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FY23 Appropriations Explainer

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The FY23 appropriations debate occurs as the U.S. continues to respond to inflation due to supply chain disruptions, the COVID-19 pandemic and the ongoing conflict in Ukraine, among other issues. It also marks the second year since 2012 that appropriations will not be subject to discretionary spending caps following the expiration of the Budget Control Act (BCA) of 2011 and subsequent budget agreements. In addition, this appropriations cycle continues the use of congressionally-directed spending (often referred to as earmarks), with certain conditions.

This explainer covers the basics of the appropriations process, notes options for increasing spending, and reviews select policy riders that Congress has attached to previous appropriations bills.

The Importance of Appropriations

Every year, Congress passes appropriations bills to fund the government. The appropriations bills fund the discretionary portions of the federal budget, such as education, defense, and housing. Appropriations bills do not include mandatory spending such as Medicaid, Medicare, and Social Security. The appropriations process impacts nearly every department and agency across the federal government. On top of that, states and localities that rely on federal funding to carry out projects and programs in their jurisdictions often have difficulty planning and budgeting for an upcoming fiscal year when there is uncertainty regarding the fiscal support that will be provided by the federal government.

Agency Funding

The level of funding each department or agency receives is critical to the ability of the institution to function and to carry out its respective mission. Ensuring an adequate amount of funding is provided to these agencies is important for enforcement and oversight responsibilities.

For example, the National Labor Relations Board (NLRB), an independent federal agency tasked with "[p]rotecting workplace democracy by promoting and enforcing the rights and obligations of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy," **has not had an increase in funding from Congress for nearly a decade.** According to the NLRB's FY2023 Congressional Budget Justification, "more than three-quarters (77%) of the NLRB's budget goes directly to staffing costs." **However, staffing for the NLRB has decreased 39% since FY2002 and field staffing has shrunk by 50%.**[1] As more workers seek to unionize their workplaces, including high-profile campaigns at Starbucks shops and Amazon warehouses, failure to provide the agency with additional resources could constrain its ability to fulfill its mission and fails to support the interests of working people pushing for workplace democracy, better wages and working conditions, and dignity at work.

Conditions and Requirements on Programs

The end of the fiscal year is September 30. Without passage of appropriations legislation or a continuing resolution (which will be discussed later in this explainer) in a given fiscal year, the federal government shuts down operations, which makes appropriations legislation a "must pass" legislative vehicle. Since 1976, the federal government has experienced a lapse in appropriations, or "shutdown," 22 times—most recently for one day in December of 2020 under then-President Trump. While Congress determines the programs that are funded and their level of funding, they also have the power to impose conditions and requirements on federal agencies to expend the funds, known as conditions, limitations, or appropriation riders.

Congress is also able to use the appropriations process to conduct oversight on the usage of funds. For example, Public Law No: 116-123, the Coronavirus Preparedness

[1] "Union Election Petitions Increase 57% in First Half of Fiscal Year 2022." *News & Publications*, National Labor Relations Board, 6 Apr. 2022.

and Response Supplemental Appropriations Act, included numerous oversight provisions to provide Congress with information on how COVID relief funds were being utilized.

Members of Congress may request that certain terms and conditions be set on federal spending through the submission of "language requests" to the Appropriations Committees. Language requests could entail prohibiting the use of funds for certain activities, directing agencies to prioritize certain programs or activities, or to conduct and publish studies and reports on the efficacy of programs, among others.

Annual Appropriations Process

302(a) Allocation

To begin their work, the House and Senate Appropriations Committees need the topline spending level they will allocate among discretionary programs. Statutorily, the President is required to send a budget proposal to the House and Senate Budget Committees by early February, however administrations often do not adhere to that deadline and submitting the budget proposal past February has become the norm. President Biden submitted his administration's proposed budget for FY2023 discretionary funding on March 28, 2022. The Budget Committees are then supposed to mark up a concurrent budget resolution, which is not signed by the President and does not become law, but does include the total amount of spending for the Appropriations Committees. That topline number for discretionary spending is known as the 302(a) allocation after Section 302(a) of the Congressional Budget Act of 1974. The 302(a) allocation is passed either through a deeming resolution or budget resolution. On June 8, 2022, the House adopted a deeming resolution, H. Res. 1151, Providing for budget allocations, and for other purposes, which set the 302(a) topline allocation at $1.6 trillion for FY23, however this does not reflect an agreement with House Republicans or the Senate.

Up until FY22, under the BCA, 302(a) allocations had generally totaled the sum of the military budget cap and the non-defense discretionary funding cap. However, with the expiration of the Budget Control Act of 2011 and subsequent budget caps deals, Congress has wider latitude during the FY2023 appropriations process to determine the overall level of spending for the year. Congress did not set a statutory cap on FY2023 discretionary spending.

