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**Authorizations and  
Appropriations:  
A Distinction  
Without Difference?**

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Mark Champoux  
Dan Sullivan

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## **AUTHORIZATIONS AND APPROPRIATIONS: A DISTINCTION WITHOUT DIFFERENCE?**

The Constitution grants to Congress the power of appropriation for federal spending.<sup>1</sup> The precise process for exercising that power is derived almost exclusively from internal House and Senate rules. Those rules set out a procedure under which, in general, authorization of federal programs and activities precede, in separate legislation, the corresponding appropriation of actual budget authority. Because these internal rules, by definition, carry almost no statutory or constitutional weight, Congress has little trouble in bending or breaking them whenever it wishes.<sup>2</sup> As such, although the authorization-appropriation process continues to serve as the central track for enacting federal spending, the exceptions to and deviations from that process are increasingly numerous. The consequences of this blurring distinction between authorization and appropriation on the federal budget, however, are somewhat unclear.

### **Authorizations and Appropriations Generally**

The distinction between legislation that establishes federal programs and legislation that funds such programs has been institutionalized in Congress since the 1830s, although its practice likely predates even the Constitution.<sup>3</sup> Today, House and Senate rules generally require that an authorization for a federal activity precede the appropriation that allows agencies to actually obligate federal funds.<sup>4</sup>

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<sup>1</sup> See U.S. CONST. art. I, § 9 (“No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”).

<sup>2</sup> Although some rules have been established by statute (for example, by the Congressional Budget Act of 1974, 2 U.S.C. 601 et seq (2006)), both statutory and non-statutory Congressional rules cannot bind a subsequent congressional act. See *infra* note 35 and accompanying text.

<sup>3</sup> See ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS*, 163–64 (rev. ed. 2000); see also *infra* pp. 4–7.

<sup>4</sup> See House Rules XXI, XXII; Senate Rule XVI. There is no constitutional or statutory requirement that an appropriation be preceded by an authorization. See 71 Comp. Gen. 378, 380 (1992).

## **Authorizations**

Authorizing legislation is of two basic kinds. One type of authorizing measure is that of an “organic” or “enabling” statute, which can create, modify, or continue a federal agency or program. Such statutes generally set forth the structure, functions, and responsibilities of the various federal programs created by Congress. The other type of authorizing legislation is a specific provision that authorizes the enactment of appropriations for an agency or program and acts as a guide to Congress regarding the amount of funding necessary. This second type, more than the first “enabling” or “organic” type, is what is generally meant by the term “authorization.”<sup>5</sup>

An authorization is sometimes included in the actual “enabling” statute, but is also often provided in a separate law. An authorization measure may provide permanent, annual, or multi-year authorizations for appropriations.<sup>6</sup> The amount authorized may be specifically provided in the statute (definite authorization), or not, in which case the statute usually authorizes the appropriations for “such sums as may be necessary” (indefinite authorization).<sup>7</sup> Most standing committees in the House and Senate are authorizing committees; these committees have the responsibility to write authorizations for the federal programs under their jurisdiction.<sup>8</sup>

## **Appropriations**

Appropriations bills are acts of Congress that provide budget authority to federal agencies so that they may incur obligations and make payments out of the Treasury.<sup>9</sup>

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<sup>5</sup> See 1 GOVERNMENT ACCOUNTABILITY OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW (3d. ed. 2004) ch. 2, p. 40 [hereinafter GAO PRINCIPLES].

<sup>6</sup> See *id.* at ch. 2, p. 41.

<sup>7</sup> See *id.*

<sup>8</sup> See House Rules X, XII; Senate Rule XXV.

<sup>9</sup> See GOVERNMENT ACCOUNTABILITY OFFICE, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 21 (GAO-05-734SP, 2005) [hereinafter GAO BUDGET GLOSSARY].

The House and Senate Appropriations Committees, which have exclusive committee jurisdiction over appropriations measures, are divided into 13 subcommittees, each of which is responsible for one of the regular appropriations acts.<sup>10</sup> These annual acts provide budget authority for the next fiscal year, beginning on October 1. Congress may also enact supplemental appropriations (when unexpected funds are needed during the present fiscal year) and continuing appropriations (providing temporary funding when Congress has not completed work on the regular appropriations acts by the start of the new fiscal year).<sup>11</sup>

### **Historical Separation of Authorizations and Appropriations**

The First Congress to take office under the Constitution in 1789 maintained an informal separation between legislation of substantive law and legislation making appropriations, likely adopting the practice from the British Parliament.<sup>12</sup> The first step towards making the separation formal was to create a division of labor at the committee level. By 1795, the House Ways and Means Committee operated as the committee primarily responsible for appropriations (as well as revenues), and by 1816 the Finance Committee played a similar role in the Senate.<sup>13</sup> In the wake of the Civil War, both the House and Senate separated committee jurisdiction over revenues and appropriations,

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<sup>10</sup> The 13 regular appropriations acts: Agriculture – Rural Development – Food and Drug Administration; Commerce – Justice – Judiciary; Department of Defense; District of Columbia; Energy and Water Development; Foreign Operations; Interior Department; Labor – Health and Human Services – Education; Legislative Branch; Military Construction; Transportation Department; Treasury – Postal Service – General Government; and Veterans Affairs – Housing and Urban Development – Independent Agencies.

<sup>11</sup> For further general information regarding the basic definitions of authorizations and appropriations, see Bill Heniff, Jr., *Overview of the Authorization-Appropriations Process*, CRS Report RS20371 (2003), available at <http://www.rules.house.gov/archives/rs20371.pdf>; SCHICK, *supra* note 3, ch. 8, 9.

<sup>12</sup> See SCHICK, *supra* note 3, at 163.

<sup>13</sup> See Louis Fisher, *The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices*, 29 CATH. U.L. REV. 51, 54 (1979).

creating Appropriations Committees specifically to handle the latter.<sup>14</sup> The power and jurisdiction of the Appropriations Committees vacillated for several decades as other legislative committees maneuvered to gain appropriating authority.<sup>15</sup> But by 1922, the House and Senate had consolidated jurisdiction over appropriations in the respective Appropriations Committees.<sup>16</sup>

Because the appropriations bills reported from these committees were often delayed on the floor of the House and Senate due to the frequent insertion of legislative riders,<sup>17</sup> the House adopted a rule in 1837 providing that “no appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law.”<sup>18</sup> The Senate adopted a somewhat similar rule in 1850, although the Senate rule applied only to amendments and not to the actual appropriations bill reported by the committee.<sup>19</sup>

Because these rules only acted to prevent insertions of unauthorized expenditures in appropriations bills, riders containing substantive policy legislation could still be

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<sup>14</sup> See *id.* at 57.

<sup>15</sup> See *id.*; COMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE: 1867–2005, S. DOC. NO. 109-5, at 1–13 (2005) [hereinafter HISTORY OF SENATE APPROPRIATIONS COMMITTEE].

<sup>16</sup> See Fisher, *supra* note 13, at 58; HISTORY OF SENATE APPROPRIATIONS COMMITTEE, *supra* note 15, at 13–16. House Rule X and Senate Rule XXV establish the jurisdiction of the Appropriations Committees. House Rule XXI, clause 4 enforces the assignment of appropriations to the Appropriations Committee:

A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction.

