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# **Use of the Annual Appropriations Process to Block Implementation of the Affordable Care Act (FY2011-FY2016)**

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## Summary

Congress remains deeply divided over implementation of the Patient Protection and Affordable Care Act (ACA), the health reform law enacted in March 2010. Since the ACA's enactment, lawmakers opposed to specific provisions in the ACA or the entire law have repeatedly debated its implementation and considered bills to repeal, defund, delay, or otherwise amend the law.

In addition to considering ACA repeal or amendment in authorizing legislation, some lawmakers have used the annual appropriations process in an effort to eliminate funding for the ACA's implementation and address other aspects of the law. ACA-related provisions have been included in enacted appropriations acts each year since the ACA became law. In October 2013, disagreement between the Republican-led House and Democratic-controlled Senate over the inclusion of ACA language in a temporary spending bill for the new fiscal year (i.e., FY2014) resulted in a partial shutdown of government operations that lasted 16 days.

The House Appropriations Committee has added numerous ACA-related provisions to annual appropriations acts since the Republicans regained control of the House in 2011. Most of these provisions were included in the Departments of Labor, Health and Human Services, Education, and Related Agencies ("Labor-HHS-ED") Appropriations Act, which funds the Centers for Medicare & Medicaid Services (CMS). A few were incorporated in the Financial Services and General Government ("Financial Services") Appropriations Act, which funds the Internal Revenue Service (IRS). By comparison, the Labor-HHS-ED and Financial Services appropriations bills drafted by the Senate Appropriations Committee were largely free of any ACA-related provisions while the committee remained under Democratic control through 2014.

Congressional appropriators have used a number of legislative options available to them through the appropriations process in an effort to defund, delay, or otherwise address implementation of the ACA. First, they have denied CMS and the IRS any new funding to cover the administrative costs of ACA implementation. Second, House appropriators repeatedly have added limitations (often referred to as riders) to the Labor-HHS-ED and Financial Services appropriations bills to prohibit CMS and the IRS from using discretionary funds provided in the bills for ACA implementation activities. To date, the ACA limitation provisions added by House appropriators have been removed during negotiations with the Senate. None of them have been included in any of the enacted appropriations acts.

Third, House appropriators have incorporated ACA-related legislative language in the Labor-HHS-ED appropriations bills. For example, appropriators have included language to rescind (i.e., cancel) certain mandatory funding provided by the ACA.

Finally, congressional appropriators have added to recent Labor-HHS-ED appropriations acts several reporting and other administrative requirements regarding implementation of the ACA. These include instructing the HHS Secretary to establish a website with information on the allocation of funding from the Prevention and Public Health Fund and to provide an accounting of administrative spending on ACA implementation.

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## Introduction

Congress remains deeply divided over implementation of the Patient Protection and Affordable Care Act (ACA), the health reform law enacted in March 2010.<sup>1</sup> Since the ACA's enactment, lawmakers opposed to specific provisions in the ACA or the entire law have repeatedly debated its implementation and considered bills to repeal, defund, delay, or otherwise amend the law.

To date, most of this legislative activity has taken place in the House, which reverted to Republican control in 2011. Over the past four years, the Republican-led House has passed numerous ACA-related bills, including legislation that would repeal the entire law. There has been far less debate in the Senate, which remained under Democratic control through 2014. Most of the ACA legislation that passed the House during this period was not considered in the Senate. However, a few bills to amend specific elements of the ACA that attracted sufficiently broad and bipartisan support were approved by both the House and the Senate and signed into law. Now that Republicans control both chambers of Congress, opponents of the ACA see new opportunities to pass and send to the President legislation that would change the law.

In addition to considering ACA repeal or amendment in authorizing legislation, some lawmakers have used the annual appropriations process in an effort to eliminate funding for the ACA's implementation and address other concerns they have with the law. ACA-related provisions have been included in enacted appropriations acts each year since the ACA became law. In October 2013, disagreement between the House and Senate over the inclusion of ACA language in a temporary spending bill for the new fiscal year (i.e., FY2014) resulted in a partial shutdown of government operations that lasted 16 days.

This report summarizes the ACA-related language added to annual appropriations legislation by congressional appropriators since the ACA was signed into law. The information is presented in **Table 1**. While a detailed examination of the ACA itself is beyond the scope of this report, a brief overview of the ACA's core provisions and its impact on federal spending is provided as context for the material in the table.<sup>2</sup> This report will be updated to reflect key developments in the annual appropriations process.

A companion report, CRS Report R43289, *Legislative Actions to Repeal, Defund, or Delay the Affordable Care Act*, summarizes the authorizing legislation to amend the ACA that has been enacted since 2010. It also reviews all the ACA legislation taken up and passed by the House during this period.

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<sup>1</sup> The ACA was signed into law on March 23, 2010 (P.L. 111-148, 124 Stat. 119). A week later, on March 30, 2010, the President signed the Health Care and Education Reconciliation Act (HCERA; P.L. 111-152, 124 Stat. 1029). HCERA included several new health reform provisions and amended numerous provisions in the ACA. Several subsequently enacted bills made additional changes to selected ACA provisions. All references to the ACA in this report refer collectively to the law and to the changes made by HCERA and subsequent legislation.

<sup>2</sup> Numerous CRS products that provide more in-depth information on the many new programs and activities authorized and funded by the ACA are available at <http://www.crs.gov/pages/subissue.aspx?cliid=3746&parentid=13&preview=False>.

## A Brief Overview of the ACA

The ACA made significant changes to the way U.S. health care is financed, organized, and delivered. Its primary goal is to increase access to affordable health care for the medically uninsured and underinsured. To that end, the law included a complex set of interconnected provisions that address the private health insurance market.

First, the ACA requires health insurers to comply with a set of federal standards (“market reforms”) to ensure that individuals may purchase, keep, and renew coverage that provides a minimum level of benefits and consumer protections, with some limits on costs. Second, the law establishes competitive private health insurance exchanges (also known as marketplaces) through which individuals and small employers are able to compare and enroll in qualified health plans.

