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Status of FY2021 Labor, Health and Human Services, and Education Appropriations: In Brief

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Congress recently began to consider the FY2021 appropriations bill for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS).[1] On July 13, 2020, the House Appropriations Committee voted to report the LHHS bill, 30-22; the measure was subsequently reported to the House on July 15 (H.R. 7614; H.Rept. 116-450). Senate Appropriations Committee action on the FY2021 LHHS bill has yet to occur.

This report provides a brief summary of the status of LHHS appropriations during the FY2021 cycle, including relevant congressional actions and a top-line comparison of discretionary funding enacted in FY2020 versus relevant FY2021 legislative proposals. It also provides background on the scope of the bill and the budgetary context for congressional decisionmaking.

Congressional clients may consult the LHHS experts list in CRS Report R42638, *Appropriations: CRS Experts*, for information on which analysts to contact at the Congressional Research Service (CRS) with questions on specific agencies and programs funded in the LHHS bill.

Scope of the LHHS Bill

The LHHS bill is the largest ($1.1 trillion in FY2020) of the 12 annual appropriations bills when accounting for both mandatory and discretionary funding.[2] It provides annually appropriated budget authority for the following federal departments and agencies:

- the Department of Labor (DOL);
- most agencies at the Department of Health and Human Services (HHS), except for the Food and Drug Administration (funded through the Agriculture appropriations bill), the Indian Health Service (funded through the Interior-Environment appropriations bill), and the Agency for Toxic Substances and Disease Registry (funded through the Interior-Environment appropriations bill);
- the Department of Education (ED); and
- more than a dozen related agencies (RA), 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.

In general, mandatory funding represents just over 80% of the total LHHS bill, supporting annually appropriated entitlements such as Medicaid and Supplemental Security Income (SSI). Discretionary funds account for less than 20% of total funds in the bill, but they tend to receive the most attention throughout the LHHS appropriations process.[3] This is because the appropriations process generally has little control over the amounts provided for appropriated

[1] For background on the FY2020 LHHS appropriations bill, see CRS Insight IN11114, *FY2020 LHHS Appropriations: Status*.

[2] The discretionary funding provided in the LHHS appropriations act is both provided and controlled by that act. The mandatory funding provided in the LHHS act is controlled by provisions in authorizing law. For definitions of these and other budget terms, see U.S. Government Accountability Office (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 1, 2005, http://www.gao.gov/products/GAO-05-734SP. (Terms of interest may include budget authority, appropriated entitlement, direct spending, discretionary, entitlement authority, and mandatory.)

[3] For an illustrative discussion of the distribution of funds among the different titles of the bill, and between discretionary and mandatory spending, see the summary of FY2019 LHHS appropriations in CRS Report R45869, *Labor, Health and Human Services, and Education: FY2019 Appropriations*, pp. 10-12.

entitlements; rather, the authorizing statute controls the program parameters (e.g., eligibility rules, benefit levels) that entitle certain recipients to payments.

Even though discretionary appropriations represent a relatively small share of the entire LHHS bill, the bill is typically the largest single source of nondefense discretionary funding for the federal government. (The Department of Defense bill is the largest single source of discretionary funding overall.)

Calculating Total LHHS Budget Authority

Budget authority is the amount of money a federal agency is legally authorized to commit or spend. Appropriations bills may include budget authority that becomes available in the current fiscal year, in future fiscal years, or some combination. Amounts that become available in future fiscal years are typically referred to as *advance appropriations*.

The amount of LHHS budget authority can be tabulated in various ways. The total amount of budget authority provided in an appropriations bill (i.e., *total in the bill*) would be calculated regardless of the year in which the funding becomes available.[4] In some cases, however, such as the 302(b) suballocations (discussed later), the total is calculated based on *current-year* appropriations (i.e., the amount of *budget authority available for obligation in a given fiscal year*, regardless of the year in which it was first appropriated).[5] Additionally, scorekeeping and other types of adjustments made by the Congressional Budget Office (CBO) to reflect budget enforcement conventions and special instructions of Congress may be reflected in or excluded from the calculation of budgetary totals.[6]

Context for FY2021

Under the congressional budget process, the start of annual appropriations decisionmaking traditionally is preceded by the submission of the President Trump's budget request and the adoption of the congressional budget resolution. The President's FY2021 budget request was submitted to Congress on February 10, 2020.[7] On March 17, 2020, the President submitted a letter to Congress about FY2021 budget amendments (along with a supplemental appropriations request for FY2020) related to the response to the Coronavirus Disease 2019 (COVID-19) outbreak.[8] These budget amendments affected the FY2021 President's requested levels for several accounts at DOL, HHS, ED, and certain LHHS related agencies, including the Social Security Administration and the Railroad Retirement Board.