<sup>17</sup> For further discussion of legislative riders, see *infra* pp. 18–19.

<sup>18</sup> See Fisher, *supra* note 13, at 54–55; IV ASHER C. HINDS, HINDS’ PRECEDENTS § 3578 (1907) [hereinafter HINDS’ PRECEDENTS].

<sup>19</sup> See Fisher, *supra* note 13, at 55–56. Following amendments in 1852 and 1854, the Senate rule stated:

No amendment, proposing additional appropriations, shall be received to any general appropriation bill, unless it be made to carry out the provisions of some existing law, or some act or resolution, previously passed by the Senate, during that session, or moved by direction of a standing or select committee of the Senate, or in pursuance of an estimate from the head of some of the Departments; and no amendment shall be received whose object is to provide for a private claim, unless it be to carry out the provisions of an existing law, or a treaty stipulation.

*Id.* at 56 (quoting CONG. GLOBE, 33d Cong., 1st Sess. 1380–81 (1854)).

included.<sup>20</sup> In 1876, at the suggestion of Congressman William Holman, the House added to its previous rule a provision stating: “nor shall any provision in any such bill or amendment thereto, changing existing law, be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures.”<sup>21</sup> The “Holman Rule” was later amended to limit the retrenchment exception, and it was also dropped completely from the rules for a time before being readopted in 1911.<sup>22</sup> The House rules remained in effect and largely unamended until 1983, when they were restructured into their present form as clause 2 of House Rule XXI.<sup>23</sup>

The counterpart to House Rule XXI is Senate Rule XVI. The original version of Rule XVI, adopted in 1884, incorporated much of the rule that had been adopted previously in 1850 (barring amendments making unauthorized appropriations) and also set out procedures for amending appropriations bills.<sup>24</sup> In 1922, when the Senate restored full appropriations jurisdiction to the Appropriations Committee, it also added a provision to Rule XVI that allowed for a point of order to be raised on any appropriations bill that contained amendments “proposing new or general legislation.”<sup>25</sup> The current version of Rule XVI retains the prohibition against new or general legislation in appropriations, and it also prohibits appropriations that are not “made to carry out the provisions of some existing law.”<sup>26</sup>

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<sup>20</sup> *See id.* at 55.

<sup>21</sup> *See HINDS’ PRECEDENTS*, *supra* note 18, at § 3578.

<sup>22</sup> CONSTITUTION, JEFFERSON’S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 108-241, at 826 (2005).

<sup>23</sup> *See id.* at 826–28. The present form of clause 2 of House Rule XXI is printed in the Appendix. The original 1837 prohibition against unauthorized appropriations is more or less contained in paragraph (a), while the Holman rule is found in paragraph (b).

<sup>24</sup> *See HISTORY OF SENATE APPROPRIATIONS COMMITTEE*, *supra* note 15, at 7.

<sup>25</sup> *See id.* at 14–15.

<sup>26</sup> Senate Rule XVI. *See* Appendix for full text.

As it presently stands, then, both House and Senate rules prohibit substantive legislation in appropriations bills, although technically the Senate prohibition only applies to amendments (whether proposed in committee or on the Senate floor) and not to the original bill. Similarly, both House and Senate rules prohibit unauthorized appropriations, although the Senate rule only applies to amendments proposed after the bill has been reported by the committee. One final nuance to the rules is that the House rules apply only to regular and supplemental appropriations bills as well as conference reports, while they do not apply to continuing resolutions.<sup>27</sup> The Senate rules apply to regular and supplemental appropriations bills and also continuing resolutions, but they do not apply to conference reports.<sup>28</sup>

### **Points of Order**

The House and Senate rules, while important as guidance to legislators, are only binding if a point of order is raised and sustained to enforce the rules.<sup>29</sup> If no one raises such a point of order at the proper time during debate of the bill or amendment, or if the chair's ruling on a point of order is overturned by a majority vote, consideration of that legislation proceeds even though it is in violation of House or Senate rules.<sup>30</sup>

Additionally, both the House and Senate generally allow for a suspension of the rules on

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<sup>27</sup> See Sandy Streeeter, *The Congressional Appropriations Process: An Introduction*, CRS Report 97-684 GOV, at 24 (2004), available at <http://www.rules.house.gov/archives/97-684.pdf>.

<sup>28</sup> See *id.* at 24–25.

<sup>29</sup> See GAO PRINCIPLES, *supra* note 5, at ch. 1, pp. 29–30.

<sup>30</sup> See *id.* The procedures regarding timing and scope of points of order are complex and vary by chamber and type of legislation. For more details, see generally, e.g., 15 LEWIS DESCHLER & WILLIAM HOLMES BROWN, DESCHLER-BROWN PRECEDENTS, ch. 31 (1986); WILLIAM HOLMES BROWN & CHARLES W. JOHNSON, HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS, AND PROCEDURES OF THE HOUSE 661–74 (2003) [hereinafter HOUSE PRACTICE]; FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE, S. DOC. NO. 101-28, at 987–96 (1992) [hereinafter RIDDICK'S SENATE PROCEDURE].

particular bills or amendments, usually by a two-thirds vote.<sup>31</sup> In the Senate, rules can also be waived or suspended by unanimous consent agreements.<sup>32</sup> Finally, the House frequently attaches a “special rule” to appropriations bills being considered on the floor.<sup>33</sup> The special rule, which is approved by a majority vote, outlines the rules and procedures that will apply during consideration of that bill, and these often contain waivers of points of order that would otherwise lie under House Rule XXI.<sup>34</sup> Through all of these methods, Congress can and often does circumvent its own rules, resulting in a blurred distinction between authorizations and appropriations.

### **Unauthorized Appropriations**

Perhaps one of the most common ways in which Congress departs from the general rules and definitions regarding authorizations and appropriations is by appropriating spending which has not previously been authorized. Often, such unauthorized appropriations are simply situations in which Congress appropriates spending for programs which had been previously authorized but for which authorizing legislation has expired. In other cases, Congress appropriates spending at levels above that which has been authorized. Finally, Congress sometimes, though rarely, appropriates spending for programs which have never been authorized. In almost all cases, the appropriations are valid despite their disjunction with previous authorizing language, justified by the principle that one Congress may not bind a future Congress.<sup>35</sup>

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<sup>31</sup> See Fisher, *supra* note 13, at 93; RIDDICK’S SENATE PROCEDURE, *supra* note 30, at 177, 1266–72; HOUSE PRACTICE, *supra* note 30, at 871–79.

<sup>32</sup> See RIDDICK’S SENATE PROCEDURE, *supra* note 30, at 1311–69.

<sup>33</sup> See Fisher, *supra* note 13, at 93–94.

<sup>34</sup> See *id.*; HOUSE PRACTICE, *supra* note 30, at 857–69.

<sup>35</sup> See *e.g.*, 36 Comp. Gen. 240, 242 (1956) (“It is fundamental . . . that one Congress cannot bind a future Congress and that the Congress has full power to make an appropriation in excess of a cost limitation contained in the original authorization act. This authority is exercised as an incident to the power of the Congress to appropriate and regulate expenditures of the public money.”).

