



House Offset Amendments to Appropriations Bills: Procedural Considerations

Sandy Streeter

Analyst on Congress and the Legislative Process

November 19, 2010

Congressional Research Service

7-5700

www.crs.gov

RL31055

Summary

One of the most common methods for changing spending priorities in appropriations bills on the House floor is through *offset amendments*. House offset amendments generally change spending priorities in a pending appropriations measure by increasing spending for certain activities (or creating spending for new activities not included in the bill) and offsetting the increase with funding decreases in other activities in the bill. Offset amendments are needed to avoid the Congressional Budget Act 302(f) and 311(a) points of order enforcing certain spending ceilings.

There are two types of House offset amendments considered in the Committee of the Whole House on the State of the Union (Committee of the Whole): clause 2(f) and reachback (or fetchback) amendments. As provided under House Rule XXI, *clause 2(f) offset amendments* 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 does not increase the amount of funding in the pending bill. Such amendments (1) must provide offsets in both new budget authority and outlays, (2) may contain certain unauthorized appropriations, (3) cannot add new appropriations or spending set asides, and (4) must not contain legislation.

Reachback offset amendments are generally offered at the end of the bill and change funding amounts in the pending bill by reference. These amendments (1) must provide offsets in new budget authority, but not necessarily offsets, (2) cannot include unauthorized appropriations, (3) may add new appropriations (and spending set asides), (4) cannot contain legislation, and (5) may provide across-the-board spending reductions as offsets.

Parliamentary rules governing consideration of offset amendments may be suspended or waived, typically by House adoption of a special rule, but also by unanimous consent.

The significant advantages of clause 2(f) amendments over reachback amendments are that clause 2(f) amendments may contain certain unauthorized appropriations and are typically considered before reachback amendments, sometimes limiting offset opportunities for reachback amendments. The main advantages of reachback amendments are they may add new appropriations and include across-the-board spending reductions.

Contents

Introduction	1
Spending Ceilings and Offset Amendments	1
General Rules	1
Appropriations Measures: Selected Content	3
Lump-Sum and Line-Item Appropriations	3
Funding Set Asides	3
Types of Offset Amendments	4
Clause 2(f) Offset Amendments.....	4
Must Offset Both Budget Authority and Outlays.....	6
Can Not Add New Appropriations or Funding Set Asides	7
May Not Contain Legislation	7
May Contain Certain Unauthorized Appropriations	8
Exempt from a “Demand for a Division of the Question”	9
Reachback Offset Amendments	9
Must Offset Budget Authority, May Not Necessarily Have To Offset Outlays	10
May Add New Appropriations (and Set asides).....	10
May Not Contain Legislation	11
May Not Include Unauthorized Appropriations	11
Must Be Drafted to Avoid a “Demand for a Division of the Question”	11
May Provide Across-the-Board Spending Reductions as Offsets.....	12
Procedural Considerations.....	12
Opportunities to Waive Parliamentary Rules.....	12
Selected Procedural Advantages of Clause 2(f) Amendments.....	13
May Include Unauthorized Appropriations	13
Considered Earlier	13
Selected Procedural Advantages of Reachback Amendments	14
May Add New Lump-Sum Appropriations or Set asides	14
May Provide Across-the-Board Cuts in Spending	14
May Exceed Bill’s Total Spending Levels.....	14
May Not Necessarily Have to Offset Outlays	14

Tables

Table 1. Distribution of Outlays	6
Table 2. Budget Authority, Spendout Rate, and Outlays	7

Contacts

Author Contact Information	14
Acknowledgments	14

Introduction

One of the most common methods for redistributing spending priorities in appropriations bills on the House floor is through offset amendments. House *offset amendments* generally change spending priorities in a pending appropriations measure by increasing spending for certain activities (or creating spending for new activities not included in the bill) and offsetting the increase(s) by decreasing or striking funding for other activities in the bill. For example, an amendment increasing funding for one agency funded in the bill by \$3 million and decreasing funding for another agency by the same amount in the same bill would be an offset amendment.

These amendments may transfer funds between two activities or among several activities. In addition, certain offset amendments may reduce funding with across-the-board spending reductions.

Representatives use offset amendments for a variety of reasons. Three are to (1) ensure that proposals increasing funding for certain activities in an appropriations bill do not violate parliamentary rules enforcing certain spending ceilings;¹ (2) garner support for efforts to reduce funding for certain activities by transferring those funds to popular programs; and (3) provide a focal point for discussion of a particular issue.

