



# Regular Appropriations Bills: Terms of Initial Consideration and Amendment in the House, FY1996-FY2012

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## Summary

Each year, Congress considers appropriations measures that provide funding for various federal government activities. Such measures are commonly referred to as “regular” appropriations bills. In recent years, the House has typically considered a regular appropriations bill after first reaching agreement on the procedural terms of its consideration, most frequently through the adoption of a special rule, or occasionally through a unanimous consent agreement (UCA). Rarely have regular appropriations bills been considered as privileged business.

This report examines the terms under which the regular appropriations bills are typically brought up and initially considered on the House floor, as well as the practices of the House with regards to amendment opportunities and the waiver of points of order, for FY1996 to FY2012 (104<sup>th</sup>-112<sup>th</sup> Congresses).

House Rule XIII, clause 5(a) allows a motion to be made to provide for consideration of a general appropriations measure. When a regular appropriations bill is considered as a privileged measure by this method, this procedure generally permits any amendments thereto that comply with the rules of the House to be considered. Providing for consideration by a special rule or UCA, however, allows this amending process to be altered. Such alterations can place preconditions on the offering of amendments, directly prescribe the amendments that will be in order, waive points of order against amendments, or place time limits on consideration.

For FY1996 to FY2012, the means used for consideration of most regular appropriations bills provided for some type of “open” amending process allowing an unrestricted number of amendments to be offered that comply with House rules. Such processes also often waived points of order against certain amendments, and, less frequently, required that amendments be preprinted in the *Congressional Record* in advance of consideration. The Legislative Branch Appropriations bill was the one most frequently considered under a “structured” amendment process. On all but one occasion, the means used for initiating consideration of Legislative Branch bills during this period specified a list of amendments that could be offered and waived points of order against those amendments. Structured processes were used for other types of bills on three occasions through the 110<sup>th</sup> Congress, and on 13 occasions during the 111<sup>th</sup> Congress. A “closed” process allowing no amendments was used on only one occasion, for consideration of the FY2004 Legislative Branch Appropriations bill. Other practices during this period have included the imposition of time caps on consideration of the bill, sections of the bill, or amendments.

The standing rules of the House place certain restrictions on when a measure is eligible for consideration and what content may be considered. The House sometimes chooses to “waive” or set aside its standing rules during the consideration of certain measures or matters through a special rule or UCA. For FY1996 to FY2012, the practice of providing broad waivers for “points of order against consideration” evolved considerably—from providing no waivers or only waivers of specific rules, to providing blanket waivers of all points of order against consideration or blanket waivers with exceptions. This change in procedural practice, however, does not necessarily reflect changes in the content of the bills. The practice of providing waivers for Rule XXI, clause 2, with exceptions for specified language in the bill, often referred to as the “Army Protocol,” steadily increased during this period, until the FY2008 regular appropriations bills. For the FY2008 to FY2011 bills, only waivers that covered the entire measure were used. Most recently, a waiver with specified exceptions was provided on one occasion in 112<sup>th</sup> Congress.

## **Contents**

Introduction.....	1
Initiating Consideration of Regular Appropriations Bills in the House.....	3
Consideration as Privileged.....	3
Special Rules.....	5
Unanimous Consent Agreements.....	6
Amending Regular Appropriations Bills in the House.....	6
Consideration of Amendments to Regular Appropriations Bills.....	7
Limiting Debate and Amendments.....	8
Structuring the Consideration of Amendments Prior to Initial Consideration.....	9
Open Amending Processes.....	1
Structured and Closed Amending Processes.....	2
Other Amending Processes.....	3
Waiving House Rules Prior to Consideration of Regular Appropriations Bills.....	4
Consideration Waivers.....	5
Rule XXI, Clause 2 Waivers.....	7

## **Tables**

Table 1. Regular Appropriations Bills and Methods of Initial Consideration.....	4
Table 2. Amending Processes for Initial Consideration of Regular Appropriations Bills, FY1996-FY2012.....	12
Table 3. Waivers of Points of Order Against Consideration for Regular Appropriations Bills, FY1996-FY2012.....	6
Table 4. Rule XXI, Clause 2 Waivers for Initial Consideration for Regular Appropriations Bills, FY1996-FY2012.....	9

## **Contacts**

Author Contact Information.....	10
Acknowledgments.....	10

## Introduction

Each year, Congress considers appropriations measures that provide funding for various federal government activities. Such measures are commonly referred to as “regular” appropriations bills. Because of the importance of these measures, the standing rules of the House establish special terms for their consideration, including making them *privileged* for consideration<sup>1</sup> and providing restrictions on the amendment process to which they are subject.<sup>2</sup> In practice, however, the extent to which these procedures are applicable to a specific regular appropriations bill is often dependent on whether the House chooses to consider it under these standing rules, or to adopt alternate procedures for the individual case.

In recent years, the House has typically considered a regular appropriations bill only after first reaching agreement on the procedural terms of its consideration. Since at least the mid-1990s, the House has provided for consideration of nearly all regular appropriations bills under *special rules*, which are simple resolutions reported by House Rules Committee that set the terms for considering a measure.<sup>3</sup> During this period, the House has also occasionally initiated consideration under the terms of *unanimous consent agreements* (UCAs), which have typically resembled special rules in form and effect.<sup>4</sup> Rarely have regular appropriations bills been considered under their status as privileged business.

House Rule XIII allows a motion to be made to provide for consideration of a general appropriations bill. When regular appropriations bills are brought to the floor as privileged business by this method, there are no restrictions on the amendments that may be offered beyond what is provided in the standing rules of the House. Such rules affect both the content and timing of amendments, but do not provide significant restrictions on debate or the number of amendments that may be offered. Consequently, the consideration of a regular appropriations bill under its privileged status may be time consuming. Since about the 80<sup>th</sup> Congress (1947-1948), special rules that govern proceedings on regular appropriations bills have generally also allowed any amendments to be offered that would otherwise be in order under House rules.<sup>5</sup> During the

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<sup>1</sup> Privileged business can “supersede or interrupt other matters that might otherwise be called up or be pending before the House” (William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2011) (hereafter, *House Practice*), chapter 36, §4, p. 657). Regular appropriations bills that are reported from the House Appropriations Committee are privileged business under Rule XIII(5) (*House Practice*, chapter 4, §3, p. 75).

<sup>2</sup> This report does not comprehensively address the details of these special procedures. For further information, see, for example, CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup; CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by Bill Heniff Jr. and Elizabeth Rybicki; CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup; CRS Report RL31055, *House Offset Amendments to Appropriations Bills: Procedural Considerations*, by Jessica Tollestrup.

<sup>3</sup> The House Rules Committee reports special rules pursuant to House Rule X clause 1(m). For further information on this process see the *Survey of Activities of the House Committee on Rules for the First Session of the 112<sup>th</sup> Congress* (H.Rept. 112-357), pp. 24-26.

<sup>4</sup> For further information on unanimous consent agreements, see *House Practice*, chapter 54.

<sup>5</sup> Between the late 19<sup>th</sup> through mid-20<sup>th</sup> Century, special rules for regular appropriations bills were only used occasionally, generally to curtail amendments. From the 80<sup>th</sup> (1947-1948) through 104<sup>th</sup> (1995-1996) Congresses, however, special rules for regular appropriations bills were used with much greater frequency, and the primary purpose of these rules was typically to provide waivers of House rules for provisions in the bill. Generally, these special rules did not otherwise structure the amending process. For further background on the use of special rules prior to the 104<sup>th</sup> (continued...)

period covered by this report, particularly during the 111<sup>th</sup> Congress (2009-2010), regular appropriations bills have occasionally been considered under special rules that also placed further restrictions on the amending process.

Special rules and UCAs have also been used frequently to waive House rules that could prevent or delay the consideration of regular appropriations bills as reported by the committee.<sup>6</sup> These standing rules have included both those that would prevent consideration of the measure itself and those barring certain kinds of provisions it might contain, but the coverage of such waivers has changed over the period studied. In earlier years, waivers of rules precluding consideration tended to specify those rules waived, but more recent special rules have often contained a blanket waiver. One of the most frequently waived standing rules barring specific kinds of provisions has been of House Rule XXI, clause 2, which prohibits appropriations not authorized by law and the inclusion of “legislative” provisions.<sup>7</sup> Such waivers may include exceptions for certain portions of the bill, leaving those portions vulnerable to a point of order. Since the 110<sup>th</sup> Congress (2007-2008), however, the special rules or UCAs initiating consideration have provided a blanket waiver of Rule XXI, clause 2, in almost all instances.

