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# Overview of Continuing Appropriations for FY2021 (P.L. 116-159)

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## Overview of Continuing Appropriations for FY2021 (P.L. 116-159)

This report provides an analysis of the continuing appropriations provisions included in Division A (Continuing Appropriations Act, 2021, and Other Extensions Act) of P.L. 116-159. On October 1, 2020, the President signed H.R. 8337 into law as P.L. 116-159. The law also extended the authorizations of surface transportation programs and included numerous provisions affecting the authorization and funding of federal health care, nutrition, and veterans programs in Divisions B-E. This report examines only Division A, the continuing resolution (CR) portion of the act.

Division A of P.L. 116-159 provides temporary authority for federal agencies and programs to continue spending in FY2021. Such authority is termed a “continuing resolution” because historically it has often been enacted in the form of a joint resolution. The measure provides temporary funding for the programs and activities covered by all 12 of the regular appropriations bills, because none of them had been enacted prior to the start of FY2021. These provisions constitute budget authority for the purposes of the projects and activities that were funded in FY2020 by that fiscal year’s applicable 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 for emergencies or “Overseas Contingency Operations/Global War on Terrorism.”

Funding under the terms of the CR is effective October 1, 2020, through December 11, 2020—roughly the first 10 weeks of the fiscal year.

The CR generally provides budget authority for FY2021 for most projects and activities at the rate at which they were funded during FY2020. Although it is effective only through December 11, the cost estimate prepared by the Congressional Budget Office (CBO) provides an annualized projection of the discretionary budget authority provided in the measure. As provided in P.L. 116-159, the annualized amount subject to the statutory discretionary spending limits would be approximately \$1.296 trillion. 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 \$1.398 trillion.

CRs frequently include provisions that are specific to certain agencies, accounts, or programs. These include provisions that designate exceptions to the general funding rate formula or otherwise single out a program, activity, or purpose for which any referenced funding is extended (typically referred to as “anomalies”), as well as provisions that have the effect of creating new law or changing existing law (including the renewal of expiring provisions of law). The CR includes a number of such provisions, each of which is briefly summarized in this report. CRS appropriations experts for each of these provisions are indicated in the accompanying footnotes, and congressional clients may also access CRS Report R42638, *Appropriations: CRS Experts*.

For general information on the content of CRs and historical data on CRs enacted between FY1977 and FY2019, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Practices*.

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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.<sup>1</sup> This process anticipates the enactment of 12 regular appropriations bills each fiscal year.<sup>2</sup> 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 consideration of annual appropriations measures is completed.

Continuing appropriations acts are often referred to as “continuing resolutions” (CRs), because historically they have been enacted in the form of a joint resolution. CRs also contain numerous provisions that may operate as limitations or restrictions to preserve Congress’s prerogative to make funding decisions once the final appropriations acts are agreed to.<sup>3</sup> Numerous exceptions (or anomalies) are also often included in CRs to provide changes and exceptions to the general funding rate, to address special circumstances that may result with only temporary funding, or for other purposes.<sup>4</sup> Rescissions or cancellations of discretionary budget authority may also be included in CRs.<sup>5</sup>

CRs may be enacted for a period of days, weeks, or months, and Congress and the President may enact multiple CRs in a given fiscal year. If any of the 12 regular appropriations bills are still not enacted by the time that the first CR for a fiscal year expires, further extensions might be enacted until all regular appropriations bills have been completed or the fiscal year ends.

None of the FY2021 regular appropriations bills were enacted prior to the start of the new fiscal year on October 1, 2020. On September 22, 2020, H.R. 8337 was introduced in the House to provide continuing appropriations for projects and activities covered by all 12 of the regular annual appropriations bills from the beginning of the fiscal year through December 11, 2020 (Division A). The legislation also included four separate divisions to extend the authorizations of surface transportation programs and numerous provisions affecting the authorization and funding of federal health care, nutrition, and veterans programs. The House passed the legislation on September 22, 2020, by a vote of 359-57. The Senate subsequently passed the legislation without amendment by a vote of 84-10 on September 30, 2020. On October 1, 2020, the President signed H.R. 8337 into law (P.L. 116-159).

This report provides an analysis of the continuing appropriations provisions included in the CR (P.L. 116-159, Division A). The first two sections summarize the overall funding provided (“Coverage, Duration, and Rate”) and budget enforcement issues associated with the statutory

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<sup>1</sup> 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*.

<sup>2</sup> Under current practice, each House and Senate Appropriations subcommittee usually 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.

<sup>3</sup> For instance, P.L. 116-159, as is typical for CRs under current practice, instructs that “only the most limited funding action of that permitted in the Act shall be taken in order to provide for the continuation of projects and activities” (§110). Similarly, any awarding of grants that would impinge on final funding prerogatives are expressly restricted (§109).

<sup>4</sup> For example, Section 125 of P.L. 116-159 allows the Secretary of the Navy to begin the procurement process for up to two Columbia-class nuclear submarines.

<sup>5</sup> For example, see Section 115 in P.L. 116-159, which provides for a continuing effect for certain prior rescissions when calculating the level of budget authority available.

discretionary spending limits (“The CR and the Statutory Discretionary Spending Limits”). The third section of this report provides short summaries of the act’s provisions that are agency-, account-, or program-specific. These summaries are organized by appropriations act title. In some instances, background information about the history of those appropriations, and how they operate under a CR, is provided.

## Coverage, Duration, and Rate

Three components of a CR 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 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 authority<sup>6</sup> 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 prorated based on the fraction of a year for which the CR is in effect, but it may also be affected by other factors that can have an effect on spending patterns over the course of a fiscal year.

### Coverage

P.L. 116-159 (§101) covers all 12 of the regular annual appropriations bills by generally providing continuing budget authority for FY2021 through December 11, 2020, for projects and activities funded in FY2020.<sup>7</sup>

Budget authority is provided by the act under the same terms and conditions as the referenced FY2020 appropriations acts (§103). Effectively, this requirement extends many of the provisions in the FY2020 acts that stipulated or limited agency authorities during FY2020. In addition, none of the funds are, in general, to be used to initiate or resume an activity for which budget authority was not available in FY2020 (§104). Such provisions, as well as many of the other provisions discussed in the sections below, may protect Congress’s constitutional authority to determine

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<sup>6</sup> 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 (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 20-23.

<sup>7</sup> Referenced appropriations acts include Divisions A-D of the Consolidated Appropriations Act, 2020 (P.L. 116-93) and Divisions A-H of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94). Several programs included in the referenced appropriations acts were exempted from the CR’s general coverage provision, including several U.S. Department of Agriculture (USDA) emergency programs, the Department of Commerce’s programs related to the census, amounts for the Department of Homeland Security funded in Title II of Division D of P.L. 116-93 that were designated as being for an emergency requirement, and amounts for Department of Defense natural disaster activities funded in Title X of Division A of P.L. 116-93 and Title V of Division F of P.L. 116-94.



annual funding in the manner it chooses in whatever final appropriations measures may be enacted.

Statutory limits on discretionary spending are in effect for FY2021, as adjusted by the Bipartisan Budget Act of 2019 (P.L. 116-37). 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) or “emergency requirements,” as well as limited amounts that may be designated as “disaster relief” or “program integrity initiatives.” Amounts previously receiving an OCO/GWOT, emergency, or disaster relief designation for FY2020 continue to receive this designation through the length of the CR (§114).

## **Duration**

Section 106 provides that funding in the CR is effective through December 11, 2020—roughly a 10-week period of funding. That section also 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 December 11.<sup>8</sup> For projects and activities funded in the CR that a subsequent appropriations act does not fund, budget authority would immediately cease upon such enactment, even if enactment occurs prior to December 11. However, the CR provides some exceptions to this. For instance, the OCO/GWOT designations (§114) are specified to remain in effect through the date specified in Section 106(c) regardless of other appropriations actions. Section 111(b) also provides funds to pay obligations for mandatory payments required to be made at the beginning of January 2021.

