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FY2017 Labor-HHS-Education Appropriations: Status and Issues

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The House and the Senate have begun their consideration of annual appropriations for FY2017.¹ Of the 12 bills that are used to consider these appropriations, the Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS) appropriations bill is one of the largest and most controversial. When taking into account both mandatory and discretionary funding,² the bill typically contains over \$800 billion in appropriations each fiscal year. The Senate Appropriations Committee reported their version of the bill on June 9, 2016 (S. 3040); legislative action in the House Appropriations Committee has not yet occurred as of the date of this report.

This report provides a brief summary of the general scope of the LHHS appropriations bill, congressional action with regard to the FY2017 bill, key issues and controversial topics that have previously arisen for the bill, and a list of additional resources.

The LHHS bill provides appropriations for the following federal departments and agencies:

- the Department of Labor;
- most agencies at the Department of Health and Human Services, except for the Food and Drug Administration (provided in the Agriculture appropriations bill), the Indian Health Service (provided in the Interior-Environment appropriations bill), and the Agency for Toxic Substances and Disease Registry (also funded through the Interior-Environment appropriations bill);
- the Department of Education; and
- more than a dozen related agencies, including the Social Security Administration, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Institute of Museum and Library Services, the National Labor Relations Board, and the Railroad Retirement Board.³

When taking into account both mandatory and discretionary appropriations, the LHHS bill is consistently the largest of the 12 annual appropriations acts. The size of the bill reflects the fact that it includes annual appropriations for a number of mandatory spending programs, such as Medicaid and Supplemental Security Income. In fact, mandatory spending typically accounts for the majority of the LHHS bill (about 81% in FY2016).

It is particularly notable that the LHHS bill contains such a large proportion of mandatory appropriations because most mandatory spending is not provided through the annual appropriations process, but rather through budget authority provided by the program's authorizing law (e.g., the Social Security Act). However, while the levels of spending for appropriated entitlements like Medicaid are controlled by requirements in authorizing law, the laws lack the appropriations to fund those entitlements. As a consequence, those appropriations are provided through the annual appropriations process.

¹ For further information with regard to the annual appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup and James V. Saturno.

² The congressional budget process distinguishes between discretionary spending, which is controlled through appropriations acts, and mandatory (or direct) spending, which is controlled through permanent law. The annual appropriations process is also used to provide appropriations necessary to finance certain mandatory spending programs that lack a funding source in the authorizing statute, which is referred to as "appropriated mandatory" or "appropriated entitlement" spending. For further information, see *ibid*.

³ For further information, see CRS Report R41716, *The Social Security Administration (SSA): Budget Request and Appropriations*, by William R. Morton; and CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding*, by Abigail R. Overbay and Benjamin Collins.

In general, the appropriations process has little control over the amounts provided for appropriated entitlements; rather, the authorizing statute controls the program parameters (e.g., eligibility rules, benefit levels) that entitle certain recipients to payments. If the money necessary to meet these commitments is not appropriated, entitled recipients (e.g., individuals, states, or other entities) may have legal recourse. Because the amount of appropriated mandatory spending is not determined through the appropriations process, discretionary appropriations tend to receive the most attention during the consideration of the LHHS bill, even though they account for less than a quarter of total LHHS appropriations.

Furthermore, while discretionary appropriations represent a relatively small share of the entire LHHS bill, those funds are typically the largest single source of nondefense discretionary appropriations for the federal government (the Department of Defense bill is the largest single source of discretionary appropriations overall).⁴ In FY2016, for instance, the LHHS bill accounted for about 31% of all nondefense discretionary appropriations and about 14% of all discretionary appropriations.⁵

