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Lawmakers returned to Washington this week from their summer Congressional district work period. Below is an update regarding the FY 2013 appropriations process.

FY 2013 Appropriations

Based upon behind-the-scenes discussions, it appears that action on the six-month Continuing Resolution (CR) will play out in the immediate future, starting perhaps as early as today. The action will begin in the House where appropriations bills normally originate. As of this morning, the House and Senate do NOT have an agreement on the CR's contents.

The House may vote as early as Thursday, September 13 on its version of the six-month stopgap funding measure. Congress has until September 30 to complete action on the measure, or else face a government-wide shutdown, which Democrats and Republicans alike are intent on avoiding.

This is a very fluid situation. Currently, we anticipate the House will introduce a six-month CR (October 1, 2012 to March 31, 2013) that allows the government to operate at the $1.047 trillion level. This amount is the same topline number included in last summer's Budget Control Act of 2011 (debt ceiling increase). The House version of the CR will set spending rates, by account level only, at the current enacted FY 2012 rate. Any policy restrictions and guidance from FY 2012 would also carry over during the period of the CR.

The Congressional Budget Office (CBO) has indicated that allowing discretionary programs to spend at the current FY 2012 enacted level would only require $1.039 billion, resulting in an $8 billion difference from the topline number being discussed for the CR. As you can imagine, there is a great deal of maneuvering going on for these additional dollars. Nothing has been settled at this time, although military pay is almost certainly one area that will be protected.

There will be very few anomalies (or alterations from the FY 2012 levels) as the intention of appropriators is to make the CR a "tough" one so there is incentive to complete FY 2013 appropriations bills as early as possible in the new Congress. Supposedly, agencies will have the flexibility to reallocate funds within accounts – unless Congress mandates otherwise. **There are just seven anomalies for the Labor-HHS Title of the CR and two of them pertain to SSA.** The following language was included in draft documents we reviewed late last week. **While we do not know at this time what, if any, language will be included in the final CR relative to SSA, the fact that there is discussion regarding SSA is a good sign.**

> ***Social Security Administration, Full Funding of SSA Program Integrity Cap Adjustment Authorized Under the Budget Control Act of 2011***
> *Sec. ____. Notwithstanding section 101, amounts are provided for "Social Security Administration—Limitation on Administrative Expenses" for the cost associated with continuing disability reviews under titles II and XVI of the Social Security Act and for the cost associated with conducting redeterminations of eligibility under title XVI of the Social Security Act, at a rate for operations of $1,024,000,000, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: Provided, That, of the amount provided by this section, $273,000,000 is provided to meet the terms of section 251(b)(2)(B)(ii)(III) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, and $751,000,000 is additional new budget authority specified for purposes of*

subsection 251(b)(2)(B) of such Act.

Language is needed to provide a rate for operations of $1,024 million for program integrity funding in the Social Security Administration (SSA), Limitation on Administrative Expenses account. Of the total amount for program integrity, a $751 million cap adjustment would be provided for purposes of subsection 251(b)(2)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, above the discretionary spending base level of $273 million, to conduct Social Security Continuing Disability Reviews (CDRs) and Supplemental Security Income (SSI) Redeterminations of eligibility. CDRs are used to determine whether beneficiaries have medically improved and are capable of working, while SSI Redeterminations of eligibility focus on an individual's eligibility for the means-tested SSI program and generally result in revision of the individual's benefit level. Fully funding the $751 million cap adjustment will allow SSA to conduct at least 650,000 CDRs and at least 2.6 million SSI redeterminations of eligibility in 2013. SSA has demonstrated that CDRs and SSI Redeterminations provide $9 for each dollar spent on CDRs and $6 for each dollar spent on SSI Redeterminations. If an anomaly for full funding of the cap is not included in the CR, language is at least needed to instead incorporate in section 101 the reference to the $483 million cap adjustment that was enacted in the Disaster Relief Appropriations Act, 2012 (P.L. 112-77). This fallback option can also be found in the note included at the beginning of this transmittal package outlining the assumptions about section 101.

Social Security Administration, SSA's WIPA and PABSS Programs
Sec. ____. Of the funds made available by section 101 for "Social Security Administration—Limitation on Administrative Expenses", amounts are provided to carry out section 1149 of the Social Security Act at a rate for operations of $23,000,000, and section 1150 of the Social Security Act at a rate for operations of $7,000,000.

Language is sought that would clearly authorize the Social Security Administration (SSA) to access a limited amount of funding from the Limitation on Administrative Expenses (LAE) account to support the Work Incentives Planning and Assistance (WIPA) and the Protection and Advocacy for Beneficiaries of Social Security (PABSS) programs. The WIPA program consists of community-based organizations that receive grants to provide disability beneficiaries with free access to work incentives planning and assistance. The PABSS program provides return-to-work supports and advocacy services to disability beneficiaries via State protection and advocacy systems. In the absence of an authorization of appropriations for these programs, grantees have begun to shut down. GAO has just issued a decision (B-323433, Aug. 14, 2012) related to WIPA/PABSS which is currently under Administration review.

We have not heard or seen anything that indicates sequestration is being addressed in the CR. That said, if sequestration does occur, it would be at the FY 2012 current rate level and then applied across the board in the same percentage against every program, project, and activity within the account as adjusted by decisions under the CR.

The House would require each agency to submit a spending plan on their use of funds during the CR, 30 days after the CR is signed into law. So far, we are not hearing that the Senate is requiring this, but the consensus is that the final CR will have a spending plan requirement – and that it would be due before the November elections. Much like the sequestration report that was due from the Obama Administration last week (now anticipated this coming Friday), if there is no tough enforcement provision relative to these spending plans it's likely they could be delayed.

Congress will be in session (with members present) less than ten days between now and Election Day. That means there will be little time to sort out differences. **We may see action on the CR wrap up as early as late next week – certainly well before September 30.**

Bottom line – there will be tight spending constraints during the CR, compounded by the looming issue of sequestration. One bit of good news – there appears to be strong sentiment (at least for now) to avoid a year-long CR and instead complete work on the twelve appropriations bills once we get past the 2012 elections and the deliberations on the "fiscal cliff."

<u>Fiscal Cliff – Sequestration</u>

As stated in the previous Legislative Report, Congress will wait to address the "fiscal cliff" issues until the lame-duck session following the elections. Lawmakers from both parties have called for the cuts to be stopped, but there is no plan or roadmap in sight. Republicans are insisting on replacing sequestration entirely with spending cuts, and Democrats favor a combination of spending cuts and tax increases.

Unless Members of Congress and President Obama agree to a plan to replace the automatic cuts scheduled to go into effect in January of 2013, federal agencies will face $109 billion in cuts in 2013.

In a recent Congressional Budget Office (CBO) estimate of the sequester, CBO noted that the cuts would take about $94 billion from discretionary spending and about $16 billion from mandatory spending in 2013.

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