NACo Legislative Bulletin

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November 21, 2011

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A NACo Victory — President Signs Three Percent Withholding Repeal
After years of advocacy to repeal the onerous unfunded mandate known as three percent withholding, NACo has finally achieved the ultimate goal of full repeal signed into law. The final version of H.R. 674 included full repeal of the three percent withholding, language modifying the income definition for determination of eligibility for exchange subsidies under the health reform law and provisions that provide tax credits for businesses hiring veterans.

In attendance at the signing ceremony, held November 21, were NACo President Lenny Eliason and Miami-Dade County Commissioner Sally Heyman. Commissioner Heyman led one of the earliest efforts for federal repeal legislation with then Congressman Kendrick Meek (D-Fla.).

NACo would like to thank all members as this victory would not be possible without your support and efforts over the years!
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"Waters of the U.S." Conference Call Scheduled on 11/22 at 11 a.m. EST
In an effort to be responsive to local concerns, the U.S. Environmental Protection Agency (EPA) has scheduled a conference call for NACo membership on pending "Waters of the U.S." regulatory changes. These changes will impact a number of county-run programs that involve ditches and other water features.

> Tuesday, November 22 11 a.m. EST Call-in Number: 877-290-8017
> Conference ID#: 28877889

According to the EPA, the proposal will increase the number of waters (and their conveyances) that will fall under federal jurisdiction. The regulatory proposal is based on the draft "waters of the U.S." guidance released earlier this year. The new definitions will impact all CWA programs, including section 303 the water quality standards and total maximum daily load programs, section 311 oil spill program, section 401 State water quality certification

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process, section 402 National Pollutant Discharge Elimination System (NPDES) permit program (including the new pesticides general permit), and section 404 discharges of dredged or fill material. The EPA is currently in pre-consult for this rule. They plan to brief NACo members on the proposal and take questions afterwards from participants. To see the original "waters of the U.S." draft guidance, click here.
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"Minibus" Spending Package Sets Spending Levels for Numerous County Priority Programs
On November 18, President Obama signed the "minibus" (HR 2112 — H Rept. 112-284), which contains three of the usual 12 annual appropriations bills: Agriculture, Commerce-Justice-Science and Transportation-HUD.

In total, the spending package would provide $128.1 billion in discretionary funding subject to the $1.043 trillion cap established in the Budget Control Act (PL 112-25) and an additional $2.3 billion for emergency relief activities not subject to the cap. The package also included another continuing resolution, which extends FY 2011 funding levels through December 16, 2011 for programs that have not received an FY 2012 appropriation.

Below are four summaries broken down by issue area that detail the major funding provisions impacting counties.

— Agriculture Appropriations
Overall, county priorities fared well in conference negotiations on the final FY 2012 Agriculture, Rural Development, FDA and Related Agencies Appropriations Act. The final bill provides $19.8 billion in discretionary spending authority, the same level found in the Senate bill and avoids the deeper $2.6 billion in cuts proposed by the House. This funding level still represents a roughly $350 million or 1.8 percent cut from current spending.

Several policy riders also made it into the final bill including a NACo supported provision allowing for the restoration of USDA-sponsored inspections of horse processing facilities. In addition, the bill will block USDA from implementing proposed new standards limiting white potatoes and starchy vegetables in school meals. Conferees also accepted the policy rider championed by Senator Tom Coburn (R-OK) that would bar farmers or farm operations with adjusted gross incomes exceeding $1 million from receiving subsidies under the direct payment program.

Funding for Extension remained steady and Food Safety received additional resources. The NACo supported increase of $50 million for the Food and Drug Administration (FDA) made it into the final bill. The $2.497 billion funding level for FDA will allow the agency to begin implementation of the recently passed Food Safety Modernization Act, P.L. 111-353. The Smith-Lever extension formula funds received $294 million, which is the same level as FY 2011 and $37 million above the proposed House level.

