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Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations

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Summary

Federal programs that are funded through the annual appropriations process in regular appropriations acts may typically obligate those funds during a period that starts at the beginning of that fiscal year. For certain programs, however, the period of availability for some or all of their funds may be delayed until after the start of the fiscal year or even until a future fiscal year. Three types of delayed periods of availability are discussed in this report: "advance appropriations," "forward funding," and "advance funding."

Advance appropriations become available for obligation one or more fiscal years after the budget year covered by the appropriations act. Although advance appropriations are provided in order to manage specific planning concerns, they also have implications for the prevention of funding gaps and the avoidance of continuing appropriations for those programs. Advance appropriations are typically enacted at an interval of one fiscal year prior to when such appropriations become available. For accounts that receive advance appropriations, the amount of budget authority that will become available once the fiscal year commences is sometimes adjusted in subsequent appropriations acts through supplemental appropriations or rescissions.

Forward funding becomes available beginning late in the budget year and is carried into at least one following fiscal year. This period of availability's main implication is that it facilitates obligations during the summer months for programs that start their activities during the fall, particularly for the Department of Education and Department of Labor. Forward funds tend to become available at an interval that starts on July 1 and are available during at least two fiscal years. Typically, this schedule of availability is combined with annual or advance appropriations so that only the portions of the program that require summer obligations are funded in this manner.

Advance funding becomes available late in the budget year and is in addition to the funds for that entire fiscal year; any expenditure of the advance funds is charged to the following fiscal year's appropriation. This period of availability has tended to be used for accounts that fund mandatory payments to individuals. The aggregate amount of such payments may be particularly sensitive to changes in eligible beneficiaries or difficult to predict more than a year in advance. In such instances, providing extra funds that become available late in the fiscal year might lessen or eliminate the potential for a funding shortfall and the need for separate supplemental appropriations. In the two cases where advance funds are currently used, they are available only during the final weeks of the fiscal year.

Choosing a delayed period of availability when funding a program may have budget process implications due to the scorekeeping rules that govern the fiscal year to which such funds are attributed. The congressional budget resolution has also imposed various limits on advance appropriations for discretionary spending since FY2001. For FY2014, these limits were established in the Bipartisan Budget Act of 2013. In certain circumstances, making funds available for a delayed period of availability may also violate House and Senate rules that prohibit unauthorized appropriations and other types of legislative provisions.

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Introduction

Funding for federal programs that is provided through the annual appropriations process in regular appropriations acts is typically available for obligation[1] during a single fiscal year, unless otherwise specified.[2] This period of availability most often begins on the first day of the fiscal year of the appropriations act (October 1), also referred to as the "budget year." For example, appropriations provided by the FY2007 Department of Defense Appropriations Act (P.L. 109-289), which was enacted on September 29, 2006, were generally available for obligation and expenditure on October 1, 2006, the first day of FY2007, and remained available through September 30, 2007.[3]

However, a delayed period of availability that begins after the start of the fiscal year, or even during a future fiscal year, may be provided for particular programs that are funded through the annual appropriations process.[4] Delayed periods of availability are typically provided to meet specific budgetary needs related to the purpose or structure of a program. Some of the reasons to provide such periods of availability may be more broadly applicable, such as to prevent a funding shortfall late in the fiscal year or a funding gap[5] in the following fiscal year.[6] Although only a comparatively small number of individual programs receive funds that are available during such periods, many of these programs have a large number of beneficiaries. For example, portions of the Medicaid program, the Veterans Health Administration (VHA), and Department of Education formula grants are funded for delayed periods of availability.[7]

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[1] Appropriations bills provide agencies *budget authority*, which is 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. For explanations of these terms, see U.S. Government Accountability Office (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 20-21, http://www.gao.gov.

[2] Funds may also be made available for more than one year ("multi-year" funds) or without fiscal year limitation ("no year" funds). For further information on the appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup.

[3] P.L. 109-289 is an example of a regular appropriations act that was enacted prior to the beginning of the fiscal year.

[4] The federal budget process distinguishes between mandatory and discretionary spending, which are provided through two different processes. The annual appropriations process both controls and funds discretionary spending. Mandatory spending is controlled through authorizing laws. Such spending may be funded through provisions in the authorizing law that contains appropriations for that purpose. Alternately, when the authorizing law contains no appropriations, such mandatory programs are funded through the annual appropriations process. This is sometimes referred to as "appropriated mandatory" or "appropriated entitlement" spending. For further information on discretionary spending, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup. For further information on appropriated mandatory spending, see CRS Report RS20129, *Entitlements and Appropriated Entitlements in the Federal Budget Process*, by Bill Heniff Jr.

