H.R. 264 - Financial Services and General Government Appropriations Act, 2019 (Rep. Quigley, D-IL)

FLOOR SCHEDULE:

H.R. 264 is expected to be considered January 9, 2019, under a closed rule.

The rule would waive all points of order against consideration of the bill and against provisions in the bill.

The rule provides the bill one motion to recommit.

TOPLINE SUMMARY:

The bill would provide full-year FY 2019 appropriations for agencies and departments that are annually funded under the Financial Services and General Government Appropriations Act. Funding lapsed for agencies and departments funded under this act, and the following acts, at the end of December 21, 2019:

1. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
2. Commerce, Justice, Science, and Related Agencies
3. Interior, Environment, and Related Agencies
4. State, Foreign Operations, and Related Programs
5. Transportation, and Housing and Urban Development, and Related Agencies
6. Department of Homeland Security

The bill would direct that furloughed federal and state employees receive back-pay.

COST:

According to a Congressional Budget Office (CBO) cost estimate for H.R. 21, which included substantially the same language with respect to funding covered by the Financial Services and General Government Appropriations Act, the bill would provide a net total of $23.688 billion in Fiscal Year 2019 base discretionary budget authority that is subject to the Budget Control Act (BCA) discretionary spending caps (as increased by the Bipartisan Budget Act of 2018 (BBA18)).

CONSERVATIVE CONCERNS:

Wall Funding & Shutdown

For the second week in a row, Speaker Pelosi will be forcing the House to vote on appropriations measures that have no realistic chance of becoming law. Many conservatives will view this bill as a waste of time by House Democratic Leadership because it was understood by House and Senate leadership that the Senate would not consider a government funding measure until it was agreed to by the President.

Conservative members may be concerned that House Democrats are forcing separate consideration of this and the other appropriations measures being brought up in the House this week in an attempt to peel off Republican members from voting 'no' by focusing on the programs funded in the individual bills. Conservatives should be resolute in understanding that votes on individual funding bills represent part of a cohesive position on the FY 2019 funding debate. Further, the vote may be seen by conservatives as a ploy to blame Republicans for continuing the partial shutdown.

Many conservatives will be concerned that appropriations are being concerned without an agreement in place to provide full-year funding for the Department of Homeland Security with additional funding for a southern border wall/barrier as requested by President Trump. Currently enacted funding (section 230 of the FY 2018 Omnibus) for the Department of Homeland Security includes $1.571 billion for fencing and border security technology along the southern border, of which about $1.34 billion can be used for fencing. None of that funding can be used for construction of a President Trump wall according to restrictions of that section. House Republicans passed an amended continuing resolution on December 20, 2018 prior to the lapse in discretionary funding that would have fully funded the President's wall funding request.

Programmatic Funding Concerns

Conservatives may be concerned that the bill does not contain the Fund for America's Kids and Grandkids that was a part of the House's Financial Services and General Government appropriations bill for FY 2019 passed in the 115th Congress. According to the House Committee Report from the 115th Congress, it "is established to fund activities to further government efficiency, and through those efficiencies reduce the overall cost to operate government programs." Pursuant to the House-passed bill, funds appropriated to the Fund would not be obligated until the Federal government is operating either at a surplus or zero deficit. The House-passed bill would have appropriated $585 million to this new account.

Conservatives may be concerned that the bill would institute a 1.9 percent raise for federal employees for CY 2019, contradicting President Trump's pay freeze.

Conservatives may be concerned that the bill does not contain language from the House-passed bill that would prohibit D.C. from using funds to enact any law to carry out assisted suicide.

Conservatives may be concerned that the bill does not contain language from the House-passed bill that would prohibit the use of appropriated funds from being used to carry out the Reproductive Health Non-Discrimination Amendment Act of 2018 (D.C. Law 20– 261) which bars employers from making employment decisions based on an employee's reproductive decisions.

Conservatives may be concerned that the bill does not contain language that would negate the creation of an individual health insurance mandate in DC.

Conservatives may be concerned that the bill contains language that would require that 6-day delivery shall continue at not less than the 1983 level and prohibit funds from being used to consolidate or close small rural and other small post offices.

Conservatives may be concerned that the bill does not contain language from the House-passed bill that would prohibit abortion coverage through the Multi-State Plan Program created under Obamacare.

