Congressional Research Service

The Congressional Appropriations Process: An Introduction

Jessica Tollestrup
Analyst on Congress and the Legislative Process

February 23, 2012

Congressional Research Service
7-5700
www.crs.gov
R42388

CRS Report for Congress
Prepared for Members and Committees of Congress

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. In recent years these measures have provided approximately 35% to 39% of total federal spending. The remainder of federal spending comprises direct (or mandatory) spending controlled by House and Senate legislative committees and net interest on the public debt.

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, the beginning of the fiscal year. If regular bills are not enacted by the beginning of the new fiscal year, Congress adopts *continuing resolutions* to continue funding, generally until regular bills are enacted. *Supplemental appropriations bills* provide additional appropriations to become available 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 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. Authorization bills establish, continue, or modify agencies or programs. Appropriations measures subsequently provide funding for the agencies and programs authorized.

Contents

Introduction 1
Annual Appropriations Cycle 2
President Submits Budget 2
Congress Adopts Budget Resolution 3
Timetable for Consideration of Appropriations Measures 4
Work of the Appropriations Committees 5
House and Senate Floor Action 6
House 6
Senate 7
House and Senate Conference Action 8
Presidential Action 10
Types of Appropriations Measures 10
Regular Appropriations Bills 10
Omnibus Appropriations 11
Continuing Resolutions 12
Supplemental Appropriations Measures 13
Spending Ceilings for Appropriations Measures 13
Allocations 13
Enforcement 16
House 17
Senate 19
Emergency Spending 19
Relationship Between Authorization and Appropriation Measures 20
Rescissions 22

Tables

Table 1. House Committee on Appropriations' 302(a) Allocations for FY2011 13
Table 2. Initial House Appropriations Committee's 302(b) Allocations for FY2011 15

Contacts

Author Contact Information 23

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. Appropriations acts are characteristically annual, and generally provide funding authority that expires at the end of the federal fiscal year, September 30.[1]

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."[2] 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.[3] Under law, public funds, furthermore, may only be used for the purpose(s) for which Congress appropriated the funds.[4]

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 regular annual appropriations bill that provides funding for departments and agencies under the subcommittee's jurisdiction.

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]

---

[1] The federal *fiscal year* begins on October 1 and ends the following September 30.

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

[3] 31 U.S.C. §§1341(a)-1342 and 1349-1350.

[4] 31 U.S.C. §1301(a).

[5] The House and Senate Appropriations Committees separately provide their subcommittees' jurisdictions, by subcommittee, see their respective websites, http://appropriations.house.gov/ and http://appropriations.senate.gov/. For (continued...)

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

Annual Appropriations Cycle

President Submits Budget

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

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.

A FY2010 appropriations act, for example, provided $79 million in new budget authority for FY2010 to the National Institute of Environmental Health Sciences (Institute) for agency

(...continued)

more information on the jurisdiction of the House and Senate appropriations subcommittees by agency, see CRS Report R40858, *Locate an Agency or Program Within Appropriations Bills*, by Justin Murray.

[6] For additional information, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2011*, by Jessica Tollestrup.

[7] 31 U.S.C. §1105(a).

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

operations.[9] That is, the act gave the Institute legal authority to sign contracts to purchase supplies and pay salaries. The agency could not commit the government to pay more than $79 million for these covered activities. The outlays occur when government payments are made.

Budget authority must be obligated in the fiscal year(s) in which the funds are made available, but outlays may occur over time. In the case of the Institute's activities, it may not pay for all the supplies until the following fiscal year.

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 pay salaries may occur in the year the budget authority is made available, while outlays for a construction project may occur over several years as various stages of the project are completed.

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.

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.[12] The House and Senate Committees on Appropriations receive allocations 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.

The budget resolution is not sent to the President, and does not 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

[9] P.L. 111-88, 123 Stat. 2904, 2948.

[10] 2 U.S.C. §621 et seq.

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

[12] The committee allocations are usually provided in the joint explanatory statement included in the conference report to the budget resolution. For more details, see "Spending Ceilings for Appropriations Measures" below.

and Senate have established parliamentary rules to enforce some of these spending ceilings when legislation is considered on the House or Senate floor, respectively.

