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The Congressional Appropriations Process: An Introduction

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Summary

Congress annually considers several appropriations measures, which provide funding for numerous activities, for example, national defense, education, and homeland security, as well as general government operations. Congress has developed certain rules and practices for the consideration of appropriations measures, referred to as the *congressional appropriations process*.

Appropriations measures are under the jurisdiction of the House and Senate Appropriations Committees. These measures provide only about 40% of total federal spending for a fiscal year. The House and Senate legislative committees control the rest.

There are three types of appropriations measures. *Regular appropriations bills* provide most of the funding that is provided in all appropriations measures for a fiscal year, and must be enacted by October 1 of each year. If regular bills are not enacted by the deadline, Congress adopts *continuing resolutions* to continue funding generally until regular bills are enacted. *Supplemental appropriations bills* provide additional appropriations and are typically considered during a fiscal year.

Each year Congress considers a budget resolution that, in part, sets spending ceilings for the upcoming fiscal year. Both the House and Senate have established parliamentary rules that may be used to enforce certain spending ceilings associated with the budget resolution during consideration of appropriations measures in the House and Senate, respectively.

Congress has also established an authorization-appropriation process that provides for two separate types of measures—authorization bills and appropriation bills. These measures perform different functions and are to be considered in sequence. First, authorization bills establish, continue, or modify agencies or programs. Second, appropriations measures may provide funding for the agencies and programs previously authorized.

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Introduction

Congress annually considers several appropriations measures, which provide funding for numerous activities, such as national defense, education, and homeland security, as well as general government operations. These measures are considered by Congress under certain rules and practices, referred to as the *congressional appropriations process*. This report discusses the following aspects of this process:

- the annual appropriations cycle;
- types of appropriations measures;
- spending ceilings for appropriations associated with the annual budget resolution; and
- the relationship between authorization and appropriation measures.

When considering appropriations measures, Congress is exercising the power granted to it under the Constitution, which states, "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[1] The power to appropriate is a legislative power. Congress has enforced its prerogatives through certain laws. The so-called Antideficiency Act, for example, strengthened the application of this section by, in part, explicitly prohibiting federal government employees and officers from making contracts or other obligations in advance of or in excess of an appropriation, unless authorized by law; and providing administrative and criminal sanctions for those who violate the act.[2] Under law, public funds, furthermore, may only be used for purpose(s) for which Congress appropriated the funds.[3]

The President has an important role in the appropriations process by virtue of his constitutional power to approve or veto entire measures, which Congress can only override by two-thirds vote of both chambers. He also has influence, in part, because of various duties imposed by statute, such as submitting an annual budget to Congress.

The House and Senate Committees on Appropriations have jurisdiction over the annual appropriations measures. Each committee has 12 subcommittees and each subcommittee has jurisdiction over one annual, regular appropriations bill that provides funding for departments and agencies under the subcommittee's jurisdiction.[4]

The jurisdictions of the House and Senate appropriations subcommittees are generally parallel. That is, each House appropriations subcommittee is paired with a Senate appropriations subcommittee and the two subcommittees' jurisdictions are generally identical.[5] As currently organized, there are 12 subcommittees:[6]

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[1] U.S. Constitution, Article I, Section 9.

[2] 31 U.S.C. §§ 1341(a)-1342 and 1349-1350.

[3] 31 U.S.C. § 1301(a).

[4] The House has an additional subcommittee, Select Intelligence Oversight Panel (select panel). It, however, does not have jurisdiction over providing spending. The select panel, instead, makes annual intelligence funding recommendations to the House Defense Appropriations Subcommittee, which has jurisdiction over legislation to provide intelligence spending.

[5] For departments and agencies under the jurisdiction of each subcommittee, see CRS Report WA00004, *Locate an*
(continued...)

- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (Agriculture);
- Commerce, Justice, Science, and Related Agencies (Commerce, Justice, and Science);
- Defense;
- Energy and Water Development, and Related Agencies (Energy and Water Development);
- Financial Services and General Government;
- Department of Homeland Security (Homeland Security);
- Interior, Environment, and Related Agencies (Interior and Environment);
- Departments of Labor, Health and Human Services, Education, and Related Agencies (Labor, Health and Human Services, and Education);
- Legislative Branch;
- Military Construction, Veterans Affairs, and Related Agencies (Military Construction and Veterans Affairs);
- State, Foreign Operations, and Related Programs (State and Foreign Operations); and
- Departments of Transportation, and Housing and Urban Development, and Related Agencies (Transportation and Housing and Urban Development).

Annual Appropriations Cycle

President Submits Budget

The President initiates the annual budget cycle when he submits his annual budget for the upcoming fiscal year[7] to Congress. He is required to submit his annual budget on or before the first Monday in February.[8] Congress has, however, provided deadline extensions; both statutorily and, sometimes, informally.[9]

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Agency or Program within Appropriations Bills: 110th Congress, by Mary Frances Bley; U.S. Congress, House Committee on Appropriations, *Subcommittee Jurisdiction*, Jacket Number 32-282, 110th Cong., 1st sess. (Washington: GPO, 2007); and U.S. Congress, Senate Committee on Appropriations, *Subcommittee Jurisdiction*, S. Prt. 110-11, 110th Cong., 1st sess. (Washington: GPO, 2007).

[6] For additional information, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by James V. Saturno.

[7] Congress generally provides spending for fiscal years, in contrast to calendar years. Federal government *fiscal years* begin on October 1 and end the following September 30. FY2009 began on October 1, 2008.

[8] 31 U.S.C. § 1105(a).

[9] For information on deadline extensions in presidential transition years, see CRS Report RS20752, *Submission of the President's Budget in Transition Years*, by Robert Keith.

The President recommends spending levels for various programs and agencies of the federal government in the form of *budget authority* (or *BA*). Such authority does not represent cash provided to, or reserved for, agencies. Instead, the term refers to authority provided by federal law to enter into contracts or other financial *obligations* that will result in immediate or future expenditures (or *outlays*) involving federal government funds. Most appropriations are a form of budget authority that also provide legal authority to make the subsequent payments from the Treasury.

An FY2008 appropriations act, for example, provided $222 million in new budget authority for FY2008 to the Department of the Interior's National Park Service (NPS) for construction, improvement, repair, and replacement of facilities. That is, the act gave NPS legal authority to sign contracts to construct and repair the facilities. The agency could not commit the government to pay more than $222 million. The outlays occur when government payments are made to complete the tasks.

While budget authority must generally be obligated in the fiscal year in which the funds were made available, outlays may occur over time. In the case of the NPS construction projects, for example, the outlays may occur over several years as various stages of the project are completed. In this example, the $222 million appropriation could be spent over four fiscal years:

- FY2008, $22 million;
- FY2009, $55 million;
- FY2010, $55 million; and
- FY2011, $90 million.

The amount of outlays in a fiscal year may vary among activities funded because the length of time to complete the activities differs. Outlays to purchase office supplies may occur in the year the budget authority is made available, while outlays for construction projects may take longer.

As Congress considers appropriations measures providing new budget authority for a particular fiscal year, discussions on the resulting outlays involve estimates based on historical trends. Data on the actual outlays for a fiscal year are not available until the fiscal year has ended.

After the President submits his budget to Congress, each agency generally provides additional detailed *justification* materials to the House and Senate appropriations subcommittees with jurisdiction over its funding.