Exchanges operate in every state and the District of Columbia. They are administered by states or by the federal government, or through a partnership between the state and federal governments. Qualified individuals who enroll in exchange plans may receive financial assistance if they meet income and certain other requirements. Refundable tax credits are available to individuals and families with incomes between 100% and 400% of the federal poverty level (FPL) to help pay the insurance premium. The premium tax credits are available upon enrollment so that eligible individuals and families can choose to receive the subsidy immediately rather than wait until they file taxes the following year. In addition, certain individuals and families receiving the tax credit may be eligible for cost-sharing subsidies to reduce their out-of-pocket costs (e.g., deductibles, copays) when receiving health services. Small employers with fewer than 25 full-time equivalent employees (FTEs) may also use the exchanges to purchase insurance coverage for their employees and may qualify for a tax credit to help cover the cost of providing that coverage.

In June 2015, the U.S. Supreme Court in *King v. Burwell* ruled that the premium tax credits are available to all qualified individuals who enroll in exchange plans and meet the necessary income and other requirements, regardless of whether the exchange is administered by the state or the federal government.<sup>3</sup>

Third, the ACA’s “individual mandate” requires most U.S. citizens and legal residents to obtain coverage. Those who remain uninsured may have to pay a penalty unless they qualify for an exemption. The individual mandate is intended to encourage healthy individuals to participate in the insurance market and not wait until they get sick to buy coverage. Finally, the law requires larger employers with 50 or more FTEs to offer health coverage that meets affordability and adequacy standards for their full-time employees and those workers’ dependents. Employers who do not comply with these requirements may be subject to a tax if one or more of their employees purchase coverage through an exchange and receive a subsidy. The purpose of the ACA’s employer requirements is to encourage larger firms to maintain affordable and adequate coverage for their employees.

The ACA coupled its private insurance provisions with the requirement that states expand their Medicaid programs to cover all nonelderly individuals with incomes up to 138% FPL. Those with higher incomes, up to 400% FPL, may be eligible to get subsidized coverage through an exchange. In June 2012, the U.S. Supreme Court in *NFIB v. Sebelius* found the Medicaid

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<sup>3</sup> *King v. Burwell*, No. 14-114 slip op. (June 25, 2015), [http://www.supremecourt.gov/opinions/14pdf/14-114\\_qo11.pdf](http://www.supremecourt.gov/opinions/14pdf/14-114_qo11.pdf).

expansion to be unconstitutionally coercive and prohibited the federal government from enforcing it.<sup>4</sup> The Court's decision made Medicaid expansion optional for states.

In addition to expanding access to insurance coverage, the ACA contains hundreds of other provisions that address health care access, costs, and quality. They include new programs to test alternative ways of delivering and paying for health care. The law also includes new taxes and fees as well as adjustments to Medicare payments to hospitals and other health care providers. These provisions are designed to offset the federal spending on exchange subsidies and Medicaid expansion.

## ACA's Impact on Federal Spending

Implementation of the ACA is affecting both mandatory and discretionary spending. *Mandatory spending*—also referred to as direct spending—is controlled through authorizing laws.<sup>5</sup> It includes spending on entitlement programs such as Medicare and Social Security. Authorizing laws may provide permanent or temporary appropriations or other forms of budget authority for such spending. When the authorizing law contains no appropriations, mandatory programs may be funded through the annual appropriations process. This is sometimes referred to as “appropriated mandatory” or “appropriated entitlement” spending.<sup>6</sup> *Discretionary spending* is both controlled and funded through the annual appropriations process. It typically covers the routine costs of running federal agencies and offices, including wages and salaries.<sup>7</sup>

Federal spending on ACA implementation can be grouped into three categories: (1) mandatory spending on expanding insurance coverage, (2) mandatory spending on other programs, and (3) discretionary spending. Each of these categories is briefly discussed below.

### Mandatory Spending on Expanding Insurance Coverage

This category accounts for most of the federal spending under the ACA. It includes the exchange subsidies (i.e., premium tax credits and cost-sharing subsidies), the federal government's share of the costs of Medicaid expansion, and tax credits for small employers. The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) projected that this and other ACA mandatory spending (discussed in the second category, below) would be more than offset by (1) revenues from the ACA's new taxes and fees, and (2) savings from the law's adjustments to Medicare provider payments that are projected to slow the rate of growth of Medicare spending.<sup>8</sup>

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<sup>4</sup> *NFIB v. Sebelius*, No. 11-393, slip op. (June 28, 2012), <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>. For more information, see CRS Report R42367, *Medicaid and Federal Grant Conditions After NFIB v. Sebelius: Constitutional Issues and Analysis*, by Kenneth R. Thomas.

<sup>5</sup> Authorizing legislation generally refers to substantive legislation, reported by a committee (or committees) of jurisdiction other than the House or Senate Appropriations Committees, that establishes or continues the operation of a federal program or agency either indefinitely or for a specific period.

<sup>6</sup> For further information on direct spending, see CRS Report RS20129, *Entitlements and Appropriated Entitlements in the Federal Budget Process*, by Bill Heniff Jr.

<sup>7</sup> For further information on discretionary spending, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup.

<sup>8</sup> U.S. Congressional Budget Office, letter to the Honorable Nancy Pelosi, Speaker, U.S. House of Representatives, providing an estimate of the direct spending and revenue effects of ACA, as amended by HCERA (March 20, 2010), (continued...)

## Mandatory Spending on Other Programs

The ACA authorized new Medicare and Medicaid spending. For example, it phased out the Medicare prescription drug benefit “donut hole” through a combination of subsidies and manufacturer discounts, and it increased Medicare payments for primary care services and medical education. The ACA also included numerous appropriations that are providing billions of dollars of mandatory funding to support grant programs and other activities authorized by the law.<sup>9</sup> For example, the law funded temporary insurance programs for targeted groups prior to the exchanges becoming operational, and it provided funding for grants to states to plan and establish health insurance exchanges. The ACA included a permanent appropriation, available for 10-year periods, for the Center for Medicare & Medicaid Innovation (CMMI), within the Centers for Medicare & Medicaid Services (CMS), to test and implement innovative health care payment and service delivery models.

In addition, the ACA created four special funds and appropriated amounts to each one. First, the Community Health Center Fund (CHCF) has provided almost \$11 billion over five years (FY2011-FY2015) for the federal health centers program and the National Health Service Corps.<sup>10</sup> Second, the Patient-Centered Outcomes Research Trust Fund (PCORTF) is supporting patient-centered comparative clinical effectiveness research through FY2019 with a mix of appropriations, fees on health plans, and transfers from the Medicare trust funds. Third, the Prevention and Public Health Fund (PPHF), for which the ACA provided a permanent annual appropriation, is supporting prevention, wellness, and other public health-related programs and activities. Finally, the Health Insurance Reform Implementation Fund (HIRIF), for which the ACA appropriated \$1 billion, helped pay for the initial administrative costs of implementing the law.