These three spending ceilings for the upcoming fiscal year may be enforced, through points of order during House consideration of each appropriation measure. During Senate consideration of each appropriations bill the total new budget authority and outlay levels for the upcoming fiscal year as well as the subcommittee spending ceilings may be enforced, but not the committee ceilings.

The Congressional Budget Act establishes April 15 as a target for congressional adoption of the budget resolution. Since FY1977, Congress has considered budget resolutions but has frequently not met this target. In some instances (such as FY1999, FY2003, FY2005, FY2007, and FY2011), Congress did not adopt a budget resolution.[13]

There is no penalty if the budget resolution is not completed before April 15, or not at all. 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 before Congress completes the budget resolution; and, in the Senate, before the Senate Appropriations Committee receives its spending ceilings.[14] The House, however, may consider most appropriations measures after May 15, even if the budget resolution is not in place;[15] 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 adopt one), each chamber may adopt a deeming resolution to address these procedural difficulties.[16]

Timetable for Consideration of Appropriations Measures

The timing of the various stages of the appropriations process tends to vary from year to year. Although timing patterns for each stage tend to be discernible over time, certain anomalies from these general patterns occur in many years.

Traditionally, the House of Representatives initiated consideration of regular appropriations measures, and the Senate subsequently considered and amended the House-passed bills. More 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, the House and Senate appropriations committees and their subcommittees have often considered the regular bills simultaneously.

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

[14] Section 303 of the Budget Act, 2 U.S.C. §634.

[15] This exception applies to *general appropriations bills* which the House defines as regular appropriations bills and supplemental appropriations measures that provide funding for more than one agency (for more information, see "Types of Appropriations Measures" below).

[16] For information on deeming resolutions, see "Allocations" below and CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Megan Suzanne Lynch.

The House Appropriations Committee reports the 12 regular appropriations bills separately to the full House. The committee generally begins reporting the bills in May or June, typically completing consideration of all of them prior to the annual August recess.[17] Generally, the full House starts floor consideration of the regular appropriations bills in May or June as well, passing almost all of them by the annual August recess.[18] The regular bills that are not considered or do not pass are typically funded in an omnibus appropriations bill.[19]

In the Senate, the Senate Appropriations Committee typically begins reporting the bills in June and generally completes committee consideration in September.[20] The Senate typically passes the bills beginning in June or July and continuing through the fall. In some years, such as FY2009, FY2011, and FY2012, the Senate has not separately considered several of the bills reported from committee. As in the House, such measures are typically funded in an omnibus appropriations bill.

During the fall and winter, the appropriations committees are usually heavily involved in negotiations 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]

In some recent instances, such as FY2010 and FY2012, all of the regular bills (either separately or combined in omnibus bills) became law by the end of the calendar year. In others, such as FY2009, the bills became law early in the next calendar year. Alternatively, such as in FY2011, a majority of the regular appropriations bills were not enacted; programs were funded in a continuing resolution extending funding to the end of the fiscal year.

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

[17] Significant deviations from this general pattern have occurred recently. Out of twelve regular bills, the House Appropriations Committee reported five FY2009 regular bills and two FY2011 regular bills.

[18] Again, anomalies occurred for FY2009 and FY2011 regular bills. The House passed one FY2009 regular bill and two FY2011 regular bills.

[19] See "Regular Appropriations Bills" below.

[20] The Senate Appropriations Committee, however, reported 9 out of 12 FY2009 regular appropriations bills.

[21] For information on 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 committee to originate a bill.

bills under their jurisdiction and report them to their respective full committees. (Each year a few Senate appropriations subcommittees do not formally report the regular bill to the full committee; in such cases, formal committee action begins at full-committee markup.) Both Appropriations Committees consider each 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 available for consideration on the floor. At this point, Representatives or Senators are generally provided an opportunity to propose 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 Rules Committee 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:

---

[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 Appropriations Committee to make a motion to bring a regular appropriations bill directly to the floor without the Rules Committee reporting 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. In most cases, the special rules typically provide an open rule. That is, a Member may offer any amendment that does not violate a House rule.

