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Department of Veterans Affairs FY2017 Appropriations

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Summary

The Department of Veterans Affairs (VA) provides a range of benefits and services to veterans and eligible dependents who meet certain criteria as authorized by law. These benefits include medical care, disability compensation and pensions, education, vocational rehabilitation and employment services, assistance to homeless veterans, home loan guarantees, administration of life insurance as well as traumatic injury protection insurance for servicemembers, and death benefits that cover burial expenses.

The President's FY2017 budget request for the VA was submitted to Congress on February 9, 2016. The President's FY2017 request for VA is approximately \$177.54 billion. This amount, which includes \$102.53 billion in mandatory funding and \$75.01 billion in discretionary appropriations, is a 9.14% increase over the FY2016-enacted level of \$162.67 billion.

On April 13, 2016, the House Appropriations Committee approved its version of the FY2017 Military Construction and Veterans Affairs, and Related Agencies (MILCON-VA) appropriations bill (H.R. 4974; H.Rept. 114-497). The House passed the measure on May 19. The House-passed measure provides a total of \$176.06 billion for the VA, a slight decrease (0.83%) from the President's request of \$177.54 billion and an 8.23% increase from the FY2016-enacted amount. This amount includes \$102.53 billion in mandatory appropriations and \$73.53 billion in discretionary appropriations.

On April 14, the Senate Appropriations Committee approved its version of the FY2017 MILCON-VA appropriations bill (S. 2806; S.Rept. 114-237). The Senate passed the FY2017 MILCON-VA appropriations bill on May 19 as an appropriations package that included the FY2017 Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations bill (Division A); the FY2017 MILCON-VA appropriations bill (Division B), and the Zika Response appropriations bill (Title V of Division B). The Senate-passed version of the FY2017 MILCON-VA appropriations bill (Division B of H.R. 2577) provides a total of \$177.39 billion for VA, a 9.04% increase over the FY2016-enacted level of \$162.67 billion and slightly less than the President's request for FY2017. This amount includes \$102.53 billion in mandatory appropriations and \$74.85 billion in discretionary appropriations.

On September 29, 2016, President Obama signed the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223). Division A of this act contained the FY2017 MILCON-VA appropriations act. P.L. 114-223 would provide \$176.89 billion for VA for FY2017. This includes \$102.53 billion in mandatory funding and \$74.36 billion in discretionary funding. The act also contained several administrative provisions including, among others, fertility counseling and treatment using assisted reproductive technology (e.g., in vitro fertilization, IVF) for eligible veterans and their spouses or adoption reimbursement. It also included the VA Patient Protection Act of 2016, which would establish another process for VA employees to file whistleblower complaints in addition to the relief under the Whistleblower Protection Act (P.L. 101-12, 103 Stat. 16; P.L. 103-424, 108 Stat. 4361). On May 5, 2017, President Trump signed the Consolidated Appropriations Act, 2017, which included the Military Construction and Veterans Affairs—Additional Appropriations Act, 2017 (P.L. 115-31, Division L). This act provides an additional \$50 million for implementation costs associated with the Jason Simekoski Memorial and Promise Act (Title IX of P.L. 114-198). Thus the total enacted amount provided for VA for FY2017 is \$176.94 billion. This report provides an overview of VA appropriations; for a discussion on military construction appropriations, see CRS Report R44639, *Military Construction: FY2017 Appropriations*.

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Department of Veterans Affairs Overview

The Department of Veterans Affairs (VA) provides a range of benefits and services to veterans and eligible dependents who meet certain criteria as authorized by law. These benefits include medical care, disability compensation and pensions, education, vocational rehabilitation and employment services, assistance to homeless veterans, home loan guarantees, administration of life insurance as well as traumatic injury protection insurance for servicemembers, and death benefits that cover burial expenses.¹

The VA carries out its programs nationwide through three administrations and the Board of Veterans Appeals (BVA).² The Veterans Benefits Administration (VBA) is responsible for, among other things, providing compensation, pensions, education assistance, and vocational rehabilitation and employment services.³ The National Cemetery Administration (NCA) is responsible for maintaining national veterans' cemeteries; providing grants to states for establishing, expanding, or improving state veterans' cemeteries; and providing headstones and markers for the graves of eligible persons, among other things.⁴ The Veterans Health Administration (VHA) is responsible for health care services and medical and prosthetic research programs. The VHA is primarily a direct service provider of primary care, specialized care, and related medical and social support services to veterans through the nation's largest integrated health care system. Inpatient and outpatient care are also provided in the private sector to eligible dependents of veterans under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).⁵

The VA Budget

The VA budget includes both mandatory⁶ and discretionary funding.⁷ Mandatory accounts fund disability compensation, pensions, vocational rehabilitation and employment, education, life insurance, housing, and burial benefits (such as graveliners, outer burial receptacles, and headstones), among other benefits and services. Discretionary accounts fund medical care,

¹ In general, payments of benefits made to, or on account of, a beneficiary under any law administered by the VA are exempt from federal taxation. Furthermore, benefits are exempt, in most cases, from "attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary" (38 U.S.C. §5301(a)(1)).

² The BVA is part of the Department of Veterans Affairs, located in Washington, DC, and makes the final determination on an appeal within the VA. The BVA reviews all appeals for entitlement to veterans' benefits, including claims for service connection, increased disability ratings, pension, insurance benefits, educational benefits, home loan guaranties, vocational rehabilitation, dependency and indemnity compensation, health care services, and fiduciary matters.

³ For more information, see CRS Report RL34626, *Veterans' Benefits: Disabled Veterans*.

⁴ For more information, see CRS Report R41386, *Veterans' Benefits: Burial Benefits and National Cemeteries*.

