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# **FY2017 Labor-HHS-Education Appropriations: Status and Issues**

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The House and the Senate began their consideration of annual appropriations for FY2017 during calendar year 2016.<sup>1</sup> 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,<sup>2</sup> 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); the House Appropriations Committee version was ordered reported on July 14, 2016, and reported to the House on July 22, 2016 (H.R. 5926). Neither House nor Senate floor consideration of an LHHS bill has occurred as of the date of this report. Since the start of the fiscal year (October 1, 2016), funding for LHHS programs and activities has been provided by two continuing resolutions (CRs; P.L. 114-254 and P.L. 114-223).

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

## LHHS Overview

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.<sup>3</sup>

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. 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

<sup>1</sup> 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.

<sup>2</sup> 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*.

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

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.

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).<sup>4</sup> In FY2016, for instance, the LHHS bill accounted for about 31% of all nondefense discretionary appropriations and about 14% of all discretionary appropriations.<sup>5</sup>

## FY2017 Continuing Resolutions

Full year appropriations were not enacted by the start of FY2017 (October 1, 2016). As a consequence, temporary funding for LHHS was provided by two CRs.

The first FY2017 CR was enacted on September 29, 2016 (P.L. 114-223, Division C). With limited exceptions, the CR generally funded discretionary LHHS programs at FY2016 levels, minus a reduction of about one-half of one percent (-0.496%) through December 9, 2016. Mandatory programs covered by the CR were generally continued at current law levels, less sequestration (where applicable). Provisions specifically affecting LHHS programs are carried in Sections 116 and 138-141.

The second FY2017 CR was enacted on December 10, 2016 (P.L. 114-254, Division A). This CR provides continuing LHHS appropriations through April 28, 2017. It generally funds discretionary LHHS programs at FY2016 levels, minus an across-the-board reduction. However, instead of the across-the-board reduction of 0.496% (per the first FY2017 CR), the reduction in this CR is 0.1901%. Mandatory programs covered by the CR are generally continued at current law levels, less sequestration (where applicable).

The second CR extends all of the provisions in the first FY2017 CR, including special provisions for LHHS programs. In addition, the second FY2017 CR includes a number of new provisions

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<sup>4</sup> 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.

<sup>5</sup> 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 "Earlier FY2017 Congressional Action." The bill contains about 14% of all discretionary appropriations, including those that are effectively exempt from the statutory limits.

affecting LHHS programs, which are carried in Sections 168-174, Sections 194-195, and Sections 198-201.

For further information on these CRs and the LHHS-specific provisions, see CRS Report R44723, *Overview of Further Continuing Appropriations for FY2017 (H.R. 2028)*, coordinated by James V. Saturno; and CRS Report R44653, *Overview of Continuing Appropriations for FY2017 (H.R. 5325)*, coordinated by James V. Saturno.

## Earlier FY2017 Congressional Action on LHHS

**Table 1** displays congressional action on full-year FY2017 LHHS appropriations that occurred prior to the enactment of the CRs.

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.) About one month later, the House Appropriations Committee’s version of the bill was approved in subcommittee on July 7, 2016, by a voice vote. It was ordered reported by the full committee on July 14, 2016, by a vote of 31-19, and reported to the House on July 22, 2016. In the last decade, initial subcommittee action on the LHHS bill has begun as early as June and as late as September.<sup>6</sup>

**Table 1. 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
H.R. 5926	S. 3040	H.Rept. 114-699		S.Rept. 114-274					
7/7/16	6/7/16	7/14/16		6/9/16					
voice vote	voice vote	31-19		29-1					

**Source:** CRS Appropriations Status Table.

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.<sup>7</sup> 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.<sup>8</sup> Separately, the

<sup>6</sup> 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.

<sup>7</sup> For further information with regard to the BCA spending limits, see Office of Management and Budget (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\\_rep\\_fy17\\_house.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_preview_rep_fy17_house.pdf).

<sup>8</sup> 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 (continued...)