[24] House Rule XVIII, clause 3, requires that appropriations measures be considered in the Committee of the Whole before the House votes on final 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 generally that establish several requirements, such as requiring amendments to be germane to the bill;
- House standing rules and precedents that establish a separation between legislation and appropriations;[27]
- Separate orders establishing certain requirements;
- 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 by the House. A special rule or unanimous consent agreement may waive 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 has sometimes agreed to limit consideration to a specific list of amendments or to limit debate on individual amendments by unanimous consent.

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

Senate

The recent practice has been for the full Senate to consider the text of a bill as reported by its Appropriations Committee in the form of a substitute to the House-passed appropriations bill.[28] The Senate does not have a device like a special rule to set parameters for consideration of bills by majority vote. 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 established under the Senate standing rules and precedents (including those providing for the separation of authorizations and appropriations) and congressional budget process, as well as any requirements

[27] See "Relationship Between Authorization and Appropriation Measures" below.

[28] Recently, the Senate Appropriations Committee has generally either (1) reported the House-passed bill with a committee substitute, or (2) reported an original Senate bill, waited until the House-passed bill was received in the Senate, and then offered a committee substitute (comprising the text of the Senate bill) to the House-passed bill. In either case, the Senate considers the committee's recommendations in the form of a committee amendment to the House-passed bill.

agreed to by unanimous consent. The specifics of the Senate and House requirements differ, including the waiver procedures.[29]

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

The House and Senate may resolve their differences in their respective bills in a conference report or through an exchange of amendments.[30] Regarding 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] These negotiators are referred to as *conferees* or *managers*.[32]

The purpose of the negotiations is to resolve differences between the two chambers, and therefore House rules limit the authority of House conferees to those matters in disagreement.[33] The conferees generally do not have authority to change provisions that both chambers included in identical text in their respective bills or to add new matter that was not included in either bill. They must remain within the scope of the differences between the positions of the two chambers. The conferees may agree to the House position, the Senate position, or the range in between. For example, if the House-passed bill appropriates $3 million for a certain purpose and a separate Senate amendment provides $5 million, the conferees must reach an agreement that is not below $3 million and does not exceed $5 million.

Senate conferees' authority is similarly limited to matters in disagreement.[34] They do not have authority to change language already agreed to by the House and Senate or add new matter.[35] Additionally, they may not include in the conference report new *directed spending provisions*, defined as,

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

[30] For information on amendment exchanges, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki; CRS Report 98-812, *Amendments Between the Houses: A Brief Overview*, by Elizabeth Rybicki and James V. Saturno; and CRS Report R41003, *Amendments Between the Houses: Procedural Options and Effects*, by Elizabeth Rybicki.

[31] In practice if the Senate and/or House does not pass an individual appropriations bill, informal negotiations may still 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] For more detailed information on House and Senate conference action, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

[33] House Rule XXII, clause 9.

[34] Senate Rule XXVIII.

[35] In practice, the Senate rule prohibiting new matter is less restrictive than the House rule. For more information, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

> 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.[36]

These rules may be enforced or waived during House and Senate consideration of the conference report. Upon a sustained point of order, the entire text of the applicable conference report generally falls; except for cases regarding new matter or directed spending provisions in the Senate.

A mechanism is available in which sustained points of order against new matter or new directed spending provisions in a conference report are stricken, but the remaining provisions are effectively retained for Senate consideration. If the Presiding Officer sustains a point of order against new matter or one or more new directed spending provisions, the offending language is stricken from the conference report. 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 it to the Senate for further consideration. If the House, however, agrees to the amendment, the measure is cleared for presidential action.[37] The Senate may waive these points of order by motion by a three-fifths vote of all Senators duly chosen and sworn (60 Senators if there are no vacancies). An appeal of a ruling by the Presiding Officer would also require a vote of three-fifths of all Senators.

In current practice, 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 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. Prior to consideration of the conference report, the House typically adopts a special rule waiving any points of order against the conference report or its consideration. The first chamber to consider the conference report may vote to adopt it, reject it, or recommit it to the conference for further consideration. After the first house adopts the conference report, the conference is automatically disbanded; therefore, the second house has two options—to adopt or reject the conference report.