In the aftermath of the President's budget submission, appropriations decisionmaking has proceeded on the basis of procedures and budgetary limits enacted in the Bipartisan Budget Act of 2019 (P.L. 116-37). In addition, congressional action on FY2021 appropriations may be influenced by the ongoing COVID-19 pandemic. A number of emergency FY2020 supplemental

[4] Such figures include advance appropriations provided in the bill for future fiscal years, but do not include advance appropriations provided in prior years' appropriations bills that become available in the current year.

[5] Such figures exclude advance appropriations for future years, but include advance appropriations from prior years that become available in the given fiscal year.

[6] For more information on scorekeeping, see CRS Report 98-560, *Baselines and Scorekeeping in the Federal Budget Process*. See also a discussion of key scorekeeping guidelines included in the joint explanatory statement accompanying the conference report to the Balanced Budget Act of 1997 (H.Rept. 105-217, pp. 1007-1014).

[7] For further information on the HHS budget request, see CRS Report R46321, *Department of Health and Human Services: FY2021 Budget Request*. Note that the report covers the FY2021 President's request for HHS in its entirety, not just the components of the agency funded through the annual LHHS bill.

[8] Executive Office of the President, Office of Management and Budget, Letter from Acting Director Russell T. Vought to The Honorable Michael R. Pence, March 17, 2020, https://www.whitehouse.gov/wp-content/uploads/2020/03/Letter-regarding-additional-funding-to-support-the-United-States-response-to-COVID-19-3.17.2020.pdf.

discretionary appropriations have been enacted in response to the pandemic. These supplementals have significantly increased available LHHS budgetary resources for FY2020. Further supplemental appropriations may be considered during the FY2021 cycle. These and related issues are summarized below.

FY2020 Regular and Supplemental Appropriations

FY2020 regular appropriations for LHHS were enacted as part of the Further Consolidated Appropriations Act, 2020, on December 20, 2019 (FY2020 LHHS omnibus; P.L. 116-94). Discretionary appropriations in the FY2020 LHHS omnibus totaled $195.4 billion (including advance appropriations for future years, but excluding certain scorekeeping adjustments).[9] This amount was 3.2% more than FY2019 enacted levels. The omnibus also provided $902.3 billion in mandatory funding, for a combined LHHS total of $1.098 trillion.

Subsequently, five acts have been signed into law providing FY2020 supplemental discretionary appropriations for LHHS programs and activities. The first of these acts (P.L. 116-113), enacted on January 29, 2020, provided $210 million in additional funding to DOL to carry out the United States-Mexico-Canada Agreement.[10] The remaining four, which together contain more than 99% of the LHHS supplemental appropriations provided for FY2020 ($279.8 billion), were part of the legislative response to the COVID-19 global pandemic:[11]

- Title III, Division A, of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123), enacted on March 6, 2020;
- Title V, Division A, of the Families First Coronavirus Response Act (FFCRA, P.L. 116-127), enacted on March 18, 2020;
- Title VIII, Division B, of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136), enacted on March 27, 2020; and
- Title I, Division B, of the Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA, P.L. 116-139), enacted on April 24, 2020.

All of these additional funds were designated as an "emergency requirement" and thus were effectively exempted from otherwise applicable budget enforcement requirements, such as the discretionary spending limits.[12]

In total, FY2020 supplemental appropriations increased regular FY2020 LHHS enacted funding by about 143%. The bulk of the supplemental funding (89%) was directed at HHS. The $248 billion in supplemental HHS funds represented a 261% increase over the agency's FY2020

[9] This amount differs from what is listed in **Table 1** because it captures total discretionary budget authority provided in the FY2020 LHHS omnibus, regardless of when the funds become available. It does not include advance appropriations from prior years that became available in FY2020, but does include current-year appropriations that become available in future years. In addition, this total does not reflect certain scorekeeping adjustments applied by the Congressional Budget Office (e.g., effects of one-time rescissions or changes in mandatory program spending).

