

Status of FY2023 Labor, Health and Human Services, and Education Appropriations: In Brief

Updated December 16, 2022

Congressional Research Service

<https://crsreports.congress.gov>

R47233



R47233

December 16, 2022

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Status of FY2023 Labor, Health and Human Services, and Education Appropriations: In Brief

This report provides a brief summary of the status of FY2023 Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS) appropriations as of the cover date of this report. It also provides background on the scope of the LHHS bill generally and the budgetary context for congressional decisionmaking, including the submission of the FY2023 President's budget request and budget enforcement in the absence of a budget resolution.

Congress has not yet reached agreement on full-year regular LHHS appropriations. In the interim, FY2023 funding has been provided temporarily through two continuing resolutions. The first CR was signed into law on September 30, 2022 (Division A of H.R. 6833; P.L. 117-180), providing continuing appropriations for all 12 annual appropriations acts (including LHHS) through December 16, 2022. The second CR was signed into law on December 16, 2022 (Division A of H.R. 1437; P.L. 117-229), extending appropriations through December 23, 2022. In general, the CRs fund discretionary programs at the same rate, and under the same conditions, as in FY2022 and funds annually appropriated entitlements at their current law levels. The CRs include several anomalies that are specific to LHHS accounts or related activities.

Previously, on June 30 2022, the House Appropriations Committee voted to report the FY2023 LHHS bill, 32-24; the measure was subsequently reported to the House on July 5 (H.R. 8295; H.Rept. 117-403). The committee-reported bill would increase regular discretionary LHHS appropriations by an estimated \$12.4 billion (+14%) relative to FY2022. Prior to full committee action, the measure was approved in subcommittee, via a voice vote, on June 23, 2022. The committee reported its initial suballocations for all 12 bills, including LHHS, on June 24, 2022 (H.Rept. 117-390).

While the Senate Appropriations Committee has not voted to report the legislation, the committee chair, Senator Leahy, released a majority draft of the LHHS bill and accompanying draft report language on July 28, 2022. The Senate majority draft proposal would increase regular discretionary LHHS appropriations by about \$19.1 billion (+10%) relative to FY2022. (Also on July 28, 2022, Senator Patty Murray, Chair of the Senate Appropriations LHHS Subcommittee, introduced an FY2023 LHHS bill [S. 4659] that appears to be substantially the same as the majority draft.)

Although full-year regular annual appropriations have not been enacted, the CR provided \$2.8 billion in FY2023 emergency-designated appropriations for accounts typically funded in the LHHS bill (Division A of H.R. 6833; P.L. 117-180).

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Congress has not yet reached agreement on full-year regular appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS). In the interim, FY2023 funding has been provided temporarily through two continuing resolutions. The first CR was signed into law on September 30, 2022 (Division A of H.R. 6833; P.L. 117-180), providing continuing appropriations for all 12 annual appropriations acts (including LHHS) through December 16. The second CR was signed into law on December 16, 2022 (Division A of H.R. 1437; P.L. 117-229), extending funding through December 23, 2022. Previously, on June 30, 2022, the House Appropriations Committee voted to report the FY2023 LHHS bill, 32-24; the measure was subsequently reported to the House on July 5 (H.R. 8295; H.Rept. 117-403). While the Senate Appropriations Committee has not voted to report the legislation, the committee chair, Senator Leahy, released a majority draft of the LHHS bill and accompanying draft report language on July 28, 2022.¹

This report provides a brief summary of the status of LHHS appropriations during the FY2023 cycle, including relevant congressional actions and a topline comparison of discretionary funding enacted in FY2022 versus relevant FY2023 legislative proposals as of the cover date of this report. 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 (\$1.3 trillion in FY2022) 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

¹ See draft text and explanatory statement linked to Senate Appropriations Committee, “Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills,” July 28, 2022, <https://www.appropriations.senate.gov/news/majority-breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills>. Also on July 28, 2022, Senator Patty Murray, Chair of the Senate Appropriations LHHS Subcommittee, introduced an FY2023 LHHS bill (S. 4659). This bill was referred to the Senate Appropriations Committee. Because S. 4659 has not received any congressional action, this report does not discuss this measure.

² See the FY2022 Joint Explanatory Statement for LHHS in *Congressional Record*, daily edition, vol. 168, no. 42, book IV (March 9, 2022), p. H2915. 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.)

- more than a dozen related agencies (RA), 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.³ 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 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* (e.g., the FY2023 LHHS appropriations bill generally would contain advance appropriations that become available in FY2024 and FY2025 for certain programs and activities). In addition, while new budget authority is generally subject to a variety of statutory and congressional rules that are intended to control the budget (i.e., *budget controls*), some budget authority may be effectively exempted from those controls (e.g., budget authority for emergency requirements, health care fraud and abuse control, continuing disability reviews and redeterminations).