## Expired Authorizations

Until the 1960s, most authorizations of appropriations were permanent.<sup>36</sup> In recent decades, however, Congress has increasingly passed temporary authorizations, a method that gives legislators more frequent opportunities to review federal agencies and make desired changes and that also allows authorizing committees to more closely itemize authorization amounts.<sup>37</sup> But with authorizations expiring more frequently, Congress often finds itself unable, for a variety of political reasons, to make all necessary reauthorizations in any given year. During the 1990s, for example, national defense was the only major area in which expiring authorizations were consistently renewed.<sup>38</sup> In most cases, despite an expired authorization, Congress will nevertheless enact appropriations to fund federal programs at levels reflecting amounts previously authorized and appropriated. In fiscal year 2006, Congress passed appropriations with expired authorizations in the amount of approximately \$159 billion.<sup>39</sup> This follows a general trend of increasing amounts of such appropriations with expired authorizations (see Figures 1 and 2).

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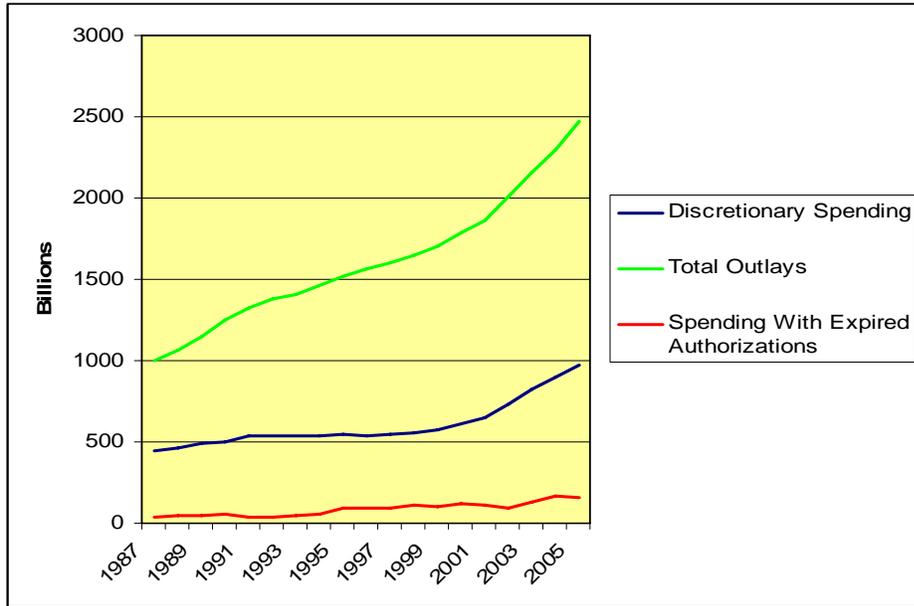
<sup>36</sup> See SCHICK, *supra* note 3, at 168..

<sup>37</sup> See *id.* at 170–71.

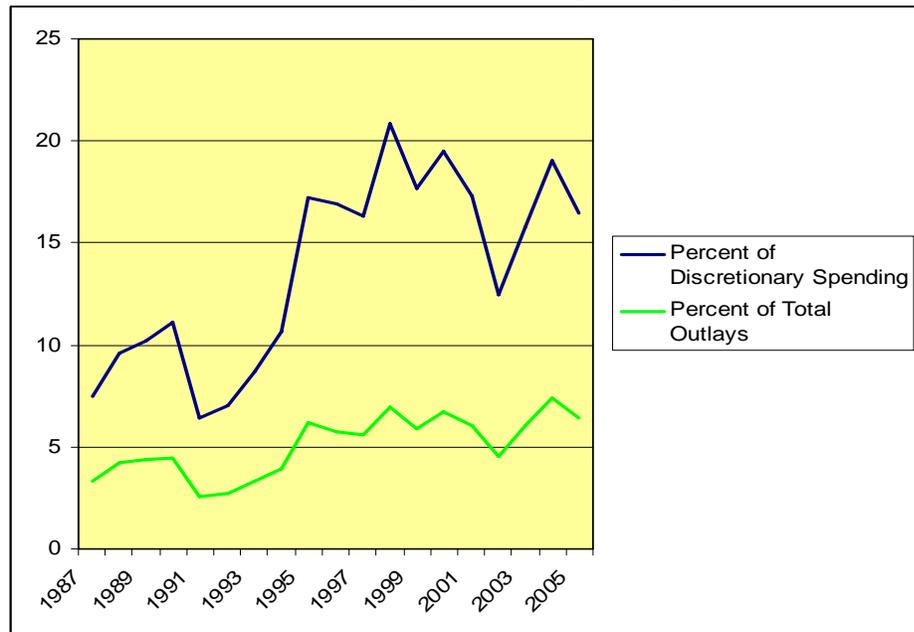
<sup>38</sup> See *id.* at 171.

<sup>39</sup> See Congressional Budget Office, *Unauthorized Appropriations and Expired Authorizations* (2006).

**Figure 1: Appropriations With Expired Authorizations<sup>40</sup>**



**Figure 2: Appropriations With Expired Authorizations as Percentage of Total Spending**



<sup>40</sup> See Congressional Budget Office, *Historical Budget Data* (2006), available at <http://www.cbo.gov/budget/historical.pdf>; Congressional Budget Office, *Unauthorized and Expired Appropriations* (1987-2005), available at <http://www.cbo.gov/publications/bysubject.cfm?cat=6>. CBO did not calculate a total amount for appropriations with expiring authorizations in four years (1989, 1993, 1996, 2003) due to Congress not having passed all appropriations bills by the time CBO generated its annual report. For the purposes of these figures, the totals from those four years were approximated using the available CBO data and comparing to the total from the year before and after.

In addition to the general rule prohibiting appropriations before authorizations (along with the various provisions for waiving or avoiding a point of order), Congress has established other institutional mechanisms to help itself limit such appropriations. In the Balanced Budget and Emergency Deficit Control Act of 1985, Congress directed the Congressional Budget Office (CBO) to annually issue a report listing all programs funded by appropriations acts in the current fiscal year for which authorizations had expired and also all programs for which authorizations would expire in the current fiscal year.<sup>41</sup> The purpose of that requirement is “to help Congress use the early months of the year to adopt authorizing legislation before the regular appropriations bills can be considered.”<sup>42</sup> Additionally, House and Senate rules require appropriations committees to identify in their reports on regular appropriations bills any programs that are funded but lack an authorization.<sup>43</sup> Finally, in some instances, Congress has adopted an “automatic extension” provision as part of a funding authorization. Under such provisions, the authorization is automatically extended for a period of time if Congress has not enacted new authorizing legislation before the original authorization expires.<sup>44</sup>

The GAO has long held that funds appropriated despite expiring authorizations can be obligated.<sup>45</sup> According to the GAO, the enactment of appropriations “for a program whose funding authorization has expired, or is due to expire . . . provides sufficient legal basis to continue the program . . . , absent indication of contrary

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<sup>41</sup> See Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, § 221(b) (1985).

<sup>42</sup> See H.R. REP. NO. 99-433, at 114 (1985) (Conf. Rep.).

<sup>43</sup> See Congressional Budget Office, *Unauthorized Appropriations and Expired Authorizations 2* (2006).

<sup>44</sup> See, e.g., Acting Comptroller General, Letter to Lowell P. Weicker, Jr., B-214456 (May 14, 1984).