Congress Adopts Budget Resolution

The Congressional Budget and Impoundment Control Act of 1974 (Congressional Budget Act)[10] requires Congress to adopt an annual budget resolution.[11] The budget resolution is Congress's response to the President's budget. The budget resolution must cover at least five fiscal years: the upcoming fiscal year plus the four subsequent fiscal years.

[10] 2 U.S.C. § 621 et seq.

[11] Budget resolutions are under the jurisdiction of the House and Senate Committees on the Budget.

The budget resolution, in part, sets total new budget authority and outlay levels for each fiscal year covered by the resolution. It also allocates federal spending among generally 20 functional categories (such as national defense, agriculture, and transportation) and sets similar levels for each function.

Within each chamber, the total new budget authority and outlays for each fiscal year are also allocated among committees with jurisdiction over spending, thereby setting spending ceilings for each committee (see "Allocations" section below).[12] The House and Senate Committees on Appropriations receive ceilings only for the upcoming fiscal year, because appropriations measures are annual. Once the appropriations committees receive their spending ceilings, they separately subdivide the amount among their respective subcommittees, providing spending ceilings for each subcommittee.[13]

The budget resolution is never sent to the President, nor does it become law. It does not provide budget authority or raise or lower revenues; instead, it is a guide for the House and Senate as they consider various budget-related bills, including appropriations and tax measures. Both the House and Senate have established parliamentary rules to enforce some of these spending ceilings when appropriations measures are considered on the House or Senate floor, respectively.[14]

The Congressional Budget Act provides an April 15 deadline for congressional adoption of the budget resolution. During the past 33 fiscal years Congress has considered budget resolutions (FY1976-FY2008), however, Congress frequently has not met this deadline, and in four of those years (FY1999, FY2003, FY2005, and FY2007), Congress did not adopt a budget resolution.[15]

There is no penalty if the budget resolution is not completed or is tardy. Under the Congressional Budget Act, however, certain enforceable spending ceilings associated with the budget resolution are not established until the budget resolution is completed. The act also prohibits both House and Senate floor consideration of appropriations measures for the upcoming fiscal year until they complete the budget resolution; and, in the Senate, until the Senate Appropriations Committee receive their spending ceilings.[16] The House, however, may consider most appropriations measures after May 15, even if the budget resolution is not in place;[17] and the Senate may adopt a motion to waive this rule by a majority vote.

If Congress delays completion of the annual budget resolution (or does not complete the resolution), each chamber may adopt a deeming resolution to address these procedural difficulties.[18]

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[12] The committee ceilings are usually provided in the joint explanatory statement that accompanies the conference report to the budget resolution.

[13] See "Allocations" below.

[14] For more details, see "Spending Ceilings for Appropriations Measures" below.

[15] For more information on budget resolutions, see CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr. and Justin Murray.

[16] 2 U.S.C. § 634 (or Congressional Budget Act, section 303); and H.Res. 6, section 511(a)(2) (110th Cong.).

[17] This exception applies to regular appropriations bills and supplemental appropriations measures that provide funding for more than one agency or purpose (for more information, see "Types of Appropriations Measures" below).

[18] For information on deeming resolutions, see "Allocations" section below and CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith.

Timetable for Consideration of Appropriations Measures

Traditionally, the House of Representatives initiated consideration of regular appropriations measures, and the Senate subsequently considered and amended the House-passed bills. Recently, the Senate appropriations subcommittees and committee have sometimes not waited for the House bills, instead they have reported original Senate bills. Under this non-traditional approach, both House and Senate appropriations committees and their subcommittees have often considered the regular bills simultaneously.

The House Committee on Appropriations reports the 12 regular appropriations bills separately to the full House.[19] The committee typically begins reporting the bills in May or June, completing their consideration of all (or almost all) of them by the annual August recess. Generally, the full House starts consideration of the regular appropriations bills in May or June as well, passing most of those bills by the August recess. For three of the last seven fiscal years (FY2002-FY2008) the House did not pass all the regular bills separately. The regular bills that do not pass are typically funded in an omnibus appropriations bill.[20]

In the Senate, the Senate Appropriations Committee typically begins reporting the bills in June and generally completes reporting them in September. The Senate typically starts passing the bills in June or July and continues through the fall. For five of the last seven fiscal years, the Senate also did not pass all of the bills separately.

During the fall and winter, the appropriations committees are usually heavily involved in conferences to resolve differences between the versions of appropriations bills passed by their respective chambers. Relatively little (if any) time is left before the fiscal year begins to resolve what may be wide disparities between the House and Senate, to say nothing of those between Congress and the President. As a result, Congress is usually faced with the need to enact one or more temporary continuing resolutions pending the final disposition of the regular appropriations bills.[21]

Work of the Appropriations Committees

After the President submits his budget, the House and Senate appropriations subcommittees hold hearings on the segments of the budget under their jurisdiction. They focus on the details of the agencies' justifications, primarily obtaining testimony from agency officials.

After the hearings have been completed, and the House and Senate appropriations committees have generally received their spending ceilings, the subcommittees begin to mark up[22] the regular

[19] For almost 35 years (1971-2004), Congress generally considered 13 regular appropriations bills each year. As a result of two reorganizations of the House and Senate Committees on Appropriations in 2005 and, again, in 2007, the total number of bills changed twice. Congress considered 11 regular bills for FY2006 and FY2007 and there have been 12 regular bills for FY2008 and FY2009. (For more information, CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by James V. Saturno.)

[20] See "Regular Appropriations Bills" below.

[21] For a description of continuing resolutions, see "Continuing Resolutions" below.

[22] The chair usually proposes a draft bill (the *chair's mark*). The chair and other subcommittee members discuss amendments to the draft and may agree to include some (referred to as *marking up the bill*). Regular appropriations bills are not introduced prior to full committee markup. The bill is introduced when the House appropriations committee reports the bill; a bill number is assigned at that time. House rules allow the House appropriations (continued...)

bills under their jurisdiction and report them to their respective full committees. Both appropriations committees consider each of their subcommittee's recommendations separately. The committees may adopt amendments to a subcommittee's recommendations, and then report the bill as amended to their respective floors for further action.

House and Senate Floor Action

After the House or Senate appropriations committee reports an appropriations bill to the House or Senate, respectively, the bill is brought to the floor. At this point, Representatives or Senators are generally provided an opportunity to propose floor amendments to the bill.

House

Prior to floor consideration of a regular appropriations bill, the House generally considers a special rule reported by the House Committee on Rules setting parameters for floor consideration of the bill.[23] If the House adopts the special rule, it usually considers the appropriations bill immediately.

The House considers the bill in the Committee of the Whole House on the State of the Union (or Committee of the Whole) of which all Representatives are members.[24] A special rule on an appropriations bill usually provides for one hour of general debate on the bill. The debate includes opening statements by the chair and ranking minority member[25] of the appropriations subcommittee with jurisdiction over the regular bill, as well as other interested Representatives.

After the Committee of the Whole debates the bill, it considers amendments. A regular appropriations bill is generally read for amendment, by paragraph.[26] Amendments must meet a variety of requirements:

- House standing rules and precedents generally that establish several requirements, such as requiring amendments to be germane to the bill;

(...continued)

committee to originate a bill. In contrast, most House committees do not have such authority.