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.[38] The measure cannot be sent to the President until both houses have agreed to the entire text of the bill.

---

[36] Senate Rule XLIV, paragraph 8.

[37] For more detailed information on these Senate rules, see CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.

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

Presidential Action

Under the Constitution,[39] after a measure is presented 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 if Congress is in session. 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 of appropriations measures: regular appropriations bills, continuing resolutions, and supplemental appropriations measures. Of the three types, regular appropriations bills typically provide most of the funding.[40]

Regular Appropriations Bills

The appropriations process assumes the consideration of 12 regular appropriations measures annually. Each House and Senate appropriations subcommittee has jurisdiction over one regular bill.

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 account as well as any conditions, provisos, or specific requirements that apply to that account. A few accounts include a single program, project, or item, which the appropriations act funds individually.

In report language,[41] the House and Senate Committees on Appropriations may provide more detailed directions to the departments and agencies on the distribution of funding among various activities funded within an account.

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

[40] Two recent, notable exceptions were (1) FY2007 continuing resolution (P.L. 110-5, 121 Stat. 8), which provided funding for nine FY2007 regular appropriations bills through the end of FY2007; and (2) FY2011 continuing resolution, that, in part, provided funding for 11 FY2011 regular appropriations bills through the end of the fiscal year.

[41] The term *report language* refers to information provided in reports accompanying committee-reported legislation as well as joint explanatory statements, which are included in conference reports. Although the entire document is generally referred to as a conference report, it comprises two separate parts. The conference report contains a conference committee's proposal for legislative language resolving the House and Senate differences on a measure, while the joint explanatory statement explains the conference report.

Appropriations measures may also provide transfer authority.[42] *Transfers* shift budget authority from one account or fund to another or allow agencies to make such shifts. For example, an agency moving new budget authority from a salaries and expenses account to a research and development account would be a transfer. Agencies are prohibited from making such transfers without statutory authority.

Agencies may, however, generally shift budget authority from one activity to another within an account without additional statutory authority. This is referred to as *reprogramming*.[43] The appropriations subcommittees have established notification and other oversight procedures for various agencies to follow regarding reprogramming actions. Generally, these procedures differ with each subcommittee.

Omnibus Appropriations

Congress has traditionally considered and approved each regular appropriations bill separately, but Congress has also combined several bills together. These packages are referred to as omnibus appropriation measures.[44]

In these cases, Congress typically begins consideration of each regular bill separately, but generally has combined some of the bills together at the conference stage. During conference on one of the regular appropriations bills, the conferees have typically added to the conference report the final agreements on other outstanding regular appropriations bills, thereby creating an omnibus appropriations measure.[45]

Omnibus acts may provide the full text of each regular appropriations bill included in the act or may incorporate the full text by reference. Omnibus acts may also be in the form of full-year continuing resolutions.[46] Those that provide funding either by including the text of the regular bills or by incorporating them by reference may be considered omnibus bills, but those resolutions providing spending rates, such as is typically included in continuing resolutions, would not.

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

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

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

[44] There is no agreed upon definition of omnibus appropriations measure, but the term *minibus appropriations measure* has sometimes been used to refer to a measure including only a few regular appropriations bills, while *omnibus appropriations measure* refers to a measure containing several regular bills. (For more information on omnibus appropriations acts, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup).

[45] In a few cases, Congress resolved their differences through an exchange of amendments (for more information on this process, see CRS Report R41003, *Amendments Between the Houses: Procedural Options and Effects*, by Elizabeth Rybicki).

[46]See "Continuing Resolutions" below.

consideration of appropriations using fewer measures. Omnibus measures may also be used to achieve a timely end to the annual appropriations process.[47]

Continuing Resolutions

Regular appropriations expire at the end of the fiscal year, September 30. If action on one or more regular appropriations measures has not been completed by the start of the next fiscal year, on October 1, the agencies funded by these bills must cease non-excepted activities due to lack of budget authority.[48] 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*).