<sup>45</sup> See, e.g., 55 Comp. Gen. 289, 290 (1975) (“[I]t would seem that the appropriation of funds for a program whose authorization is due to expire during the period of availability of the funds, confers the necessary authority to continue the program during the period of availability, in the absence of indication of contrary intent.”).

congressional intent.”<sup>46</sup> The demonstration of such congressional intent may be as simple as statutory language that would explicitly prohibit appropriating funds without first renewing an authorization. For example, 22 U.S.C. § 2680 states that “no money appropriated to the Department of State under any law shall be available for obligation or expenditure . . . unless the appropriation thereof has been authorized by law enacted on or after February 7, 1972.”<sup>47</sup> It seems, however, that Congress can override its previously expressed intent in such a statute by explicitly waiving the statutory prohibition in the new appropriations bill.<sup>48</sup> The GAO has also found congressional intent by referring to legislative history in combination with statutory language. For example, in 1988 a continuing resolution appropriated for the Solar Bank funds that would remain available until September 30, 1989. On the same day, however, Congress enacted legislation providing for the Bank’s termination by March 15, 1988. The Comptroller General held that the termination legislation, in conjunction with the legislative history, demonstrated Congress’s intent that the appropriations not be available after March 15.<sup>49</sup>

### **Appropriations Exceeding Amounts Authorized**

In addition to appropriating where authorizations have expired, Congress also at times enacts appropriations in excess of amounts authorized. Generally, Congress is free to do so, although such actions may be subject to a point of order.<sup>50</sup> One important exception is where evidence indicates that Congress did not intend to appropriate at

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<sup>46</sup> GAO PRINCIPLES, *supra* note 5, at ch. 2, p. 69.

<sup>47</sup> See 22 U.S.C. § 2680 (2005).

<sup>48</sup> See SCHICK, *supra* note 3, at 173.

<sup>49</sup> See Letter from Comptroller General, B-207186 (Feb. 10, 1989).

<sup>50</sup> See, e.g., Joseph Campbell, Comptroller General, Letter to Glenard Lipscomb, B-123469 (April 14, 1955) (“While legislation providing for an appropriation of funds in excess of the amount contained in a related authorization act apparently would be subject to a point of order under rule 21 of the Rules of the House of Representatives, there would be no basis on which we could question otherwise proper expenditures of funds actually appropriated.”).

levels exceeding the authorizations. For example, a 1985 GAO decision held that the authorization level was controlling over the appropriation level where Congress had authorized specific funding levels for certain Small Business Administration (SBA) programs but then enacted a lump-sum appropriation that exceeded the total of the amounts authorized.<sup>51</sup> Because the appropriations act referred explicitly to the authorizing statute, GAO concluded that Congress likely did not intend that the appropriations level depart from the amounts authorized.<sup>52</sup> In the absence of any such reference to the authorizing language, GAO will generally find that appropriations made in excess of amounts authorized implicitly override the previously manifested Congressional intent and are, therefore, valid and available for obligation.<sup>53</sup>

### **Substantively Unauthorized Appropriations**

More extraordinary than both appropriations exceeding authorization levels and appropriations with expired authorizations are appropriations without any substantive enabling or authorizing statute, expired or otherwise. GAO contends that such appropriations, much like other unauthorized appropriations, are valid:

Where authorizations are not required by law, Congress may, subject to a possible point of order, appropriate funds for a program or object that has not been previously authorized or which exceeds the scope of a prior authorization, in which event the enacted appropriation, in effect, carries its own authorization and is available to the agency for obligation and expenditure.<sup>54</sup>

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<sup>51</sup> See 64 Comp. Gen. 282 (1985).

<sup>52</sup> See *id.*

<sup>53</sup> See GAO PRINCIPLES, *supra* note 5, at ch. 2, pp. 46–47.

<sup>54</sup> *Id.* at ch. 2, p. 69.

Despite its apparent power in this area, Congress rarely makes appropriations lacking any authorizing legislation.<sup>55</sup> To do so would leave the relevant federal agency without congressional guidance on how the money should be used.

### **Advance Appropriations**

Another way in which the distinction between authorizations and appropriations has become increasingly blurred is through advance appropriations. Congress makes an advance appropriation when it provides “[b]udget authority . . . that becomes available one or more fiscal years after the fiscal year for which the appropriation act was enacted.”<sup>56</sup> For example, Congress might make fiscal year 2007 budget authority available to an agency in an fiscal year 2006 appropriations act. The agency would technically not be able to obligate those funds until 2007, and the appropriations would not be included in the 2006 budget. But a funding promise by Congress for the future is better than no promise at all.

The use of advance appropriations is sometimes motivated by a desire to increase certainty in the future, especially regarding relations between the federal government and its vendors or grant beneficiaries. For example, defense procurement is facilitated when Congress enacts appropriations for budget authority of several years in the future in order to ensure payment on that specific procurement project. A more recent trend, however, is the use of advance appropriations for the simple purpose of staying within discretionary spending caps without necessarily cutting spending.<sup>57</sup> Because such appropriations are

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<sup>55</sup> See SCHICK, *supra* note 3, at 172.

<sup>56</sup> GAO BUDGET GLOSSARY, *supra* note 9, at 8.

<sup>57</sup> See generally, David Burd & Brad Shron, *Analysis & Critique of Specialized Rules: Discretionary Caps, Spending Targets, and Committee Allocations* (Harvard Law School Federal Budget Seminar, Briefing Paper 1, 2005), available at <http://lawweb.usc.edu/csfp/conferences/fiscal%20challenges/BriefingPapers.html>

scored against the caps for later years, this is a politically attractive budget tool.<sup>58</sup> From 1993 to 1999, Congress enacted advance appropriations averaging \$2.3 billion annually.<sup>59</sup> As Congress struggled to meet discretionary spending caps, advance appropriations increased to \$8.9 billion in 1999, \$23.4 billion in 2000, and \$14.4 for fiscal year 2001.<sup>60</sup>

### **Period of Availability**

A somewhat related topic to advance appropriations is the question of how long appropriated funds will be available for obligation. With an advance appropriation, Congress appropriates budget authority for future fiscal years. Another method of providing for spending in the future is to allow agencies to wait until after the current fiscal year to obligate all the budget authority made available from that year, otherwise known as “multiple-year budget authority.”<sup>61</sup> Both authorizations and appropriations may specify a period of availability of either one year or multiple years, or an appropriation may be made to “remain available until expended” (a no-year appropriation).<sup>62</sup> Under 31 U.S.C. §1301(c), the default period of availability if not specified is one-year.<sup>63</sup>

An occasional problem occurs when the period of availability given in the appropriations bill differs from that of the authorization. As such instances have arisen, GAO has developed various canons of statutory interpretation to determine which legislation controls.<sup>64</sup> In general, periods of availability specified in appropriations acts

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<sup>58</sup> See SCHICK, *supra* note 3, at 63, 66, 68.

<sup>59</sup> See *Analytical Perspectives: Budget of the United States Government, Fiscal Year 2004*, at 316–17.

<sup>60</sup> See *id.*; SCHICK, *supra* note 3, at 68.

<sup>61</sup> GAO BUDGET GLOSSARY, *supra* note 9, at 22.

<sup>62</sup> See *id.*

<sup>63</sup> 31 U.S.C. §1301(c) (2005).

