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Status of FY2022 Labor, Health and Human Services, and Education Appropriations: In Brief

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SUMMARY

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Status of FY2022 Labor, Health and Human Services, and Education Appropriations: In Brief

This report provides a brief summary of the status of FY2022 appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS) as of July 23, 2021. It also provides background on the scope of the LHHS bill generally and the budgetary context for congressional decisionmaking, including the submission of the FY2022 President's budget request, budget enforcement in the absence of statutory discretionary spending limits, and the supplemental appropriations provided as part of the legislative response to the COVID-19 pandemic.

With regard to House action on full-year appropriations, on July 15, 2021, the House Appropriations Committee voted (33-25) to report the LHHS bill; the measure was subsequently reported to the House on July 19 (H.R. 4502; H.Rept. 117-96). Previously, the measure was approved in subcommittee, via a voice vote, on July 12, 2021. The committee reported its initial suballocations for all 12 appropriations bills, including LHHS, on July 1 (H.Rept. 117-78).

Senate Appropriations Committee action on the LHHS bill has not yet occurred during the FY2022 cycle.

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On July 15, 2021, the House Appropriations Committee voted (33-25) to report the FY2022 appropriations bill for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS); the measure was subsequently reported to the House on July 19 (H.R. 4502; H.Rept. 117-96). Previously, the measure was approved in subcommittee, via a voice vote, on July 12, 2021.

This report provides a brief summary of the status of LHHS appropriations during the FY2022 cycle, including relevant congressional actions and a top-line comparison of discretionary funding enacted in FY2021, versus relevant FY2022 legislative proposals as of July 23, 2021. It also provides background on the scope of the bill and the 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 ($1.2 trillion in FY2021) of the 12 annual appropriations bills when accounting for both mandatory and discretionary funding.[1] 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 (RAs), including the Social Security Administration (SSA), 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, which account for less than 20% of total funds in the bill, tend to be the focus of congressional debate during the appropriations process.[2] This is because the appropriations process generally has little control over the amount of mandatory funding provided for appropriated entitlements; rather, the authorizing statute controls the program parameters (e.g., eligibility rules, benefit levels) that entitle certain recipients to payments. Consequently, the

[1] The FY2021 total is drawn from the *Congressional Record*, Vol. 166, No. 218, Book IV, December 17, 2019, p. H8709, https://www.congress.gov/116/crec/2020/12/21/CREC-2020-12-21.pdf-bk4. 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.)

[2] 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 FY2020 LHHS appropriations in CRS Report R46492, *Labor, Health and Human Services, and Education: FY2020 Appropriations*, pp. 11-14.

focus of this report generally is on the discretionary spending that has been or would be provided for LHHS programs and activities under various laws and proposals.

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.[3] 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)*, which is calculated regardless of the year in which it was first appropriated.[4] Additionally, budgetary totals may or may not include Congressional Budget Office (CBO) scorekeeping and other adjustments to reflect budget enforcement conventions and special instructions of Congress.[5]

Context for FY2022

Under the congressional budget process, congressional consideration of annual appropriations traditionally is preceded by the submission of the President's budget request and the adoption of the congressional budget resolution. However, the FY2022 cycle has been affected by a number of timing and budgetary issues related to the ongoing COVID-19 pandemic, the presidential transition, and a lack of statutory discretionary spending limits for the first time in a decade. Background related to these issues is provided below.

COVID-19 Pandemic Supplemental Appropriations for FY2020 and FY2021

Subsequent to the enactment of annual FY2020 LHHS appropriations and the submission of the President's FY2021 budget, the effects of the COVID-19 pandemic on communities across the world and throughout the United States elicited a legislative response from Congress and the President. In the first months of the pandemic, four FY2020 supplemental appropriations were part of this legislative response:[6]

[3] 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.

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

[5] 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).