In only four instances since FY1977 (FY1977, FY1989, FY1995, and FY1997) were all regular appropriations enacted by the start of the fiscal year. In all other instances, at least one continuing resolution was necessary to fund governmental activities until action on the remaining regular appropriations bills was completed.[49]

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 separate appropriations levels for each account), temporary continuing resolutions generally provide funding at a rate or formula, with certain exceptions. Recently, the continuing resolutions have generally provided a rate at the levels provided in the previous fiscal year for all accounts in each regular bill covered, with some account-specific adjustments. 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 used to sequentially extend the expiration date. These subsequent continuing resolutions sometimes change the funding methods.

Less frequently, Congress may adopt a full-year continuing resolution that continues funding, at a specific rate or formula for accounts in outstanding regular bills, with numerous account-specific exceptions, through the end of the fiscal year. For example, the FY2007 full-year CR (P.L. 110-5[50]) funded 9 regular bills and the FY2011 full-year CR (P.L. 112-10[51]) covered 11 regular bills.[52]

[47] For further information on omnibus appropriations, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup.

[48] For more information, see (1) CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*, by Clinton T. Brass; (2) CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass; and (3) CRS Report R41759, *Past Government Shutdowns: Key Resources*, by Jared Conrad Nagel and Justin Murray.

[49] For further information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup.

[50] 121 Stat. 8.

[51] 125 Stat. 38.

[52] It also included the Department of Defense Appropriations Act, 2011

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 (often referred to as the budget year),
- several continuing resolutions for the same fiscal year, and
- one or more supplementals for the current fiscal year.

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*).[53] For example, **Table 1** provides 302(a) allocations to the House Committee on Appropriations for FY2011.

Table 1. House Committee on Appropriations' 302(a) Allocations for FY2011

(in billions of dollars)

Spending Category	New Budget Authority	Outlays
Discretionary	1,121.0	1,314.0
Direct	765.6	755.5

Source: H.Res. 1493 (111th Cong.), Section (a)(1)(B).

[53] 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.

Table 1 includes allocations for discretionary spending and direct (or mandatory) spending. Congress divides budget authority and the resulting outlays into two categories: discretionary spending and direct spending (including net interest).[54] Discretionary spending is controlled by the annual appropriations acts, which are under the jurisdiction of the House and Senate Committees on Appropriations. In contrast, direct spending is controlled by legislation under the jurisdiction of the legislative (or authorizing) committees.[55] Appropriations measures include all the discretionary budget authority and may also include budget authority to finance the obligations of some direct spending programs.

The direct spending provided in appropriations measures (or *mandatory appropriations*) is predominantly for entitlement programs, referred to as *appropriated entitlements*. These entitlements are funded through a two-step process.[56] First, 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 finance the commitment. The appropriations committees have limited control over the amount of budget authority provided, since the amount needed is the result of previously enacted commitments in law.[57]

After the House and Senate Appropriations Committees receive their 302(a) allocations, they separately subdivide this amount among their subcommittees, providing each subcommittee with a ceiling. These subdivisions are referred to as the *302(b) suballocations*.[58] 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. For example, **Table 2** provides the House Appropriations Committee's initial 302(b) suballocations of discretionary and direct spending for FY2011.

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), because appropriations measures are annual.

[54] "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.

[55] For example, Social Security and Medicare Part A are under the jurisdiction of the House Ways and Means Committee and Senate Finance Committee. Most of the other standing committees are also legislative committees, such as the House and Senate Armed Services Committees as well as the House Oversight and Governmental Committee and Senate Homeland Security and Government Affairs Committee.

[56] Alternatively, direct spending authority may also be provided through a one-step process in which the legislative act sets the program parameters and provides the budget authority, such as Social Security.

[57] Sometimes appropriations measures include amendments to legislation providing for programs funded through mandatory appropriations and, thereby, change the amount needed. Because such amendments are legislative in nature they violate the parliamentary rules separating authorizations and appropriations (see "Relationship Between Authorization and Appropriation Measures").