FY2017 Congressional Action

FY2017 LHHS appropriations are being considered in the context of statutory and procedural constraints on discretionary spending. The statutory constraints are provided through the Budget Control Act of 2011 (BCA; P.L. 112-25, as amended), which imposes separate limits on defense and nondefense discretionary spending each fiscal year.⁶ The LHHS bill is subject to the nondefense limit, which is \$518.5 million for FY2017. Amounts provided under the nondefense limit are typically distributed across all 12 of the annual appropriations acts, while only about half of the acts also receive appropriations that are subject to the defense limit.⁷ Separately, the congressional budget process also provides a means of procedural budget enforcement through the adoption of a budget resolution. The budget resolution provides an overall limit on spending allocated to the House and the Senate appropriations committees (referred to as a “302(a) allocation”). The appropriations committees subsequently divide the 302(a) allocation among

⁴ For further information about historic trends in defense and nondefense discretionary spending, see Figure 3 in CRS Report RL34424, *The Budget Control Act and Trends in Discretionary Spending*, by D. Andrew Austin.

⁵ Calculated by the Congressional Research Service (CRS) based on amounts appropriated in the FY2016 omnibus, as scored by the Congressional Budget Office (CBO) and reported in *Fiscal Year 2016 Senate Current Status of Discretionary Appropriations*, December 31, 2015, available at <https://www.cbo.gov/publication/50227>. The LHHS bill contains 31% of discretionary appropriations that are subject to the statutory limits on nondefense spending. These are discussed further in the section “FY2017 Congressional Action.” The bill contains about 14% of all discretionary appropriations, including those that are effectively exempt from the statutory limits.

⁶ For further information with regard to the BCA spending limits, see Office of Management and Budget (OMB), *OMB OMB Sequestration Preview Report to the President and Congress for Fiscal Year 2017*, February 9, 2016, available at https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_preview_report_fy17_house.pdf.

⁷ In addition to implementing statutory discretionary spending limits, the BCA also requires sequestration (i.e., automatic across-the-board reductions) of nonexempt mandatory spending programs for each of FY2013-FY2025. President Obama has already released the required FY2017 sequestration order and the Office of Management and Budget has estimated that the sequestration percentages will equal 2% of nonexempt Medicare spending and 6.9% of other nonexempt nondefense mandatory spending, for a total reduction of \$18 billion in FY2017. OMB also estimated a 9.1% reduction, totaling \$728 million, in nonexempt defense mandatory spending, but this only applies to components of two LHHS accounts that fund activities associated with the Energy Employee Illness Occupational Compensation Program Act. *OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2017*, February 9, 2016, https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/jc_sequestration_report_2017_house.pdf.

each of their 12 subcommittees, effectively establishing limits on each of the annual appropriations bills (commonly referred to as “302(b) suballocations”).⁸ These subcommittee levels may be revised throughout the FY2017 appropriations process to reflect changing priorities and other budgetary actions.

The House and the Senate have not yet adopted a budget resolution for FY2017.⁹ In its absence, the Senate Budget Committee chair has filed budgetary levels in the *Congressional Record* that are enforceable in the Senate as if they had been included in a budget resolution for FY2017.¹⁰ Based on these levels, the Senate Appropriations Committee reported their initial 302(b) suballocations on April 18, 2016; these suballocations were subsequently revised on May 12, May 18, and June 8, 2016.¹¹ In the absence of a budget resolution in the House, the House Appropriations Committee has thus far chosen to adopt “interim 302(b) suballocations” for the appropriations bills as those bills are marked up in full committee.¹² These interim suballocations are not procedurally enforceable. A suballocation for the LHHS subcommittee in the House is not yet available.

Table 1 displays the Senate FY2017 LHHS suballocation along with comparable FY2016 appropriations. Under the current Senate suballocation, FY2017 discretionary LHHS appropriations would be reduced by less than 1%, or \$270 million, compared to FY2016. Congressional consideration of FY2017 LHHS appropriations will likely be affected by the reductions required by these spending levels.