This report is an introduction to selected House rules and practices governing the consideration of offset amendments to appropriations measures considered in the Committee of the Whole House on the State of the Union (or Committee of the Whole).² Issues analyzed below are spending ceilings and offset amendments; two types of offset amendments, clause 2(f) and reachback (or fetchback) offset amendments, including procedural factors regarding each; and mechanisms waiving House rules. The report concludes with highlights on the procedural advantages of each offset amendment type.

Spending Ceilings and Offset Amendments

Offset amendments enable members to propose amendments including certain funding increases to appropriations measures that are subject to enforceable spending ceilings.

General Rules

Each spring, Congress considers an annual budget resolution, which is under the jurisdiction of the House and Senate Budget Committees. This resolution establishes, in part, total new budget authority³ and outlay ceilings for federal government activities for the upcoming fiscal year. Once

¹ See “Spending Ceilings and Offset Amendments” below.

² House Rule XVIII, clause 3, requires that appropriations measures be considered in the Committee of the Whole before the House votes on passage of the measures (see CRS Report 95-563, *The Legislative Process on the House Floor: An Introduction*, by Christopher M. Davis).

³ *Budget 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.

these figures are finalized, the new budget authority and outlays are allocated among the House committees with jurisdiction over spending, and each committee is given specific spending ceilings (referred to as the *302(a) allocations*).⁴ The House Appropriations Committee receives separate allocations for discretionary and mandatory spending;⁵ and, in turn, subdivides their 302(a) allocations among their 12 appropriations subcommittee,⁶ providing each subcommittee with their spending ceilings (*302(b) allocations*). In the case of the appropriations committee, these allocations are only established for the upcoming fiscal year, because appropriations measures are annual.

Two Congressional Budget Act points of order, 302(f) and 311(a) points of order, enforce selected spending ceilings.⁷ First, the 302(f) point of order prohibits, in part, floor consideration of any appropriations measure and related amendments⁸ providing new budget authority for the upcoming fiscal year that would cause the applicable 302(a) or 302(b) allocations of new budget authority for that fiscal year to be exceeded. In effect, the application of this point of order on appropriations legislation is generally limited to discretionary spending. If, for example, the 302(b) allocation in new discretionary budget authority a fiscal year is \$24 billion and the reported bill would provide the same amount for the same fiscal year, any amendment proposing an increase in new discretionary budget authority for activities in the bill (or creating new discretionary budget authority) would violate the 302(f) point of order. An offset amendment, however, that also includes a commensurate decrease in new discretionary budget authority for activities in the bill would not violate the rule.

The second rule, the 311(a) point of order, prohibits, in part, floor consideration of any appropriations measure and related amendments 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.⁹ 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.

⁴ The Congressional Budget and Impoundment Control Act of 1974 (Congressional Budget Act (2 U.S.C. § 621 et seq.) established this process. The terms 302(a) and 302(b) allocations refer to sections 302(a) and 302(b) of the act.

⁵ Congress divides spending into two categories: *discretionary* and *mandatory* (or *direct*) spending. Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Committees on Appropriations. Mandatory spending is controlled by legislative acts under the jurisdiction of the authorizing committees (principally, the House Committee on Ways and Means and Senate Committee on Finance). All discretionary spending and some mandatory spending are included in the annual appropriations measures. For more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

⁶ Each House appropriations subcommittee has jurisdiction over a single regular appropriations bill. There are three major types of appropriations measures: regular appropriations bills, supplemental appropriations measures (or supplementals), and continuing resolutions. Of the three types, *regular appropriations bills* generally provide most of the funding (either as separate acts or in omnibus acts). *Supplemental appropriations measures* (or supplementals) generally increase funding for selected activities previously funded in the regular bills, although recently supplementals have provided funds for the wars in Iraq and Afghanistan. *Continuing resolutions* extend funding for agencies, if any regular appropriations bill does not become law by the October 1 deadline. The House typically agrees to prohibit amendments to continuing resolutions.

⁷ The 302(f) and 311(a) points of order refer to sections 302(f) and 311(a) of the Congressional Budget Act.

⁸ Both the 302(f) and 311(a) rules also apply to conference reports to appropriations measures.

⁹ This rule exempts, in part, appropriations measures and related amendments, that would not cause the 302(a) allocation to be exceeded, referred to as the *Fazio exception*.

If a Representative raises a point of order that an amendment violates either rule and the presiding officer sustains the point of order, the amendment falls.

Appropriations measures considered on the House floor are typically at or just below the level of the subcommittee's 302(b) allocation and, in some cases, the committee's 302(a) allocation and the total spending ceiling as well. As a result, amendments that would increase new budget authority in an appropriations measure must typically include offsets.