[23] Because the regular appropriations bills must be completed in a timely fashion, House Rule XIII, clause 5, provides that these appropriations bills are privileged. This allows the House Committee on Appropriations to make a motion to bring a regular appropriations bill directly to the floor in contrast to asking the Rules Committee to report a special rule providing for the measure's consideration, as is necessary for most major bills.

In recent years, the House appropriations committee has usually used the special rule procedure, however. These special rules typically include waivers of certain parliamentary rules regarding the consideration of appropriations bills and certain provisions within them. Special rules may also be used for other purposes, such as restricting floor amendments.

[24] House Rule XVIII, clause 3, requires that appropriations measures be considered in the Committee of the Whole before the House votes on passage of the measures (see CRS Report 95-563, *The Legislative Process on the House Floor: An Introduction*, by Christopher M. Davis; and CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by Bill Heniff Jr. and Elizabeth Rybicki.

[25] *A ranking minority member* of a committee or subcommittee is the head of the minority party members of the particular committee or subcommittee.

[26] For more information, see CRS Report 98-995, *The Amending Process in the House of Representatives*, by Christopher M. Davis.

- House standing rules and precedents that establish a separation between legislation and appropriations (see "Relationship Between Authorization and Appropriation Measures" below);
- funding limits imposed by the congressional budget process (see "Spending Ceilings for Appropriations Measures" below); and
- provisions of a special rule or unanimous consent agreement providing for consideration of the particular bill.

If an amendment violates any of these requirements, any Representative may raise a point of order to that effect. If the presiding officer rules the amendment out of order, it cannot be considered on the House floor. The special rule or unanimous consent agreement[27] may waive the requirements imposed by House rules or the budget process, thereby allowing the House to consider the amendment.

During consideration of individual regular appropriations bills, the House sometimes sets additional parameters, either by adopting a special rule or by unanimous consent. For example, the House sometimes agrees to limit consideration to a specific list of amendments or to limit debate on individual amendments by unanimous consent.[28]

After the Committee of the Whole completes consideration of the measure, it rises and reports the bill with any adopted amendments to the full House. The House then votes on the adopted amendments and passage. After House passage, the bill is sent to the Senate.

Senate

The full Senate considers the bill as reported by its appropriations committee.[29] The Senate does not have a device like a special rule to set parameters for consideration of bills. Before taking up the bill, however, or during its consideration, the Senate sometimes sets parameters by unanimous consent.

When the bill is brought up on the floor, the chair and ranking minority member of the appropriations subcommittee make opening statements on the contents of the bill as reported.

Committee and floor amendments to the reported bills must meet requirements under the Senate standing rules and precedents (including the authorization-appropriations process) and congressional budget process, as well as requirements agreed to by unanimous consent. The specifics of the Senate and House requirements differ, including the waiver procedures.[30]

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[27] Under *unanimous consent agreements,* the House agrees to the new parameters if no Representative objects.

[28] In addition to special rules, in recent years House consideration of appropriations bills has been supplemented by unanimous consent agreements. For more information, see CRS Report RS22711, *Considering Regular Appropriations Bills on the House Floor: Current Practice Regarding Comprehensive Unanimous Consent Agreements*, by Christopher M. Davis.

[29] In cases in which the non-traditional practice is utilized, the Senate Committee on Appropriations typically reports an original Senate bill and after the full Senate has completed action on it, the Senate waits for the House to send its bill to the Senate and amends the House-passed bill with generally a substitute amendment that contains the text of the Senate bill, as amended on the Senate floor.

[30]The Senate may waive these rules either by unanimous consent or, in some cases, by motion.

The Senate, in contrast to the House, does not consider floor amendments in the order of the bill. Senators may propose amendments to any portion of the bill at any time unless the Senate agrees to set limits.

House and Senate Conference Action

Generally, members of the House and Senate appropriations subcommittees having jurisdiction over a particular regular appropriations bill, and the chair and ranking minority members of the full committees meet to negotiate over differences between the House- and Senate-passed bills.[31]

Under House and Senate rules, the negotiators (called *conferees* or *managers*) are generally required to remain within the scope of the differences between the positions of the two chambers, and cannot add new matter.[32] Their agreement must be within the range established by the House- and Senate-passed versions. For example, if the House-passed bill appropriates $3 million for a program and a separate Senate amendment provides $5 million, the conferees must reach an agreement that is within the $3 million-$5 million range. In the Senate, the conference report cannot add new directed spending provisions that were not in included in either the House- or Senate-passed versions of the bill. The Senate rule against new matter applies to any provision in the conference report, while the rule against new directed spending provisions is limited to

> any item that consists of a specific provision containing a specific level of funding for any specific account, specific program, specific project, or specific activity, when no specific funding was provided for such specific account, specific program, specific project, or specific activity in the measure originally committed to the conferees by either House.[33]

These rules may be enforced during House and Senate consideration of the conference report.

The Senate typically passes the House bill with the Senate version attached as a single substitute amendment. In such instances, the conferees must reach agreement on all points of difference between the House and Senate versions before reporting the conference report in agreement to both houses. When this occurs, the conferees propose a new conference substitute for the bill as a whole. The conference report includes a *joint explanatory statement* (or *managers' statement*) explaining the new substitute. A conference report may not be amended in either chamber.

Usually, the House considers conference reports on appropriations measures first, because it traditionally considers the measures first. Prior to consideration of the conference report, the House typically adopts a special rule waiving any points of order against the conference report. The first chamber to consider the conference report has the option of voting to recommit it to the conference for further consideration, rejecting it, or adopting it.

After the first house adopts the conference report, the conference is automatically disbanded; therefore, the second house has two options—adopt or reject the conference report. The Senate,

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[31] If the Senate and/or House does not pass a bill, informal negotiations typically take place on the basis of the reported version of that chamber(s). For example, the provisions of the House-passed bill and Senate committee-reported bill might be negotiated. Typically, the compromise is included in a conference report on an omnibus appropriations measure (see "Regular Appropriations Bills" section below).

[32] House Rule XXII, clause 9, and Senate Rule XXVIII, paragraphs 2 and 3.

[33] Senate Rule XLIV, paragraph 8.

however, may strike new matter or new directed spending provisions from the conference report by points of order thereby rejecting it. The Senate can avoid this situation by adopting a motion to waive the applicable rule by a three-fifths vote of all Senators duly chosen and sworn (60 Senators if there are no vacancies). If the Presiding Officer sustains point(s) of order against new matter or new directed spending provisions, the offending language is stricken from the bill. After all points of order under both requirements have been disposed of, the Senate considers a motion to send the remaining provisions to the House as an amendment between the houses since they cannot amend the conference report. The House would then consider the amendment. The House may choose to further amend the Senate amendment and return to the Senate for further consideration. If the House, however, agrees to the amendment the measure is sent to the President.[34]

In cases in which either the conference report is rejected or recommitted to the conference committee, the conferees negotiate further over the matters in dispute between the two houses.[35] The measure cannot be sent to the President until both houses have agreed to the entire text of the bill.

Presidential Action

Under the Constitution,[36] after Congress sends the bill to the President, he has 10 days to sign or veto the measure. If he takes no action, the bill automatically becomes law at the end of the 10-day period. Conversely, if he takes no action when Congress has adjourned, he may *pocket veto* the bill.