This report examines the terms under which the regular appropriations bills are typically brought up and initially considered on the House floor, as well as the practices of the House with regards to amendment opportunities and waivers, for FY1996 to FY2012 (104<sup>th</sup>-112<sup>th</sup> Congresses). It focuses exclusively on initial consideration of regular appropriations bills and does not address the consideration of conference reports or amendments between the Houses. It also does not address the few instances where an appropriations bill was first considered on the House floor combined with one or more other appropriations bills (so-called omnibus or minibus bills).<sup>8</sup> Similarly, this report does not cover the initial consideration of supplemental appropriations bills or continuing appropriations measures, as such measures tend to be considered under different terms than is typical of regular appropriations bills.<sup>9</sup> It also does not discuss special rules prior to the 104<sup>th</sup> Congress (1995-1996), as the structure of those rules and the floor consideration of regular appropriations bills differed significantly from current practice. For example, regular

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Congress, see U.S. Congress, House Committee on Rules, *A History of the Committee on Rules: 1<sup>st</sup> to 97<sup>th</sup> Congresses*, committee print, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess., (Washington, DC: GPO, 1983), pp. 156-159; Stanley Bach, “From Special Orders to Special Rules: Pictures of House Procedures in Transition,” paper presented at the American Political Science Association annual meeting, San Francisco, CA, 1990, pp. 28-29; Stanley Bach, “Representatives and Committees on the Floor: Amendments to Appropriations Bills in the House of Representatives, 1963-1982,” *Congress and the Presidency*, vol. 13, no. 1 (spring 1986), pp. 43-44.

<sup>6</sup> See footnote 5.

<sup>7</sup> For further information on House Rule XXI, clause 2, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh, and CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup.

<sup>8</sup> For further information on omnibus appropriations measures, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup.

<sup>9</sup> Supplemental appropriations bills provide funding for unforeseen needs or increase funding for programs for which appropriations have previously been provided. Continuing appropriations measures, often referred to as “continuing resolutions,” maintain temporary funding for agencies and programs if regular appropriations have not been enacted before the beginning of the fiscal year. In recent years, supplemental and continuing appropriations measures have typically been considered under structured or closed rules. See “Structuring the Consideration of Amendments Prior to Initial Consideration” section of this report for a discussion of the types of amending processes used for the consideration of regular appropriations bills.

appropriations bills were often brought up using their privileged status in combination with a special rule that waived points of order.

Examination of the practices of the House for considering regular appropriations bills shows that consideration was sometimes further structured once it had been initiated through an additional special rule or unanimous consent agreement. For the purposes of consistency, the data presented in this report for each bill includes only the terms under which consideration was initiated. The practice of further structuring those terms after consideration has begun is discussed below in the report section, “Limiting Debate and Amendments.”

This report proceeds in three sections. The first section provides a general overview of how the consideration of regular appropriations bills has been initiated between FY1996 and FY2012. The second section discusses the floor consideration of amendments to regular appropriations bills and the types of amending processes that have been established at the beginning of consideration. The third section discusses waivers of points of order both against consideration and of Rule XXI, clause 2, and how the form of those waivers has evolved during this period.

## Initiating Consideration of Regular Appropriations Bills in the House

For the FY1996 to FY2012 regular appropriations bills, the frequency of each method through which floor consideration was initiated is illustrated in **Table 1**. During the earlier part of this period, all of the regular appropriations bills received floor consideration in all but one fiscal year. Since FY2003 appropriations cycle, however, all regular appropriations bills received floor consideration in only four fiscal years, most recently for FY2010. Over the entire period, special rules were used to initiate consideration of regular appropriations bills in almost all instances. Unanimous consent agreements and consideration as privileged measures were also used on some occasions, in five of the 19 fiscal years during this period.

### Consideration as Privileged

House Rule XIII, clause 5, allows a regular appropriations bill to be brought to the floor for consideration by a privileged motion to proceed to its consideration after it has been reported by the Appropriations Committee, and certain other reporting and layover conditions have been satisfied.<sup>10</sup> Such a motion may not be debated, so that initiating consideration in this matter requires only as much floor time as is necessary to agree to the motion.<sup>11</sup> Consideration of a

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<sup>10</sup> Clause 4(a)(1) of Rule XIII generally prohibits a measure from being considered until the third calendar day on which a committee report is available, with some exceptions. Clause 2(l) of Rule XI requires that members of the committee reporting the bill, upon request, be given two additional days to file supplemental, minority, or additional views to be included in the report. Clause 4(c) of Rule XIII requires that printed hearings on general appropriations bills be available for three days prior to being considered in the House.

<sup>11</sup> By precedent, the motion may not be amended, debated, laid on the table, or infinitely postponed. Rules of the House of Representatives, in *House Manual, One Hundred Twelfth Congress*, H.Doc. 111-157, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., [compiled by] John V. Sullivan, Parliamentarian (Washington: GPO, 2011), (hereafter *House Manual*), §856, p. 647. For regular appropriations bills, such a motion to resolve into the Committee of the Whole for consideration of the bill typically has been agreed to by unanimous consent or voice vote.

regular appropriations bill under its privileged status does not, however, provide a mechanism for House rules to be waived or altered to structure the debate and amending process. Thus, the legislative process in the standing rules of the House governs, unless superseded by unanimous consent or the adoption of a special rule, either prior to or after consideration has begun.

Only three regular appropriations bills were brought to the floor during this period under their status as privileged business, two for FY1998 and one for FY2004 (see **Table 1**). In all other instances, the House first agreed to the terms of consideration, and then brought the bill to the floor.

**Table 1. Regular Appropriations Bills and Methods of Initial Consideration**

Congress	Fiscal Year	Number of Regular Appropriations Bills <sup>a</sup>	Number Receiving Initial Floor Consideration <sup>g</sup>	Number Initially Considered as Privileged	Number Initially Considered by Special Rule	Number Initially Considered by Unanimous Consent
104	1996	13	13		13	
	1997	13	13		12	1 <sup>b</sup>
105	1998	13	13	2	9	2 <sup>c</sup>
	1999	13	13		13	
106	2000	13	12		12	
	2001	13	13		13	
107	2002	13	13		11	2 <sup>d</sup>
	2003	13	5		5	
108	2004	13	13	1	9	3 <sup>e</sup>
	2005	13	12		12	
109	2006	11	11		11	
	2007	11	10		10	
110	2008	12	12		10	2 <sup>f</sup>
	2009	12	1		1	
111	2010	12	12		12	
	2011	12	2		2	
112	2012	12	7		7	

**Source:** Prepared by CRS using data obtained from the Legislative Information System (available at <http://www.congress.gov>) and the *Congressional Record*.

- a. Between the 104<sup>th</sup> and 108<sup>th</sup> Congresses, the 13 House Appropriations subcommittees were responsible for one regular appropriations bill each. During the 109<sup>th</sup> Congress, due to subcommittee realignment, the total number of regular appropriations bills was reduced to 11 annually. Beginning in the 110<sup>th</sup> Congress, subcommittee jurisdictions were again realigned for a total of 12 subcommittees, each of which is currently responsible for a single regular appropriations bill. For further information on subcommittee realignment during this period, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2011*, by Jessica Tollestrup.

- b. UCA initiated consideration for H.R. 3845 (104<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 142, part 13 (July 18, 1996), p. H7907.
- c. UCA initiated consideration for H.R. 2159 (105<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 143, part 11 (July 24, 1997), p. H5750; UCA initiated consideration for H.R. 2264 (105<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 143, part 12 (July 31, 1997), p. H6667.
- d. UCA initiated consideration for H.R. 2904 (107<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 147, part 12 (September 21, 2001), p. H5867; UCA initiated consideration for H.R. 3061 (107<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 147, part 14 (October 11, 2001), p. H6568.
- e. UCA initiated consideration for H.R. 2658 (108<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 149, part 12 (June 26, 2003), p. H5992; UCA initiated consideration for H.R. 2754 (108<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 149, part 14 (July 17, 2003), p. H7106; UCA initiated consideration for H.R. 2765 (108<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 149, part 14 (July 25, 2003), p. H7771.
- f. UCA initiated consideration for H.R. 2642 (110<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 153, part 11 (June 15, 2007), p. H6518; UCA initiated consideration for H.R. 3222 (110<sup>th</sup> Cong.), House debate, *Congressional Record*, daily edition, vol. 153, part 17 (August 4, 2007), p. H 9952.
- g. Bills receiving initial floor consideration do not include the few instances where a regular appropriations bill was first considered on the House floor in a legislative vehicle that combined two or more regular appropriations bills (so-called omnibus or minibuss bills). For further information, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup.