Conservatives may be concerned that the bill would direct the Office of Management and Budget (OMB) to adjust the defense or non-defense discretionary spending caps upward in an amount as high as 0.2 percent of the sum of the adjusted discretionary spending limits for both categories for the fiscal year when there is a breach of the spending caps due to estimating differences between OMB and the Congressional Budget Office (CBO). For FY 2019, the adjustment could be as high as $2.488 billion.

- **Expand the Size and Scope of the Federal Government?** The bill provides discretionary funding at levels greater than what was provided for last fiscal year.
- **Encroach into State or Local Authority?** Some conservatives may believe that many of the programs funded by the bill should be the responsibility of state and local governments.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Division B: Financial Services and General Government Appropriations Act, 2019

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level		FY19 vs 18 Enacted	FY18 vs President
23,423	26,587	23,688		+265	- 3,099

The Financial Services and General Government Appropriations Act would appropriate a net total of $23.688 billion, a level that is $3.099 billion below the President's Budget request and $265 million more than the FY 2018 enacted level.

Title I: Department of the Treasury

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level		FY19 vs 18 Enacted	FY18 vs President
12,155	12,678	12,701		+545	+23

The Treasury would be appropriated a net total of $12.7 billion, a level that is $23 million above the President's Budget request, $545 million above the FY 2018 enacted level.

Treasury (Non-IRS): The non-IRS functions of the Treasury are appropriated $1.438 billion, a level that is $257 million above the President's Budget request and $713 million above the FY 2018 enacted level.

Office of Terrorism and Financial Intelligence: The bill would provide $159 million for the Treasury's Office of Terrorism and Financial Intelligence, a level that is the same as the President's Budget request and $17 million above the current FY 2018 level.

Fund for America's Kids and Grandkids: The bill does not contain this fund that would have been created by the House-passed bill. According to the Committee Report, it "is established to fund activities to further government efficiency, and through those efficiencies reduce the overall cost to operate government programs." Pursuant to the House-passed bill, funds appropriated to the Fund would not be obligated until the Federal government is operating either at a surplus or zero deficit. The House-passed bill would appropriate $585 million to this new account.

The Congressional Budget Office projects the federal deficit to rise from $981 billion in FY 2019 to $1.526 billion in 2028. The practical effect of the surplus/zero-deficit restriction in the House-passed bill is that it would be virtually impossible under current policy for the funds appropriated to the Fund to be spent so long as they remain in the fund.

Treasury Forfeiture Fund: The bill would not rescind any funds from the Treasury Forfeiture Fund. The FY2018 Omnibus permanently rescinded $702 million from the Fund.

The Fund is populated by assets seized pursuant to law-enforcement activities by the Treasury and certain Homeland Security agencies and is then available to support a number of law enforcement activities. A smaller rescission of these funds means that more resources are available for law enforcement activities. A rescission from this fund is a "change in mandatory program" (CHIMPS). In the past, some rescissions from the Fund would reduce mandatory spending in the fiscal year under consideration, but would also increase mandatory spending in the out-years. Consequently, they would produce no real savings but be used to offset actual spending in the appropriations bill.

Some conservatives have expressed concerns in the past that seizures under various asset forfeiture programs fail to provide basic protections to citizens, and some may believe such activities to be unconstitutional violation of the 4th Amendment. More information on asset forfeiture and the use of the Fund as a CHIMP is available from the Heritage Foundation.

Internal Revenue Service (IRS): The bill would provide $11.26 billion for the IRS, a level that is $127 million above the president's budget request, $75 million above the current FY 2018 enacted level.

Additionally, the bill would appropriate an additional $77 million to the IRS for either Taxpayer Services, Enforcement, or Operations Support accounts of the Internal Revenue Service to be used solely for carrying out the Tax Cuts and Jobs Act so long as the IRS submits to Congress a spending plan for such funds.

Civilian Pay Freeze: Conservatives may be concerned that the bill would negate President Trump's pay freeze for CY 2019 for federal civilian employees and institute a 1.9 percent raise.

POLICY PROVISIONS:

Targeting of Conservatives: The bill would prohibit the use of funds to target groups and individual citizens based upon their ideological beliefs or for exercising their First Amendment rights.

IRS Conferences: The bill includes a current law provision to prohibit funds for IRS conferences that fail to comply with the Inspector General's recommendations.

Hiring Former IRS Employees: The bill would prohibit hiring or awarding bonuses to IRS employees without taking into account the conduct and tax compliance of the employee.