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 each of their 12 subcommittees, effectively establishing limits on each of the annual appropriations bills (commonly referred to as “302(b) suballocations”).<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Based on these levels, the Senate Appropriations Committee reported their initial 302(b) suballocations on April 18, 2016; these suballocations were subsequently revised on several occasions, most recently on December 9, 2016.<sup>12</sup> In the absence of a budget resolution in the House, the House Appropriations Committee has chosen to adopt “interim 302(b) suballocations” for the appropriations bills as those bills are marked up in full committee.<sup>13</sup> These interim suballocations are not procedurally enforceable. An interim suballocation for the LHHS subcommittee was adopted by the House Appropriations Committee on the same day that the bill was ordered reported out of committee, on July 14, 2016.<sup>14</sup>

**Table 2** displays the Senate FY2017 LHHS suballocation along with comparable FY2016 appropriations. Under the current Senate suballocation, FY2017 discretionary LHHS appropriations would be reduced by \$270 million compared to FY2016. The House interim

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(...continued)

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](https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/jc_sequestration_report_2017_house.pdf).

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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, S.Rept. 114-273, S.Rept. 114-278, S.Rept. 114-286, S.Rept. 114-358, and S.Rept. 114-405).

<sup>13</sup> These interim suballocations are available on the House Appropriations Committee website, at <http://appropriations.house.gov/files/?CategoryID=34785>.

<sup>14</sup> See, “Revised Interim Suballocation of Budget Allocations for Fiscal Year 2017,” Submitted by Mr. Rogers, Chairman, Committee on Appropriations, July 14, 2016, available at [http://appropriations.house.gov/uploadedfiles/07.14.16\\_revised\\_suballocation\\_of\\_budget\\_allocations\\_for\\_fy\\_2017.pdf](http://appropriations.house.gov/uploadedfiles/07.14.16_revised_suballocation_of_budget_allocations_for_fy_2017.pdf).

suballocation assumes a reduction of \$569 million. Both of these reductions are less than 1% of the FY2016 total for LHHS.

**Table 2. FY2017 LHHS Discretionary 302(b) Suballocations Compared to FY2016**  
(Budget authority in billions)

FY2016 Comparable	FY2017 House Interim 302(b)	FY2017 Senate 302(b)
\$162.127	\$161.558	\$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 Senate 302(b) suballocations are as reported in S.Rept. 114-405 (December 9, 2016). The FY2017 House Interim 302(b) suballocations are as posted on the House Appropriations Committee website on July 14, 2016, [http://appropriations.house.gov/uploadedfiles/07.14.16\\_revised\\_suballocation\\_of\\_budget\\_allocations\\_for\\_fy\\_2017.pdf](http://appropriations.house.gov/uploadedfiles/07.14.16_revised_suballocation_of_budget_allocations_for_fy_2017.pdf).

**Notes:** These amounts reflect current-year discretionary budget authority subject to spending limits. Amounts exclude certain funds for program integrity activities for which special rules apply under the Budget Control Act (\$1.5 billion in FY2016, \$2.0 billion in S. 3040, and \$1.5 billion in H.R. 5926). 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.

## 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, 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.<sup>15</sup> Both the House and the Senate appropriations committees' versions of the bill propose to retain all of these provisions.

## Department of Health and Human Services

The congressional debate over the FY2017 LHHS bill is taking place amid broader discussions of the federal government's role in providing funds for biomedical research at the National Institutes of Health (NIH), combatting heroin and prescription opioid abuse, responding to the effects of lead contamination, and controlling the spread of the Zika virus.<sup>16</sup> In the months since the LHHS bills were reported by the appropriations committees, some aspects of these issues have been

<sup>15</sup> For an overview of common restrictions included in the LHHS bill, see the "Funding Restrictions Related to Certain Controversial Issues" section of CRS Report R44691, *Labor, Health and Human Services, and Education: FY2017 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: Science, Federal Research Funding, and Regulatory Oversight*, by Judith A. Johnson and Edward C. Liu.