[5] A funding gap is the interval during the fiscal year when appropriations for a particular project or activity are not enacted into law either in the form of a regular appropriations act or a continuing resolution.

[6] These and other reasons for providing funds for a delayed period of availability have been noted by both Congress and the executive branch. See, for example, U.S. Congress, Conference Committee, *Concurrent Resolution on the Budget for Fiscal Year 2001*, conference report to accompany H.Con.Res. 290, 106th Cong., 2nd sess., H.Rept. 106-577 (Washington, DC: GPO, 2000), p. 72; Executive Office of the President, Office of Management and Budget (OMB), *Budget of the U.S. Government*, Analytical Perspectives, Fiscal Year 2014, H.Doc.113-3, 113th Cong., 1st sess. (Washington, DC: GPO, 2013), pp. 156-157.

[7] For further information on the funding for these programs, see CRS Report R42640, *Medicaid Financing and Expenditures*, by Alison Mitchell; CRS Report R43179, *Veterans' Medical Care: FY2014 Appropriations*, by Sidath Viranga Panangala; and CRS Report R42588, *Labor, Health and Human Services, and Education: FY2013 Appropriations Overview*, coordinated by Karen E. Lynch.

The statutory authority for a particular delayed period of availability may derive from provisions authorizing a particular program,[8] those that provide appropriations to fund it, or a combination of the two. Under congressional rules, a statutory authorization of such a period of availability must precede an appropriation for those purposes. A program's authorizing statute may specifically address such a period of availability in the authorization of appropriations[9] or address it more generally in the provisions that govern the program.[10] If the authorizing statute itself does not suggest a delayed schedule for the funds, the legislative history associated with that statute could anticipate that such funds will be provided.[11] Another possibility is that Congress could decide to use a delayed period of availability during the annual appropriations process even if the program's authorization or associated legislative history is silent as to timing of future funds or only authorizes a schedule that is aligned with the budget year. On the other hand, even when the authorization anticipates that funds will be available for a delayed period, appropriations may subsequently be provided on a schedule that is aligned with the budget year.[12] In either instance, the period of availability associated with the appropriations would be controlling.

A variety of approaches have been used during the annual appropriations process to provide funds that become available at some point after the beginning of the fiscal year. These include, but are not limited to, the three periods of availability: "advance appropriations," "forward funding," and "advance funding." *Advance appropriations* become available for obligation starting at least one fiscal year after the budget year.[13] *Forward funding* becomes available beginning late in the budget year and is carried into at least one following fiscal year.[14] *Advance funding* is funding for the following fiscal year that becomes available for obligation late in the budget year and would be in addition to the funds for that fiscal year. Any expenditure of advance funds is counted as part of the following fiscal year's appropriation.[15] These particular periods of availability as compared to annual appropriations are illustrated in **Figure 1**.

[8] An authorization may generally be described as a statutory provision that defines the authority of the government to act. It can establish or continue a federal agency, program, policy, project, or activity. Further, it may establish policies and restrictions and deal with organizational and administrative matters. It also (implicitly or explicitly) authorizes subsequent congressional action to provide appropriations. For further information, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh.

[9] See, for example, 31 U.S.C. 117, which authorizes appropriations for certain VHA accounts.

[10] See, for example, 20 U.S.C. 1223(a), which is a general statutory provision governing certain federal education programs.

[11] See, for example, P.L. 94-192, which established and authorized appropriations for the Public Broadcasting Fund but did not explicitly specify a period of availability. The expectation that funds might be available for an alternative period of availability was noted in the accompanying committee report (U.S. Congress, House Committee on Interstate and Foreign Commerce, *Public Broadcasting Financing Act of 1975*, report to accompany H.R. 6461, 94th Cong., 1st sess., H.Rept. 94-245 [Washington, DC: GPO, 1975], p. 18).