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

Table 2. Initial House Appropriations Committee's 302(b) Allocations for FY2011

(in billions of dollars)

Subcommittee	Discretionary	Direct	Total
Agriculture			
New Budget Authority	23.1	111.9	135.0
Outlays	24.7	100.7	125.5
Commerce, Justice, and Science			
New Budget Authority	60.5	0.3	60.8
Outlays	66.9	0.3	67.2
Defense			
New Budget Authority	523.9	0.3	524.2
Outlays	589.6	0.3	589.9
Energy and Water Development			
New Budget Authority	34.7		34.7
Outlays	45.6		45.6
Financial Services and General Government			
New Budget Authority	24.5	21.2	45.7
Outlays	26.5	21.1	47.6
Homeland Security			
New Budget Authority	43.6	1.3	44.9
Outlays	46.1	1.3	47.5
Interior and Environment			
New Budget Authority	32.2	0.5	32.7
Outlays	33.8	0.5	34.2
Labor, Health and Human Services, and Education			
New Budget Authority	176.4	560.8	737.2
Outlays	208.0	562.0	770.0
Legislative Branch			
New Budget Authority	4.7	0.1	4.8
Outlays	4.7	0.1	4.8
Military Construction and Veterans Affairs			
New Budget Authority	76.0	69.2	145.2
Outlays	80.9	69.0	149.9
State and Foreign Operations			
New Budget Authority	54.0	0.2	54.1
Outlays	51.3	0.2	51.4

Subcommittee	Discretionary	Direct	Total
Transportation and Housing and Urban Development			
New Budget Authority	67.4		67.4
Outlays	136.4		136.4
Total			
New Budget Authority	1,121.0	765.6	1,886.6
Outlays	1,314.5	755.5	2,070.0

Source: U.S. Congress, House Committee on Appropriations, *Report on* the *Suballocation of Budget Allocations for Fiscal Year 2011*, 111th Cong., 2nd sess., July 26, 2010, H.Rept. 111-565 (Washington: GPO, 2010), pp. 2-3.

If the budget resolution is significantly delayed (or is never completed), there may not be 302(a) allocations, or 302(b) suballocations 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 for their respective Appropriations Committee, thereby establishing some enforceable spending ceilings. A *deeming resolution* refers to a measure (or language in a measure) that deems certain spending ceilings in effect to serve as an annual budget resolution for purposes of establishing enforceable budget levels for a budget cycle.[59]

The method of adopting a deeming resolution in one or both chambers may take a variety of forms. For example, when Congress did not complete a FY2007 budget resolution, both the House and Senate adopted separate deeming resolutions in 2006. The House adopted a special rule[60] that, in part, deemed the House-adopted FY2007 budget resolution[61] 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) sub-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 Appropriations Committee.[62]

Congress also did not adopt a FY2011 budget resolution. In this case, the House adopted two deeming resolutions. The House adopted the first in 2010, H.Res. 1493 (111th Congress), which, in part, set 302(a) allocations for the House Appropriations Committee. Since this resolution expired at the end of the 111th Congress, the House adopted a second deeming resolution in January 2011, H.Res. 5 (112th Congress), Section 3(b), which required the chairman of the House Budget Committee to provide funding ceilings in the *Congressional Record*. The Senate, however, did not adopt any deeming resolution for FY2011.

Enforcement

Certain spending ceilings associated with the budget resolution are enforced through points of order that can be 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

[59] For information on deeming resolutions, see CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Megan Suzanne Lynch.

[60] H.Res. 818, §2 (109th Cong).

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

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

point of order that a measure, amendment, or conference report violates a specific rule. Generally, if a Member raises a point of order (such as those described 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),[63] are available to enforce certain spending ceilings associated with the annual budget resolution. Additionally, Section 401 of the House-adopted FY2012 budget resolution (H.Con.Res. 34, 112th Congress) establishes discretionary spending limits and provides a point of order to enforce these ceilings.[64]

The Congressional Budget Act points of order apply to committee-reported appropriations bills,[65] certain non-reported appropriations bills,[66] amendments, and conference reports to these measures during their consideration. If such legislation violates these rules, the legislation or amendment cannot be considered. The separate order also provides a procedure to enforce the 302(b) ceilings for appropriations measures as amended.