If the President vetoes the bill, he sends it back to Congress. Congress may override the veto by a two-thirds vote in both houses. If Congress successfully overrides the veto, the bill becomes law. If Congress is unsuccessful, the bill dies.

Types of Appropriations Measures

There are three major types appropriations measures: regular appropriations bills, continuing resolutions, and supplemental appropriations measures. Of the three types, regular appropriations bills typically provide most of the funding.[37]

Regular Appropriations Bills

The House and Senate annually consider several regular appropriations measures. Each House and Senate appropriations subcommittee has jurisdiction over one regular bill. Due to the 2007

[34] For more detailed information on these Senate rules, see CRS Report RS22733, *Senate Rules Changes in the 110th Congress Affecting Restrictions on the Content of Conference Reports*, by Elizabeth Rybicki.

[35] If either house rejects the conference report, the two houses normally agree to further conference, usually appointing the same conferees.

[36] U.S. Constitution, Article I, section 7.

[37] A notable exception was an FY2007 continuing resolution (P.L. 110-5, 121 Stat. 8), which provided funding for nine FY2007 regular appropriations bills through the end of FY2007.

House and Senate appropriations committees' reorganization, each chamber considers 12 regular bills.

Regular appropriations bills contain a series of unnumbered paragraphs with headings; generally reflecting a unique budget account. The basic unit of regular and supplemental appropriations bills is the account. Under these measures, funding for each department and large independent agency is distributed among several accounts. Each account, generally, includes similar programs, projects, or items, such as a "research and development" account or "salaries and expenses" account. For small agencies, a single account may fund all of the agency's activities. These acts typically provide a lump-sum amount for each of these accounts. A few accounts include a single program, project, or item, which the appropriations act funds individually.

In report language,[38] the House and Senate Committees on Appropriations provide more detailed directions to the departments and agencies on the distribution of funding among various activities funded within an account. Funding for most local projects are specified in report language, as opposed to the text of the appropriations bill. Congressional earmarks (referred to as congressionally directed spending items in Senate Rule XLIV) are frequently included in report language and have also been provided in a bill, amendment, or conference report.

Appropriations measures may also provide transfer authority.[39] *Transfers* shift budget authority from one account or fund to another. For example, an agency moving new budget authority from a "salaries and expenses" account to a "construction" account would be a transfer. Agencies are prohibited from making such transfers without statutory authority.

In contrast, agencies may generally shift budget authority from one activity to another within an account without such statutory authority. This is referred to as *reprogramming*.[40] The appropriations subcommittees have established notification and other oversight procedures for the various agencies to follow regarding reprogramming actions. Generally, these procedures differ with each subcommittee.

Congress has traditionally considered and approved each regular appropriations bill separately, but Congress has on occasion combined several bills together. For 19 of the past 32 years (FY1977-FY2008), Congress has packaged two or more regular appropriations bills together in one measure.[41] These packages are referred to as omnibus appropriation measures.[42]

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[38] *Report language* refers to the content of committee reports and joint explanatory statements, which are attached to the back of conference reports.

[39] Authorization measures may also provide transfer authority. For information on authorization measures, see "Relationship Between Authorization and Appropriation Measures" below.

[40] Transfer authority may be required, however, in cases in which the appropriations act includes a set aside for a specified activity within an account.

[41] For example, the FY2001 Energy and Water Development bill was attached to the FY2001 Veterans Affairs, Housing and Urban Development, and Independent Agencies bill. The FY2001 Legislative Branch bill and Treasury and General Government bill were attached to the FY2001 Labor, Health and Human Services, Education, and Related Agencies bill.

[42] There is no agreed upon definition of omnibus appropriations measure, but the term *minibus appropriations measure* refers to a measure including only a few regular appropriations bills, while *omnibus appropriations measure* refers to a measure containing several regular bills.

In these cases, Congress typically began consideration of each regular bill separately, but generally has combined some of the bills together at the conference stage. During conference on a single regular appropriations bill, the conferees typically have included in the conference report the final agreements on other outstanding regular appropriations bills, thereby creating an omnibus appropriations measure.

Packaging, as shown in **Table 1**, was used for nine consecutive fiscal years beginning for FY1980. The first two of those years (FY1980-FY1981) occurred while President Jimmy Carter was in the White House, and the remaining seven were

during Ronald Reagan's presidency. Since that time, it has been used 10 times—five during President William Jefferson Clinton's presidency (FY1996-FY1997 and FY1999-FY2001) and five while President George W. Bush has been in the White House (FY2003-FY2005 and FY2007-FY2008).

In two years (FY1987 and FY1988) during Ronald Reagan's presidency, all of the bills were enacted in an omnibus bill; while in three years (FY2003, FY2007, and FY2008), while President George W. Bush has been in the White House, all but one or two bills have been enacted as a part of a package.

Packaging regular appropriations bills can be an efficient means for resolving outstanding differences within Congress or between Congress and the President. The negotiators can make more convenient trade-offs between issues among several bills and complete consideration of appropriations using fewer measures.

Continuing Resolutions

The provisions in regular appropriations bills typically allow funds to be obligated only until the end of the fiscal year, October 1. If action on one or more regular appropriations measures has not been completed by the deadline, the agencies funded by these bills must cease nonessential activities due to lack of budget authority. Traditionally, *continuing appropriations* have been used to maintain temporary funding for agencies and programs until the regular bills are enacted. Such appropriations continuing funding are usually provided in a joint resolution, hence the term *continuing resolution* (or *CR*).

Table 1. Number of Regular Appropriations Bills Packaged in Omnibus (or Minibus) Measure, FY1977-FY2008

Fiscal Year	Presidential Administration	Regular Acts in Omnibus or Minibus Measure
1977	Gerald Ford	0
1978	Jimmy Carter	0
1979		0
1980		2
1981		5
1982	Ronald Reagan	3
1983		6

Fiscal Year	Presidential Administration	Regular Acts in Omnibus or Minibus Measure
1984		3
1985		8
1986		7
1987		13
1988		13
1989		0
1990	George H.W. Bush	0
1991		0
1992		0
1993		0
1994	William Clinton	0
1995		0
1996		5
1997		6
1998		0
1999		8
2000		5
2001		2,3[a]
2002	George W. Bush	0
2003		11
2004		7
2005		9
2006		0
2007		9
2008		11

Sources: U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, committee prints, 94th Cong., 2nd sess.-103rd , Cong., 2nd sess. (Washington: GPO, 1976-1994); and U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation, 94th-110th Congresses* (Washington: GPO, 1976-2008).

a. The FY2001 Energy and Water Development bill was attached to the FY2001 Veterans Affairs, Housing and Urban Development, and Independent Agencies bill. The FY2001 Legislative Branch bill and Treasury and General Government bill were attached to the FY2001 Labor, Health and Human Services, Education, and Related Agencies bill.

In 27 of the past 32 years (FY1977-FY2008), Congress and the President did not complete action on a majority of the regular bills by the start of the fiscal year (see **Table 2**). In eight years, they did not finish any of the bills before October 1. They completed action on all the bills on schedule only four times: FY1977, FY1989, FY1995, and FY1997.

In November and again in December 1995, FY1996 continuing resolutions expired and some regular appropriations bills had not been enacted. As a result, nonessential activities that would have been funded in those regular bills stopped and federal workers hired to perform those services were sent home.