## Discretionary Spending

The ACA is affecting discretionary spending in two ways. First, the law created numerous new discretionary grant programs and provided each of them with an authorization of appropriations. To date, however, few of these programs have received discretionary funding through annual appropriations acts, though several of them have been supported with mandatory funds from the PPHF.<sup>11</sup> Second, the two agencies primarily responsible for implementing the ACA’s provisions

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<http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendreconprop.pdf>

<sup>9</sup> For a summary of all the ACA’s mandatory appropriations, and the status of obligation of those funds, see CRS Report R41301, *Appropriations and Fund Transfers in the Affordable Care Act (ACA)*, by C. Stephen Redhead.

<sup>10</sup> The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA; P.L. 114-10, 129 Stat. 87) extended CHCF funding for the health centers program and the NHSC for two years by appropriating a total of \$3.910 billion to the fund for each of FY2016 and FY2017. Of that amount, \$3.6 billion is for the health centers program and the remaining \$310 million is for the NHSC.

<sup>11</sup> The ACA also reauthorized funding for many *existing* discretionary grant programs authorized under the Public Health Service Act; notably, the federal health workforce programs administered by the Health Resources and Services Administration (HRSA). The authorizations of appropriations for many of these programs expired prior to the ACA’s enactment, though most of them were still receiving annual appropriations. The ACA also permanently reauthorized appropriations for the federal health centers program and for programs and services provided by the Indian Health Service (IHS). Congressional appropriators have in general continued to provide discretionary funding for these long-standing programs, though typically at funding levels below the amounts authorized by the ACA. For more details on all the authorizations (and reauthorizations) of discretionary funding in ACA, including the FY2011-FY2015 funding (continued...)

to expand insurance coverage—CMS’s Center for Consumer Information and Insurance Oversight (CCIIO) and the Internal Revenue Service (IRS)—are incurring significant costs in connection with administering and enforcing the law. Both agencies requested increases in funding in each of their past four budget submissions (i.e., FY2013-FY2016) to help pay for ACA implementation. But congressional appropriators have not provided either agency with any additional discretionary funds. CMS instead has relied on discretionary fund transfers from other accounts, amounts from the Nonrecurring Expenses Fund (NEF),<sup>12</sup> and ACA mandatory funds (i.e., HIRIF, PPHF) to support its ACA implementation activities. CMS also has transferred HIRIF funds to the IRS.

## ACA Provisions in Enacted Appropriations Acts

The House Appropriations Committee has added numerous ACA-related provisions to annual appropriations acts since the Republicans regained control of the House in 2011. Most of these provisions were included in the Departments of Labor, Health and Human Services, Education, and Related Agencies (“Labor-HHS-ED”) Appropriations Act, which funds CMS. A few were incorporated in the Financial Services and General Government (“Financial Services”) Appropriations Act, which funds the IRS. By comparison, the Labor-HHS-ED and Financial Services appropriations bills drafted by the Senate Appropriations Committee, which was under Democratic control over the past four years, were largely free of any ACA-related provisions with one key exception. Each year, the Senate Labor-HHS-ED appropriations bill included instructions on the allocation of PPHF funding.

Congressional appropriators have used a number of legislative options available to them through the appropriations process in an effort to defund, delay, or otherwise address implementation of the ACA. First, they have denied CMS and the IRS any new funding to cover the administrative costs of ACA implementation. CMS requested substantial increases in funding for its Program Management account in the FY2013, FY2014, and FY2015 budgets. These new funds were to help support operation of the federally facilitated exchanges and other ACA-related activities. Congress, however, did not provide any additional discretionary funds for CMS in the enacted Labor-HHS-ED appropriations acts for FY2013-FY2015. Similarly, the IRS requested additional discretionary funds for each of those three years to support administration and enforcement of the ACA’s tax provisions, including the premium tax credits and the individual mandate penalties. Again, congressional appropriators did not give the IRS the extra funds it requested.<sup>13</sup> Both agencies have asked for additional ACA funding in the FY2016 budget.

Second, House appropriators repeatedly have added limitations (often referred to as riders) to the Labor-HHS-ED and Financial Services appropriations bills. Limitation provisions within

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levels for programs that received an appropriation, see CRS Report R41390, *Discretionary Spending Under the Affordable Care Act (ACA)*, coordinated by C. Stephen Redhead.

<sup>12</sup> The Nonrecurring Expenses Fund is an account within the Department of the Treasury. The HHS Secretary is authorized to transfer to the NEF unobligated balances of expired discretionary funds. NEF funds are available until expended for use by the HHS Secretary for capital acquisitions including facility and information technology infrastructure.

<sup>13</sup> For more discussion on the budget requests for, and sources of, funding to cover the administrative costs of implementing the ACA, see CRS Report R41390, *Discretionary Spending Under the Affordable Care Act (ACA)*, coordinated by C. Stephen Redhead.



appropriations measures are provisions that restrict the use of discretionary funds provided by the bill. They do this either by capping the amount of funding that may be used for a particular purpose or by prohibiting the use of any funds for a specific purpose. For example, appropriators on multiple occasions added language prohibiting an agency from using any of the discretionary funds in its appropriations bill for ACA implementation activities. Limitation provisions also may be used to restrict the availability of funds for transfer.<sup>14</sup> To date, the ACA limitation provisions added by House appropriators have been removed during negotiations with the Senate. None of them have been incorporated into the final appropriations legislation agreed to by both chambers and signed into law.

Third, House appropriators have incorporated ACA-related legislative language in the Labor-HHS-ED appropriations bills. Unlike limitations, legislative provisions have the effect of making new law or changing existing law.<sup>15</sup> As an example, appropriators included language to rescind (i.e., cancel) certain mandatory funding provided by the ACA. House rules prohibit legislative provisions in appropriations acts, while the rules of the Senate allow exceptions under some circumstances. However, special rules in the House (approved by the Rules Committee) and unanimous consent agreements in the Senate can be used to set aside each chamber's rules, including those that relate to legislating in appropriations measures.