[10] Title IX of the United States-Mexico-Canada Agreement Supplemental Appropriations Act, 2019, (USMCA, P.L. 116-113). The USMCA supplemental appropriations of $210 million for DOL were for the Bureau of International Labor Affairs (ILAB) to support the implementation and enforcement of the USMCA. The labor-related provisions in the USMCA, which are associated with ILAB's role, are discussed in CRS Report R44981, *NAFTA and the United States-Mexico-Canada Agreement (USMCA)*, pp. 32-33.

[11] For further information on the LHHS appropriations provided by these COVID-19 supplementals, see CRS Report R46353, *COVID-19: Overview of FY2020 LHHS Supplemental Appropriations*.

[12] For further information, see CRS Report R45778, *Exceptions to the Budget Control Act's Discretionary Spending Limits*.

regular appropriations funding level. ED received the next largest increase via supplemental funds (43%), whereas DOL and RA received the smallest increases relative to their initial FY2020 enacted levels (5% and 3%, respectively).

As the FY2021 appropriations cycle progresses, Congress and the President may consider whether further COVID-19 response funding is desirable and, if so, the extent to which such funding would continue to be enacted separately in supplemental appropriations measures or be integrated into regular appropriations decisionmaking. In addition, any COVID-19 response funding in a regular LHHS appropriations measure could be provided via appropriations that are subject to the nondefense limit, or as emergency appropriations that are effectively exempt from that limit.

FY2021 Discretionary Spending Limits and Appropriations Allocations

The framework for budget enforcement under the congressional budget process has both statutory and procedural elements. The statutory elements include limits on defense and nondefense discretionary spending established by the Budget Control Act of 2011 (BCA; P.L. 112-25); LHHS appropriations are classified as nondefense spending. The procedural elements are primarily associated with the budget resolution and provide a limit on total discretionary spending available to the appropriations committees (commonly referred to as a *302(a) allocation*) and limits on spending under the jurisdiction of each appropriations subcommittee (*302(b) suballocations*). Certain spending, such as that designed for an *emergency requirement* and for certain program integrity-related purposes, is effectively exempt from these limits (commonly referred to as *cap adjustments*).[13]

On August 2, 2019, the FY2020 and FY2021 BCA spending limits were increased via the enactment of the Bipartisan Budget Act of 2019 (BBA 2019; P.L. 116-37).[14] The FY2021 nondefense limit ($626.5 billion) was 0.8% (+$5 billion) more than the FY2020 limit. In addition, BBA 2019 provided procedures to establish the spending allocations to the House and Senate appropriations committees via statements submitted to the *Congressional Record* by the chairs of the House and Senate budget committees, without the adoption of a budget resolution.[15] Among other requirements, these spending allocations must be consistent with the levels established by the statutory discretionary spending limits. These FY2021 committee-level spending allocations were submitted in the House on May 1, and in the Senate on May 4, 2020.[16]

Generally, the next step in the appropriations process is for each of the appropriations committees to adopt suballocations from the total amount allocated to them. These 302(b) suballocations provide a limit on current-year (e.g., FY2021) appropriations within each subcommittee's jurisdiction and incorporate any applicable scorekeeping adjustments made by CBO. The House Appropriations Committee adopted 302(b) suballocations for each of its 12 subcommittees on

[13] Ibid.

[14] For further information, see CRS Insight IN11148, *The Bipartisan Budget Act of 2019: Changes to the BCA and Debt Limit*.

[15] Ibid. For a general 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*.

[16] "Publication of Budgetary Material," *Congressional Record*, daily edition, Vol. 166, No. 82 (May 1, 2020), pp. H1968-H1969. "Budget Enforcement Levels for Fiscal Year 2021," *Congressional Record*, daily edition, Vol. 166, No. 83 (May 4, 2020), pp. S2205-S2206.

July 9.[17] The House initial LHHS discretionary suballocation for FY2021 was $182.9 billion, and is discussed further below.[18] The Senate Appropriations Committee has not yet adopted its suballocations. Revisions to suballocations throughout the appropriations process are a common practice to reflect actual action on appropriations bills and changes in congressional priorities. However, if the House and Senate take divergent approaches with regard to the topline that each assumes for the LHHS bill, complications may potentially arise as the chambers seek to resolve their differences on appropriations.