Confidential Taxpayer Information: The bill would prohibit the use of funds in violation of law that prohibits the release of taxpayer return information by the federal government.

501(c)(4) Regulations: The bill would prohibit the use of funds for the IRS to issue regulations that would change the definition and standards for 501(c)(4) organizations. The IRS has attempted to rewrite regulations that would codify its practice of targeting conservative organizations. This important language is designed to protect the free speech rights of civic organizations.

Financial Action Task Force Reimbursement: The bill would allow the IRS to use funds appropriated for the Office of Terrorism and Financial Intelligence'' to reimburse the ''Departmental Offices—Salaries and Expenses'' account for expenses incurred in such account for reception and representation expenses to support activities of the Financial Action Task Force.

Cuba Issues: The bill does not include language from the House-passed bill that would:
- prohibit funds to approve, license, facilitate, authorize, or otherwise allow the importation of property confiscated by the Cuban Government; and
- prohibit approving or allowing the licensing of a mark, trade name, or commercial name that is substantially similar to one that was used in connection with a business or assets that was confiscated by Cuba, unless expressly consented.

Climate Action Plan (CAP): The bill does not contain language from the House-passed bill that would prohibit funds for enforcing a rule based on Obama's "Guidance for United States Positions on MDBs Engaging with Developing Countries on Coal-Fired Power Generation'' dated October 29, 2013" when enforcement would prohibit or have the effect of prohibiting, the carrying out of any coal-fired or other power generation project the purpose of which is to increase exports of prevent the loss of jobs.

IRS Videos: The bill would prohibit funds for wasteful videos that have not been reviewed for "cost, topic, tone, and purpose and certified to be appropriate," as has been included in previous appropriations bills.

Title II: Executive Office of the President
Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level		FY19 vs 18 Enacted	FY18 vs President
725.535	349.351	725.135		-2.600	+ 378.784

The Executive Office of the President would be appropriated a net total of $725 million, a level that is $378 million above the President's Budget request, and $2.6 million less than the FY 2018 enacted level.

White House Salaries and Expenses: The bill would provide $55 million for White House staff salaries and expenses, a level that is the same as the President's Budget request and the FY 2018 enacted level.

National Security Council and the Homeland Security Council: The bill would provide $11.8 million for the National Security Council and the Homeland Security Council, a level that is $1.7 million below the President's Budget request and the same as the FY 2018 enacted level.

Office of Management and Budget (OMB): The bill would provide $103 million for the OMB, a level that is the same as the President's Budget request and $2 million above the FY 2018 enacted level.

Office of National Drug Control Policy (ONDCP): The bill would provide a total of $415 million for the ONDCP, a level that is $386 above the President's Budget request and about the same as the FY 2018 enacted level.

POLICY PROVISIONS:

Impact of Executive Orders: The bill would require the OMB to include a statement of the budgetary impact (including costs, benefits, and revenues) of Executive Orders or Presidential Memorandum issued or revoked. For Memoranda, the requirement for cost estimates only applies when the estimated regulatory cost of the memorandum is in excess of $100 million.

Signing Statements: The bill would not prohibit the use of funds to prepare, sign, or approve statements abrogating legislation passed by Congress and signed by the president, as has been included in previous appropriations bills.

Executive Orders Contravening Law: The bill would not prohibit the use of funds to prepare or implement an Executive Order or Presidential Memorandum that contravenes existing law, as has been included in previous appropriations bills.

Title III: The Judiciary

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level		FY19 vs 18 Enacted	FY18 vs President
7,552	7,662	7,250		+ 140	+ 27

The Federal Judiciary would be appropriated a net total of $7.250 billion, a level that is $27 million above the President's Budget request, $140 million above the FY18 enacted level.

Supreme Court: The bill would provide the Supreme Court a total of $104 million, a level that is nearly equal to the President's Budget request and $2.5 million above the FY 2018 enacted level.

Title IV: District of Columbia

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level		FY19 vs 18 Enacted	FY18 vs President
721	658	703		- 18	+ 45

The District of Columbia (D.C.) would be appropriated a net total of $703 million, a level that is $45 million above the President's Budget request and $18 million above the FY 2018 enacted level.

College Tuition Subsidies: The bill would provide $30 million for the DC Tuition Assistance Grant (DCTAG) program, a level that is $30 million above the President's Budget request (which proposed to eliminate funding completely) and $10 million below the FY 2018 enacted level. The DCTAG program provides up to $10,000 annually for undergraduate DC students to attend eligible four-year public universities and colleges nationwide at instate tuition rates as well as grants of up to $2,500 per year for students to attend private universities and colleges in the D.C. metropolitan area, private Historically Black Colleges and Universities nationwide, and public two-year community colleges nationwide.