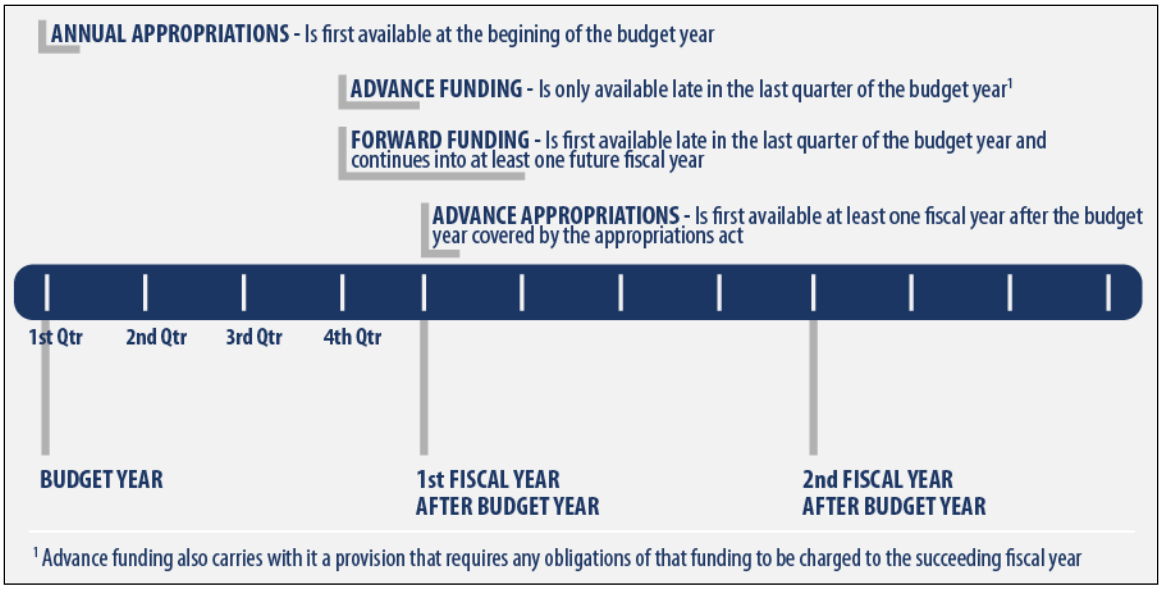
[12] All of the options described in this paragraph may have procedural implications for the congressional consideration of appropriations measures. These are discussed in the report section "Legislating on Appropriations."

[13] See U.S. Government Accountability Office (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, p. 8, http://www.gao.gov.

[14] Ibid, p. 56.

[15] Ibid, p. 8.

Figure 1. Advance Appropriations, Forward Funding, and Advance Funding



Source: CRS.

While these three delayed periods of availability all share some similarities, they are distinct concepts in three regards due to the timing of the funds. First, advance appropriations become available after the end of the budget year, whereas forward funds become available during the budget year. Second, advance appropriations become available at some point after the budget year has ended, whereas advance funds are available only during the budget year. Third, forward funds are available into the following fiscal year, whereas advance funds expire once the budget year ends.[16]

Although advance appropriations, forward funding, and advance funding are each discrete concepts, they tend to have some degree of variation in how they are implemented, including the interval in advance for which funds are provided and the duration of availability for those funds. For example, advance appropriations may be provided one or two fiscal years prior to when they become available for obligation and be available during a single fiscal year or multiple fiscal years or with no fiscal year limitation. In addition, a program may receive funds on a combination of timetables.

Providing funds for a delayed period of availability may have budget process implications for Congress. Funds provided for such periods are generally subject to both procedural and statutory budget enforcement, and their budgetary effects are attributed (or "scored") to particular fiscal years for such purposes.[17] Since FY2001, the budget resolution has also imposed limits for the House and Senate on advance appropriations for discretionary spending. For FY2014, these limits were established through the enactment of the Bipartisan Budget Act (Division A, H.J.Res. 59). As was previously mentioned, congressional rules require a statutory authorization that allows a delayed period of availability to precede an appropriation for those purposes. If a delayed period of availability for a program is not authorized by existing law, providing funding in a general

[16] Advance funding is also unique when compared to the other schedules discussed in this report in the requirement that expenditures of such funds be deducted from the succeeding fiscal year's appropriation.

[17] Scorekeeping is the process through which the budgetary effects of legislation are determined for the purposes of budget enforcement. For further information, see CRS Report 98-560, *Baselines and Scorekeeping in the Federal Budget Process*, by Bill Heniff Jr.

appropriations bill or amendment thereto for such a period may subject that bill or amendment to a point of order.

This report examines concepts, practices, and procedural implications associated with the particular delayed periods of availability described above. The following three sections discuss the origins, relevant budgetary concepts, and practices associated with advance appropriations, forward funding, and advance funding. The fourth section explains the budget process implications that are associated with these funding approaches. The scope of this report is generally restricted to an analysis of advance appropriations, forward funding, and advance funding in the context of the budget process. The program-specific considerations and potential consequences of these funding approaches are not discussed. For information on particular programs, see the CRS reports on those issue areas.

Advance Appropriations

Advance appropriations is a form of budget authority that becomes available one or more fiscal years after the budget year covered by the appropriations act.[18] For example, in an appropriations act for FY2016, funds would generally become available for obligation on October 1, 2015. Advance appropriations in the FY2016 act would not become available until the start of FY2017 or later.