[6] Other divisions of the acts that provided supplemental LHHS appropriations contained authorization provisions that in some cases relate to LHHS programs and activities—for instance, provisions providing a 6.2% increase to the federal matching assistance percentage for Medicaid and certain other programs in FFCRA, and provisions modifying student loan subsidy costs in the CARES Act. For further information on the LHHS appropriations provided by these COVID-

- Title III, Division A, of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123), enacted on March 6, 2020, provided approximately $6.4 billion in supplemental LHHS funds[7];
- Title V, Division A, of the Families First Coronavirus Response Act (FFCRA, P.L. 116-127), enacted on March 18, 2020, provided $1.25 billion in supplemental LHHS funds;
- Title VIII, Division B, of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136), enacted on March 27, 2020, provided $172.1 billion in supplemental LHHS funds; 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, provided $100 billion in supplemental LHHS funds.

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. Supplemental HHS funds totaled $248 billion and represented a 261% increase over the agency's FY2020 regular appropriations funding level. ED received the next largest increase via supplemental funds (43%), whereas the DOL and RA titles received the smallest increases relative to their initial FY2020 enacted levels (5% and 3%, respectively).

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.[8] (See "FY2022 Discretionary Spending Levels and Appropriations Allocations" for a further explanation of this issue.)

While annual appropriations for FY2021 were under discussion during the summer and fall of 2020, Congress and President Trump considered whether any additional COVID-19 response funding should be enacted.[9] Ultimately, the same law (P.L. 116-260) that provided regular annual LHHS appropriations for FY2021 in Division H also provided FY2021 supplemental discretionary appropriations in Division M. This law, which was enacted on December 27, 2020, provided a total of $154.9 billion in supplemental LHHS funds, all of which were designated as an emergency requirement (Title III, Division M). This funding was split roughly equally between HHS (48%) and ED (53%). (None was enacted for DOL or RA.) The ED supplemental funding budgetary increase of $82 billion was 112% of its FY2021 regular appropriations. HHS regular appropriations were increased by 75% (+$73 billion).[10]

The FY2020 and FY2021 supplemental funding was in many cases provided to LHHS accounts and activities that also received annual appropriations. Although this funding was generally for COVID-19-related response efforts, some of these efforts could include expanding basic

19 supplementals, see CRS Report R46353, *COVID-19: Overview of FY2020 LHHS Supplemental Appropriations*.

[7] Of the amount shown for P.L. 116-123, $300 million (appropriated to the Public Health and Social Services Emergency Fund at HHS) was contingent upon future HHS actions.

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

[9] Prior to the enactment of full-year FY2021 LHHS funding, COVID-19-related LHHS provisions were proposed in several different appropriations measures for FY2021, including the House-passed full-year LHHS bill (Division E, H.R. 7617), a supplemental appropriations package (Division A, H.R. 925), and the FY2021 continuing resolution (Division A, P.L. 116-159). While in some cases the budgetary effects of the COVID-19-related provisions were designated as an emergency requirement, this was not the case universally.

[10] For further information, see CRS Report R46775, *Overview of COVID-19 LHHS Supplemental Appropriations: FY2020 and FY2021*.

infrastructure and capacity that would otherwise have been unfunded (or funded through annual appropriations had the supplemental funding not been available). As FY2022 LHHS appropriations are being considered in the coming months, Congress and President Biden will need to consider the extent to which any further funding supporting COVID-19 pandemic response will be enacted as regular appropriations subject to the spending limits, or as an emergency requirement. They also will need to decide whether any program investments or expansions funded via previously enacted COVID-19 supplemental appropriations should be sustained.

Timing of the FY2022 President's Budget Submission

The President's budget request for the upcoming fiscal year is due to be submitted to Congress by the first Monday in February. However, the FY2022 budget was submitted during a year in which a presidential transition occurred (on January 20, 2021). Recent Presidents have not submitted detailed budget proposals until April or May of their first year in office, although each has advised Congress regarding the general contours of their economic and budgetary policies in special messages submitted to Congress prior to that submission.[11] This delay allows time to prepare a proposal that reflects the priorities of the new administration.

