



Senate Amendment to House Amendment to Senate Amendment to H.R. 195 - Extension of Continuing Appropriations Act, 2018 (Rep. Frelinghuysen, R-NJ)

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FLOOR SCHEDULE:

The [Senate Amendment to House Amendment to Senate Amendment to H.R. 195](#) (the “Senate Continuing Resolution” or “Senate CR”) may be considered on January 22, 2018 pursuant to a unanimous consent agreement.

TOPLINE SUMMARY:

The Senate CR would extend defense and non-defense discretionary funding to February 8, 2018, at current levels as provided in H.R. 601, [the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017](#) (the “September 2017 CR”).

Discretionary appropriations covered by this CR lapsed on January 20, 2018.

COST:

The Senate CR does not have a Congressional Budget Office (CBO) cost estimate at this time. However, CBO did release a cost estimate for the [House CR](#). Like the Senate CR, the House CR (Division B) would also extend discretionary government funding at current levels as provided in the September 2017 CR, albeit for a shorter period. Accordingly, the [CBO cost estimate for Division B of the House CR](#), which is based on an annualized rate, is instructive as to the budgetary impacts of the Senate CR.

According to CBO, Division B of the House CR would provide funding at a \$1.071 trillion annualized rate for base purposes, which is slightly above the FY 2017 spending levels. To achieve this level, the House CR would continue the across-the-board reduction of 0.6791 percent initially instituted in the September 2017 CR. After adding in cap-exempt spending,¹ the House CR would provide for total discretionary spending at an annualized rate of \$1.225 trillion.

The House CR would continue base funding levels above the Budget Control Act (BCA) caps: \$2.43 billion over for defense and \$3.72 billion over for non-defense. For FY 2018, the BCA caps limit base defense spending to \$549.06 billion and non-defense spending to \$515.75 billion. The Senate CR would perpetuate spending above the BCA caps as well.

¹ This includes \$104.4 billion for Overseas Contingency Operations, \$6.7 billion for disaster relief, \$1.9 billion for program integrity, and \$41.2 billion for emergency requirements.

Under the Budget Control Act, spending levels that exceed the BCA caps normally would result in a sequestration order from the Office of Management and Budget (OMB) 15 days after the adjournment of the First Session of the 115th Congress. The order would be enforced through across-the-board cuts to non-exempt programs to offset the breach in each category. However, the [Continuing Resolution passed by the House on December 21, 2018](#) contained a provision delaying any potential enforcement of the discretionary spending caps via a sequestration order until 15 days after January 19, 2018. The Senate CR, by virtue of changing the expiration date of government funding, changes the date from which the 15-day period for enforcement of the BCA caps starts to February 8, 2018.

| CR Base Discretionary Funding Levels (in millions of dollars) | | | |
|--|---------------------|-------------------------|-------------------|
| | Base Defense | Base Non-Defense | Total Base |
| House CR | 551,489 | 519,469 | 1,070,958 |
| FY 2018 Caps | 549,057 | 515,749 | 1,064,806 |
| | | | |
| House CR vs. FY 2018 Caps | + 2,432 | + 3,719 | + 6,151 |

Budgetary Waivers:

Division E of the bill contains a number of provisions waiving the budgetary impacts of Division C (CHIP extension) and Division D (Obamacare tax suspensions).

Division E would waive the requirement that the budgetary impact of Divisions C and D be added to the annual [statutory PAYGO scorecard](#) maintained by OMB. By doing so, any deficit impact would not be offset by across the board spending cuts to non-exempt programs through the sequestration process.

The Senate PAYGO rule establishes a point of order -- requiring 60 votes to overcome -- against tax and mandatory spending legislation that would increase or produce the deficit over a 6 or 11-year period. The [FY2018 budget resolution](#) restates the 6 and 11-year tests and adds new current year and budget year tests. Division E would waive any budgetary impact of Divisions C and D from these scorecards.

Division E would also would exempt any budgetary impact of Divisions C and D for purposes of the BCA’s discretionary sequestration.

CONSERVATIVE CONCERNS:

Some conservatives may be pleased the Senate CR would end the Schumer Shutdown, ensuring that soldiers serving in harm’s way receive their pay.