<sup>16</sup> For background on all of these issues, see CRS Report R44375, *SAMHSA FY2017 Budget Request and Funding History: A Fact Sheet*, by Erin Bagalman; CRS Report R43559, *Prescription Drug Abuse*, by Erin Bagalman et al.; CRS Insight IN10446, *Lead in Flint, Michigan's Drinking Water: Federal Regulatory Role*, by Mary Tiemann; and CRS Report R44460, *Zika Response Funding: Request and Congressional Action*, by Susan B. Epstein and Sarah A. Lister.

addressed in the context of supplemental or continuing appropriations measures.<sup>17</sup> These issues also might be addressed when full-year LHHS appropriations for FY2017 are ultimately enacted.

- **NIH Biomedical Research:** The President's request for NIH included funding for specific areas of biomedical research areas, including the Precision Medicine Initiative (PMI), Brain Research through Advancing Innovative Neurotechnologies Initiative (BRAIN Initiative), and cancer research. While the appropriations committees historically have not directed spending for research on particular diseases at NIH, the House and Senate committee reports each included recommendations of specific funding amounts for the PMI and BRAIN initiatives. (The House also identified a specific amount for cancer research at NIH.) The second CR contained a total of \$352 million in additional appropriations for the PMI (\$40 million), the BRAIN Initiative (\$10 million), cancer research (\$300 million), and regenerative medicine using adult stem cells (\$2 million). This NIH funding was pursuant to the authorizations of appropriations in the 21<sup>st</sup> Century Cures Act (enacted on December 13, 2016).<sup>18</sup>
- **Heroin and Prescription Opioid Abuse:** Both the House and the Senate appropriations committees propose in their respective versions of the FY2017 LHHS bill to increase budgetary resources for existing heroin and prescription opioid abuse treatment and prevention programs within HHS. Anomalies providing appropriations specifically related to this issue were included in both the first and second FY2017 CRs. The first CR contained \$17 million in additional appropriations for HHS to carry out the authorizations in the Comprehensive Addiction and Recovery Act of 2016 (enacted on July 22, 2016).<sup>19</sup> The second CR contained \$500 million in additional appropriations for HHS to carry out the new opiate addiction grant program in the 21<sup>st</sup> Century Cures Act.<sup>20</sup>
- **Lead Contamination:** The House and the Senate LHHS committee proposals approach the lead contamination issue similarly, by fully funding the amount requested by the President for the existing CDC Childhood Lead Poisoning program.<sup>21</sup> The second FY2017 CR provided additional appropriations for the CDC (\$35 million) and HRSA (\$15 million) to carry out the new lead-related

<sup>17</sup> These debates have occurred—and may continue to occur—outside the appropriations process through the congressional consideration of authorizing legislation. For example, the Comprehensive Addiction and Recovery Act of 2016 (P.L. 114-198; CARA), which was enacted on July 22, 2016, was primarily to address a variety of issues associated with opiate addiction. In addition, Section 1003 of the 21<sup>st</sup> Century Cures Act (P.L. 114-255), which was enacted on December 13, 2016, authorizes additional appropriations for biomedical research at NIH, and for grants to support state responses to opioid abuse. With regard to lead contamination, the Water and Waste Act of 2016 (Title II of P.L. 114-322), which was enacted on December 16, 2016, contained provisions related to this issue.

<sup>18</sup> P.L. 114-254, §194. For more information on the 21<sup>st</sup> Century Cures Act, see CRS Report R44720, *The 21st Century Cures Act (Division A of P.L. 114-255)*, coordinated by Amanda K. Sarata.

<sup>19</sup> P.L. 114-223, §116(a). An additional \$20 million in appropriations for CARA were provided to the Department of Justice in Section 116(b). CRS Report R44493, *The Comprehensive Addiction and Recovery Act of 2016 (S. 524): Comparison of Senate- and House-Passed Versions*, by Erin Bagalman and Lisa N. Sacco.