302(b) Allocations

Once the House and Senate Appropriations Committees have their 302(a) allocation, they set their 302(b) allocations to divide the total amount of the discretionary spending across their 12 subcommittees. The Appropriations Committees usually do not make 302(b) allocations public until the appropriations bills are released. The following table shows how the House Appropriations Committee proposed dividing the FY2023 302(a) allocation among the 12 subcommittees:

Appropriations Subcommittee	**FY2023 302(b) allocation ($ billions)**
Defense	762
Labor, Health & Human Services, Education	224
Military Construction, Veteran Affairs	151
Transportation, Housing & Urban Development	91
Commerce, Justice, Science	86
State & Foreign Operations	65
Homeland Security	60
Energy & Water Development	57
Interior & Environment	45
Financial Services & General Government	30
Agriculture, Rural Development, FDA	27
Legislative Branch	7
Total (302(a) allocation)[2]	*1,605*

Appropriations Markups

The subcommittees then decide how to distribute funds within their 302(b) allocations among different programs and agencies. In the first few months of the year, Senators and Representatives submit their programmatic and language requests to the respective Appropriations subcommittees for individual programs and agencies. For example, a member or group of members may submit a programmatic request for an increase in funding for the National Institutes for Health or could submit a letter expressing general support for a program. Subcommittees then mark up their individual bills, and then the full Appropriations Committee marks up each bill before reporting it to the full chamber for consideration.

Floor Consideration

While the committees consider each subcommittee's bill individually, multiple appropriations bills are frequently bundled together for consideration on the floor. At this point of the appropriations process, members are able to propose amendments

[2] Total may not equal the sum due to rounding.

to appropriations legislation[3] such as increasing programmatic funding, decreasing programmatic funding, restricting funding for certain activities, or reallocating funding from one program to another, among others. Bills can be packed into consolidated appropriations bills (also known as "minibuses") or a single omnibus appropriations bill. Considering appropriations bills in an omnibus package can reduce the amount of floor time dedicated to debating and considering each of the 12 appropriations bills from each respective subcommittee. Once the House and Senate reconcile their respective bills, they send the approved legislation to the President to become law.

While the fiscal year ends on September 30, Congress often fails to pass all 12 annual appropriations bills on time. In those cases, Congress has to pass a continuing resolution (CR) to keep the government running at current spending levels. Otherwise, the federal government shuts down which means most agency employees need to stop working, unless they are deemed essential, and the ability of the federal government to deliver services may be impacted. Historically, Congress has enacted one or more CRs in all but three of the 44 fiscal years since FY1977 to continue appropriations at the previous spending level or to give legislators more time to finalize full-year appropriations bills.

Supplemental & Emergency Appropriations

In addition to a regular appropriations cycle, Congress may pass additional "supplemental appropriations" bills outside of the annual appropriations process. Congress frequently uses supplemental appropriations in unanticipated emergency situations that require funding immediately, such as natural disasters, public health crises, or economic recession. For example, the House passed H.R. 7790, the Infant Formula Supplemental Appropriations Act, which appropriated $28 million to address the urgent shortage of infant formula. These supplemental appropriations layer on top of funds already included in the regular appropriations for that year. They are not subject to spending caps, pay-as-you-go policies, or budgetary controls.

Congress has already used emergency supplemental appropriations four times during the COVID-19 pandemic:

- $8.3 billion in H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123)
- $2.5 billion in Division A of H.R. 6201, the Families First Coronavirus Response Act (P.L. 116-127)
- $340 billion in Division B of H.R. 748, the CARES Act (P.L. 116-136)
- $75 billion in Division B of H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139)

Appropriations Requests and Congressionally-Directed Spending

To ensure that Members of Congress' priorities are reflected in annual appropriations bills, the Appropriation Committees will solicit input from members to inform spending levels and add report language or bill language to change existing law.

[3] Subject to the rule governing floor consideration.

While adding report language does not change existing law, it can be used to provide direction to departments and agencies on the distribution of funding. Members will circulate “Dear Colleague” letters to other members for their signature (effectively an endorsement) to build support for particular program funding levels or to express general support for certain programs.

Congressionally-directed spending (CDS), commonly referred to as “earmarks,” is a member-requested allocation of discretionary spending for a specific project, generally within a member’s district. A moratorium on this practice had been in place since 2011, however many members—both Democratic and Republican—had supported reinstating CDS.