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, such as the 302(b) suballocations (discussed later), the total is 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.⁵ 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.⁶ Finally, calculations of LHHS budget authority might include or exclude budget authority that is exempted from budget controls.

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 FY2022 LHHS appropriations in CRS Report R47029, *Labor, Health and Human Services, and Education: FY2022 Appropriations*, pp. 10-12.

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).

Context for FY2023

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 FY2023 cycle has been affected by a number of timing and budgetary issues related to the late submission of the President's budget and the lack of congressional agreement on topline discretionary spending amounts for the appropriations committees. Background related to these issues is provided below.

FY2023 President's Budget Submission

The Budget and Accounting Act of 1921 (P.L. 67-13), as amended, requires the President to submit an annual consolidated federal budget to Congress at the beginning of each regular congressional session, not later than the first Monday in February. Many of the proposals in the President's budget would require changes to laws that govern *mandatory spending* levels or policies, which are typically established on a multiyear or permanent basis. *Discretionary spending*, however, which is roughly one-third of the federal budget,⁷ is decided and controlled each fiscal year through the annual appropriations process. While Congress is ultimately not required to adopt the President's proposals or recommendations, the submission of the President's budget typically initiates the congressional budget process and informs Congress of the President's recommended spending levels for agencies and programs.⁸

The President's budget request for FY2023 was submitted on March 28, 2022, about seven weeks after it was due. It was preceded by the enactment of FY2022 full-year annual appropriations (P.L. 107-103) on March 15, 2022, more than six months into the fiscal year. In some cases, the President's budget request reflected those full-year appropriations amounts that had been enacted two weeks prior. However, in many other cases, the funding requested for LHHS programs and activities was based on annualized estimates of the continuing appropriations that were in effect at the time the budget was being prepared. As a consequence, many of the underlying assumptions about funding increases and decreases relative to the prior year that went into the formulation of the budget were outdated by the time the budget was submitted.

On June 7, the President submitted amendments to the FY2023 budget that included changes to appropriations language requested for DOL and HHS.⁹ The Administration characterized the two LHHS budget amendments as technical in nature; neither were estimated to affect budget authority totals on net in the bill.

FY2023 Discretionary Spending Levels and Appropriations Allocations

The congressional budget process generally enforces discretionary spending levels in appropriations measures via procedural means.¹⁰ This procedural budget enforcement is primarily

⁷ Congressional Budget Office (CBO), *The 2022 Long-Term Budget Outlook*, July 2022, p. 18, <https://www.cbo.gov/system/files/2022-07/57971-LTBO.pdf>.

⁸ For more information, see CRS Report R47019, *The Executive Budget Process: An Overview*.

⁹ See the budget amendments package at https://www.whitehouse.gov/wp-content/uploads/2022/06/FY_2023_Budget_Amendments_Package_6-7-22.pdf.

¹⁰ Between FY2012 and FY2021, the framework for discretionary spending budget enforcement under the congressional budget process involved both statutory and procedural elements. Those statutory elements included limits

associated with the budget resolution, which provides a process for the House and the Senate to agree on budgetary targets ahead of consideration of spending and revenue legislation.

The budget resolution imposes a limit on total discretionary spending available to the appropriations committees (commonly referred to as a *302(a) allocation*) and, subsequently, limits on spending under the jurisdiction of each appropriations subcommittee are created (referred to as *302(b) suballocations*). Certain spending is effectively exempt from these limits (commonly referred to as *adjustments* to the 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 redeterminations*), and for DOL to fund *reemployment services and eligibility assessments* conducted by the states related to unemployment compensation.¹¹

As of the cover date of this report, there has been no House or Senate action on an FY2023 budget resolution. In its absence, on June 8, 2022, the House adopted a resolution (H.Res. 1151) to provide for 302(a) allocations to the House Appropriations Committee at a specified level, provide limits on advance appropriations,¹² and 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).¹³ 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 21.¹⁴ The Senate has not taken similar action to establish Senate Appropriations Committee allocations.¹⁵

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 (i.e., FY2023) 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 June 24 (H.Rept. 117-390).¹⁶ The discretionary budget authority suballocation for LHHS of

on defense and nondefense discretionary spending established by the Budget Control Act of 2011 (BCA; P.L. 112-25). These limits expired at the end of FY2021 and were not renewed.

¹¹ For further information, see Appendix A in CRS Report R47029, *Labor, Health and Human Services, and Education: FY2022 Appropriations*.

