Congress Finally Reaches Agreement on Short-term Budget Deal

As the clock struck midnight on October 16, the House of Representatives and Senate finally approved a short-term budget deal that would reopen the federal government and avert a potential default as the result of reaching the nation’s debt limit. After weeks of political grandstanding and partisan gridlock, the Senate took the lead in framing a budget agreement that would fund the government through January 15, 2014 and extend the borrowing limit to February 7, 2014.

The budget agreement funds the operations of the VA at FY 2013 operating budget levels. The two exceptions are the Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA). VHA was already shielded from the politics of the recent budget stalemate due to advance appropriations that were provided for FY 2014 earlier this year. Additionally, the VBA was provided funding at the level requested by the Administration ($2.46 billion) in April and included in both the House and Senate versions of the FY 2014 Military Construction and Veterans Affairs appropriations bills. All of the other accounts of VA, including Medical and Prosthetic Research, Information Technology, and the Construction accounts, will be insufficiently funded until a final appropriations bill for FY 2014 is approved.

Unfortunately, this short-term solution allows for the possibility that the federal government could experience this same situation again in three months. Once again, Congress failed to take decisive and long-term action to provide sufficient funding for the VA while also dealing with the fiscal problems that the country faces.

Congress Once Again Fails to Fulfill Its Responsibility

As the start of the new fiscal year passed on October 1, Congress once again failed to fulfill its responsibility to fund the federal government. As a result of political bickering and partisan gridlock, the House of Representatives and the Senate were unable to complete work on legislation providing appropriations to federal agencies. As a consequence of their failure, a partial shutdown of the federal government ensued leaving many federal employees, including some in VA, furloughed. Now, with the partial shutdown extending into its third week, a solution to this problem remains elusive. Meanwhile, the United States now faces the prospect of a default on its obligations as the country reaches its borrowing limit (referred to as the debt limit). In the past, Congress has approved increases to the debt limit; however, the partisanship in Washington has left this prospect uncertain.

The stalemate over funding for the federal government (normally completed through the
appropriations process) is the result of efforts of conservatives in the House of Representatives to defund or block implementation of the Affordable Care Act (ACA) and the insistence of the Administration and the Democratic leadership in the Senate that the ACA is not a bargaining chip to fund government operations.

Fortunately, the Department of Veterans Affairs (VA) health care system has been largely shielded from the harmful effects of the shutdown due to the enactment of advance appropriations. However, most of the rest of VA, including the Veterans Benefits Administration, Medical and Prosthetic Research, and National Cemetery Administration, remain unfunded. Additionally, the gridlock has led to a situation where veterans’ benefits, including compensation and pension, GI Bill education benefits, and ancillary benefits, may not be paid at the end of October.

The co-authors of *The Independent Budget*—AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars—sent a letter to the House and Senate leadership in early October calling on Congress to immediately take all actions necessary to give final approval to legislation providing the full year’s FY 2014 appropriation for all veterans programs. At this point, the House has offered various alternatives that would partially fund some departments within VA or insufficiently fund the VA, while the Senate has generally rejected those proposals. *The Independent Budget* co-authors expressed outrage at the actions of Congress emphasizing that we will no longer tolerate Congress leveraging veterans’ health and wellbeing to achieve unrelated political ends.

### House VA Committee Holds Hearing on Affect of Government Shutdown on Veterans

On October 9, 2013, the House Committee on Veterans’ Affairs (HCVA) held a hearing to examine the affect of the partial federal government shutdown on veterans’ benefits. During the hearing, only Secretary of Veterans Affairs Eric Shinseki was called to testify, though several veterans service organizations (VSO), including Paralyzed Veterans of America, submitted official statements for the record. As part of his testimony, Secretary Shinseki provided a dire warning if the shutdown continues.

While the health care system of the Department of Veterans Affairs (VA) continues to function during the partial government shutdown, due to being funded through advance appropriations, Secretary Shinseki indicated that VA has also been able to continue processing veterans’ claims. This was accomplished using carryover funds remaining from fiscal year 2013 during the first few days of the shutdown. However, those funds were exhausted very quickly leading to many VBA staff members being furloughed.

