

MEMORANDUM

To: The American Society of Transplant Surgeons
From: Powers Legislative Practice Group
Date: September 30, 2016
Re: Continuing Resolution Passed By Congress to Fund Federal Government

Summary

On September 29, President Obama signed the Continuing Resolution (“CR”) ([H.R. 5325](#)) to provide funding for the federal government through a ten-week period ending December 9, 2016. The U.S. House of Representatives passed the CR on September 28 by a vote of 342-85. This action followed the CR’s passage earlier in the day by the Senate by a 72-26 vote. Enactment of this bill averts a federal government shut-down that would have otherwise occurred beginning tomorrow, October 1, 2016.

The Senate had been locked in negotiations for weeks attempting to forge a legislative solution to fund the government in its new fiscal year, beginning October 1, 2016, while addressing several pertinent member priorities through federal funding. Specifically, several members of the Senate sought to address the public health disease outbreak of the Zika virus, the opioid epidemic, the Flint, Michigan lead water crisis, and the Louisiana flooding damage, as well as funding for military construction and veterans programs.

Political issues prevented the CR from advancing until yesterday, as Democrats blocked multiple votes throughout September that sought to advance the CR without fully addressing their priorities. An early version of the CR provided funding to all of these priorities except the Flint, MI lead water issue. Consequently, Democrats blocked that bill. Late Wednesday, Republican and Democratic leadership in the House and Senate were able to successfully negotiate a compromise to include \$500 million in the CR for flood relief for Louisiana and other states, while addressing funding for Flint, Michigan in a separate water bill that the chamber will take up later this fall.

Overview of Pertinent Health Care Related Items in the CR

- **Zika Funding.** The CR provides \$1.1 billion in emergency spending to combat the Zika virus but the funds will be spent over the next five-year period. The bill provides \$933 million to the Department of Health and Human Services, including \$394 million to the Centers for Disease Control and Prevention for mosquito control and surveillance, \$387 million to the National Institutes of Health for vaccine and diagnostic development, and \$152 million for research. The CR also provides nearly \$146 million towards global health programs, and \$75 million towards state, territory, and tribal funds to combat Zika. Overall, the funding levels fall short of President Barack Obama’s original request for \$1.9 billion.

- **Opioid Epidemic.** The CR provides \$37 million to address programs authorized by legislation passed and signed earlier this year, the Comprehensive Addiction and Recovery Act (CARA), which authorized new grant programs and other opportunities to combat the opioid epidemic. The funds will be available on an “annualized” basis, and will pro-rated for the ten-week CR term. \$17 million of that funding will flow to the Department of Health and Human Services, and \$20 million will be provided to the Department of Justice.
- **Veterans Health Administration Medical Services.** The CR provides an additional \$1.1 billion available on October 1, 2016, and \$44.9 billion, plus reimbursements, available on October 1, 2017. (The CR does not explain why these spending authorities are staged in this manner.) These funds include support for VA hospital care and medical services, aid to State homes, assistance and support services for caregivers, and loan repayments. The funding also include the costs of care in facilities not under the jurisdiction of the Department of Veterans Affairs, and will include medical supplies and equipment, bioengineering services, food services, and salaries and expenses of healthcare employees. These funds are provided with many stipulations, one of which is that the Secretary of Veterans Affairs will provide access to “therapeutic listening devices” to veterans struggling with traumatic brain injury (TBI), mental health related problems, or substance abuse. The CR does not elaborate on this language so it is difficult to tell exactly what it means at this point.
- **Medical and Prosthetic Research.** The CR provides for \$675 million in funds for carrying out programs of medical and prosthetic research and development, as long as the Secretary of Veterans Affairs ensures that “sufficient amounts” are available for prosthetic research for female veterans, as well as for toxic exposure research.

Continuing Appropriations for All Departments and Agencies Cut by 0.496%

The CR includes an across-the-board reduction in the rate of operations of 0.496% to all projects or activities of the federal government, except projects and activities related to military construction, veterans’ affairs, and related agencies.

Anticipated Next Steps and Implications

The bill will provide federal funding through early December, at which point Congress will need to act once again to prevent a federal government closure or “shut down” by providing federal funding to programs. The passage of a CR is not surprising in this election year, as many members on both sides of the political aisle sought to finalize business in Washington expeditiously in order to return to the campaign trail. In addition, neither party wanted to be labelled with causing a shut-down of the federal government just weeks before the elections. Notably, Continuing Resolutions in the fall have become commonplace; the last time Congress completed its work on spending bills in time for the beginning of the new fiscal year, without resorting to a CR, was in 1996.

The next weeks will continue to be crucial for the fate of a host of federal programs as Congress appears to be headed toward a “mini-bus” strategy to fund the federal government for the remainder of FY 2017. So-called mini-buses allow Congress to group several appropriations subcommittee bills into one bill and pass several appropriations bills, rather than one massive “omnibus” bill. Some argue that this allows greater scrutiny of individual spending items.