Table 1. FY2017 LHHS Discretionary 302(b) Suballocations Compared to FY2016
(Budget authority in billions)

FY2016 Comparable	FY2017 House 302(b)	FY2017 Senate 302(b)
\$162.127	—	\$161.857

Source: Table prepared by the Congressional Research Service (CRS). FY2016 comparable is the discretionary appropriations for LHHS, as scored by the Congressional Budget Office (*Fiscal Year 2016 Senate Current Status of Discretionary Appropriations*, December 31, 2015, available at <https://www.cbo.gov/publication/50227>). The FY2017 302(b) suballocations are as reported in S.Rept. 114-273 (June 8, 2016).

Notes: These amounts reflect current-year discretionary budget authority subject to spending limits. FY2016 comparable amounts exclude funds for program integrity activities (\$1.5 billion) for which special rules apply

⁸ For an illustration of how this process worked for the FY2016 appropriations measures, see CRS Report R44062, *Congressional Action on FY2016 Appropriations Measures*, by Jessica Tollestrup.

⁹ For a discussion of budget enforcement mechanisms that may be adopted in the absence of a budget resolution, see CRS Report R44296, *Deeming Resolutions: Budget Enforcement in the Absence of a Budget Resolution*, by Megan S. Lynch; and CRS Report R43535, *Provisions in the Bipartisan Budget Act of 2013 as an Alternative to a Traditional Budget Resolution*, by Megan S. Lynch.

¹⁰ The authority for these actions is provided by Section 102 of the Bipartisan Budget Act of 2015 (P.L. 114-74). The levels were filed by the Senate Budget Committee chair on April 18, 2016. (“Allocation of Spending Authority to Senate Committee on Appropriations for Fiscal Year 2017,” *Congressional Record*, daily edition, vol. 162, no. 59 (April 18, 2016), p. S2121.) No comparable authority for the House Budget Committee chair was provided by the Bipartisan Budget Act.

¹¹ These revisions did not alter the amount of budget authority that was initially allocated to the LHHS subcommittee. (see S.Rept. 114-238, S.Rept. 114-253, S.Rept. 114-257, and S.Rept. 114-273).

¹² These interim suballocations are available on the House Appropriations Committee website, at <http://appropriations.house.gov/files/?CategoryID=34785>.

under the Budget Control Act. It is common for suballocations to be revised over the course of the year to reflect actual action on appropriations bills and changes in congressional priorities.

Table 2 displays congressional action on full year FY2017 LHHS appropriations that has occurred thus far. The Senate Appropriations Committee reported its version of the FY2017 LHHS appropriations bill on June 9, 2016 (S. 3040) by a vote of 29-1. (The LHHS subcommittee had reported the bill two days prior by a voice vote.) The House Appropriations Committee has not acted on the FY2017 LHHS appropriations bill as of the date of this report. In the last decade, initial subcommittee action on the LHHS bill has begun as early as June and as late as September.¹³

Table 2. Status of Full-Year LHHS Appropriations Legislation, FY2016

Subcommittee Markup		Resolution of House and Senate Differences							
House	Senate	House Report	House Initial Passage	Senate Report	Senate Initial Passage	Conf. Report	House Final Passage	Senate Final Passage	Public Law
	S. 3040			S.Rept. 114-274					
	6/7/16			6/9/16					
	voice vote			29-1					

Source: CRS Appropriations Status Table.

Key Issues and Controversial Topics

The LHHS bill is typically considered one of the more controversial of the regular appropriations bills. This is due not only to its size, but also to the scope of its programs and related policy issues. For instance, recent debates surrounding this bill have reflected concerns over how (or whether) to implement certain aspects of health care reform.¹⁴ Such debates have resulted in new provisions within the bill, such as those from FY2015 and FY2016 that prevent certain funds from being used to make risk corridor payments associated with health insurance exchanges.¹⁵ The Senate Appropriations Committee-reported version of the bill proposes to continue that restriction (Section 225). The LHHS bill is also commonly used to establish restrictions on the use of federal funds for abortions, research on human embryos and stem cells, and activities that might be perceived as promoting gun control.¹⁶ The Senate Appropriations Committee-reported bill proposes that all of these provisions be retained.

