



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

October 12, 2021

M- 37071

Memorandum

To: Secretary

From: Solicitor

Subject: Continuation of BSEE Inspection Fee Collection Authority during a Continuing Resolution

In recent years, Congress has funded the Bureau of Safety and Environmental Enforcement's (BSEE's) inspection program for outer Continental Shelf (OCS) oil and gas exploration and production facilities primarily through fees collected from the designated operators of OCS facilities. The Department's Interior Board of Land Appeals (IBLA) recently issued an opinion in *Medco Energi LLC*, IBLA No. 2020-184, that concluded that the BSEE fee collection authority lapsed during the period of a Continuing Resolution (CR), as the authority purportedly had been limited to the prior fiscal year by the applicable appropriations act. As set forth below, this Memorandum Opinion (M-Opinion) concludes that the BSEE fee collection authority does not lapse during the period of a CR and that the collection of inspection fees by the Department is both authorized and required during any such periods. Accordingly, the IBLA decision is based on an incorrect reading of applicable law and may not be relied upon by any employee of the Department.<sup>1</sup>

## I. Background

### A. BSEE Inspection Program Funding

Funding for the BSEE OCS inspection program is provided in the Offshore and Environmental Enforcement account in a manner that differs from the typical Federal agency appropriation, though it is not a unique structure. First, like most agency programs, the BSEE inspection program receives an annual appropriation derived from the General Treasury and enacted as a lump sum to be used for the program. Next, and unlike the usual agency appropriation, Congress directs that the Secretary credit amounts generated from inspection fees collected during the applicable fiscal year to this appropriation to reduce the dollar value of the baseline appropriation

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<sup>1</sup> Under 209 DM 3.2A (11), Solicitor's M-Opinions are "binding, when signed, on all other Departmental offices and officials and [ . . . ] may be overruled or modified only by the Solicitor, the Deputy Secretary, or the Secretary." Accordingly, M-Opinions are binding on the Office of Hearings and Appeals and the IBLA. 212 DM 13.8C. See also *Binding Nature of Solicitor's M-Opinions on the Office of Hearings and Appeals*, M-37003 (Jan. 18, 2001).

from the Treasury.<sup>2</sup> A representative formulation of the statutory language that governs the offshore inspection account is as follows:

For an additional amount, \$65,000,000, to remain available until expended, to be reduced by amounts collected by the Secretary and credited to this appropriation, which shall be derived from non-refundable inspection fees collected in fiscal year 2016, as provided in this Act: *Provided*, That to the extent that amounts realized from such inspection fees exceed \$65,000,000, the amounts realized in excess of \$65,000,000 shall be credited to this appropriation and remain available until expended[.]<sup>3</sup>

In this way, Congress ensures that the BSEE inspection program has sufficient funds to operate continuously throughout the year, through the back-stop of funding from the Treasury, but expects that the actual costs of the inspection program will ultimately be funded by the associated fees.<sup>4</sup>

### *B. BSEE Inspection Fee Collection Authority*

As noted, the BSEE annual appropriation itself provides that the program's appropriation is to be reduced by a fee "as provided in this Act."<sup>5</sup> Every year since 2010, that fee has been found in a separate section of the appropriations act that is entitled, "General Provisions, Department of the Interior."<sup>6</sup> In that provision, typically found at Section 107, Congress requires the Secretary to collect inspection fees for BSEE's inspection of certain OCS facilities pursuant to the Outer Continental Shelf Lands Act (OCSLA).<sup>7</sup> A representative provision is as follows:

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<sup>2</sup> Congress began the practice of annually funding, and directing the Department to collect fees to offset the annual funding for, OCS inspections in 2010. *See, e.g.*, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88, Div. A, Title I, § 115, 123 Stat. 2904, 2928-2929 (2009); Full-Year Continuing Appropriations, 2011, Pub. L. No. 112-10, Div. B, Title I, § 1101(a)(4), 125 Stat. 38, 102 (2011); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. E, Title I, § 109, 125 Stat. 786, 1008 (2011); Consolidated & Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Div. F, Title I, § 1101(a)(3), 127 Stat. 198,412 (2013); Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Div. G, Title I, § 107, 128 Stat. 5,311 (2014); Consolidated & Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. F, Title I, § 107, 128 Stat. 2130, 2418-2419 (2014); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. G, Title I, § 107, 129 Stat. 2242, 2549 (2015); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. G, Title I, § 107, 132 Stat. 348, 658 (2018).