⁵ For more information, see CRS Report R42747, *Health Care for Veterans: Answers to Frequently Asked Questions*.

⁶ Mandatory programs funded through the annual appropriations process are commonly referred to as *appropriated entitlements*. In general, appropriators have little control over the amounts provided for appropriated entitlements; rather, the authorizing statute establishes the program parameters (e.g., eligibility rules, benefit levels) that entitle certain recipients to payments. If Congress does not appropriate the money necessary to meet these commitments, entitled recipients (e.g., individuals, states, or other entities) may have legal recourse. For an overview of mandatory spending, see CRS Report RL33074, *Mandatory Spending Since 1962*.

⁷ Funding for discretionary programs is provided and controlled through the annual appropriations process. For more information, see CRS Report R41726, *Discretionary Budget Authority by Subfunction: An Overview*.

medical research, construction programs, information technology, the Office of Inspector General, the Board of Veterans Appeals (BVA), and general operating expenses, among other things. These accounts are further supplemented by revolving funds, such as the Canteen Service Revolving Fund and the Pershing Hall Revolving Fund; trust funds, such as the Department of Veterans Affairs Cemetery Gift Fund and the General Post Fund; and special funds, such as the Medical Care Collections Fund, and the Capital Asset Fund.⁸

Advance Appropriations⁹

In 2009, Congress enacted the Veterans Health Care Budget Reform and Transparency Act of 2009 (P.L. 111-81), authorizing advance appropriations for three of the four VHA accounts: medical services, medical support and compliance, and medical facilities.¹⁰ In 2014, Congress passed the Consolidated and Further Continuing Appropriations Act, 2015 (H.R. 83; P.L. 113-235), which amended 38 U.S.C §117 and included three more accounts in the advance appropriations list of accounts. This act authorizes advance appropriations for three mandatory VA benefits programs within the Veterans Benefits Administration: compensation and pensions, readjustment benefits, and veterans insurance and indemnities. Beginning with the FY2016 Military Construction and Veterans Affairs, and Related Agencies Appropriations Act (MILCON-VA; P.L. 114-113), those accounts received advance appropriations for FY2017 in addition to the three VHA accounts already authorized to receive advance appropriations.

Section 4003 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41) required the establishment of a separate new account for medical community care, beginning with the FY2017 appropriations cycle. The FY2017 MILCON-VA Act (Division A of P.L. 114-223) provides advance appropriations for FY2018 to the new medical community care account while funding the FY2017 requirements for this new account by rescinding from the 2017 advance appropriation amounts in the medical services account enacted in the Consolidated Appropriations Act, 2016 (P.L. 114-113) and reappropriating them.

Congress has authorized advance appropriations of new budget authority for these VBA and VHA accounts to prevent potential delays in the delivery of care and benefits to veterans that may arise in the event of a lapse in funding.

Under present budget scoring guidelines, advance appropriations are scored as new budget authority in the fiscal year in which the funds become available for obligation, not in the fiscal year the appropriations are enacted.¹¹ Therefore, throughout the funding tables in this report,

⁸ For more details about these funds, see Department of Veterans Affairs, *FY2016 Congressional Budget Submission*, Supplemental Information and Appendices, vol. 1 of 4, February 2015, pp. Appendix 117- Appendix 126. For definitions about “revolving funds,” “trust funds,” and “special funds,” see Executive Office of the President, Office of Management and Budget (OMB), OMB Circular No. A-11, *Section 20- Terms and Concepts*, 2016, available at https://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/s20.pdf.

⁹ In general, an appropriations act makes budget authority available beginning on October 1 of the fiscal year for which the appropriations act is passed (“budget year”). However, some types of appropriations do not follow this pattern; among them are advance appropriations. An advance appropriation means appropriation of new budget authority that becomes available one or more fiscal years beyond the fiscal year for which the appropriations act was passed (i.e., beyond the budget year). For more information on advance appropriations, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*.

¹⁰ Codified at 38 U.S.C. §117.

¹¹ Executive Office of the President, Office of Management and Budget (OMB), OMB Circular No. A-11, *Section 20- Terms and Concepts*, 2016, p. 15, available at https://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/s20.pdf; also see OMB Circular No. A-11, *Appendix A -Scorekeeping Guidelines*, 2016, p. 2, available at https://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/app_a.pdf.

advance appropriations numbers are shown under the label “memorandum” and in the corresponding fiscal year column. For example, the Consolidated Appropriations Act, 2016 (P.L. 114-113), provides advance appropriations for the compensation and pensions, readjustment benefits, veterans insurance and indemnities, medical services, medical support and compliance, and medical facilities accounts for FY2017. Funding shown for FY2016 does not include advance appropriations provided in FY2017 by P.L. 114-113 for use in FY2017. Instead, the advance appropriation provided in FY2016 for use in FY2017 is shown in the FY2017 column under the label “memorandum.” Similarly, FY2018 advance appropriations provided in the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223) appear in the FY2018 column under the label “memorandum.”