Appropriations Measures: Selected Content

The structure of appropriations measures has a direct impact on the form of offset amendments. Regular appropriations bills and supplementals generally include several lump-sum and line-item appropriations, so that adding a new appropriation or increasing funding for an appropriation in the bill typically requires an offset. The procedural necessity of an offset for a funding set asides within a lump-sum appropriation is dependent on the structure of the appropriation in the bill.

Lump-Sum and Line-Item Appropriations

Regular appropriations bills and supplemental appropriations measures generally contain numerous unnumbered paragraphs. Most paragraphs provide a lump-sum amount (usually an appropriation) for similar programs, projects, or activities, such paragraphs are referred to as *lump-sum appropriations*. A few paragraphs provide an appropriation for a single program or project, referred to as a *line item appropriation*.¹⁰ Most appropriations correspond to a unique budget account.

The total net spending levels provided in an appropriations bill includes all lump-sum and line item appropriations, provisions cancelling previously enacted budget authority as well as other provisions affecting spending. Appropriations bills considered on the House floor are typically near or at the level of the subcommittee's 302(b) allocation. An amendment increasing a lump-sum appropriation or adding a new appropriation, therefore, could increase the amount of funding in the bill causing it to exceed this limit, so that it typically requires an offset.

Funding Set Asides

Within a lump-sum appropriation, separate amounts are sometimes included in the bill that set aside spending for specified programs, projects, or activities (for purposes of this report, they are referred to as *funding set asides*). Congressional earmarks (or congressionally directed spending items) included in appropriations bills are typically funding set asides.¹¹

An amendment proposing to increase (or create) a funding set aside in a lump-sum appropriation that has been entirely set aside in the bill would procedurally require a commensurate offset. In the example below, the three set asides total \$200,000,000, which is the total lump-sum amount.

¹⁰ Each large agency, whether under a department or independent, are typically funded by several appropriations. All programs, projects, and activities under a small agency may be funded with a single lump-sum appropriation.

¹¹ For more information on congressional earmarks, see CRS Report RL34462, *House and Senate Procedural Rules Concerning Earmark Disclosure*, by Sandy Streeter.

An amendment proposing an increase in any of the three set asides that does not include an offset in one of the other set asides, would require an increase of the lump-sum amount.

For necessary expenses, including salaries and related expenses, of the Executive Office for YYY, to implement program activities, \$200,000,000, of which \$100,000,000 is for the yellow program, \$50,000,000 for the green program, and \$50,000,000 for the blue program.

By contrast, certain set aside amendments would not increase lump-sum amounts. If a bill contains a lump-sum amount with no set asides, for example, an amendment designating part (or all) of the funds for a particular purpose would not increase spending. In cases in which the lump-sum appropriation includes a set aside(s) that does not affect the entire amount, an amendment setting aside only the remaining funds or a portion of those funds would also not increase spending. If enacted, the effect of either case would be reductions in funding for activities that was not set aside in order to accommodate funding in the bill that was specified as set asides. To avoid such reductions, amendments may include offsets from other appropriations in the bill.

Types of Offset Amendments

There are two types of offset amendments, clause 2(f) and reachback (or fetchback) amendments, available during consideration of regular and supplemental appropriations bills in the Committee of the Whole. Clause 2(f) refers to clause 2(f) of House Rule XXI, which establishes some of the parliamentary procedures governing the consideration of such amendments.¹²

Clause 2(f) Offset Amendments

Clause 2(f) offset amendments consist of two or more amendments considered together (or en bloc)¹³ that would change amounts by directly adding text or changing text in the body of the bill; as opposed to reachback offset amendments, which are generally offered at the end of the bill, that change funding amounts by reference. The clause 2(f) offset amendment transfers funds among appropriations or activities in the pending bill and, taken as a whole, does not cause the bill to exceed the total new budget authority or outlay levels already provided in the bill. If the reported bill provides a total spending level(s) lower than the 302(a) and 302(b) ceilings, the sponsor of a clause 2(f) offset amendment can not use the difference. The member must provide a full offset to pay for the proposed increase. As noted above, however, appropriations bills considered on the House floor are typically at or just below the 302(b) allocations.

¹² House Rule XXI, clause 2(f):During the reading of an appropriation bill for amendment in the Committee of the Whole House on the state of the Union [Committee of the Whole], it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc under this paragraph, such amendments may amend portions of the bill not yet read for amendment (following disposition of any points of order against such portions) and are not subject to a demand for division of the question in the House or in the Committee of the Whole. U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives, 110th Congress (or House Manual)*, 110th Cong., 2nd sess., H.Doc. 109-157 (Washington: GPO, 2007).

