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GENERAL MEMORANDUM 20-013

FY 2021 Continuing Resolution through December 11, 2020 to Fund All Federal Agencies

The House of Representatives and Senate have passed HR 8337, a Continuing Resolution (CR), to provide funding to keep federal agencies running through December 11, 2020, at largely *FY 2020 terms and spending levels*. The President is expected to sign it before midnight tonight, when the fiscal year ends.

The CR is designed to give Congress leeway to continue negotiating the FY 2021 spending bills even after the beginning of the new fiscal year (October 1, 2020). None of the twelve FY 2021 appropriations bills have been enacted into law, although the House has approved ten of them, including passage of the bill which includes the Interior, Environment, and Related Agencies funding. The Senate Appropriations Committee has not marked up any of its FY 2021 appropriations measures although we understand that they will post proposed spending levels on its website and these will be used as a negotiations marks for conferencing with the House on full year FY 2021 appropriations bills. As Congress is basically out of session until the week following the November 3 election, this important appropriations work will take place during what is termed a "Lame Duck" session.

It has unfortunately become the norm that federal agencies are funded for periods of time under CRs, limiting their ability to plan and requiring their time to constantly reallocate funds. Tribal and tribal organizations are directly affected in the same manner, hence the tribal efforts for enactment of advance appropriations for the Indian Health Service and Indian Affairs budgets.

As is common in CRs, the funds will not be distributed for programs that may have high initial rates of operation or for funds which are fully distributed at the beginning of the fiscal year. This is because of the possibility that Congress might eliminate or reduce funding for those particular programs in a final appropriations bill. The bill directs agencies to use the most limited funding action permitted in the Act in order to provide for continuing of projects and activities.

Health Extenders, Including SDPI. The bill extends the Special Diabetes Program for Indians (SDPI) from its current expiration date of November 30, 2020, to December 11, 2020, – a 12 day extension. The Community Health Centers and the National Health Service Corps are also extended to December 11, 2020.

IHS, BIA, BIE. The bill does *not* include any specific new funding above FY 2020 levels for the Indian Health Service or Indian Affairs (BIA/BIE).

One-Year Surface Transportation Extension. The CR contains an extension of the current surface transportation authorization (highway bill) at FY 2020 terms and funding levels. The Tribal Transportation Program is among the many programs authorized by the surface transportation authorization. Absent this extension, the current surface transportation authorization was set to expire today. The CR also contains a \$13.6 billion transfer from the U.S. Treasury General Fund to the Highway Trust Fund to ensure its solvency this year.

Human Services and Nutrition. Entitlement funding is maintained for the Temporary Assistance for Needy Families and Child Care during the CR period. The CR also contains a provision to renew some pandemic-funding for subsidized meals for children who would normally receive them when schools are open and for Food Stamp (SNAP) pandemic-related flexibilities.

Attached is a 9-page summary of the CR prepared by the House Appropriations Committee.

Please let us know if we may provide additional information regarding this Continuing Resolution.

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H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act of 2020
Section-by-Section Summary of Bipartisan Continuing Resolution

DIVISION A – CONTINUING APPROPRIATIONS

Section 101. Extension of FY 2020 Funding, with Exceptions.

Section 101 appropriates funding at the levels provided in fiscal year 2020 appropriations bills, with exceptions to address technical budgetary issues, exclude one-time emergency funding, and extend certain immigration extensions and authorities.

Section 102. Prevention of New Multi-Year Activities at DOD, with Limited Exceptions.

Section 102 prevents the Department of Defense from beginning new multi-year activities during the period of the CR with limited exceptions.

Section 103. Same Terms and Conditions for Continuing Appropriations as FY 2020.

Section 103 states that appropriations are under the same terms and conditions, including relevant authorities and prohibitions, as the fiscal year 2020 appropriations bills.

Section 104. Prevention of New Starts and Activities Outside DOD.

Section 104 prevents new starts and activities outside the Department of Defense.

Section 105. Technical Budget Matter.

Section 105 contains technical budget matter identifying appropriations in the Continuing Resolution as the most appropriate funding with which to conduct fiscal year 2021 activities and programs.

