



Considering Regular Appropriations Bills on the House Floor: Current Practice Regarding Comprehensive Unanimous Consent Agreements

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Summary

Regular appropriations bills have traditionally been considered in the House of Representatives under the terms of open rules, which provide substantial freedom of debate and amendment. It has become common, however, for the House to begin considering a spending bill under such an open rule, then quickly negotiate a comprehensive unanimous consent (UC) agreement establishing more structured terms for debating and amending the measure. Such UC agreements seek to strike a balance between the needs of party and committee leaders for efficiency and scheduling predictability, and the desires of rank-and-file Members to debate and freely amend legislation funding the operations of the federal government.

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Introduction

By long tradition, most regular appropriations bills are considered by the House of Representatives under the terms of an open rule reported by the House Committee on Rules and adopted by the House (or under terms similar to an open rule).¹ This means that when the bill is brought to the House floor, the number of amendments that can be offered to it and the debate on those amendments are largely unrestricted. In the last decade, however, the House has moved away from this pure open rule tradition and begun to adopt unanimous consent (UC) agreements that comprehensively regulate the consideration of regular appropriations bills shortly after an open rule brings them to the floor.

When considering a spending bill under an open rule, the legislation is read by paragraph in the Committee of the Whole. Members are free to propose amendments to each pending paragraph, so long as their amendments comply with the chamber's standing rules. Any first degree amendment offered under an open rule is itself subject to further amendment, and debate is largely unrestricted. By offering a pro forma amendment to "strike the last word," each Member may gain five minutes to speak on each pending paragraph of the bill or amendments to it.

Although consideration of regular appropriations bills under an open rule provides a forum that maximizes deliberation, it also means that the time spent considering such measures is uncertain and open to wide variation. Time spent on floor consideration of a given spending bill will depend on how many amendments are offered, and how long Members choose to engage in debate.

To provide scheduling predictability and to facilitate progress in a busy chamber, it has become common for the House, following a period of initial consideration of a regular appropriations bill under an open rule, to adopt a UC agreement negotiated by the Appropriations Committee, party leaders, and interested Members that comprehensively regulates further debate and amendment of the legislation. Such UC agreements supplant the open rule, limit the amendments that may be offered to a finite list, restrict debate, and bar certain time-consuming procedures otherwise in order.

Timing and Frequency of Appropriations UC Agreements

The practice of bringing up a regular appropriations bill under an open rule, and shortly thereafter replacing the rule with a comprehensive UC agreement structuring further debate and amendment, was largely unseen prior to the 104th Congress (1995-1996). The practice is now routine.

¹ See, for example, Rep. Jerry Lewis, remarks in the House, *Congressional Record*, daily edition, vol. 153, January 31, 2007, p. H1090. Prior to the 103rd Congress (1993-1994), it was common for regular appropriation bills to be brought to the House floor without a special rule, or by a special rule that only waived points of order against the measure. These procedures, however, established the same unrestricted terms for floor consideration that occur under open special rules. It should be noted that one exception to this open tradition is the regular appropriations bill that funds the legislative branch of government. This measure has in recent years been regularly considered on the House floor under terms which limit consideration to specific amendments.

In 2008, only one regular appropriations bill was considered on the House floor and no comprehensive UC agreement was entered into during its consideration. In 2007, however, eight regular appropriations bills that came to the House floor under an open rule were subsequently regulated by such a UC agreement.² In 2006, seven of nine regular appropriations bills considered under an open rule were subsequently regulated by such a consent agreement. In 2005, seven out of ten bills brought up under an open rule were.

The time between the adoption of an open special rule for a regular appropriation bill and its being supplanted by a comprehensive UC agreement is often short—in most cases, both occur on the same day. In fact, party leaders often notify Members of their intention to craft such a UC agreement even before a bill comes to the House floor.³

UC Agreements vs. Structured Special Rules

Unanimous consent agreements regulating the further consideration of regular appropriation bills limit the universe of possible amendments as well as the time for considering those amendments. In this way, such UC agreements act in a manner similar to a structured special rule, albeit with an important difference: every Member can have a say in the content of a UC agreement and, in a real sense, dictate its terms. Under an announced policy that is generally strictly adhered to, the Speaker will not normally recognize a Member to propound such a unanimous consent request unless that request has been cleared in advance by the bipartisan floor and committee leadership.⁴ Structured special rules, by contrast, are privileged for consideration and adopted at the will of a majority of the House.

In short, such UC agreements are largely accepted (and presumably increasingly common) because they provide all parties with something they want—party leaders get increased certainty about the floor schedule, the Appropriations Committee is able to move its bills forward more readily, and Members are permitted to offer the amendments of their choice.

² Data from the Legislative Information System (LIS) of the U.S. Congress. Two other regular 110th Congress appropriations bills, H.R. 2642 and H.R. 3222, the FY08 Military Construction and Defense Appropriations measures, respectively, had open rules reported for their consideration, but were brought up under the terms of such a negotiated comprehensive UC agreement, and the special rules were never considered. H.R. 3161, the FY08 Agriculture Appropriations bill, was also brought to the House floor under an open rule. After the House was unable to negotiate a comprehensive UC agreement structuring its further consideration, the Committee on Rules reported a second, structured rule which was adopted by the House.