## Special Rules

Special rules can be used to regulate the consideration of regular appropriations bills in several important respects. First, special rules can provide waivers for any parts of the measure that might otherwise violate House rules and prevent the measure's consideration. In addition, special rules may structure the terms of consideration by specifying the length of time the measure will be considered, the amount and type of debate that will be allowed, and any amendments that might be eligible for consideration.<sup>12</sup> The amendment process may be further affected by a special rule that grants waivers to permit amendments to be considered that would otherwise not be in order under House rules.<sup>13</sup>

In current practice, the process of considering a regular appropriations bill on the House floor typically begins with the consideration of a special rule reported by the Committee on Rules. Once the committee reports the rule in the form of a simple resolution, it is considered on the House floor<sup>14</sup> under the "hour rule," pursuant to which one hour of debate is managed by the majority party Member of the Rules Committee who called up the rule.<sup>15</sup> Customarily, the

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<sup>12</sup> See also Special Rules and Options for Regulating the Amending Process, by Megan Suzanne Lynch.

<sup>13</sup> A special rule can also allow the House to initiate consideration by conferring privilege on a measure that does not otherwise possess it. Because regular appropriations bills are privileged under House Rule XIII, clause 5, this function is not relevant to their consideration. For further information on how special rules can be used to confer privilege on other measures, see CRS Report 98-354, *How Special Rules Regulate Calling up Measures for Consideration in the House*, by Richard S. Beth.

<sup>14</sup> Under Rule XIII clause 6, a special rule is generally eligible for floor consideration at any time starting from the legislative day after it has been reported to the House. A two-thirds vote is required to consider a special rule on the same legislative day that it is reported. For further information, see CRS Report RS22015, *Availability of Legislative Measures in the House of Representatives (The "Three-Day Rule")*, by Elizabeth Rybicki.

<sup>15</sup> For further information on the hour rule, see CRS Report 98-427, *Considering Measures in the House Under the* (continued...)



majority floor manager yields one-half of this time to a minority member of the Rules Committee for the purposes of debate only. During this hour of debate, the rule may be amended only by (or with the consent of) the majority floor manager, and typically no amendments are offered.<sup>16</sup> At the end of the hour of debate, the floor manager moves the previous question to prevent further debate and any amendments from being offered. If the previous question is ordered by an affirmative vote of a simple majority, the House proceeds to a final vote on the special rule.<sup>17</sup> Special rules are almost always approved by the House.

For FY1996 to FY2012, special rules were used to initiate consideration of 162 out of 175 regular appropriations bills (see **Table 1**). Special rules were the only method by which consideration was initiated for 12 of 17 fiscal years, including the four most recent fiscal years (FY2009-FY2012). Although alternative methods have been used periodically, special rules have been used over half the time for each fiscal year during this period.

## **Unanimous Consent Agreements**

Like special rules, UCAs may be used to bring up a measure, waive any points of order against it, and structure the terms of its consideration. Unlike special rules, however, such agreements are orally propounded on the floor by a Member and entered into if no Member objects on the floor at that time.<sup>18</sup> Consequently, initiating consideration through a UCA may be advantageous because it requires little floor time when compared to a special rule. The ability of a single Member to prevent such agreement by objecting, however, may preclude the use of a UCA in some circumstances.

UCAs were used to initiate consideration of regular appropriations bills for FY1996 to FY2012 in 10 instances during five fiscal years (see **Table 1**). The frequency with which UCAs were used ranged from once for FY1997, to three times for FY2004. Most recently, UCAs were used to initiate consideration twice for FY2008.

## **Amending Regular Appropriations Bills in the House**

When a regular appropriations bill is considered as a privileged measure, this procedure generally permits consideration of any amendments to the bill that comply with the rules of the House (called an “open” amending process). Providing for consideration by a special rule or UCA, however, allows this amending process to be altered. Such alterations can place preconditions on

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*One-Hour Rule*, by James V. Saturno.

<sup>16</sup> *House Manual*, §858, p. 651. For an example of amending a special rule providing for consideration of a regular appropriations bill, see H.Res. 190 (106<sup>th</sup> Cong.), House debate, *Congressional Record*, vol. 145, issue 82, June 10, 1999, pp. H4095-H4106.

<sup>17</sup> If the previous question is defeated, a second hour of debate on the special rule occurs, which is controlled by the minority floor manager.

<sup>18</sup> For further information on the use of UCAs for the consideration of a measure, see *House Practice*, chapter 54, §7, pp. 895-896.

the offering of amendments, directly prescribe the specific amendments that will be in order, waive points of order against amendments, or place time limits on their consideration.

For FY1996 to FY2012, the means used for consideration of most regular appropriations bills provided for some type of “open” amending process allowing an unrestricted number of amendments to be offered that comply with House rules. Such processes often waived points of order against certain amendments, and, less frequently, required that amendments be preprinted in the *Congressional Record* in advance of consideration. An exception to this has been the Legislative Branch Appropriations bill. On all but one occasion during this period, the means used for initiating consideration of Legislative Branch bills provided for a “structured” amendment process, which specified a list of amendments that could be offered and waiving points of order against those amendments. Structured processes were used for other types of bills on three occasions through the 110<sup>th</sup> Congress, and on 13 occasions during the 111<sup>th</sup> Congress. A closed process, which allowed no amendments, was used on only one occasion, for consideration of the FY2004 Legislative Branch Appropriations bill. Other practices during this period have included the imposition of time caps on consideration of the bill, sections of the bill, or amendments.

In some cases, the House may choose to structure the amendment process subsequent to initiating consideration, either by unanimous consent or a subsequent special rule.<sup>19</sup>

## **Consideration of Amendments to Regular Appropriations Bills**

Under the standing rules of the House, regular appropriations measures are considered in the Committee of the Whole under the “five-minute rule” for amendment.<sup>20</sup> Following general debate, the bill is read by paragraph. All amendments must be timely, meaning they may only be offered, if in order, to the paragraph that is currently being read for amendment. Because the House Appropriations Committee almost always reports an original bill, floor amendments considered to that bill are to the reported text.<sup>21</sup> The five-minute rule allows five minutes of debate in favor and five minutes of debate against each amendment that is offered. “Pro forma amendments,” which enable Members to speak for five minutes not allotted through the five-minute rule, may also be offered.<sup>22</sup> All amendments must be germane to the provision being amended, and additional restrictions in House rules and the Congressional Budget Act<sup>23</sup> that apply to general appropriations bills, such as the prohibitions on unauthorized appropriations and legislation in Rule XXI, clause 2, limit the content and timing of any amendments that may be considered. When the amending process is concluded, the Committee of the Whole rises and

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<sup>19</sup> For further information on this practice, see CRS Report RS22711, *Considering Regular Appropriations Bills on the House Floor: Current Practice Regarding Comprehensive Unanimous Consent Agreements*, by Christopher M. Davis.

<sup>20</sup> Rule XVII clause 3 requires that appropriations bills be considered in the Committee of the Whole, which is where the House traditionally considers amendments. For further information, see CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by Bill Heniff Jr. and Elizabeth Rybicki.

<sup>21</sup> The House Appropriations Committee is one of the few House committees authorized to report original legislation. As a result, the committee can act on a draft text and report it out of committee, at which point it becomes a numbered bill. In contrast, when most other committees consider major legislation, they often begin with a bill as introduced and report that bill with proposed amendments, or with one full-text substitute amendment that proposes to replace the entire text of the bill as introduced. For further information, see CRS Report 98-267, *House Committee Markup: Reporting*, by Judy Schneider.

<sup>22</sup> For further information on pro forma amendments, see *House Practice*, chapter 2, § 8, p. 20.

<sup>23</sup> Titles I-IX of P.L. 93-344, 2 U.S.C. 601-688.

reports back to the House. At this stage, the House must affirm the amendments to the measure recommended by the Committee of the Whole. The House may also vote on a motion to recommit, if offered, with or without amendatory instructions.<sup>24</sup> At the end of consideration, a final vote on the measure, as amended, occurs.<sup>25</sup>

## **Limiting Debate and Amendments**

Debate and amendment of regular appropriations bills can be time consuming. When consideration of a regular appropriations bill is initiated as privileged, the House routinely agrees by unanimous consent to limit general debate to one hour.<sup>26</sup> The standing rules of the House also place no direct limits on the number of amendments that Members may offer. As a result, consideration and debate on large numbers of amendments may slow the floor process. Members may also choose to offer pro forma amendments to extend debate on the measure, moreover, which can prolong the process even further.

In anticipation of the practices discussed above, the House often chooses to initiate consideration of regular appropriations bills through a special rule or UCA that limits general debate. Although the process of agreeing to special rules and UCAs differs, both afford a parallel range of options for structuring consideration. In addition to limiting general debate, special rules and UCAs may specify the number or type of amendments that may be offered to sections of the bill, or the entire bill. For example, the UCA that initiated consideration of the FY2008 Military Construction Appropriations bill limited amendments to a list of 24, plus pro forma amendments offered by the Appropriations Committee chair and ranking member or their designees.<sup>27</sup> Consideration can also be limited by a special rule or UCA that places a time cap on consideration of sections of the bill for amendment, consideration of individual amendments, or the total amount of time for consideration. For example, H.Res. 484 (106<sup>th</sup> Congress), which provided for consideration of the FY1999 Defense Appropriations bill, limited consideration of a particular section of the bill to one hour.