Finally, congressional appropriators have added to recent Labor-HHS-ED appropriations acts several reporting and other administrative requirements regarding implementation of the ACA. These include instructing the HHS Secretary to establish a website with information on the allocation of PPHF funds and to provide an accounting of administrative spending on ACA implementation.

**Table 1** summarizes the ACA-related legislative and other provisions that were incorporated in the enacted Labor-HHS-ED and Financial Services appropriations acts for each of FY2011-FY2015. For each fiscal year, the table also provides a brief overview of any legislative action taken by the House and Senate Appropriations Committees on their respective versions of the two appropriations bills prior to the two chambers reaching agreement on the final version of the legislation. This discussion lists all the ACA language added to the bills by the committees. As already noted, none of the ACA limitations added by the House appropriators were included in the enacted Labor-HHS-ED and Financial Services appropriations acts.

## Government Shutdown

Disagreement between the Republican-controlled House and the Democrat-led Senate on whether to include ACA provisions in the FY2014 continuing resolution (CR) shut down programs and activities across the federal government in October 2013. Congress took up consideration of the FY2014 CR to ensure continued funding for the government at the start of the new fiscal year (i.e., October 1) after lawmakers failed to complete legislative action on any of the FY2014

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<sup>14</sup> For more discussion and analysis of limitation provisions, including the relevant House and Senate rules and the procedural issues that arise during floor consideration of general appropriations measures that include such provisions, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup.

<sup>15</sup> CRS Report R41634 (see footnote 2) discusses the differences between limitations and legislative provisions in appropriations measures, and how to distinguish between the two.

annual appropriations acts. The House tried three times to attach provisions to the CR to defund or delay ACA implementation. Each time the Senate rejected the House language. With no agreement in place at the start of FY2014, the resulting lapse in discretionary funding led to a partial shutdown of government operations.

Lawmakers finally reached agreement on legislative language on October 16, and the President signed the Continuing Appropriations Act, 2014, the following day to reopen the government.<sup>16</sup> The measure funded the federal government through January 15, 2014, and did not include any provisions to defund or delay ACA implementation. Instead, it required the HHS Secretary to certify to Congress that the ACA health insurance exchanges were verifying the eligibility of individuals applying for subsidies to help cover the cost of purchasing insurance coverage. In January 2014, Congress completed action on the FY2014 appropriations process by approving the Consolidated Appropriations Act, 2014, which included all 12 annual appropriations acts for FY2014.<sup>17</sup>

## ACA Provisions in FY2016 Appropriations Legislation

With Republicans now in control of both chambers, House and Senate appropriators may find it easier to coordinate their efforts to include ACA-related provisions in appropriations bills. The two appropriations committees have reported their respective FY2016 Labor-HHS-ED appropriations bills, and both measures include multiple ACA limitations, legislative provisions, and reporting requirements. The bills incorporate most of the ACA language that was in the enacted FY2015 Labor-HHS-ED appropriations act. They also include other ACA funding rescissions, as well as limitation provisions that would prohibit using any of the funds provided by the bill for ACA implementation.

ACA opponents face challenges in getting these provisions enacted into law. Senate Republicans may need to persuade a handful of Democrats to join them to get to the 60 votes needed to debate and pass appropriations bills if the Democrats decide to filibuster the legislation. Moreover, an appropriations bill that contains limitations or other language intended to defund or otherwise impede ACA implementation is likely to be vetoed by the President. In that case, each chamber would require a two-thirds vote to override the veto.

Another option for ACA opponents would be to use the threat of a government shutdown at the beginning of the new fiscal year as leverage to try and get ACA limitations and other legislative provisions included in appropriations measures. However, that option appears less likely in the 114<sup>th</sup> Congress. Republican leaders in both chambers have made it clear that they will not support another shutdown, like the one that occurred in 2013, suggesting that lawmakers on both sides of the issue may have to find areas of compromise.<sup>18</sup>

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<sup>16</sup> P.L. 113-46, 127 Stat. 558. For more analysis of the various legal and procedural considerations arising from the use of the appropriations process to delay or defund the ACA, see CRS Report R43246, *Affordable Care Act (ACA) and the Appropriations Process: FAQs Regarding Potential Legislative Changes and Effects of a Government Shutdown*, coordinated by C. Stephen Redhead.

<sup>17</sup> P.L. 113-76, 128 Stat. 5.

<sup>18</sup> Carl Hulse and Jeremy W. Peters, "Boehner Uses New Mandate to Muffle Talk of a Shutdown," *New York Times*, (continued...)

**Table 1** summarizes the legislative action taken to date by House and Senate appropriators on the FY2016 Labor-HHS-ED and Financial Services appropriations bills and lists all the ACA language added to the bills.

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November 30, 2014; Paul Kane, “McConnell’s Promise of No Shutdowns Will Be Tested by Senate’s Staunch Conservatives,” *Washington Post*, November 15, 2014.