¹³ Under the House Rule XXI, clause 2(f) amendments are allowed to be considered en bloc. Other amendments may generally not be considered en bloc unless by unanimous consent or pursuant to the terms of a special rule. U.S. Congress, House, *House Practice: A Guide to the Rules, Precedents, and Procedures of th House (or House Practice)*, 108th Cong., 1st sess., prepared by Wm. Holmes Brown and Charles W. Johnson (Washington: GPO, 2003), chapter 2, section 30.

An example of a clause 2(f) offset amendment follows. This amendment would have decreased the lump-sum appropriation for the Bureau of the Census, Periodic Censuses and Programs account by \$10 million; increased the lump-sum appropriation for the Office of Justice Programs, State and Local Law Enforcement Assistance account by \$10 million; and increased a set aside within the latter appropriation for Southwest Border Prosecutor Initiative by the same amount.

Page 6, line 23, after the dollar amount insert “(reduced by \$10,000,000).”

Page 42, line 8, after the dollar amount insert “(increased by \$10,000,000).”

Page 43, line 8, after the dollar amount insert “(increased by \$10,000,000).”¹⁴

These offset amendments typically change a spending level by inserting after the amount a parenthetical increase or decrease (see example above). Under House rules, an amendment generally cannot amend text previously amended.¹⁵ Changing a monetary figure by a parenthetical increase or decrease placed after the amount text, rather than changing the amount text, however, is allowed.¹⁶

Under House rules, clause 2(f) offset amendments must be offered when the first portion of the bill to be amended is pending, but the Committee of the Whole may waive this requirement by unanimous consent.¹⁷ In Committee of the Whole, appropriations bills are generally read for amendment sequentially by paragraph. After the reading clerk reads or designates a paragraph, the presiding officer entertains points of order against that paragraph, and then members propose amendments to it. After the clerk has designated or begun reading the next paragraph, amendments to the former paragraph are not in order.¹⁸

Prior to consideration of a proposed clause 2(f) offset amendment, the Presiding Officer asks if any member wants to raise a point of order against any provision the en bloc amendment would change. If a point of order against such a provision is sustained, the provision is stricken from the bill and is no longer amendable. Therefore, the offset amendment would fall as well, unless appropriately modified or amended by unanimous consent.

Four additional procedural requirements regarding clause 2(f) offset amendments are discussed below. These amendments (1) must offset any increase in both budget authority and outlays; (2) may contain certain unauthorized appropriations; (3) cannot add new appropriations or funding set asides; and (4) cannot contain legislation.

¹⁴ Representative Capito, remarks in the House, *Congressional Record* (daily edition), vol. 153 (July 25, 2007), p. H8435. The amendment was offered to the FY2008 Commerce, Justice, and Science appropriations bill.

¹⁵ *House Manual*, section 469.

¹⁶ *House Practice*, chapter 2, section 42.

¹⁷ That is, the amendment is allowed to be offered out of order if no Representative objects. The House could also adopt a special rule waiving the point of order. Prior to consideration of an appropriations bill, the House typically adopts a special rule setting procedures parameters regarding the consideration of the bill (see “Opportunities to Waive Parliamentary Rules”).

¹⁸ During consideration of appropriations measures, the Committee of the Whole often agrees by unanimous consent to open for amendment at any point a portion of the bill, such as several paragraphs or a title. Such an agreement eliminates the requirement to propose amendments to the specified portion of the bill in sequential order.

Must Offset Both Budget Authority and Outlays

Under House Rule XXI, clause 2(f), any spending increases in a clause 2(f) offset amendment must be offset by commensurate reductions in both new budget authority and outlays. By contrast, the 302(f) point of order only enforces 302(a) and 302(b) allocations of new budget authority.¹⁹ The spending increases and decreases contained in an offset amendment must be provided in the same fiscal year, the year of the pending appropriations bill.

Offset amendments providing equal increases and decreases in new budget authority might not produce equal amounts of outlays in the same fiscal year. The amount of resulting outlays may vary among different accounts, because the length of time needed to complete the activities funded may differ. It takes less time to purchase office supplies than to complete construction of an aircraft. For example, in **Table 1**, the distribution of outlays from \$20 million in new budget authority varies between two accounts.

Table 1. Distribution of Outlays
(in millions of dollars)

Account	FY2009	FY2010	FY2011	FY2012	Total
Operating Expenses	18	2	—	—	20
Construction	2	2	8	8	20

Source: Table compiled by the Congressional Research Service.