LHHS Legislative Action

On July 13, 2020, the House Appropriations Committee voted to report the FY2021 LHHS appropriations bill, 30-22; the measure was subsequently reported to the House on July 15 (H.R. 7614; H.Rept. 116-450). This was preceded by subcommittee approval of the draft bill on July 7, by a vote of 9-6. Full committee approval of the initial suballocations for all 12 bills, including LHHS, occurred on July 9, by a vote of 29-21 (H.Rept. 116-443).

Table 1 displays the FY2021 House discretionary suballocation for LHHS, along with the enacted FY2020 funding level. The amount for "regular discretionary appropriations" does not include any funding that is subject to program integrity adjustments or emergency-designated, such as the funding that was enacted in the FY2020 supplemental appropriations acts. In addition, as noted previously, the suballocations represent current-year budget authority subject to the spending limits and take into account any applicable CBO scorekeeping adjustments. Under this method of estimating the bill, the House suballocation would decrease FY2021 discretionary funding for LHHS by about $128 million (-0.1%) relative to the FY2020 enacted level. However, using a different methodology, the House Appropriations Committee calculated that the funding in the draft LHHS bill, which was subsequently reported as H.R. 7614, would represent an increase of more than $2 billion relative to the FY2020 enacted level.[19]

H.R. 7614 also would provide an estimated $24.425 billion in emergency-designated funding for purposes associated with COVID-19 response, which is effectively exempt from those spending limits.[20] In addition, it would provide the maximum amount allowed under the FY2021 cap adjustments for program integrity funding ($1.881 billion). These funds are also effectively exempt from the limits. The "adjusted appropriations" total in the table includes this funding along with "regular discretionary appropriations."

Senate Appropriations Committee action on the FY2021 LHHS bill has yet to occur. The committee also has not released its suballocations.

[17] House Appropriations Committee, "Appropriations Committee Approves FY2021 Subcommittee Allocations," July 9, 2020, press release, https://appropriations.house.gov/news/press-releases/appropriations-committee-approves-fy-2021-subcommittee-allocations.

[18] The House Appropriations Committee subsequently reported revised 302(b) suballocations (H.Rept. 116-454, July 16, 2020), although the LHHS discretionary suballocation was unchanged from the initial amount.

[19] House Appropriations Committee, "Appropriations Committee Releases Fiscal Year 2021 Labor-HHS-Education Funding Bill," press release, July 6, 2020, https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2021-labor-hhs-education-funding. See also related discussion on H.Rept. 116-450, p. 3.

[20] Ibid.

Table 1. Comparison of FY2021 LHHS Discretionary Suballocations with FY2020 Enacted

Budget authority in billions of dollars

	FY2020 Enacted	FY2021 House Initial Suballocation	FY2021 Senate Initial Suballocation
Regular discretionary appropriations	183.042	182.914	TBD
Adjustments:			
Program integrity	1.842	1.881	
Emergency requirements	280.000	24.475	
Adjusted appropriations:	464.884	209.270	

Source: The FY2020 enacted amount is from Congressional Budget Office (CBO), *Report on the Status of Discretionary Appropriations, Fiscal Year 2020, House of Representatives, as of April 24, 2020*, https://www.cbo.gov/system/files?file=2020-05/FY2020-House-2020-4-24.pdf. The FY2021 House "regular discretionary appropriations" initial suballocation is from H.Rept. 116-443 (July 13, 2020). The House initial 302(b) suballocations for LHHS did not include allocations for the program integrity or emergency requirements adjustments; the amounts are listed in the table for informational purposes. The amount listed for "program integrity" is based on CRS analysis of the House Appropriations Committee-reported version of H.R. 7614. The amount listed for "emergency requirements" is from House Appropriations Committee, "Appropriations Committee Releases Fiscal Year 2021 Labor-HHS-Education Funding Bill," press release, July 6, 2020, https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2021-labor-hhs-education-funding.

Notes: TBD = to be determined. Amounts reflect current-year discretionary budget authority subject to spending limits. Totals exclude funds for which special rules apply under the spending limits (e.g., funds for certain program integrity activities) and funds provided under authorities in the 21st Century Cures Act (P.L. 114-255) that are effectively exempt from the spending limits.

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