The Veterans Access, Choice, and Accountability Act of 2014 (Choice Act)

In response to the crisis of access to medical care at many VA hospitals and clinics across the country reported in 2014,¹² Congress passed the Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113-146 as amended by P.L. 113-175, P.L. 113-235, P.L. 114-19, P.L. 114-41, and P.L. 115-26). On August 7, 2014, President Obama signed the bill into law. The act, as amended, makes a number of changes to programs and policies of the VHA that aim to increase access and lower wait times for veterans who seek care at VA facilities. Among other things, the act establishes a new program (the Veterans Choice Program) that would allow the VA to authorize care for veterans outside the VA health care system if they meet certain criteria.¹³ Congress also provided mandatory funding for the Choice Program, with a total of \$10 billion over three years by establishing the Veterans Choice Fund (Section 802 (a) of P.L. 113-146 as amended). Since it was estimated that not all the funds in the Veterans Choice Fund would be exhausted by August 7, 2017, on April 19, 2017, President Trump signed into law P.L. 115-26 (an act to amend the Veterans Access, Choice, and Accountability Act of 2014 to modify the termination date for the Veterans Choice Program, and for other purposes) and eliminated the sunset date of the Veterans Choice Program and allowed any unobligated funds in the Veterans Choice Fund to be used until expended. However, in mid-June 2017, VA notified Congress that due to the increased authorization of appointments, there had been higher rate of usage of VCP funds and VCP would not be able to continue past August 15, 2017, since all the remaining funds for VCP would be fully obligated by then. According to the VA, at least \$3.5 billion in new mandatory budget authority would be needed to continue VCP through FY2018. On August 12, 2017, President Trump signed into law the VA Choice and Quality Employment Act of 2017 (P.L. 115-46), which authorized and appropriated \$2.1 billion for the Veterans Choice Fund (§802 (a) P.L.113-146; 38 U.S.C.§1701 note). These funds would remain available until expended.

In addition, Section 801(a) of the Choice Act (P.L.113-146; 38 U.S.C.§1701 note), provided an additional mandatory funding of \$5 billion to increase veterans’ access to health care by hiring more physicians and staff and to improve VA’s physical infrastructure.

¹² For details, see CRS Insight IN10063, *Wait Times for Veterans Health Not New*, by Sidath Viranga Panangala.

¹³ For a section-by-section description of all the provisions in the act, see CRS Report R43704, *Veterans Access, Choice, and Accountability Act of 2014 (H.R. 3230; P.L. 113-146)*, by Sidath Viranga Panangala et al. For details pertaining to implementation of the Veterans Choice Program, see CRS Report R44562, *The Veterans Choice Program (VCP): Program Implementation*, by Sidath Viranga Panangala.

These mandatory funds are not part of the regular annual appropriations provided in the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223) and the Military Construction and Veterans Affairs—Additional Appropriations Act, 2017 (Division L of P.L. 115-31). Therefore, the Veterans Choice Fund is beyond the scope of this report, and those funds are *not* shown in the tables of this report.

The President's Budget Request for FY2017 and Congressional Action

President's Request

The President's FY2017 budget request for the Department of Veterans Affairs was submitted to Congress on February 9, 2016. The President's FY2017 VA request is approximately \$177.54 billion. This amount, which includes \$102.53 billion in mandatory funding and \$75.01 billion in discretionary appropriations (**Table 1**), is a 9.14% increase over the FY2016-enacted level of \$162.67 billion.

For the Veterans Benefits Administration mandatory programs such as disability compensation, readjustment benefits, and veterans insurance and indemnities, the FY2017 request is \$102.73 billion. This amount includes \$16.60 million over the FY2017 advance appropriations (provided in the Consolidated Appropriations Act, 2016; P.L. 114-113) for the veterans insurance and indemnities programs (**Table 2**).

For the Veterans Health Administration, the Administration's FY2017 request is \$65.66 billion, without collections (**Table 2**). This amount is a 6.30% increase over the FY2016-enacted amount of \$61.76 billion, and includes an additional \$1.72 billion over the FY2017 advance appropriations (provided in the Consolidated and Further Continuing Appropriations Act, 2015; P.L. 113-235) for the three medical care accounts (medical services, medical support and compliance, and medical facilities). The additional resources are for Hepatitis C treatment costs, caregiver programs, infrastructure improvements, and leasing of major medical facilities.

As required by Section 4003 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41), the President's FY2017 budget request includes a new account for VHA: medical community care. This account would fund care that VA provides to eligible veterans through community providers. Funding for this account would be derived from amounts appropriated in FY2017 for the medical services, medical support and compliance, or medical facilities accounts.

As required by P.L. 111-81 and P.L. 113-235, the President's budget request includes \$170.32 billion in advance appropriations for FY2018 for VHA and VBA (**Table 2**). Among other budget request highlights, the President's budget request for construction major projects is \$528.11 million, a decrease of 57.54% compared with the FY2016-enacted amount of \$1.24 billion; for information technology (IT) programs, the request is \$4.27 billion, an increase of 3.50% over the FY2016-enacted amount of \$4.13 billion.

House and Senate Committee Action

This section of the report provides a chronological overview of the House and Senate action on the FY2017 Military Construction, Veterans Affairs, and Related Agencies (MILCON-VA)

appropriations bill. It begins with House action in April 2016 and concludes with the enactment of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223) on September 29, 2016.

House Action

On April 13, 2016, the House Appropriations Committee approved its version of the FY2017 MILCON-VA appropriations bill (H.R. 4974; H.Rept. 114-497). The House passed the measure on May 19. The House-passed measure provides a total of \$176.06 billion for the VA, a slight decrease (0.83%) from the President's request of \$177.54 billion and an 8.23% increase from the FY2016-enacted amount (**Table 1**). This amount includes \$102.53 billion in mandatory appropriations and \$73.53 billion in discretionary appropriations. Of the total amount provided for VA, \$64.79 billion (without collections) is for VHA. The House-passed measure includes \$864 million over the FY2017 advance appropriations (provided in the Consolidated Appropriations Act, 2016; P.L. 114-113) compared with the Administration's request of \$1.72 billion (**Table 2**). The additional resources would fund Hepatitis C treatment costs, veterans homeless programs, the post-9/11 caregiver program, long-term services and supports, and the staffing costs VHA would need to absorb as the Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113-146) Section 801 funds run out.¹⁴ H.R. 4974 (H.Rept. 114-497) provides \$7.24 billion for a new medical community care account. Funding for this account is derived by transferring funds from amounts appropriated in FY2017 for the medical services, medical support and compliance, or medical facilities accounts (**Table 2**). This account was required to be established by P.L. 114-41, and was intended to track funding for all community care programs under a single appropriation account. The House-passed bill funds the medical and prosthetic research account at the same level as the President's request (**Table 2**).