Section 106. End Date of CR.

Section 106 provides that the CR ends at the earlier of the enactment of a full-year appropriations bill or December 11, 2020.

Section 107. Requirement to Charge CR Spending to Enacted Full-Year Appropriations Bill.

Section 107 requires that spending under the CR should be charged to the full-year appropriations bill when such bill is enacted.

Section 108. Daily Spending Rate for Agency Operations.

Section 108 provides agencies with a daily rate for operations unless Congress allows them to spend funds more quickly.

Section 109. Expenditures for Grant Programs and Similar Payments.

Section 109 prevents agencies from spending money too quickly for grant programs and similar payments, language needed because Congress has not made final funding determinations.

Section 110. Reiterating That Funding Should be Spent in the Most Limited Manner Possible.

Section 110 reiterates that funding should be spent in the most limited manner possible, language needed because Congress has not made final funding determinations.

Section 111. Operations of Mandatory Programs and Appropriated Entitlements.

Section 111 states that mandatory programs and appropriated entitlements should operate as normal. In the case of a government shutdown, provides some of those programs with an additional 30 days beyond December 11, 2020 to operate.

Section 112. Restrictions on Furloughs or Termination of Employees.

Section 112 restricts furloughs or termination of employees due to lack of funds during the duration of a CR.

Section 113. Waiver Language for Intelligence Programs.

Section 113 provides waiver language for certain intelligence programs as well as agencies that operate under the State Department Basic Authorities Act and Foreign Relations Authorization Act.

Section 114. Specially Designated Funds Including OCO, Disaster, Emergency.

Section 114 dictates that specially designated funds (OCO, disaster, emergency, etc.) in fiscal year 2020 appropriations bills should be considered the same type of funding.

Section 115. Directions for OMB and Agencies on Executing a CR.

Section 115 directs OMB and agencies to execute a CR by accounting for the levels provided to them by this CR inclusive of any rescissions that were in last year's bills.

Section 116. Rural Water and Waste Disposal Program Loan Levels.

Section 116 allows the Department of Agriculture to continue to issue loans for clean and reliable water systems in rural areas.

Section 117. Summer EBT.

Section 117 allows the Food and Nutrition Service to spend at a higher rate during the CR to ensure the Summer EBT program is fully operational by May 2021.

Section 118. Commodity Supplemental Food Program.

Section 118 allows the Food and Nutrition Service to spend at a higher rate during the CR to provide supplemental USDA foods to low-income seniors (age 60 and over) and to some low-income women, infants and children up to age six.

Section 119. Agricultural Credit Insurance Fund Program.

Section 119 ensures USDA can fully meet the demand for Direct and Guaranteed Farm Ownership loans, especially for beginning and socially disadvantaged farmers.

Section 120. Livestock Mandatory Reporting Act Extension.

Section 120 allows USDA to continue requiring reports on prices, contracts, and other purchasing information from cattle, swine, and sheep packers and processors to facilitate informed marketing decisions.

Section 121. Grain Standards Act Extension.

Section 121 allows USDA to continue to collect fees for grain inspection and weighing services, and to conduct activities related to grain export and domestic markets.

Section 122. HEMP Act Extension.

Section 122 extends the authorization for the hemp pilot program.

Section 123. OTC Monograph User Fee Program.

Section 123 allows the FDA to collect user fees to supplement its ongoing work to review over the counter drugs and regulate production facilities, which can help increase access to over the counter drugs on the marketplace.

Section 124. Census Bureau Funding.

Section 124 specifies the rate of funding during the period of the continuing resolution for the Census Bureau's Periodic Censuses and Programs account and the 2020 Decennial Census Program.

Section 125. Columbia Class Submarine.

Section 125 makes apportioned funding available for the Columbia Class Submarine procurement program during the period of the continuing resolution and allows the Navy to enter into a contract award which supports the procurement of the first two Columbia Class Submarines. The provision allows for incremental funding authority and contains liability provisions for the Federal Government.

Section 126. Extending Availability of DoD Inspector General Funding.