¹² *Advance appropriations* become available for obligation one or more fiscal years after the budget year covered by the appropriations act. The FY2023 LHHS appropriations bill generally would contain advance appropriations for FY2024 and FY2025 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*.

¹³ H.Res. 1151 also provided a technical clarification: the BCA cap adjustments (Section 251(b) of the Balanced Budget and Emergency Deficit Control Act) that applied to discretionary appropriations between FY2012 and FY2021 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-FY2027 pursuant to Section 314(g) of the Congressional Budget Act, subject to specified limits.

¹⁴ "Publication of Budgetary Material," *Congressional Record*, daily edition, Vol. 168, No. 105 (June 21, 2022), pp. H5731-H5732.

¹⁵ For a discussion of budget enforcement through methods such as H.Res. 1151, see CRS Report R47175, *Setting Budgetary Levels: The House's FY2023 Deeming Resolution*.

¹⁶ Suballocations are commonly adjusted through the appropriations cycle to account for changing priorities. For FY2023, the House Appropriations Committee reported revised suballocations on July 1 (H.Rept. 117-398) to incorporate the cap adjustments where applicable and make an adjustment to outlay levels, but otherwise the suballocation for the LHHS subcommittee was the same as originally reported.

\$224.399 billion represents a 14% (+\$27.405 billion) increase relative to FY2022. That amount does not include funding subject to adjustments, such as for emergency requirements.

FY2023 LHHS Legislative Action

FY2023 Continuing Appropriations

FY2023 LHHS regular appropriations are currently being provided by a series of CRs. The first CR was signed into law on September 30, 2022 (Division A of H.R. 6833; P.L. 117-180), providing continuing appropriations for all 12 of the annual appropriations acts (including LHHS) through December 16, 2022. The measure, which was originally an unrelated vehicle that had been passed previously by the House, was taken up by the Senate the week prior to the start of the fiscal year. The Senate amended the measure to contain the CR, and passed it as amended (72-25) on September 29, 2022. The House subsequently took up the measure and agreed to the Senate amendment (230-201) on September 30, 2022.

A second CR was signed into law on December 16, 2022 (Division A of H.R. 1437; P.L. 117-229), extending appropriations through December 23, 2022. The measure, which was originally an unrelated vehicle that had been passed previously by the House and the Senate, was amended in the House to contain the CR. The House passed (224-201) the amended bill on December 14. The Senate passed (71-19) the bill on December 15.

In general, the FY2023 CRs fund discretionary programs at the same rate and under the same conditions as in FY2022 (§101) and annually appropriated entitlements at their current law levels (§111).¹⁷ The CRs also include several anomalies that are specific to LHHS accounts or related activities (§§101(8), 145-150).¹⁸

FY2023 Emergency-Designated Appropriations

Although full-year regular annual appropriations have not been enacted, one bill has been signed into law providing FY2023 emergency-designated appropriations for accounts typically funded in the LHHS bill.

Division A of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (H.R. 6833; P.L. 117-180, September 30, 2022) provided emergency-designated appropriations for two accounts at the HHS Administration for Children and Families (ACF): \$1.0 billion for the Low Income Home Energy Assistance Program (§146) and \$1.8 billion for expenses to carry out the Unaccompanied Children Program and for certain refugee and entrant assistance activities (§147).

¹⁷ For an estimate of the discretionary appropriations contained in Division A of H.R. 6833, see *Estimated Discretionary Appropriations Under Division A of Senate Amendment Number 5745 to H.R. 6833, the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, with Adjustments Made in the Senate*, September 28, 2022, <https://www.cbo.gov/system/files/2021-09/57491-CBO-Estimate-for-HR5305.pdf>. For an estimate of the discretionary appropriations contained in Division A of H.R. 1437, see *Estimated Discretionary Appropriations Under Division A of the Further Continuing Appropriations and Extensions Act, 2023 (Rules Committee Print 117-72, the House Amendment to the Senate Amendment to H.R. 1437) as posted on the Rules Committee Website* (<https://rules.house.gov/bill/117/hr1437-sa>), with *Adjustments Made in the House*, December 14, 2022, https://www.cbo.gov/system/files/2022-12/hr1437%28as_modified%29.pdf.

¹⁸ The LHHS anomalies are discussed in CRS Report R47283, *Overview of Continuing Appropriations for FY2023 (Division A of P.L. 117-180)*.

Congressional Action on an LHHS Bill

On June 30 2022, the House Appropriations Committee voted to report the FY2023 LHHS bill, 32-24; the measure was subsequently reported to the House on July 5 (H.R. 8295; H.Rept. 117-403). Previously, the measure was approved in subcommittee, via a voice vote, on June 23, 2022.