Based on historical spending practices, the Congressional Budget Office (CBO) each year estimates the speed at which outlays from each appropriation will occur, referred to as the *spendout rates* (or *outlay rates*). A spendout rate is the rate at which budget authority is expected to be spent (outlays) in a fiscal year.²⁰ In **Table 1**, the FY2009 spending rate for the operating expenses account is 90%, while the rate for the construction account is 10%.

The varying spendout rates of appropriations sometimes complicate efforts to increase budget authority. In **Table 2**, increasing FY2009 budget authority for an operating expenses account by \$20 million produces \$18 million in outlays. Decreasing a construction account by the same amount in budget authority, however, produces only \$2 million in outlays. Under this scenario, reductions in three accounts produce the \$18 million in outlays needed to fund the \$20 million budget authority increase in operating expenses. By contrast, increasing the construction account by \$20 million in budget authority would be easier since only \$2 million in outlays would be required.

¹⁹ The 311(a) point of order enforces total new budget authority and outlays.

²⁰ U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington: GPO, September 2005), p. 91.

Table 2. Budget Authority, Spendout Rate, and Outlays
(in millions of dollars)

Budget Authority	FY2009 Budget Authority	Spendout Rate for FY2009	FY2009 Outlays
Increase			
Operating Expenses	20	90%	18
Offsets			
Construction	20	10	2
Government Assistance Program	20	20	4
Security	20	60	12
Total	60		18

Source: Table compiled by the Congressional Research Service.

Representatives (or their staff) routinely ask CBO to estimate the budgetary impact of their clause 2(f) offset amendments. A CBO estimate is required because while the Congressional Budget Act gives the authority for scoring amendments subject to the 302(f) and 311(a) points of order to the House Budget Committee, the committee relies on CBO's determinations.

Can Not Add New Appropriations or Funding Set Asides

Clause 2(f) offset amendments can only change dollar amounts in the bill. They cannot add a new lump-sum appropriation or set aside, even if the lump-sum or set aside does not violate other parliamentary rules.

May Not Contain Legislation

House Rule XXI, clause 2(b), prohibits legislation in committee-reported general appropriations measures and clause 2(c) prohibits legislation in amendments to those measures.²¹ For purposes of this rule, *legislation* refers to any provision in an appropriations bill or related amendment that changes existing law, such as proposals amending or repealing existing law, or creating new law. The following are examples of legislative language: abolishing a department, agency, or program; providing, changing, limiting, or waiving an authorization; providing emergency designations for appropriations;²² or increasing rescissions in the appropriations bill.²³

²¹ *House Manual*, House Rule XXI, clause 2(b) and (c).

²² Under the FY2009 budget resolution (S.Con.Res. 70, section 301(b), 110th Cong.), budget authority (and the resulting outlays) for FY2008 and FY2009 designated as either for overseas deployment and related activities or as necessary to meet emergency needs are exempt from the 302(f) and 311(a) points of order. While this exemption applies, in part, to appropriations measures and related amendments; in the House, such language is considered legislation on an appropriations bill. Under House precedents, the language creates new law, which would not otherwise exist. Special rules typically waive this rule for provisions in appropriations bills, but typically not amendments.

²³ *Rescissions* cancel previously enacted budget authority. While the House Appropriations Committee may report rescissions, amendments may not add them or increase rescissions in the reported bill.

May Contain Certain Unauthorized Appropriations

House Rule XXI, clause 2(a), generally prohibits unauthorized appropriations in certain committee-reported appropriations bills and amendments to such bills.²⁴ Certain amendments, such as clause 2(f) offset amendments, however, may increase the level of funding for certain unauthorized appropriations already in the bill.

Under clause 2(a), legislation must generally be enacted authorizing subsequent appropriations for a program (or an agency, account, project, or activity) before appropriations for that program can be considered on the House floor. An “[a]uthorization for a program may be derived from a specific law providing authority for that particular program or from a more general existing law—“organic law”—authorizing appropriations for such programs.”²⁵

The rule prohibits floor consideration of appropriations for a program whose authorization has expired or was never authorized, or whose budget authority exceeds the ceiling authorized. Appropriations violating these restrictions are *unauthorized appropriations*.²⁶ While this prohibition applies to *general appropriations bills*, regular appropriations bills and supplemental appropriations measures which provide funds for more than one purpose or agency; it does not apply to continuing resolutions.²⁷