On April 9, President Biden submitted to Congress an outline of his discretionary funding priorities for FY2022.[12] This preliminary document provided early highlights for numerous policy areas, including several funded in the LHHS bill. The full budget request was submitted on May 28, almost four months after its due date.[13] As a result, the start of annual appropriations decisionmaking for FY2022 also was delayed to allow time for Congress to consider this request.

FY2022 Discretionary Spending Levels and Appropriations Allocations

For the decade prior to FY2022, the framework for discretionary spending budget enforcement under the congressional budget process involved both statutory and procedural elements. Those statutory elements included 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, and the bill has the largest share of such spending compared to the other annual appropriations bills.

The procedural elements of budget enforcement are primarily associated with the budget resolution. This provides 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 is effectively exempt from these limits (commonly referred to as *adjustments* to those limits). In recent years, adjustments that have been applied to LHHS appropriations are for *emergency requirements*, to accommodate new budget authority for specified program integrity initiatives at HHS (*health care fraud and abuse control*) and the SSA (*continuing disability reviews and*

[11] See CRS Insight IN11655, *Budget Submission After a Presidential Transition: Contextualizing the Biden Administration's FY2022 Request*.

[12] Office of Management and Budget (OMB), *The President's FY2022 Discretionary Request*, April 9, 2021, https://www.whitehouse.gov/omb/fy-2022-discretionary-request/.

[13] See https://www.whitehouse.gov/omb/budget/.

redeterminations), and for DOL to fund *reemployment services and eligibility assessments* conducted by the states related to unemployment compensation.[14]

Under current law, the statutory limits on discretionary spending expire at the end of FY2021. This generally means that, absent the imposition of new statutory limits, discretionary budget enforcement for FY2022 will occur via procedural means only. As the FY2022 appropriations cycle progresses, however, Congress may consider whether to re-impose statutory caps, and if so, at what levels and for what number of fiscal years. Absent statutory caps, the amount of FY2022 discretionary spending—in total and for LHHS—will still need to be determined. In addition, Congress will need to determine to what degree any discretionary spending for FY2022 will be effectively exempt from budget enforcement, whether statutory or procedural.

As of the date of this report, there has been no House or Senate action on a FY2022 budget resolution. In its absence, on June 14, 2021, the House adopted a resolution (H.Res. 467) to provide for 302(a) allocations to the House Appropriations Committee at a specified level, to provide limits on advance appropriations,[15] and to allow adjustments to those allocations for emergency requirements, health care fraud and abuse control, and continuing disability reviews and redeterminations (as well as other purposes that do not apply to LHHS).[16] Pursuant to this resolution, the Chair of the House Budget Committee, Representative Yarmuth, published in the *Congressional Record* the House Appropriations Committee allocations on June 24.[17] The Senate has not taken similar action to establish Senate Appropriations Committee allocations.[18]

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 (in this case, FY2022) appropriations within each subcommittee's jurisdiction and incorporate any applicable scorekeeping adjustments made by CBO. The House Appropriations Committee reported their initial 302(b) suballocations for all 12 subcommittees on July 1 (H.Rept. 117-78).[19] The discretionary budget authority suballocation for LHHS of $237.466 billion represents a 36% (+$63.4 billion) increase relative to FY2021. That amount does not include funding subject to adjustments, such as for emergency requirements.

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

[15] *Advance appropriations* become available for obligation one or more fiscal years after the budget year covered by the appropriations act. The FY2022 LHHS appropriations bill generally would contain advance appropriations for FY2023 and FY2024 for certain programs and activities. For further information, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*.

[16] H.Res. 467 further provided that the BCA cap adjustments (Section 251(b) of the Balanced Budget and Emergency Deficit Control Act) would not apply to allocations established pursuant to that resolution. However, the adjustment for reemployment services and eligibility assessments would continue to be in effect for FY2022 through FY2027 pursuant to Section 314(g) of the Congressional Budget Act, subject to specified limits.