<sup>3</sup> Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. G, Title I, § 107 (hereinafter, Section 107). The same language was enacted as Section 107 in the Consolidated Appropriations Act, 2017, Pub. L. No. 115-131, Div. G, Title I.

<sup>4</sup> This formulation enables the applicable legislative committees' compliance with scoring limitations, by annually enacting revenue (fees) to offset the enacted outlay from the Treasury (the appropriation).

<sup>5</sup> *See supra* note 3.

<sup>6</sup> *See supra* note 2.

<sup>7</sup> 43 U.S.C. § 1348(c). OCSLA requires BSEE to conduct annual scheduled onsite inspections of each facility on the OCS that is subject to environmental or safety regulation promulgated under OCSLA, as well as unscheduled inspections.

## OUTER CONTINENTAL SHELF INSPECTION FEES

SEC. 107. (a) In fiscal year 2016, the Secretary shall collect a nonrefundable inspection fee, which shall be deposited in the “Offshore Safety and Environmental Enforcement” account, from the designated operator for facilities subject to inspection under 43 U.S.C. 1348(c).

(b) Annual fees shall be collected for facilities that are above the waterline, excluding drilling rigs, and are in place at the start of the fiscal year. Fees for fiscal year 2016 shall be:

- (1) \$10,500 for facilities with no wells, but with processing equipment or gathering lines;
- (2) \$17,000 for facilities with 1 to 10 wells, with any combination of active or inactive wells; and
- (3) \$31,500 for facilities with more than 10 wells, with any combination of active or inactive wells.

(c) Fees for drilling rigs shall be assessed for all inspections completed in fiscal year 2016. Fees for fiscal year 2016 shall be:

- (1) \$30,500 per inspection for rigs operating in water depths of 500 feet or more; and
- (2) \$16,700 per inspection for rigs operating in water depths of less than 500 feet.

(d) The Secretary shall bill designated operators under subsection (b) within 60 days, with payment required within 30 days of billing. The Secretary shall bill designated operators under subsection (c) within 30 days of the end of the month in which the inspection occurred, with payment required within 30 days of billing.<sup>8</sup>

As Congress enacts this fee collection authority yearly to offset the annual appropriations for BSEE’s inspection program, it has become necessary for the Department to establish a system for collection. In this case, BSEE conducts the inspections and identifies the numbers of each type of facility subject to subsection (b) and inspections conducted subject to subsection (c), while a separate office, the Office of Natural Resources Revenue (ONRR), handles the collection of the statutorily authorized fees. Pursuant to the collections authority, ONRR issues invoices to operators for inspection fees in January of each year using the numbers of facilities that BSEE identifies under subsection (b), and periodically thereafter using the numbers of inspections that BSEE identifies under subsection (c).

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<sup>8</sup> See *supra* note 3.

### C. Continuing Resolutions (CR)<sup>9</sup>

As the preceding discussion makes clear, both the BSEE inspection program appropriation and associated fee collection authority are provided on a fiscal year basis in the applicable appropriations bill. The authority provided by the applicable bill accordingly expires at the end of the fiscal year for which it is enacted, on September 30. While the normal budget process is intended to produce a follow-on appropriations bill prior to that date, most often there is no finalized appropriations bill in place when the previous bill expires. To avoid a government shutdown due to a lapse of authority and funding in such circumstances, Congress routinely enacts a “continuing resolution.”<sup>10</sup>

The Government Accountability Office’s (GAO) glossary of federal budget terms defines a “continuing resolution” as:

An appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year.<sup>11</sup>

GAO further explains that, for the most part, continuing resolutions are temporary appropriation acts that are intended by Congress to provide stop-gap statutory authority to keep existing federal programs functioning after the expiration of previous budget authority and until regular appropriation acts can be enacted.<sup>12</sup>

Though the provisions of CRs have evolved over time, the more recent ones contain a number of standard operative provisions that ensure continuation of the majority of Federal programs. A CR starts with the following statement, which appropriates funds for the covered Federal agencies:

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for fiscal year 2017, and for other purposes, namely:

[. . .]<sup>13</sup>

This statement is followed immediately by the following provision, which establishes the applicable appropriation “for continuing projects or activities” at the same “rate for operations” as found in the prior year appropriations act:

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<sup>9</sup> The relevant CRs at issue in this opinion are: Continuing Appropriations Resolution, FY 2017, Pub. L. No. 114-223 (Sept. 29, 2016) (hereinafter “FY 2017 CR”); Continuing Appropriations Resolution, FY 2018, Pub. L. No. 115-56 (Sept. 8, 2017) (hereinafter “FY 2018 CR”).