Appropriations bills frequently include unauthorized appropriations. Such appropriations are allowed to remain in an appropriations bill when the House adopts a special rule waiving points of order against the appropriation; or, less frequently, when no one raises a point of order against it.²⁸ Under House precedents, a germane amendment that merely perfects an unauthorized appropriation permitted to remain in the bill is allowed.²⁹ An example would be an amendment that would only increase the unauthorized amount and would do it by either amending the amount text or by inserting a parenthetical increase after the amount (such as an en bloc clause 2(f) offset amendment) would could be allowed. A scenario providing the stages of action:

1. An authorization act provided an authorization of appropriations of \$2 million for program yellow through FY2008; as of the close of FY2008, the authorization had expired.
2. Subsequently, an FY2009 regular appropriations bill provides an unauthorized appropriation of \$2 million for program yellow.
3. The House adopts a special rule waiving House Rule XXI, clause 2(a) against all provisions in the bill, allowing the above appropriation to remain.
4. A clause 2(f) offset amendment parenthetically increasing the unauthorized appropriation by \$1 million for program yellow is allowed.

²⁴ *House Manual*, House Rule XXI, clause 2(a).

²⁵ *House Practice*, chapter 4, section 12; p. 84.

²⁶ Unauthorized appropriations for works and projects in progress are allowed.

²⁷ In the House, continuing resolutions are not considered general appropriations bills and, therefore, may include unauthorized appropriations. For background information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

²⁸ Prior to consideration of a regular or supplemental appropriations bill, the House typically adopts a special rule waiving, in part, this rule for the entire bill or the entire bill with selected exceptions.

²⁹ For more information, see *House Practice*, chapter 4, section 69.

Although clause 2(f) offset amendments may increase unauthorized appropriations, they remain subject to the spending ceilings enforced by the 302(f) and 311(a) points of order as well as by House Rule XXI, clause 2(f).

A clause 2(f) amendment may not propose to increase an “authorized appropriation” in an appropriations bill beyond the authorized level. In the scenario above, for example, the authorization act included a \$2 million authorization for FY2009 and the regular appropriations bill provided the full amount, an offset amendment increasing the amount by \$1 million would be prohibited.

Exempt from a “Demand for a Division of the Question”

Under House Rule XXI, clause 2(f), these amendments are not subject to a “demand for a division of the question.” That is, a member cannot demand separate consideration of two or more provisions in such en bloc amendments, instead the House considers the amendment as a whole.³⁰

Reachback Offset Amendments

Reachback (or *fetchback*) *offset amendments* add a new section (or title), typically at the end of an appropriations measure, that reaches back to change amounts previously considered by reference.³¹ For example, the following amendment would have inserted a new section at the end of the FY2008 Labor, Health and Human Services, and Education regular appropriations bill:

Title VI—Additional General Provisions

Sec. 601. The amounts otherwise provided by this Act are revised by reducing the amount made available for the “Department of Labor, Employment and Training Administration, Training and Employment Services”, by increasing the amount made available for the “National Institutes of Health, National Cancer Institute”, and by increasing the amount made available for the “National Institutes of Health, National Institute of Neurological Disorders and Stroke” by \$49,000,000, \$10,000,000, and \$10,000,000, respectively.³²

In contrast to clause 2(f) offset amendments, reachback amendments may increase spending provided in the bill as long as they do not violate sections 302(f) and 311(a) points of order.³³

Reachback amendments

- must offset budget authority, may not necessarily have to offset outlays;
- may not include unauthorized appropriations;

³⁰ For more information on a “demand for a division of the question,” see “Must Be Drafted to Avoid a ‘Demand for a Division of the Question’” under reach back amendments below; and *House Manual*, House Rule XVI, clause 5.

³¹ In cases in which the amount has already been amended, reachback amendments do not violate House rules prohibiting amendments that would amend text previously amended; since reachback amendments change amounts by reference, as opposed to changing the text.

³² Representative Garrett, remarks in the House, *Congressional Record* (daily edition), vol. 153, July 19, 2007, p. H8131.

³³ For information on these points of order, see “Spending Ceilings and Offset Amendments” above.

- may add new lump-sum appropriations and set asides subject to certain restrictions;
- may not contain legislation;
- may provide across-the-board spending reductions as offsets; and
- must be drafted to avoid a demand for a division of the question.

Must Offset Budget Authority, May Not Necessarily Have To Offset Outlays

Both Congressional Budget Act points of order enforce new budget authority, but only the 311(a) point of order also enforces outlays. Of the three enforceable spending levels, the 302(b) new budget authority allocations are generally the more restrictive. Furthermore, only the last spending measures considered for a fiscal year, typically supplementals or last regular bills, are subject to the 311(a) point of order. For reachback amendments, budget authority offsets are generally the primary procedural concern.