The terms of consideration may be determined as consideration is initiated, and then further elaborated after the amending process has begun. During the earlier part of the previous decade, the consideration of amendments to regular appropriations bills was often initiated by a special rule that did not limit amendments, and then structured by a UCA once consideration was underway.<sup>28</sup> For example, after the House took up the FY2008 State and Foreign Operations Appropriations bill, a UCA was entered into at the end of the first day of consideration that limited further amendments to a list of 55 and specified a time cap for debate on each

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<sup>24</sup> For further information on the motion to recommit, see CRS Report 98-383, *Motions to Recommit in the House*, by Megan S. Lynch.

<sup>25</sup> If a special rule governs consideration, the previous question on any amendments and final passage of the bill is typically considered as ordered pursuant to the terms of the rule.

<sup>26</sup> In the absence of such a unanimous consent agreement, general debate would proceed under the hour rule, meaning that each Member could theoretically be recognized for one hour. For further information on general debate in the Committee of the Whole, see *House Practice*, chapter 16, § 45, pp. 425-426.

<sup>27</sup> House debate, *Congressional Record*, daily edition, vol. 153, part 11 (June 15, 2007), p. H6518.

<sup>28</sup> For a discussion of this practice, see CRS Report RS22711, *Considering Regular Appropriations Bills on the House Floor: Current Practice Regarding Comprehensive Unanimous Consent Agreements*, by Christopher M. Davis, and McKay, William and Charles W. Johnson, *Parliament and Congress: Representation and Scrutiny in the Twenty-First Century* (Oxford: Oxford University Press, 2010), pp. 284-286.

amendment.<sup>29</sup> This use of UCAs can enable the House to conclude the amending process in a more predictable manner than might otherwise occur under an open rule. This practice has been less frequent during the 110<sup>th</sup> through 112<sup>th</sup> Congresses.

As an alternative to a UCA after consideration has been initiated under an open rule, the House can adopt a second special rule to limit the consideration of subsequent amendments. Although additional special rules are rarely used in current practice, the House may resort to them in instances when a UCA cannot be obtained. For example, during consideration of the FY2010 Commerce, Justice, Science appropriations bill, a second special rule was adopted (H.Res. 552, 111<sup>th</sup> Congress) that limited further amendments to a list of 23, plus up to 10 from an additional list.<sup>30</sup>

## **Structuring the Consideration of Amendments Prior to Initial Consideration**

As was discussed above, special rules and UCAs may provide for consideration of amendments to regular appropriations bills in different ways. Prior to 1973, most special rules used to initiate consideration of regular appropriations bills tended to place no restrictions on amendments. In other cases during this period in which they did place restrictions, they tended to preclude amendments entirely.<sup>31</sup> Since that time, however, special rules have been used to regulate the amending process in a variety of ways that place some limits on amendments, but still allow them to be offered under certain conditions. The Rules Committee has concurrently developed additional categories to distinguish rules in this respect. These categories have varied over the years.<sup>32</sup> For the purposes of analytic consistency, this report divides the amendment processes provided by special rules and UCAs into five categories relevant to House practice when taking up regular appropriations bills.

- *Regular Open* allows any amendment to be offered that would be in order under the standing rules of the House and the Budget Act.
- *Open Plus* makes in order one or more specified amendments by waiving House Rules (either specifically or generally), but do not otherwise restrict the opportunities available for amendment. This type of process may also place time caps on the consideration of

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<sup>29</sup> House debate, *Congressional Record*, daily edition, vol. 153, part 12 (June 20, 2007), pp. H6818-H6819.

<sup>30</sup> For the context surrounding the adoption of this special rule, see “Structured and Closed Amending Processes” below. For further examples of more than one special rule governing the initial consideration of regular appropriations bills, see H.Res. 599 (110<sup>th</sup> Cong.), H.Res. 584 (105<sup>th</sup> Cong.), H.Res. 177 (104<sup>th</sup> Cong.), and H.Res. 189 (104<sup>th</sup> Cong.).

<sup>31</sup> U.S. Congress, House Committee on Rules, *A History of the Committee on Rules: 1<sup>st</sup> to 97<sup>th</sup> Congress, 1789-1981*, committee print, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington, DC: GPO, 1983), pp. 218-219.

<sup>32</sup> As of the date of this report, the House Rules Committee divides special rules for the consideration of all types of measures into four different categories. *Open Rules* allow any amendment to be offered that does not violate the standing rules of the House and the Budget Act. *Modified Open Rules* permit all floor amendments but require that they be preprinted in the *Congressional Record* before being offered or place an overall time cap on their consideration. *Structured Rules* generally only allow amendments to be offered that have been printed in the rule or otherwise specified in the report accompanying the rule. Such rules typically waive points of order against the amendments specified. *Closed Rules* allow no amendments to be offered except those recommended by the committee reporting the bill and at least one motion to recommit. *Survey of Activities of the House Committee on Rules for the First Session of the 112<sup>th</sup> Congress*, H.Rept. 112-357, pp. 26-27.

specified amendments, or provide that no second degree amendments to those amendments will be in order.<sup>33</sup>

- *Open with a Preprinting Requirement* provides that amendments to the bill must be preprinted in the *Congressional Record* before being offered, but otherwise allows any preprinted amendments that comply with House rules. No pro forma amendments to the bill are in order when a preprinting requirement is in effect, but pro forma amendments to the preprinted amendments are allowed, unless otherwise specified.<sup>34</sup>
- *Structured* specifies the amendments that may be offered to the bill or to a portion of the bill. This form of consideration also includes processes that close part of the bill to amendment, or limit amendments on specific topics. This process may also waive points of order against such specified amendments, or place time caps on their consideration.<sup>35</sup>
- *Closed* allows no amendments to be offered and at least one motion to recommit.<sup>36</sup>

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<sup>33</sup> “Open Plus Rules” are discussed and separately designated from “Open Rules” in the *House Committee on Rules Survey of Activities: 103<sup>rd</sup> Congress*, H.Rept. 103-891. Such rules are discussed, but not separately designated in the *Survey of Activities of the House Committee on Rules*, 104<sup>th</sup>-111<sup>th</sup> Congresses, H.Rept. 104-868, H.Rept. 105-840, H.Rept. 106-1051, H.Rept. 107-808, H.Rept. 108-814, H.Rept. 109-743, H.Rept. 110-931, H.Rept. 111-714. “Open Plus Rules” are not discussed or designated in the *Survey of Activities of the House Committee on Rules for the First Session of the 112<sup>th</sup> Congress*, H.Rept. 112-357.

<sup>34</sup> The Committee on Rules’ surveys of activities have categorized rules that require that amendments be preprinted in the *Congressional Record* and/or place a time cap on consideration differently over time. In the 103<sup>rd</sup> Congress, such rules were designated as *Time cap* (consideration of amendments is subject to an overall time limit) or *Amendments printed in the Congressional Record* (consideration is limited to only those amendments preprinted in the *Congressional Record*) (H.Rept. 103-891). In the 104<sup>th</sup>-107<sup>th</sup> Congresses, such rules were designated as *Modified Open—time cap on consideration of amendments*, *Modified open—required preprinting in the Congressional Record*, or *Modified open—both time cap on consideration of amendments, and required preprinting in the Congressional Record* (H.Rept. 104-868, H.Rept. 105-840, H.Rept. 106-1051, H.Rept. 107-808). In the 108<sup>th</sup>-109<sup>th</sup> Congresses, such rules were designated *Modified open—required preprinting in the Congressional Record*, with no designation for *Modified open—time cap on consideration of amendments* or *Modified open—time cap on consideration of amendments, and required preprinting in the Congressional Record* (H.Rept. 109-743). In the 110<sup>th</sup> Congress, *Modified open—required preprinting in the Congressional Record* were designated as *Open with a Preprinting Requirement* (H.Rept. 110-931). In the 111<sup>th</sup> Congress, such rules were again designated as *Modified Open (Required Amendment Preprinting in the Congressional Record)* (H.Rept. 111-714). In the 112<sup>th</sup> Congress, *Modified Open* rules are those with preprinting requirement for amendments or that place an overall time limit on their consideration (H.Rept. 112-357).