**Table I. ACA-Related Provisions in Appropriations Acts, FY2011-FY2016**

Public Law and Date of Enactment	Summary of Provisions
<b>FY2011</b>	
<b>P.L. 112-10</b> Apr. 15, 2011	<p><b>Department of Defense and Full-Year Continuing Appropriations Act, 2011.</b> Division B, Title VIII of P.L. 112-10 provided full-year continuing appropriations for Labor-HHS-ED for FY2011 generally at FY2010 levels, but with numerous spending reductions for specified agencies and programs. It included the following ACA-related provisions:</p> <ul style="list-style-type: none"> <li>• Permanently canceled \$2.2 billion of the \$6 billion appropriation for Consumer Operated and Oriented Plan (CO-OP) program, which was established and funded by ACA Section 1322.</li> <li>• Repealed the free choice voucher program, established by ACA Section 10108, which would have required certain employers to provide vouchers to qualified employees for purchasing coverage through a health insurance exchange.</li> <li>• Prohibited transfers from the Public Health and Social Services Emergency Fund to support the U.S. Public Health Sciences Track, pursuant to ACA Section 5315.</li> <li>• Removed the maintenance of effort requirement for use of monies in the Community Health Center Fund (CHCF), which was established and funded by ACA Section 10503 (as amended by HCERA Section 2303).</li> <li>• Mandated a Government Accountability Office (GAO) study of the costs and processes of ACA implementation, and a Medicare actuarial analysis of the impact of the ACA's private insurance reforms on employer-sponsored health insurance premiums.</li> </ul> <p>Note: After it passed the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (H.R. 1473) on April 14, 2011, the House approved an accompanying concurrent resolution (H.Con.Res. 35). The resolution instructed the House clerk, during enrollment of the bill, to insert a provision that would have prohibited using any of the funds provided by H.R. 1473 or any previous Act to implement the ACA. The Senate rejected H.Con.Res. 35.</p>
<p><b>Legislative activity prior to enactment of P.L. 112-10.</b> The Senate Appropriations Committee reported its version of the FY2011 Labor-HHS-ED appropriations bill (S. 3686) on August 2, 2010. The measure would have instructed the HHS Secretary to allocate the Prevention and Public Health Fund (PPHF) funds for FY2011 to the accounts specified, in the amounts specified, and for the activities specified in a table included in the accompanying committee report (S.Rept. 111-243). The House Appropriations Subcommittee on Labor-HHS-ED also approved a draft (unnumbered) FY2011 bill, but the full committee took no further action on it.</p> <p>On February 19, 2011, the House by a vote of 235-189 passed its version of a full-year continuing resolution for FY2011 (H.R. 1). The bill included nine separate but overlapping provisions that would have prohibited using any of the discretionary funds provided in the bill to implement specific ACA provisions or the entire law. The Senate subsequently rejected H.R. 1 by a vote of 44-56 on March 9, 2011.</p>	

Public Law and Date of Enactment	Summary of Provisions
<b>FY2012</b>	
<p><b>P.L. 112-74</b> Dec. 23, 2011</p>	<p><b>Consolidated Appropriations Act, 2012.</b> Division F of P.L. 112-74—the FY2012 Labor-HHS-ED Appropriations Act—included the following ACA-related provisions:</p> <ul style="list-style-type: none"> <li>• Rescinded \$400 million of the remaining \$3.8 billion for the CO-OP program; see P.L. 112-10, above.</li> <li>• Rescinded \$10 million of the FY2012 appropriation for the Independent Payment Advisory Board (IPAB), which was authorized and funded by ACA Section 3403.</li> <li>• Required the HHS Secretary to establish a website with detailed information on the allocation and use of PPHF funds.</li> <li>• Prohibited the use of PPHF funds for lobbying, publicity, or propaganda purposes.</li> </ul>
<p><b>Legislative activity prior to enactment of P.L. 112-74.</b> The chairman of the House Appropriations Subcommittee on Labor-HHS-Education introduced a chairman’s bill (H.R. 3070) on September 29, 2011, but the subcommittee did not mark up or report the measure to the full committee. The bill received no full committee action. H.R. 3070, as introduced, would have (1) rescinded the entire FY2012 appropriations for Community Health Center Fund (CHCF), PPHF, IPAB, the pregnancy assistance grants, the home visitation program, state Aging and Disability Resource Centers (ADRCs), and the health workforce demonstration grants; (2) rescinded all the remaining CO-OP funds (i.e., \$3.8 billion); (3) rescinded \$1.862 billion of the \$10 billion appropriation for the Center for Medicare and Medicaid Innovation (CMMI) for the period FY2011-FY2019; and (4) prohibited using any of the discretionary funds provided in the bill to implement and administer the ACA until 90 days after all ACA legal challenges are complete.</p> <p>The House Appropriations Committee reported the FY2012 Financial Services appropriations bill (H.R. 2434, H.Rept. 112-136) on July 7, 2011. It would have (1) prohibited the IRS from using any of the discretionary funds provided in the bill to implement the ACA individual mandate; and (2) prohibited the transfer of any ACA funds to the IRS.</p> <p>The Senate Appropriations Committee reported its version of the FY2012 Labor-HHS-ED appropriations bill (S. 1599) on September 22, 2011. Similar to the previous year’s bill, S. 1599 would have instructed the HHS Secretary to allocate the PPHF funds for FY2012 to the accounts specified, in the amounts specified, and for the activities specified in a table included in the accompanying committee report (S.Rept. 112-84). In addition, S.Rept. 112-84 included language directing the HHS Secretary to submit a detailed report on all the recipients of PPHF funding.</p> <p>The Senate Appropriations Committee reported its FY2012 Financial Services appropriations bill (S. 1573) on September 15, 2011. The measure did not include any ACA provisions. However, the accompanying committee report (S.Rept. 112-79) directed the IRS to submit a detailed table itemizing each fund transfer from HHS to the IRS for the purpose of ACA implementation.</p>	