[17] "Publication of Budgetary Material," *Congressional Record*, daily edition, Vol. 167, No. 110 (June 24, 2021), p. H3130.

[18] For a discussion of budget enforcement through methods such as H.Res. 467, see CRS Report R44296, *Deeming Resolutions: Budget Enforcement in the Absence of a Budget Resolution*.

[19] Suballocations are commonly adjusted through the appropriations cycle to account for changing priorities. For FY2022, the House Appropriations Committee reported revised suballocations on July 16 (H.Rept. 117-91) to incorporate the cap adjustments where applicable, but otherwise the suballocation for the LHHS subcommittee was the same as originally reported.

FY2022 LHHS Legislative Action

On July 15, 2021, the House Appropriations Committee voted (33-25) to report the LHHS bill; the measure was subsequently reported to the House on July 19 (H.R. 4502; H.Rept. 117-96). Previously, the measure was approved in subcommittee, via a voice vote, on July 12, 2021.

Senate Appropriations Committee action on the FY2022 LHHS bill has not yet occurred.

Table 1 displays the CBO estimate of enacted LHHS discretionary appropriations for FY2021, and the House committee-reported FY2022 discretionary appropriations for LHHS. The amount shown for "regular discretionary appropriations" does not include any funding that is subject to program integrity adjustments or emergency designations. The amount shown represents current-year budget authority subject to the spending limits and takes into account any applicable CBO scorekeeping adjustments. Under this method of estimating the bill, the House proposal would increase regular discretionary appropriations for LHHS relative to FY2021 by 36% (+$63.4 billion).

As mentioned previously, certain LHHS appropriations, such as those allowed for program integrity funding or designated for emergency requirements, are effectively exempt from the discretionary spending limits. As was the case for FY2021, the FY2022 House proposal would provide the maximum amount allowed for program integrity spending under relevant procedures (see discussion in "FY2022 Discretionary Spending Levels and Appropriations Allocations"). With regard to new FY2022 funding for emergency requirements, no such emergency-designated funding has been proposed by the House. The "adjusted appropriations" total in the table includes these additional funds along with "regular discretionary appropriations."

Table 1. LHHS Discretionary Appropriations: Comparison of FY2021 Enacted with FY2022 House Appropriations Committee Proposal

(Budget authority in billions of dollars)

	FY2021 Enacted	FY2022 House Committee Bill (H.R. 4502)
Regular discretionary appropriations	174.073	237.466
Adjustments:[a]		
Health care fraud and abuse control	0.496	0.556
Continuing disability reviews and redeterminations	1.302	1.435
Reemployment services and eligibility assessments	0.083	0.133
Emergency requirements	156.563	—
Adjusted appropriations	332.517	239.590

Source: The FY2021 enacted amounts are from CBO, *Report on the Status of Discretionary Appropriations, Fiscal Year 2021, House of Representatives, as of December 27, 2020*, https://www.cbo.gov/system/files?file=2021-02/FY2021-House-2021-02-01.pdf, and CRS analysis of Division H of P.L. 116-260. The FY2022 House amounts are from page 3 of H.Rept. 117-96, and CRS analysis of H.R. 4502, as reported. "Regular discretionary appropriations" exclude funds for which special rules apply under the spending limits (e.g., funds for certain

program integrity activities and emergency requirements), as well as funds provided under authorities in the 21st Century Cures Act (P.L. 114-255) that are effectively exempt from the spending limits.

Notes: Amounts reflect current-year discretionary budget authority subject to spending limits.

a. CBO presents the FY2021 enacted amounts provided for health care fraud and abuse control, continuing disability reviews and redeterminations, and reemployment services and eligibility assessments as an aggregated "program integrity" total of $1.881 billion. The FY2021 enacted amounts for these activities are identified via CRS analysis of Division H of P.L. 116-260.

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