

Nonprofits & The Spending Act

05.08.18 | Linda J. Rosenthal, JD



If you're confused by the seemingly endless stream of budget battles in Congress, including the most recent spending act, you're not alone.

The Congressional budget and appropriations processes are tough nuts to crack for everyone except the most seasoned legislative and political operatives. To some extent, it is an ongoing issue because funds must be authorized and appropriated for each fiscal year, but it's made dramatically worse by gridlock that results in piecemeal "continuing resolutions" to kick the can down the road over and over again.

The Consolidated Appropriations Act of 2018 – (we'll call it the "Spending Act" for convenience) enacted and signed into law on March 23, 2018, authorizes funding for the U.S. government for FY 2018 ending on September 30, 2018. Of course, we're already 7 months into FY 2018, so this process must soon begin again – for FY 2019.

It was done in a rush because Congress had to act fast before the expiration of the last stopgap funding act in February 2018 and to avoid another shutdown or short-term continuing resolution.

"The political dynamics ... [were] different from the tax bill that passed in December because there are no special procedural gimmicks that would allow a bill to pass with only one-party support."

Some House Republicans opposed the bill because of the \$143 billion in new military spending along with domestic programs, and the absence in it of provisions about abortion and other social issues.

As a result, "... many controversial issues have been jettisoned from the omnibus spending bill and reserved for the FY 2019 spending bill and other legislative debates."

For the nonprofit sector, this legislation "features a number of positives for nonprofits and the populations that they serve."

Spending Act Omits Johnson Repeal

What happened to the Johnson Amendment in the Spending Act was – nothing. Repeal language was in the omnibus bill but it was among the final provisions taken out the night before the vote. Certainly, nonprofit community leaders (who generally oppose any amendment or repeal of the 501(c)(3) ban on politics) were happy; they thanked everyone for the hard work in lobbying and other activist efforts. Unfortunately, the Johnson Amendment issue has not disappeared from the GOP agenda. The result was a stay of execution; not a reprieve or pardon. David L. Thompson, vice president of public policy for the National Council of Nonprofits, predicts that a repeal of the Johnson Amendment could be part of any one or more “technical corrections” bills related to last year’s Tax Cuts & Jobs Act. It could also come up again in connection with the 2019 appropriations bill due by October 1st. Of course, there is a rift among Republican lawmakers about whether to push for a full repeal or carve out limited exceptions for clergy, for instance.

More Spending for the Arts

Surprising good news arising from the Spending Act is that the expected draconian cuts to many arts programs and agencies not only did not materialize but the funding has increased.

Throughout the 2016 campaign and continuing through 2017, the White House and the GOP leadership in Congress seemed to be in lockstep about fulfilling long-held dreams of slashing government spending in many areas, including the arts. Their targets included major institutions like the National Endowment for the Arts, the National Endowment for the Humanities, and the Corporation for Public Broadcasting.

But a funny thing happened on the way to passage of the 2018 omnibus spending bill, according to an article in The Atlantic titled *A Domestic Budget to Make Barack Obama Proud*. The Republican Congress “didn’t just ignore Trump’s proposals,” it enacted a “...\$1.3 trillion spending bill [that] actually fulfilled – or even exceeded – many of the funding requests of his Democratic predecessor.” And not a single one of the 18 independent agencies targeted for the scrapheap was thrown overboard.

Among the key budget items were:

- HHS gets \$78 billion: Close to the \$77.9 billion Obama sought and almost 20% more than the Trump budget request
- Head Start and Pell Grants get increases
- DOL and DOE get \$1.5 billion more than Obama’s final request and almost \$12 billion more than the Trump budget request
- Community Development Block Grant gets a 10% increase to \$3.3 billion: slated for the chopping block, even Obama had proposed a slight funding cut in 2016

“This could have been written by President Obama and liberal Democrats,” Senator Rand Paul of Kentucky said Thursday night on Fox News, hours before he consented to a vote on a 2,200-page bill most of his colleagues hadn’t had time to read.

The article in The Atlantic is a fascinating read about how Senator Paul and almost everyone on Capitol Hill fell down the rabbit hole with Alice on the way to enactment of the Omnibus Spending Bill of 2018.

[Update: 5/7/18: The White House is preparing a package of about \$15 billion in spending cuts "using an obscure budgetary process to rescind so-called unobligated funds while also preparing another package that would take money from the recently passed government funding bill." It's unclear exactly which items will be affected as well as if Congress will go along with these changes, although this move has been anticipated since the March 2018 passage of the Spending Act.]

501(c)(4) Regulations: Off Limits

The third item of interest to the nonprofit community concerns the ongoing war of the GOP with the Internal Revenue Service and, in particular, the interpretation and application of the rules pertaining to 501(c)(4) "social welfare" organizations.

The Consolidated Appropriations Act of 2018 provides that "none of the funds made available in this or any other Act may be used by the Department of the Treasury, including the Internal Revenue Service, to issue, revise, or finalize any regulation, revenue ruling, or other guidance not limited to a particular taxpayer relating to the standard which is used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4) of the Internal Revenue Code of 1986."

From the time it was originally added to the Internal Revenue Code decades ago, the social welfare organization category of tax exemption has been a problem for everyone concerned – including the IRS personnel who must apply a fuzzy and confusing standard, particularly about the amount of political intervention activity that's allowed.

Over the years, there have been efforts to formulate helpful regulations; see, for instance, the Bright Line Project's 2014 Proposed Regulations for Bright Line Rules for Nonprofit Political Activity. Shutting down discussion and debate over a proper standard is – to say the least – unhelpful.

Conclusion

The most recent skirmish in the budget battles has concluded, but interest groups like the nonprofit sector must remain vigilant because in the months ahead there will be considerable activity on Capitol Hill that may have profound effects on philanthropy in the United States.