<sup>10</sup> See GAO, Principles of Federal Appropriations Law, 3rd ed., Ch. 8, §§ 8-2 to 8-8 (hereinafter, “Redbook”).

<sup>11</sup> GAO, A Glossary of Terms Used in the Federal Budget Process, GAO-05-734SP, pp. 35-36 (2005).

<sup>12</sup> See *supra* note 10; see also B-300673, July 3, 2003.

<sup>13</sup> FY 2017 CR.

SEC. 101. (a) Such amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2016 and under the authority and conditions provided in such Acts, for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this Act, that were conducted in fiscal year 2016, and for which appropriations, funds, or other authority were made available in the following appropriations acts: [a list of specific appropriations acts, for example, “The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016 (division G of Public Law 114–113).”].<sup>14</sup>

In addition to stating that programs are to be operated “under the authority and conditions provided” in the prior year appropriations acts, Congress enacts a series of complementary provisions to ensure that government operations continue in the same manner as the previous year. These include a provision specifying that funds are provided “to the extent and in the manner” of the prior act<sup>15</sup> and a provision confirming that the “funds made available and authority granted” pursuant to the CR are available for the term of the CR, unless superseded by an applicable full year appropriation.<sup>16</sup>

Congress also explicitly precludes agencies from initiating or resuming projects or activities for which appropriations, funds, or other authority were not available in the prior fiscal year.<sup>17</sup> Finally, after the series of standard clauses, Congress will typically enact any desired changes to agency programs, including initiating programs, stopping programs, or increasing or decreasing the amount of funding available for programs.<sup>18</sup>

#### *D. Interior Board of Land Appeals Decision*

On July 14, 2021, the Interior Board of Land Appeals (IBLA) issued an opinion in the matter of *Medco Energi LLC*, IBLA No. 2020-184, which involved a challenge to orders issued by ONRR,

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<sup>14</sup> *Id.* This example is representative of the CR language at issue in the *Medco* case, which opined on the inspection fee collection authority during the term of the FY 2017 and FY 2018 CRs. Of course, the FY 2018 CR appropriated funds for FY 2018, based on the prior year (FY 2017); otherwise, the relevant FY 2018 CR language is identical to the representative example quoted above.

<sup>15</sup> *See, e.g.*, FY 2017 CR, Sec. 103 (“Appropriations made by section 101 shall be available to the extent and in the manner that would be provided by the pertinent appropriations Act.”).

<sup>16</sup> *See, e.g.*, FY 2017 CR, Sec. 106 (“Unless otherwise provided for in this Act or in the applicable appropriations Act for fiscal year 2017, appropriations and funds made available and authority granted pursuant to this Act shall be available until whichever of the following first occurs: (1) the enactment into law of an appropriation for any project or activity provided for in this Act; (2) the enactment into law of the applicable appropriations Act for fiscal year 2017 without any provision for such project or activity; or (3) December 9, 2016.”).

<sup>17</sup> *See, e.g.*, FY 2017 CR, Sec. 104 (“Except as otherwise provided in section 102, no appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during fiscal year 2016.”).

<sup>18</sup> *See, e.g.*, FY 2017 CR, Sec. 116 (“Notwithstanding section 101, amounts are provided for ‘Department of Agriculture-Domestic Food Programs-Food and Nutrition Service-Commodity Assistance Program’ at a rate for operations of \$317,139,000, of which \$238,120,000 shall be for the Commodity Supplemental Food Program.”).

and affirmed by the ONRR Director, that required Medco to pay BSEE inspection fees for fiscal years 2017 and 2018. These orders had been issued in January of 2017 and 2018, during a time in which Congress had not enacted an annual appropriations bill and in which, instead, the government operated under a CR.