<sup>64</sup> See GAO PRINCIPLES, *supra* note 5, at ch. 2, pp. 52–56; 71–114.

take precedent over any specifications in the authorizations.<sup>65</sup> The more complicated situation occurs where an authorization specifies a period of availability but the appropriations act contains no such language; in that case, a determination must be made whether Congress intended to apply the period specified in the authorization or the statutory one-year default. Traditionally, GAO required that an appropriations act at least refer specifically to the authorization in order for the period of availability specified by the authorization to apply.<sup>66</sup> Beginning in 1971, Congress began including a general provision in all appropriations acts stating that “[n]o part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.”<sup>67</sup> As a result of this language, GAO now requires that, for the authorization period of availability to be applied, “the appropriation act will have to expressly repeat the multiple year or no-year language of the authorization, or at least expressly refer to the specific section of the authorizing statute in which it appears.”<sup>68</sup> Though GAO’s guidance provides more clarity as to the legally valid period of availability, the need for such guidance indicates the blurring of appropriations and authorizations engaged in by Congress.

### **Authorization in Appropriations Bills**

Despite House and Senate rules prohibiting the insertion of legislative provisions in an appropriations bill, appropriations bills often contain such provisions.<sup>69</sup> Congress frequently puts provisions in appropriations bills that place restrictions on the use of

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<sup>65</sup> *See id.*

<sup>66</sup> *See id.* at ch.2, p. 53.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at ch. 2, p. 55.

<sup>69</sup> *See Fisher, supra* note 13, at 72.

federal funds or amend or repeal existing law. Sometimes these provisions enact entire laws while other times they simply implement a single policy objective.<sup>70</sup>

There are a number of ways that authorizing language can find its way into an appropriations bill. First, Congress frequently avoids its own rules against allowings authorization provisions in appropriations bills. One way Congress avoids its rules is by not enforcing them. Points of order, as mentioned above, are not self-enforcing. A Member must raise a point of order to strike an authorizing provision from an appropriations bill. If no Member raises a point of order then the provision stays in the bill. And if the bill passes Congress and is signed by the President the provision becomes law. Often Members will not object to minor provisions that are legislative in nature. Another way Congress avoids its rules against legislating in appropriations bill is by waiving them or suspending them by unanimous consent. The section above on points of order explains the procedures used by the House and Senate do this.<sup>71</sup> Although Congress avoids its rules quite regularly, there do not appear to be any empirical studies showing which avoidance techniques are used most frequently by the House and Senate.

Second, Congress often includes authorization provisions in continuing resolutions. Congress enacts continuing resolutions, which are joint resolutions, when it fails to pass the annual appropriations bills before the beginning of the fiscal year. Continuing resolutions provide temporary funding for government agencies and programs. They may provide funding for a short period, such as several months, or for the entire fiscal year.<sup>72</sup> According to House rules, continuing resolutions, whether they are for several months or an entire year, are not general appropriations bills. Thus they are

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<sup>70</sup> See SCHICK, *supra* note 3, 235.

<sup>71</sup> See *supra* note 30 and accompanying text.

<sup>72</sup> See Streeter, *supra* note 27, at 15.

not subject to the points of order against inserting authorization provisions in appropriations bills. As a result, continuing resolutions “allow Congress to authorize and appropriate at the same time.”<sup>73</sup> Just about any provision can find its way into a continuing resolution. This fact may give Members an incentive to pass continuing resolutions rather than passing the annual appropriations bills.<sup>74</sup> Continuing resolutions are especially “attractive vehicles for... [authorization] provisions because they are considered must-pass legislation on which the President and Congress eventually must reach agreement.”<sup>75</sup> Over the years, continuing resolutions have included authorization provisions ranging from less than one page to more than 200 pages.<sup>76</sup> These provisions have included “comprehensive measures that establish major new policies and amend permanent provisions of law.”<sup>77</sup> But continuing resolutions have also included smaller provisions focused on temporary matters, such as extending statutory authority to provide travel funding for family members of military personnel injured in Iraq and Afghanistan.<sup>78</sup>

Third, Congress also inserts authorization provisions into omnibus appropriations acts. These are acts that include two or more annual appropriations acts in one measure. They sometimes include all thirteen annual appropriations acts. Congress bundles appropriations bills together when it is unable to pass them in a timely manner individually. Omnibus acts are similar to continuing resolutions because they provide funding for a large number of programs and activities. But they are different from

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<sup>73</sup> See Fisher, *supra* note 13, at 81.

<sup>74</sup> See SCHICK, *supra* note 3, at 227.

<sup>75</sup> See Sandy Streeter, *Continuing Appropriations Acts: Brief Overview of Recent Practices*, CRS Report RL30343, at 9-10 (2004), available at <http://www.rules.house.gov/Archives/RL30343.pdf>.

<sup>76</sup> See Streeter, *supra* note 75, at 10.

<sup>77</sup> See Streeter, *supra* note 75, at 9-10.

<sup>78</sup> See Streeter, *supra* note 75, at 9-10.

continuing resolutions because they are considered general appropriations bills. As a result, points of order apply to them. Nevertheless, Congress often avoids its own rules in order to put authorization provisions into these bills. Omnibus acts are often loaded up with such provisions because they are usually voted on near the end of a Congressional session when Members are eager to wrap up business. The Consolidated Appropriations Resolution for FY2003 (P.L. 108-7), for example, included not only the regular appropriations for FY2003, but also the Agricultural Assistance Act of 2003, amendments to the Price-Anderson Act and the Homeland Security Act, and provisions dealing with the U.S.-China Economic and Security Review Commission, among other legislative matters.<sup>79</sup>

Fourth, Congress can also legislate in an appropriations bill by including a provision in the bill that restricts the use of funds for a particular purpose or program. Such provisions are often called policy riders or limitations. They can only apply to funds appropriated in the bill to which they are inserted. Because Congress may decide not to appropriate funds for an authorized purpose, it contends that it may also “by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it.”<sup>80</sup> Limitations in an appropriations bill allow Congress to effectively amend authorizing legislation for budgetary or policy reasons. The courts recognize such limitations as a valid application of Congress’ spending power.<sup>81</sup> The First Circuit Court of Appeals, for example, recently upheld a provision of a spending bill that banned the

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<sup>79</sup> See Robert Keith, *Omnibus Appropriations Acts: Overview of Recent Practices*, CRS Report RL32473, at 6 (2005), available at [http://www.opencrs.com/rpts/RL32473\\_20050427.pdf](http://www.opencrs.com/rpts/RL32473_20050427.pdf).

<sup>80</sup> See Fisher, *supra* note 13, 73.