Section 126 rescinds unobligated funding provided for the Department of Defense Inspector General under the CARES Act and provides an equivalent amount for the same purposes through September 30, 2021.

Section 127. Ensuring Availability of Funds for DOE's Western Area Power Administration.

Section 127 prevents a transfer of funds from the Department of Energy's Western Area Power Administration to the general fund of the Treasury and ensures that amounts are available for use in future fiscal years.

Section 128. Extension of Reclamation Drought Response Authorization.

Section 128 extends dates in the Reclamation States Emergency Drought Relief Act, ensuring that the Bureau of Reclamation can provide emergency drought assistance in 17 western states.

Section 129. Extension for District of Columbia Voucher School Accreditation.

Section 129 allows District of Columbia voucher schools an additional year to be accredited and therefore remain in the program. The accrediting process requires in-school visits, which are not happening during the coronavirus.

Section 130. District of Columbia Local Funds

Section 130 allows the District of Columbia to spend FY 2021 funds received from local tax revenues and other non-Federal sources in the amount and for the programs and activities provided in DC's FY 2021 Budget Act.

Section 131. Additional Funding for Presidential Inauguration Activities

Section 131 provides additional funding to the District of Columbia for activities related to the Presidential Inauguration.

Section 132. Increased Flexibility to Process Certain SBA Loans.

Section 132 allows the Small Business Administration flexibility to spend at the rate necessary to accommodate potential demand increases for commitments for 7(a) business loans and for the Small Business Investment Company (SBIC) program.

Section 133. Increased Flexibility to Process SBA Disaster Loans.

Section 133 allows a higher spending rate for the Small Business Administration to continue to process and service new and existing disaster loans, particularly given the increased demand.

Section 134. Additional Funding for Presidential Transition Office Space.

Section 134 provides funding for Presidential transition services including the provision of office space suitable for staff to support the ingoing and outgoing administrations.

Section 135. Increased Flexibility for Government Rental Payments.

Section 135 provides a higher rate of spending for the General Services Administration's rental account so that they can make payments on leased property.

Section 136. Additional Funding for Presidential Transition.

Section 136 provides funding for the Executive Office of the President to provide administrative support for a Presidential transition.

Section 137. Additional Funding for Presidential Transition Archival Activities.

Section 137 provides funding for the National Archives and Records Administration to support taking custody of Presidential records and artifacts by Inauguration Day in the event of a Presidential transition.

Section 138. Increased Flexibility for Background Check Administrative Expenses.

Section 138 allows a higher spending rate for the Office of Personnel Management to pay administrative expenses related to services provided to the Department of Defense for National Background Investigations Bureau.

Section 139. Extension of Certain Bankruptcy Judgeships.

Section 139 extends the term of certain bankruptcy judgeships.

Section 140. Extension of Authority to Provide Paid Leave.

Section 140 extends the authority to allow reimbursement to qualifying contractors for the costs of providing paid leave to employees during the pandemic.

Section 141. Department of Homeland Security Working Capital Fund.

Section 141 will permit the Department of Homeland Security to realign funding currently associated with Working Capital Fund activities, consistent with the budget request for fiscal year 2021.

Section 142. Coast Guard Pay Authority.

Section 142 authorizes the Coast Guard to use Operations and Support funding to pay the salaries of Coast Guard employees who are normally paid through fee collections, which have decreased during the pandemic.

Section 143. Great Lakes Pilotage Advisory Committee.

Section 143 continues the authorization for the Great Lakes Pilotage Advisory Committee during the period of the continuing resolution.

Section 144. Cybersecurity and Infrastructure Security Agency (CISA) Accounting Structure.

Section 144 permits CISA to begin fiscal year 2021 using a new accounting structure for programs, projects, and activities under each of its funding accounts.

Section 145. Disaster Relief Fund (DRF).

Section 145 allows the Federal Emergency Management Agency to access the entire DRF appropriation for fiscal year 2021 under the continuing resolution as necessary to respond to declared disasters.

Section 146. National Flood Insurance Program (NFIP).

Section 146 continues the authorization for the NFIP through September 30, 2021.

Section 147. Land and Water Conservation Fund.

