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This certainly seems clear to me and should resolve any lingering confusion over VA's authority to pay benefits during this period when there is no appropriation in effect.

Mr. President, I ask that the full text of the opinion be printed in the RECORD.

The material follows:

CONGRESSIONAL RESEARCH SERVICE,  
THE LIBRARY OF CONGRESS,  
Washington, DC, November 17, 1995.

Subject: Necessity of Appropriations Legislation to Pay Compensation and Pension Benefits By The Department of Veterans' Affairs on December 1, 1995.

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The Department of Veterans Affairs (VA) has advised that if a continuing resolution is not enacted into law by November 22, 1995, compensation and benefit checks scheduled to be mailed on December 1 would be delayed. Two questions are raised. First, are veterans' compensation and premium benefits entitlements? Second, if they are entitlements, isn't the government obligated to pay them on time, even if appropriations for the payments have not been passed, such as by tapping the civil service retirement fund? Veterans' benefits are entitlements, but since they are entitlements that require annual appropriations, the absence of spending authority, either through an appropriations measure or a continuing resolution, appears to preclude the scheduled payments by VA or by the Treasury Department through the tapping of a trust fund.

Both the Constitution and federal statutory law place specific limits on what government entities may do in the absence of appropriated funds. The Constitution prohibits the withdrawal of any money from the Treasury "but in Consequence of Appropriations made by the Law," U.S. Const. art. I, sec. 9, cl. 7. By the terms of this clause, government entities may continue to obligate funds during a temporary lapse in appropriations, but they may not pay out any monies. This gap has been closed by the Antideficiency Act which prohibits the obligation of funds under such circumstances. Under that Act, it is a crime for an official or employee of the United States Government or of the District of Columbia to make expenditures in excess of appropriations or involve the Government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. 1341(a)(1) (1988). The Act also prohibits any officer from accepting "voluntary services," or "employ[ing] personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of Property". 31 U.S.C. 1342. The exceptions clause was amended in 1990 to specifically preclude "ongoing, regular functions of the government the suspension of which would not imminently threaten the safety of human life or the protection of property." *Id.* Thus on its face the Act appears to leave little room for the continuance of most government functions in advance of appropriations.

It is clear that veterans' compensation and pension benefits are "entitlements". See, e.g., 38 U.S.C. 310. However, there are two types of entitlements: (1) Those that have permanent appropriations contained in authorizing legislation. These do not require

funding through annual appropriation acts. The leading example is social security legislation and its trust funds mechanism. See 42 U.S.C. 401. (2) Also, there are those entitlements authorized in basic legislation for which funding is provided in annual appropriations acts. Veterans' compensation and pension benefits fall within this latter category. See Departments of Veterans' Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327. As a consequence, the congressional failure to enact an annual appropriation act or a further continuing resolution constrains the VA's authority to spend, both with respect to the benefits themselves and the personnel necessary to administer the programs. VA therefore appears to be acting within the parameters of the Department of Justice and Office of Management and Budget guidelines for funding lapses. There are no "no-year or multi-year or other funds available". However, if funding legislation is passed, even after November 22, VA would then be properly authorized to issue checks and personnel necessary to issue them would be available.

The coincidence of the current debt limit situation provides no additional option for payment of the benefits. Reaching the debt limit and the failure to provide appropriations are distinctly different problems that are accompanied by different consequences and solutions. By law the total amount of government debt that may be outstanding is limited to \$4.9 trillion. 31 U.S.C. 3101(b). When that limit is reached, if Congress has not increased it, the government must rely on taxes and miscellaneous receipts such as loan deposits and fees to replenish its operating balances. In essence, it must go on a cash basis. The statutory debt ceiling, therefore, limits the ability of government agencies to exercise spending authority that they have received in a appropriations measure because the Treasury will, at some point, not take in sufficient receipts to pay for all appropriated actions.

In contrast, a funding lapse involves the authority of agencies to spend money. Thus appropriations lapses and reaching the debt ceiling limit present distinct budgetary and legal issues for VA. The Department's decision to delay payments rests upon its lack of spending authority in the first place. There is no question of inability to pay. Indeed, in the absence of appropriations we are not aware of any legal basis for making the benefits payments by tapping, for instance, the civil service retirement fund for such and unfunded purpose. Stated differently, the lack of VA spending authority leaves Treasury without any apparent legal authority to use retirement trust fund resources or any other available monies for activities which have not been authorized "in Consequence of Appropriations made by the Law". What the Treasury is doing now is paying obligations that have come due either by using current revenues or by tapping the civil service retirement fund or the G fund, as authorized by statutes governing those funds. These obligations—unlike the VA entitlements—arise from activities for which appropriations have been enacted.●

UNANIMOUS-CONSENT REQUEST—  
H.R. 2127

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2127, the Labor-HHS appropriations bill, and that the language on page 21, lines 3 to 10, relating to striker replacement, be stricken; that

all other committee amendments be agreed to en bloc; that the bill be read a third time and passed; and that the motion to reconsider be laid upon the table, with the above occurring without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, I object to that at this point.

The PRESIDING OFFICER. Objection is heard.

Mr. HARKIN. Mr. President, I will not take much time. I knew that would be objected to. I just want to say we had hot lined this on our side and hot lined it on the Republican side.

I just want the RECORD to show that there are no objections to this unanimous consent request on the Democratic side.

I will also state for the RECORD, I repeat from the RECORD of September 29, 1995, in a colloquy among this Senator, Senator SPECTER and Senator DOLE, the majority leader, when we tried to bring up the Labor-HHS appropriations bill.

Senator DOLE, the Senate majority leader, said and I quote from the RECORD of September 29, 1995:

I agree with the Senator from Pennsylvania and the Senator from Iowa that we ought to pass that bill on a voice vote. We cannot get cloture. There are two votes, 54-46 party line votes.

And he is referring here to the striker replacement votes.

So my view is we ought to do it, pass it and find out what happens after the veto in the next round.

Mr. President, I just want to point out that these riders that we have on the Labor-HHS bill can be dropped. For example, this week the Republicans have dropped their effort to attach the Istook antilobbying rider to the Treasury-Postal conference agreement, thereby clearing the bill for congressional approval.

They agreed to a compromise to the abortion rider on the defense appropriations conference agreement, also clearing it for approval in both Houses. And they dropped all 17 House-approved EPA riders on the HUD-VA conference agreement.

So this unanimous-consent request that I propounded—and I also want to state, Mr. President, that I had checked with the chairman of the Appropriations subcommittee, Senator SPECTER. I am the ranking member on that. I used to be chairman and he was ranking member. I checked with him earlier. He is in favor of this unanimous-consent request, and I asked if I could have his permission to so state that for the RECORD, and he said yes.

Again, Mr. President, I want to point out, on this side of the aisle, we have no objections to bringing up Labor-HHS and simply passing it on a voice vote if these riders are dropped, just as I pointed out riders were dropped from other bills, clearing them for action.

With that I thank the Senator from Mississippi.