Holland & Knight

EYES ON WASHINGTON

Rich Gold
Practice Group Leader
Public Policy & Regulation Group

202.457.7143
rich.gold@hklaw.com

November 18, 2011

In This Issue:

- **Three FY 2012 Spending Bills Enacted while Omnibus Option is Weighed**
- **Guessing Continues on Super Committee Progress**
- **House GOP Releases Transportation Proposal**
- **Grant Highlight: Healthcare Innovation Challenge**

Three FY2012 Spending Bills Enacted while Omnibus Option is Weighed

Congress passed the first set of FY 2012 spending bills yesterday – Agriculture, Commerce-Justice-Science and Transportation-Housing and Urban Development – and President Obama signed them into law today. The bills, totaling approximately $128 billion in discretionary spending, were packed into a conference agreement (H.R. 2112) and are the first of the 12 appropriations bills to move forward into law. Attached to the minibus (H.R. 2112) was another short-term continuing resolution (CR) that will maintain funding for programs by H.R. 2112 through December 16.

After Senate Majority Leader Harry Reid's (D-NV) attempt to move a second minibus failed, it is becoming likely that the other nine spending bills will be grouped together in a catchall omnibus. This will allow both chambers to finish the appropriations process before the latest CR expires in mid-December. House appropriation leaders have supported the omnibus option over allowing another CR to carry over into the new year.

Funding Details on Spending Bills

Discretionary appropriations under the conference agreement would be $391 million lower than the FY 2011 level for the Agriculture section of the package, and $387 million lower for the Commerce-Justice-Science section. Discretionary spending for the Transportation-HUD section would increase by $183 million.

For most programs, Democratic and Republican appropriators who negotiated the conference agreement split the different between the higher Senate proposals for spending and the smaller House figures. However, there were a few contradictions to this method of compromise. The National Science Foundation received an appropriation of $7 billion, which is $173 million more than the House level and $335 million more than was proposed in a draft

Senate bill. The conference agreement also arrived at higher figures for the Women, Infants and Children (WIC) nutrition program. Under the bill, WIC would receive $6.6 billion – $570 million more than the House-passed Agriculture bill and $36 million more than Senate appropriators had recommended.

Below is an outline of spending levels for major programs. For more information, visit the conference report for H.R. 2112.

I. Agriculture

The FY 2012 Agriculture spending bill provides $137 billion in funding for the Department of Agriculture. In addition to $19.8 billion in discretionary spending, the bill includes $116.8 billion in mandatory spending for programs authorized in the 2008 Farm Bill, such as commodity and crop insurance, export subsidies, and food stamps. Mandatory funds of $99 billion are directed to food and nutrition programs, including the Supplemental Nutrition Assistance Programs (SNAP) and child nutrition.

Overall, the bill reduces spending by 2 percent, or $387 million from FY 2011 levels, and is $2.5 billion lower than the President's request. The bill provides the following:

- $367 million in emergency spending for disaster relief
- $6.6 billion for the Women, Infants, and Children (WIC) nutrition program, a $115.5 million decrease over FY11
- $80.4 billion for SNAP, a $15.2 billion increase over FY11
- $205.3 million for the Commodities Futures Trading Commission (CFTC), a $3.0 million increase over last year
- $1.2 billion for the National Institute of Food and Agriculture, a $12.5 million decrease over FY 2011
- $1.1 billion for the Agricultural Research Service, a $38.5 million decrease over FY 2011
- $1.2 billion for the Agricultural Marketing Service, an $11.7 million increase over FY 2011
- $819.7 million for the Animal and Plant Health Inspection Service, $47.1 million less than FY 2011
- $1.0 billion for the Food Safety and Inspection Service, $2.1 million less than FY 2011
- $1.6 billion for the Farm Service Agency, $65.6 million less than FY 2011
- $844.0 million for conservation programs, $45.4 million less than FY 2011
- $26.5 billion in loan authorizations for the Rural Housing Service, a $795.2 million increase over the FY 2011 authorization
- $880.2 million in loan authorizations for the Rural Business-Cooperative Service, a $72.0 million decrease over FY 2011
- $8.7 billion in loan authorizations for the Rural Utilities Service, a $443.4 million decrease over FY 2011
- $242.3 million for the Commodity Assistance Program, $3.8 million less than FY 2011
- $1.8 billion for Foreign Assistance and export loans, a $55.7 million decrease over FY 2011
- $0 for the Healthy Food Financing Initiative, down from $50 million in FY 2011 due to questions about the program's efficacy

II. Commerce-Justice-Science

The FY 2012 Commerce-Justice-Science (CJS) spending bill provides $52.7 billion for FY 2012, including $200 million to the Economic Development Administration for emergency disaster relief. State and local law enforcement programs would receive a total of $2.2 billion, $570 million

(20 percent) less than FY 2011 appropriations and $856 million (28 percent) less than requested in the President's budget. Highlights of the CJS bill are below.