<sup>81</sup> See, e.g., *United States v. Will*, 449 U.S. 200, 222 (1980); *United States v. Dickerson*, 310 U.S. 554 (1940).

use of federal funds to grant permits to fishermen who used “spotter planes” to locate Atlantic bluefin tuna.<sup>82</sup>

The use of policy riders to restrict spending has gained considerable attention and provoked intense controversy during the past three decades. Policy riders have been used to “restrict the use of federal money to finance abortions, to curb the enforcement of environmental protection laws, to bar certain military operations, and to induce changes in the speed limit on federally aided highways.”<sup>83</sup> But riders are not a new phenomenon. Although not as common as they are today, riders were used as long ago as the late 1820s.<sup>84</sup> In 1855, for example, Congressional Republicans attached a limitation to a military spending bill that prohibited funding for federal troops to enforce slavery laws in Kansas.<sup>85</sup>

Fifth, Congress can also repeal or amend existing law by implication through appropriations. The courts, however, generally disfavor so-called “repeal by implication.”<sup>86</sup> The Supreme Court articulated its disfavor in *Tennessee Valley Authority v. Hill*<sup>87</sup>, a case involving a spending bill that included funds for a dam even though the Endangered Species Act of 1973 prohibited construction of the dam. Congress contended that the spending provision alone trumped the existing environmental law. The Court was unwilling to accept this argument because Congress did not make clear and explicit in the spending bill, as opposed to committee reports, its intention to repeal the existing law. The message of this case is that, “if Congress wants to use an appropriation act as the

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<sup>82</sup> See GAO PRINCIPLES, *supra* note 5, at ch. 1, p. 6. (citing *Atlantic Fish Spotters Ass’n v. Evans*, 321 F.3d 220, 225, 229 (1st Cir. 2003)).

<sup>83</sup> See SCHICK, *supra* note 3, 229.

<sup>84</sup> See Fisher, *supra* note 13, 54–55.

<sup>85</sup> See Fisher, *supra* note 13, 54–55.

<sup>86</sup> See Fisher, *supra* note 13, at 86.

<sup>87</sup> 437 U.S. 153 (1978) (hereinafter *TVA v. Hill*).

vehicle for suspending, modifying, or repealing a provision of existing law, it must do so advisedly, speaking directly and explicitly to the issue.”<sup>88</sup> For example, if Congress wanted to repeal the law at issue in *TVA v. Hill* it should have provided a specific line-item appropriation for the dam project, together with the words “notwithstanding the provisions of the Endangered Species Act.”<sup>89</sup>

### **Appropriations in Authorization Bills**

Yet another way in which the distinction between authorizations and appropriations has become increasingly blurred is through direct spending, or “backdoor spending”, legislation. Direct spending legislation provides federal agencies with the authority to obligate funds in advance of appropriations.<sup>90</sup> Authorization committees rather than appropriations committees produce direct spending legislation. It has been nicknamed “backdoor spending” because it is viewed by some as a way of sneaking spending into the budget by-passing the normal appropriations process. Direct spending takes the form of contract authority, borrowing authority, mandatory entitlements, and permanent appropriations.

Contract authority and borrowing authority are two major forms of backdoor spending. Contract authority allows a federal agency to enter into obligations in advance of appropriations, while borrowing authority permits federal agencies to borrow funds and then spend it.<sup>91</sup> Before the Congressional Budget Act of 1974 was passed, authorization committees had considerable power to grant contract and borrowing authority. This power allowed authorization committees to create liabilities for the

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<sup>88</sup> See GAO PRINCIPLES, *supra* note 5, at ch. 2, pp. 67–68.

<sup>89</sup> See GAO PRINCIPLES, *supra* note 5, at ch. 2, pp. 67–68.

<sup>90</sup> See SCHICK, *supra* note 3, at 166.

<sup>91</sup> See SCHICK, *supra* note 3, at 181.

government without going through the normal appropriations process. The Act cut down on the authorization committee's power by prohibiting Congress from "considering new contract or borrowing authority legislation unless this authority is made effective only to the extent provided in appropriations acts."<sup>92</sup> Nevertheless, some trust funds, such as the Highway Trust Fund, are not affected by this restriction.<sup>93</sup>

The other major form of direct spending is mandatory entitlements. They are the most "prominent" form of direct spending.<sup>94</sup> Some entitlements, such as Medicare and Medicaid, are mandatory entitlements. Although they are financed by annual appropriations, the amount spent on them is set by authorizing legislation rather than by appropriations bills. The authorizing legislation for these entitlement programs determines who is eligible to receive benefits and what size benefit they will receive. Appropriations committees, for the most part, cannot change these provisions of the law. Other entitlements, such as Social Security, do not go through appropriations committees as all. Thus they are known as permanent appropriations. This form of spending is on autopilot – even more so than mandatory entitlements – unless the authorization committee makes changes to the legislation authorizing the spending. The growth of entitlement spending during the last sixty years has shifted a large amount of appropriations out of the direct control of the appropriations committees.

Authorization bills also blur the line with appropriations by setting ceilings for maximum spending and floors for minimum spending, also known as appropriation-forcing language. These ceilings and floors are not binding on the appropriators. Some budget experts, however, claim they tend to influence how much funding appropriators

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<sup>92</sup> See SCHICK, *supra* note 3, at 181.

<sup>93</sup> See SCHICK, *supra* note 3, at 181.

<sup>94</sup> See SCHICK, *supra* note 3, at 181.

grant. Schick asserts that there is a “close correspondence” between the amounts authorized and the amounts appropriated.<sup>95</sup> He says this phenomenon is “particularly so in annually authorized programs, where the appropriation typically exceeds 90 percent of the authorized level.”<sup>96</sup> He cites the annual defense authorization act is an example of an authorization act that “strongly influences” later appropriations.<sup>97</sup> Schick, however, does not provide empirical evidence to back up this claim, and there do not appear to be widely-available studies on this topic. There certainly are gaps in some programs between the levels of spending authorized and the levels appropriated, which suggests that authorization committees’ ceilings and floors do not always influence appropriations committees. There is also anecdotal support for this view. Some interest groups have taken to demanding full funding for their programs – “by which they mean that Congress should appropriate the amounts promised in authorizations” - because they are displeased with Congress’ practice of under-funding programs.”<sup>98</sup>

### **Critiques and Reform Proposals**

Among the myriad reform measures proposed each year to improve the federal budget process, a few are aimed at reinvigorating the distinction between authorizations and appropriations. The idea behind these proposals is that an elimination of the deviations from the rigid two-step process of authorization and then appropriation would help to reign in federal spending and possibly increase political accountability. Some of the reform proposals aim to change the internal congressional rules, while others seek to statutorily enact budget reform. In large part, however, it seems that many of the gray

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<sup>95</sup> See SCHICK, *supra* note 3, at 171.

<sup>96</sup> See SCHICK, *supra* note 3, at 171.

<sup>97</sup> See SCHICK, *supra* note 3, at 171.

<sup>98</sup> See SCHICK, *supra* note 3, at 181.

areas between appropriations and authorizations are not targets of a significant number of reform proposals.

### **Rule Reforms**

Because the division of authorizations and appropriations is one made primarily by internal Congressional rules, some of the reform proposals are merely a matter of amending those rules. For example, Senator John McCain has proposed amending Senate Rule XVI so that amendments proposing unauthorized appropriations in excess of \$1 million would be subject to a point of order which may only be waived or suspended by a three-fifths (60) vote (in contrast to the simple majority vote that may overcome such points of order raised under paragraph 1 of Rule XVI).<sup>99</sup> The Senate did not act on this proposal when it was made in 1999, and it has not been renewed for the 109th Congress.