¹³ In two cases during the last 10 years (FY2012 and FY2014), the House Appropriations LHHS Subcommittee did not take any action on the LHHS bill.

¹⁴ More information about health care reform is available on the CRS website at <http://www.crs.gov/Cli/SubIssue?cliid=3746>.

¹⁵ For more information on restrictions placed on health care reform through the LHHS bill, see CRS Report R44100, *Use of the Annual Appropriations Process to Block Implementation of the Affordable Care Act (FY2011-FY2016)*, by C. Stephen Redhead and Ada S. Cornell.

¹⁶ For an overview of common restrictions included in the LHHS bill, see the “Funding Restrictions Related to Certain Controversial Issues” section of CRS Report R44287, *Labor, Health and Human Services, and Education: FY2016 Appropriations*, coordinated by Karen E. Lynch and Jessica Tollestrup. For historical information on provisions related to abortions, see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro. For historical information on provisions related to human embryos, CRS Report RL33540, *Stem Cell Research*: (continued...)

For HHS, ongoing concern with heroin and prescription opioid abuse has received attention in the funding that has been proposed for that agency during the FY2017 appropriations cycle.¹⁷ For instance, the Senate Appropriations Committee report accompanying the LHHS bill states that resources for heroin and prescription opioid abuse treatment and prevention programs funded in the bill will increase by 93% compared to FY2016.¹⁸ In addition, the Senate-reported bill would increase funding to NIH by \$2 billion, which reflects the committee’s prioritization of biomedical research.¹⁹

At the Department of Education (ED), the bill is responsible for funding the implementation of the Every Student Succeeds Act (ESSA; P.L. 114-95), which was enacted in December 2015.²⁰ FY2017 is the first year of funding for ESSA programs and activities, including the reauthorized Title I-A program and the new Student Support and Academic Enrichment Grants program (commonly known as the “Title IV block grant”).²¹ Appropriations decisionmaking will also include issues such as the funding levels for special education and student aid. The Senate committee-reported bill recommends FY2017 funding levels for the Department of Education (ED), including programs authorized under ESSA. ESSA-related provisions in the bill would provide \$15.5 billion for the Title I-A program—about \$600 million more than the FY2016 level and \$400 million more than authorized—and would provide \$300 million for the Title IV block grant, or \$22 million more than the FY2016 combined total for programs consolidated into the block grant, and \$1.4 billion below the FY2017 authorized funding level. Higher education provisions from the Senate committee-reported bill include language to allow students to receive Pell Grants year-round.²² The bill would also rescind \$1.2 billion of the Pell Grant program’s surplus.²³ Other provisions in the Senate committee-reported bill would provide FY2017 funding for special education; career and technical education; and other ED programs, accounts, and activities.

The LHHS bill also remains a vehicle for active debates over the appropriate scope of federal policies related to labor standards and labor relations. In recent years, for example, the bill has included provisions prohibiting the National Labor Relations Board (NLRB) from issuing new

(...continued)

Science, Federal Research Funding, and Regulatory Oversight, by Judith A. Johnson and Edward C. Liu.

¹⁷ For background about this issue, see CRS Report R44375, *SAMHSA FY2017 Budget Request and Funding History: A Fact Sheet*, by Erin Bagalman; and CRS Report R43559, *Prescription Drug Abuse*, by Erin Bagalman et al.

¹⁸ S.Rept. 114-274, p. 10.

¹⁹ *Ibid.*, p. 9. The proposed increases consist of roughly \$1.6 billion in new budget authority, plus increases in transfers from the Public Health Evaluation Set-Aside (also called the Public Health Evaluation Tap) and new transfers from the HHS Non-Recurring Expenses Fund, which would be repurposed by the bill.

²⁰ This law reauthorized and amended the Elementary and Secondary Education Act of 1965 for the first time since the No Child Left Behind Act of 2001 (P.L. 107-110).