According to the Congressional Budget Office (CBO), advance appropriations were first provided in 1962 for grants-in-aid that funded airport construction. Other early uses included grants for urban renewal and the Department of Education.[19] Currently, this period of availability is used for a wide variety of programs funded by discretionary and appropriated mandatory spending.[20]

Perhaps the most significant implication of advance appropriations relates to funding gaps.[21] The congressional budget process currently requires that annual appropriations be enacted by the beginning of the fiscal year (October 1). If such appropriations are not enacted by that time, one or more continuing resolutions (CRs) may be enacted to prevent a funding gap from occurring until regular appropriations are completed or the fiscal year ends. Programs that are funded through the appropriations process are at risk of a funding gap at the beginning of the fiscal year if annual appropriations or a CR is not enacted or at any point during the fiscal year when a CR expires and has not been replaced by a further CR or annual appropriations. However, if a program's appropriations for all or part of a fiscal year are enacted in the previous year's appropriations act, the program might not experience a funding gap, assuming that such appropriations were available during that period and were unexpended.[22]

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[18] See GAO, *A Glossary of Terms*, p. 8.

[19] CBO, "A History of the Use of Advance Appropriations," in *Advance Budgeting: A Report to the Congress*, March 1977, pp. 75-82.

[20] See footnote 4 for a discussion of these terms.

[21] For further information with regard to funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

[22] This implication has particularly been noted in the context of appropriated entitlements. For example, for the Special Benefits for Disabled Coal Miners account, the Senate Appropriations Committee noted in the report accompanying their FY2013 appropriations proposal, "The Committee also recommends an advance appropriation of $24,000,000 for the first quarter of fiscal year 2015.... These funds will ensure uninterrupted benefit payments to coal miners, their widows, and dependents." Senate Committee on Appropriations, Department of Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill 2014, report to accompany S. 1284, S.Rept. 113-71, 113th Cong,. 1st sess., July 11, 2013 (Washington, DC: GPO, 2013), p. 31.

A related implication, but one that is more generally associated with a program's annual operations, is that advance appropriations may enable that program to avoid the need for any continuing appropriations during periods when the regular appropriations bills for that fiscal year have not yet been enacted. The potential consequences of CRs on program operations have been noted by a variety of observers, including funding levels, program delivery, management support, and revenue collection.[23] The extent to which a program has previously been provided advance appropriations that are available at the start of a fiscal year, that program would not be reliant on funding that would otherwise be provided through a CR.

Some have argued that programs that receive advance appropriations may be better able to engage in advance planning. Enacting funding for a program in advance may enable it to make long-term commitments related to its internal operations or the population that it serves.[24] Similarly, advance appropriations may assist agencies in planning and carrying out multi-year capital expenditures by spreading the cost over a number of fiscal years.[25] However, others argue that the ability to make such commitments may be limited by the extent to which programmatic needs can be forecasted in advance.[26] Congress may also prefer to exercise control over programs through regular annual appropriations in certain circumstances.

Recent Funding Practices[27]

Advance appropriations are typically enacted at an interval of one fiscal year prior to when such appropriations become available. For example, FY2013 funds for the "medical facilities"

[23] See, for example, CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass; GAO, Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies, GAO-09-879, September 2009.

[24] This implication has been noted by a variety of observers. See, for example, CBO, "A History of the Use of Advance Appropriations," p. 87; OMB, Analytical Perspectives, Fiscal Year 2000 (Washington, DC: GPO, 1999), pp. 135-139.

[25] For example, the FY2012 and FY2013 budgets requested advance appropriations for specific missile procurement programs (OMB, *Budget of the U.S. Government*, Appendix, Fiscal Year 2012 [Washington, DC: GPO, 2011], p. 1315; Appendix, Fiscal Year 2013 [Washington, DC: GPO, 2012], p. 1427). The FY2014 budget requested advance appropriations for the full funding of construction of *Virginia*-class submarines (Appendix, Fiscal Year 2014 [Washington, DC: GPO, 2013], p. 1333). For further information on the FY2014 request for these funds, see CRS Report RL32418, *Navy Virginia (SSN-774) Class Attack Submarine Procurement: Background and Issues for Congress*, by Ronald O'Rourke, pp. 7-8. Requests for advance appropriations for such Department of Defense purchases were also made prior to recent years on a number of occasions. Congressional approval of this particular use of advance appropriations, however, has been rare. For a summary of these issues, see CRS Report RL31404, *Defense Procurement: Full Funding Policy—Background, Issues, and Options for Congress*, by Ronald O'Rourke and Stephen Daggett.

[26] This issue was discussed, for example, when Congress first considered providing the Department of Veterans Affairs with advance appropriations. Susan Irving, "VA Health Care: Challenges in Budget Formulation and Issues Surrounding the Proposal for Advance Appropriations," GAO, GAO-09-664T, April 29, 2009; CRS Report R40489, *Advance Appropriations for Veterans' Health Care: Issues and Options for Congress*, by Sidath Viranga Panangala, pp. 11-12. See also H.Rept. 111-171, which accompanied H.R. 1016, Veterans Health Care Budget Reform and Transparency Act of 2009.