## **Rate**

In general, the CR provides budget authority at levels provided in FY2020 appropriations acts for the duration of the CR (through December 11). The rate is based on the actual amounts made available in FY2020. Sections 109, 110, 111, and 112 place several additional limitations on the continued rate of operations specified in Section 101. Section 109 prohibits actions by agencies that would effectively “impinge on final funding prerogatives,” and Section 110 directs that “only the most limited funding actions” are allowed under the CR to continue existing projects and activities. Section 112 specifies that the amount available to agencies under the CR may be apportioned at the rate for operations necessary to avoid furloughs, although agencies must first take any action necessary to reduce or delay non-personnel-related administrative expenses. For entitlements and other mandatory spending for which budget authority is provided in regular appropriations acts, funding is provided at the rate sufficient to maintain program levels under current law as provided in Section 111(a).

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<sup>8</sup> 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 a part of, and not in addition to, the final amount provided in the applicable appropriations act for FY2021.



# The CR and the Statutory Discretionary Spending Limits

## Background

Appropriations for FY2021 are subject to statutory discretionary spending limits on categories of spending designated as “defense” and “nondefense” spending pursuant to the Budget Control Act of 2011 (BCA), as most recently modified by the Bipartisan Budget Act of 2019. The defense category includes all discretionary spending under budget function 050 (defense), and the nondefense category includes discretionary spending in the other budget functions.<sup>9</sup> 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). Once discretionary spending is enacted, the Office of Management and Budget (OMB) evaluates that spending relative to the spending limits and determines whether sequestration is necessary.<sup>10</sup> For FY2021 discretionary spending, the first such evaluation (and any necessary enforcement) is to occur within 15 calendar days after the 2020 congressional session adjourns *sine die*.<sup>11</sup> For any FY2021 discretionary spending that becomes law after the session ends, the OMB evaluation and any enforcement of the limits would occur 15 days after enactment.

## FY2020

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 the CBO projection, 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) would be \$668.615 billion for defense, which is about \$2.9 billion below the defense limit of \$671.5 billion, and \$627.631 billion for nondefense, which is about \$1.1 billion below the nondefense limit of \$626.5 billion for FY2021.<sup>12</sup> The final amount available for FY2021 will be determined through further appropriations actions.

P.L. 116-159 specified that each amount incorporated in the legislation by reference, which was previously designated as OCO/GWOT or disaster relief and not subject to the discretionary spending caps, retains that same designation (§114). Thus 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 \$1.398 trillion for FY2021.

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<sup>9</sup> For more information on the BCA generally, see CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*.

<sup>10</sup> OMB, “Sequestration Reports and Orders,” <https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/>.

<sup>11</sup> For further information with regard to *sine die* adjournments of a congressional session, see CRS Report R42977, *Sessions, Adjournments, and Recesses of Congress*.

<sup>12</sup> These defense and nondefense limits are provided in P.L. 116-37, Section 101(a). See also CBO estimate for Division A of P.L. 116-159 (discretionary spending only) at <https://www.cbo.gov/system/files/2020-09/H.R.8337.pdf>.

## Agency-, Account-, and Program-Specific Provisions

CRs lasting multiple weeks or longer usually 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.” They often address specific issues or circumstances that may result from the extension of only current rates of funding. Second, certain provisions may have the effect of creating new law or changing existing law. Most often, these provisions are used to renew expiring provisions of law or extend the scope of certain existing statutory requirements. 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 expires.

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 CRs.<sup>13</sup> In addition, Congress may identify or initiate any other anomalies and provisions changing law that it seeks to include in the CR.

This section of the report summarizes provisions in P.L. 116-159 that are agency-, account-, or program-specific. They are alphabetically organized by appropriations act title for the 12 regular appropriations acts covered in Section 101. 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, congressional clients may contact the CRS appropriations experts as noted in the accompanying footnote.

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

### Section 116—Rural Water and Waste Disposal (WWD) Loans and Loan Guarantees<sup>14</sup>

Section 116 appropriates loan levels of \$1.4 billion for direct loans and \$50 million for loan guarantees under the U.S. Department of Agriculture (USDA) WWD Program. These amounts are equal to the program’s funding levels in USDA’s FY2020 appropriation, except that the loan subsidies differ. In FY2020, the WWD direct loan and loan guarantee programs had positive subsidy rates (i.e., the cost of providing loans was more than estimated repayments and fees) and required appropriated loan subsidies. For FY2021, OMB estimates that the WWD direct loan and loan guarantee programs will have negative subsidy rates and therefore will not require appropriated loan subsidies.<sup>15</sup>

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<sup>13</sup> *Congressional Quarterly* released documents that purport to be lists of OMB-requested appropriations anomalies and authorization extensions. CRS has not confirmed the authenticity of this document. This document, if authentic, might provide insight into particular anomalies and extensions ultimately included in the CR. See Paul Krawzak, “Trump Requests Funds to Buttress Agencies Hurt by the Pandemic,” *Congressional Quarterly*, September 2, 2020, <http://www.cq.com/doc/news-5997207?0>.

<sup>14</sup> This section was authored by Alyssa R. Casey, Analyst in Agricultural Policy.

<sup>15</sup> OMB, *President’s Budget FY 2021*, “Federal Credit Supplement Spreadsheets: Direct Loans: Subsidy Rates, Obligations, and Average Loan Size,” <https://www.whitehouse.gov/omb/supplemental-materials>.

### **Section 117—Summer Food for Children Demonstrations<sup>16</sup>**

Section 117 allows USDA's Food and Nutrition Service to spend discretionary funds for the Summer Food for Children Demonstrations at a rate that ensures that the projects supported by these grants can be fully operational by May 2021, the start of summer meal service. These projects, which include the Summer Electronic Benefit Transfer demonstration, have operated in selected states since FY2010.<sup>17</sup> Similar provisions have been part of previous CRs.

### **Section 118—Commodity Supplemental Food Program (CSFP)<sup>18</sup>**

Section 118 allows the Food and Nutrition Service to spend discretionary funds for the CSFP at a rate necessary to maintain the program's current caseload. This program distributes food to low-income seniors. A CSFP anomaly to maintain current operations has often been included in previous CRs.

### **Section 119—Farm Loan Programs<sup>19</sup>**

Section 119 allows USDA's Farm Service Agency to spend discretionary funds for the Agriculture Credit Insurance Fund at a rate necessary to cover any backlog of farm ownership loan applications that were approved but not able to be funded in FY2020.

### **Section 120—Livestock Mandatory Reporting Extension<sup>20</sup>**

Section 120 extends the authorization of the Livestock Mandatory Reporting Act of 1999, as amended (LMR; 7 U.S.C. §§1635 et seq.) through December 11, 2020. The LMR requires buyers of live cattle, swine, and lambs and sellers of beef, pork, and lamb to report prices, volumes, and other marketing characteristics to the USDA Agricultural Marketing Service, which makes this information public through daily, weekly, and monthly reports to provide market transparency for the livestock industry.

The LMR was enacted in 1999 and has been reauthorized four times. Congress last reauthorized the LMR through September 30, 2020, in the Agriculture Reauthorizations Act of 2015 (P.L. 114-54). LMR authority lapsed for one year in FY2006. During that time period, USDA requested buyers and sellers who had been subject to the LMR to voluntarily report this market information. In response, buyers and sellers reported an estimated 90% of the requested information.

### **Section 121—U.S. Grain Standards Act Extension<sup>21</sup>**

Section 121 reauthorizes four expiring provisions of the U.S. Grain Standards Act of 1916, as amended (USGSA; 7 U.S.C. §§71 et seq.). Most of the USGSA is permanently authorized, although four provisions expired on September 30, 2020. Section 121(a) reauthorizes the USDA's Federal Grain Inspection Service (FGIS) to collect administrative and supervisory fees through December 11, 2020. Subsection (b) of the same section reauthorizes appropriations and extends the cap on the FGIS's administrative and supervisory fees until September 30, 2021. Without reauthorization, the FGIS would likely have had to use any reserve funds from previously

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<sup>16</sup> This section was authored by Kara Clifford Billings, Analyst in Social Policy.

<sup>17</sup> For more information, see CRS In Focus IF11633, *Summer Meals for Children: An Overview of Federal Aid*.

<sup>18</sup> This section was authored by Randy Alison Aussenberg, Specialist in Nutrition Assistance Policy.

<sup>19</sup> This section was authored by Jim Monke, Specialist in Agricultural Policy.

<sup>20</sup> This section was authored by Joel Greene, Analyst in Agricultural Policy.