While the Senate Appropriations Committee has not voted to report the legislation, the committee chair, Senator Leahy, released a majority draft of the LHHS bill and accompanying draft report language on July 28, 2022.¹⁹

Table 1 displays the CBO estimate of enacted LHHS discretionary appropriations for FY2022, the House committee-reported FY2023 discretionary appropriations for LHHS, and those in the Senate majority draft proposal. 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 FY2022 by 14% (+\$27.4 billion), while the Senate majority draft proposal would increase those appropriations by 10% (+19.1 billion).²⁰

As previously mentioned, 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 FY2022, the FY2023 House and Senate proposals would provide the maximum amount allowed for program integrity spending under relevant procedures (see discussion in the “FY2023 Discretionary Spending Levels and Appropriations Allocations” section). With regard to new FY2023 funding for emergency requirements, no such emergency-designated funding was proposed in the House committee bill, but the Senate majority draft would enact such funding in Titles II and VI. The “adjusted appropriations” total in the table includes these additional funds along with “regular discretionary appropriations.” (Note that this table does not include any of the enacted FY2023 emergency funding for LHHS in P.L. 117-180, as this funding was enacted in a different legislative vehicle than those summarized below.)

¹⁹ See the draft text and explanatory statement linked to Senate Appropriations Committee, “Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills,” July 28, 2022, <https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills>. See also Senate Appropriations Committee, “Shelby: Democrats’ Partisan Bills Threaten FY23 Appropriations Process,” July 28, 2022, <https://www.appropriations.senate.gov/news/minority/shelby-democrats-partisan-bills-threaten-fy23-appropriations-process>. Also on July 28, 2022, Senator Patty Murray, Chair of the Senate Appropriations LHHS Subcommittee, introduced an FY2023 LHHS bill (S. 4659). This bill was referred to the Senate Appropriations Committee. Because S. 4659 has not received any congressional action, this report does not discuss this measure.

²⁰ This CRS estimate of the increase proposed by the Senate majority draft is based on a comparison of the CBO estimate for FY2022 enacted (CBO, *Report on the Status of Discretionary Appropriations, Fiscal Year 2022, House of Representatives*, as of May 26, 2022, <https://www.cbo.gov/system/files?file=2022-05/FY2022-House-2022-05-26.pdf>) to the total amount of spending listed on page 1 of the Senate majority draft LHHS committee report (<https://www.appropriations.senate.gov/imo/media/doc/LHHSFY23REPT.pdf>).

Table 1. LHHS Discretionary Appropriations: Comparison of FY2022 Enacted with FY2023 House Appropriations Committee Proposal and FY2023 Senate Majority Draft

(budget authority in billions of dollars)

	FY2022 Enacted	FY2023 House Committee Bill (H.R. 8295)	FY2023 Senate Majority Draft (July 28, 2022)
Regular discretionary appropriations	196.994	224.399	216.079
Adjustments: ^a			
Health Care Fraud and Abuse Control	0.556	0.576	0.576
Continuing Disability Reviews and Redeterminations	1.435	1.511	1.511
Reemployment Services and Eligibility Assessments	0.133	0.258	0.258
Emergency requirements	7.831	—	18.500
Adjusted appropriations	206.949	226.744	236.924

Source: The FY2022 Enacted amounts are from CBO, *Report on the Status of Discretionary Appropriations, Fiscal Year 2022, House of Representatives*, as of May 26, 2022, <https://www.cbo.gov/system/files?file=2022-05/FY2022-House-2022-05-26.pdf>, and Table 3 in CBO, cost estimate, “The Bipartisan Safer Communities Act would provide funding to encourage enactment of state laws aimed at controlling access to guns and to support a variety of other initiatives to enhance school safety, mental health programs, and violence prevention,” June 22, 2022, <https://www.cbo.gov/system/files?file=2022-06/S2938.pdf>. The FY2023 House Committee Bill amounts are from page 3 of H.Rept. 117-403 and CRS analysis of H.R. 8295, as reported. FY2023 Senate Majority Draft amounts are from page 1 of the Senate majority draft LHHS committee report (<https://www.appropriations.senate.gov/imo/media/doc/LHHSFY23REPT.pdf>) and CRS analysis of the Senate majority draft LHHS bill (<https://www.appropriations.senate.gov/download/lhhsfy2023>).

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

- a. CBO presents the FY2022 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 \$2.124 billion. The FY2022 enacted amounts for these activities are identified via CRS analysis of Division H of P.L. 117-103.

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