<sup>35</sup> The Committee on Rules’ surveys of activities have categorized rules that limit opportunities for Members to offer amendments, but do not entirely prevent them, differently over time. In the 103<sup>rd</sup> Congress, such rules were designated as *Open—restricted in part* (specific sections limited to one specified amendment or fewer, or amendments on certain topics not in order), *Amendments printed in the report or specified in the rule* (amendments limited to those specified in the rule or accompanying report), or *modified closed* (no amendments to the bill, except possibly a committee substitute, but a motion to recommit with instructions is allowed) (H.Rept. 103-891). In the 104<sup>th</sup>-109<sup>th</sup> Congresses, such rules were designated as *structured* (amendments limited to three or more specified in the rule or accompanying report), or *modified closed* (amendments limited to one or two specified in the rule or accompanying report) (H.Rept. 104-868, H.Rept. 105-840, H.Rept. 106-1051, H.Rept. 107-808, H.Rept. 108-814, H.Rept. 109-743). In the 110<sup>th</sup> Congress, such rules were designated as *structured* (amendments limited to any number specified in the report) only, with no separate class for *modified closed* (H.Rept. 110-931). In the 111<sup>th</sup> Congress, *structured* and *modified closed* rules were distinguished in the same way as the 104<sup>th</sup> through 109<sup>th</sup> Congresses (H.Rept. 111-714). In the 112<sup>th</sup> Congress, such rules were again designated as *structured* (amendments limited to any number specified in the report) only (H.Rept. 112-357).

<sup>36</sup> It is not in order for a special rule to prohibit a motion to recommit. Since the 104<sup>th</sup> Congress, the form of the rule has specifically provided that the special rule also may not prohibit the inclusion of amendatory instruction if offered by the minority leader or a designee (CRS Report 98-383, *Motions to Recommit in the House*, by Megan S. Lynch). During the period covered by this report, all special rules initiating consideration of regular appropriations bills allowed at least (continued...)

Using these categories, **Table 2** presents a breakdown of the type of amending process provided in special rules and UCAs for FY1996 to FY2012 regular appropriations bills. The few rules that do not conform to these categories are noted in the “other” column and are discussed separately.

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(...continued)  
one motion to recommit.

**Table 2. Amending Processes for Initial Consideration of Regular Appropriations Bills, FY1996-FY2012**

Congress	Fiscal Year	Number of Appropriations Bills/ Number Initially Considered <sup>a</sup>	Type of Amending Process <sup>a</sup>						
			Privileged	Regular Open	Open Plus	Open with Preprinting <sup>b</sup>	Structured <sup>c</sup>	Closed	Other
104	1996	13/13		4	7		1		1 <sup>d</sup>
	1997	13/13		8 (1)	3		1 <sup>e</sup>		
105	1998	13/13	2	4	3 (2)		2 <sup>f</sup>		
	1999	13/13		5	5		1 <sup>g</sup>		2 <sup>h</sup>
106	2000	13/12		5	6		1		
	2001	13/13		9	2	1 <sup>i</sup>	1		
107	2002	13/13		6 (2)	3	1 <sup>j</sup>	1		
	2003	13/5		3	1		1		
108	2004	13/13	1	8 (2)	(1)			1	
	2005	13/12		11			1		
109	2006	11/11		10			1		
	2007	11/10		9			1		
110	2008	12/12		9			1 (2)		
	2009	12/1				1 <sup>k</sup>			
111	2010	12/12				1 <sup>l</sup>	11		
	2011	12/2					2		
112	2012	12/7		6			1		

**Source:** Prepared by CRS using data obtained from the Legislative Information System (available at <http://www.congress.gov>) and the *Congressional Record*.

**Notes:** Special rules are in regular text; UCAs are in parentheses.

- a. Between the 104<sup>th</sup> and 108<sup>th</sup> Congresses, the 13 House Appropriations subcommittees were responsible for one regular appropriations bill each. During the 109<sup>th</sup> Congress, due to subcommittee realignment, the total number of regular appropriations bills was effectively reduced to 11 annually. Beginning in the 110<sup>th</sup> Congress, subcommittee jurisdictions were again realigned for a total of 12 subcommittees, each of which is currently responsible for a single regular

appropriations bill. For further information on subcommittee realignment during this period, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2011*, by Jessica Tollestrup. Bills receiving initial floor consideration do not include the few instances where a regular appropriations bill was first considered on the House floor in a legislative vehicle that combined two or more regular appropriations bills (so-called omnibus or minibus bills). For further information, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup.

- b. Special Rules designated in the accompanying committee report or House Rules activity report as a type of rule other than “open with a preprinting requirement” are noted.
- c. Special Rules designated in the accompanying committee report or House Rules activity report as a type of rule other than “structured” are noted.
- d. H.Res. 252 (104<sup>th</sup> Cong.) waived points of order against the amendment printed in the committee report and placed a 10 minute limit on debate on that amendment. It further provided that if the amendment was adopted, debate on all further amendments to the bill could not exceed 30 minutes per amendment. This special rule was classified in the accompanying committee report (H.Rept. 104-302) as a “modified open” rule.
- e. H.Res. 473 (104<sup>th</sup> Cong.) was classified in the accompanying committee report (H.Rept. 104-663) as a “modified closed” rule.
- f. H.Res. 193 and H.Res. 197 (105<sup>th</sup> Cong.) were classified in the accompanying committee reports (H.Rept. 105-197 and H.Rept. 105-202 , respectively) as “modified closed” rules.
- g. H.Res. 264 (105<sup>th</sup> Cong.) was classified in the accompanying committee report (H.Rept. 105-315) as a “modified closed” rule.
- h. H.Res. 484 (105<sup>th</sup> Cong.) provided that consideration of Section 8106 for amendment under the five-minute rule would not exceed one hour but did not otherwise restrict the amending process; this special rule was classified in the accompanying committee report (H.Rept. 105-596) as a “modified open” rule. H.Res. 542 (105<sup>th</sup> Cong.) placed a five-hour time cap on the amending process, required amendments to be preprinted, and waived points of order against amendments specified in the rule; this special rule was classified in the accompanying committee report (H.Rept. 105-725) as a “modified open” rule.
- i. H.Res. 563 (106<sup>th</sup> Cong.) was classified in the accompanying committee report (H.Rept. 106-790) as a “modified open” rule.
- j. H.Res. 199 (107<sup>th</sup> Cong.) was classified in the accompanying committee report (H.Rept. 107-146) as a “modified open” rule.
- k. H.Res. 1384 (110<sup>th</sup> Cong.) was classified in the accompanying committee report (H.Rept. 110-800) as an “open rule with a pre-printing requirement.”
- l. H.Res. 544 (111<sup>th</sup> Cong.) was classified in the accompanying committee report (H.Rept. 111-155) as “open rule with a pre-printing requirement.”



## Open Amending Processes

For regular appropriations bills for FY1996 to FY2012, 80.8% of special rules and UCAs that initiated consideration provided some type of open amending process. In addition, some type of open process was used the majority of the time for each fiscal year during this period, except during the 111<sup>th</sup> Congress (2009-2010).

The type of open amending process varied. In total, 73.4% of open processes were “regular open” and allowed any amendment to be offered that was in order under the standing rules of the House and the Budget Act. In addition, 23.7% were “open plus” and made one or more specified amendments in order. Open plus rules and UCAs were used frequently during the earlier part of this period; for FY1996 to FY2000, “open plus” processes were used to initiate consideration for 41.9% of regular appropriations bills. The frequency of this approach subsequently declined for consideration of the FY2001 to FY2004 bills; no open plus amending processes have been used to initiate consideration of regular appropriations bills since that time.

The open plus processes used during this period, at a minimum, regulated consideration by waiving points of order against one or more specified amendments. Although seven amendments were provided waivers on one occasion, open plus processes typically waived points of order against only one or two amendments.<sup>37</sup> Most of these processes also included time caps on the debate of such amendments. For example, H.Res. 245 (107<sup>th</sup> Congress), the special rule initiating consideration of the FY2002 District of Columbia Appropriations bill (H.R. 2944, 107<sup>th</sup> Congress), provided that an amendment specified in the report would be debatable only for ten minutes. Some of these open plus processes also protected the amendments specified in the report from being amended on the floor by second degree amendments.<sup>38</sup> For example, H.Res. 263 (106<sup>th</sup> Congress), the special rule initiating consideration of the FY2000 Foreign Operations, Export Financing, and Related Programs Appropriations bill (H.R. 2606, 107<sup>th</sup> Congress), stipulated that the amendments printed in the report would “not be subject to amendment.” Effectively, this meant that while Members could generally offer amendments to the bill that complied with House rules, they could only give an up or down vote to those specified amendments.

Clause 8(b) of Rule XVIII provides procedures for amendments to be submitted to the *Congressional Record* for printing prior to consideration.<sup>39</sup> Generally, however, the practice of requiring amendments to be preprinted in the *Congressional Record* before being offered has been rare for FY1996 to FY2012. Only four special rules and no UCAs initiating consideration of regular appropriations bills contained such provisions, most recently for consideration of a FY2010 measure. In all four of these instances, the special rule explicitly allowed pro forma amendments.

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<sup>37</sup> H.Res. 170 (104<sup>th</sup> Cong.).

<sup>38</sup> In the House, amendments are distinguished by degree. First degree amendments propose to change the text of the measure under consideration. Second degree amendments propose to change the text of a pending first degree amendment to that measure. For further information, see CRS Report 98-613, *Amendments in the House: Types and Forms*, by Christopher M. Davis.