<sup>21</sup> This section was authored by Joel Greene, Analyst in Agricultural Policy.

collected fees or would have required additional appropriations to offset the loss of administrative and supervisory fees in order to continue mandatory inspections and its supervision of state and private agencies.

Under the authority of the USGSA, the FGIS establishes quality standards that define classes and grades of 12 categories of grains, (e.g., corn, wheat, and soybeans). To guarantee the integrity of U.S. grain trade, the USGSA requires that all grain exports be inspected and weighed by either the FGIS or delegated state agencies supervised by FGIS. Domestic grain inspection and weighing services are voluntary and are conducted by designated state or private agencies under the supervision of the FGIS.

## Section 122—Extension of Hemp Pilot Program in 2014 Farm Bill<sup>22</sup>

Section 122 extends until September 30, 2021, the authorization of a 2014 farm bill (Agricultural Act of 2014, P.L. 113-79) hemp pilot program that was set to be repealed in October 2020. This extension allows hemp production in some states under the pilot program instead of USDA’s hemp program established in the 2018 farm bill (Agriculture Improvement Act of 2018, P.L. 115-334).

Prior to 2014 farm bill, hemp production in the United States was subject to the Controlled Substances Act (P.L. 91-513) and oversight by the Drug Enforcement Administration. The 2014 farm bill established an agricultural pilot program allowing for hemp cultivation under certain conditions and by selected producers for research purposes only and if allowed under state laws where the hemp production is located.<sup>23</sup> The 2018 farm bill further relaxed restrictions on U.S. hemp production by removing *hemp* from the definition of *marijuana*, making it no longer a Schedule I controlled substance under the Controlled Substances Act or subject to Drug Enforcement Administration oversight. The 2018 farm bill established a new regulatory program for hemp production under USDA’s jurisdiction<sup>24</sup> and repealed the 2014 farm bill’s pilot program once the USDA establishes its hemp production plan.<sup>25</sup> The USDA issued its interim final rule on its Hemp Production Program on October 31, 2019,<sup>26</sup> with the expectation that the 2014 farm bill’s pilot program would be repealed one year later in October 2020.

Concerns about USDA’s regulatory requirements have resulted in some states opting out of the 2018 farm bill program for the 2020 crop year in favor of continuing with the existing pilot program.<sup>27</sup> Although hemp may be grown only for research purposes under the 2014 pilot program, producers growing hemp under USDA’s 2018 program may do so for commercial purposes.<sup>28</sup>

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<sup>22</sup> This section was authored by Renée Johnson, Specialist in Agricultural Policy.

<sup>23</sup> P.L. 113-79, §7606; 7 U.S.C. §5940 note.

<sup>24</sup> 7 U.S.C. §1639o-s.

<sup>25</sup> Section 7605 of P.L. 115-334 repeals the pilot program (7 U.S.C. §5940) effective “1 year after the date on which the Secretary establishes a plan under section 297C of the Agricultural Marketing Act of 1946.”

<sup>26</sup> 84 *Federal Register* 58522, October 31, 2019 (Docket No. AMS-SC-19-0042; SC19-990-2IR).

<sup>27</sup> For a listing of states under the 2014 and 2018 farm bill programs, see USDA, “Status of State and Tribal Hemp Production Plans for USDA Approval,” <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review>. For more information, see CRS Congressional Distribution memorandum, “State Regulations and Programs Governing Hemp Production and Processing,” June 12, 2020 (available to congressional clients upon request).

<sup>28</sup> For comparisons of the 2014 and 2018 farm bill programs, see USDA, “Comparison of 2014 Farm Bill and 2018 Farm Bill Requirements,” [https://www.ams.usda.gov/sites/default/files/media/HempFarmBillComparison\\_022020.pdf](https://www.ams.usda.gov/sites/default/files/media/HempFarmBillComparison_022020.pdf).

## Section 123—Over-the-Counter Drug Monograph User Fee Act<sup>29</sup>

Section 123 provides that during the CR, over-the-counter (OTC) monograph user fees shall be credited to the Food and Drug Administration (FDA) Salaries and Expenses account and remain available until expended. The FY2020 annual appropriations for the FDA in P.L. 116-94 made the availability of these fees “contingent upon the enactment of the Over-the-Counter Monograph User Fee Act of 2019,” which, at the time, had not been enacted. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136) was signed into law. Subtitle F of Title III of that act established the OTC Monograph User Fee Program and provided the legal framework for FDA to assess and collect fees to support its OTC monograph drug activities *beginning in FY2021*.<sup>30</sup> However, because the FDA funding in the CR is generally subject to the conditions that applied to that funding in P.L. 116-94, Section 123 strikes this contingency language.<sup>31</sup>

The FDA’s budget is comprised of discretionary appropriations from two sources: (1) appropriated funding out of the Treasury’s General Fund and (2) user fees paid by the regulated entities (e.g., pharmaceutical companies).<sup>32</sup> The FDA’s activities may be funded solely by discretionary appropriations from the General Fund (e.g., as has historically been the case with OTC monograph drug activities); solely by user fees (e.g., in the case of tobacco product activities); or a combination of the two (e.g., in the case of prescription drug activities). The authorizing legislation for each user fee program (e.g., the OTC Monograph User Fee Act) establishes the legal framework that governs the fees, while the annual appropriations acts provide FDA the authority to collect and expend them.

## Section 173—Commodity Credit Corporation (CCC)<sup>33</sup>

Section 173 allows the CCC to use funds appropriated under this act to reimburse the Treasury for a line of credit before completion of the required audited report of its financial condition at the close of the fiscal year.<sup>34</sup> Many farm bill program payments—for which the CCC is the funding source—are due on, or shortly after, October 1, 2020. The USDA has also announced plans to make additional coronavirus relief payments from the CCC in the coming months.<sup>35</sup> The Administration stated that without the anomaly, the CCC could exhaust its \$30 billion line of credit before the expected completion of the audited financial report in November 2020.<sup>36</sup> Once

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<sup>29</sup> This section was authored by Agata Dabrowska, Analyst in Health Policy.

<sup>30</sup> See Federal Food, Drug, and Cosmetic Act, Chapter VII, Part 10 “Fees Relating to Over-the-Counter Drugs,” as added by CARES Act Section 3862. For additional information about regulation of OTC monograph drugs and the changes made by the CARES Act, see the section “Subtitle F—Over-the-Counter Drugs” in CRS Report R46334, *Selected Health Provisions in Title III of the CARES Act (P.L. 116-136)*.

<sup>31</sup> See Sections 101 and 103, P.L. 116-159 (116<sup>th</sup> Cong.).

<sup>32</sup> For additional information, see CRS Report R44576, *The Food and Drug Administration (FDA) Budget: Fact Sheet*.

<sup>33</sup> This section was authored by Megan Stubbs, Specialist in Agricultural Conservation and Natural Resources Policy.

<sup>34</sup> For additional information on the CCC, see CRS Report R44606, *The Commodity Credit Corporation: In Brief*.

<sup>35</sup> USDA, “USDA to Provide Additional Direct Assistance to Farmers and Ranchers Impacted by the Coronavirus,” press release, September 18, 2020, <https://www.usda.gov/media/press-releases/2020/09/18/usda-provide-additional-direct-assistance-farmers-and-ranchers>.

<sup>36</sup> For more information about the Administration’s request, see Krawzak, “Trump Requests Funds to Buttress Agencies Hurt by the Pandemic.”

the CCC reaches its borrowing authority limit, all the corporation's payments and activities would cease. A similar anomaly was part of the CR in FY2017, FY2019, and FY2020.<sup>37</sup>

## Commerce, Justice, Science, and Related Agencies<sup>38</sup>

### Section 101(2) – Bureau of the Census

Section 101(2), specifies that the Census Bureau's funding will continue at the rate of operations provided by the FY2020 Consolidated Appropriations Act (P.L. 116-93), except that the \$2.5 billion of emergency funding provided in that act for the bureau's Periodic Censuses and Programs account is no longer considered an emergency appropriation under Section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985.

### Section 124 – Bureau of the Census, Periodic Censuses and Programs

Section 124 specifies that the rate of operations for the bureau's Periodic Censuses and Programs account for the period covered by this act is \$1.5 billion, which is \$5.8 billion below the amount provided for in the FY2020 appropriation. This provision also allows the bureau to apportion those funds at the rate needed to complete the 2020 decennial census.

