“What Could Possibly Go Wrong:
An Analysis of Prospects for the FY20 L-HHS Appropriations Bill”

Research!America thanks Steven Grossman, Deputy Executive Director of the Alliance for a Stronger FDA for adapting his August 23 commentary to incorporate insights into NIH funding. R!A is a member of the Alliance. Steven can be reached at sgrossman@strengthenfda.org.

We are grateful that Congress passed the Bipartisan Budget Act (BBA) before the August recess, setting more realistic budget ceilings than those in effect under the Budget Control Act of 2011. That makes it possible for Congress to address all the other issues that must be resolved before FY 20 appropriations are in place. This is a difficult task.

Under the category of “what could possibly go wrong?” here are some of the possibilities:

**House and Senate are misaligned on non-defense spending levels.** Most non-defense federal programs will get an increase over their FY 19 numbers, but less than the amounts in the House-passed non-defense bills (plus Homeland Security). Specifically, the House-passed non-defense bills (plus monies allotted for Homeland Security) are about $15 billion above the BBA spending caps (which are, as indicated, above FY 19 actual spending levels).

Not surprisingly, every House non-defense subcommittee will be trying to contribute as little as possible to the needed $15 billion in cuts below the House-passed levels. In turn, appropriators who care about specific agencies and programs within the bills will be trying to have those agencies contribute as little as possible to the portion of the cuts assigned to their subcommittee.

In this scenario, the L/HHS Subcommittee tries to bear as little of the cutback as possible and those who champion NIH will work to have that agency bear none or very little of the funding reductions ultimately allocated to L/HHS. All of this is math, not policy.

**House and Senate have different priorities within the BBA ceilings.** The Senate (in tandem with the White House) is certain to ask for proportionally greater growth for Homeland Security, including controversial border initiatives and policies. In contrast, the House is likely to want to press for its higher funding levels for the agencies and programs under the jurisdiction of the “Labor/HHS” Subcommittee and for other Democratic priorities. There will not be sufficient monies to satisfy everyone’s priorities at the levels they want.

**Difficulties with non-defense spending may delay efforts to combine Defense and L/HHS funding.** Over the summer, there was talk of including DOD and L/HHS funding into a single minibus and have that be the first bill considered by the Senate in September. Politically, that forces defense hawks to support domestic spending and human services advocates to vote for increased defense spending. This approach was a huge success in FY 19, would likely be signed quickly by the President, and has the effect of taking care of about 70% of federal discretionary programs (on a dollar basis).
Indeed, Senate bills that fit under the BBA non-defense ceiling may start to move early in September, but there can be no conference with the House on a DOD-L/HHS minibus until the House figures out where the (collective) $15 billion in non-defense cuts should come from.

Without a coordinated approach, there might be no money for the last few non-defense bills. This would be problematic in any case, but especially so since Homeland Security is likely to be the last bill through and there will be a strong push in the Senate (and from the White House) for those programs to get further increases. Note: while House Democrats need to formulate a position that is “House-passed non-defense program funding minus $15 billion,” there is unlikely to be any detailed disclosure because that would undercut the House negotiating position.

**Setting program funding levels may be easier than resolving any appropriations riders not covered by the BBA agreement.** To get BBA passed, there were a number of side agreements, including one to maintain status quo on controversial “poison pill” riders. It is clear that the long-standing Hyde amendment (no federal funds to be used for abortions) will continue, while new House-passed riders on border security will not. This still leaves a lot of unknowns as to what riders are automatically in or out…or still must be fought over.

**Manipulation of FY 19 spending may undermine goodwill generated by the BBA agreement.** An Administration proposal was floated in August and then withdrawn that would have rescinded $4 billion in FY 19 foreign aid spending. This would have exploited a long-standing loophole in the original 1974 Congressional Budget and Impoundment Control Act that may permit a late-in-the-fiscal-year Presidential rescission order to take effect without Congressional agreement. Even the suggestion of this (or similar types of work-arounds) underscores the fragile political truce that is essential to passage of FY 20 funding bills.

While these are macro-budgetary issues (explained [here](#)), their resolution affects the micro-budgetary fate of all L/HHS agencies and FDA (which is in the Agriculture Appropriations bill).

Uncertainty makes it far harder for agencies to efficiently manage both old and new programs. NIH and FDA stakeholders have much to gain from a smooth and timely appropriations process; nothing to gain from controversy, uncertainty, and funding under continuing resolutions.