Some conservatives may be concerned with passing a CR that includes funding for defense programs at current levels instead of full-year defense funding and a short term non-defense continuing resolution.

Some conservatives may be concerned that passing a CR as short as 15 days adds pressure on Republican leadership to reach an agreement with Democrats regarding immigration and raising the BCA spending caps and could increase the leverage of Democrats in those negotiations.

Many conservatives oppose continuing resolutions that apply to defense spending arguing that they negatively impact military training, readiness, equipment, and personnel.

Conservatives may be concerned that the bill extends the discretionary appropriations originally provided by [H.R.244, the Consolidated Appropriations Act 2017 \(“FY 2017 Omnibus”\)](#) that was passed with [primarily Democratic support](#). For conservative concerns of the FY 2017 Omnibus, the RSC Legislative Bulletin is available [here](#).

Some conservatives oppose continuing resolutions arguing that they perpetuate an inability of Congress to wield its power of the purse and properly carry out the annual appropriations process to prioritize funding decisions based on the will of the voters that elected them. The Senate CR would be the fourth CR passed by Congress since the FY 2017 Omnibus.

Some conservatives may be concerned that passing a string of continuing resolutions under the threat of a government shutdown gives Democrats leverage on each occasion to extract concessions on liberal policy items.

Some conservatives may be concerned that the Senate CR would continue to appropriate discretionary funding in excess of the FY 2018 BCA spending caps despite being nearly four months into the 2018 fiscal year.

Some conservatives may be concerned that the bill contains a number of provisions waiving the budgetary impacts of Divisions C and D of the bill for purposes of Statutory PAYGO, the Senate PAYGO rule, and the BCA’s discretionary sequestration mechanism.

Some conservatives may be concerned that one of the bill’s spending anomalies – provisions that enumerate exceptions to the duration, amount, or purposes for which those funds may be used for certain appropriations accounts or activities – would allow the Department of Defense to use previously appropriated emergency missile defense funds for intelligence activities not specifically enumerated in that appropriation.

Some conservatives may be concerned that the bill would reauthorize CHIP for six years while only gradually phasing out the Obamacare match-rate increase and would extend an Obamacare requirement that states must maintain income eligibility for children enrolled in Medicaid or CHIP.

Some conservatives may be concerned the bill would deposit \$980 million in the Medicaid Improvement Fund which would allow the HHS Secretary to use these funds beginning in FY 2023. Congress has historically used the Medicaid Improvement Fund as a "parking spot" to bank savings to offset future spending.

- **Expand the Size and Scope of the Federal Government?** Yes. The bill would eliminate application of a restriction on the use of previously appropriated funds for intelligence activities. The bill would also increase the amount of funding for certain healthcare related programs.
- **Encroach into State or Local Authority?** Some conservatives may believe that many of the programs and activities funded by this bill would be more appropriately handled by state and local governments, or the private sector.
- **Delegate Any Legislative Authority to the Executive Branch?** Some conservatives believe that continuing resolutions delegate authority regarding spending to the Executive Branch.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

Division B - Continuing Resolution²

The Senate CR would extend discretionary appropriations for defense and non-defense programs through February 8, 2018. It would do so by extending the expiration date of the [September CR](#), which provided continuing discretionary appropriations through December 8, 2017, and was subsequently extended by [H.J.Res. 123, the Continuing Appropriations Act](#) through December 22, 2017, and then by [H.R. 1370, Further Continuing Resolution](#) through January 19, 2018.

The Senate CR would extend the National Flood Insurance Program through February 8, 2018 by virtue of extending the September CR.

For background, the September CR, which [passed the House 316-90 with primarily Democratic support](#) on September 8, 2017, provided funding through December 8, 2017 by extending appropriations, funds, and other authority made available by the [FY 2017 Omnibus](#). The FY 2017 Omnibus [passed the House 309-118 on May 3, 2017, again with primarily Democratic support](#). A more complete history of the FY 2017 appropriations process can be found in the [RSC's Legislative Look Ahead – FY 2017 Appropriations](#).