<sup>20</sup> P.L. 114-254, §195. For more information on the 21<sup>st</sup> Century Cures Act, see CRS Report R44720, *The 21st Century Cures Act (Division A of P.L. 114-255)*, coordinated by Amanda K. Sarata.

<sup>21</sup> The Senate Appropriations Committee proposes \$17 million for the Childhood Lead Poisoning program, which is equal to the amount requested. The House Appropriations Committee proposes \$17.5 million for that program. These funds would be provided through a transfer from the Prevention and Public Health Fund, which was established by the Affordable Care Act (P.L. 111-148).

- provisions in the Waste and Water Act of 2016 (enacted on December 16, 2016).<sup>22</sup>
- **Zika Response:** The House and Senate committee proposals for annual LHHS appropriations would address the Zika outbreak differently. While the House committee would provide funding specifically for that purpose, the Senate committee does not. In addition, the House committee version of the LHHS bill proposes the creation of a new Infectious Diseases Rapid Response Fund within the CDC, which would be funded with an initial appropriation of \$300 million. Supplemental appropriations were enacted on September 29, 2016, providing \$1.1 billion in FY2016 supplemental appropriations for Zika response (P.L. 114-223).<sup>23</sup> Of this amount, \$933 million was provided to HHS. (Remaining funds were provided to programs and activities outside of LHHS jurisdiction.)

Recent debates over how (or whether) to implement certain aspects of health care reform also have affected the LHHS bill.<sup>24</sup> 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 established pursuant to the Affordable Care Act (P.L. 111-148; ACA).<sup>25</sup> For FY2017, the Senate Appropriations Committee-reported version of the bill proposes to continue both that restriction on risk corridor payments, as well as all of the other ACA-related provisions that were enacted in FY2016.<sup>26</sup> Similarly, the House Appropriations Committee proposes that all of those provisions be continued (with one exception<sup>27</sup>); the committee also proposes a number of new provisions that would curb HHS activities, or the use of HHS funds, for ACA-related purposes. Furthermore, the House committee version of the LHHS bill incorporates the Health Care Conscience Rights Act (H.R. 940), which would amend the ACA so that individuals/employers would not have to purchase or sponsor coverage of abortion or other items or services to which they have a moral or religious objection.

## Department of Education<sup>28</sup>

Congressional debate on FY2017 funding for the Department of Education (ED) has focused primarily (but not exclusively) on implementation of the Every Student Succeeds Act (ESSA; P.L. 114-95)—which in 2015 reauthorized provisions of the Elementary and Secondary Education Act for the first time since enactment of the No Child Left Behind Act of 2001—and on

<sup>22</sup> P.L. 114-254, Sections 198-200. For more information on this provision, see CRS Report R44723, *Overview of Further Continuing Appropriations for FY2017 (H.R. 2028)*, coordinated by James V. Saturno.

<sup>23</sup> These funds were appropriated in Division B of P.L. 114-223, the legislative vehicle that also contains the first FY2017 CR. CRS Report R44460, *Zika Response Funding: Request and Congressional Action*, by Susan B. Epstein and Sarah A. Lister.

<sup>24</sup> More information about health care reform is available on the CRS website at <http://www.crs.gov/search/#/0?termsToSearch=Health%20Care%20Reform&orderBy=Date&navIds=4294938515>.

<sup>25</sup> For more information on restrictions previously placed on health care reform through the LHHS bill, as well as those proposed for FY2017, see CRS Report R44100, *Use of the Annual Appropriations Process to Block Implementation of the Affordable Care Act (FY2011-FY2017)*, by C. Stephen Redhead and Ada S. Cornell.

<sup>26</sup> The prohibition on the use of funds for risk corridor payments is in Section 225 of S. 3040.

<sup>27</sup> The FY2016 provision authorizing the transfer of Medicare trust funds to the Centers for Medicare & Medicaid Services Program Management Account was not included in the House Appropriations Committee version of the FY2017 LHHS bill. The FY2016 bill restricted HHS from using these additional funds to support the ACA.