Medco challenged the ONRR Director's authority to issue the orders to pay the fees because "ONRR lacked the authority to issue the demands for payment because the continuing appropriations acts for fiscal years 2017 and 2018 did not authorize ONRR to collect inspection fees for those fiscal years."<sup>19</sup> Medco based its challenge on the statutory language in Section 107, which authorizes the collection of BSEE inspection fees and specifies the amount of the fees, arguing that Section 107 explicitly used the phrase "[i]n fiscal year [X]" and thus was limited only to that applicable fiscal year. The IBLA agreed, reasoning that "[i]n the [applicable appropriations act], Congress expressly limited the Secretary's authority to collect inspection fees to a single fiscal year, and the continuing appropriations acts did not extend the Secretary's authority into the next fiscal year."<sup>20</sup>

## II. Analysis

The IBLA's *Medco* decision potentially creates a significant impediment to the current and future collection of BSEE inspection fees during the period of a CR. As operations under a CR have been a routine aspect of Federal government functions, the decision also has the potential to engender similar challenges to prior year fees collected during a CR. The Office of the Solicitor therefore has reviewed the underlying law and, for the reasons set forth below, confirms that the BSEE inspection fee authority does not lapse during a CR and that statements to the contrary in the *Medco* decision are legally incorrect.

### A. BSEE's Inspection Program is a "Continuing Project or Activity" Funded by a CR

It is important to start with the understanding that a CR is a form of appropriations act that provides funding for covered programs.<sup>21</sup> Accordingly, we must start with the language of the CR itself to determine its effect on the BSEE fee authority. In this regard, Section 101 establishes that it provides funding for the specific purpose of "*continuing* projects or activities" covered by the CR. The CR, again by its terms, specifies that it continues funding for projects or activities: 1) "that are not otherwise specifically provided for in this Act"; 2) "that were conducted in the [prior fiscal year]"; and 3) "for which appropriations, funds, or other authority were made available" in one of the specifically designated appropriations acts. This formulation means that existing programs will be continued, unless Congress specifically provides otherwise. In other words, Congress carries forward the prior year's *status quo* into the subsequent fiscal year through the operative provisions of a CR.<sup>22</sup>

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<sup>19</sup> IBLA No. 2020-184, at 197 IBLA 206 (July 14, 2021). In addition to challenging ONRR's authority to collect fees, Medco also challenged ONRR's method of calculating the applicable fees. As of the date of this opinion, this aspect of the case had not been decided, given the IBLA decision on the CR's effect.

<sup>20</sup> 197 IBLA at 208.

<sup>21</sup> See *supra* note 11.

<sup>22</sup> Generally, a continuing resolution's effect and purpose can be summarized by stating that a CR maintains the "status quo." See *generally* B-214236 ("We have stated in previous decisions that continuing resolutions are

The BSEE inspection program, in each of the years during which there has been a CR, has met all of these criteria.<sup>23</sup> To date, 1) Congress has not specifically addressed the BSEE inspection program in any CR; 2) Congress has provided funding for the program in the prior fiscal year; and 3) the funding has been provided in one of the specified acts. Accordingly, the BSEE inspection program is covered by the authority provided in a CR and may continue operations using that appropriation during any such period.

*B. The Inspection Fee Collection Authority is Carried Forward as an Authority and Condition*

Based on the plain terms of the CR, the CR carries forward the authorities, directions, and limitations provided in the prior year appropriations act through Section 101's statement that the funds are appropriated "under the authority and conditions" of the prior year's appropriations acts.<sup>24</sup> In this case, the prior year's appropriations act provided detailed *authority* to charge fees at certain specified annual rates and for inspections of certain types of facilities. It also placed a *condition* on the use of the fee authority, which is that the Secretary is required to collect the fee and does not have the discretion to not do so. Thus, the annual fees, the inspection fees, their specific dollar amounts, as well as the duty to collect such fees, are authorities and conditions established in Section 107(b) and (c) of the prior year annual appropriations act and are therefore carried forward by Section 101 of the CR. Accordingly, *as provided by the terms of the applicable CR itself*, BSEE inspection fee collection authority and mandatory implementation remains intact during the period of the CR.