## Department of Defense (DOD)

### Section 102 – Prohibition on “New Starts” and Increasing Production Rates<sup>39</sup>

Section 102 is similar to provisions typically included in CRs in previous years. The provision prohibits DOD from funding either *new starts*—that is, procurement or research and development of a major program for which funding was not provided in FY2020—or the acceleration of production rate for any major program for which FY2020 procurement funding was provided.

Among the Administration's proposed FY2021 new starts barred by this provision are the production of Battlefield Airborne Communications Node E-11A aircraft; Stryker wheeled combat vehicle Fire Direction Center variant; counter-improvised threat initiatives; HIV biomedical technology and medical development programs; and Phoenix Air-to-Ground Communication Network that is part of the nuclear command, control, and communications system.

Among the programs for which the Administration has proposed FY2021 production rate increases barred by this provision are Military Global Positioning System User Equipment, AN/TPQ-53 radar antennae retrofit, contract award for the STP-S29 launch as part of the Rocket Systems Launch Program, and KC-130J Hercules refueling tanker aircraft.

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<sup>37</sup> §118 of P.L. 114-223 (FY2017); §116 of P.L. 115-245 (FY2019); and §119 of P.L. 116-59 (FY2020).

<sup>38</sup> This section was authored by Jennifer D. Williams, Specialist in American National Government.

<sup>39</sup> This section was authored by Brendan McGarry, Analyst in U.S. Defense Budget. For more information on defense spending under a CR, see CRS Report R45870, *Defense Spending Under an Interim Continuing Resolution: In Brief*.



## Section 125—Funding and Authority for Columbia-Class Submarines<sup>40</sup>

Section 125 permits procurement of the first Columbia-class ballistic missile submarine in FY2021 under a two-boat contract. Without this provision, work on the first Columbia-class submarine would have been prevented by the Section 102 prohibition on new starts and increases in annual procurement rates. The provision allows for \$1.6 billion to be apportioned up to the rate for operations necessary for the Ohio Replacement Submarine (Full Funding) line within the Shipbuilding and Conversion, Navy appropriations account.<sup>41</sup> The provision also authorizes the Secretary of the Navy to enter into a contract in FY2021 to simultaneously procure up to two of the boats using *incremental funding*. Under incremental funding, the cost of a weapon system is divided into two or more annual portions, or increments.<sup>42</sup>

## Section 126—Funding for Inspector General Audits of COVID-19 Activities<sup>43</sup>

Section 126 addresses the availability of certain funding for the DOD Office of the Inspector General to conduct audits and investigations of projects and activities carried out with funds made available in Title III of Division B of the CARES Act (P.L. 116-136) in response to the Coronavirus Disease 2019 (COVID-19) pandemic. The provision rescinds unobligated FY2020 funds for such efforts and, in addition to amounts otherwise provided by the CR, appropriates an FY2021 amount equal to the unobligated FY2020 funds.

## Section 140—Authority for Contractor Reimbursements<sup>44</sup>

Section 140 extends an authority provided in Section 3610 of the CARES Act (P.L. 116-136) that allows DOD (or any agency) to reimburse contractors for paid leave, including sick leave. Such reimbursement is intended to maintain a contractor's ability to resume performance in a timely manner.<sup>45</sup> The authority is applicable to firms whose employees or subcontractors cannot perform work due to facility closures or other restrictions and who cannot telework because their job duties cannot be performed remotely during the COVID-19 pandemic.<sup>46</sup> As enacted, the Section 3610 authority would have expired on September 30, 2020. Section 140 of this act extends the authority through December 11, 2020.

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<sup>40</sup> This section was co-authored by Brendan McGarry, Analyst in U.S. Defense Budget, and Ronald O'Rourke, Specialist in Naval Affairs.

<sup>41</sup> For more information, see CRS Report R41129, *Navy Columbia (SSBN-826) Class Ballistic Missile Submarine Program: Background and Issues for Congress*.

<sup>42</sup> For more information, see CRS Report RL31404, *Defense Procurement: Full Funding Policy—Background, Issues, and Options for Congress*.

<sup>43</sup> This section was authored by Brendan McGarry, Analyst in U.S. Defense Budget.

<sup>44</sup> This section was co-authored by Brendan McGarry, Analyst in U.S. Defense Budget, and Heidi Peters, Analyst in U.S. Defense Acquisition Policy.

<sup>45</sup> DOD, Office of the Under Secretary of Defense (Acquisition and Sustainment), Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Frequently Asked Questions, updated August 17, 2020, [https://www.acq.osd.mil/dpap/pacc/cc/docs/covid-19/FAQ\\_Implementation\\_Guidance\\_CARES\\_Act\\_Sec\\_3610\\_2020.08.17.pdf#page=4](https://www.acq.osd.mil/dpap/pacc/cc/docs/covid-19/FAQ_Implementation_Guidance_CARES_Act_Sec_3610_2020.08.17.pdf#page=4).

<sup>46</sup> For more information, see CRS Insight IN11288, *COVID-19 and the Defense Industrial Base: DOD Response and Legislative Considerations*.



## Energy and Water Development and Related Agencies<sup>47</sup>

### Section 127 – Ensuring Availability for the Western Area Power Administration (WAPA)

Section 127 provides that for the duration of FY2020, no funding may be transferred from WAPA’s Colorado River Basins Power Marketing Fund to the General Fund of the Treasury. Due to a scorekeeping adjustment made by the Trump Administration, the prior common practice of transferring funds from WAPA’s Colorado River Basins Power Marketing Fund (which receives revenues from hydropower sales in the Colorado River Basin) to the Bureau of Reclamation’s Upper Colorado River Basin Fund (which funds environmental mitigation responsibilities associated with the Colorado River Storage Project, among other activities) has not been executed in recent years. Instead, the Administration has proposed that these WAPA funds be transferred to the General Fund of the Treasury. Some Members of Congress have opposed this proposal and attempted to counteract it through additional appropriations to the Upper Colorado River Basin Fund and restricting the WAPA from making transfers to the General Fund.

### Section 128 – Extension of Reclamation Drought Response Authorization

Section 128 of the bill extends Bureau of Reclamation authorities under the Reclamation States Emergency Drought Relief Act of 1991 (P.L. 102-250) that were scheduled to expire at the end of FY2020. These authorities provide support for eligible western states affected by drought and have been extended on multiple prior occasions (most recently from FY2017 to FY2020).<sup>48</sup>

## Financial Services and General Government

### Section 129 – Extension of District of Columbia Voucher School Accreditation<sup>49</sup>

Section 129 modifies District of Columbia law so that certain types of private educational institutions participating in the Scholarships for Opportunity and Results Act (Division C of P.L. 112-10) grant program may have up to six years to complete their initial accreditation.<sup>50</sup> Previously, these institutions had five years to complete their initial accreditation.

### Section 130 – District of Columbia Local Funds<sup>51</sup>

Section 130 grants congressional approval of the District of Columbia general fund and capital budgets for FY2021, 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. This provision grants the District the authority to expend locally raised funds only for those programs and activities that received funding in the District’s FY2020 appropriation (the District of Columbia Appropriations Act, 2020 [Title IV of Division C of P.L. 116-93]). This provision also allows

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<sup>47</sup> This section was authored by Charles Stern, Specialist in Natural Resources Policy.

<sup>48</sup> Section 203 of Division D, Title II of P.L. 115-141 extended the authority through FY2020. See 43 U.S.C. §2214 note for a legislative history of prior extensions.

<sup>49</sup> This section was authored by Joseph V. Jaroscak, Analyst in Economic Development Policy.

<sup>50</sup> Section 38—1853.07(a)(5)(A)(i)(II)(bb) of the *District of Columbia Official Code*.

<sup>51</sup> This section was authored by Joseph V. Jaroscak, Analyst in Economic Development Policy.

District officials to obligate locally raised funds at the rate set forth in the Fiscal Year 2021 Local Budget Act of 2020 (D.C. Act 23-408).

### **Section 131 — Additional Funding for Presidential Inauguration Activities<sup>52</sup>**

Section 131 provides an additional \$13 million for the District of Columbia’s emergency planning and security costs related to the upcoming presidential inauguration. This amount is in addition to amounts that have already been appropriated by Section 101 of this act for presidential inauguration planning and security operations. The provision is similar to previous inauguration-related funding anomalies that were provided in past CRs that preceded presidential inaugurations.