²¹ For further information about ESSA, see CRS Report R44297, *Reauthorization of the Elementary and Secondary Education Act: Highlights of the Every Student Succeeds Act*, by Rebecca R. Skinner and Jeffrey J. Kuenzi.

²² Pell Grants typically provide aid for the equivalent of two semesters. Students who wish to attend an additional semester (or summer term classes) must find other means of support. The Senate committee-reported bill proposes a year-round Pell Grant provision that is similar to a provision eliminated by the FY2011 Continuing Appropriations Act (P.L. 112-10). Year-round Pell Grants would allow eligible students to receive up to 150% of the maximum Pell Grant award in a single award year if enrolled for additional payment periods. For more information about the program, see CRS Report R42446, *Federal Pell Grant Program of the Higher Education Act: How the Program Works and Recent Legislative Changes*, by Cassandra Dortch

²³ The Congressional Budget Office (CBO) estimates that the program will have a \$7.8 billion surplus by the end of FY2016. See Congressional Budget Office, *Federal Pell Grant Program: Cumulative Shortfall/Surplus And Available Funding*, March 2016 Baseline, at <https://www.cbo.gov/sites/default/files/51304-2016-03-PellGrant.pdf>.

regulations related to union election rules and how prevailing wages are determined in the H-2B program. There has been some congressional interest in including new provisions in the bill related to recent NLRB decisions on joint employer standards and union election rules, as well as recent regulations from the Department of Labor, such as the fiduciary rule and the white collar overtime exemption.²⁴ The Senate committee-reported bill includes provisions about prevailing wages in the H-2B program and about the prohibition on the NLRB from issuing new regulations on electronic voting for union elections. The bill does not appear to address the fiduciary rule, joint employer standards, or the overtime rule. The report language includes a directive for the NLRB to report on the possible problems associated with “micro unions.”

The congressional debate over the FY2017 LHHS bill is also taking place amid broader discussions of the federal government’s role in controlling the spread of the Zika virus and responding to the effects of lead contamination in Flint, MI.²⁵ The congressional debate with regard to these issues may occur through a variety of legislative avenues, including supplemental appropriations and authorizing legislation. For example, both the House and the Senate have considered supplemental appropriations measures that would provide funding for the Zika response.²⁶ The Senate committee-reported LHHS bill fully funds the amount requested by the President for the CDC Childhood Lead Poisoning program, but does not provide appropriations for the specific purpose of the Zika response.

Additional Resources

The following resources provide additional information on the status of congressional action on FY2017 appropriations, as well as the LHHS bill as a whole:

- CRS Appropriations Status Table: FY2017, available at <http://www.crs.gov/AppropriationsStatusTable/Index>.
- CRS Report R44287, *Labor, Health and Human Services, and Education: FY2016 Appropriations*, coordinated by Karen E. Lynch and Jessica Tollestrup.
- Additional CRS reports addressing key funding questions for the programs and agencies funded by the LHHS appropriations bill are available on the CRS website at <http://www.crs.gov/Cli/SubIssue?cliid=2347>.

²⁴ See Dear Colleague Letter to Chairman Cole and Ranking Member DeLauro, March 23, 2016. See also Ben Weyl and Matthew Nussbaum, “Politico Pro Q&A with Rep. Tom Cole,” *PoliticoPro*, March 24, 2016; and Gayle Cinguegrani, “Overtime Proposed Rule would Make Workers Earning Below \$50,440 Eligible,” *Bloomberg BNA*, June 30, 2015.

²⁵ For background on both of these issues, see CRS Report R44460, *Zika Response Funding: Request and Congressional Action*, coordinated by Susan B. Epstein; and CRS Insight IN10446, *Lead in Flint, Michigan’s Drinking Water: Federal Regulatory Role*, by Mary Tiemann.

²⁶ See H.R. 5243 and Division B of H.R. 2577.

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