Furthermore, the House-passed measure (H.R. 4974; H.Rept. 114-497) provides \$102.70 billion for VBA programs, a 12.33% increase over the FY2016-enacted amount of \$91.42 billion, and a slight decrease from the President's request of \$102.73 billion. For the National Cemetery Administration, the House-passed measure provides \$14.97 million less than the President's request of \$286.19 million. For information technology programs, H.R. 4974 provides \$4.22 billion, a 1.22% decrease from the requested amount of \$4.27 billion. According to the committee report (H.Rept. 114-497) accompanying the bill: "Although funding constraints require the Committee to provide a funding level below the request, the level provided includes an \$87,506,000, or a 2.1 percent, increase over fiscal year 2016, which will permit investment in high priority areas."¹⁵ These priority areas include the Veterans Benefits Management System, the Board of Veterans Appeals modernization effort, electronic health record (EHR)—VistA Evolution modernization, and interoperability and Virtual Lifetime Electronic Record (VLER) health.¹⁶ It should be noted that during House floor debate, the IT account was increased by \$5 million by decreasing the general administration account by a similar amount (as reflected in the amounts shown in **Table 2**).

The House-passed bill provides \$66.38 billion in advance appropriations for the four medical care accounts (medical services, medical community care, medical support and compliance, and

¹⁴ U.S. Congress, House Committee on Appropriations, *Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2017*, report to accompany H.R. 4974, 114th Cong., 2nd sess., April 15, 2016, p. 35.

¹⁵ *Ibid.*, p. 63.

¹⁶ *Ibid.*, p. 63.

medical facilities) and \$103.93 billion in advance appropriations for mandatory benefit program accounts (compensation and pensions, readjustment benefits, and veterans insurance and indemnities) for FY2018, the same as the President's request for these accounts for FY2018.

Senate Action

On April 14, the Senate Appropriations Committee approved its version of the FY2017 MILCON-VA appropriations bill (S. 2806; S.Rept. 114-237). The Senate passed the FY2017 MILCON-VA appropriations bill on May 19 as an appropriations package that included the FY2017 Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations bill (Division A), the FY2017 MILCON-VA bill (Division B), and the Zika Response Appropriations bill (Title V of Division B).¹⁷ Because appropriations legislation generally originates in the House, and because the House had not yet taken up a FY2017 THUD appropriations bill as of May, the Senate used the FY2016 THUD appropriations bill (H.R. 2577) as the vehicle for this package.

The Senate-passed version of the FY2017 MILCON-VA appropriations bill (Division B of H.R. 2577) provides a total of \$177.39 billion for VA, a 9.04% increase over the FY2016-enacted level of \$162.67 billion and slightly less than the President's request for FY2017. This amount includes \$102.53 billion in mandatory appropriations and \$74.85 billion in discretionary appropriations (**Table 1**). The Senate-passed version (Division B of H.R. 2577) provides \$105.58 billion for VBA programs. This amount includes \$2.85 billion in VBA general operating expenses moved from the departmental administration to VBA programs (**Table 2**). Of note, prior to passage of the FY2012 MILCON-VA appropriations bill (P.L. 112-74), VBA general operating expenses were included with the departmental general operating expenses. With the enactment of P.L. 112-74, VBA general operating expenses were separated into general administration and general operating expenses.¹⁸

Division B of H.R. 2577 provides \$65.52 billion for VHA (without collections), which includes \$1.57 billion over the FY2017 advance appropriations (provided in the Consolidated Appropriations Act, 2016; P.L. 114-113) for the three medical care accounts (medical services, medical support and compliance, and medical facilities), and \$675.36 million for the medical and prosthetic research account—a 1.80% increase over the President's request of \$663.36 million. Division B of H.R. 2577 provides \$7.24 billion for a new medical community care account. Funding for this account is derived by rescinding amounts appropriated in FY2017 for the medical services account. The House-passed measure (H.R. 4974; H.Rept. 114-497) and the President's request would fund this account by transferring funds from the medical services, medical support and compliance, or medical facilities accounts.

Among other highlights, the Senate-passed version of the MILCON-VA appropriations bill includes an administrative provision that allows FY2017 and FY2018 advance appropriations

¹⁷ For more information on the Zika Response Appropriations bill, see CRS Report R44460, *Zika Response Funding: Request and Congressional Action*, coordinated by Susan B. Epstein.

¹⁸ According to H.Rept. 112-94: "The Administration's budget request proposes that funding for the administrative expenses associated with the Veterans Benefits Administration and all Department-wide offices be included within one single appropriation account. The Committee recommendation includes funding for these functions in two separate accounts: General operating expenses, Veterans Benefits Administration, and General administration. The Committee believes that differences in the mission and purpose of the Department's executive offices and the Veterans Benefits Administration justify providing funding in two separate accounts. Further, separating these two broad categories will provide the Congress with greater visibility of budgetary resources and oversight of expenditures for these two vital missions," p. 44.

funds to provide “fertility treatment and counseling, including treatment using assisted reproductive technology, to veterans and their spouses if the veteran has a service-connected condition that results in the veteran being unable to procreate without the use of such fertility treatment.”¹⁹ The bill also contains numerous authorization provisions of veterans programs as administrative provisions.

