 16-008 of January 22, 2016
Labor-HHS-Education	GM 16-010 of January 25, 2016

Please let us know if we may provide additional information or assistance regarding FY 2017 appropriations.

###

Inquiries may be directed to:

Karen Funk (kfunk@hobbsstrauss.com)

Moriah O'Brien (mobrien@hobbsstrauss.com)