On or before the start of the fiscal year, Congress and the President generally complete action on an initial continuing resolution that temporarily funds the outstanding regular appropriations bills. In contrast to funding practices in regular bills (i.e., providing appropriations for each account), temporary continuing resolutions generally provide funding by a rate and/or formula. Recently, the continuing resolutions have generally provided a rate at the levels provided in the previous fiscal year. The initial CR typically provides temporary funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. Once the initial CR becomes law, additional interim continuing resolutions are frequently utilized to sequentially extend the expiration date. These subsequent continuing resolutions sometimes change the funding methods. Over the past 31 fiscal years, Congress has approved, on average, four continuing resolutions each year (see **Table 2**).

Supplemental Appropriations Measures

Congress frequently considers one or more supplemental appropriations measures (or supplementals) for a fiscal year that generally increase funding for selected activities previously funded in the regular bills. Recent supplementals have also been used to provide funds for the wars in Iraq and Afghanistan. Supplementals may provide funding for unforeseen needs (such as funds to recover from a hurricane, earthquake or flood); or increase or provide funding for other activities. These measures, like regular appropriations bills, provide specific amounts of funding for individual accounts in the bill. Sometimes Congress includes supplemental appropriations in regular bills and continuing resolutions rather than in a separate supplemental bill.

During a calendar year, Congress typically considers, at least

- 12 regular appropriations bills for the fiscal year that begins on October 1;
- few continuing resolutions for the same fiscal year; and
- one or more supplementals for the previous fiscal year.

Table 2. Regular Appropriations Bills Completed by Deadline and Number of Continuing Resolutions, FY1977-FY2008

Fiscal Year	Presidential Administration	Regular Appropriations Bills Became Law by or on October 1st	Continuing Resolutions Became Law
1977	Gerald Ford	13	(2[a])
1978	Jimmy Carter	9	3
1979		5	1
1980		3	2
1981		1	2
1982	Ronald Reagan	0	4
1983		1	2
1984		4	2

Fiscal Year	Presidential Administration	Regular Appropriations Bills Became Law by or on October 1st	Continuing Resolutions Became Law
1985		4	5
1986		0	5
1987		0	5
1988		0	5
1989		13	0
1990	George H.W. Bush	1	3
1991		0	5
1992		3	4
1993		1	1
1994	William J. Clinton	2	3
1995		13	0
1996		0	14
1997		13[b]	0
1998		1	6
1999		1	6
2000		4	7
2001		2	21
2002	George W. Bush	0	8
2003		0	8
2004		3	5
2005		1	3
2006		2	3
2007		1	4[c]
2008		0	4[d]

Sources: U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94th Cong., 2nd sess.-04th Cong., 1st sess. (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104th Cong., 1st sess.-107th Cong., 1st sess. (Washington: GPO, 1995-2005).

a. The two CRs did not provide continuing funding for entire regular bills; instead, they provided funding for selected activities.

b. Five regular bills were attached to the FY1997 defense regular act, which became law on September 30. As a result, the FY1997 appropriations process was completed by October 1.

c. The initial FY2007 CR was included in the FY2007 Department of Defense regular appropriations act (P.L. 109-289http://www.congress.gov/cgi-lis/bdquery/R?d109:FLD002:@1(109+289), Division B; 120 Stat. 1257).

d. The second FY2008 CR was included in the FY2008 Department of Defense regular appropriations act (P.L. 110-116http://www.congress.gov/cgi-lis/bdquery/R?d110:FLD002:@1(110+116), Division B; 121 Stat. 1295).

Spending Ceilings for Appropriations Measures

The Congressional Budget Act established a process through which Congress annually sets spending ceilings associated with the budget resolution and enforces those ceilings with parliamentary rules, or *points of order*, during congressional consideration of budgetary legislation, including appropriations bills.

Allocations

As mentioned previously, within each chamber, the total budget authority and outlays included in the annual budget resolution are allocated among the House and Senate committees with jurisdiction over spending, including the House and Senate Committees on Appropriations. Through this allocation process, the budget resolution sets total spending ceilings for each House and Senate committee (referred to as the *302(a) allocations*).[43] **Table 3** provides 302(a) allocations to the House Committee on Appropriations for FY2008.

Table 3. House Committee on Appropriations' 302(a) Allocations for FY2008

(in billions of dollars)

Spending Category	Budget Authority	Outlays
Discretionary	953.053	1,028.398
Mandatory	548.676	536.972

Source: U.S. Congress, Conference Committees, 2007, *Concurrent Resolution on the Budget for Fiscal Year 2008*, conference report to accompany S.Con.Res. 21, H.Rept. 110-153, 110th Cong., 1st sess. (Washington: GPO, 2007), p. 129.

Table 3 includes allocations for discretionary spending and mandatory spending. Congress divides budget authority and the resulting outlays into two categories: discretionary spending and mandatory spending (including net interest[44]). Discretionary spending is controlled by the annual appropriations acts, which are under the jurisdiction of the House and Senate Committees on Appropriations. In contrast, mandatory spending is controlled by authorization (or legislative) acts under the jurisdiction of the authorization (or legislative) committees.[45] Appropriations measures include all the discretionary spending and some of the mandatory spending.

Discretionary spending provides funds for a wide variety of activities, such as those described in the "Introduction"above, whereas mandatory spending primarily funds entitlement programs[46] as

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[43] This refers to section 302(a) of the Congressional Budget Act. Typically, these are provided in the joint explanatory statement that accompanies the conference report on the budget resolution.

[44] "In the federal budget, net interest comprises the government's interest payments on debt held by the public, offset by interest income that the government receives on loans and cash balances and by earnings of the National Railroad Retirement Investment Trust." U.S. Congressional Budget Office, *Glossary of Budgetary and Economic Terms*, available at http://www.cbo.gov.

[45] For example, Social Security and Medicare Part A are under the jurisdiction of the House Committee on Ways and Means and Senate Committee on Finance. Most standing committees are legislative committees, such as the House Committee on Armed Services and the Senate Committee on the Judiciary. For more information, see "Relationship Between Authorization and Appropriation Measures" below.

[46] The Congressional Budget Office defines entitlement as:A legal obligation of the federal government to make (continued...)

well as other mandatory spending programs. Of the total outlays for FY2006, 38% was discretionary spending, 53% was mandatory spending, and 9% was net interest.

Regarding the distribution of discretionary spending outlays for FY2006, 51% of the outlays was for defense activities, 45% for domestic activities, and 4% for international activities.

The mandatory spending provided in appropriations measures is predominantly for entitlement programs, referred to as *appropriated entitlements*. These entitlements are funded through a two-step process. First, authorizing legislation becomes law that sets program parameters (through eligibility requirements and benefit levels, for example); then the appropriations committees *must* provide the budget authority needed to meet the commitment. The appropriations committees have little control over the amount of budget authority provided, since the amount needed is the result of previously enacted commitments in legislative law.[47]

Congress also controls mandatory spending by controlling budget authority. It does not, however, generally control this form of budget authority by setting specific spending levels. It controls mandatory spending, instead by, establishing parameters for government commitments in permanent law, such as Social Security benefit levels and eligibility requirements.

After the House and Senate Committees on Appropriations receive their 302(a) allocations, they separately subdivide their allocations among their subcommittees, providing each subcommittee with a ceiling. These subdivisions are referred to as the *302(b) allocations*.[48] **Table 4** provides the House Committee on Appropriations' initial 302(b) allocations of discretionary, mandatory spending for FY2008.