### **Section 132 — Increased Flexibility to Process Certain Small Business Administration (SBA) Loans<sup>53</sup>**

Section 132 reduces funding for loan credit subsidies in the SBA 7(a) loan guarantee program from \$99 million to \$15 million. The 7(a) loan guarantee program provides loans to small businesses that might not otherwise find financing, and it is one of the SBA’s primary programs. The funding provided by this provision may be apportioned at the rate necessary to meet demand.<sup>54</sup> The SBA is also authorized by this provision to accommodate increased demand for commitments to guarantee loans for debentures under the Small Business Investment Company program.<sup>55</sup>

### **Section 133 — Increased Flexibility to Process SBA Disaster Loans<sup>56</sup>**

Section 133 allows amounts made available by Section 101 for Small Business Administration—Disaster Loans Program Account to be apportioned up to the rate for operations necessary to accommodate increased demand for commitments for disaster administrative expenses.<sup>57</sup>

### **Section 134 — Additional Funding for Presidential Transition Office Space<sup>58</sup>**

Section 134(a) provides the General Services Administration (GSA) with \$9.9 million to carry out the Presidential Transition Act of 1963 (P.L. 88-277, as amended). The appropriation is for purposes related to the presidential election and is in addition to amounts otherwise appropriated for the GSA. Section 134(b) explicitly states that funding for the GSA’s Pre-Election Presidential Transition account is not provided under this act.

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<sup>52</sup> This section was authored by Joseph V. Jaroscak, Analyst in Economic Development Policy.

<sup>53</sup> This section was authored by Robert Jay Dilger, Senior Specialist in American National Government.

<sup>54</sup> For more information, see CRS Report R41146, *Small Business Administration 7(a) Loan Guaranty Program*.

<sup>55</sup> For more information, see CRS Report R41456, *SBA Small Business Investment Company Program*.

<sup>56</sup> This section was authored by Robert Jay Dilger, Senior Specialist in American National Government.

<sup>57</sup> For more information, see CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*.

<sup>58</sup> This section was authored by Garrett Hatch, Specialist in American National Government.

### **Section 135—Increased Flexibility for Government Rental Payments<sup>59</sup>**

Section 135 provides that amounts made available by Section 101 for the General Services Administration Real Property Activities—Federal Buildings Fund—Limitations on Availability of Revenue may be apportioned up to the rate for operations necessary for monthly rental of space operations.

### **Section 136—Additional Funding for Presidential Transition<sup>60</sup>**

Section 136 would provide, in addition to amounts appropriated by Section 101, \$8 million for the Office of Administration’s Presidential Transition Administrative Support account for expenses to carry out the Presidential Transition Act of 1963 (P.L. 88-277, as amended) and similar expenses. This provision also allows funds to be transferred to other accounts that provide funding for offices within the Executive Office of the President and the Office of the Vice President.

### **Section 137—Additional Funding for Presidential Transition Archival Activities<sup>61</sup>**

Section 137 provides, in the event of a presidential transition, \$18 million to the National Archives to carry out the presidential transition responsibilities under the Presidential Records Act of 1978 (42 U.S.C. §§2201-2207).<sup>62</sup> This amount is in addition to amounts otherwise appropriated by this act for the National Archives.

### **Section 138—Increased Flexibility for Background Check Administrative Expenses<sup>63</sup>**

Section 138 provides that amounts made available by Section 101 for Office of Personnel Management (OPM)—Salaries and Expenses, including amounts to be transferred from the appropriate OPM trust funds, can be apportioned up to the rate for operations necessary to offset any administrative expenses related to transferring the functions of the National Background Investigations Bureau to DOD.

### **Section 139—Extension of Certain Bankruptcy Judgeships<sup>64</sup>**

Section 139 extends the term of office for a temporary federal bankruptcy judgeship in the Eastern District of Tennessee from five years to nine years.<sup>65</sup> This modification further extends a temporary U.S. bankruptcy judgeship for the Eastern District of Tennessee that was originally created in 1992 (P.L. 102-361).

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<sup>59</sup> This section was authored by Garrett Hatch, Specialist in American National Government.

<sup>60</sup> This section was authored by Barbara L. Schwemle, Analyst in American National Government.

<sup>61</sup> This section was authored by Meghan M. Stuessy, Analyst in Government Organization and Management.

<sup>62</sup> For more information, see CRS Report R46129, *The Presidential Records Act: An Overview*.

<sup>63</sup> This section was authored by Barbara L. Schwemle, Analyst in American National Government.

<sup>64</sup> This section was authored by Barry J. McMillion, Analyst in American National Government.

<sup>65</sup> This provision modifies Section 2(b)(2)(C)(i) of the Temporary Bankruptcy Judgeships Extension Act of 2012 (28 U.S.C. §152 note; P.L. 112-121).

## Department of Homeland Security (DHS)<sup>66</sup>

### Section 101(6)—Extension of Immigration Authorities

Section 101(6) extends the authorities of five immigration programs.

Four of these extensions were requested by the Administration in the event authorizing legislation was not enacted prior to the end of the fiscal year. These four authorities have been extended through the appropriations process each year since FY2016 through a variety of mechanisms. In the FY2018 consolidated appropriation, those immigration extensions were shifted out of the text of the DHS appropriations act into a different division of the consolidated act.<sup>67</sup> In the FY2019 CR, they were included by reference in the first section of the CR.<sup>68</sup> This pattern of extension in CRs by reference to a year-end extensions division in the first section has continued since. The four authorities are:

1. E-Verify Program—Section 401(b) of P.L. 104-208, Division C, as amended, codified as part of 8 U.S.C. §1324a note;
2. Authority to Grant Special Immigrant Status to Religious Workers Other than Ministers—8 U.S.C. §1101(a)(27)(C)(ii)(II) and (III);
3. Waiver of Foreign Residence Requirements for Physicians Working in Underserved Areas (“Conrad State 30” Program)—Section 220(c) of P.L. 103-416, codified as part of 8 U.S.C. §1182 note; and
4. Immigrant Investor (EB-5) Regional Center Program—Section 610(b) of P.L. 102-395, codified as part of 8 U.S.C. §1153 note.

One additional provision that had been carried in the FY2020 CR and annual DHS appropriations act was *not* requested by the Administration—an expansion of the H-2B visa program. This was the only provision of the five immigration extensions from the FY2020 consolidated appropriations bill that was included in the House-reported version of the FY2021 DHS appropriations act.<sup>69</sup>

### Section 141—Restructured Apportionment of Continuing Appropriations for Activities Previously Funded by the Working Capital Fund

Section 141 provides flexibility for the Administration in allocating funds within the DHS management accounts. In its FY2021 budget request, the Administration proposed restructuring some management accounts—including dissolving the DHS Working Capital Fund. In its request for CR anomalies, OMB asked for authority to act as if those changes had been approved by Congress so that manual administrative adjustments to obligations and disbursements would not be required.<sup>70</sup>

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<sup>66</sup> This section was authored by William L. Painter, Specialist in Homeland Security and Appropriations.

<sup>67</sup> P.L. 115-141, Division M.

<sup>68</sup> P.L. 115-245, Division C, §101.

<sup>69</sup> H.R. 7669, §414.

<sup>70</sup> This is the third year in a row that such an anomaly was provided. The first FY2018 CR (P.L. 115-56, Division D, §125) and FY2019 CR (P.L. 115-245, Division C, §128) both carried an almost identical provision related to restructuring funding for activities that had been paid for by the Working Capital Fund. For detail about the Administration’s anomalies request, see Krawzak, “Trump Requests Funds to Buttress Agencies Hurt by the Pandemic.”

### **Section 142—Coast Guard Pay Authority**

Section 142 extends authority provided in the CARES Act (P.L. 116-136) that allows appropriated Operations and Support funding to pay salaries and benefits of several pools of Coast Guard personnel that are usually supported by fees and operating revenues from activities that have been disrupted by the COVID-19 pandemic. The supported programs include Coast Guard Yard employees; Vessel Documentation personnel; Non-Appropriated Funds personnel; and the Morale, Welfare and Recreation programs.<sup>71</sup> The Administration indicated that it was requesting this anomaly in the event the issue is not addressed in pandemic-related legislation.