Commerce

- $220 million for core activities of the Economic Development Administration (EDA), $25 million (10 percent) below FY 2011 and 19 percent less than requested in the President's budget
- $200 million in emergency disaster relief funding to respond to recent natural disasters and $5 million for a grant program to work with U.S. businesses to bring back offshore jobs

Justice

- $199 million to support local law enforcement agencies through Community Oriented Policing Services (COPS), including:
    - $166 million for COPS Hiring Grants to hire or retain officers. This is $296 million (60 percent) less than the FY 2011 level and $511 million (72 percent) less than requested in the President's budget
- $413 million for the Office on Violence Against Women for prevention and prosecution programs, 1 percent below FY 2011 levels and 9 percent less than the request in the President's budget, including:
    - 4.2 million for Elder Abuse Grant Program
- $1.6 billion for grants for state and local organizations to fight crime, juvenile justice programs and public safety officer benefits through the Office of Justice Programs, $82 million (5 percent) less than the FY 2011 amount and 16 percent less than requested in the President's budget, including:
    - $470 million for Byrne Memorial JAG Grants (formula)
    - $15 million for Byrne Competitive Grants
    - $15 million for Byrne Criminal Justice Innovation Program
    - $78 million for Youth Mentoring Grants

Science

- $17.8 billion for NASA, $648 million less than the FY 2011 level
- $7 billion for the National Science Foundation, $173 million more than the FY 2011 level
    - $5.7 billion is intended for research and related activities, a $155 million increase from FY 2011 levels
- $4.5 million for the Office of Science and Technology Policy, nearly 32 percent less than FY 2011 funding

III. Transportation-Housing and Urban Development

The conference agreement provides $55.6 billion in fiscal 2012 discretionary appropriations for transportation and housing programs, an increase of $183 million from last year's level but $19.4 billion less than what was provided in the President's budget. Housing and Urban Development received $37.3 billion, a $3.8 billion cut from FY 2011. The deal zeroed out $100 million that Senate appropriators had dedicated in their bill to high-speed passenger rail. Below are other program highlights.

Transportation

- $500 million for TIGER, $27 million less than FY 2011
    - DOT is allowed to use up to 35 percent ($175 million) for TIFIA credit subsidy

- not less than $120 million shall be spent in rural areas with minimum grant size being $1 million
- DOT can use up to $20 million for project oversight activities
- Grants in urban areas must be between $10 million and $200 million

- $0 provided for TIGGER greenhouse gas and energy reduction grants
- $8.361 billion for the Formula and Bus Grants account, an increase of $18 million over FY 2011
- $1.955 billion for New Starts/Small Starts, an increase of $358 million for FY 2011

  - $188.2 million of bus rapid transit (BRT) projects was moved from the New Starts/Small Starts program to the section 5309 bus and bus facilities program. This action creates additional room for the rail projects in the New Starts pipeline.

- $150 million for Washington Metro, maintaining FY 2011 levels
- $1.45 billion for Amtrak grants, about $64 million less than FY 2011
  - $0 for high-speed and intercity passenger rail
  - $39.1 billion for federal-aid highways program, about $2 billion less than FY 2011
  - $1.6 billion for emergency relief highway funding
  - $12.5 billion for the Federal Aviation Administration (FAA), a $137 million increase over FY 2011
  - $2.731 billion for FAA procurement and capital
  - $3.350 billion for the Airport Improvement Program, a $165 million decrease from FY 2011
  - $143 million for FAA's Essential Air Service program

Housing-Urban Development

- $2.95 billion for the Community Development Block Grant Formula Grants program, $388 million less than the FY 2011 level of $3.34 billion
- $0 for the Sustainable Communities Initiative, $100 million less than the FY 2011 level
- $1 billion for the HOME Investment Partnership Formula Grants Program, $200 million less than the FY 2011 level of $1.2 billion
- $1.9 billion for Homeless Assistance Grants, level funded at the FY 2011 level
- $120 million for the Choice Neighborhoods Initiative (CNI), an increase of $55 million from the FY 2011 level of $65 million
- CNI is replacing the HOPE VI program, which was funded in FY 2011 at $100 million in addition to the $65 million for CNI in last year's bill. There is $0 for HOPE VI in the FY 2012 THUD bill, so overall this program area is decreased by $45 million in FY 2012
- $17.2 billion for Section 8 Tenant Based Rental Assistance Contract Renewals, an increase of $573 million over the FY 2011 funding level of $16.7 billion
- $1.875 billion for the Public Housing Capital Fund, $165 million less than the FY 2011 funding level of $2.04 billion
- $3.96 billion for the Public Housing Operating Fund, $655 million less than the FY 2011 funding level of $4.62 billion
- $45 million for the Housing Counseling Assistance program, which was eliminated in FY 2011

Guessing Continues on Super Committee Progress

The Super Committee has continued deliberations, but no sign of a final deal has been reported. The deadline for the panel to approve a proposal, cutting at least $1.2 trillion from the deficit, is November 23. If the Super Committee fails to develop a proposal, across-the-board spending cuts, called a sequester, will automatically take effect in January 2013.