Opponents of a reachback amendment may, however, raise the lack of outlay offsets as a concern for policy reasons. They might also argue that the resulting outlay increases might present a procedural problem for the bill in the Senate or in conference.³⁴

In the case of reachback amendments that also provide sufficient new budget authority reductions to offset any outlay increases, Representatives (or their staff) routinely ask CBO to estimate the outlay effect of their amendments.³⁵

The spending increases and decreases contained in an offset amendment must be provided in the same fiscal year, the year of the pending appropriations bill.

May Add New Appropriations (and Set asides)

Reachback amendments may contain new appropriations and set asides for certain activities not already included in the bill. Such new appropriations and set asides must be germane to the bill.

Under House Rule XVI, clause 7,³⁶ all amendments must be *germane* to the pending bill. That is, they may not add new subject matter to the bill. Reachback amendments offered at the end of the bill must be germane to the bill, while those offered at the end of a title must be germane to the title. Regular appropriations measures generally have broad subject matter, which may provide flexibility for reachback amendments.

³⁴ For more information Senate and conference procedures, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streever; and CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

³⁵ See “Must Offset Both Budget Authority and Outlays” under clause 2(f) offset amendments above.

³⁶ *House Manual*, House Rule XVI, clause 7.

May Not Contain Legislation

Reachback amendments may not change existing law.³⁷ As a result, amendments adding new set asides are often restricted by this prohibition.

One of the guiding principles in interpreting this prohibition is that an amendment designating funds may not interfere with an executive branch official's statutory authority, for example, they may not significantly alter the official's discretion. Such language changes existing law and is, therefore, prohibited. For example, if an authorization law provides an agency head with the authority to allocate funds within a particular lump-sum appropriation, an amendment proposing a new set aside would alter the agency head's authority and would be out of order.

Where a new set aside would violate the rules, an amendment sponsor frequently does not include the set aside in the amendment; instead, the sponsor discusses it during debate on the amendment. This approach is used to avoid the point of order against the amendment. During conference on the bill, the amendment sponsor may urge the conferees to include the set aside in the conference report or accompanying joint explanatory statement.

May Not Include Unauthorized Appropriations

Under House Rule XXI, clause 2(a), new appropriations and set asides included in amendments must be proposed for authorized purposes. All new set asides must also be proposed to authorized lump-sum appropriations.³⁸

In contrast to clause 2(f) offset amendments, reachback amendments may not increase unauthorized appropriations permitted to remain in the bill because they do not change the text of the bill. The section added by a reachback amendment is considered adding a further unauthorized appropriation, as opposed to merely perfecting the text.³⁹

Must Be Drafted to Avoid a "Demand for a Division of the Question"

Under House Rule XVI, clause 5,⁴⁰ a member may demand separate consideration of two or more individual portions of an amendment if each portion identified, when standing alone, is a separate, substantive proposition and is grammatically separate "... so that if one proposition is rejected a separate proposition will logically remain."

Because reachback amendments are potentially subject to a demand for a division of the question, if the presiding officer rules that an amendment is divisible, each divided portion of the amendment would be considered separately and subject to separate debate and amendment, as well as a separate vote.

³⁷ See "May Not Contain Legislation" under clause 2(f) offset amendments above.

³⁸ *House Manual*, House Rule XXI, clause 2(a).

³⁹ *House Manual*, section 1058. For an explanation of unauthorized appropriations, see "May Contain Certain Unauthorized Appropriations" under clause 2(f) offset amendments above.

⁴⁰ *House Manual*, House Rule XVI, clause 5.

members often demand a division of the question on an amendment in order to defeat one or more of the portions of an amendment. For example, a majority of members might be opposed to the portion of an offset amendment that decreases funds for a particular program. One of them might demand a division of question that, if granted, would allow a separate vote on the funding decrease portion of the amendment. Individual portions of the amendment may also be subject to the Congressional Budget Act points of order.

May Provide Across-the-Board Spending Reductions as Offsets

Reachback amendments may include as an offset across-the-board spending cuts, while clause 2(f) amendments may only directly change amounts in the bill.

Procedural Considerations

Parliamentary rules may be suspended or waived in order to consider offset amendments that violate these rules, typically by House adoption of a special rule. However, this approach has been used infrequently.

There are certain procedural advantages of clause 2(f) amendments over reachback amendments as well as vice versa.

Opportunities to Waive Parliamentary Rules

There are generally three limited opportunities to suspend or waive the rules governing consideration of an offset amendment: (1) if no one raises a point of order the rules would implicitly be waived; (2) if the House adopts a special rule explicitly waiving points of order against the amendment; or (3) if the House agrees by unanimous consent to waive the rules. Otherwise, if the presiding officer sustains a point of order against an amendment for violating the parliamentary rules previously discussed, the amendment falls.