In the 117th Congress, both the House and the Senate Appropriations Committee Chairs indicated that they would once again begin accepting earmark requests from members, which are now called “Community Project Funding.” However, members that submit earmark requests must certify that they do not have financial interests in the projects and the requests must be made public. Members are allowed to submit up to 15 funding requests and the total allocation of earmarks for the fiscal year cannot exceed 1% of discretionary spending. The funding is only eligible for government or non-profit entities. The FY23 bills released by the House Appropriations Committee included 4,386 earmarks totalling more than $8.2 billion.

Policy Riders

Appropriations bills can be useful vehicles for policy provisions that would not otherwise get floor time. Putting restrictions and reporting requirements on funding is a major way that Congress uses the power of the purse to check the Administration. Policy riders allow members to force consideration of high-profile issues or to advance more niche issues within a larger legislative vehicle, such as an omnibus appropriations bill.

While riders are used by both parties to advance policy preferences, this process has been used far more regularly by Republican members looking to sneak in damaging policy actions, as past appropriations bills have been littered with riders that undermine progressive priorities. With recent rulings from the Supreme Court overturning *Roe v. Wade* and limiting the Environmental Protection Agency’s ability to regulate harmful emissions, the stakes around the inclusion or exclusion of policy riders are especially high this year. Here are some of the “poison pill” riders included in past appropriations bills (listed by subcommittee). Note that this list is not exhaustive.

Labor, Health & Human Services, Education

- Barring programs in these agencies from covering abortion (Hyde Amendment). By attaching the Hyde Amendment to the appropriations bill that funds the Department of Health and Human Services (HHS), Congress ensures that insurance programs run through HHS—including Medicaid, Medicare, the Children’s Health Insurance Program and the Indian Health Service—do not cover abortion.

- Prohibiting discrimination against "health care entities" that do not provide, pay for, or provide coverage of or refer for abortions (Weldon Amendment).

Commerce, Justice, Science

- Preventing the Federal Bureau of Prisons from covering the cost of an abortion.

State & Foreign Operations

- Prohibiting discrimination against international organizations that offer only "natural family planning" for religious or conscientious reasons (Livingston-Obey Amendment).
- Preventing the use of U.S. foreign assistance from paying for abortion as a method of family planning or or to motivate or coerce any person to practice abortions (Helms Amendment).
- Prohibiting abortion coverage for Peace Corps workers.

Interior, Environment

- Blocking rules on greenhouse gas emissions.
- Restricting use of the Endangered Species Act.
- Allowing greater commercial use of public lands.

Financial Services & General Government

- Blocking transparency of political spending and the creation of clear definitions of political activity.
- Preventing federal employees and their dependents from accessing abortion services..

Agriculture, Rural Development, FDA

- Weakening nutrition standards.

H.R. 2471, Consolidated Appropriations Act, 2022

On March 15, 2022, President Biden signed into law H.R. 2471, the Consolidated Appropriations Act, 2022, a $1.5 trillion omnibus spending bill providing federal funding for the remainder of the 2022 fiscal year. With the expiration of BCA caps, appropriators agreed to $730 billion in nondefense funding, a $46 billion increase over FY2021, representing a total increase of 6.7%, and $782 billion in defense funding, a $42 billion increase over FY2021, for a total increase of 5.6%.

The following table shows how the FY2022 spending was ultimately divided among the 12 subcommittees:

Appropriations Subcommittee	FY2022 302(b) allocation ($ billions)[4]	Increase over FY2021 ($ billions)
Defense	729	33
Military Construction, Veteran Affairs	285	33
Labor, Health & Human Services, Education	214	15
Transportation, Housing & Urban Development	81	6
Commerce, Justice, Science	76	5
Homeland Security	58	6
State & Foreign Operations	56	1
Energy & Water Development	55	3
Interior & Environment	38	2
Financial Services & General Government	26	1
Agriculture, Rural Development, FDA	25	1
Legislative Branch	6	1

Omnibus Policy Riders

With narrow majorities in Congress and the ongoing procedural hurdle of the filibuster, Democrats and Republicans had to work on a bipartisan basis to unlock the votes needed to pass the omnibus package. As a result, the final bill did not eliminate long-standing policy riders like the Hyde Amendment and the Weldon amendment. The bill also prohibits federal funding from being used to buy sterile needles or syringes that would be used in needle exchange programs to support harm reduction efforts.

Conclusion

The FY2023 appropriations package comes after a decade of statutory austerity due to the Budget Control Act. Congress now has the opportunity to continue to increase spending to the levels necessary to adequately fund agencies and programs that provide critical relief and services to working families. Congress must also decide which policy riders to include or eliminate, given a broad range of high-profile issues and oversight priorities, in the next fiscal year's appropriations process.

[4] Excludes disaster funding outside budget caps.

Appropriations bills are a critical opportunity for Congress to meet the needs of the moment, and that is especially true this year as families grapple with the ongoing effects of the pandemic.