POLICY PROVISIONS:

D.C. Local Funds: The bill provides authority for D.C. to spend its local funds. The bill would provide authority for D.C. to spend its local funds in the event of a federal government shutdown. The bill does not contain language from the House-passed bill that would repeal D.C.'s Local Budget Autonomy Amendment Act of 2012.

Assisted Suicide: The bill does not contain language from the House-passed bill that would prohibit D.C. from using funds to enact any law to carry out assisted suicide.

Reproductive Non-Discrimination Act: The bill does not contain language from the House-passed bill that would prohibit the use of appropriated funds from being used to carry out the Reproductive Health Non-

Discrimination Amendment Act of 2018 (D.C. Law 20– 261) which bars employers from making employment decisions based on an employee's reproductive decisions.

DC Individual Mandate: The bill does not contain language from the House-passed bill that would negate the creation of an individual health insurance mandate in DC.

Needle Exchanges: The bill would prohibit the use of federal funds for a drug needle exchange program.

Conscience Clause: The bill would maintain the conscience clause for contraceptive coverage by health insurance plans in D.C.

Drug Legalization: The bill would prohibit the use of federal fund to legalize or reduce the penalties against controlled substances including marijuana.

D.C. Hyde Amendment: The bill would prohibit the use of federal or local funds to provide for an elective abortion. Since 1979, Congress has prohibited the use of funds for abortion in D.C., except for FY 1994-95, and in FY 2010 through part of FY 2011.

<u>Title V: Independent Agencies</u>

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level		FY19 vs 18 Enacted	FY19 vs President
2,710	2,727	2,303		- 656	- 705

The independent agencies funded by the bill would be appropriated a net total of $2.303 billion, a level that is $705 million below the President's Budget request and $656 million below the FY 2018 enacted level.

Consumer Financial Protection Bureau (CFPB): The bill does not contain language from the House-passed bill that would make the CFPB subject to the appropriations process in FY 2019. Under the Dodd-Frank financial reform law, the CFPB is allowed to set its own budget using funds transferred from the Federal Reserve. This allows the CFPB to operate with no Congressional oversight. The bill also lacks House-passed language that would limit transfers to $485 million in FY 2019, an amount equal to the President's Budget request.

Federal Communications Commission (FCC): The bill would provide $333 million for the FCC, a level that is the same as the president's budget request and $11 million above the FY 2018 enacted level. The appropriation would be fully offset with offsetting collections.

Federal Election Commission (FEC): The bill would provide $71 million for the FEC, a level that is equal to the President's Budget request and the FY 2018 enacted level.

Office of Personnel Management (OPM): The bill would provide a total of $296 million for the OPM, a level that is the same as the President's Budget request and $5 million above the FY 2018 enacted level.

Securities and Exchange Commission (SEC): The bill would provide the SEC with $1.695 billion, a level that is $3.5 million below the President's Budget request and $201 million below the FY 2018 enacted level. This funding would be fully offset by fee collections.

The bill would not rescind $25 million in the unobligated balances from the SEC's Reserve Fund as requested in the President Budget request.

Small Business Administration (SBA): The bill would provide $699 million for the SBA, a level that is $20 million above the President's Budget request and $1.6 million below the FY 2018 enacted level.

The bill does not contain language from the House-passed bill that would repeal a provision of the Food, Conservation, and Energy Act of 2008 that created an expedited disaster assistance business loan program under which the SBA could, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business.

U.S. Postal Service (USPS): The bill would provide $305 million for the USPS, a level that is $15 million above the President's Budget request and $2 million above the FY 2018 enacted level.

Limitation on Postal Reform: Conservatives may be concerned that the bill contains language that would require that 6-day delivery shall continue at not less than the 1983 level and prohibit funds from being used to consolidate or close small rural and other small post offices.

POLICY PROVISIONS:

Pro-Life: Sections 613 and 614 of the bill would prohibit funding abortion coverage through the Federal Employee Health Benefits Program (FEHBP), except in cases where the health of the mother is at risk or in the event of rape and incest. These provisions, sometimes called the Smith Amendment, were first enacted in 1983 and have consistently been included in appropriations bills.