Anomalies

Division B contains a number of anomalies – provisions that enumerate exceptions to the duration, amount, or purposes for which those funds may be used for certain appropriations accounts or activities.

Under [existing law](#), appropriated funds cannot be used for an intelligence activity unless Congress specifically authorizes funding to be used for the activity. H.R. 195 would lift this restriction with respect to \$4.68 billion appropriated under the December CR and designated therein for missile defense purposes and naval ship repairs.

The bill would allow funds to be obligated at a rate necessary to ensure that a Department of Agriculture program designed to develop and test methods of providing access to food for children in urban and rural areas during the summer months can be fully operational by May 2018.

The bill would allow funds to be obligated at a rate necessary to maintain the planned launch capability schedules for the Space Launch System launch vehicle, Exploration Ground Systems, and Orion Multi-Purpose Crew Vehicle programs.

The bill would allow funds to be obligated at a rate necessary to sustain staffing levels achieved on June 30, 2017 within the Department of Energy's Energy Programs Inspector General Office.

The bill would allow funds to be obligated at a rate necessary to accommodate increased demand for small businesses loans. Some conservatives may feel that subsidizing private businesses in the form of loans is an inappropriate use of federal taxpayer money and interferes with free markets.

The bill would allow the Department of Housing and Urban Development to adjust its funding allocations related to administration of the Section 8 housing voucher program to public housing agencies in areas receiving a presidential disaster declaration in 2017 and 2018. Some conservatives may feel that the Section 8 housing program is a wasteful use of taxpayer money that does a poor job of helping beneficiaries improve their education or earnings.

DIVISION C

² The legislative language that would appear prior to the continuing resolution language consists of the text of [H.R. 195, the Federal Register Printing Savings Act of 2017](#), as passed by the House and the Senate. This legislative language is *not* a matter of disagreement between the House and Senate, and is not modified by the Senate Amendment to the House Amendment to the Senate Amendment to H.R. 195.

Division C would extend funding for the Children's Health Insurance Program (CHIP) through FY 2023 and gradually eliminate the temporary 23 percent increase to the federal CHIP matching rate provided under Obamacare. It would also extend funding for certain pediatric-related public health programs, [the childhood obesity demonstration project](#) (\$30 million) and certain activities related to pediatric quality measures (\$90 million). The six-year funding extension follows the model of a [bipartisan agreement](#) between Senators Hatch and Wyden that, if enacted, would extend CHIP funding for five years.

Previously, the [Congressional Budget Office \(CBO\)](#) scored the Hatch-Wyden proposal as increasing direct spending by \$8.2 billion over the FY2018-FY2027 period, and the House voted [242-174](#) on November 3, 2017 to advance this proposal with full offsets. Following repeal of Obamacare's harmful individual mandate, however, the Congressional Budget Office (CBO) [substantially revised cost estimates](#) given that "the federal costs of the alternatives to providing coverage through CHIP (primarily Medicaid, subsidized coverage in the marketplaces, and employment-based insurance) are larger than the costs of providing CHIP during that period."

Specifically, under H.R. 195 CHIP would be funded at the following levels:

- FY 2018: \$21.5 billion
- FY 2019: \$22.6 billion
- FY 2020: \$23.7 billion
- FY 2021: \$24.8 billion
- FY 2022: \$25.9 billion
- Funding for FY 2023 would be structured like CHIP's FY 2015 and FY 2017 funding, with semiannual appropriations of \$2.85 billion plus a one-time \$20.2 billion appropriation provided in the first six months of the fiscal year that would remain available until exhausted.

Some conservatives have [raised concerns](#) that some of the CHIP appropriation has historically been diverted to other, unrelated HHS programs and thus the formula-derived funding levels may be inflated. Governors have [previously suggested](#), however, that the formula works well.

Although federal CHIP funding is capped at the level Congress appropriates for the program, rather than extended as an open-ended entitlement, the federal government provides a matching payment for CHIP services. Obamacare applied a 23 percent increase to this matching payment, which affected the traditional state-federal financing partnership by shifting more responsibility to the federal government, and in some cases even superseded the need to states to contribute to their own programs. Division C would gradually roll back this increase and restore the traditional state-federal financing partnership by providing an 11.5 percent matching rate in FY 2020 and returning to the pre-Obamacare matching rate for FY 2021-2023. [Some conservatives](#) may be concerned about the gradual reduction of this phase out, given that the increase would fully expire in FY 2019 under current law.