The 302(f) point of order prohibits floor consideration of a measure, amendment, or conference report 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. The application of this point of order on appropriations legislation is generally limited to discretionary spending (and any changes in direct spending initiated in the appropriations measures).[67] If, for example, the committee-reported FY2010 agriculture appropriations bill had provided $22.9 billion in new discretionary budget authority, which equals the agriculture subcommittee's 302(b) allocation in **Table 2**, any amendment proposing additional 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. 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.[68] If, for example, the pending

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

[64] H.Res. 287 (112th Cong.), section 2 provides deeming provisions making the provisions of the House-passed budget resolution effective for purposes of enforcement in the House.

[65] The House Committee on Appropriations typically reports regular and major supplemental appropriations bills. It, however, does not generally report continuing resolutions.

[66] 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.

[67] The point of order does not apply to increases in direct spending required under current law.

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

appropriations legislation would not cause the House Appropriations Committee's 302(a) allocations to be exceeded, then the legislation would be exempt from the 311(a) point of order.

Since 2005, the House has adopted a separate order for each Congress that extends enforcement of 302(b) allocations to appropriations bills as amended in the Committee of the Whole.[69] Regular appropriations bills and major supplemental appropriations measures are typically considered for amendment in the Committee of the Whole. The order 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.[70] 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.[71] 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) pursuant to House Rule XXI, clause 2(d), which has been offered by the majority leader or his designee to prevent further amendment.

Appropriations measures considered on the House floor typically include a level of budget authority 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 of this practice amendments that would increase new budget authority in an appropriations measure for certain activities must typically also decrease funding for other activities in the pending bill. Two types of House offset amendments are considered in Committee of the Whole: clause 2(f) and reachback 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 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 amendments must provide offsets in new budget authority, but not necessarily outlays.[72]

On January 5, 2011, the House adopted H.Res. 5 (112th Congress). Included in the resolution were several separate orders of the House, including one that establishes new requirements for the consideration of amendments to appropriations bills. Section 3(j)(3) establishes a new point of order against an amendment (or amendments offered en bloc) that proposes a net increase in budget authority, even if the level of budget authority in the bill is below the ceiling established under the appropriate 302(b) subdivision. This establishes a secondary enforcement mechanism intended to preserve any savings below the 302(b) subdivision achieved by the Appropriations

[69] On April 28, 2005, the House adopted the initial separate order H.Res. 248 (109th Cong.), §2. At the beginning of each subsequent Congress, the House adopted an identical separate order: H.Res. 6 (110th Cong.), §511(a)(5); H.Res. 5 (111th Cong.), §3(a)(4); and H.Res. 5 (112th Cong.), §3(a)(4).

[70] 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.

[71] 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.

[72] For more information, see CRS Report RL31055, *House Offset Amendments to Appropriations Bills: Procedural Considerations*, by Jessica Tollestrup.

Committee or through floor amendments. This new point of order applies only to general appropriations bills.

Section 3(j) also allows amendments that would transfer appropriations in a pending general appropriations bill to a spending reduction account, which is required in each such bill. Only amendments transferring funds into the account are allowed; therefore, the House may not consider an amendment withdrawing funds from the account.

Senate

Three points of order typically enforce spending ceilings associated with the budget resolution. Two are Congressional Budget Act points of order, as provided in Sections 302(f) and 311(a). The Senate application of these rules, however, varies from the House versions. The annual budget resolution in recent years has typically established another Senate point of order that enforces separate total discretionary spending ceilings established in the budget resolution. 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 conference reports to these measures.

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) suballocations in new budget authority and outlays for that fiscal year to be exceeded. In contrast to the House, it (1) does not apply to 302(a) allocations, but (2) does enforce the outlay level associated with the 302(b) subdivisions. 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 401 of the FY2010 budget resolution is an example of a budget resolution provision enforcing Senate discretionary spending ceilings. It set discretionary spending limits in new budget authority and outlays for FY2009 and FY2010 and prohibited the consideration of legislation that would cause any limit to be exceeded.[73]

In addition, the FY2009 budget resolution included a point of order, still in effect, that prohibits language in appropriations legislation that would produce a net increase in the cost of direct spending programs.[74]

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.