<sup>28</sup> For more information about key terms and concepts related to ED funding, see CRS Report R44477, *Department of Education Funding: Key Concepts and FAQ*, by Heather B. Gonzalez and Jessica Tollestrup.

undergraduate student aid.<sup>29</sup> FY2017 is the first year of funding for many ESSA-authorized 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”).<sup>30</sup> With respect to student aid, the FY2017 appropriations conversation has centered on proposals to revive and pay for the so-called “year round” Pell Grant, which was eliminated in FY2011, and on whether to tap the Pell Grant program’s estimated discretionary funding surplus.<sup>31</sup>

The two largest sources of discretionary funding for elementary and secondary education in the LHHS bill are the Title I-A program and the special education programs authorized under the Individuals with Disabilities Education Act (IDEA, P.L. 108-446).<sup>32</sup> Both the House and the Senate committee-reported bills would provide around a half billion more in funding for Title I-A in FY2017 (compared to FY2016)—the second year in a row that the program would receive a year-over-year increase of this magnitude.<sup>33</sup> With respect to the Special Education account, the House bill recommends more funding (overall) than the Senate bill in FY2017. However, the House bill would provide funding at or below FY2016 levels for most programs while increasing funding for IDEA, Part B, Grants to States; the Senate bill would provide funding at or slightly above FY2016 levels for all programs.

As enacted, ESSA authorizes \$1.65 billion for the new Title IV block grant program in FY2017. The House committee-reported bill recommends a funding level (\$1 billion) that is closer to the ESSA-authorized amount, while the Senate committee-reported bill recommends an amount that is closer to the combined FY2016 appropriations total for programs that were eliminated and consolidated into the Title IV block grant (\$300 million).<sup>34</sup> It is unclear if the proposed funding for the Title IV block grant program, which is substantially lower than authorized, would provide

<sup>29</sup> In addition to funding provisions, both House and the Senate committee-reported bills also include education-related policy provisions, though these were not the central focus of debate during markup in either committee (with the exception of year-round Pell Grants). Some of the policy provisions are long-standing—such as the decades-old provision prohibiting funds from being used to provide transportation for the purpose of racial desegregation (e.g., bussing; see P.L. 114-113, Division H, §301)—while others are new. New policy provisions in FY2017 include those in the Senate committee-reported bill that would authorize and pay for year-round Pell (S. 3040, §310), and a provision in the House committee-reported bill that would limit ED’s ability to enforce the May 13, 2016, Office of Civil Rights Dear Colleague Letter on transgender students (H.R. 5926, §311). Other provisions in the House bill address ED’s rules on gainful employment, teacher preparation, and the federal definition of a credit hour (§310).

<sup>30</sup> For more information, see CRS Report R44461, *Allocation of Funds Under Title I-A of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Leah Rosenstiel; and 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.

<sup>31</sup> For more information, see CRS Report R42446, *Federal Pell Grant Program of the Higher Education Act: How the Program Works and Recent Legislative Changes*, by Cassandra Dortch.

<sup>32</sup> For more information, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Kyrie E. Dragoo.

<sup>33</sup> In FY2016, the Title I-A program received a \$500 million increase over the prior year, while the School Improvement Grant (SIG) program was funded at \$450 million (an 11% decrease). For FY2017, House and Senate appropriators recommend a second, commensurate year-over-year increase in Title I-A—\$450 million and \$500 million, respectively—and recommend no funding for SIG. The Senate committee report notes that its FY2017 recommendation consolidates SIG funding into Title I-A. (See S.Rept. 114-274, p. 166.) The ESSA did not reauthorize the SIG program and the Administration did not seek funding for the program in FY2017. Within Title I-A in FY2017, the Senate committee bill would increase funding for Targeted Grants and Education Finance Incentive Grants, while the House committee bill would increase funding for Basic Grants.

<sup>34</sup> See S.Rept. 114-274, p. 173.

sufficient resources to local educational agencies (LEAs) to carry out the program.<sup>35</sup> (This has been the focus of some debate.)