<sup>39</sup> For further information on Rule XVIII, clause 8(b), see CRS Report 98-995, *The Amending Process in the House of Representatives*, by Christopher M. Davis.

## **Structured and Closed Amending Processes**

Structured and closed amendment processes for the FY1996 to FY2012 regular appropriations bills have been implemented at the time consideration was initiated almost entirely through special rules. Structured UCAs were used on only two occasions.

The structured rules and UCAs during this period have been largely consistent with regard to time caps and waivers for the consideration of amendments. All structured rules and UCAs have placed time caps on the consideration of each amendment. In addition, all structured rules, but none of the UCAs, have waived points of order against the allowed amendments.

The primary use of structured and closed rules during this period has been to initiate consideration of the Legislative Branch Appropriations bill, with some exceptions. In all but one instance that the Legislative Branch bill was initially considered in the House, it was considered under a structured rule. In addition, the one closed rule during this period initiated consideration of the FY2004 Legislative Branch Appropriations bill. In general, the number of amendments to Legislative Branch bills that were allowed by structured rules increased during the 112<sup>th</sup> Congress. Prior to this time, the number of amendments allowed ranged between 1 and 12, with an average of about four per rule. The rule for the consideration of the FY2012 Legislative Branch Appropriations bill (H.Res. 359, 112<sup>th</sup> Congress) allowed a list of 16 amendments.

In recent Congresses, the use of structured rules to provide for the consideration of regular appropriations bills has been the subject of some controversy. In particular, the use of structured rules to initiate consideration of all but one such bill during the 111<sup>th</sup> Congress, rather than an open rule supplemented by an amendment roster included in a subsequent UCA, as had generally been the practice of the House.<sup>40</sup> Prior to this time, a structured rule was used to initiate consideration of an appropriations measure other than a Legislative Branch bill on only one occasion, the FY1998 District of Columbia Appropriations bill (H.Res. 264, 105<sup>th</sup> Congress). More recently, structured UCAs were used on two occasions, to initiate consideration for the FY2008 Defense Appropriations bill (H.R. 3222, 110<sup>th</sup> Congress) and the FY2008 Military Construction/Veteran's Affairs Appropriations bill (H.R. 2642, 110<sup>th</sup> Congress).

The use of structured rules during the 111<sup>th</sup> Congress began with the consideration of the FY2010 Commerce/Justice/Science Appropriations bill (H.R. 2847). The House initiated consideration under H.Res. 544 (111<sup>th</sup> Congress), an open rule that required amendments to be preprinted in the *Congressional Record* prior to a specified deadline and allowed an unlimited number of pro forma amendments. More than 100 amendments were prefiled before the deadline in the rule, and the House was unable to agree to a UCA further structuring consideration two days after that deadline. Instead, the House passed a second special rule, H.Res. 552 (111<sup>th</sup> Congress), that limited consideration to a list of 23 amendments, plus up to an additional 10 amendments. The special rule imposed a time cap of 10 minutes of debate per amendment and waived points of order against the listed amendments.<sup>41</sup> Proponents of these and subsequent structured rules during

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<sup>40</sup> House Committee on Rules Majority Staff, "Open Rules By The Numbers," June 1, 2011, <http://www.rules.house.gov/News/BlogArticle.aspx?NewsID=327> (most recently accessed May 1, 2012), Rep. Louis Slaughter and Rep. Lincoln Diaz-Balart, House debate, *Congressional Record*, daily edition, vol. 155, part 91 (June 17, 2009), pp. H6910-H6911.

<sup>41</sup> For further background on these events, see, Paul M. Krawzak, "Republican Amendments Pile Up, Threatening to Slow Spending Bills' Progress," *CQ Today Print Edition*, June 16, 2009; Keith Perine, C-J-S Spending Debate Dissolves into Partisan Fight; Restrictive Rule Sought," *CQ Today Online News*, June 17, 2009; Edward Epstein and (continued...)

the 111<sup>th</sup> Congress argued that they were a necessary response to the number of amendments prefiled to assure that appropriations could be completed in a timely manner.<sup>42</sup> Others claimed that structured rules on appropriations bills undermine the ability of Members to influence the content of bills and represent their constituents by offering amendments.<sup>43</sup>

In general, the number of amendments allowed by structured rules initiating consideration for appropriations measures other than Legislative Branch bills has increased in recent years. While only two amendments were allowed for the FY1998 District of Columbia Appropriations bill, the UCAs initiating consideration for the FY2008 Defense and Military Construction/Veteran's Affairs bills allowed 18 and 24 amendments, respectively. The structured rules for consideration of appropriations measures other than Legislative Branch bills during the 111<sup>th</sup> Congress allowed a range of five to 24 amendments, with an average of about 13 per rule.

There were no structured rules for the consideration of appropriations measures other than legislative branch bills in the 112<sup>th</sup> Congress.

### **Other Amending Processes**

Three special rules for initiating consideration of regular appropriations bills were not aligned with the categories discussed in the previous sections.

H.Res. 252 (104<sup>th</sup> Congress), the special rule for consideration of the FY1996 District of Columbia Appropriations bill (H.R. 2546), contained elements of an open plus amending process, with some exceptions. It provided that the amendment printed in the committee report (H.Rept. 104-302) be considered prior to any other amendment, waived all points of order against that amendment, prohibited any second degree amendments to that amendment, and placed a 10 minute time cap on debate of that amendment. In addition, if that amendment were adopted, debate on each further amendment to the bill and any second degree amendments thereto would be limited to 30 minutes. The rule also waived points of order against four other amendments, and specified that they could not be not subject to any second degree amendments.

H.Res. 484 (105<sup>th</sup> Congress), the special rule for consideration of the FY1999 Department of Defense Appropriations bill (H.R. 4103), contained elements of a regular open rule, but imposed a one-hour time cap on the amendment process for Section 8106.<sup>44</sup>

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(...continued)

Paul M. Krawzak, "Chaos on House Floor as 53 Votes Taken, Democrats Threaten Clamphdowns," *CQ Today Print Edition*, June 18, 2009.

<sup>42</sup> Rep. Norman Dicks, House debate, *Congressional Record*, daily edition, vol. 155 (June 25, 2009), p. H7393; Edward Epstein and Paul M. Krawzak, "Week of Procedural Bickering Foreshadows Future Spending Fights," *CQ Today Print Edition*, June 19, 2009. Edward Epstein, "GOP Forces Procedural Votes to Protest Rules on Appropriations," *CQ Today Online News*, June 24, 2009.

<sup>43</sup> Rep. David Dreier, House debate, *Congressional Record*, daily edition, vol. 155 (June 24, 2009), pp. H7168-H7170. Don Wolfensberger, "Appropriations Bills Face New Twists And Old Realities," *Roll Call*, June 23, 2009. Edward Epstein, "GOP Forces Procedural Votes to Protest Rules on Appropriations," *CQ Today Online News*, June 24, 2009.

<sup>44</sup> H.R. 4103, Section 8106, provided: "No funds appropriated or otherwise made available by this Act may be used to initiate or conduct offensive military operations by United States Armed Forces except in accordance with the war powers clause of the Constitution (article 1, section 8), which vests in Congress the power to declare and authorize war and to take certain specified, related decisions."

H.Res. 542 (105<sup>th</sup> Congress), the special rule for consideration of the FY1999 Foreign Operations, Export Financing and Related Programs appropriations bill (H.R. 4569), contained elements of both open plus and open with preprinting. The rule waived points of order against five amendments printed in the committee report (H.Rept. 105-725), specified a debate limit for each amendment, and provided that three of these amendments would not be subject to second degree amendments. It also required that all other amendments to the bill be preprinted in the *Congressional Record*, but allowed pro forma amendments. Finally, the rule provided that the amendment process for this bill be limited to five hours.

## Waiving House Rules Prior to Consideration of Regular Appropriations Bills

The standing rules of the House place certain restrictions on when a measure is eligible for consideration and what content may be considered. Specifically, House rules may require that a measure only be brought to the floor during certain time periods, or after certain conditions have been satisfied. In addition, rules may also restrict the content of measures, so that certain types of matters cannot be considered, or must be considered in certain types of legislative vehicles. These rules are enforced on the floor through points of order and are in effect when consideration of a measure is initiated through privilege, and also (unless altered) by a special rule or UCA.<sup>45</sup>

The House sometimes chooses to “waive” or set aside its standing rules or restrictions in the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, 2 U.S.C. 601-688) during the consideration of certain measures through a special rule or UCA. This is because these rules could potentially prevent the House from taking up legislation that it wishes to consider, or require it to be considered in a less preferable form. In setting aside these rules, the House can choose to waive only specific rules, or waive broad categories of rules. The House can also choose to waive rules only for specified provisions in the measure, or waive them for the entire measure. Alternatively, waivers of rules can also be framed as covering the entire measure excepting specified provisions, which would consequently remain vulnerable to a point of order.