Section 147 reduces discretionary funding from the Land and Water Conservation Fund since those funds are now mandatory appropriations under the Great American Outdoors Act.

Section 148. Forest Service National Forest System Account Restructuring.

Section 148 allows the Forest Service to transition certain accounts to a new budget structure as required by Congress.

Section 149. Maintaining Funding for the TANF and Child Care Entitlement to States Programs.

Section 149 extends funding for the Temporary Assistance for Needy Families program and the Child Care Entitlement to States program during the period of the continuing resolution. The extension will allow HHS to make first-quarter payments to States.

Section 150. Extending Availability of Funding to Replace the Lake Lynn Experimental Mine and Laboratory.

Section 150 extends the availability of funding for the Centers for Disease Control and Prevention to replace a mine safety research facility.

Section 151. Delayed Obligation of Mandatory Funding.

Section 151 continues the rescission and delayed obligation of funding that would not be available for obligation in fiscal year 2021 for various mandatory programs.

Section 152. Extending Availability of Funding for NIH multiyear research grants.

Section 152 extends the availability of funding for multiyear research grants supported by the National Institutes of Health that were interrupted in fiscal year 2020 by COVID-19 and would have expired at the end of the fiscal year.

Section 153. Rehabilitation Services Administration Grant Extension.

Section 153 extends the authority for the Rehabilitation Services Administration Automated Personalization Computing Project.

Section 154. National Advisory Committee on Institutional Quality and Integrity (NACIQI).

Section 154 extends the authorization for NACIQI.

Section 155. Account Maintenance Fees.

Section 155 extends the Account Maintenance Fees authority.

Section 156. Corporation for National and Community Service (CNCS).

Section 156 fixes a drafting error in the CARES Act related to funding availability for CNCS.

Section 157. Death Gratuity for the Beneficiaries of the Honorable John R. Lewis.

Section 157 provides the customary death gratuity for the beneficiaries of the Honorable John R. Lewis, late a Representative from Georgia.

Section 158. Transition Activities.

Section 158 increases the funding available to the House of Representatives during the period of the continuing resolution to allow the House to begin preparations for the 117th Congress.

Section 159. Extension of Current Authorities for Certain Contractors.

Section 159 extends authorities allowing payments to certain contractors.

Section 160. Contractor Performances.

Section 160 provides the Library of Congress with the authority to extend certain contracts that have been delayed.

Section 161. Technical Correction on Veterans Benefits.

Section 161 provides a technical correction to the Fiscal Year 2021 advance appropriation provided in division F of Public Law 116-94 for the Department of Veterans Affairs Compensation and Pensions account, to ensure that funds for veterans' benefits may remain available until expended.

Section 162. Increasing Veterans Electronic Health Record Modernization Funding.

Section 162 increases the funding available to the Veterans Electronic Health Record Modernization during the period of the continuing resolution to successfully deploy the health record system at planned sites during the first fiscal quarter.

Section 163. Providing Funding for the Veterans Canteen Service.

Section 163 allows a transfer of funds from the CARES Act to maintain the operations of the Veterans Canteen Service.

Section 164. Repatriation Loans.

Section 164 allows the State Department to obligate the amount provided by the continuing resolution in the Repatriation Loans Program Account at a rate for operations necessary to accommodate increases in repatriation loans during the period of the CR.

Section 165. Passport Surcharge.

Section 165 extends authority provided in the CARES Act authorizing the Department of State to use passport and immigrant visa security surcharges for the cost of providing consular services, including services to American citizens abroad.

Section 166. Maintaining Consular Operations.

Section 166 for the period of the continuing resolution expands the use of Western Hemisphere Travel Initiative surcharges to cover a wider range of consular operations and incorporates the Consular and Border Security Programs (CSBP) account into the FY 2020 transfer authority, allowing the transfer of either prior year balances or CR funding provided under Administration of Foreign Affairs accounts into CBSP for the purpose of sustaining consular operations, mitigating the most severe impacts of reduced consular fee revenue.

Section 167. Assistance to Sri Lanka.