According to the VA, the lack of funding has led to delays for an average of 1,400 veterans a day. The Secretary expressed concern that a greater challenge will occur if the shutdown continues into late October, at which time “claims processing for veterans’ compensation, pensions, education, vocational rehabilitation and employment benefits will
be suspended due to lack of funding.” When asked if passage of a VA appropriations bill currently stalled in the Senate would solve the problem, the Secretary said that it would not completely. This was due to the fact that VA receives data to assist in processing claims from several other federal agencies including the Social Security Administration and the Internal Revenue Service. Without this information, VA cannot accurately process claims.

With only a few exceptions, members of the Committee were mostly bipartisan in their concerns for veterans and the need to get the government fully open and operating again. Both Chairman Jeff Miller (R-FL) and Ranking Member Michael Michaud (D-ME) commented on the desire for the Senate to pass the VA appropriations bill that the House passed over four months ago, well before the shutdown. Rep. Michaud also added that a clean CR (Continuing Resolution) was an alternative that would again get benefits flowing to veterans and their families.

In our statement for the record, PVA explained that the number one concern expressed by our members is whether or not they will receive their compensation and pension benefits at the end of October. Similarly, questions have been raised about payment of Dependency and Indemnity Compensation (DIC) as well.

PVA also expressed serious concerns about the impact that the government shutdown will have on the process for providing Specially Adapted Housing (SAH) benefits. SAH claims require expeditious follow-up to the multiple step processes that are required to provide a safe environment to catastrophically disabled veterans. Many veterans with Amyotrophic Lateral Sclerosis (ALS) experience rapid exacerbations of their terminal illness which require appropriate modifications to their home to protect them from the hazards of everyday living. The role of VA employees who handle SAH in these cases is to evaluate the needs of the veteran and coordinate the various building codes and other related issues to facilitate the implementation of the needed home modifications as quickly as possible. The decrease in the VBA workforce as a result of the shutdown will certainly cause unnecessary delays to SAH claims that may result in severe consequences for veterans who need the greatest assistance.

Meanwhile, the function of the Veterans Benefits Management System (VBMS) and its widespread implementation is jeopardized by the shutdown. VBMS roll outs are already falling behind schedule and the furlough will further erode the progress of this critical VBA initiative. The incremental releases which build on the ability of VSO’s to better support the claims adjudication process will be delayed and will likely have a reverse catalytic effect to the progress that has been made. Additionally, the system, which requires significant and ongoing maintenance through the Information Technology (IT) management structure just to remain operational, will likely experience considerable down time.

Similarly, the Stakeholder Enterprise Portal (SEP) and other IT initiatives will not be supported and related problems will go unresolved. SEP is used to obtain the status of claims and payment history. The program is user friendly when it operates properly, but
intervention at the current stage of development is often required to reconcile technical issues for individual issues and to develop patches for more broad based problems. With IT staff that support VBA’s operations furloughed, any problems that arise with the IT support systems will simply languish, further slowing the ability of VBA to process claims in a timely fashion.

PVA also emphasized that the activities in Congress over the last two weeks further affirm the need to approve legislation to make the VBA and all other VA programs a part of advance appropriations. Advance appropriations have shielded VA health care from most of the harmful effects of the current government shutdown as well as prior continuing resolutions. PVA, and its co-authors of The Independent Budget, has called on House and Senate leadership to immediately bring H.R. 813, the “Putting Veterans Funding First Act,” to the floor for consideration, amendment and approval. PVA’s full statement for the record can be found at www.pva.org.

The Independent Budget Critical Issues Report Released

The co-authors of The Independent Budget—AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars—recently released the Critical Issues Report that proceeds the release of the FY 2015 Independent Budget. This year’s report addresses five primary issues:

1. Trends in VA Funding.
4. Accountability to Veterans and Their Representatives.
5. The Continuing Challenge of Providing Specialized Care and Benefits Services to Veterans.

The FY 2015 Independent Budget will be released in February 2014. The full Critical Issues Report can be found at www.independentbudget.org.