First, House rules are not generally self-enforcing. A Representative must raise a point of order that an amendment violates a specific rule. If no one opposes an amendment, a point of order does not have to be raised.

Second, under current practice, the House Committee on Rules usually reports a special rule setting additional procedural parameters for the consideration of appropriations measures. The House typically adopts the special rule and then considers the particular appropriations measure pursuant to it, as well as any subsequent unanimous consent agreement.⁴¹ If an offset amendment would violate one or more parliamentary rules, the sponsor may ask the Rules Committee to include a waiver protecting the amendment from the point(s) of order.

Although special rules generally do not provide special protection for offset amendments to regular appropriations bills, they have sometimes protected those to supplemental appropriations measures. The rationale for protecting clause 2(f) amendments is that the opportunity to offer

⁴¹ See CRS Report RS22711, *Considering Regular Appropriations Bills on the House Floor: Current Practice Regarding Comprehensive Unanimous Consent Agreements*, by Christopher M. Davis.

offset amendments is otherwise extremely limited. The 302(f) point of order requires that funding increases and offsets are under the same subcommittee. Clause 2(f) amendments and generally reachback amendments must include offsets from the pending bill. Supplementals may not include funding for accounts in each subcommittee (or most subcommittees); furthermore, they often include a limited number of accounts under subcommittees included. As a result, there are relatively few offset opportunities.

Third, a member might ask to consider an amendment violating the rules by unanimous consent. A single member, however, can prevent such consideration by simply objecting to the unanimous consent request.

To attain their policy objectives, sponsors of controversial offset amendments generally select either a clause 2(f) or reachback amendment and work within the rules governing their consideration.

Selected Procedural Advantages of Clause 2(f) Amendments

May Include Unauthorized Appropriations

Appropriations bills typically include some unauthorized appropriations. Generally, the House Rules Committee reports a special rule adopted by the House, waiving the prohibition against unauthorized appropriations for most or all unauthorized appropriations in a reported bill. Clause 2(f) amendments can increase those unauthorized appropriations allowed to remain. Reachback amendments, however, can only increase authorized appropriations in the bill to their authorized level (if there is one).

In some cases, entire bills or significant portions of bills have consisted of unauthorized appropriations. As a result, reachback amendments could not increase those amounts. For example, many of the lump-sum appropriations provided in the committee-reported regular defense appropriations bills have typically been unauthorized because of the timing of consideration of the annual defense authorization bill. The House has adopted special rules regarding each bill waiving the application of House Rule XXI, clause 2. As a result, clause 2(f) amendments to those bills were in order, while reachback amendments were limited to the few, if any, authorized appropriations.

Considered Earlier

The timing of clause 2(f) amendments is sometimes an advantage over reachback amendments since clause 2(f) amendments are offered earlier in a bill's consideration. By the time reachback amendments are considered, there may be fewer politically appealing offset options available. Amendments, including clause 2(f) amendments may have already been adopted that reduced the account a reachback amendment sponsor selected for offsets. The account might be reduced so low that there is no support for further reductions.

Selected Procedural Advantages of Reachback Amendments

May Add New Lump-Sum Appropriations or Set asides

Reachback amendments may add new lump-sum appropriations and some set asides within certain restrictions, while clause 2(f) amendments are limited only to changing amounts already in the bill.

May Provide Across-the-Board Cuts in Spending

Reachback amendments may include as an offset an across-the-board spending cut, while clause 2(f) amendments may only directly change amounts in the bill.

May Exceed Bill's Total Spending Levels

Reachback amendments can exceed the bill's total spending level, while clause 2(f) amendments cannot. This advantage is limited, however, since most appropriations bills considered on the floor are either at or just below the subcommittee allocations.

May Not Necessarily Have to Offset Outlays

Another limited advantage of reachback amendments is that for most appropriations bills, reachback amendments must offset only new budget authority. Clause 2(f) amendments must offset both new budget authority and outlays. In practice, however, this advantage of reachback amendments over clause 2(f) amendments is limited because, in order to garner political support for reachback amendments, sponsors sometimes provide offsets in both budget authority and outlays.

Author Contact Information

Sandy Streeter
Analyst on Congress and the Legislative Process
sstreeter@crs.loc.gov, 7-8653

Acknowledgments

The author is grateful to the following individuals for their advice: Ira Forstater, House Office of the Legislative Counsel; Thomas J. Wickham, House Office of the Parliamentarian; and James V. Saturno, Congressional Research Service.