[27] A source of data on the programs for which advance appropriations have been previously provided is the President's budget submissions for FY1976 through FY2014. The Congressional Budget Act of 1974 requires that the President's budget submission include information related to budget estimates for advance appropriations in subsequent fiscal years (31 U.S.C. 1105(a)(17)). The Veterans Health Care Budget Reform and Transparency Act of 2009 (P.L. 111-81; 31 U.S.C. 1105[a][36]) requires that advance appropriations also be annually requested for certain VHA accounts. The list containing this required information was first included in the FY1976 budget submission (Appendix, Fiscal Year 1976 [Washington, DC: GPO, 1975], p. 1077). It also noted advance appropriations that were authorized but not requested and all associated authorization laws for both the requested and unrequested accounts. The form of this list has varied significantly over time through FY2007, at times also listing advance appropriations provided in the

(VHA—Department of Veterans Affairs) account were provided one year in advance in the FY2012 appropriations act:

> For necessary expenses for the maintenance and operation of hospitals, nursing homes, domiciliary facilities, and other necessary facilities of the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department; for oversight, engineering, and architectural activities not charged to project costs; for repairing, altering, improving, or providing facilities in the several hospitals and homes under the jurisdiction of the Department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry services, **$5,441,000,000**, **plus reimbursements, shall become available on October 1, 2012, and shall remain available until September 30, 2013**.[28]

Less frequently, accounts receive advance appropriations for the second fiscal year succeeding the budget year of the appropriations law in which they are enacted. For example, the Corporation for Public Broadcasting account received FY2014 appropriations two years in advance in the FY2012 appropriations act:

> For payment to the Corporation for Public Broadcasting (referred to in this Act as "CPB"), as authorized by the Communications Act of 1934, an amount which shall be available within limitations specified by that Act, **for the fiscal year 2014, $445,000,000**.[29]

Because advance appropriations are defined by when they make funds first available for obligation, a range of options exists under recent practice for the duration of their availability—from one quarter of the fiscal year to no fiscal year limitation. For example, the advance appropriation for the "payments for foster care and permanency" (Administration for Children and Families—Department of Health and Human Services) account was available for the first quarter of the fiscal year only:

> For making payments to States or other non-Federal entities under title IV-E of the Social Security Act, **for the first quarter of fiscal year 2013, $2,100,000,000.**[30]

A further example of a no-year advance appropriation was the Public and Indian Housing—tenant-based rental assistance (Department of Housing and Urban Development) account:

> For activities and assistance for the provision of tenant-based rental assistance authorized under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided ... **$4,000,000,000, to remain available until expended, shall be available on October 1, 2012**.[31]

Adjustments to Funding in the Budget Year

For accounts that receive advance appropriations, the amount of budget authority that will be available once the fiscal year commences is sometimes adjusted in subsequent appropriations acts. In some instances, an account is appropriated some funds a year in advance, and then the

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previous fiscal year's appropriations acts but not requested for inclusion in the upcoming acts. Since FY2008, the coverage of the list has included advance appropriations with funding amounts provided in the previous fiscal year, the current fiscal year, the budget year, and request for the fiscal year succeeding budget year.

[28] P.L. 112-74. All emphases are added.

[29] Ibid.

[30] Ibid.

[31] P.L. 112-55.

remainder of the funds are appropriated for the budget year. Those advance appropriated funds provided through the prior appropriations act may be reduced through a rescission.[32] In the example below, which was excerpted in the prior subsection, the account for Public and Indian Housing—tenant-based rental assistance (Department of Housing and Urban Development) received additional funding to the prior year's advance in the budget year plus an advance appropriation for the succeeding fiscal year:

> For activities and assistance for the provision of tenant-based rental assistance authorized under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, **$14,914,369,000, to remain available until expended, shall be available on October 1, 2011 (in addition to the $4,000,000,000 previously appropriated under this heading that became available on October 1, 2011), and $4,000,000,000, to remain available until expended, shall be available on October 1, 2012**.[33]

An additional provision in this appropriations act also adjusted downward the amount that was advance appropriated in the FY2011 appropriations act.

> Of the unobligated balances remaining from funds appropriated under the heading "Tenant-Based Rental Assistance" under the "Full-Year Continuing Appropriations Act, 2011", **$650,000,000 are rescinded from the $4,000,000,000 which are available on October 1, 2011**.[34]

As an effect of these provisions, the amount of new budget authority available for this account as of October 1, 2011, was the $4,000,000,000 advance appropriation plus the $14,914,369,000 budget year appropriation minus the $650,000,000 rescission for a total of $18,264,369,000.

