

HOMELAND AND BORDER SECURITY BUDGET UPDATE: APRIL 2018

FY 2019 begins in five months on September 30, giving appropriators a short window to write and pass appropriations bills ahead of a crucial November 6 midterm election. They could move quickly, thanks to a deal raising sequestration-related budget caps struck earlier this year. A new crop of appropriations leaders in the Senate are promising quick action. Only one problem: President Trump hasn't moved on from his anger with last month's FY 2018 omnibus, potentially jamming the federal contracting and appropriations process.

Appropriators promise quick action, but expect DHS bill later: Appropriators in both chambers met with leadership this month to discuss how to quickly move spending bills ahead of the vital November 6 midterm elections. They have a leg up on last year: thanks to a deal raising sequestration-related spending caps passed in February, appropriators already know they can spend slightly more in FY 2019 (about \$36 billion more, split in two across defense and non-defense spending) than they did for FY 2018. However, we could still wait a while for a FY 2019 DHS funding bill, and we doubt it will be passed into law by September 30, for several reasons.

- **Partisan differences:** Appropriators tend to start with "easy" bills dealing with non-controversial government functions like veterans affairs. Bills dealing with political hot topics, such as immigration enforcement and border priorities, take longer to write and are more difficult to advance.
- **Chamber makeup:** Because Republicans hold firm control of the House, Republican DHS appropriators are likely to write a partisan DHS bill, emphasizing harder-line policies from the White House and the conservative wing of the GOP. This partisan strategy is a non-starter in the Senate, however, where Democrats retain filibuster power. Senate appropriators are likewise more likely to produce a bipartisan DHS bill that, in turn, can't pass the solidly Republican House. The result can be a stalemate.
- **Looming midterms:** Pre-election bipartisanship on appropriations is likely a pipe dream ahead of the 2018 midterm election. As campaigning intensifies in the late summer and early fall, expect both parties to prioritize political debate over producing and passing a workable DHS bill.
- **Election results:** The pressures of the election fall away in the post-election "lame duck" session scheduled for November 13-December 14, when both chambers have the best chance to wrap up appropriations and other year-end business before a new Congress is seated in January. However, if the rumored "blue wave" sweeps Democrats into power in either chamber, Democrats may hold out on approving funding bills until after January to maximize their influence on FY 2019.

Hearings first step in FY 2019 budget: Secretary of Homeland Security Kirstjen Nielsen and bigwigs of FEMA, CBP, ICE, and the Coast Guard all appeared before the House Appropriations Subcommittee on Homeland Security this month to pitch their FY 2019 budget requests. Hearings to consider agencies' FY 2019 budget requests is a first step before the House subcommittee, led by Chairman John Carter (R-TX) and Ranking Member Lucille Roybal Allard (D-CA), take their first whack at drafting a FY 2019 DHS funding bill this spring. So, what are some takeaways from these hearings?

- Immigration policy and President Trump's border wall remain third rails, but both parties continue to agree in supporting more technology at the borders and ports.
- Appropriators remain very interested in non-intrusive inspection (NII) equipment, especially in preventing smuggling of contraband opioid drugs into the country. Members of both parties are pressuring CBP and the TSA to acquire technology like CT scanners and X-ray scanners to scan cargo and luggage entering the U.S.
- Staffing remains a serious concern for several DHS agencies. CBP alone has 1,000 vacancies per CBP Commissioner Kevin McAleenan, and ICE continues to petition for a hiring surge as President Trump requested.

Shelley Moore Capito new top Senate appropriator for DHS: Senate Appropriations Committee Chairman Thad Cochran (R-MS) resigned on April 1 for health reasons, triggering a leadership shuffle among Senate Republican appropriators. Sen. Richard Shelby (R-AL) took over the full committee as well as the Defense Subcommittee. Shelby's shift cascaded into leadership changes across the subcommittees, installing Sen. Shelley Moore Capito (R-WV) as the new chair of the Homeland Security Subcommittee. Capito is a moderate-leaning Republican who understands the need to develop a bipartisan DHS funding bill that can pass the Senate's Democratic filibuster, meaning she probably won't lead a charge for President Trump's border wall or deportation force. However, as a representative of an opioid-ravaged West Virginia, she is very interested in stemming the flow of these drugs into the U.S. We'll see Capito in action later this year when the Senate Appropriations Homeland Security Subcommittee kicks off its own hearing and bill-writing process.

Other changes to be aware of: Sen. Jerry Moran (R-KS) will take over Shelby's spot leading the Commerce-Justice-Science Subcommittee, setting funding for agencies including federal law enforcement and science agencies like NASA. Sen. James Lankford (R-OK) will take over the Financial Services and General Government Subcommittee, and Sen. John Boozman (R-AR) moves to Military Construction and Veterans Affairs.

Trump rescission plan could cause headaches for contractors: President Trump briefly panicked Washington last month when he threatened to block the FY 2018 omnibus bill funding the government through September 30. While he relented and averted a federal shutdown, Trump remains angry that this law did not fully fund his \$25 billion border wall and ICE hiring surge while funding other priorities his White House didn't request. It's typical for Congress to pass appropriations packages very different from the Administration's request; Congress holds the constitutional "power of the purse." President Trump, never one for compromises, nevertheless is demanding Congress and the White House use an obscure "rescission" maneuver to unwind the omnibus and strip out \$30 to \$60 billion in already-appropriated discretionary federal funding. It's not yet clear if or how this rescission request would impact DHS or domestic law enforcement. The White House plans to send a rescission request to Congress the second week of May and demand a vote by July; a simple majority in both chambers would make rescissions reality.

To be clear: a large rescission is a long-shot. Congress last considered a rescission package way back in the Clinton era, and it has never considered one as large as President Trump wants. Senate Majority Leader Mitch McConnell (R-KY) and several Republican appropriators implied the plan will only disrupt the FY 2019 appropriations process. HOWEVER: any funding the White House targets for rescission is frozen for 45 days while Congress considers the request, meaning a large chunk of federal funding may not even be available for distribution until later this summer. With such pressure from the President himself, even after the 45 days expire, the Trump Administration may be reluctant to spend targeted money. While it's too early to say for sure, the executive branch delaying disbursement of appropriated money could create significant problems for federal contractors. Stay tuned for the proposal, due in May.

FY 2019 NDAA takes lead in setting defense budget: The House and Senate Armed Services Committees are drafting their own versions of the FY 2018 National Defense Authorization Act (NDAA) this month and next. The NDAA, passed each year, sets spending goals and policy for the Pentagon and parts of the Department of Energy for the coming fiscal year. Defense appropriators abide by the limits set in the NDAA, meaning the NDAA is key for predicting future defense funding levels. The Pentagon requested \$716 billion for defense in FY 2019, though Congress regularly exceeds the Pentagon's request in the NDAA and appropriations. The House committee (HASC) is set to hold its full committee markup on May 9, and the Senate's (SASC) will hold theirs on May 21.



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