This conclusion is consistent with a leading GAO decision on how to determine the effect of a CR on an existing program. In *U.S. Postal Service—Applicability of Appropriations Act Provision Under Continuing Resolution*, Congress had enacted a longstanding string of annual appropriations acts (every year since 1987) that included a requirement that the U.S. Postal Service (USPS) deliver mail 6 days a week.<sup>25</sup> Congress had enacted a CR at the onset of Fiscal Year 2013, but the CR did not provide any funding to the USPS, due to the unique USPS funding structure. The USPS took the position that the 6-day a week requirement did not apply during the CR, as it did not come explicitly linked to any funding provided by the CR.

The GAO disagreed, based on its conclusion that the 6-day delivery requirement constituted an integral part of the *status quo* being carried forward. The GAO explained that nothing in the 6-day requirement restricted its applicability to, or predicated it upon, any particular amounts appropriated. Accordingly, the GAO considered the requirement to be a "legislative directive establishing an operational standard for the USPS" and noting that "[a]n appropriations act is a

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intended by the Congress to be stop-gap measures to keep existing Federal programs functioning in the absence of regular appropriation acts.").

<sup>23</sup> Given the formulaic enactment of CRs, as evidenced by the representative examples shown above highlighting Sections 101-106, we anticipate the same will hold true for future CRs. Please consult with the Solicitor's Office should the terms of a future CR materially change.

<sup>24</sup> The terms "authority" and "conditions" have no specialized meanings within the budgetary or continuing resolution contexts and thus carry their plain meanings in these contexts.

<sup>25</sup> U.S. Postal Service, *Applicability of Appropriations Act Provision Under Continuing Resolution*, B-324481 (Comp. Gen. Mar. 21, 2013).

law like any other law, and Congress is free to enact operational directives and prohibitions in appropriations acts, as well as appropriations themselves.”<sup>26</sup> With respect to this longstanding 6-day requirement, the GAO stated: “[i]t would be anomalous, and inconsistent with the nature and purpose of a continuing resolution, to conclude that Congress intended in this Continuing Resolution, without specific legislative language, to eliminate this directive[.]”<sup>27</sup> As mandatory duties carry forward in a CR unless there is specific direction to the contrary, the mandatory duty to collect the inspection fee carries forward, given that there is no contrary direction and despite the requirement being independent of the appropriations for the BSEE inspection program itself.

The USPS decision further confirmed the propriety of considering the overall context in determining the relevant *status quo*. In that instance, the GAO highlighted Congress’ practice of re-enacting the same language year after year, since 1987, as support for its conclusion that the 6-day delivery requirement constituted an authority and condition that carried forward during the term of the CR. The GAO noted that such a pattern “establish[es] an expectation that agencies will continue to carry out the *status quo* during a continuing resolution, unless otherwise specifically stated.”<sup>28</sup> As a similar context and similar circumstances are at play here, in which Congress has enacted the BSEE fee collection authority and mandate as part of the program’s appropriations act every year since 2010, it has thereby established the expectation that the fee authority is carried forward by a CR as an authority and condition of the prior year.

A conclusion that the BSEE fee authority does not carry forward as a condition of the annual appropriations act, as extended by Section 101 of the CR, would negate BSEE’s ability to comply with its duty to offset appropriations by collecting fees. Such a conclusion would be precisely contrary to the existing *status quo* and would be proper only if established through explicit statutory language. As Congress has not enacted any such specific exception to eliminate the structure of the offsetting inspection fee collection in the CR, I conclude that those fees carry forward during the term of the CR as part of the authority and conditions associated with the prior years’ appropriations acts.<sup>29</sup>

### *C. The Identification of a Specific Fiscal Year in the BSEE Fee Collection Authority Does Not Negate the Authority Provided by the CR*

The IBLA’s *Medco* decision rests entirely on an interpretation of the phrase “in fiscal [2016/2017],” which appeared in Section 107 of the appropriations acts for fiscal years 2016 and 2017 that authorized collection of fees at the specified levels.<sup>30</sup> The IBLA reads this phrase as

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> The opposite may be true where authorizing language directs the termination of authority, despite the prior year’s appropriations making funds available under authority and conditions that otherwise would carry forward. For example, when authorizing legislation provides for a program’s termination or sunset date, Congress must include language in a CR indicating Congress’s intent to continue such a program in order to overcome the sunset (referred to as an “anomaly,” see FY 2017 CR at Sec. 135). This result comports with rules of statutory interpretation, as specific legislation providing for a program’s sunset trumps the general provisions of Section 101 enacted in a CR, absent an anomaly. See B-220409 (Congress authorized DOD to run a test program via enabling legislation, scheduled to sunset at the end of FY 1985; Section 101 does not overcome the sunset of enabling legislation without express Congressional direction to continue the test program).