NACo and coalition partner advocacy efforts were also successful in maintaining the higher Senate funding levels for USDA Rural Development in the conference agreement; however the final bill includes significant cuts to county supported programs. Rural Development provides direct funding to rural counties for broadband, community facilities, water/wastewater infrastructure and business development projects. The final bill provides $2.25 billion overall for Rural Development, which is a 7 percent cut from the FY 2011 level of $2.43 billion. The overwhelming support by the full Senate to reject a 40 percent reduction to rural development programs during floor consideration in October helped NACo's position in conference negotiations to avoid the House funding level of $2.08 billion, which represented a 14 percent cut.

A summary of funding levels for the major county supported Rural Development programs is found below. The modest overall reductions are positive given the current political environment, however some individual programs experienced drastic reductions.

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Rural Water and Waste Disposal Programs: The bill provides $513 million in budget authority to support both grants and loans. This is higher than both the Senate and House positions going into conference and represents a $14.9 million or 3 percent cut from FY 2011.

Rural Community Facilities Programs: The bill provides $24.29 million in budget authority to support grants. This represents a $17.11 million or 41 percent cut. However, the agreement includes $1.3 billion in direct loan availability which is a $1 billion increase that will greatly benefit rural counties with facility projects. This increase did not cost the federal government anything because the subsidy rate for direct community facility loans recently became negative.

Rural Broadband: The bill provides $37.37 million for Distance Learning, Telemedicine and Broadband Program grants and loans, which saved the program from the House level of $15 million. However, this level of funding is $30.7 million or 45 percent less than the FY 2011 level.

Rural Business Programs: The bill provides $74.8 million for Rural Business grants and loan subsidies. This represents a $10.5 million or 12 percent cut. The Rural Microenterprise Assistance Program, which was funded at $5.7 million in FY 2011 was completely eliminated in the bill.

Renewable Energy for America Program (REAP): The program is funded at $25.4 million in discretionary and mandatory funding, which represents a cut of $49.6 million or 66 percent.
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— HUD Appropriations
The “minibus” includes $37.4 billion for HUD, 9 percent less than FY 2011. It cuts funding for the Community Development Block Grants (CDBG) formula program from $3.3 billion to $2.95 billion; this is close to a $400 million decrease. While the Community Development Fund section is funded at $3.3 billion, of this amount up to $300 million, plus an additional $100 million in disaster funds is slated for disaster assistance. This is the first set aside for disaster assistance in CDBG. The final language does maintain the 20 percent administrative cap for CDBG. The House proposed cutting this in half. The final agreement also reduces the HOME program funding from $1.6 billion to $1.0 billion, a $600 million cut. The HOME program has come under increased scrutiny lately. The final bill also includes reforms to ensure HOME funds are used in a timely fashion, and for worthy projects.

The final agreement includes $120 million for HUD’s Choice Neighborhood Initiative, a $65 million increase over the current level. This program expands on the HOPE VI to improve public housing. The bill eliminated funding for the Sustainable Communities Initiative, which is currently funded at $100 million but does maintain the office within HUD. There is language in the conference report that indicates that sustainable activities are an eligible use for CDBG formula funds.

The agreement includes level funding of $1.9 billion for homeless assistance grants. It provides $18.9 billion for Section 8 housing choice vouchers, $500 million above FY 2011. Of this amount, $17.2 billion for renewal of current housing vouchers, $1.4 billion for program administration. It also includes $75 million for vouchers for homeless veterans, up from the current $50 million level.

The final bill also includes $45 million for HUD’s housing counseling program, which was eliminated in FY 2011, and $80 million for the National Foreclosure Mitigation Counseling program. Close to $ 6 million was allotted for Section 108 loan guarantees. It also increases the Federal Housing Administration (FHA) higher loan limit up to $729,750 through December 31, 2013, but not for Fannie and Freddie Mac.