If the Super Committee moves forward with a proposal, keep in mind that:

- two days before voting on any proposal, the panel must have an estimate of the proposal's effects on spending, revenue and the deficit from the Congressional Budget Office
- the committee must approve a report and accompanying legislative language by midnight Wednesday, Nov. 23; at least seven of the 12 members must support the proposal

If the Super Committee does not meet the deadline:

- Congress could send a bill to the president to repeal or modify the sequester, which was established by the Budget Control Act in August; that bill might be vetoed
- absent congressional action, $1.2 trillion in automatic cuts over nine years would be allocated across the government by the Office of Management and Budget; the first sequester would take effect January 2, 2013

We will continue to monitor and report on Super Committee actions leading up to the November 23 deadline. Please contact your local Holland & Knight representative with any questions.

House GOP Releases Transportation Proposal

On November 17, House Speaker John Boehner (R-OH) announced broad details of the House GOP's transportation reauthorization proposal. In the coming weeks, House Republicans are expected to introduce the American Energy Infrastructure Jobs Act, which would fund high-priority infrastructure projects with revenue gathered from new American energy production. Speaker Boehner said he expects the bill to move through the House before the end of the year. The American Energy Infrastructure Jobs Act would include the following pieces of legislation that have already been introduced. They are:

- **The Energy Security and Transportation Jobs Act**, introduced by Rep. Steve Stivers (R-OH), which would lift President Obama's drilling ban on new offshore areas by requiring the administration to lease offshore areas estimated to contain the most oil and natural gas resources.
- **The Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act ("PIONEERS" Act)**, introduced by Rep. Doug Lamborn (R-CA), which would set rules for the development of U.S. oil shale resources and promote shale technology research and development.
- **The Alaskan Energy for American Jobs Act**, introduced by Chairman Doc Hastings (R-WA) and Rep. Don Young (R-AK). It would open less than 3 percent of the Arctic National Wildlife Refuge's 19 million acres in the North Slope for oil and natural gas development.

House Transportation and Infrastructure Chairman John Mica (R-FL) also joined Speaker Boehner during the November 17 press conference and laid out four general aims of the bill:

- consolidate duplicative parts of the federal transportation system
- shift responsibility to states and local governments to move transportation projects forward
- increase the ability to leverage financial resources
- significantly streamline the process for projects, cutting red tape and federal paperwork

No specifics for the bill's dollar amount or duration were mentioned.

Grant Highlight: Healthcare Innovation Challenge

The Center for Medicare and Medicaid Innovation (CMMI) has announced a $1 billion Health Care Innovation Challenge program to spur health care delivery reform, and develop and deploy the healthcare workforce needed for tomorrow's delivery system. A wide array of entities are eligible to apply for funds, including health care providers, educational institutions, public-private partnerships, multi-payer collaboratives, local governments and tribal nations. Grants are

expected to be in the range of $1 million to $30 million. Awardees will be expected to show improved care and lower costs to people enrolled in Medicare, Medicaid and the Children's Health Insurance Program (CHIP), particularly those with the highest healthcare needs.

The objectives of this initiative are to:

- engage a broad set of innovation partners to identify and test new care delivery and payment models that originate in the field and that produce better care, better health, and reduced cost through improvement for identified target populations
- identify new models of workforce development and deployment and related training and education that support new models either directly or through new infrastructure activities
- support innovators who can rapidly deploy care improvement models (within six months of award) through new ventures or expansion of existing efforts to new populations of patients, in conjunction (where possible) with other public and private sector partners

Awards will range from approximately $1 million to $30 million for a three-year period. Applications are open to providers, payers, local government, public-private partnerships and multi-payer collaboratives. Each grantee project will be monitored for measurable improvements in quality of care and savings generated.

Important Dates

- Letters of Intent due: December 19, 2011
- Applications due: January 27, 2012
- Anticipated Award Date: March 30, 2012

To learn more about the Health Care Innovation Challenge and obtain information about the application process, please read the Funding Opportunity Announcement and reference the Fact Sheet.

About Our Public Policy & Regulation Practice

Holland & Knight's Public Policy & Regulation Group uses its in-depth understanding of governmental operations and political perspectives to help advance our clients' strategic objectives and solve problems. As advocates for our clients, we are committed to helping shape public policy decisions through careful, strategic positioning combined with a deep understanding of our clients' evolving needs. Our team offers depth, diversity and a bipartisan approach that adapts well to changes in the political climate.

About Holland & Knight

Holland & Knight is a global law firm with more than 1,000 lawyers in 17 U.S. offices as well as Abu Dhabi, Beijing and Mexico City. Holland & Knight is among the nation's largest law firms, providing representation in litigation, business, real estate and governmental law. Interdisciplinary practice groups and industry-based teams provide clients with access to attorneys throughout the firm, regardless of location.

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

www.hklaw.com
Holland & Knight LLP
Copyright © 2011 Holland & Knight LLP All Rights Reserved