Section 167 circumvents the conditions on Sri Lanka applied to FY 2020 funds and funds for the period of the continuing resolution (CR) and allows funding to be used for disaster relief; to protect human rights, locate and identify missing persons, and assist victims of torture; to promote justice, accountability, and reconciliation; to enhance maritime security and domain awareness; and for International Military Education and Training.

Section 168. Advisory Commission on Public Diplomacy.

Section 168 extends authorization for the Advisory Commission on Public Diplomacy, which expires on October 1, for one-year.

Section 169. National Infrastructure Investments (BUILD).

Section 169 assists state, local, and tribal governments and other applicants who were awarded BUILD grants in fiscal years 2017 and 2018, Section 169 provides increased flexibilities by extending obligation deadlines.

Section 170. Government National Mortgage Association (GinnieMae).

Section 170 provides the Government National Mortgage Association with the authority to securitize a sharp increase in Federal mortgages due to historically low mortgages rates.

Section 171. Choice Neighborhood Initiative.

Section 171 extends the liquidation period for certain Choice Neighborhoods Initiative grants from fiscal year 2013.

Section 172. Housing for the Elderly.

Section 172 allows HUD to obligate funding under the CR formula for Housing for the Elderly programs at a rate for operations necessary to maintain project rental assistance for the elderly and to continue the Integrated Wellness in Supportive Housing (IWISH) demonstration program.

Section 173. Commodity Credit Corporation Reimbursement.

Section 173 allows the Commodity Credit Corporation (CCC) to be replenished for net realized losses sustained and not reimbursed as of September 17, 2020, in order to make required farm assistance and other payments.

DIVISION B – SURFACE TRANSPORTATION PROGRAM EXTENSION

Division B contains provisions in the jurisdiction of the Committee on Transportation and Infrastructure, including a one-year extension for surface transportation programs at fiscal year 2020 levels and provisions shoring up the Airport and Airway Trust Fund. The division also includes a one-year reauthorization for the Appalachian Regional Commission.

DIVISION C – HEALTH EXTENDERS

Title I – Public Health Extenders and Miscellaneous

Section 2101. Community Health Centers, National Health Service Corps, and Teaching health centers that operate graduate medical education.

Section 2101 extends funding for Community Health Centers, National Health Service Corps, and the Teaching Health Centers Graduate Medical Education Program through December 11, 2020.

Section 2102. Diabetes programs.

Section 2102 extends funding for the Special Diabetes Program and the Special Diabetes Program for Indians through December 11, 2020.

Section 2103. Personal responsibility education.

Section 2103 extends the authorization of the Personal Responsibility Education Program (PREP) to December 11, 2020 on a pro rata basis of the amount appropriated for Fiscal Year 2020.

Section 2104. Sexual risk avoidance education.

Section 2104 extends the authorization of the Sexual Risk Avoidance Education (SRAE) program to December 11, 2020 on a pro rata basis of the amount appropriated for Fiscal Year 2020.

Section 2105. Rare pediatric priority review voucher extension.

Section 2105 extends the Rare Pediatric Priority Review Voucher (PRV) program at the Food and Drug Administration through December 11, 2020.

Section 2106. Authorization to accumulate excess annual leave.

Section 2106 extends the amount of leave U.S. Public Health Service (USPHS) Commissioned Corps members may accrue to 120 days through September 30, 2023. This aligns USPHS accrued leave policies with all other branches of the uniformed and federal services.

Section 2107. HHS Services and Supply Fund.

Section 2107 clarifies the authority of the National Institutes of Health (NIH) and Office of the Secretary (OS) Service and Supply Fund to continue providing services to other agencies. NIH was given this administrative charge by the Office of Management and Budget, and this technical fix would clarify this authority to allow NIH to continue its services.

Title II – Medicare Extenders

Section 2201. Extension of the work geographic practice cost index floor under the Medicare Program.

Section 2201 extends the provision setting the work geographic practice index floor at 1.0 for all localities that are currently less than 1.0 through December 11, 2020.

Section 2202. Extension of funding for quality measure endorsement, input, and selection.

Section 2202 extends funding through December 11, 2020 for quality measure selection and to support HHS's contract with a consensus-based entity (e.g., the National Quality Forum) for quality measurement and performance improvement activities.