<sup>30</sup> See *supra* notes 2 and 3.

limiting the BSEE fee collection authority to only the single, specified fiscal year and asserts that it amounts to an express limitation on the extension of BSEE's fee collection authority through a CR. This interpretation is misplaced, however, as annual appropriations acts are always presumed to be limited to a particular fiscal year, and this fact does not constitute the type of express restriction that would limit the effect of any CRs.<sup>31</sup> As the GAO explains: “[a]ll appropriations are presumed to be annual appropriations unless the appropriation act expressly provides otherwise.”<sup>32</sup> In fact, all regular and supplemental appropriation acts are required by 1 U.S.C. § 105 to contain a title and enacting clause that states, “for the fiscal year ending September 30, [(here insert the calendar year)].” Thus, as everything in an appropriation act—including the acts authorizing the fees at issue in *Medco*—is presumed to be applicable only to a single fiscal year in the first place, the addition of the language specific to the subject fiscal years provides no additional limitation on the funds, or their associated authorities and conditions.<sup>33</sup>

The very essence of a CR is that it maintains the *status quo* by appropriating funding after the conclusion of the preceding fiscal year and before an annual appropriations bill for the current fiscal year is enacted. Language referencing “in fiscal year X” in the same year’s annual appropriations act cannot operate as a fiscal year limitation on a later enacted CR because such a reading, applicable to annual appropriations writ large, would render any CR a nullity. In other words, and as explained above, a prior-year appropriations act’s time limitations cannot control the extension of that appropriations act’s terms by a subsequent CR, as that prior year appropriations act will have expired by its own terms.<sup>34</sup>

The scope and effect of a CR, then, is that it temporarily reenacts the prior-year appropriations act using the existing “rate of operations” and “authority and conditions,” subject to any explicit modifications by Congress. In the case of BSEE’s inspection fees, there have been no such modifications under prior CRs, so the BSEE inspection program appropriations and inspection fee collection requirement constituted a fundamental part of the applicable *status quo* from the preceding fiscal years. The authority carries forward under the authority of a CR, authorizing ONRR to collect OCS inspection fees during such time, “unless otherwise specifically stated.”<sup>35</sup>

### III. Conclusion

As a matter of law, the Department’s ability and requirement to collect inspection fees represents the *status quo* from prior fiscal years, going back to 2010, and is carried forward during the period of a CR, as Congress directed in Section 101 of the pertinent Continuing Resolutions in

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<sup>31</sup> As noted, the CR specifies, typically in Section 106, the duration of its own validity and thus the extent of the authority it provides.

<sup>32</sup> See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Sec. 5 (“The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2016.”).

<sup>33</sup> Redbook, at 5-5. This presumption may be overcome by explicit Congressional direction. See 31 U.S.C. § 1301(c). There is no such direction applicable to the BSEE fee authority.

<sup>34</sup> The same analysis applies to the other parts of Section 107 (subparagraphs (b) and (c)) that refer to a specific fiscal year to which certain inspection fee amounts apply. Those references do not negate the ability of a subsequent CR to carry forward the condition or the authority set forth in the annual appropriations act setting fee amounts to be collected.

<sup>35</sup> B-324481.

2017 and 2018. The opening phrase of “in fiscal year [x]” in Section 107 of the appropriation acts’ authorization of the Outer Continental Shelf Inspection Fees does not establish a countervailing time limitation for a later enacted CR. Such fiscal year language cannot override the authority, as it is extended by a CR, to collect inspection fees and the condition that they offset appropriated funds, despite the fact that the calendar reflects a new fiscal year. The fundamental nature of continuing resolutions as an extension of annual appropriations acts necessitates such a result. With respect specifically to the fees at issue in the IBLA *Medco* case, the BSEE inspection fee collection authority as set forth in FY 2016 and FY 2017 annual appropriations acts carried forward as an authority and condition of the relevant CRs, and the ONRR Director continued to have the authority to collect such fees during the period of the applicable CR.

  
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