The final agreement includes a provision (Section 409) that prohibits funds from being used for any project that seeks to use the power of eminent domain

unless eminent domain is employed only for a public use.
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— Commerce, Justice and State Appropriations

The “Minibus” proposes a total of $52.7 billion in discretionary appropriations for the Department of Commerce, Department of Justice (DOJ), and other related agencies and is a decrease of $583 below last year's level, and a decrease of $5 billion below the President's FY12 budget request. As a result, the bill provides many reductions for key local criminal justice, law enforcement, juvenile justice, and delinquency prevention assistance programs important to counties.

Specifically, the final bill provides:

- $470 million for Byrne Memorial Justice Assistance/JAG grants ($39 million less than FY11);
- $240 million for The State Criminal Alien Assistance Program ($34 million less than FY11);
- $166 million for COPS hiring grants ($80 million less than FY11);
- $63 million for Second Chance Act funding ($20 million less than FY11);
- $35 million for DOJ’s Drug Court Discretionary Grant Program ($2 million less than FY11);
- $30 million for the Juvenile Accountability Block Grant ($16 million less than FY11);
- $20 million for Juvenile Justice Title V Incentive Grants for Local Delinquency Prevention Programs ($34 million less than FY11);
- $15 million for Byrne Competitive Grants ($18 million less than FY11);
- $13 million for Prison Rape Prevention and Prosecution funding ($1 million less than FY11);
- $13 million for DEA Methamphetamine Lab Cleanup assistance (2.5 million more than FY11);
- $9 million for Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) program funding ($1 million less than FY11); and
- $418 million for DOJ's Office of Violence Against Woman Programs ($6 million less than FY11).

Throughout debate for the past nine months, Second Chance Act funding, COPS Hiring Grants,SCAAP, JJDP Title V Delinquency Prevention, and JABG all faced elimination. However, these programs were all ultimately saved thanks to the widespread advocacy of county officials and many stakeholders nationwide.
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— Transportation Appropriations

The “Minibus” Appropriations bill for FY2012 passed by Congress and signed by President Obama generally adheres to the Senate-passed transportation funding levels, which NACo supported, that generally provide a higher level of funding than the House bill.

The final bill provides $39.883 billion for highway funding, down from the FY2011 level of $41.107 billion but substantially higher than the $27.7 billion proposed by the House. Another $1.662 for the Emergency Relief program for highways damaged in disasters such as Hurricane Irene and the recent Missouri River flooding is included.

Transit funding is $10.608 billion, a $311 million increase over FY2011 and includes an increase in the Formula and Bus Grants program and an increase in the New Starts and Small Starts programs. The Airport Improvement Program took a cut to $3.350, the House-passed level, from the current figure of $3.515 billion, which had been in place since FY2006.

This can be partially explained by the lack of progress in passing a FAA reauthorization bill. Despite some vocal opposition, Essential Air Service is funded at $193 million, a reduction of only $6.7 million, far better than the House proposal to cut EAS by $50 million, The Small Community Air Service program is kept alive with $6 million in funding.

Amtrak is provided with $1.439 billion, a 4.3 percent cut. Operating assistance for Amtrak is set at $466 million, a $96 million cut and the Amtrak capital program is funded at $952 million, a $30 million increase. High-speed rail receives no funding, despite a Senate supported level of $100 million, and the TIGER grant program is provided with $500 million, which the House bill would have eliminated.
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Speaker Boehner, Chairman Mica Announce Five-Year Surface Transportation Bill to Be Funded Through Energy Exploration
On November 17, Speaker John Boehner (R-Ohio) House Transportation and Infrastructure Committee Chairman John Mica (R-Fla.) and other Republican Members of Congress announced their plans to introduce the "American Energy & Infrastructure Jobs Act," which they insisted will be considered in the House before the end of calendar year 2011.

The Speaker indicated that the bill will include a five-year surface transportation reauthorization bill, as well as legislation expanding offshore oil and gas drilling, expanded oil shale production, and Arctic National Wildlife Reserve oil exploration.
Speaker Boehner said the bill will be introduced as H.R. 7, however, few details on the specifics of the bill, such as total spending or programmatic distribution of dollars were given.