Section 2203. Extension of funding outreach and assistance for low-income programs.

Section 2203 extends funding through December 11, 2020 for low-income Medicare beneficiary outreach, enrollment, and education activities provided through State Health Insurance Assistance Programs, Area Agencies on Aging, Aging and Disability Resource Centers, and the National Center for Benefits and Outreach and Enrollment.

Title III – Medicaid Extenders

Section 2301. Extension of Money Follows the Person Rebalancing Demonstration.

Section 2301 provides funding for the Money Follows the Person Rebalancing Demonstration through December 11, 2020.

Section 2302. Extension of spousal impoverishment protections.

Section 2302 extends protections against impoverishment for the spouses of individuals receiving home- and community-based services (HCBS) through December 11, 2020.

Section 2303. Delay of DSH reductions.

Section 2303 delays implementation of the allotment reductions for Medicaid disproportionate share hospitals through December 11, 2020.

Section 2304. Extension of Community Mental Health Services Demonstration Program.

Section 2304 extends the authorization for the certified community behavioral health clinics demonstration through December 11, 2020.

Title IV – Part B Premium Adjustment

Section 2401. Medicare Part B Premium Adjustment.

Section 2401 protects Medicare beneficiaries from the expected increase in Part B premiums for 2021 likely to result from the COVID-19 public health emergency and the Medicare Advance Payment program loans, which were paid from the Supplemental Medical Insurance (SMI) Trust Fund. Specifically, it holds the 2021 Part B monthly premium at the 2020 amount for the standard premium, plus 25 percent of the difference between the 2020 amount and the preliminary monthly actuarial rate for 2021, according to models from the CMS Office of the Actuary. Beneficiaries will pay a small surcharge – equating to about \$3 for the vast majority of seniors – on the monthly premium until the SMI Trust Fund is paid back. This provision also transfers funds from the general fund of the Treasury to the SMI equal to the amount paid by the SMI to providers via the Medicare Advance Payment program.

Title V – Improving the Accelerated and Advance Payment Programs

Section 2501. Medicare Accelerated and Advance Payment Program Changes.

Section 2501 extends both the period before repayment begins and the period before the balance must be repaid in full, reduces the recoupment percentage, and lowers the interest rate for payments made under the Medicare

Accelerated and Advance Payment Programs and comparable programs between the date of enactment of the CARES Act and the end of the COVID-19 public health emergency.

Title VI – Offsets

Section 2601. Inclusion in the Medicaid Drug Rebate Program of Covered Outpatient Drugs Used for Medication-Assisted Treatment.

Section 2601 clarifies that drugs and biologicals used for medication assisted treatment, which must be covered by Medicaid beginning October 1, 2020, will continue to be eligible for rebates under the Medicaid program.

Section 2602. Medicaid improvement fund.

Section 2602 provides increased funding for the Medicaid improvement fund.

DIVISION D – OTHER MATTERS

This division includes the Emergency Stopgap USCIS Stabilization Act and provisions extending programs in the jurisdiction of the Committee on the Judiciary, as well as technical budgetary provisions. In addition:

Title IV – Nutrition and Commodities Programs

Section 4601. P-EBT Program Extension and Expansion.

Section 4601 extends the Pandemic EBT program, which provides resources to families with children who would have otherwise received free or reduced-price meals in school but for pandemic-related school closures or reduced attendance hours, through September 30, 2021. It also expands the program to include children at child care centers effected by COVID-19 closures and reduced attendance hours.

Section 4602. Nutrition Waivers Extension.

Section 4602 extends waivers for the National School Lunch Program and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) that were included in the Families First Coronavirus Response Act until September 30, 2021.

Section 4603. Supplemental Nutrition Assistance Program (SNAP) Waivers Extension.

Section 4603 allows states to extend administrative flexibilities for SNAP through September 30, 2021.

Section 4604. Prohibition on Payments to Fossil Fuels Refiners and Importers.

Section 4604 prohibits the Commodity Credit Corporation (CCC) or the Department of Agriculture from providing payments or otherwise supporting fossil fuel refiners and importers.