Two major rule “reforms” occurred in the Senate during the 1990s. As mentioned above, Senate Rule XVI prohibits the insertion of legislation in spending bills. In 1995, Senate Republicans succeeded in stopping enforcement of this rule so that they could add legislative amendments to appropriations bills. On March 16, 1995, Senator Kay Bailey Hutchison (R-TX) offered an amendment to an appropriations bill and Senator Harry Reid (D-NV) raised a point of order that Hutchison’s amendment was inserting legislation into an appropriations bill. The presiding officer of the Senate sustained Reid’s point of order. Normally, a Senator in Hutchinson’s position would respond by asking the Senate to vote on whether her amendment was germane to the bill. But she did not. Instead, she asked the Senate to vote on whether the presiding officer should have sustained Reid’s point of order. The Senate voted 42-57 to overrule the presiding

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<sup>99</sup> See S. Res. 25, 106th Cong. (1999).

officer's ruling, setting a precedent that the Senate would not enforce its ban against legislative amendments to general appropriations bills.<sup>100</sup>

Democrats responded to the Republicans disabling of Senate Rule XVI by inserting into appropriations bills legislation they wanted Congress to consider. Their goal was to push Democratic legislation and frustrate Republican efforts to pass appropriations bills. Four years later disabling Senate Rule XVI, the Republicans changed course and decided to restore it. They did so ostensibly because the widespread use of riders was leading to the wholesale circumvention of authorization committees. In July 1999, Senate Majority Leader Trent Lott introduced a Senate resolution, S.Res. 160, to restore enforcement of Senate Rule XVI.<sup>101</sup> The resolution directed the Senate's presiding officer once again to enforce the rule permitting points of order to be raised against legislative amendments to appropriations bills. Senate Rule XVI was restored when this resolution passed by a vote of 53-45, with only two Democrats voting in favor of it. It is unclear how these reforms have impacted the use of riders to legislate in appropriations acts. According to Schick, the four year suspension of Senate Rule XVI damaged the old practice of prohibiting riders.<sup>102</sup> There do not, however, appear to be any empirical studies demonstrating whether his anecdotal claim is accurate or not.

Another reform proposal would create more of a bright-line distinction between appropriations and authorizations by moving all spending into the annual appropriations

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<sup>100</sup> Paul S. Rundquist, *S.Res. 160: Rule XVI and Reversing the Hutchison and FedEx Precedents*, CRS Report RS20276 (1999), available at <http://www.rules.house.gov/archives/RS20276.htm>.

<sup>101</sup> See SCHICK, *supra* note 3, at 167.

<sup>102</sup> See SCHICK, *supra* note 3, at 167.

process.<sup>103</sup> This reform, which the Heritage Foundation advocates, would end the practice of having authorization committees essentially set entitlement spending, which then usually goes on auto-pilot. It would require all programs to be sent to “the appropriations committee to receive a specific dollar appropriation for the upcoming year”, and forbid programs from spending beyond that amount.<sup>104</sup> Heritage concedes that if this reform is enacted most mandatory entitlement programs will probably not undergo major changes. But it argues that this reform would at least grant Congress the tools it needs to make trade-offs between programs and reduce spending on programs that spend more than it considers necessary. Proponents of this reform hold out the Food Stamp program as an example of an entitlement that successfully is reviewed during each appropriations process.

The inclusion of legislative provisions in appropriations bills, particularly continuing resolutions and omnibus appropriations bills, has been criticized for a number of reasons. These criticisms do not suggest specific reform proposals but highlight the possible need for them. Critics recognize that including significant legislation may be efficient way to tie up loose ends as a Congressional session comes to an end. But they point out that this practice does not give legislatures an adequate opportunity to debate and amend these provisions.<sup>105</sup> Other critics contend that allowing legislative matters in continuing resolutions and omnibus appropriations allows these bills to be used as vehicles “for enacting legislation that would not become law under other

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<sup>103</sup> See BRIAN M. RIEDL, WHAT’S WRONG WITH THE FEDERAL BUDGE PROCESS? 13-14 (Heritage Foundation Backgrounder, No. 1816, Jan. 25, 2005), *available at* <http://www.heritage.org/Research/Budget/bg1816.cfm>.

<sup>104</sup> See RIEDL, *supra* note 101, at 13.

<sup>105</sup> See Keith, *supra* note 79, at 7.

circumstances.”<sup>106</sup> Even though Members of Congress and the President are aware of this phenomenon they are hesitant to vote against them and the President is unlikely to veto them because these bill are passed “under imminent threat of government shutdown.”<sup>107</sup> Since legislation can be rolled into continuing resolutions and omnibus appropriations bills Congress has less of an incentive to fix the problems in the authorization process. In fact, Congress ends up having an incentive to keep putting legislation in these bills.<sup>108</sup>

### **Statutory Reforms**

Beginning with the FY 2002 Budget Proposal, the Bush Administration has called for the freezing and eventual elimination of advance appropriations made for the purpose of avoiding spending limitations.<sup>109</sup> In the FY 2006 Budget Proposal, the Administration elaborated on its plan to fix advance appropriations. It proposed to cap total advance appropriations, excluding Project BioShield, for 2006-2010 at \$22.6 billion, which was the level of advance appropriations for 2007 proposed in the 2006 budget.<sup>110</sup> It would enforce the limit by counting any advance appropriations made in excess of \$22.6 billion against the discretionary spending cap for the year in which the appropriations are made rather than the year in which funds become available.<sup>111</sup> Additionally, the Administration proposed to score against the current discretionary caps any second-year effect of appropriations acts delaying obligations of mandatory budget authority.<sup>112</sup> Similar to the Administration’s proposal, a provision in the Spending Control Act of 2004 would have established a limit on advance appropriations at \$23.5 billion, scoring

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<sup>106</sup> See SCHICK, *supra* note 3, at 227.

<sup>107</sup> See SCHICK, *supra* note 3, at 227.

<sup>108</sup> See SCHICK, *supra* note 3, at 174-75.

<sup>109</sup> See *Analytical Perspectives: Budget of the United States Government, Fiscal Year 2002*, at 243-44.

<sup>110</sup> See *Analytical Perspectives: Budget of the United States Government, Fiscal Year 2006*, at 237.

<sup>111</sup> See *id.*

<sup>112</sup> See *id.*

anything in excess of that limit against the current year's discretionary caps.<sup>113</sup> That Act was defeated on the House floor.<sup>114</sup>

A recent reform proposal that has received considerable attention is the “Pork-Barrel Reduction Act” proposed by Senator McCain and several other senators in early February 2006.<sup>115</sup> That act amends both Senate rules as well as the Congressional Budget Act in an attempt to reign in federal spending. Relevant to the distinction between appropriations and authorization, the act would amend Senate rules so that a point of order, defeatable only by 60 votes, may be raised against new legislation or unauthorized appropriation in general appropriations bills.<sup>116</sup> The act similarly would allow essentially the same point of order to be raised in order to prevent legislation or unauthorized appropriations from being added to an appropriations bill by amendment or by conference report.<sup>117</sup>

There are also critics of the appropriations-authorizations process that think the whole process is rotten. Professor Susan Rose-Ackerman at Yale Law School argues that the lack of transparency in the legislative process, with its intricate parliamentary rules and confusingly worded bills, makes it difficult for voters to hold Members of Congress accountable for their actions.<sup>118</sup> She makes several proposals to remedy this situation, two of which are relevant to the distinction between appropriations and authorization. First, she contends that courts should strike down any authorizing language or policy

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<sup>113</sup> See H.R. 4663 § 5, 108th Cong. (2004).

<sup>114</sup> The vote was 146-268. See Roll Call 318, 108th Cong., 2d Sess. (2004).