Making 302(b) allocations is within the jurisdiction of the House and Senate appropriations committees, and they typically make revisions to reflect action on the appropriations bills.

The spending ceilings associated with the annual budget resolution that apply to appropriations measures are generally for a single fiscal year (the upcoming fiscal year), since appropriations measures are annual.[49] If the budget resolution is significantly delayed (or is never completed), there are no total spending ceilings, 302(a) allocations, or 302(b) allocations to enforce until the budget resolution is in place. In such instances, the House and Senate have often adopted separate *deeming resolutions* providing, at least, temporary 302(a) allocations, thereby, establishing some enforceable spending ceilings.[50]

(...continued)

payments to a person, group of people, business, unit of government, or similar entity that meets the eligibility criteria set in law and for which the budget authority is not provided in advance in an appropriation act. Spending for entitlement programs is controlled through those programs' eligibility criteria and benefit or payment rules. The best-known entitlements are the government's major benefit programs, such as Social Security and Medicare. U.S. Congressional Budget Office, *Glossary of Budgetary and Economic Terms*, available at http://www.cbo.gov.

[47] Some mandatory spending is provided through a one-step process in which the authorization act sets the program parameters and provides the budget authority, such as Social Security.

[48] This refers to section 302(b) of the Congressional Budget Act.

[49] In contrast, spending ceilings associated with the budget resolution that apply to legislative measures are generally provided for several fiscal years.

[50] For more information, see CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith.

Since Congress did not expect to adopt a FY2007 budget resolution, both the House and Senate adopted separate deeming resolutions in 2006. The House adopted a special rule[51] that, in part, deemed the House-adopted FY2007 budget resolution[52] and accompanying committee report in effect for enforcement purposes. As a result, the FY2007 total spending ceilings and 302(a) allocations (and therefore, subsequent 302(b) allocations) were in effect. The Senate included in a FY2006 supplemental appropriations act a deeming provision that, in part, set FY2007 302(a) allocations for the Senate Committee on Appropriations.[53]

Table 4. Initial House Appropriations Committee's 302(b) Allocations for FY2008

(in billions of dollars)

Subcommittee	Discretionary	Mandatory	Total
Agriculture			
New Budget Authority	18.825	32.905	51.730
Outlays	20.027	21.115	41.142
Commerce, Justice, and Science			
New Budget Authority	53.551	0.234	53.785
Outlays	55.318	0.225	55.543
Defense			
New Budget Authority	459.332	0.263	459.595
Outlays	475.980	0.263	476.243
Energy and Water Development			
New Budget Authority	31.603		31.603
Outlays	32.774		32.775
Financial Services and General Government			
New Budget Authority	21.028	21.394	42.422
Outlays	21.650	21.388	43.038
Homeland Security			
New Budget Authority	36.254	1.072	37.326
Outlays	38.247	1.066	39.313
Interior and Environment			
New Budget Authority	27.598	0.054	27.652
Outlays	28.513	0.055	28.568
Labor, Health and Human Services, and Education			
New Budget Authority	151.112	451.491	602.603
Outlays	148.433	451.718	600.151

[51] H.Res. 818 (109th Cong.), section 2.

[52] H.Con.Res. 376 (109th Cong.).

[53] P.L. 109-234, section 7035(a); 120 Stat. 418.

Subcommittee	Discretionary	Mandatory	Total
Legislative Branch			
New Budget Authority	4.024	0.126	4.150
Outlays	4.036	0.126	4.162
Military Construction and Veterans Affairs			
New Budget Authority	64.745	40.978	105.723
Outlays	54.831	40.856	95.687
State and Foreign Operations			
New Budget Authority	34.243	0.159	34.402
Outlays	33.351	0.159	33.510
Transportation and Housing and Urban Development			
New Budget Authority	50.738		50.738
Outlays	114.869		114.869
Total[a]			
New Budget Authority	953.053	548.676	1,501.729
Outlays	1,028.398	536.972	1,565.910

Source: U.S. Congress, House Committee on Appropriations, *Report on the Suballocation to Budget Allocations for Fiscal Year 2008*, 110th Cong., 1st sess. (Washington: GPO, 2007), pp. 2-3.

a. The committee also set aside a small full committee allowance of $0.369 billion in discretionary outlays.

Enforcement

Certain spending ceilings associated with the budget resolution are enforced through points of order raised on the House and Senate floors when the appropriations measures are considered. These points of order are not self-enforcing. A Representative or Senator must raise a point of order that a measure, amendment, or conference report violates a specific rule. Generally, if a Member raises a point of order below, and the presiding officer rules that the measure, amendment, or conference report violates the parliamentary rule, the chamber may not consider it on the floor.

House

Two Congressional Budget Act points of order, 302(f) and 311(a),[54] as well as a separate order in the House[55] are available to enforce certain spending ceilings associated with the annual budget resolution. The Congressional Budget Act points of order apply to committee-reported appropriations bills,[56] certain non-reported appropriations bills,[57] amendments, and conference

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[54] These refer to sections 302(f) and 311(a), respectively, of the Congressional Budget Act (see also, section 403 of H.Res. 6 (110th Cong.).

[55] A *separate order* is a provision that is not a part of the House Standing Rules, but is provided under the rulemaking authority of the House. Section 511(a)(5) of H.Res. 6 (110th Cong.) established the separate order, which is identical to a separate order established in the previous Congress (section 2 of H.Res. 248 (109th Cong.).

[56] The House Committee on Appropriations almost always reports regular and major supplemental appropriations bills. (continued...)

reports to these measures; they do not apply to appropriations bills amended on the floor. If such legislation violates these rule the legislation cannot be considered. The separate order also provides a procedure to enforce the 302(b) ceilings for certain amended appropriations measures for the 110th Congress.

The 302(f) point of order prohibits floor consideration of such legislation[58] providing new budget authority for the upcoming fiscal year that would cause the applicable committee 302(a) or subcommittee 302(b) allocations of new budget authority for that fiscal year to be exceeded. In effect, the application of this point of order on appropriations legislation is generally limited to discretionary spending (and any mandatory spending changes initiated on the appropriations measures).[59] If, for example, the committee-reported FY2008 agriculture appropriations bill provided $18.825 billion new discretionary budget authority, which equals the agriculture subcommittee's 302(b) allocation in **Table 4**, any amendment proposing new discretionary budget authority would violate the 302(f) point of order.

The 311(a) point of order prohibits floor consideration of legislation providing new budget authority for the upcoming fiscal year that would cause the applicable total budget authority and outlay ceilings in the budget resolution for that fiscal year to be exceeded.[60] As the amounts of all the spending measures considered in the House accumulate, they could potentially reach or exceed these ceilings. This point of order would typically affect the last spending bills to be considered, such as supplemental appropriations measures or the last regular appropriations bills. In the House, the so-called *Fazio Exception*, however, exempts legislation if it would not cause the applicable committee 302(a) allocations to be exceeded.[61] If, for example, the pending appropriations legislation would not cause the House Appropriations Committee's 302(a) allocations to be exceed, then the legislation would be exempt from the 311(a) point of order.