The Senate-passed bill provides \$66.38 billion in advance appropriations for the four medical care accounts (medical services, medical community care, medical support and compliance, and medical facilities) and \$103.93 billion in advance appropriations for mandatory benefit program accounts (compensation and pensions, readjustment benefits, and veterans insurance and indemnities) for FY2018, the same as the President’s request for these accounts for FY2018.

Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act. (H.R. 5325; P.L. 114-223)

On May 26, 2016, the House concurred with the Senate amendment with an amendment consisting of the text of H.R. 4974, H.R. 5243, and H.R. 897, as passed by the House (H.Res. 751). On June 22, the chairman of the House Appropriations Committee filed a conference agreement reached between House and Senate Republican Members (H.R. 2577; H.Rept. 114-640). The conference agreement to accompany the FY2017 MILCON-VA appropriations bill and the Zika Response and Preparedness Act was approved by the House on June 23; on June 28, July 14, and September 6, 2016, the Senate voted not to invoke cloture on the conference agreement.²⁰

On September 22, 2016, S.Amdt. 5082 to H.R. 5325 was proposed by Senator McConnell, and H.R. 5325 (the Legislative Branch Appropriations bill, 2017), as amended, became the legislative vehicle that included the full year FY2017 MILCON-VA appropriations Act.²¹ Division A of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223) contains the FY2017 MILCON-VA appropriations act (which incorporated language from H.R. 2577; H.Rept. 114-640).²²

Division A of P.L. 114-223 provides \$176.89 billion for VA programs and services. This included \$102.53 billion for mandatory benefits and services and \$74.36 billion for discretionary programs and services. For VBA programs, P.L. 114-223 provided \$105.58 billion. This amount included \$2.85 billion for VBA general operating expenses moved from under the departmental administration accounts to VBA program accounts. For the NCA, the MILCON-VA Appropriations Act provided \$286.19 million.

For the VHA, the MILCON-VA Appropriations Act (Division A of P.L. 114-223) provides \$65.27 billion without collections. Beginning with FY2017, VA programs that provide care in the

¹⁹ Section 247 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017 (Division B of H.R. 2577).

²⁰ For more information on the Zika Response Appropriations bill, see CRS Report R44460, *Zika Response Funding: Request and Congressional Action*, by Susan B. Epstein and Sarah A. Lister.

²¹ An explanatory statement regarding Senate amendment No. 5082 to H.R. 5325 was also published in the *Congressional Record*. See Explanatory Statement Regarding Amendment No. 5082 to H.R. 5325, *Congressional Record*, vol. 162 (September 22, 2016), pp. S5989-S6035.

²² For more information on military construction appropriations, see CRS Report R44639, *Military Construction: FY2017 Appropriations*, by Daniel H. Else.

community (non-VA care) will be funded through a separate medical community care account. This account was established as required by the Surface Transportation and Veterans Health Care Choice Improvement Act (P.L. 114-41) “to consolidate all the VA programs that provide care for veterans in the community from non-VA providers.”²³ For FY2017, the medical community care account is funded at \$7.25 billion and for FY2018 (advance appropriations) it is funded at \$9.41 billion (**Table 2**).

The FY2017 MILCON-VA Appropriations Act provided \$4.28 billion for information technology programs (**Table 2**). Due to issues surrounding interoperability and seamless exchange of medical information among DOD, VA, and private sector health care providers, the FY2017 MILCON-VA Appropriations act—similar to previous MILCON-VA appropriations acts (FY2013-FY2016)—prohibits an obligation or expenditure of more than 25% of FY2017 funds provided for VistA Evolution, or any successor electronic medical records program until VA meets reporting requirements stipulated in the act.²⁴

For construction, major projects Division A of P.L. 114-223 provided \$528.11 million (**Table 2**). Among other provisions, the FY2017 MILCON-VA appropriations act withholds \$222.62 million for VHA major construction projects until the VA enters into an agreement with a non-VA federal entity to serve as the design and/or construction agent for each major construction project with a total estimated cost of \$100 million or above.²⁵ This provision is intended to prevent cost overruns of major construction projects.²⁶

VA Patient Protection Act of 2016²⁷

The FY2017 MILCON-VA appropriations act also includes the VA Patient Protection Act of 2016 as an administrative provision. Section 247 of the FY2017 MILCON-VA appropriations act would establish another process for VA employees to file whistleblower complaints. While it appears that the process for seeking relief under the Whistleblower Protection Act (P.L. 101-12, 103 Stat. 16; P.L. 103-424, 108 Stat. 4361; codified, as amended, in various sections of Title 5, *U.S. Code*) would remain available, such employees could also seek relief pursuant to the provisions added by Section 247. Unlike the Whistleblower Protection Act (WPA), the new process allows VA employees to file whistleblower complaints with their immediate supervisors, with the ability to file a complaint with a next-level supervisor if an immediate supervisor does not make a timely determination or a complaint is not adequately addressed. The new process provides for a central whistleblower office to investigate all of the VA’s whistleblower complaints, including those brought pursuant to the WPA.

If it is determined that a supervisor has engaged in retaliation against a VA whistleblower, for a first offense, the supervisor will be subject to punishment that is not less than a 12-day suspension, but not more than removal. A supervisor will be subject to removal for a second offense. Under the new provisions added by Section 247, a VA supervisor’s treatment of whistleblower complaints will be considered as part of the individual’s performance evaluation.

²³ Explanatory Statement Regarding Amendment No. 5082 to H.R. 5325, *Congressional Record*, vol. 162 (September 22, 2016), p. S6006.