A notable difference between the House and the Senate committee-reported bills is in their respective approaches to the Pell Grant program. The Senate committee bill would allow students to receive Pell Grants year-round, while the House committee bill would not.<sup>36</sup> Further, although there are differences in the way the House and the Senate appropriations committees would treat mandatory and discretionary Pell Grant program resources, as a practical matter both bills would provide similar levels of total budget authority for the program in FY2017 and each would provide a maximum award of \$5,935. The significance of the difference in approaches is in the effect on the Pell Grant program surplus and the provision (or not) of year-round Pell Grants.<sup>37</sup> The surplus would be smaller, to pay for year-round Pell Grants, under the Senate committee-reported bill.

## Department of Labor and Related Issues

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 regulations related to union election rules and how prevailing wages are determined in the H-2B program. Both the House and the Senate appropriations committees propose to continue these provisions. In addition, prior to consideration of the FY2017 LHHS appropriations, there was 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.<sup>38</sup>

Both the House and the Senate appropriations committees propose to continue provisions from the FY2016 act related to labor standards and labor relations. Some of these major labor-related provisions include the following:<sup>39</sup>

<sup>35</sup> As authorized, the Title IV block grant provides grants to states by statutory formula. States, in turn, use those funds to provide sub-grants to LEAs—also by formula. At lower levels of total program funding, LEAs may receive commensurately smaller sub-grants and may be unable to carry out the purposes of the program. In the FY2017 President’s request, the Administration sought \$500 million for the Title IV block grant program and proposed appropriations language that would allow states to award sub-grants on a competitive basis, rather than on a formula basis. The House and Senate committee bills do not include language to allow states to award sub-grants on a competitive basis.

<sup>36</sup> Pell Grants typically limit full-time students to the equivalent of two semesters of Pell Grant awards. Students who wish to attend an additional semester (or summer term classes) are ineligible for additional Pell Grant aid. The Senate committee-reported bill proposes a year-round Pell Grant provision that 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 (e.g., an additional semester). 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.

<sup>37</sup> 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>.

<sup>38</sup> 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.

<sup>39</sup> In the Senate Appropriations Committee-reported bill (S. 3040), these provisions are in Sections 109 (H-2B “staggered crossings”), 110 (H-2B prevailing wage), and 406 (electronic voting). In the House Appropriations Committee version (H.R. 5926), these provisions are in Sections 112 (H-2B “staggered crossings”), 113 (H-2B (continued...))

- an allowance for employers to use “staggered crossings” for non-immigrants working in the seafood industry under the H-2B visa program;
- a requirement for the Secretary of Labor to accept private wage surveys in the determination of prevailing wages in the H-2B program; and
- a prohibition on the NLRB from issuing new regulations on electronic voting for union elections.

Notably, the House committee version of the LHHS bill also includes additional labor provisions that the Senate committee version does not, including prohibitions on implementing regulations on the fiduciary rule, the white collar exemption overtime rule, and the joint employer standards.<sup>40</sup>

## 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 R44691, *Labor, Health and Human Services, and Education: FY2017 Appropriations*, coordinated by Karen E. Lynch and Jessica Tollestrup.
- CRS Report R44287, *Labor, Health and Human Services, and Education: FY2016 Appropriations*, coordinated by Karen E. Lynch and Jessica Tollestrup.
- CRS Report R44653, *Overview of Continuing Appropriations for FY2017 (H.R. 5325)*, coordinated by James V. Saturno.
- CRS Report R44723, *Overview of Further Continuing Appropriations for FY2017 (H.R. 2028)*, coordinated by James V. Saturno.
- 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/search/#/0?termsToSearch=Labor,%20HHS,%20%26%20Education%20Appropriations&orderBy=Date&navIds=4294930945>.

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(...continued)

prevailing wage), and 407 (electronic voting).

<sup>40</sup> In the House Appropriations Committee-reported bill (H.R. 5926), the fiduciary rule provision is in Section 110, the white collar exemption overtime rule provisions is in Section 111, and the joint employer standard provision is in Section 410.

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