House rule waivers provided through special rules and UCAs prior to initial consideration of regular appropriations bills for FY1996 to FY2012 are illustrated in **Table 3** and **Table 4**. During this period, the practice of providing broad waivers for “points of order against consideration” evolved—from providing no waivers, or only waivers for specific rules, to providing blanket waivers of all points of order against consideration, or blanket waivers with exceptions. This change in procedural practice, however, does not necessarily reflect changes in the content of the bills. The practice of providing waivers for Rule XXI, clause 2, with exceptions for specified language in the bill increased during this period, until the FY2008 regular appropriations bills. For the FY2008 to FY2011 bills, only waivers that covered the entire measure were used. Most recently, a waiver with specified exceptions was provided on one occasion in the 112<sup>th</sup> Congress, for a FY2012 measure.

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<sup>45</sup> For further information on the enforcement of House Rules through points of order, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen.

## Consideration Waivers

When a bill is subject to a point of order against its consideration, House action on the bill requires that a waiver be granted, because if such a point of order is raised from the floor and sustained by the chair, the House will be unable to take the bill up for consideration. As previously mentioned, special rules initiating consideration for regular appropriations bills have often included provisions that waive points of order against consideration stemming from restrictions in specific House rules or the Congressional Budget Act. For example, H.Res. 213 (107<sup>th</sup> Congress), which provided for consideration of the FY2002 Legislative Branch Appropriations bill, contained the following provision: “Points of order against consideration of the bill for failure to comply with clause 4(c) of rule XIII are waived.”<sup>46</sup>

During this period, special rules providing for consideration of regular appropriations bills have also included provisions that provided a blanket waiver of points of order against consideration of the bill. For example, H.Res. 300 (112<sup>th</sup> Congress), which provided for consideration of the FY2012 Agriculture appropriations bill, contained the following provision: “All points of order against consideration of the bill are waived.”

Such provisions have the effect of waiving all points of order that would prevent the bill from being taken up by the House.<sup>47</sup>

Broad waivers of points of order provided by special rules are typically addressed in the accompanying committee report, as required under Rule XIII clause 6(g).<sup>48</sup> In instances where a special rule contains a general waiver of points of order against consideration, the committee report accompanying the rule often identifies specific sections of House rules that would be violated by the bill’s consideration.<sup>49</sup> In other instances, the committee report indicates that the waiver provided is “prophylactic,” in that the consideration of the bill is not believed to violate House rules, but the waiver is included in the event that it does.<sup>50</sup> Unanimous consent agreements that initiate consideration may similarly provide waivers of points of order against consideration in any of the forms discussed above.

**Table 3** contains a breakdown of the special rules and UCAs initiating consideration of regular appropriations bills that provided a blanket waiver of all points of order against consideration, waived all such points of order with exceptions, waived specific points of order of this kind, or had no waiver. During this period, special rules and UCAs have trended in a similar direction with respect to the form of waiver provided. Prior to the FY2001 bills, waivers tended to be for specific points of order against consideration, or not to be provided at all. Waivers of all points of order were the least common when initiating consideration of regular appropriations bills. Since

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<sup>46</sup> Rule XIII clause 4(c) requires that printed hearings on a general appropriations bill be available for three days prior to House consideration of the bill.

<sup>47</sup>For example, Rule XIII clause 4(a)(1) of generally prohibits measures from being considered until the third calendar day on which a committee report is available, with some exceptions. Rule XI clause 2(l) requires that members of the committee reporting the bill upon giving notice of their intent to do so, be given two days to file supplemental, minority, or additional views to be included in the report.

<sup>48</sup> Rule XIII clause 6(g) requires the report specify to the maximum extent possible “the object of any waiver of a point of order against the measure or against its consideration.”

<sup>49</sup> For example, see H.Rept. 112-103, which accompanied H.Res. 300 (112<sup>th</sup> Cong.), p. 1.

<sup>50</sup> For example, see H.Rept. 112-176, which accompanied H.Res. 363 (112<sup>th</sup> Cong.), p. 2.

the FY2001 bills, however, waivers of all points of order against consideration have generally predominated, with the bills for FY2004 being the most recent for which a special rule or UCA provided either a specific waiver or none at all.

**Table 3. Waivers of Points of Order Against Consideration for Regular Appropriations Bills, FY1996-FY2012**

Congress	Fiscal Year	Number of Appropriations Bills/Number Initially Considered <sup>a</sup>	Privileged	Consideration Waivers <sup>a</sup>			
				All	Exceptions <sup>b</sup>	Specific	None
104	1996	13/13		1		4	8
	1997	13/13		(1)		11	1
105	1998	13/13	2	1 (1)		5 (1)	3
	1999	13/13				11	2
106	2000	13/12		4		6	2
	2001	13/13		11		2	
107	2002	13/13		10 (2)		1	
	2003	13/5		5			
108	2004	13/13	1	8 (3)			1
	2005	13/12		12			
109	2006	11/11		11			
	2007	11/10		10			
110	2008	12/12			10 (2)		
	2009	12/1			1		
111	2010	12/12			12		
	2011	12/2			2		
112	2012	12/7		7			

**Source:** Prepared by CRS using data obtained from the Legislative Information System (available at <http://www.congress.gov>) and the *Congressional Record*.

**Notes:** Special rules are in regular text; UCAs are in parentheses.

- a. Between the 104<sup>th</sup> and 108<sup>th</sup> Congresses, the 13 House Appropriations subcommittees were responsible for one regular appropriations bill each. During the 109<sup>th</sup> Congress, due to subcommittee realignment, the total number of regular appropriations bills was effectively reduced to annually. Beginning in the 110<sup>th</sup> Congress, subcommittee jurisdictions were again realigned for a total of 12 subcommittees, each of which is currently responsible for a single regular appropriations bill. For further information on subcommittee realignment during this period, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2011*, by Jessica Tollestrup. Bills receiving initial floor consideration do not include the few instances where a regular appropriations bill was first considered on the House floor in a legislative vehicle that combined two or more regular appropriations bills (so-called omnibus or minibus bills). For further information, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup.
- b. During the 110<sup>th</sup> and 111<sup>th</sup> Congresses, the waiver of all points of order against consideration provided in special rules included an exception for Rule XXI, clause 9 and 10. The UCA initiating consideration for H.R. 2642 (110<sup>th</sup> Cong.) included an exception for the same provisions; the UCA initiating consideration for H.R.

3222 (110<sup>th</sup> Cong.) included an exception for only Rule XXI, clause 10. For an explanation of these clauses, see pp. 18-19 of this report.

During the 110<sup>th</sup> and 111<sup>th</sup> Congresses, the waiver of points of order against consideration provided in special rules initiating consideration of regular appropriations bills contained an exception for Rule XXI, clauses 9 and 10. Such exceptions were typically included in all special rules that waived points of order against consideration during this period. The two UCAs initiating consideration of regular appropriations bills followed a similar pattern. One included an exception to the waiver of all points of order against consideration for both of these clauses;<sup>51</sup> the other included an exception for Rule XXI, clause 10.<sup>52</sup>

Clauses 9 and 10 were added to Rule XXI at the beginning of the 110<sup>th</sup> Congress. Clause 9 provides requirements related to earmark disclosure in the committee report accompanying a regular appropriations bill, and a point of order may be raised against any special rule that waives clause 9.<sup>53</sup> In instances where such a point of order is raised, the House votes on that waiver through a question of consideration.<sup>54</sup> Clause 10 contained the PAYGO point of order against direct spending and revenue legislation. Because regular appropriations bills primarily involve discretionary spending, it would be unusual for a point of order under clause 10, to be raised during consideration, even if allowed.<sup>55</sup>

No points of order were raised pursuant to clause 9 or 10 when the regular appropriations bills were initially brought to the floor during the 110<sup>th</sup> and 111<sup>th</sup> Congresses. In the 112<sup>th</sup> Congress, the practice returned to providing a blanket waiver of all points of order against consideration in the special rule; no points of order under clause 9 were raised against these rules.

## **Rule XXI, Clause 2 Waivers**

In addition to waiving points of order against consideration, special rules and UCAs initiating consideration of regular appropriations bills have often waived House Rule XXI, clause 2,<sup>56</sup> which prohibits general appropriations bills from including provisions “changing existing law.” Such provisions, for example, impose new duties upon the recipient of funds, change agency

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<sup>51</sup> UCA initiated consideration for H.R. 2642 (110<sup>th</sup> Cong.), House debate, *Congressional Record* (daily edition), vol. 153, part 11 (June 15, 2007), p. H6518.

<sup>52</sup> UCA initiated consideration for H.R. 3222 (110<sup>th</sup> Cong.), House debate, *Congressional Record* (daily edition), vol. 153, part 17 (August 4, 2007), p. H9952.