²⁴ *Ibid.*, p. S6008.

²⁵ *Ibid.*, p. S6009.

²⁶ *Ibid.*, p. S6048.

²⁷ This section was prepared by Jon Shimabukuro, Legislative Attorney, in the American Law Division of CRS.

Fertility Treatment and Adoption Reimbursement

Section 260 of the FY2017 MILCON-VA appropriations act (Division A of P.L. 114-223) also allows VA to use current FY2017 and FY2018 (advance appropriations) funds in the medical services account to provide fertility treatment using assisted reproductive technology (ART), such as in-vitro fertilization (IVF), and “adoption reimbursement for veterans and their spouses if the veteran has a service-connected disability that results in being unable to procreate without such fertility treatment.”²⁸ According to the Explanatory Statement accompanying the act, the VA must “develop and publish implementing guidance within 120 days of enactment of this Act [that is by January 27, 2017].”²⁹ The VA published interim-final regulations on January 19, 2017.³⁰ Under this authority as codified in 38 C.F.R. §17.380 and 38 C.F.R. §17.412, VA may provide IVF treatment to eligible veterans and fertility counseling and IVF treatments to spouses of eligible veterans. Authority to provide these fertility counseling and treatment services using assisted reproductive technology (ART) would end on September 30, 2018.

Jason Simcakoski Memorial and Promise Act (title IX of Comprehensive Addiction and Recovery Act of 2016; P.L. 114-198)

Division C of P.L. 114-223 included Section 116(c) that would require the VA to use FY2017 advance appropriations provided in the medical services account of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2016 (P.L. 114-113), to implement the numerous provisions contained in the Jason Simcakoski Memorial and Promise Act (Title IX of P.L. 114-198). The purpose of the act, among other things, is to improve opioid safety and reduce the use of opioids among veterans with chronic pain. Furthermore, the Jason Simcakoski Memorial and Promise Act would establish an office of patient advocacy within the office of the Under Secretary for Health. The office would be required to carry out patient advocacy programs within the VA health care system. No new additional funding was provided by this provision for implementation purposes.³¹

Consolidated Appropriations Act, 2017 (Military Construction and Veterans Affairs—Additional Appropriations Act, 2017; P.L. 115-31, Division L)

On May 5, 2017, President Trump signed into law the Consolidated Appropriations Act, 2017 (H.R. 244; P.L. 115-31). Among other things, Division L of P.L. 115-31 contained the Military Construction and Veterans Affairs—Additional Appropriations Act, 2017. The act provides \$50 million for the medical services account for opioid and substance abuse prevention and treatment, and for implementation expenses related to the Jason Simcakoski Memorial and Promise Act (P.L. 114-198).

²⁸ Explanatory Statement Regarding Amendment No. 5082 to H.R. 5325, *Congressional Record*, vol. 162 (September 22, 2016), p. S6011.

²⁹ *Ibid.*

³⁰ Department of Veterans Affairs, "Interim Final Rule - Fertility Counseling and Treatment for Certain Veterans and Spouses," 82 *Federal Register* 6273 - 6276, January 19, 2017; and Department of Veterans Affairs, "Interim Final Rule; correcting amendment - Fertility Counseling and Treatment for Certain Veterans and Spouses; Correction," 82 *Federal Register* 11152 - 11153, February 21, 2017.

³¹ Also see CRS Report R44653, *Overview of Continuing Appropriations for FY2017 (H.R. 5325)*, coordinated by James V. Saturno.

With this additional appropriation, the total amount provided for VA by Division A of P.L. 114-223 and Division L of P.L. 115-31 for FY2017 is approximately \$176.94 billion. Of this amount, \$74.40 billion is discretionary appropriations and \$102.53 billion is mandatory appropriations (**Table 1**). The total FY2017-enacted amount provided for VHA is \$65.32 billion (**Table 2**).

Table I.VA FY2016-FY2017 Mandatory and Discretionary Appropriations and FY2018 Advance Appropriations

(\$ in Thousands)

	Consolidated Appropriations Act, 2016 (P.L. 114-113)		President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
Total Department of Veterans Affairs (VA)	\$162,671,005	—	\$177,545,236	—	\$176,066,836	—	\$177,391,336	—	\$176,941,336	—
Total Mandatory	\$91,256,062	—	\$102,532,481	—	\$102,532,481	—	\$102,532,481	—	\$102,532,481	—
Total Discretionary	\$71,414,943	—	\$75,012,755	—	\$73,534,355	—	\$74,858,855	—	\$74,408,855	—
Memorandum:										
Advance Appropriations Veterans Benefits Administration, (VBA) ^a	—	\$102,515,876	—	\$103,935,996	—	\$103,935,996	—	\$103,935,996	—	\$103,935,996
Advance Appropriations Veterans Health Administration, (VHA) ^b	—	\$63,271,000	—	\$66,385,032	—	\$66,385,032	—	\$66,385,032	—	\$66,385,032
Total Advance Appropriations	—	\$165,786,876	—	\$170,321,028	—	\$170,321,028	—	\$170,321,028	—	\$170,321,028

Source: Table prepared by the Congressional Research Service based on U.S. Congress, House Committee on Appropriations, *Military Construction, Veterans Affairs and Related Agencies Appropriations Bill, 2017*, Report to Accompany H.R. 4974, 114th Cong., 2nd sess., April 15, 2016; U.S. Congress, Senate Committee on Appropriations, *Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2017*, Report to Accompany S. 2806, 114th Cong., 2nd sess., April 18, 2016; Explanatory

Statement Regarding Amendment No. 5082 to H.R. 5325, *Congressional Record*, vol. 162 (September 22, 2016), pp. S5989-S6035; Explanatory Statement Regarding The House Amendment To The Senate Amendments On H.R. 244, *Congressional Record*, vol. 163 (May 3, 2017), Book III, p. H4112; and H.Rept. 115-188; and S.Rept. 115-130.