Appropriations measures considered on the House floor typically include an amount at or just below the subcommittee 302(b) allocations and, in some cases, the committee 302(a) allocations and the total spending ceilings as well. As a result, amendments that would increase new budget authority in an appropriations measure for certain activities must typically decrease funding for other activities in the pending bill. There are two types of House offset amendments considered in Committee of the Whole: clause 2(f) and reachback (or fetchback) amendments. Under House Rule XXI, *clause 2(f) offset amendments* may be offered that consist of two or more amendments considered together (or en bloc) that would change amounts by directly adding text or changing

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It, however, does not generally report continuing resolutions.

[57] If a special rule expedites consideration of a measure by ordering the previous question directly to passage, the form of the measure considered is subject to the points of order. Some continuing resolutions are considered by this procedure.

[58] In this context, *legislation* refers the committee-reported and non-committee reported bills as well as amendments and conference reports to those bills. This definition contrasts with "legislation" as it is defined for purposes of the authorization-appropriation process (see "Relationship Between Authorization and Appropriation Measures" below).

[59] It does not affect increased mandatory spending that the appropriators are required to provide. For example, if the House Committee on Appropriations is required to increase new budget authority for unemployment compensation due to a recession, such budget authority would not be subject to the point of order.

[60] This rule exempts, in part, appropriations measures and related amendments, that would not cause the 302(a) allocation to be exceeded, referred to as the *Fazio exception*.

[61] Section 311(c) of the Congressional Budget Act. The title of the exception refers to former Representative Victor Herbert Fazio, Jr., (CA).

text in the body of the bill. Taken as a whole the amendment can not increase the total new budget authority or outlays in the pending bill. *Reachback offset amendments* are generally offered at the end of the bill and change funding amounts in the pending bill by reference. These amendment must provide offsets in new budget authority, but not necessarily outlays.[62]

For the 110th Congress, the separate order extends enforcement of 302(b) allocations to appropriations bills amended in the Committee of the Whole. Regular appropriations bills and major supplemental appropriations measures are typically considered for amendment in the Committee of the Whole. The order generally establishes a point of order in the Committee of the Whole against a motion to rise and report to the House an appropriations bill that, as amended, exceeds the applicable 302(b) allocation in new budget authority.[63] If the Presiding Officer sustains a point of order against such a motion, the bill does not fall or automatically remain in the Committee of the Whole; instead, the Committee of the Whole must decide, by a vote, whether to adopt the motion even though the amended measure exceeds the allocation.[64]

Significantly, the separate order does not apply to a motion to rise and report proposed after the bill has been read for amendment, if offered by the majority leader (or a designee). As a result, the majority leader (or designee) may be able to preempt consideration of a motion to rise enforcing the 302(b) allocation, if the Committee of the Whole agrees, by majority vote, to a motion to simply rise.

The House may waive or suspend these three points of order by adopting, by majority vote, a special rule waiving the particular point of order prior to floor consideration of the appropriations legislation.

Senate

Three points of order typically enforce spending ceilings associated with the budget resolution. Two are Congressional Budget Act points of order, 302(f) and 311(a).[65] The Senate versions of these rules, however, vary from the House versions. The annual budget resolution typically establishes another Senate point of order that enforces separate total discretionary spending ceilings established in the budget resolution.[66] In the Senate, these points of order apply to all appropriations measures, both reported by the committee and as amended on the floor, as well as amendments, motions, and conferences reports to these measures.

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[62] For more information, see CRS Report RL31055, *House Offset Amendments to Appropriations Bills: Procedural Considerations*, by Sandy Streeter.

[63] For more detailed information on motions to rise, CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by Bill Heniff Jr. and Elizabeth Rybicki.

[64] If the committee votes against "rising," it may consider one proper amendment, such as an amendment reducing funds in the bill to bring it into compliance with the allocation. The separate order also provides an up-or-down vote on the amendment. Only one such point of order may be raised against a single measure.

Special rules providing for the consideration of bills routinely preclude the necessity for a motion to rise and report by ordering the Committee of the Whole to rise and report after all amendments have been considered. Since adoption of the original separate order (H.Res. 248 (109th Cong.) on April 28, 2005, almost all special rules providing for the consideration of regular appropriations bills have not included such an order, thereby, providing an opportunity for Representatives to raise this point of order.

[65] These refer to sections 302(f) and 311(a), respectively, of the Congressional Budget Act.

[66] Section 312(a) and (b) of the FY2009 budget resolution, Con.Res. 70 (110th Cong.), included such spending limits and a point of order for FY2009.

The Senate 302(f) point of order prohibits floor consideration of such legislation providing new budget authority for the upcoming fiscal year that would cause the applicable 302(b) allocations in new budget authority and outlays for that fiscal year to be exceeded. In contrast to the House, it (1) does not enforce the 302(a) allocations and (2) does enforce the outlay allocations. The 311(a) point of order in the Senate is similar to the House version. The Senate, however, does not provide for an exception similar to the *Fazio Exception* in the House. Section 312 of the FY2009 budget resolution prohibits the consideration of legislation that would cause the discretionary spending limits in new budgetary authority in outlays established in the budget resolution to be exceeded.

The FY2009 budget resolution included another point of order prohibiting provisions in appropriations legislation that would produce a net increase in the cost of mandatory spending programs.[67]

Senators may make motions to waive these points of order at the time the issue is raised. Currently, a vote of three-fifths of all Senators (60 Senators if there are no vacancies) is required to approve a waiver motion for any of these points of order. A vote to appeal the presiding officer's ruling also requires three-fifths vote of all Senators. These super-majority vote requirements for the 302(f) and 311(a) points are currently scheduled to expire on September 30, 2017.

Emergency Spending

Since 1990, both the House and Senate have, generally, developed procedures to exempt from the above spending ceilings funding for emergencies. These procedures have evolved over time.

In the House and Senate, new budget authority and resulting outlays designated in the legislation as necessary to meet emergency needs are exempt from the 302(f) and 311(a) points of order.[68]

A super-majority vote requirement, however, is needed to utilize the emergency designation exemption in the Senate. A Senator may raise a point of order against an emergency designation in legislation, a motion to waive the point of order or an appeal of the Presiding Officer's ruling requires a three-fifths vote of all Senators (60 Senators if there are no vacancies). If the Presiding Officer sustains the point of order, the designation is stricken and then the legislation or amendment may be vulnerable to the various enforceable spending ceilings.

Recently, the House and Senate have provided an exemption for new budgetary authority (and resulting outlays) that is designated for overseas deployment and related activities. In practice, overseas deployment and emergency designations considered in the House may be included in the committee-reported bills and conference reports, but not in floor amendments. Under House precedents these designations are considered legislation on an appropriations bill and, therefore, prohibited under House Rule XXI, clause 2(b) and (c). This language is considered to create new law, which would not otherwise exist.[69] The House, sometimes, adopts a special rule waiving this

[67] See section 314, S.Con.Res. 70 (110th Cong.).

[68] House exemption provided in the FY2009 budget resolution, S.Con.Res. 70, section 301(b)(2) (110th Cong.); Senate exemption included in the FY2008 budget resolution, S.Con.Res. 21, section 204 (110th Cong.).

[69] Specifically, *special budgetary designations pursuant to the concurrent resolution on the budget* are considered "legislation on an appropriations bill." Special budgetary designations include provisions (1) designating funds as (continued...)

point of order against emergency and contingency operations designations in the reported bills and conference reports, but not such provisions in floor amendments.