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.

[73] See S.Con.Res. 13 (111th Cong.), §401(a) and (b).

[74] See S.Con.Res. 70 (110th Cong.), §314.

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 budget enforcement limits in Titles III and IV of the Congressional Budget Act, such as 302(f) and 311(a) points of order.[75]

Regarding the Senate, a super-majority vote requirement may be needed to utilize the emergency designation exemption. Any Senator may raise a point of order against an emergency designation in legislation, and 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 additional exemption from enforcement under these points of order for new budgetary authority (and resulting outlays) that is designated for overseas deployment and related activities (or contingency operations related to the global war on terrorism). 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).[76] This language is considered to create new law, which would not otherwise exist.[77] The House, sometimes, adopts a special rule waiving this point of order against emergency and contingency operations designations in the reported bills and conference reports, but has not done so for such provisions in floor amendments.

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.

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 multiyear authorizations. Annual and

[75] The current Senate exemption is provided in the FY2010 budget resolution, S.Con.Res. 13 (111th Cong.), sec. 403. The current House exemption is provided in Section 105(a)(3) of the Budget Control Act (P.L. 112-25).

[76] See "Relationship Between Authorization and Appropriation Measures".

[77] 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 for "overseas deployment and other activities" under section 423(a) of S.Con.Res. 13 (111th Cong.); and (2) designating funds as "an emergency requirement" under section 423(b) of the same resolution. For more information on legislation on an appropriations bill, see "Relationship Between Authorization and Appropriation Measures" section below.

multiyear provisions require reauthorizations 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. 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.[78] The House and Senate prohibit, in varying ways, language in appropriations bills providing appropriations not authorized by law or legislation on an appropriations bill. An appropriation for purposes not authorized by law, commonly called 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 for which budget authority exceeds the ceiling authorized.[79] *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 legislative committees.

House rules prohibit both unauthorized appropriations and legislation in regular appropriations bills and supplemental appropriations measures which provide funds for two or more agencies. 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 point of order applies to the text of the bill, as well as any amendments or conference reports.

The Senate rule regarding unauthorized appropriations and legislation on appropriations bills applies to regular bills, supplementals that provide funds for more than one purpose or agency, and continuing resolutions, but only to amendments

- offered 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.[80]

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 did apply to provisions in H.R. 2107, the FY1998 Interior bill, as reported by the Senate Appropriations Committee, since that version of the bill consisted of Senate amendments to the House-passed bill.[81] Recently, the practice of the Senate

[78] 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).

[79] For further information on the relationship between authorizations and appropriations, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh.

[80] The Senate rule also applies to amendments between the houses.

[81] The Senate rule reflects Senate practices at the time the rule was established. The Senate Appropriations Committee (continued...)

Appropriations Committee has been either to (1) report the House-passed bill with a committee substitute, or (2) report an original Senate bill, wait until the Senate receives the House-passed bill, and then offer a committee substitute (comprising the text of the Senate bill) to the House-passed bill. In either case, the Senate considers the committee's recommendations in the form of a committee amendment.

The Senate rule is less restrictive than the House regarding what is interpreted as unauthorized appropriations. For example, the Senate Appropriations Committee may report committee amendments containing appropriations not authorized by previous law. 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. 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.[82] It also prohibits non-germane amendments.

The division between an authorization and an appropriation is a construct of House and Senate rules created to apply 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 $79 million to the National Institute of Environment and Health Services, 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,[83] 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,

(...continued)

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.

[82] Senate Rule XVI, paragraph 2. Under Senate precedents, an amendment containing legislation may be considered if it is germane to language in the 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.

[83] Title X is referred to as the Impoundment Control Act. 2 U.S.C. §681 et seq.

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.[84] 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.

Author Contact Information

Jessica Tollestrup
Analyst on Congress and the Legislative Process
jtollestrup@crs.loc.gov, 7-0941

Acknowledgments

This report was authored by Sandy Streeter, formerly an Analyst on Congress and the Legislative Process at CRS. The listed contact has made minor modifications to the original report and is available to respond to inquiries on the subject.

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