- a. As authorized in P.L. 113-235, beginning with FY2017 certain VBA accounts would receive advance appropriations, as provided in the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2016 (Division J of the Consolidated Appropriations Act, 2016, P.L. 114-113). The Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2017 (Division A of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act. H.R. 5325; P.L. 114-223) would provide advance appropriations for FY2018.
- b. Congress first provided advance appropriations for the three VHA accounts in the FY2010 appropriations cycle; the Consolidated Appropriations Act, 2010 (P.L. 111-117), provided advance appropriations for FY2011. Subsequently, each successive appropriation act has provided advance appropriations for the VHA accounts.

Table 2.VA FY2016-FY2017 Appropriations and FY2018 Advance Appropriations
(\$ in Thousands)

Program	Consolidated Appropriations Act, 2016 (P.L. 114-113)		President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223 ; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
Veterans Benefits Administration (VBA)										
Compensation and pensions	\$76,865,545	—	\$86,083,128	—	\$86,083,128	—	\$86,083,128	—	\$86,083,128	—
Readjustment benefits	\$14,313,357	—	\$16,340,828	—	\$16,340,828	—	\$16,340,828	—	\$16,340,828	—
Insurance and indemnities	\$77,160	—	\$91,920	—	\$91,920	—	\$91,920	—	\$91,920	—
<i>Over FY2017 advance appropriations</i>	—	—	\$16,605	—	\$16,605	—	\$16,605	—	\$16,605	—
Housing programs administration	\$164,558	—	\$198,856	—	\$167,612	—	\$198,856	—	\$198,856	—
Vocational rehabilitation loan program	\$31	—	\$36	—	\$36	—	\$36	—	\$36	—
Vocational rehabilitation loan administration	\$367	—	\$389	—	\$389	—	\$389	—	\$389	—
Native American housing loan program	\$1,134	—	\$1,163	—	\$1,163	—	\$1,163	—	\$1,163	—

Program	Consolidated Appropriations Act, 2016 (P.L. 114-113)				President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223 ; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
General operating expenses, VBA ^a	—	—	—	—	—	—	\$2,856,160	—	\$2,856,160	—	—	—
<i>Total, VBA</i>	\$91,422,152	—	\$102,732,925	—	\$102,701,681	—	\$105,589,085	—	\$105,589,085	—	—	—
National Cemetery Administration (NCA)	\$271,220	—	\$286,193	—	\$271,220	—	\$286,193	—	\$286,193	—	—	—
<i>Total, NCA</i>	\$271,220	—	\$286,193	—	\$271,220	—	\$286,193	—	\$286,193	—	—	—
Veterans Health Administration (VHA)												
Medical services	\$47,603,202	—	\$51,673,000	—	\$51,673,000	—	\$51,673,000	—	\$51,673,000	—	\$51,673,000	—
<i>Additional funding over FY2016 advance appropriation</i>	\$2,369,158	—	—	—	—	—	—	—	—	—	—	—
<i>Additional funding over FY2017 advance appropriations</i>	—	—	\$1,078,993	—	\$864,000	—	\$1,078,993	—	\$1,078,993	—	\$1,078,993	—
<i>Additional funding in Division L of P.L. 115-31</i>	—	—	—	—	—	—	—	—	—	—	50,000	—

Program	Consolidated Appropriations Act, 2016 (P.L. 114-113)		President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223 ; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
Medical community care (rescinded from medical services) ^b	—	—	—	—	—	—	(\$7,246,181)	—	(\$7,246,181)	—
Subtotal Medical Services	\$49,972,360	—	\$52,751,993	—	\$52,537,000	—	45,505,812	—	\$45,555,812	—
Medical community care (transfers from other accounts) ^c	—	—	\$7,246,181	—	\$7,246,181	—	—	—	—	—
Subtotal Medical community care	—	—	\$7,246,181	—	\$7,246,181	—	\$7,246,181	—	\$7,246,181	—
Medical support and compliance	\$6,144,000	—	\$6,524,000	—	\$6,524,000	—	\$6,524,000	—	\$6,524,000	—
Medical facilities	\$4,915,000	—	\$5,074,000	—	\$5,074,000	—	\$5,074,000	—	\$5,074,000	—
Additional funding over FY2016 advance appropriations	\$105,132	—	—	—	—	—	—	—	—	—
Additional funding over FY2017 advance appropriations	—	—	\$649,000	—	—	—	\$495,100	—	\$247,668	—

Program	Consolidated Appropriations Act, 2016 (P.L. 114-113)				President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223 ; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
Subtotal Medical facilities	\$5,020,132	—	\$5,723,000	—	\$5,074,000	—	\$5,569,100	—	\$5,321,668	—		
Medical and prosthetic research	\$630,735	—	\$663,366	—	\$663,366	—	\$675,366	—	\$675,366	—		
Total, VHA (without collections)^d	\$61,767,227	—	\$65,662,359	—	\$64,798,366	—	\$65,520,459	—	\$65,323,027	—		
Medical Care Collection Fund (MCCF)	\$2,445,000	—	\$2,637,000	—	\$2,637,000	—	\$2,637,000	—	\$2,637,000	—		
Total, VHA (with collections)	\$64,212,227	—	\$68,299,359	—	\$67,435,366	—	\$68,157,459	—	\$67,960,027	—		
Departmental Administration												
General administration	\$336,659	—	\$417,959	—	\$316,159	—	\$417,959	—	\$345,391	—		
Board of Veterans Appeals	\$109,884	—	\$156,096	—	\$156,096	—	\$156,096	—	\$156,096	—		
General operating expenses, VBA	\$2,707,734	—	\$2,826,160	—	\$2,826,160	—	—	—	—	—		
Information technology	\$4,133,363	—	\$4,278,259	—	\$4,225,869	—	\$4,278,259	—	\$4,278,259	—		