### **Section 143—Extend the Authorization for the Great Lakes Pilotage Advisory Committee**

Section 143 extends the authorization for the Great Lakes Pilotage Advisory Committee, which would have expired at the end of FY2020, through the period covered by this act.<sup>72</sup> The committee's authorization was last extended in the Coast Guard Authorization Act of 2010 (P.L. 111-281). The Administration requested this extension.

### **Section 144—Restructured Apportionment of Cybersecurity and Infrastructure Security Agency Continuing Appropriations**

The Administration proposed modifying the budget structure within the appropriations for the Cybersecurity and Infrastructure Security Agency (CISA) in their FY2021 budget request and has asked for a CR anomaly that would allow CISA to not only execute appropriations within the new structure but also reprogram funding within that new structure. OMB indicates that these modifications would reduce the potential administrative burden on DHS if the budget modifications are approved by Congress.<sup>73</sup> Section 144 does not enact these requested changes and instead directs DHS to follow the budget structure and direction provided for CISA in the FY2021 DHS Appropriations Act ordered reported by the House Appropriations Committee and in the accompanying report.<sup>74</sup>

### **Section 145—Modified Apportionment of Disaster Relief Fund Continuing Appropriation**

Section 145 allows OMB to apportion funding for the Federal Emergency Management Agency's Disaster Relief Fund to meet the response and recovery needs of disaster-affected states. While the Administration did not request this provision, an identical one has been included in CRs since FY2018.<sup>75</sup>

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<sup>71</sup> P.L. 116-136, Division B, §16004(a).

<sup>72</sup> The original authorization and expiration are found in 46 U.S.C. §9307.

<sup>73</sup> For more information about the Administration's request, see Krawzak, "Trump Requests Funds to Buttress Agencies Hurt by the Pandemic."

<sup>74</sup> H.R. 7669; H.Rept. 116-458.

<sup>75</sup> P.L. 115-56, Division D, §129; P.L. 115-245, Division C, §124; P.L. 116-59, §133.

## Section 146—Extension of the National Flood Insurance Program

Section 146 provides an extension of the authority for the National Flood Insurance Program (NFIP) to continue to issue new policies that would have otherwise expired at the end of the FY2020. This extension, as requested by the Administration, is through the end of FY2021, not just the length of the CR.

The authority for the NFIP has been extended in CRs each year since FY2018,<sup>76</sup> but similar language has appeared periodically in CRs starting in FY1998, taking different forms.<sup>77</sup> Short- and long-term reauthorizations of the NFIP have also been enacted separately from the appropriations process.<sup>78</sup>

## Interior, Environment, and Related Agencies

### Section 147—Land and Water Conservation Fund<sup>79</sup>

P.L. 116-152, the Great American Outdoors Act, enacted on August 4, 2020, made the \$900 million in annual deposits to the Land and Water Conservation Fund (LWCF) available as mandatory spending beginning in FY2021.<sup>80</sup> Prior to P.L. 116-152, appropriations laws for Interior, Environment, and Related Agencies typically included discretionary appropriations derived from the LWCF for several activities and programs, including land acquisition by federal land management agencies, an outdoor recreation grants to states program, and other programs. Given that LWCF activities and programs are funded through mandatory spending, Section 147 provides that the discretionary appropriations for most of those activities and programs are not continued in FY2021. However, the section continues discretionary funding, derived from the LWCF, for land acquisition by the U.S. Fish and Wildlife Service at a rate of operations of \$7.6 million, a reduction from the \$70.7 million provided in FY2020. It also continues the \$10.0 million in FY2020 LWCF funding for the Department of the Interior's Appraisal and Valuation Services Office, apportioned at rates necessary to fund the activities of the office. Section 147 also continues most, but not all, provisions in the FY2020 law that rescind varying amounts of unobligated prior year funds.

### Section 148—Forest Service Account Restructuring<sup>81</sup>

The FY2020 appropriations law directed the Secretary of Agriculture to establish a new budget account structure for Forest Service (FS) no later than the end of FY2020 and to submit a report detailing the account adjustments to the House and Senate Appropriations Committees.<sup>82</sup> The new budget structure is required to include the establishment of a new account and may also include new budget activities to cover specified salary and expenses within several accounts. Section 148 authorizes the FS to obligate funds for FY2021 based on the new account structure, which the

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<sup>76</sup> P.L. 115-56, Division D, §130; P.L. 115-298, which added a new §136 to P.L. 115-245, Division C; P.L. 116-59, §134.

<sup>77</sup> P.L. 105-46, §118.

<sup>78</sup> For additional information on what expiration of the program might mean, see CRS Insight IN10835, *What Happens If the National Flood Insurance Program (NFIP) Lapses?*

<sup>79</sup> This section was authored by Carol Hardy-Vincent, Specialist in Natural Resources Policy.

<sup>80</sup> For a summary of changes to the LWCF made by P.L. 116-152, see CRS In Focus IF11636, *The Great American Outdoors Act, P.L. 116-152*.

<sup>81</sup> This section was authored by Katie Hoover, Specialist in Natural Resource Policy.

<sup>82</sup> P.L. 116-94, Division D, §435.



Secretary of Agriculture is to include in the report to the House and Senate Appropriations Committees. Because the new structure involves the shifting of some salary and expenses between FS accounts and programs, Section 148 allows for funding in one FS account to be available for the salary and expenses of employees who carry out functions funded by other FS accounts. It further provides that this funding can be apportioned at rates necessary to fund those operations.

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

### **Section 149—Extension of the Temporary Assistance for Needy Families (TANF) Block Grant, the Child Care Entitlement to States (CCES), and Related Funding<sup>83</sup>**

Under provisions in the CARES Act (P.L. 116-136), funding and program authority for the TANF block grant, the CCES, the TANF contingency fund, Healthy Marriage and Responsible Fatherhood grants, and matching grants to the territories for TANF and child welfare activities was scheduled to end on November 30, 2020. In general, Section 149 extends funding and program authority for these programs through December 11, 2020. However, Section 149 also specifies that CCES payments are to be issued on the same basis as TANF block grants, which are issued in quarterly installments pursuant to Section 405(a) of the Social Security Act. These payments are expected to be provided through the first full quarter of FY2021 (i.e., December 31, 2020). Section 149 would seem to allow CCES grant payments to be issued for the full first quarter of FY2021 as well.<sup>84</sup>

### **Section 150—Centers for Disease Control and Prevention (CDC) Buildings and Facilities<sup>85</sup>**

Section 150 addresses the availability of certain CDC Buildings and Facilities funding to replace the Lake Lynn Experimental Mine and Laboratory in Pennsylvania. Specifically, the provision (1) rescinds certain unobligated budget authority for this project that was set to expire at the end of FY2020 and (2) appropriates an equivalent amount of budget authority for the same purposes to remain available through FY2025. The rescinded budget authority had originally been appropriated in the FY2016 Consolidated Appropriations Act (P.L. 114-113).

### **Section 151—State Children’s Health Insurance Program’s (CHIP) Delayed Obligation of Mandatory Funding<sup>86</sup>**

Section 151(a) rescinds \$1.2 billion of mandatory spending of the \$24.8 billion appropriated for the FY2021 CHIP allotments to states that were unobligated as of September 25, 2020. Section

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<sup>83</sup> This section was authored by Karen Lynch, Specialist in Social Policy, and Gene Falk, Specialist in Social Policy.

<sup>84</sup> See related discussion on p. 5 of the section-by-section summary of H.R. 8337 released by the House Appropriations Committee at <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FINAL%20Continuing%20Appropriations%202021%20Extensions%202020%20Summary.pdf>.

<sup>85</sup> This section was authored by Kavya Sekar, Analyst in Health Policy.

<sup>86</sup> This section was authored by Alison Mitchell, Specialist in Health Care Financing.



151(b) makes \$11.0 billion of the funding deposited in the CHIP Child Enrollment Contingency Fund prior to the beginning of FY2020, and income derived from investment of those funds, unavailable for obligation in FY2021.<sup>87</sup> Similar provisions have been part of previous CRs.