U.N. Convention on People With Disabilities

On October 10, 2013, Senator Robert Menendez (D-NJ), Chairman of the Senate Foreign Relations Committee held a briefing for disability and veterans service organizations on upcoming hearings, October 22 and 31, on the Convention on the Rights for People with Disabilities. Chairman Menendez emphasized the need of a significant push from veterans grass roots to secure enough Senate Republican votes to pass the CRPD. The U.S. International Council on Disability and Leadership Conference for Civil Rights joined the call for pushing the Senate to pass this treaty. Senate Leader Harry Reid (D-NV) will bring it up for a vote only if the votes are 100 percent secure. The 2012 vote failed due to a widespread campaign of misinformation, and was a defeat for the disability community.
The CRPD is a human rights treaty that promotes the ideals of the Americans with Disabilities Act around the world, identifying the obligations of participating countries to ensure the rights of people with disabilities. To date, 156 nations have signed the treaty, including the United States, and 128 nations have ratified it. Ratification requires no change in U.S. law, and does not grant the U.N. any enforcement or implementation authority. It is not a self-executing treaty, i.e., there is no enforcement in the U.S. without Congressional authorization.

Target Senators include: Lamar Alexander (R-TN), John Boozeman (R-AR), Roy Blunt (R-MO), Saxby Chambliss (R-GA), Dan Coats (R-IN), Tom Coburn (R-OK), Thad Cochran (R-MS), Bob Corker (R-TN), Jeff Flake (R-AZ), Deb Fischer (R-NE), Johnny Issackson (R-GA), Mike Johanns (R-NE), Ron Johnson (R-WI), and Rob Portman (R-OH). Please call, and email your Senators and ask them to support passage of the Convention on the Rights for People with Disabilities (CRPD). If you have question please contact Lee Page, Associate Advocacy Director at 202-416-7694, leep@pva.org

DOL Issues Final Rule on Companionship Exemption

On September 17, the Department of Labor (DOL), Wage and Hour Division, released a final rule applying the Fair Labor Standards Act (FLSA) to domestic service. This rule will extend the FLSA’s minimum wage and overtime protections, and recordkeeping provisions, to most direct care workers and domestic service workers.

The rule revises the Department’s 1975 regulations that extended minimum wage and overtime protections to domestic service workers broadly, but created an exemption for workers providing “companionship services” to older adults or persons with disabilities and an exemption from overtime compensation for live-in domestic service workers. This new final rule claims that the home care industry has undergone significant change and expansion in the past several decades such that direct care workers today do far more than “elder sitting.”

Key provisions of the final rule clarify and narrow the scope of duties that fall within the definition of companionship services in order to limit the application of the exemption. Under the rule, “companionship services” mean the provision of fellowship and protection to elderly individuals or persons with disabilities, not to exceed 20 percent of total hours worked per workweek. The final rule also precludes third party employers, such as home care agencies, from claiming the companionship or domestic service exemptions. Only the individual, family, or household using the services may claim an exemption.

The final rule recognizes the “significance and unique nature” of paid family and household caregiving in certain Medicaid-funded and other publicly-funded programs, and the growth of such models. In interpreting the “economic realities” test to determine when someone is employed, the Department has found that the FLSA does not necessarily require that once a family or household member is paid to provide some home care services, all care provided by that family or household member is part of the employment relationship. In
such cases, the employment relationship will be defined by the “plan of care,” which should reasonably define and limit the hours for which paid home care services will be provided.

The Department set an effective date for this final rule of January 1, 2015, taking into account the complexity of federal and state systems that fund home care and the needs of the diverse stakeholders affected by the rule. According to the rule, the Department will work closely with stakeholders and the Department of Health and Human Services to provide additional guidance and technical assistance during the period before the rule becomes effective. To view the final rule, visit http://www.dol.gov/whd/homecare/final_rule.pdf. For more information, visit http://www.dol.gov/whd/homecare/finalrule.htm. The Department will host a series of regional webinars on the rule in October, see http://www.dol.gov/whd/homecare/webinar.html.

Federal Commission on Long Term Care Issues Final Report

On September 18, 2013, the Federal Commission on Long Term Care submitted its final report to the President and the Congress as required by the American Taxpayer Relief Act of 2012 (P.L.112-240), signed into law on January 2, 2013.