Public Law and Date of Enactment	Summary of Provisions
<b>FY2013</b>	
<p><b>P.L. 113-6</b> Mar. 26, 2013</p>	<p><b>Consolidated and Further Continuing Appropriations Act, 2013.</b> Division F, Title V of P.L. 113-6 provided full-year continuing appropriations for Labor-HHS-ED for FY2013 generally at FY2012 levels, but with some spending adjustments—reductions and increases—for specified programs. It included the following ACA-related provisions:</p> <ul style="list-style-type: none"> <li>• Rescinded \$200 million of the \$500 million transfer from the Medicare Part A and Part B trust funds for the 5-year Community-Based Care Transition Program, which was established and funded by ACA Section 3026.</li> <li>• Rescinded \$10 million of IPAB’s FY2013 appropriation. [Note: A similar rescission was included in the FY2012 appropriations act; see above.]</li> <li>• Required the HHS Secretary to establish a website with detailed information on the allocation and use of PPHF funds. [Note: This provision first appeared in the FY2012 appropriations act and remained in effect in FY2013 under P.L. 113-6; see above.]</li> <li>• Prohibited the use of PPHF funds for lobbying, publicity, or propaganda purposes. [Note: This provision first appeared in the FY2012 appropriations act and remained in effect in FY2013 under P.L. 113-6; see above.]</li> </ul>
<p><b>Legislative activity prior to enactment of P.L. 113-6.</b> The House Appropriations Subcommittee on Labor-HHS-ED approved an unnumbered draft bill for FY2013 on July 18, 2012, but no further action was taken. The measure did not provide CMS with any of the requested \$1.0 billion increase in funding for FY2013 to help pay for ACA implementation and related activities, and it would have prohibited using any of the discretionary funding provided in the bill to support CMS’s Center for Consumer Information and Insurance Oversight (CCIIO). The draft bill also would have (1) rescinded the entire FY2013 appropriations for PPHF and IPAB, and rescinded the FY2013 base appropriation of \$150 million for the Patient-Centered Outcomes Research Trust Fund (PCORTF); (2) rescinded \$3 billion of the remaining \$3.4 billion for the CO-OP funds (see P.L. 112-74, above); (3) rescinded \$1.590 billion of the \$10 billion appropriation for CMI for the period FY2011-FY2019; (4) rescinded \$300 million of the \$1.5 billion CHCF appropriation in FY2013 for community health centers; (5) prohibited using any of the discretionary funds provided in the bill to implement and administer the ACA; (6) instructed the HHS Secretary to establish a website with detailed information on the allocation and use of FY2013 PPHF funds; and (7) prohibited the use of PPHF funds for lobbying, publicity, or propaganda purposes.</p> <p>The House Appropriations Committee reported its FY2013 Financial Services appropriations bill (H.R. 6020, H.Rept. 112-550) on June 26, 2012. The measure did not include the IRS’s requested funding increase of \$360 million for FY2013 for ACA implementation. Moreover, H.R. 6020 would have prohibited the IRS from using any of the discretionary funds provided in the bill to carry out the transfer of ACA funds to the agency.</p> <p>The Senate Appropriations Committee reported its version of the FY2013 Labor-HHS-ED appropriations bill (S. 3295) on June 14, 2012. The measure included about half of the funding increase requested by CMS for ACA implementation. As with the Senate’s Labor-HHS-ED appropriations bills for the previous two fiscal years, S. 3295 would have instructed the HHS Secretary to allocate the PPHF funds for FY2013 to the accounts specified, in the amounts specified, and for the activities specified in a table included in the accompanying committee report (S.Rept. 112-176). In addition, the bill would have directed the HHS Secretary to establish a website with detailed information on the allocation and use of PPHF funds.</p> <p>The Senate Appropriations Committee reported the FY2013 Financial Services appropriations bill (S. 3301) on June 14, 2012. The measure did not include any ACA-related provisions. However, the accompanying committee report (S.Rept. 112-177) directed the IRS to submit a detailed table itemizing each fund transfer from the Health Insurance Reform Implementation Fund (HIRIF) to the IRS for the purpose of ACA implementation.</p>	

Public Law and Date of Enactment	Summary of Provisions
<b>FY2014</b>	
<b>P.L. 113-76</b> Jan. 17, 2014	<p data-bbox="445 328 1879 386"><b>Consolidated Appropriations Act, 2014.</b> Division H of P.L. 113-76—the FY2014 L-HHS-ED Appropriations Act—included the following ACA-related provisions:</p> <ul data-bbox="445 402 1900 1107" style="list-style-type: none"> <li data-bbox="445 402 1879 457">• Rescinded \$10 million of IPAB's FY2014 appropriation. [Note: A similar rescission was included in both the FY2012 and FY2013 appropriations acts; see above.]</li> <li data-bbox="445 474 1848 613">• Required the HHS Secretary to transfer the FY2014 PPHF funds to the accounts specified, in the amounts specified, and for the activities specified in a table included in the explanatory statement to accompany P.L. 113-76 (Congressional Record, January 15, 2014, p. H1041). Prohibited the Secretary from making further transfers. [Note: The requirement to transfer PPHF funds in accordance with the allocations specified by the committee was included in each of the FY2011, FY2012, and FY2013 L-HHS-ED appropriations bills reported by the Senate Appropriations Committee, but the provision was not included in the final enacted appropriations legislation for those years; see above.]</li> <li data-bbox="445 630 1894 711">• Required the HHS Secretary to establish a website with detailed information on the allocation and use of PPHF funds, organized by program or by state. [Note: A similar, but less detailed, provision was included in the FY2012 appropriations act and remained in effect in FY2013 under P.L. 113-6; see above.]</li> <li data-bbox="445 727 1780 782">• Prohibited the use of PPHF funds for lobbying, publicity, or propaganda purposes. [Note: This provision first appeared in the FY2012 appropriations act and remained in effect in FY2013 under P.L. 113-6; see above.]</li> <li data-bbox="445 799 1843 854">• Authorized the HHS Secretary to transfer up to \$305 million from the Medicare trust funds to the CMS Program Management account for Medicare operations, but prohibited the use of such transferred funds for ACA implementation.</li> <li data-bbox="445 870 1900 961">• Required the HHS Secretary to include in the FY2015 budget justification and on the HHS website a detailed breakdown of the ACA programs and activities receiving funds appropriated to implement the law, including the number of full-time equivalents (FTEs), for FY2014 and for each of the past four fiscal years (i.e., FY2010-FY2013).</li> <li data-bbox="445 977 1816 1032">• Required the HHS Secretary to include in the FY2015 budget justification a detailed breakdown of all funds used to date by CMS for the exchanges, including the proposed use of such funds in FY2015.</li> <li data-bbox="445 1049 1843 1107">• Required the HHS Secretary to include in the FY2016 budget justification an analysis of how the ACA requirement that health plans cover recommended immunizations and other preventive services without any cost-sharing will impact eligibility for HHS discretionary programs.</li> </ul> <p data-bbox="445 1123 1900 1230">Note: The explanatory statement to accompany P.L. 113-76, submitted by the House Appropriations Committee Chairman and published in the January 15, 2014, Congressional Record, instructed HHS to include in the FY2015 budget justification the amount of expired unobligated balances available for transfer to the Nonrecurring Expenses Fund (NEF), and the amount of any such balances transferred to the NEF. [Note: Section 4 of P.L. 113-76 stated that the explanatory statement was to be treated as if it were a joint explanatory statement of the conference committee.]</p> <p data-bbox="445 1247 1659 1276">Division E of P.L. 113-76—the FY2014 Financial Services Appropriations Act—included the following ACA-related provision:</p> <ul data-bbox="445 1292 1822 1347" style="list-style-type: none"> <li data-bbox="445 1292 1822 1347">• Required the IRS Commissioner to allocate \$92 million in general program funds among the agency's appropriations accounts for various specified activities (e.g., improve delivery of services to taxpayers), but prohibited the use of such funds for ACA implementation.</li> </ul>