Forward Funding

Forward funding is a period of availability that begins during the last quarter of the budget year and continues into at least the following fiscal year.[35] For example, in an appropriations bill for FY2016, budget authority that is forward funded would become available during FY2016 but not until July 1, 2016, or later and would remain available through all or part of FY2017. This budget authority is often available for a period of more than 12 months, in which case it can be classified as multi-year budget authority[36] but may also be provided in shorter increments.

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[32] A rescission is the cancellation of previously enacted budget authority while it is still available for obligation.

[33] P.L. 112-55.

[34] Ibid.

[35] See GAO, *Glossary of Terms*, p. 56. Some accounts also receive funds at earlier intervals after the beginning of the budget year, such as April 1. See, for example, the Training and Employment Services (Employment and Training Administration—Department of Labor) account in P.L. 112-74, which provides, in part:

> (1) for grants to States for adult employment and training activities, youth activities, and dislocated worker employment and training activities, $2,605,268,000 as follows:
>
> (A) $770,922,000 for adult employment and training activities, of which $58,922,000 shall be available for the period July 1, 2012, through June 30, 2013, and of which $712,000,000 shall be available for the period October 1, 2012 through June 30, 2013;
>
> (B) $825,914,000 for youth activities, **which shall be available for the period April 1, 2012 through June 30, 2013**.

This delayed period of availability for these funds is not considered to be forward funding because the funds become available prior to the last quarter of the budget year.

[36] GAO, *Glossary of Terms*, p. 22.

While the first use of forward funding is unknown, the modern practice appears to have begun around the same time as the change in the federal fiscal year from July 1 to October 1, which occurred in fiscal year 1976.[37] As a consequence of this new schedule, the ability to obligate funds for certain activities became difficult, for example, if the activities required obligations to be made in the summer and remain available through the fall. At least partially in response to this issue, some programs were provided forward funding to allow such obligations to occur during the summer months and the funds to remain available into the following fiscal year.[38] Under current practice, this period of availability is used only for programs that are funded by discretionary spending.

The main implication associated with forward funding relates to the seasonal timing of obligations that it may enable. The following two departments currently receive forward funding.

1. The Department of Education, for the largest formula grant programs to states; and
2. The Department of Labor, for vocational training programs.

These particular programs require significant obligations during the summer to prepare for activities that coincide with the school year.[39] Although advance appropriations might enable these programs to plan ahead based on those budgetary resources, such advance appropriations could not be obligated until they became available at the beginning of the fiscal year.[40] Forward funding part or all of a program, in contrast, allows for obligations to occur up to three months prior to that time so that the availability of funds coincides with the program year.[41]

Recent Funding Practices[42]

Forward funds tend to become available at an interval that starts on July 1. Funds are available during at least two fiscal years, but the duration of these funds may be for one year or multiple years, depending on whether the funds are available for more or fewer than 12 months. For example, the Community Service Employment for Older Americans (Employment and Training Administration—Department of Labor) account provided funds for one-year duration (12 months):

> To carry out title V of the Older Americans Act of 1965 (referred to in this Act as "OAA"), **$449,100,000, which shall be available for the period July 1, 2012 through June 30, 2013**.[43]

[37] Title V of the Congressional Budget and Impoundment Control Act of 1974, as enacted (88 Stat. 321).

[38] CBO, "A History of the Use of Advance Appropriations," p. 94.

[39] The timing issue associated with such programs has been noted as early as 1976 (Peat, Marwick, Mitchell & Co., *A Study of Late Funding of Elementary and Secondary Education Programs*, prepared for the U.S. Office of Education, February 1976, p. VI-1).

[40] Many of the programs that receive forward funds are also provided other funds that are advance or annual appropriations. This practice is discussed in the report section "Mixed Approaches."

[41] OMB, Analytical Perspectives, Fiscal Year 2014 (Washington, DC: GPO, 2013), p. 128.

[42] A source of data on the programs for which forward funds have been previously provided is the President's budget submissions for FY1981 through 2007. During this period, a list of programs for which the President requested forward funds was included with the information on advance appropriations.

[43] P.L. 112-74. In this particular account, a provision allows funds to be "recaptured and reobligated in accordance with section 517(c) of the OAA." Potentially, this may allow the agency to prolong the period of availability beyond 12 months.

