CONGRESS AND THE PRESIDENT STRIKE A "HUUUGE" BUDGET DEAL: WHAT IT MEANS AND OPPORTUNITIES

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INTRODUCTION

On August 2, 2019, the Bipartisan Budget Act of 2019 (P.L.116-37) ("BBA") was signed into law. This bill amends the Budget Control Act of 2011 (P.L.112-25) ("BCA") by raising discretionary spending caps for FY2020 and FY2021 and allows for various other budgetary changes, including a debt limit suspension until August 1, 2021. The BBA raises discretionary spending to $1.37 trillion in FY2020 and $1.375 trillion in FY2021. Clients should expect a return to a more orderly appropriations process for the FY2021 legislation. With the passage of the BBA, Washington is effectively witnessing the end of the BCA (which was already set to expire in 2021).

In preparation for FY2021, we advise clients to identify their priority requests and begin to develop written justifications. While the increased funding will likely not result in a large number of new projects in FY2021, we do expect to see a "bump up" in individual accounts and potentially a limited number of new projects being funded.

THE AGREEMENT

The broad outline of the BBA sets discretionary spending at $1.37 trillion in FY2020 and slightly more ($1.375 trillion) in FY2021.[1] As summarized in the table below, for FY2020, the BBA raises the caps above the limits set in the BCA. In FY2020, the nondefense cap increases to $621.5 billion, while the defense cap is set at $666.5 billion.[2] In FY2021, the nondefense cap increases to $626.5 billion, while the defense cap is set at $671.5 billion.[3] The bill sets Overseas Contingency Operations ("OCO") levels up to $79.5 billion in FY2020[4] and $77 billion in FY2021. The BBA also adds an exemption for the 2020 Census (capped at $2.5 billion). As a result, the overall real increase in spending compared to FY2019 is approximately $49 billion for FY2020 and $54 billion for FY2021.

	FY2019	**FY2020**	**FY2021**
Nondefense Base	597	621.5	626.5
Census Adj.		2.5	0
Nondefense subtotal (includes Census Adj.)	**597**	**624**	**626.5**

Nondefense OCO	8	8	8
Nondefense subtotal	**605**	**632**	**634.5**
Defense Base	647	666.5	671.5
Defense OCO	69	71.5	69
Defense subtotal	**716**	**738**	**740.5**
Total	716	738	740.5

(Figures are in the billions)

WHAT THIS MEANS FOR CLIENTS: OPEN ISSUES/QUESTIONS

While the deal did not result in a huge boost in funding over current FY2019 funding levels, it prevented the BCA's automatic spending cuts (also known as sequestration) from taking effect. We advise clients to prepare now for the FY2021 appropriations season by identifying your priority requests and developing your written justification for FY2021. While we do not expect a large increase in funding for new projects in FY2021, the additional topline budget funding provided through this recent budget deal will give appropriators more room in individual bills to bump up existing projects and potentially start a small number of new projects.

Clients should also expect a more orderly appropriations process in FY2021 (see caveat below) with lawmakers attempting to move bills in smaller batches rather than through an omnibus package.

Below are a list of open questions regarding the FY2020 and FY2021 appropriations season.

Riders, Poison pills, and CHIMPS: According to a statement released by House leadership, the agreement removes "CHIMPS, poison pills, riders, and other non-appropriations language"[5] from the FY2020 bill that are not agreed to by both congressional leadership and the White House.[6] However, it is unclear if this agreement also pertains to FY2021.[7]

For clients, this "handshake deal" could result in previously included language or riders (in the House appropriations bills) being taken out of the final negotiated legislation that is signed by the president. Also there is a possibility that long-standing riders could be taken out of the FY2020 appropriations bills if congressional leadership and the White House cannot agree on allowing them to stay in the FY2020 bill. This possibility is remote because if these riders cleared a divided House/Senate/White House in the past they would presumably do so again. If clients have successfully put a rider into a House appropriations bill in the past (or for the FY2020 bill), they should work hard to ensure that these provisions are also included in the Senate appropriations legislation in order to increase the chances of their rider's (or language) successful inclusion into the final appropriations legislation.