Boehner has been searching for up to $100 billion in additional revenue for the Surface Transportation bill to fund a six-year (maybe five-year or less now) highway-transit program at the same current funding plus inflation levels that the Senate Environment and Public Works Committee recently approved. The Speaker has apparently designated House Natural Resources Committee Chairman Doc Hastings (R-Wash.) with the task for identifying that additional revenue.
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SCOTUS to Hear Affordable Care Act Appeals
On November 14, the Supreme Court announced that it would hear oral arguments on appeal concerning the constitutionality of the Affordable Care Act (ACA) in March 2012. A ruling would likely be issued in June. The court will hear arguments on four issues: the individual mandate, that is, the requirement that everyone carry health insurance or pay a federal tax penalty; severability, or whether the entire ACA should be invalidated if the individual mandate is struck down; whether the Anti-Injunction Act applies in this case, that is, are the appeals ripe for review, or should they wait until the tax penalties have been levied and paid; and finally, whether the ACA’s Medicaid expansion amounts to unconstitutional coercion of the states.

The Medicaid question may have the farthest reaching impact for counties since countless federal programs administered by states and counties are predicated on federal funding with “strings attached”.
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Fast Tracked Bipartisan Farm Bill has no Legislative Vehicle
The House and Senate Agriculture committee chairs completed a bipartisan Farm Bill package. The leaked Farm Bill package would have imposed significant cuts to Farm Bill programs in the range of $23 billion, but authorizers calculated that including this package as part of a deficit reduction deal would have avoided uncertainty and potentially larger cuts in the year ahead. The current five-year Farm Bill (PL 110-246) expires Sept. 30, 2012

and it now appears that the House and Senate will create separate bills next year through the normal legislative process. They face the reality that reauthorizing the Farm Bill in an election year will be very difficult to accomplish and may require even steeper funding cuts and more drastic policy changes. The majority of Farm Bill Programs will also be subject to the $1.2 trillion in automatic spending cuts over the next ten years that will be triggered by the failure of Congress to reach a deficit reduction deal.

The Farm Bill package composed by the Agriculture Committee Chairs is now likely to serve as the first draft for future proposals. NACo priority programs in the Rural Development Title and Energy Title would not see significant policy changes, but mandatory funding levels are very disappointing. The Rural Development Title would only receive $15 million in mandatory funding for the Value-Added Agriculture Market Development Grants and would be targeted towards beginning farmers and ranchers. The 2008 Farm Bill included $150 million in mandatory funding for Rural Development, but had no baseline funding to be continued. NACo's efforts to include new technical assistance for the Community Facilities program was successful, however efforts to provide more flexibility for regional rural development projects was not.

The Energy Title which received $1.1 billion in mandatory funding in the 2008 Farm Bill only received $27 million in mandatory funding in the proposal. This would put these programs in jeopardy because unlike Rural Development programs, which receive nearly all of their funding through the yearly appropriations process, Energy programs receive the majority of their resources through mandatory funding provided in the 2008 Farm Bill.

The package would make significant changes to commodity and conservation programs, although it is still unclear how these changes would impact NACo's priority of supporting beginning and young farmers. The proposal would save $15 billion by eliminating direct payments, the Average Crop Revenue Election (ACRE) Program and the Supplemental Agricultural Disaster Assistance Program (SURE). Crop insurance would be expanded for fruit and vegetable producers and a new stand-alone revenue protection program for cotton growers would be created, along with an expanded supplemental area-wide revenue coverage program for all other producers. A new Ag Risk Coverage (ARC) program would be created to protect against both price and yield losses. The number of conservation programs would be reduced from 23 to 13, but a new Agricultural Conservation Easement Program would be created to help protect farm land from development.
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About NACo
National Association of Counties (NACo) is the only national organization that represents county governments in the U. S. NACo provides essential services to the nation' s 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research and provides value-added services to save counties and taxpayers money.

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