The Statute directed the Commission to: “… develop a plan for the establishment, implementation, and financing of a comprehensive, coordinated, and high quality system that ensures availability of long term services and supports [LTSS] for individuals in need of such services and supports, including elderly individuals, individuals with substantial cognitive or functional limitations, others who require assistance in performing daily living, and individuals desiring to plan for future long term care needs.”

The Commission’s work was completed in less than 3 months. It recognized that 62 percent of LTSS are paid by the Federal and State government at a cost of over a $130 billion a year. These costs will increase as the need grows for the oncoming retirement of the baby boomers.

The Commission’s 28 recommendations include promoting services for persons with functional limitations in the least restrictive setting appropriate to their needs; building a system, including Medicaid, with options for people who would prefer to live in the community; establish a single point of contact for LTSS; create a simple and more usable standard assessment mechanism across care settings (acute, post-acute, and LTSS); advocate for new models of public payment that pay for post-acute and long-term services and supports on the basis of the service rather than the setting.

An alternative report written by Commission members who felt the majority report fell short offers more recommendations, including a public social insurance program that could provide comprehensive or limited benefits; assurance that direct-care workers are paid a living wage, are well trained, and have opportunities for career advancement; public programs providing LTSS must appropriately engage family caregivers; current Medicare
programs must reduce outdated and unreasonable barriers to outpatient therapies, home health and skilled nursing facility care; Medicaid must rebalance its LTSS financial incentives to states, and establish tax-preferred savings accounts for people and their families who are not currently receiving LTSS through Medicaid.


**TSA Disability Coalition learns about TSA Pre✓™**

Starting later this year, U.S. citizens will be able to apply online and provide identification and fingerprints for TSA Pre✓™, an expedited screening program that allows pre-approved airline travelers to leave on their shoes, light outerwear and belt, keep their laptop in its case and their 3-1-1 compliant liquids/gels bag in a carry-on in select screening lanes. The TSA Pre✓™ application program requires a background check, fingerprints, and an anticipated enrollment fee of $85 for a five-year membership. Once approved, travelers will receive a Known Traveler Number (KTN) and the opportunity to go through TSA Pre✓™ lanes at security checkpoints at participating airports.

At a TSA Disability Coalition meeting in September, TSA staff at Reagan National airport demonstrated the procedures. Though we had been told that a pat-down would not be part of the TSA Pre✓ process, the staff said they had been trained to do a "modified" pat-down, i.e., no turning down of waist band or hands under the seat. Reports from people with disabilities already participating in the program differ – some report faster and less intrusive checks, others say it is faster but no different as far as the pat-downs. Regardless, the TSA Pre✓ lines are generally shorter. Random security measures will continue and no individual will be guaranteed expedited screening.

Information can be found here: http://www.tsa.gov/tsa-precheck. PVA would be interested in hearing about members' experiences with the program; contact Maureen McCloskey at maureenm@pva.org.

**Final Guidelines for Federal Outdoor Recreation Sites**

On September 26, the U.S. Access Board issued new accessibility guidelines for outdoor areas developed by the federal government. PVA’s Architecture and Advocacy staff were members of the Regulatory Negotiation committee that developed the report underlying the guidelines. Requirements for trails, outdoor recreation access routes, and beach access routes address surface characteristics, width, and running and cross slopes are specified. Exceptions are included for these and other provisions under certain conditions stipulated in the guidelines. Departures are allowed where compliance is not practicable because of terrain or prevailing construction practices. Exceptions are also recognized where compliance would conflict with mandates such as the Endangered Species Act and
other laws or where it would fundamentally alter a site’s function or purpose.

The rule will become mandatory on November 25, 2013 for federal sites only as part of the Architectural Barriers Act Accessibility Standards, which apply to facilities that are built, altered, or leased with federal funds. The Board plans to follow-up with rulemaking to address non-federal sites under the Americans with Disabilities Act (ADA) at a later date. The rule can be viewed here: http://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas/final-guidelines-for-outdoor-developed-areas.

The Board will conduct a public webinar on the new rule on October 17 from 2:30 to 4:00 (ET). To register for this free webinar, visit www.accessibilityonline.org.