Both Democrats and Republicans argued that this handshake agreement was a win for their side. Republicans argued that it protected many conservative and Trump-related policy initiatives from attack in the FY2020 bill. Democrats, on the other hand, argued that most of these partisan riders, poison pills, and other non-appropriations language would have been removed during conference between the Democrat-controlled House and the Republican-controlled Senate anyway.

Also, House Democrats argued that there were other bills that they could potentially serve as vehicles for policy riders. According to appropriations leadership, members can still "negotiate" the inclusion of riders as bills move from committee consideration to floor debate to conference. However, only those riders that all sides agree to will be included in the final bill.

Regular Order and Increased Funding: The handshake deal also states that the White House, congressional leadership, and appropriations committees will work to ensure that the appropriations process proceeds according to regular order. If the agreement holds, Congress appears to be on course for regular order in FY2021. For FY2020, the Senate officially began drafting appropriations bills in August and will likely begin to hold their first subcommittee markups when the Senate reconvenes on September 9.

After initial subcommittee and full committee markups, the Senate will likely skip a vote on the floor, and congressional leadership will work to combine both the House and Senate bills into an omnibus bill.[8] House and Senate leadership seem determined to avoid another government shutdown and will likely push for members to support the final version of the bill. If the handshake agreement holds, then the bill should receive enough Democratic and Republican votes to guarantee passage. After a floor vote, the bill should then go to the president's desk for signing.

Census Funding: Although the budget allows for an additional $2.5 billion increase in funds for the 2020 Census, these funds will have to come out of existing funds within the Commerce, Justice, Science ("CJS") appropriations bill and will likely place additional funding pressure on the big accounts present in the bill (NASA, NOAA satellites, Community Oriented Policing Services program, etc.). This is not a unique situation, as the final year before the decennial census often places funding stress on the CJS bill.

Veterans Funding: During negotiations, Speaker Nancy Pelosi pushed for $25 billion in funding for a Veterans Administration healthcare initiative; however, the BBA does not explicitly set aside funds for this purpose. It remains to be seen how much of the increase in funding will be allocated towards this initiative.

Wall Funding: On July 26, the Supreme Court lifted an injunction blocking the White House from using unspent military funds to build part of the border wall. As stated above, the BBA included an agreement that no poison pill policy provisions would be included in the FY2020 appropriations legislation. Because the administration retained its right to redirect money from the Department of Defense to the wall, there remains a strong possibility that the White House could exercise this right within the next few months. How this plays out during budget negotiations is an open question. Both parties have signaled a wish to avoid a situation similar to last February's 35-day partial federal government shutdown. However, wall funding remains a Trump administration priority, and the budget deal along with the Supreme Court decision may give them the option of pursuing a major policy goal (barring any last-minute court injunction).

Defense: The BBA includes approximately $738 billion in defense spending in FY2020 (including OCO). This represents a 3.1% (or $22 billion) increase over current funding levels. Congressional Republicans sought an additional $12 billion in defense funding during negotiations but were unable to achieve their goal.[9] This reduced amount is disappointing to defense hawks in light of the recently passed House National Defense Authorization Act ("NDAA"), which included only $733 billion for defense spending. That bill's lower funding level caused most Republicans to vote against the bill. Republican leadership and the White House spun the budget agreement as a win, stating that the overall spending number was higher than the NDAA number and better than the automatic spending cuts that would have resulted if a deal had not been reached.

ADDITIONAL BACKGROUND ON THE BBA AND THE BCA

Offsets, Exemptions, and Debt Limit

The BBA contains a few exemptions from the statutory spending limits. Emergency spending, OCO, wildfire suppression, and disaster relief are all exempt from the BCA's spending caps.[10] These exemptions are extended under the BBA.