<sup>53</sup> For further information on House rules related to earmark disclosure, see CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch.

<sup>54</sup> For further information on the point of order and question of consideration provided by Rule XXI, clause 9, see Rules of the House of Representatives, in *House Manual, One Hundred Twelfth Congress*, H.Doc. 111-157, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., [compiled by] John V. Sullivan, Parliamentarian (Washington: GPO, 2011), (hereafter, *House Manual*) §1068d, pp. 896-897.

<sup>55</sup> For further information about the House PAYGO rule during the 110<sup>th</sup> and 111<sup>th</sup> Congresses, see CRS Report R41510, *Budget Enforcement Procedures: House Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr. In the 112<sup>th</sup> Congress, the rule was modified to become the current CUTGO, or cut-as-you-go, rule to prohibit the consideration of any legislation that would have the net effect of increasing direct spending over six-year and 11-year time periods. For further information, see CRS Report R41926, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 112th Congress*, by Bill Heniff Jr.

<sup>56</sup> During the period covered by this report, waivers for provisions in the bill have been periodically provided for other House rules, such as Rule XXI, clause 5 and 6. Such waivers have been provided only intermittently and are not addressed by this report.

discretion, or mandate action contrary to existing law.<sup>57</sup> Clause 2 also prohibits appropriations for programs, projects, or activities “not previously authorized by law.”<sup>58</sup> This rule stems from the principle that the process through which the activities of government are chosen should be distinct from the process through which those activities are funded. Points of order under Rule XXI, clause 2, may be raised against any portion of the bill during consideration. If such a point of order is raised and sustained, the entire portion is stricken and consideration of the bill may continue.<sup>59</sup>

Since the FY1996 regular appropriations bills, almost all waivers of Rule XXI, clause 2 for provisions in the bill have taken one of two forms. First, some of these waivers have covered the entire measure. For example, H.Res. 320 (112<sup>th</sup> Congress), which provided for consideration of the FY2012 Defense appropriations bill, contained the following provision: “Points of order against provisions in the bill for failure to comply with clause 2 of rule XXI are waived.”

Second, waivers of Rule XXI, clause 2 have specified provisions that are excepted from the blanket waiver and thereby left unprotected. For example, H.Res. 836, which provided for consideration of the FY2007 Homeland Security appropriations bill, included the following provision:

Points of order against provisions in the bill for failure to comply with clause 2 of rule XXI are waived except: beginning with the comma on page 38, line 11 through ‘funds’ on line 14; section 512; beginning with ‘or’ on page 54, line 12 through ‘appropriation’ on line 13; and section 536.

Alternately, a waiver of Rule XXI, clause 2 might only apply to specific provisions, but still leave other provisions unprotected.

In many instances, the Rules Committee chooses to provide waivers with exceptions (or waivers for only specific provisions) because the authorizing committee of jurisdiction objects to the inclusion of a particular legislative provision or unauthorized appropriation.<sup>60</sup> This practice has generally been recognized as the “Army Protocol” since the 104<sup>th</sup> Congress.<sup>61</sup> Under this protocol, a provision that would potentially be out of order under Rule XXI, clause 2 is left unprotected and could be subject to a point of order on the floor.<sup>62</sup> If such a point of order against

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<sup>57</sup> For further information on provisions changing existing law, also known as “legislation on appropriations,” see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup.

<sup>58</sup> For further information on appropriations not previously authorized by law, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh.

<sup>59</sup> *House Practice*, chapter 4, §7, p. 77-78.

<sup>60</sup> House Committee on Rules, “Open Rules and Appropriations Bills,” October 13, 2011, available at <http://rules.house.gov/Media/file/NewSite/Boot%20Camp/mkcBT%20-%20Open%20Rules913b.pdf> (accessed on May 1, 2012).

<sup>61</sup> *Ibid.*; for further information on the Army Protocol, see Oleszek, Walter, *Congressional Procedures and the Policy Process* (Washington, DC: CQ Press, 2007), 7<sup>th</sup> ed., pp. 134-135. Because this protocol is not a formal part of House rules, it is not possible to compile data on its use or impact.

<sup>62</sup> In most legislative situations, it is more typical that measures, rather than specific provisions, are subject to a point of order, so that, if successful, the point of order would cause the measure to be removed from floor consideration and recommitted to its committee of origin. For further information, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen. For an example of points of order being raised and sustained against unprotected provisions in a regular appropriations bill, see the consideration of H.R. 5025, House debate, *Congressional Record* (daily edition), vol. 150, issue 109, September 14, 2004, pp. H7126-H7136; H7139-H7177.



that provision were raised and sustained, the provision would be stricken and consideration of the bill would continue.<sup>63</sup>

**Table 4** displays a breakdown of the number of special rules and UCAs initiating consideration of regular appropriations bills that provided a blanket waiver of Rule XXI, clause 2, a blanket waiver with exceptions, a waiver for only specific provisions, or no waiver. Almost all bills were provided some type of Rule XXI, clause 2 waiver at the time consideration was initiated; in only one instance was no waiver of clause 2 provided when consideration was initiated through a special rule or UCA. In this instance (H.Res. 770, 108<sup>th</sup> Congress), points of order were raised and sustained during subsequent consideration of the bill.<sup>64</sup> Similarly, in the one instance where a waiver of clause 2 was provided for only a specified provision in the bill (H.Res. 498, 105<sup>th</sup> Congress), points of order were raised and sustained against other provisions when the bill was considered.

**Table 4. Rule XXI, Clause 2 Waivers for Initial Consideration for Regular Appropriations Bills, FY1996-FY2012**

Congress	Fiscal Year	Number of Appropriations Bills/Number Initially Considered <sup>a</sup>	Privileged	Rule XXI, Clause 2 Waivers <sup>a</sup>			
				Entire Bill <sup>b</sup>	Exceptions	Specific	None
104	1996	13/13		10	3		
	1997	13/13		7 (1)	5		
105	1998	13/13	2	6	3 (2)		
	1999	13/13		6	6	1	
106	2000	13/12		7	5		
	2001	13/13		4	9		
107	2002	13/13		4 (2)	7		
	2003	13/5		2	3		
108	2004	13/13	1	2 (1)	7 (2)		
	2005	13/12		2	9		1
109	2006	11/11		3	8		
	2007	11/10		2	8		
110	2008	12/12		10 (2)			
	2009	12/1		1			
111	2010	12/12		12			
	2011	12/2		2			
112	2012	12/7		5	2		

<sup>63</sup> *House Manual*, §1044, p. 850.

<sup>64</sup> See the consideration of H.R. 5025 (109<sup>th</sup> Cong.), *Congressional Record* (daily edition), vol. 151, part 15 (September 14, 2005), pp. H.R. 17136.

**Source:** Prepared by CRS using data obtained from the Legislative Information System (available at <http://www.congress.gov>) and the *Congressional Record*.

**Notes:** Special rules are in regular text; UCAs are in parentheses.

- a. Between the 104<sup>th</sup> and 108<sup>th</sup> Congresses, the 13 House Appropriations subcommittees were responsible for one regular appropriations bill each. During the 109<sup>th</sup> Congress, due to subcommittee realignment, the total number of regular appropriations bills was effectively reduced to 11 annually. Beginning in the 110<sup>th</sup> Congress, subcommittee jurisdictions were again realigned for a total of 12 subcommittees, each of which is currently responsible for a single regular appropriations bill. For further information on subcommittee realignment during this period, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2011*, by Jessica Tollestrup. Bills receiving initial floor consideration do not include the few instances where a regular appropriations bill was first considered on the House floor in a legislative vehicle that combined two or more regular appropriations bills (so-called omnibus or minibus bills). For further information, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by Jessica Tollestrup.
- b. On three occasions, the waiver of Rule XXI clause 2 that applied to the entire bill was provided through a UCA that waived all points of order against the bill; these UCAs initiated consideration for H.R. 3845 (104<sup>th</sup> Cong.), H.R. 2904 (107<sup>th</sup> Cong.), and H.R. 3061 (107<sup>th</sup> Cong.).

For both blanket waivers of Rule XXI, clause 2, and waivers with exceptions, special rules and UCAs have trended in a similar direction in the form of waiver provided. For all but four of the fiscal years between FY1996 and FY2007, at least half of the Rule XXI clause 2 waivers had specified exceptions, allowing those provisions to be stricken by a point of order during subsequent consideration. For the bills between FY2008 and FY2011, however, waivers included no exceptions, and so protection against such points of order was provided for the entire measure. Most recently, for consideration the FY2012 bills, a waiver with exceptions was provided on two occasions, for the Department of Homeland Security appropriations bill (H.R. 2017) and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill (H.R. 2112).<sup>65</sup>

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<sup>65</sup> H.Res. 287 and H.Res. 300 (112<sup>th</sup> Cong.), respectively.