By contrast, under Senate precedents such designations are not considered legislation on an appropriations bill. Emergency designations may be included in Senate floor amendments as well as committee amendments, reported bills, amended bills, and conference reports.

Relationship Between Authorization and Appropriation Measures

Congress has established an authorization-appropriation process that provides for two separate types of measures—authorization measures and appropriation measures. These bills perform different functions and are to be considered in sequence. First, the authorization is enacted and then appropriation measures provide funding.

Authorization acts establish, continue, or modify agencies or programs. For example, an authorization act may establish or modify programs within the Department of Defense. An authorization act may also explicitly authorize subsequent appropriations for specific agencies and programs, frequently setting spending ceilings for them. These authorization of appropriations provisions may be permanent, annual, or multi-year authorizations. Annual and multi-year provisions require re-authorizations when they expire. Congress is not required to provide appropriations for an authorized discretionary spending program.

Authorization measures are under the jurisdiction of legislative committees such as the House Committees on Agriculture and Homeland Security, or the Senate Committees on Armed Services and the Judiciary. Most congressional committees are legislative committees. The House and Senate Committees on Appropriations, however, are not. Appropriations measures provide new budget authority for programs, activities, or agencies previously authorized.

House and Senate rules enforce separation of these functions into different measures by separating committee jurisdiction over authorization and appropriations bills, and with points of order prohibiting certain provisions in appropriations measures.[70] The House and Senate prohibit, in varying degrees, language in appropriations bills providing unauthorized appropriations or legislation on an appropriations bill. An *unauthorized appropriation* is new budget authority in an appropriations measure (including an amendment or conference report) for agencies or programs with no current authorization, or whose budget authority exceeds the ceiling authorized. *Legislation* refers to language in appropriations measures that change existing law, such as establishing new law, or amending or repealing current law. Legislation is under the jurisdiction of the authorizing committees (also called legislative committees).

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"making appropriations for contingency operations directly related to the global war on terrorism and other unanticipated defense-related operations" under sec. 402 of H.Con.Res. 376 (109th Cong.); and (2) designating funds as "an emergency requirement" under title v of the same resolution. For more information on legislation on an appropriations bill, see "Relationship Between Authorization and Appropriation Measures" section below.

[70] House Rule XXI, clause 2; House Rule XXII, clause 5; and Senate Rule XVI. House rules also prohibit appropriations in authorization measures, amendments, or conference reports (Rule XXI, clause 4 and House Rule XXII, clause 5).

House rules prohibit unauthorized appropriations and legislation in regular appropriations bills and supplemental appropriations measures which provide funds for more than one purpose or agency (referred to in the House as *general appropriations bills*). However, House rules do not prohibit such provisions in continuing resolutions. The House prohibition applies to bills reported by the House Appropriations Committee, amendments, and conference reports. The House may adopt a special rule waiving this rule prior to floor consideration of the appropriations bill or conference report.[71] The point of order applies to the text of the bill, as well as any amendments or conference reports.

In the Senate, unauthorized appropriations and legislation are treated differently. The Senate rule regarding such language applies to regular bills, supplementals which provide funds for more than one purpose or agency, and continuing resolutions (referred to in the Senate as *general appropriations bills*).

This Senate rule applies only to amendments to general appropriations bills, such as, those

- introduced on the Senate floor;
- reported by the Senate Appropriations Committee to the House-passed measure; or
- proposed as a substitute for the House-passed text.

The rule does not apply to provisions in Senate bills or conference reports. For example, this rule did not apply to provisions in S. 1005, the FY1998 Defense appropriations bill, as reported by the Senate Appropriations Committee. But it did apply to provisions in H.R. 2107, the FY1998 Interior bill, as reported by the Senate Appropriations Committee, since this version of the bill consisted of amendments to the House-passed bill.[72] Recently, the Senate has adopted unanimous consent agreements, on a bill-by-bill basis, that make these points of order applicable to the provisions of Senate bills.

The Senate rule is less restrictive than the House regarding what is prohibited as unauthorized appropriations. For example, the Senate Appropriations Committee may report committee amendments containing unauthorized appropriations. Similarly, an amendment moved by direction of the committee with legislative jurisdiction or in pursuance of an estimate submitted in accordance with law would not be prohibited as unauthorized. An appropriation also is considered authorized if the Senate has previously passed the authorization during the same session of Congress. In contrast, in the House, the authorization must be in law. As a result, while the Senate rule generally prohibits unauthorized appropriations, Senators rarely raise this point of order because of these exceptions to the rule.

The Senate rule prohibits legislation in both Senate Appropriations Committee amendments and non-committee amendments.[73] It also prohibits non-germane amendments.

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[71] The special rule may provide a waiver for specified provisions or all provisions in the bill that are subject to the point of order. The special rule may also provide a waiver for specific amendments. Special rules typically waive points of order against all provisions in all conference reports on general appropriations measures.

[72] The Senate rule reflects Senate practices at the time the rule was established. The Senate Appropriations Committee traditionally reported numerous amendments to the House-passed appropriations bill, instead of reporting an original Senate bill. Therefore, the rule's prohibition only applies to amendments, both committee and floor amendments.

[73] Under Senate precedents, an amendment containing legislation may be considered if it is germane to language in the (continued...)

The division between an authorization and an appropriation applies only to congressional consideration. If unauthorized appropriations or legislation remain in an appropriations measure as enacted, either because no one raised a point of order or the House or Senate waived the rules, the provision will have the force of law. Unauthorized appropriations, if enacted, are generally available for obligation or expenditure.

Rescissions

Rescissions cancel previously enacted budget authority. For example, if Congress provided $1.6 billion to construct a submarine, it could enact subsequent legislation canceling all or part of the budget authority prior to its obligation. Rescissions are an expression of changed or differing priorities. They may also be used to offset increases in budget authority for other activities.

The President may recommend rescissions to Congress, but it is up to Congress to act on them. Under Title X of the Congressional Budget Act,[74] if Congress does not enact a bill approving the President's rescissions within 45 days of continuous session of Congress, the budget authority must be made available for obligation.

In response to the President's recommendation, Congress may decide not to approve the amount specified by the President, approve the total amount, or approve a different amount. For example, in 2005, the President requested a rescission of $106 million from the Department of Defense (DOD), Operations and Maintenance, Defense-Wide account and $48.6 million from DOD, Research, Development, Test, and Evaluation, Army account. Congress provided a rescission of $80 million from the first account in the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.[75] The act did not provide a rescission from the second account.

Congress may also initiate rescissions. In the above Act, Congress also included a rescission of $10 million from the Department of State, Diplomatic and Consular Programs account.

As budget authority providing the funding must be enacted into law, so, too, a rescission canceling the budget authority must be enacted into law. Rescissions can be included either in separate rescission measures or any of the three types of appropriations measures.

(...continued)

House-passed appropriations bill. That is, if the House opens the door by including a legislative provision in an appropriations bill, the Senate has an "inherent right" to amend it. However, if the Senate considers an original Senate bill, rather than the House-passed bill with amendments, there is no House language to which the legislative provision could be germane. Therefore, the *defense of germaneness* is not available.

[74] Title X is referred to as the Impoundment Control Act.

[75] P.L. 109-148, 119 Stat. 2680.

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