Public Law and Date of Enactment	Summary of Provisions
<p><b>P.L. 113-46</b> Oct. 17, 2013</p>	<p><b>Continuing Appropriations Act, 2014.</b> P.L. 113-46 provided continuing appropriations for the federal government through January 15, 2014, generally at FY2013 post-sequestration funding levels. It included the following ACA-related provisions:</p> <ul style="list-style-type: none"> <li>• Required the HHS Secretary to certify in a report to Congress, due by January 1, 2014, that the health exchanges are verifying the eligibility of individuals applying for premium tax credits and cost-sharing subsidies consistent with the requirements of the ACA.</li> <li>• Required the HHS Inspector General to report to Congress not later than July 1, 2014, on the effectiveness of procedures and safeguards provided under the ACA for preventing exchange applicants from submitting inaccurate or fraudulent information.</li> </ul>
	<p><b>Legislative activity prior to enactment of P.L. 113-46.</b> On September 20, 2013, in the absence of any enacted appropriations bills for FY2014, the House approved a continuing resolution (CR; H.J.Res. 59) to provide temporary funding for the federal government through December 15. H.J.Res. 59, as passed by the House, incorporated language that would have prohibited the use of any federal funds—mandatory or discretionary—to carry out the ACA. The Senate amendment to H.J.Res. 59 did not incorporate the House ACA defunding language. On September 29, the House amended the Senate amendment with language that would have (1) repealed the ACA’s medical device tax, and (2) delayed the law’s implementation by one year, but the Senate tabled both of these amendments. On September 30, the House further amended the Senate amendment by adding language to (1) delay the ACA’s individual insurance mandate by one year; and (2) expand the ACA’s requirement for Members of Congress and their staff to obtain health coverage through the exchanges by including the President, Vice President, and political appointees, and prohibit any premium contribution by the government. Once again, the Senate tabled the House amendments. With the House and Senate unable to agree on the CR, the Administration on October 1, 2013, commenced a partial shutdown of the federal government. The government resumed full operations on October 17, 2013, after House and Senate lawmakers reached an agreement on a temporary funding measure, and the Continuing Appropriations Act, 2014, was signed into law (see above).</p> <p>Earlier in the summer of 2013, the House and Senate Appropriations Committees took the following actions on FY2014 appropriations. The Senate Appropriations Committee reported its FY2014 Labor-HHS-ED appropriations bill (S. 1284) on July 11, 2013. For the fourth year in a row, the Senate’s L-HHS-ED appropriations bill would have instructed the HHS Secretary to allocate the PPHF funds to the accounts specified, in the amounts specified, and for the activities specified in a table included in the accompanying committee report (S.Rept. 113-71). S. 1284 also would have prohibited the Secretary from making any further transfers of PPHF funds. In addition, the bill would have required the HHS Secretary to establish a website with detailed information on the allocation and use of PPHF funds. S. 1284 would have provided CMS with its requested \$1.4 billion increase in discretionary funds for ACA implementation in FY2014.</p> <p>The Senate Appropriations Committee reported its FY2014 Financial Services appropriations bill (S. 1371, S.Rept. 113-80) on July 25, 2013. S. 1371 would have provided some but not all of the requested \$440 million increase in IRS funding for ACA implementation.</p> <p>The House Appropriations Committee reported its version of the FY2014 Financial Services appropriations bill (H.R. 2786, H.Rept. 113-172) on July 23, 2013. The measure did not provide any of the new IRS funds requested in the President’s FY2014 budget for ACA implementation. H.R. 2786, as reported, would have prohibited the IRS from using any of the discretionary funds provided in the bill to implement the individual mandate, and would have prohibited transfers from HHS to the IRS to implement the ACA. The House Appropriations Subcommittee on Labor-HHS-ED did not introduce or report a FY2014 appropriations bill.</p>



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<b>FY2015</b>	
P.L. 113-235 Dec. 16, 2014	<p data-bbox="445 328 1885 386"><b>Consolidated and Further Continuing Appropriations Act, 2015.</b> Division G of P.L. 113-235—the FY2015 L-HHS-ED Appropriations Act—includes the following ACA-related provisions:</p> <ul data-bbox="445 402 1900 1133" style="list-style-type: none"> <li data-bbox="445 402 1774 457">• Rescinded \$10 million of IPAB’s FY2015 appropriation. [Note: A similar rescission was included in the FY2012, FY2013, and FY2014 appropriations acts; see above.]</li> <li data-bbox="445 474 1858 613">• Required the HHS Secretary to transfer the FY2015 PPHF funds to the accounts specified, in the amounts specified, and for the activities specified in a table included in the explanatory statement to accompany P.L. 113-235 (Congressional Record, December 11, 2014, p. H9839). Prohibited the Secretary from making further transfers. [Note: The requirement to transfer PPHF funds in accordance with the allocations specified by the committee has been included in each L-HHS-ED appropriations bill reported by the Senate Appropriations Committee since FY2011; however, the provision did not get included in the final enacted appropriations legislation until FY2014.]</li> <li data-bbox="445 630 1879 685">• Required the HHS Secretary to establish a website with detailed information on the allocation and use of PPHF funds, organized by program or by state. [Note: The same provision was included in the FY2014 appropriations act; see above.]</li> <li data-bbox="445 701 1816 756">• Prohibited the use of PPHF funds for lobbying, publicity, or propaganda purposes. [Note: The same provision was included in the FY2014 appropriations act; see above.]</li> <li data-bbox="445 773 1879 860">• Authorized the HHS Secretary to transfer up to \$305 million from the Medicare trust funds to the CMS Program Management account for Medicare operations, but prohibited the use of such transferred funds for ACA implementation. [Note: The same provision was included in the FY2014 appropriations act; see above.]</li> <li data-bbox="445 876 1900 964">• Required the HHS Secretary to include in the FY2016 budget justification and on the HHS website a detailed breakdown of the ACA programs and activities receiving funds appropriated to implement the law, including the number of full-time equivalents (FTEs), for FY2015 and for each of the past four fiscal years (i.e., FY2011-FY2014). [Note: The same provision was included in the FY2014 appropriations act; see above.]</li> <li data-bbox="445 980 1900 1088">• Required the HHS Secretary to include in the FY2016 budget justification a detailed breakdown of all funds used to date by CMS for the exchanges, including the proposed use of such funds in FY2016. Funding details must be provided for all the activities specified under the heading “Health Insurance Marketplace Transparency” in the explanatory statement to accompany P.L. 113-235 (Congressional Record, December 11, 2014, p. H9837). [Note: A less specific provision was included in the FY2014 appropriations act; see above.]</li> <li data-bbox="445 1104 1764 1133">• Prohibited risk corridor payments (authorized by ACA Section 1342) from the CMS Program Management appropriations account.</li> </ul> <p data-bbox="445 1149 1890 1341">Note: The explanatory statement to accompany P.L. 113-235, submitted by the House Appropriations Committee Chairman and published in the December 11, 2014, Congressional Record, instructed HHS to include in the FY2016 budget justification the amount of expired unobligated balances available for transfer to the non-recurring expenses fund (NEF), and the amount of any such balances transferred to the NEF. In addition, the explanatory statement instructed the HHS Office of the Inspector General to (1) submit to Congress, within 60 days of enactment, a plan of how it will conduct health reform oversight activities; and (2) report to Congress (jointly with the Treasury Inspector General), no later than June 1, 2015, on the IRS’s procedures for reconciling premium tax credits and reducing fraud and overpayments. [Note: Section 4 of P.L. 113-235 stated that the explanatory statement is to be treated as if it were a joint explanatory statement of the conference committee.]</p>