The agreement allows for a variety of offsets in the BBA. These offsets are composed of a mix of fees and funding sequesters that equal approximately $77.4 billion. The White House and congressional Republicans had been pushing for $150 billion in offsets, but the two parties eventually agreed on the $77.4 billion number. To reach this number, the BBA relies on a variety of fees and extends the sequester of certain programs until FY2029. According to the CBO, this extension should save approximately $61.8 billion from FY2019–FY2029.

Finally, the agreement suspends the debt ceiling until August 1, 2021, well past the next national election. On this date, the debt limit will automatically increase to reflect any federal spending incurred up to that point. Although this is an automatic increase, Congress will still have to lift the debt ceiling again to reflect any federal spending that occurs after August 1, 2021.

THE END OF THE BCA

The new deal marks the end of a period of self-imposed austerity in Washington. This era began with an agreement between then President Barack Obama and then Speaker John Boehner in 2011 to create a bipartisan "Supercommittee" charged with reducing the federal debt (which became the BCA). The Supercommittee, which was composed of various experts and politicians, was charged with designing a plan that would reduce the federal debt through a mix of spending cuts, tax increases, and changes to nondiscretionary programs such as Social Security, Medicare, and Medicaid. This Supercommittee would then present this plan to Congress for a vote. However, the Supercommittee never produced a plan, and pursuant to the BCA's statutory mandate, "the sequester" (a mechanism designed to enforce automatic spending across-the-board cuts on the federal budget) was instituted. Congress, bearing the brunt of having to enforce heavy spending cuts on the federal budget, voted to raise the BCA's spending caps three times before this last agreement. With the BCA expiring in 2021, the BBA ends the era of automatic spending cuts in Washington.

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[1] Figures includes Overseas Contingency Operations ("OCO") and 2020 Census spending. See footnote 10 for an explanation of OCO funding.

[2] Equal to a $78.3 billion increase for nondefense and a $90.3 billion increase for defense.

[3] Equal to a $71.6 billion increase for nondefense and an $81.3 billion increase for defense.

[4] $8 billion dollars goes towards State Department Operations in the OCO category.

[5] CHIMPS – Changes in Mandatory Spending.

Policy rider – A piece of legislative language (often controversial) that is inserted into a larger bill. Because the president lacks the ability to strip out specific language in a bill (a line-item veto) these riders will often become law if they are included in legislation that must pass (an appropriations bill). These policy riders can cover a wide range of topics (i.e., wall funding, abortion restrictions, restrictions on climate change policies). They come in two main forms — either a restriction on funding for a particular program or as an inclusion of additional funds for some initiative (i.e., wall funding).

Poison pills – Poison pills are policy riders that are controversial enough to prevent a bill from being signed into law. One example would be a policy rider that restricts climate change research being placed in an appropriations bill that needs a large number of Democrats to pass. Presumably, a majority of these Democrats would not support this provision, causing the bill to fail to pass on the floor. Another could be restrictions on wall funding, which could cause the president to veto an appropriations bill that had passed the House and Senate.

[6] Any modifications to transfer funding levels or emergency spending levels must also be agreed to by congressional leadership and the White House.

[7] This agreement does not appear in the text of the BBA and appears to be a "handshake deal" between congressional leadership and the White House.

[8] Although the agreement contemplates that we will not have an omnibus funding bill, given the time left on the Congressional calendar, it is more likely than not that an omnibus will be necessary.

[9] The additional $12 billion would have been in line with the president's budget request for the Department of Defense.

[10] OCO is a category of funds that was originally authorized to fight the Iraq and Afghanistan wars. OCO funds are considered separate from the Department of Defense and State Department's "base budgets." These funds are exempt from the BCA spending caps. Under this system, contingency operations are classified as military operations, while "base budget activities" are considered expenses that would have occurred regardless of contingency operations (troop pay, base operations, support/maintenance, etc.).

[11] Based on a Congressional Budget Office ("CBO") score.

[12] These fee and funding sequesters include a Medicare sequester. In effect since April 1, 2013, this sequester involves a 2% payment reduction in the Medicare fee-for-service program. Originally, this sequester was set to end in FY2027.

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