Program	Consolidated Appropriations Act, 2016 (P.L. 114-113)		President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223 ; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
Inspector General	\$136,766	—	\$160,106	—	\$160,106	—	\$160,106	—	\$160,106	—
Construction, major projects	\$1,243,800	—	\$528,110	—	\$528,110	—	\$528,110	—	\$528,110	—
Construction, minor projects	\$406,200	—	\$372,069	—	\$372,069	—	\$372,069	—	\$372,069	—
Grants for state extended care facilities	\$120,000	—	\$80,000	—	\$80,000	—	\$90,000	—	\$90,000	—
Grants for state veterans cemeteries	\$46,000	—	\$45,000	—	\$45,000	—	\$45,000	—	\$45,000	—
<i>Total, Departmental Administration</i>	<i>\$9,240,406</i>	<i>—</i>	<i>\$8,863,759</i>	<i>—</i>	<i>\$8,709,569</i>	<i>—</i>	<i>\$6,047,599</i>	<i>—</i>	<i>\$5,975,031</i>	<i>—</i>
Administrative rescissions and reductions	(\$30,000)	—	—	—	(\$414,000)	—	(\$52,000)	—	(\$232,000)	—
Total, Department of Veterans Affairs (without collections)	\$162,671,005	—	\$177,545,236	—	\$176,066,836	—	\$177,391,336	—	\$176,941,336	—
Memorandum: Advance Appropriations										

Program	Consolidated Appropriations Act, 2016 (P.L. 114-113)		President's Request		House (H.R. 4974)		Senate (H.R. 2577)		Enacted (P.L. 114-223 ; P.L. 115-31)	
	FY2016	FY2017	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018	FY2017	FY2018
Compensation and pensions	—	\$86,083,128	—	\$90,119,449	—	\$90,119,449	—	\$90,119,449	—	\$90,119,449
Readjustment benefits	—	\$16,340,828	—	\$13,708,648	—	\$13,708,648	—	\$13,708,648	—	\$13,708,648
Insurance and indemnities	—	\$91,920	—	\$107,899	—	\$107,899	—	\$107,899	—	\$107,899
Total VBA	—	\$102,515,876	—	\$103,935,996	—	\$103,935,996	—	\$103,935,996	—	\$103,935,996
Medical services	—	\$51,673,000	—	\$44,886,554	—	\$44,886,554	—	\$44,886,554	—	\$44,886,554
Medical community care	—	—	—	\$9,409,118	—	\$9,409,118	—	\$9,409,118	—	\$9,409,118
Medical support and compliance	—	\$6,524,000	—	\$6,654,480	—	\$6,654,480	—	\$6,654,480	—	\$6,654,480
Medical facilities	—	\$5,074,000	—	\$5,434,880	—	\$5,434,880	—	\$5,434,880	—	\$5,434,880
Total VHA	—	\$63,271,000	—	\$66,385,032	—	\$66,385,032	—	\$66,385,032	—	\$66,385,032
Total, VA advance appropriations	—	\$165,786,876	—	\$170,321,028	—	\$170,321,028	—	\$170,321,028	—	\$170,321,028

Source: Table prepared by the Congressional Research Service based on U.S. Congress, House Committee on Appropriations, *Military Construction, Veterans Affairs and Related Agencies Appropriations Bill, 2017*, Report to Accompany H.R. 4974, 114th Cong., 2nd sess., April 15, 2016; U.S. Congress, Senate Committee on Appropriations, *Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2017*, Report to Accompany S. 2806, 114th Cong., 2nd sess., April 18, 2016; Explanatory Statement Regarding Amendment No. 5082 to H.R. 5325, *Congressional Record*, vol. 162 (September 22, 2016), pp. S5989-S6035; Explanatory Statement Regarding The House Amendment To The Senate Amendments On H.R. 244, *Congressional Record*, vol. 163 (May 3, 2017), Book III, p. H4112; H.Rept. 115-188; and S.Rept. 115-130.

- a. The Senate-reported version of the Military Construction, Veterans Affairs and Related Agencies Appropriations Bill, 2017 (S. 2806; S.Rept. 114-237), the Senate-passed (H.R. 2577) version, and the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and

Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223) moves the General Operating Expenses, Veterans Benefits Administration (VBA) account from the Departmental Administration accounts to the VBA program activities accounts.

- b. Section 4003 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41) required the establishment of a separate account for medical community care. The Senate-reported version of the Military Construction, Veterans Affairs and Related Agencies Appropriations Bill, 2017 (S. 2806; S.Rept. 114-237), the Senate-passed (H.R. 2577) version, and the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (H.R. 5325; P.L. 114-223) funds this account by rescinding FY2017 funds from the medical services account and appropriating to the new medical community care account.
- c. Section 4003 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41) required the establishment of a separate account for medical community care. The President's request for FY2017 and the House passed version of the Military Construction, Veterans Affairs and Related Agencies Appropriations Bill, 2017 (H.R. 4974) funds this new account by transferring funds from other medical care accounts.
- d. The VHA total (without collections) is a total of the following: (1) subtotal medical services; (2) subtotal medical community care; (3) medical support and compliance; (4) subtotal medical facilities; and (5) medical and prosthetic research.

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