### **Section 152—National Institutes of Health (NIH) Multi-Year Research Grants<sup>88</sup>**

Section 152 provides the NIH director with the authority to delay, through the end of FY2021, the cancellation of certain FY2015 funds that have been obligated, but not yet expended, for multi-year research grants. The NIH director may postpone the cancellation of such funds if he determines that “the project suffered interruption of activities attributable to” COVID-19. In general, NIH awards numerous types of extramural multi-year research grants to research institutions (e.g., universities) for a period of up to five years.<sup>89</sup> Per Title 31, Section 1552, of the *United States Code*, all federal agencies shall close fixed year appropriations accounts at the end of the fifth fiscal year after the funds expire and cancel any remaining budget authority (regardless of whether it is unobligated or obligated).<sup>90</sup> According to the NIH grant policy statement, this has the effect of limiting NIH’s authority to extend the final budget period when an entire project period is funded by a single award.<sup>91</sup> Actions taken in response to the COVID-19 pandemic, such as stay-at-home orders and closures of universities and other research institutions, have affected researchers’ ability to carry out NIH-funded research projects—particularly those that require laboratory or clinical research components.<sup>92</sup> NIH has exercised various administrative flexibilities in response to these challenges, such as by allowing certain grantees to continue to charge for salaries and benefits when researchers are unable to work due to the effects of the pandemic.<sup>93</sup>

### **Section 153—Automated Personalization Computing Project (APCP)<sup>94</sup>**

Section 153 delays until the end of FY2021 the cancellation of funds that were made available for the APCP in P.L. 113-76 to allow for the liquidation of valid obligations incurred in FY2014 or FY2015. Per Title 31, Section 1552, of the *U.S. Code*, all federal agencies shall close fixed-year appropriations accounts at the end of the fifth fiscal year after the funds expire and cancel any remaining budget authority (regardless of whether it is unobligated or obligated). Absent Section 153, the balances in this account would have been canceled at the end of FY2020.<sup>95</sup>

The APCP is a competitive grant program administered by the Rehabilitation Services Administration at the Department of Education. The purpose of the APCP is to improve outcomes

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<sup>87</sup> For more information about CHIP financing, see CRS Report R43949, *Federal Financing for the State Children’s Health Insurance Program (CHIP)*.

<sup>88</sup> This section was authored by Kavya Sekar, Analyst in Health Policy.

<sup>89</sup> See CRS Report R41705, *The National Institutes of Health (NIH): Background and Congressional Issues*.

<sup>90</sup> See GAO, *Principles of Federal Appropriations Law*, ch. 2, p. 2-29, “Account Closing,” <https://www.gao.gov/assets/680/675709.pdf>.

<sup>91</sup> NIH, “5.3 Funding,” *NIH Grants Policy Statement*, [https://grants.nih.gov/grants/policy/nihgps/html5/section\\_5/5.3\\_funding.htm](https://grants.nih.gov/grants/policy/nihgps/html5/section_5/5.3_funding.htm).

<sup>92</sup> See CRS Report R46309, *Effects of COVID-19 on the Federal Research and Development Enterprise*.

<sup>93</sup> NIH, “Coronavirus Disease 2019 (COVID-19): Information for NIH Applicants and Recipients of NIH Funding,” <https://grants.nih.gov/policy/natural-disasters/corona-virus.htm>.

<sup>94</sup> This section was authored by Kyrie Drago, Analyst in Education Policy, and Benjamin Collins, Analyst in Labor Policy.

<sup>95</sup> See GAO, *Principles of Federal Appropriations Law*, ch. 2, p. 2-29, “Account Closing.”

for individuals with disabilities by increasing access to information and communication technologies through automatic personalization of needed assistive technology.

### **Section 154—National Advisory Committee on Institutional Quality and Integrity (NACIQI)<sup>96</sup>**

Section 154 extends the duration of NACIQI through December 11, 2020. NACIQI assesses the process of accreditation 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; P.L. 89-329, as amended).<sup>97</sup> If this provision had not been enacted, under Section 114(f) of the HEA, NACIQI would have terminated on September 30, 2020.

In general, Section 422 of the General Education Provisions Act (GEPA)<sup>98</sup> automatically adds one additional fiscal year to the authorization for most programs administered by the Department of Education. This automatic extension would occur only if Congress and the President do not enact legislation extending the program by the beginning of the terminal fiscal year of a program's authorization. However, Section 422(d) of GEPA 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, 2020, had it not been extended.

### **Section 155—Account Maintenance Fees<sup>99</sup>**

Section 155 extends mandatory budget authority for the Secretary of Education to pay account maintenance fees to guaranty agencies under the Federal Family Education Loan (FFEL) program through December 11, 2020. Under the program, state or national nonprofit guaranty agencies administer the federal loan insurance that protects holders of those loans against losses arising from borrower defaults or loan discharges due to a borrower's death or disability and provide a variety of administrative services to lenders. Section 458(a)(4) of the HEA provides mandatory budget authority to pay account maintenance fees to guaranty agencies as compensation for various tasks related to administering the federal loan guarantees. Account maintenance fees are equal to 0.06% of the original principal balance of outstanding FFEL program loans and are paid quarterly by the Secretary of Education to guaranty agencies. Although authority to originate new FFEL loans terminated on July 1, 2010, many FFEL program loans remain outstanding, and, thus, guaranty agencies continue to perform administrative tasks associated with those loans.

### **Section 156—Corporation for National and Community Service (CNCS)<sup>100</sup>**

According to the House Appropriations Committee, the purpose of Section 156 is to correct “a drafting error in the CARES Act (P.L. 116-136) related to funding availability for CNCS.”<sup>101</sup>

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<sup>96</sup> This section was authored by Alexandra Hegji, Analyst in Social Policy.

<sup>97</sup> For additional information on NACIQI, see CRS Report R43826, *An Overview of Accreditation of Higher Education in the United States*.

<sup>98</sup> 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.

<sup>99</sup> This section was authored by Alexandra Hegji, Analyst in Social Policy.

<sup>100</sup> This section was authored by Joselynn Fountain, Analyst in Education Policy.

<sup>101</sup> See House Appropriations Committee, “H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act

Specifically, Section 156(d) provides that Section 3514(b) of the CARES Act (P.L. 116-136), which was intended to extend the availability of CNCS budget authority that would have otherwise expired at the end of FY2020, is to be treated as if it were never enacted. Additionally, the provision (1) rescinds the remaining unobligated budget authority for CNCS that was set to expire at the end of FY2020 and (2) appropriates an equivalent amount of budget authority for the same purposes to remain available through FY2021.

## Legislative Branch<sup>102</sup>

### Section 157—Gratuity Payment

Section 157 provides one gratuity payment to the beneficiary of a deceased Member of the House.

A gratuity equal to one year's salary has long been given to the heirs or beneficiaries of Members of Congress who die in office.<sup>103</sup> The payment is generally included in the next legislative branch, supplemental, or continuing appropriations act following the death.

### Section 158—House of Representatives

Section 158 changes the amount available for House of Representatives—Salaries and Expenses account for FY2021 to \$1.384 billion, an increase from the \$1.366 billion appropriated in FY2020. This account funds all activities of the House, but it does not fund salaries of Members of Congress.

### Section 159—Continuation of Payments

Section 159 continues certain authorities for payments or reimbursements originally provided by the CARES Act (P.L. 116-136) until the termination of the public health emergency. It includes subsections to address the authority of the Library of Congress to reimburse the Little Scholars Child Development Center for salaries, the authority of the Government Accountability Office to reimburse the Tiny Findings Child Development Center for salaries, and the authority of the Architect of the Capitol to continue payments for service contracts if the contractors' employees are "furloughed or otherwise unable to work during closures, stop work orders, or reductions in service arising from or related to the impacts of coronavirus" (see Section 19005 of P.L. 116-136).

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of 2020 Section-by-Section Summary of Bipartisan Continuing Resolution," p. 5, <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FINAL%20Continuing%20Appropriations%202021%20Extensions%202020%20Summary.pdf>.

<sup>102</sup> This section was authored by Ida Brudnick, Specialist on the Congress.