In contrast, funds of a multi-year duration (15 months) were provided by the School Improvement Programs (Department of Education) account:

> For carrying out school improvement activities authorized by parts A and B of title II, part B of title IV, parts A and B of title VI, and parts B and C of title VII of the ESEA; the McKinney-Vento Homeless Assistance Act; section 203 of the Educational Technical Assistance Act of 2002; the Compact of Free Association Amendments Act of 2003; and the Civil Rights Act of 1964, $4,550,018,000, **of which $2,725,246,000 shall become available on July 1, 2012, and remain available through September 30, 2013**.[44]

Mixed Approaches

While forward funding is sometimes provided as the only schedule of availability for an account, it is typically combined with either budget year or advance appropriations. This allows for only the portion of the program that requires summer obligations to be funded in this manner, while the remaining aspects can be funded through regular annual or advance appropriations. For example, the Office of Job Corps (Employment and Training Administration—Department of Labor) account contained both forward funding and annual appropriations:

> To carry out subtitle C of title I of the WIA, including Federal administrative expenses, the purchase and hire of passenger motor vehicles, the construction, alteration, and repairs of buildings and other facilities, and the purchase of real property for training centers as authorized by the WIA, $1,706,171,000, plus reimbursements, as follows:
>
> (1) **$1,572,049,000 for Job Corps Operations, which shall be available for the period July 1, 2012 through June 30, 2013**;
>
> (2) $104,990,000 for construction, rehabilitation and acquisition of Job Corps Centers, which shall be available for the period July 1, 2012 through June 30, 2015 ... and
>
> (3) **$29,132,000 for necessary expenses of the Office of Job Corps, which shall be available for obligation for the period October 1, 2011 through September 30, 2012**.[45]

Forward funding combined with advance appropriations was provided by the Education for the Disadvantaged (Department of Education) account:

> For carrying out title I of the Elementary and Secondary Education Act of 1965 (referred to in this Act as "ESEA") and section 418A of the Higher Education Act of 1965 (referred to in this Act as "HEA"), $15,750,983,000, of which **$4,817,117,000 shall become available on July 1, 2012, and shall remain available through September 30, 2013**, and of which **$10,841,177,000 shall become available on October 1, 2012, and shall remain available through September 30, 2013**, for academic year 2012-2013.[46]

Advance Funding

Advance funding is a form of budget authority provided for a small number of accounts that allows for additional obligations late in the budget year that are counted as a part of the succeeding fiscal year's funding.[47] In essence, advance funds have three defining characteristics. First, advance funds are provided for an account in addition to the appropriation for the budget

[44] P.L. 112-74.

[45] Ibid.

[46] Ibid.

[47] Ibid, p. 8.

year in that account. Second, advance funds become available only after the budget year has begun, usually during the last two months of that year, and are no longer available once the budget year ends. Third, any expenditure of the advance funds is directed in the appropriations act to be charged to the succeeding fiscal year's appropriation.[48] For example, an appropriations act for FY2016 provides $100 million for an account in annual appropriations and additional budget authority for such sums as may be necessary for obligations after September 1, 2016. Legislative language in that account further directs that any expenditure of the "such sums" budget authority is to be charged to the next fiscal year's appropriation for FY2017. At the end of FY2016, the obligations of the advance funds total $1 million. Subsequent appropriations for FY2017 total $100 million plus advance funding for that account, and the $1 million in obligations of the FY2016 advance funding is charged against that $100 million for FY2016. Effectively, then, FY2017 budget authority for new obligations is $99 million plus the advance funds for FY2017.

As with forward funding, the first time that advance funds were provided in an appropriations act is not known. Provisions that display the essential characteristics of advance funding date back to at least FY1967, when such additional funds were provided for the Unemployment Compensation for Federal Employees and Ex-Servicemen account.[49] Historically, advance funding has tended to be provided for certain accounts that fund payments based on an entitlement formula. The practice of providing for such entitlements through advance funding, as opposed to other funding mechanisms, appears to be a legacy of earlier funding practices that pre-date the current conceptualization of budget enforcement and execution.[50] It has limited application in the present day, as only two accounts currently receive advance funding:

1. Office of Workers Compensation Programs—Special Benefits (Department of Labor); and
2. Federal Unemployment Benefits and Allowances (Employment and Training Administration—Department of Labor).

The total amount of payments that are funded by these and similar accounts may be particularly sensitive to changes in eligible beneficiaries or difficult to predict more than a year in advance. In such instances, providing extra funds that become available late in the fiscal year might lessen or eliminate the potential for a funding shortfall and the need for separate supplemental appropriations. However, because any obligations of such funds must be charged to the

[48] This is in contrast to supplemental funds that are provided late in the fiscal year in the event that the annual funds that were provided are insufficient to finance program obligations, which are charged to that fiscal year. For example, the Foster Care and Permanency (Administration for Children and Families—Department of Health and Human Services) provides, "For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under section 474 of title IV-E of the Social Security Act, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary" (P.L. 112-74).