³ For example, a July 18, 2007, e-mail from Majority Leader Steny Hoyer to Members stated, “In order to expedite consideration of the FY08 Labor, HHS, and Education Appropriations bill that will be considered today and begin the drafting of a possible Unanimous Consent agreement, it is critical that Democratic Members submit amendments they may have to the bill to the Democratic staff of the Appropriations Committee. The amendment deadline is 5:00 p.m., TODAY, Tuesday, July 17, 2007.” Similar notices were sent relating to other regular spending measures.

⁴ William Holmes Brown and Charles W. Johnson, *House Practice, A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2003), ch. 54, §2, p. 882.

Features of Appropriations UC Agreements

Unanimous consent agreements regulating the further consideration of regular appropriations bills in the House have several common features that differ significantly in effect from consideration under an open rule.⁵ Such UC agreements routinely:

- *Limit the amendments that can be offered to those listed in the unanimous consent agreement by sponsor and subject, or by amendment number. Occasionally, a UC agreement will give the majority bill manager blanket authority to offer amendments on the subject of funding levels.*⁶ By contrast, under an open rule, Members may freely offer amendments to each pending paragraph of the bill so long as those amendments comply with House rules and practice. In addition, Members are not required to give notice of their amendments under an open rule.
- *Specify that each amendment may be offered only by the named Member or the Member's designee and that those amendments shall be considered as read.*⁷ By contrast, under an open rule, any Member might conceivably offer any amendment. Ordinarily, amendments that have not been preprinted in the Congressional Record must be read aloud unless their reading is waived by unanimous consent.
- *Forbid division of an amendment in the House or Committee of the Whole.*⁸ Ordinarily, as a matter of right, any Member may demand that an amendment be divided—and its pieces voted on separately—if the amendment consists of two or more separate, substantive provisions.
- *Bar second-degree amendments to the amendments.*⁹ Under an open rule, when an amendment is offered, as many as three other amendments may then be offered: an amendment to the amendment, a substitute for it, and an amendment to the substitute.
- *Permit one pro forma amendment offered by each of the chair and ranking member of the Appropriations Committee and the Appropriations subcommittee on each amendment. Specify that only the chair and ranking member of the Committee on Appropriations or their designees may offer pro forma amendments at any point in the reading of the bill.*¹⁰ Under an open rule, each Member, not just the floor managers, would be able to “strike the last word,” to obtain five minutes to debate each amendment. As has been noted, under an open rule, each Member may offer a pro forma amendment on the pending paragraph of the bill during its reading. Structuring the UC agreement in this way puts

⁵ Unanimous consent agreements of this type must be propounded orally in the House, not in the Committee of the Whole, and are published in the *Congressional Record*.

⁶ *Congressional Record*, daily edition, vol. 153, July 26, 2007, p. H8639.

⁷ *Congressional Record*, daily edition, vol. 153, July 24, 2007, p. H8317.

⁸ *Congressional Record*, daily edition, vol. 153, July 18, 2007, p. H8036.

⁹ *Congressional Record*, daily edition, vol. 153, June 18, 2007, p. H7296.

¹⁰ *Congressional Record*, daily edition, vol. 153, June 26, 2007, p. H7134.

control of debate time almost exclusively in the hands of committee leaders instead of rank-and-file Members.

- *Specify the time for debate on each amendment, often 10 minutes equally-divided between a proponent and an opponent, although longer periods may be specified.*¹¹ Under an open rule, the proponent and opponent of an amendment each have a right to five minutes of time, and debate may continue significantly beyond 10 minutes as other Members offer pro forma amendments.
- *A statement that “An amendment shall be considered to fit the description stated in this [UC agreement] if it addresses in whole or in part the object described.”*¹² Normally in the Committee of the Whole, a Member would need unanimous consent to modify his or her amendment. Under a structured special rule, such modifications would not be in order at all. This language of the UC agreement allows Members to freely negotiate changes in a given amendment as long as it addresses the subject contemplated, fostering progress on the bill. In order to further expedite consideration, such UC agreements sometimes grant the bill manager blanket authority to package amendments on the list en bloc. In these instances, it is common for the agreement to permit Members to insert remarks on their amendments in the Congressional Record.
- *Other provisions:* Although less common, such UC agreements sometimes waive points of order against amendments or deem certain amendments to be automatically adopted.¹³

Procedural Events Not Covered by Such UC Agreements

It should be noted that unanimous consent agreements of this type do not provide complete certainty of how long floor consideration of a given spending measure will last, because they do not regulate time spent on every procedural step that may occur, including voting on the amendments themselves; the bill managers “striking the last word” and yielding to other Members for debate; any separate votes requested after the Committee of the Whole rises and reports the bill back to the House; consideration and voting on the motion to recommit; voting on final passage, and any general “slippage” of time.

Other procedural events, including, but not limited to, points of order, appeals, quorum calls, and motions to rise, might also extend floor consideration of a given regular appropriations measure and also might add some uncertainty to the proceedings.

¹¹ *Congressional Record*, daily edition, vol. 153, June 20, 2007, p. H6818.

¹² *Congressional Record*, daily edition, vol. 153, June 14, 2007, p. H6411.

¹³ *Congressional Record*, daily edition, vol. 147, July 27, 2001, p. H4751.

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