Division C would also extend an Obamacare requirement that states must maintain income eligibility for children enrolled in Medicaid or CHIP -- or risk losing federal Medicaid matching funds -- between FY 2019 and FY 2023, but would limit its application to children in families with annual income below 300% of the federal poverty level (FPL). Some conservatives may be concerned that this limitation does not go far enough, given that the [vast majority of children](#) enrolled in CHIP have family incomes at or below 250 percent of FPL. The Division would also extend the Child Enrollment Contingency Fund, qualifying state option, and authority for Express Lane eligibility determinations through FY 2023. Additionally, it would provide \$100 million for [outreach and enrollment grants](#) between FY 2018 and FY 2023 and add parent mentors to the list of entities eligible to receive such grants.

Finally, the Division would deposit \$980 million in the Medicaid Improvement Fund and allow the HHS Secretary to use these funds beginning in FY 2023 to reimburse states for activities related to mechanized claims systems. Congress has historically used the Medicaid Improvement Fund and a similar Medicare

Improvement Fund as a "parking spot" to bank savings to offset future spending. If not redirected by Congress, the MIF is available to the HHS Secretary for specific uses related to improving the Medicaid program.

DIVISION D

Division D suspends a number of taxes created by Obamacare.

[Medical Device Tax](#). The Affordable Care Act levied a 2.3% excise tax on the sale of medical devices. The Consolidated Appropriations Act, 2016, enacted on December 18, 2015, included a two-year moratorium on the medical device tax that ended on December 31, 2017. H.R. 195 would re-establish a moratorium lasting until December 31, 2019.

[Cadillac Tax](#). The Affordable Care Act established a 40% excise tax (a.k.a., the "Cadillac Tax") on the cost of high-value health plans that exceeds a statutory threshold (\$10,800 for single health plans). The Consolidated Appropriations Act, 2016, enacted on December 18, 2015, delayed the effective date of the Cadillac Tax from January 1, 2017 to January 1, 2020. H.R. 195 would further delay implementation until January 1, 2022.

[Health Insurance Tax](#). The Affordable Care Act created an annual fee on certain for-profit health insurers. For 2018, the total amount to be collected is \$14.8 billion. This sum is to be apportioned among health insurers based on their market share and value of their business. The Consolidated Appropriations Act, 2016, enacted on December 18, 2015, suspended the health insurance tax for 2017. H.R. 195 would place a moratorium on the health insurance tax for calendar year 2019.

DIVISION E

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COMMITTEE ACTION:

H.R. 195 was introduced as the [Federal Register Printing Savings Act of 2017](#) on January 3, 2017 and referred to the House Committees on Oversight and Government Reform and Administration. The Committee on Oversight and Government Reform ordered the bill reported by voice vote on February 14, 2017. The bill passed the House on May 17, 2017, by a voice vote. The bill passed the Senate with an [amendment](#) adding an additional title on December 21, 2017, by unanimous consent.

The Rules Committee Print 115-55, showing the text of H.J.Res. 125 as introduced, was posted on docs.house.gov at 8:53 pm on January 16, 2018. Rules Committee Print 115-55 states that its text would replace the prior Senate amendment.

The House passed the House Amendment to the Senate Amendment to H.R. 195 on January 18, 2018, by a [230 – 197](#) vote.

The Senate then passed an amended version of that bill on January 22, 2018, by a 81 – 18 vote, changing the funding expiration date from February 16, 2018 to February 8, 2018.

ADMINISTRATION POSITION:

Regarding the House CR, the [Statement of Administration Policy](#) released on January 17, 2018 states: “The Administration supports passage of H.J. Res. 125, the Extension of Continuing Appropriations Act, 2018.”

A Statement of Administration Policy for the Senate CR has not been released.

CONSTITUTIONAL AUTHORITY:

The original Constitutional Authority Statement for H.R. 195 stated: “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8.”

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

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