<sup>103</sup> For the Senate, see Floyd M. Riddick, *Riddick's Senate Procedure: Precedents and Practices*, S.Doc. 101-28, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), p. 1254, which footnotes *Congressional Record* debate from 1892; and U.S. Senate, *United States Senate Handbook*, p. I-92. For the House of Representatives, see Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States* (Washington: GPO, 1935-1941), vol. VI, p. 380; and Lewis Deschler, *Deschler's Precedents of the United States House of Representatives*, vol. II, H.Doc. 94-661, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess. For additional information, see CRS Congressional Distribution Memorandum, *Gratuity Payments for Members of Congress Who Die in Office: Historical Practice*, November 8, 2013, by Ida Brudnick, R. Eric Petersen, and Jennifer Manning (available to congressional clients upon request).

## **Section 160—Library of Congress Severable Services Contracts**

Section 160 allows for the extension of Library of Congress’s severable service contracts by up to 12 months if the performance or delivery of services is delayed or otherwise affected by the COVID-19 pandemic.

## **Military Construction, Veterans Affairs, and Related Agencies<sup>104</sup>**

### **Section 161—Compensation and Pensions<sup>105</sup>**

Section 161 makes a technical correction to the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2020 (Division F of P.L. 116-94), related to the Department of Veterans Affairs (VA) Compensation and Pensions account. This provision authorizes advance appropriations for the Compensation and Pensions account provided in P.L. 116-94 that became available on October 1, 2020, to remain available until expended. This change would also allow unobligated carryover appropriations and funds in this account to remain available beyond FY2021.

### **Section 162—Veterans Electronic Health Record<sup>106</sup>**

Section 162 provides authority to the VA to apportion funds up to the rate of operations necessary for activities related to the implementation, preparation, development, management, rollout, and maintenance of the veterans electronic health record system, including salaries and expenses of VA employees associated with the development and deployment of the system.

### **Section 163—Canteen Service Revolving Fund<sup>107</sup>**

Section 163 provides authority to the VA during FY2021 to transfer up to \$140 million of unobligated balances provided by the CARES Act (P.L. 116-136) for the Medical Services account to the Canteen Service Revolving Fund. Operations of the Canteen Service Revolving Fund are generally financed by collections from the sale of meals, merchandise, and services at VA medical facilities. However, due to a decline in collections as a result of the COVID-19 pandemic, the Administration requested this transfer authority to offset these losses.

## **State, Foreign Operations, and Related Programs (SFOPS)<sup>108</sup>**

### **Section 164—Repatriation Loans Program Account**

Section 164 authorizes the Department of State (DOS) to obligate funds made available by Section 101 of this act for the Repatriation Loans Program account at a rate necessary to accommodate any increased demand for repatriation loans due to the COVID-19 pandemic. The

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<sup>104</sup> For more information on Military Construction, Veterans Affairs, and Related Agencies’ FY2021 appropriations, see CRS Report R46459, *Department of Veterans Affairs FY2021 Appropriations*.

<sup>105</sup> This section was authored by Sidath Panangala, Specialist in Veterans Policy, and Heather Salazar, Analyst in Veterans Policy.

<sup>106</sup> This section was authored by Sidath Panangala, Specialist in Veterans Policy.

<sup>107</sup> This section was authored by Sidath Panangala, Specialist in Veterans Policy.

<sup>108</sup> This section was authored by Cory R. Gill, Analyst in Foreign Affairs.

Repatriation Loans Program, authorized by Section 4 of the State Department Basic Authorities Act of 1956 (P.L. 84-885, as amended), provides emergency direct loans for temporary subsistence and transportation to assist destitute U.S. citizens abroad who have no other source of funds to return to the United States.<sup>109</sup>

### **Section 165—Extension of Passport and Immigrant Visa Surcharge Expenditure Authorities**

Section 165 extends authority provided in Section 21009 of the CARES Act (P.L. 116-136) for the DOS to obligate passport and immigrant visa security surcharge collections from any fiscal year for the cost of providing consular services broadly. The DOS was previously authorized to expend these fees only for “consular services in support of enhanced border security.”<sup>110</sup> As international travel has declined during the COVID-19 pandemic, however, the DOS has experienced a significant decline in receipts from other fees that traditionally offset the cost of consular services.

### **Section 166—Authorities to Fund Consular Operations**

Section 166, subsection (a) authorizes the DOS to obligate receipts from Western Hemisphere Travel Initiative (WHTI) surcharge to offset the costs of providing consular services broadly.<sup>111</sup> The DOS was previously authorized to expend such fees only to meet the costs associated with increased passport demand and the WHTI. The WHTI was first implemented in calendar year 2008, and it requires all U.S. citizens entering the United States from another country to present a passport or other accepted secure document prior to entry.

Subsection (b) authorizes the DOS to transfer SFOPS funding made available by Section 101 of this act under the Administration of Foreign Affairs heading and unobligated balances made available by previous SFOPS appropriations laws under such heading to the Consular and Border Security Programs account in order to sustain consular operations. Subsection (b) further provides that no amounts may be transferred under this section that have been designated for OCO or other emergency requirements.

Subsection (c) authorizes the DOS to expend SFOPS funding made available by Section 101 of this act for the Diplomatic Programs account at the rate necessary to sustain consular operations. This account is the principal operating account of the DOS.

### **Section 167—Foreign Assistance to Sri Lanka**

Section 167 provides that several certification and reporting requirements related to the provision of certain forms of foreign assistance for the central government of Sri Lanka shall not apply to the funds made available in this act and P.L. 116-94. Those forms of assistance include those related to disaster relief; the protection of human rights; locating and identifying missing persons; assisting victims of torture; promoting justice, accountability, and reconciliation; enhancing maritime security; and international military education and training.<sup>112</sup>

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<sup>109</sup> 22 U.S.C. §2671.

<sup>110</sup> 8 U.S.C. §1714.

<sup>111</sup> The WHTI surcharge is authorized pursuant to 22 U.S.C. §214(b).

<sup>112</sup> Those restrictions were provided in Section 7044(e)(2) of Division G of P.L. 116-94.

## **Section 168—U.S. Advisory Commission on Public Diplomacy**

Section 167 extends the sunset provision for the U.S. Advisory Commission on Public Diplomacy from October 1, 2020, to October 1, 2021.<sup>113</sup> This body is responsible for appraising U.S. government activities intended to understand, inform, and influence foreign publics and to increase understanding of, and support for, such activities.<sup>114</sup>

## **Departments of Transportation, Housing and Urban Development, and Related Agencies**

### **Section 169—National Infrastructure Investments (BUILD Grants)<sup>115</sup>**

Section 169 extends, through the end of FY2021, the availability of funds in the Department of Transportation’s Better Utilizing Investments to Leverage Development (BUILD) grant program that were awarded to grantees in FY2017 and FY2018 and have not yet been obligated. Without this provision, the availability of this budget authority would have lapsed at the end of FY2020. The Administration did not request this change.

### **Section 170—Ginnie Mae Increase<sup>116</sup>**

Section 170 more than doubles the volume of mortgage-backed securities that can be guaranteed by the Government National Mortgage Association (“Ginnie Mae”). The Administration requested an increase in commitment authority, citing increasing mortgage demand as a result of low-interest rates.<sup>117</sup>

### **Section 171—Choice Neighborhoods Extension<sup>118</sup>**

Section 171 prevents the expiration of unspent FY2013 Choice Neighborhoods grant funds by extending their availability through FY2021. The Choice Neighborhoods is a competitive grant program that funds the redevelopment of distressed public and other housing assisted by the Department of Housing and Urban Development.

### **Section 172—Housing for the Elderly<sup>119</sup>**

Section 172 allows the Department of Housing and Urban Development to increase the rate of obligation for the Section 202 Housing for the Elderly program to both meet increased rental assistance renewal costs and continue a supportive housing demonstration. The Administration requested this provision.<sup>120</sup>

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<sup>113</sup> 22 U.S.C. §6553.

<sup>114</sup> DOS, “U.S. Advisory Commission on Public Diplomacy,” <https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy/>.

<sup>115</sup> This section was authored by David Randall Peterman, Analyst in Transportation Policy.

<sup>116</sup> This section was authored by Katie Jones, Analyst in Housing Policy.

<sup>117</sup> Krawzak, “Trump Requests Funds to Buttress Agencies Hurt by the Pandemic.”

<sup>118</sup> This section was authored by Maggie McCarty, Specialist in Housing Policy.

<sup>119</sup> This section was authored by Libby Perl, Specialist in Housing Policy.

<sup>120</sup> Krawzak, “Trump Requests Funds to Buttress Agencies Hurt by the Pandemic.”

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