The bill does not contain language from the House-passed bill that would prohibit abortion coverage through the Multi-State Plan Program created under Obamacare.

Conscience Clause: The bill would maintain conscience protections for contraceptive coverage by health insurance plans in the FEHB.

Discretionary Spending Cap Adjustment Authority: Conservatives may be concerned that the bill would direct the Office of Management and Budget (OMB) to adjust the defense or non-defense discretionary spending caps upward in an amount as high as 0.2 percent of the sum of the adjusted discretionary spending limits for both categories for the fiscal year when there is a breach of the spending caps due to estimating differences between OMB and the Congressional Budget Office (CBO). For FY 2019, the adjustment could be as high as $2.488 billion.

Recreational Off-Road Vehicles: The bill would prohibit the Consumer Product Safety from moving forward with finalizing a rule to designed to make the vehicles safer until a National Academy of Sciences study is complete.

Food Marketed to Children: The bill would prohibit funds for the Federal Trade Commission to complete or publish the study, recommendations, or report prepared by the Interagency Working Group on Food Marketed to Children unless the FTC complies with E.O. 13563.

Internet Service Provider (ISP) Privacy Protection: The bill would prohibit agencies from requiring ISPs to disclose electronic communications information in a manner that violates the Fourth Amendment.

Political Disclosures: The bill would prohibit the SEC from requiring the disclosure of political contributions, contributions to tax-exempt organizations, or dues paid to trade associations. The bill would also prohibit the federal government from requiring federal contractors to disclose political contributions.

FEC Prior Approval Requirement: The bill lacks House-passed legislation that would prohibit funds from being used to enforce the Federal Elections Commission's prior approval requirement for corporate member trade association PACs.

Whistleblower Protection: The bill prohibits payment of salary to any federal employee who threatens or prohibits another federal employee from communicating with Congress.

Unions: The bill prohibits the federal government from disclosing the home addresses of federal employees to labor unions without employee authorization.

Official Duties: The bill would require executive employees to make a reasonable effort to use official time to complete their official duties.

Collection of Internet Activities: the bill contains language prohibiting the use of funds to monitor personal access or use of Internet sites or to collect, review, or obtain any personally identifiable information relating to access to or use of an Internet site.

Contractor Political Contributions: The bill would prohibit the use of funds to require any entity submitting an offer for a Federal contract or participating in an acquisition to disclose political contributions.

Federal Flood Risk Management Standard: The bill does not contain language from the House-passed bill that would prohibit the use of funds to implement or enforce Executive Order 13690 establishing a Federal Flood Risk Management Standard.

Blood Diamonds: The bill does not contain language from the House-passed bill that would prohibit the use of funds to implement, administer, or enforce a rule issued pursuant to section 13(p) of the Securities Exchange Act of 1934 which calls on the SEC to create rules requiring issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose annually whether any of those minerals originated in the Democratic Republic of the Congo or an adjoining country.

Civilian Employee Job Protection: Conservatives may be concerned that the bill would prohibit the use of funds to begin or announce a study or a public-private competition regarding the conversion to contractor performance of any function performed by civilian Federal employees pursuant to Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.

Unauthorized Appropriations: The bill includes billions in appropriations for dozens of programs that are not authorized by law.

Furlough Back-pay

Furloughed Worker Back-pay:

The bill would provide back-pay for employees furloughed as a result in the funding lapse. Employees include those federal employees and District of Columbia employees whose salaries are paid by this bill.

States and Federal grantees that spent their own funding to administer programs funded by the bill's appropriations would be reimbursed for those expenditures plus interest.

Further, if a State or Federal grantee furloughed employees whose compensation is advanced or reimbursed in whole or in part by the Federal Government, the bill would direct that such States be reimbursed for the cost of compensating furloughed employees during the lapse in federal funding.

ADMINISTRATION POSITION:

President Trump has consistently voiced his opposition to signing a government funding bill that did not include extra money for the southern border wall.

The Statement of Administration Policy for the last two appropriations measures without wall funding brought to the floor (H.R. 21 and H.J.Res. 1) recommended a veto of each bill stating: "The Administration is committed to working with the Congress to reopen lapsed agencies, but cannot accept legislation that provides unnecessary funding for wasteful programs while ignoring the Nation's urgent border security needs."

CONSTITUTIONAL AUTHORITY:

A Constitutional Authority Statement was not available at the time this Legislative Bulletin was written.

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