<sup>115</sup> S. 2265, 109th Cong. (2006).

<sup>116</sup> See *id.* at sec. 2.

<sup>117</sup> See *id.*

<sup>118</sup> SUSAN ROSE-ACKERMAN, *RETHINKING THE PROGRESSIVE AGENDA: THE REFORM OF THE AMERICAN REGULATORY STATE* 44 (1992).

riders Congress inserts in appropriations bills.<sup>119</sup> Second, she thinks courts should regard underfunded programs - that is, programs appropriated less than the level of spending authorized – as effectively repealed.<sup>120</sup> The purpose of these reforms is to prevent the Congress from hiding its policy choices and pulling the wool over the eyes of the public.

Rose-Ackerman’s proposals are constitutionally problematic. Her first proposal raises serious separation of powers issues because an appropriation act that contains such provisions is law if it is passed by Congress and signed by the President. The courts do not have authority to strike down provisions of a law simply because they do not adhere to the traditional distinction between authorizations and appropriations. Rose-Ackerman’s second proposal is problematic because, as mentioned above, the courts seriously disfavor “repeal by implication.” It also puts the courts in the role of the legislature, which, again, raises separation of powers issues.

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<sup>119</sup> See ROSE-ACKERMAN, *supra* note 118, at 64, 70.

<sup>120</sup> See ROSE-ACKERMAN, *supra* note 118, at 64, 70.

## Bibliography

### Academic Sources

SUSAN ROSE-ACKERMAN, *RETHINKING THE PROGRESSIVE AGENDA: THE REFORM OF THE AMERICAN REGULATORY STATE* 44 (1992).

Louis Fisher, *The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices*, 29 CATH. U.L. REV. 51 (1979).

ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS* (rev. ed. 2000).

### Government Sources

*Analytical Perspectives: Budget of the United States Government, Fiscal Year 2002.*

*Analytical Perspectives: Budget of the United States Government, Fiscal Year 2004.*

*Analytical Perspectives: Budget of the United States Government, Fiscal Year 2006.*

WILLIAM HOLMES BROWN & CHARLES W. JOHNSON, *HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS, AND PROCEDURES OF THE HOUSE* (2003).

COMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE: 1867–2005, S. DOC. NO. 109-5, (2005).

Congressional Budget Office, *Historical Budget Data* (2006), available at <http://www.cbo.gov/budget/historical.pdf>.

Congressional Budget Office, *Unauthorized Appropriations and Expired Authorizations* (1987-2006).

CONSTITUTION, JEFFERSON’S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 108-241 (2005).

LEWIS DESCHLER & WILLIAM HOLMES BROWN, *DESCHLER-BROWN PRECEDENTS* (1986).

GOVERNMENT ACCOUNTABILITY OFFICE, *PRINCIPLES OF FEDERAL APPROPRIATIONS LAW* (3d. ed. 2004).

GOVERNMENT ACCOUNTABILITY OFFICE, *A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS* (GAO-05-734SP, 2005), available at <http://www.gao.gov/new.items/d05734sp.pdf>.

Bill Heniff, Jr., *Overview of the Authorization-Appropriations Process*, CRS Report RS20371 (2003), available at <http://www.rules.house.gov/archives/rs20371.pdf>.

ASHER C. HINDS, *HINDS' PRECEDENTS* (1907).

Robert Keith, *Omnibus Appropriations Acts: Overview of Recent Practices*, CRS Report RL32473 (2005), available at [http://www.opencrs.com/rpts/RL32473\\_20050427.pdf](http://www.opencrs.com/rpts/RL32473_20050427.pdf).

FLOYD M. RIDDICK & ALAN S. FRUMIN, *RIDDICK'S SENATE PROCEDURE*, S. DOC. NO. 101-28 (1992).

BRIAN M. RIEDL, *WHAT'S WRONG WITH THE FEDERAL BUDGE PROCESS? 13* (Heritage Foundation Backgrounder, No. 1816, Jan. 25, 2005), available at <http://www.heritage.org/Research/Budget/bg1816.cfm>.

Paul S. Rundquist, *S.Res. 160: Rule XVI and Reversing the Hutchison and FedEx Precedents*, CRS Report RS20276 (1999), available at <http://www.rules.house.gov/archives/RS20276.htm>.

Sandy Streeter, *The Congressional Appropriations Process: An Introduction*, CRS Report 97-684 GOV (2004), available at <http://www.rules.house.gov/archives/97-684.pdf>.

Sandy Streeter, *Continuing Appropriations Acts: Brief Overview of Recent Practices*, CRS Report RL30343, at 9-10 (2004), available at <http://www.rules.house.gov/Archives/RL30343.pdf>.

### **Legal Sources**

*Atlantic Fish Spotters Ass'n v. Evans*, 321 F.3d 220, 225, 229 (1st Cir. 2003).

*Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978).

*United States v. Will*, 449 U.S. 200, 222 (1980).

*United States v. Dickerson*, 310 U.S. 554 (1940).

## **Appendix: House and Senate Rules**

### **House Rule XXI, cl. 2, paragraphs (a)–(c)**

General appropriation bills and amendments

2. (a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for public works and objects that are already in progress. (2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress. This subparagraph does not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated that are reported by the Committee on Appropriations.

(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill (which may include those recommended to the Committee on Appropriations by direction of a legislative committee having jurisdiction over the subject matter) and except rescissions of appropriations contained in appropriation Acts.

(c) An amendment to a general appropriation bill shall not be in order if changing existing law, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation. Except as provided in paragraph (d), an amendment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.

### **Senate Rule XVI**

1. On a point of order made by any Senator, no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law, or treaty stipulation, or act or resolution previously passed by the Senate during that session; or unless the same be moved by direction of the Committee on Appropriations or of a committee of the Senate having legislative jurisdiction of the subject matter, or proposed in pursuance of an estimate submitted in accordance with law.

2. The Committee on Appropriations shall not report an appropriation bill containing amendments to such bill proposing new or general legislation or any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law if such restriction is to take effect or cease to be effective upon the happening of a

contingency, and if an appropriation bill is reported to the Senate containing amendments to such bill proposing new or general legislation or any such restriction, a point of order may be made against the bill, and if the point is sustained, the bill shall be recommitted to the Committee on Appropriations.

3. All amendments to general appropriation bills moved by direction of a committee having legislative jurisdiction of the subject matter proposing to increase an appropriation already contained in the bill, or to add new items of appropriation, shall, at least one day before they are considered, be referred to the Committee on Appropriations, and when actually proposed to the bill no amendment proposing to increase the amount stated in such amendment shall be received on a point of order made by any Senator.

4. On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.

5. On a point of order made by any Senator, no amendment, the object of which is to provide for a private claim, shall be received to any general appropriation bill, unless it be to carry out the provisions of an existing law or a treaty stipulation, which shall be cited on the face of the amendment.

6. When a point of order is made against any restriction on the expenditure of funds appropriated in a general appropriation bill on the ground that the restriction violates this rule, the rule shall be construed strictly and, in case of doubt, in favor of the point of order.

7. Every report on general appropriation bills filed by the Committee on Appropriations shall identify with particularity each recommended amendment which proposes an item of appropriation which is not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.

8. On a point of order made by any Senator, no general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works on which work has commenced.