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Division E of P.L. 113-235—the FY2015 Financial Services Appropriations Act—did not include any ACA-related provisions. However, the explanatory statement to accompany P.L. 113-235 (discussed above) instructed the IRS to submit quarterly reports to Congress during FY2015 on actions taken to reconcile advance premium tax credit payments received in 2014 when 2014 tax returns are filed in 2015, and required the Treasury Secretary to provide Congress an accounting each month of the number of individuals who had not paid the full amount of any premium owed for the preceding month for health coverage obtained through an exchange.

Division M of P.L. 113-235—the Expatriate Health Coverage Clarification Act of 2014—exempts expatriate health plans offered to individuals working outside the United States from certain ACA requirements. Prior to enactment of this law, U.S. insurance companies offering these plans had to fully comply with the ACA, whereas foreign insurance companies did not. [Note: The House passed a similar bill, H.R. 4414, on April 29, 2014.]

**Legislative activity prior to enactment of P.L. 113-235.** The House passed the FY2015 Financial Services appropriations bill (H.R. 5016, H.Rept. 113-508) on July 16, 2014. The measure did not include the \$436 million increase in funding requested by the IRS for ACA implementation. Moreover, it would have (1) prohibited the IRS from using any of the discretionary funds provided in the bill to implement the individual mandate; (2) prohibited any transfers from HHS to the IRS for ACA implementation; and (3) required the Treasury Secretary to provide Congress an accounting each month of the number of individuals who had not paid the full amount of any premium owed for the preceding month for health coverage obtained through an exchange. Language in H.Rept. 113-508 would have directed the IRS to submit monthly status reports to Congress during FY2015 on actions taken to reconcile advance premium tax credit payments received in 2014 when 2014 tax returns are filed in 2015.

The House Appropriations Subcommittee on Labor-HHS-ED did not introduce or report a FY2015 appropriations bill.

The Senate Appropriations Subcommittee on Labor-HHS-ED approved a draft bill for FY2015 on June 10, 2014, and released an accompanying draft committee report, but no further action was taken. The Senate Appropriations Subcommittee on Financial Services approved a draft bill for FY2015 on June 24, 2014, but no further action was taken.

**FY2016**

**Legislative activity to date.** The House Appropriations Committee approved its FY2016 Financial Services appropriations bill on June 17, 2015. The measure would reduce the IRS's discretionary funding by about 8% compared to the FY2015 level. It also would (1) prohibit the IRS from using any of the discretionary funds provided in the bill to implement the individual mandate, and (2) prohibit any transfers from HHS to the IRS for ACA implementation.

The House Appropriations Committee reported its FY2016 Labor-HHS-ED appropriations bill on July 10, 2015 (H.R. 3020, H.Rept. 114-195). The bill would reduce funding for the CMS Program Management account by about 9% compared to the FY2015 level. It would continue all but one of the ACA provisions in the enacted FY2015 Labor-HHS-ED appropriations act (see above)—the provision authorizing the transfer of Medicare trust funds to the CMS Program Management Account is not included. The House committee bill would prohibit the use of any of the discretionary funds provided in the bill to support (1) patient-centered outcomes research; (2) exchange navigators; (3) CCIIO; or (4) implementation of any provision of the ACA. It also would prohibit CMS from collecting and using exchange user fees. Besides rescinding \$15 million of IPAB's FY2016 appropriation (up from the \$10 million in FY2015), the bill would rescind (1) \$18 million of the remaining CO-OP funds; (2) \$100 million of PCORTF's FY2016 funding; and (3) all unobligated HIRIF funds. Moreover, the bill would terminate the NEF and rescind all its unobligated funds. In addition, it would require the HHS Secretary to include in the FY2017 budget justification an analysis of how the ACA requirement that health plans cover recommended immunizations and other preventive services without any cost-sharing will impact eligibility for HHS discretionary programs. Finally, the House committee bill incorporates the Health Care Conscience Rights Act (H.R. 940). Among other things, H.R. 940 would amend the ACA so that individuals/employers would not have to purchase/sponsor coverage of abortion or other items or services to which they have a moral or religious objection.

The Senate Appropriations Committee reported its FY2016 Labor-HHS-ED appropriations bill (S. 1695, S.Rept. 114-74) on June 25, 2015. The bill would reduce funding for the CMS Program Management account by about 17% compared to the FY2015 level. Like the bill approved by the House Appropriations Committee, the Senate version would continue all of the ACA provisions in the enacted FY2015 Labor-HHS-ED appropriations act with the exception of the provision authorizing the transfer of Medicare trust funds to the CMS Program Management Account. In addition, the Senate committee bill would (1) rescind \$18 million of the remaining CO-OP funds; (2) prohibit the use of any of CMS's Program Management funds to support exchange operations; and (3) require the Secretary to provide the Appropriations Committees with monthly exchange enrollment figures at least two days before making them publicly available.

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