[49] P.L. 97-787, which provided:

> For payments to unemployed Federal employees and ex-servicemen, as authorized by title XV of the Social Security Act, as amended, $65,000,000, of which not to exceed $5,000,000 shall be available for benefit payments for trade adjustment activities, together with such amount as may be necessary to be charged to the subsequent year appropriation for the payment of benefits for any period subsequent to March 31 of the current year.

Advance funding, as a concept, dates back at least to the President's FY1981 budget submission (Appendix, Fiscal Year 1981 [Washington, DC: GPO, 1980], p. 1143). CRS was unable to determine if this concept existed at any earlier period.

[50] For example, the distinction between direct and discretionary spending for budget enforcement purposes.

succeeding fiscal year, any use of this budget authority technically reduces base appropriations that are available in that future year.[51]

Recent Funding Practices[52]

Both the date of initial availability and consequent duration of the advance funds for the two accounts vary slightly. The first account, Office of Workers Compensation Programs—Special Benefits (Department of Labor), is provided advance funds for about the last seven weeks of the fiscal year:

> For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by 5 U.S.C. 81; continuation of benefits as provided for under the heading "Civilian War Benefits" in the Federal Security Agency Appropriation Act, 1947; the Employees' Compensation Commission Appropriation Act, 1944; sections 4(c) and 5(f) of the War Claims Act of 1948; and 50 percent of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers' Compensation Act, **$350,000,000, together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year.**

The second account, Federal Unemployment Benefits and Allowances (Employment and Training Administration—Department of Labor), which funds the Trade Adjustment Assistance for Workers program, is provided advance funds for about the last two weeks of the fiscal year:

> For payments during fiscal year 2012 of trade adjustment benefit payments and allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974, and section 246 of that Act; and for training, employment and case management services, allowances for job search and relocation, and related State administrative expenses under part II of subchapter B of chapter 2 of title II of the Trade Act of 1974, including benefit payments, allowances, training, employment and case management services, and related State administration provided pursuant to section 231(a) of the Trade Adjustment Assistance Extension Act of 2011, **$1,100,100,000, together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15, 2012.**

Budget Process Implications

Using a delayed period of availability to fund a program may also have budget process implications. These implications derive from scorekeeping rules that govern the fiscal year to which such funds are attributed for the purposes of budget enforcement. The congressional budget resolution has also imposed various limits on advance appropriations for discretionary spending since FY2001. For FY2014 and FY2015, these limits were established in the Bipartisan Budget Act of 2013. If a delayed period of availability has not been authorized by law, making

[51] It is not clear from a review of the program history of these and other accounts that have received advance funding why this funding structure is preferred, as opposed to supplemental budget authority that, if used, is charged to the budget year.

[52] A source of data on the programs for which advance funds have been previously provided is the President's budget submissions for FY1981 through FY2007. During this period, a list of programs for which the President was requesting advance funds was included with the information on advance appropriations.

funds available on such a schedule in a general appropriations bill or amendment thereto may subject it to a point of order under House and Senate rules.

Scorekeeping Considerations

Both statutory processes and congressional procedures enable previously agreed-upon fiscal goals to be enforced, both during the consideration of budgetary measures and once they have been enacted.[53] This enforcement is based upon estimated budgetary effects that are attributed (i.e., "scored") by fiscal year. Under longstanding scorekeeping guidelines, new budget authority is attributed to the first fiscal year that it is available for obligation.[54] Consequently, advance appropriations are not scored against the budget year covered by the bill in which they are enacted but instead against the first fiscal year for which they are provided (one or more years after the budget year).[55] Forward funding, in contrast, is scored against the budget year of the bill in which it is enacted, because it becomes available during the budget year. Similarly, because advance funding is for mandatory spending, CBO attributes the total projected budget authority and outlays that will be required for the budget year to that account.

Limits on Advance Appropriations Associated with the Budget Resolution

Congress has imposed procedural controls to limit the overall level of advance appropriations in response to concerns that such appropriations may affect future budgetary resources and that they might be used to circumvent other budgetary controls. Between FY1991 and FY2002, statutory spending limits restricted the amount of discretionary spending for each fiscal year.[56] Because budget authority is scored against the first year it is available, advance appropriations could be enacted for future fiscal years that would not count against the current fiscal year's limits. Previously enacted advance appropriations would, however, count against those limits if they were first available during that budget year. As a consequence, some observers became concerned that an increase in the use of advance appropriations could affect flexibility in future budgetary decisions.[57] Because of this, the FY2001 budget resolution, and every budget resolution thereafter, has contained provisions limiting future advance appropriations.

The first limits on advance appropriations created points of order on the House and Senate floor against the consideration of future legislation that would enact such appropriations above a specified dollar amount.[58] These provisions also provided procedures for a supermajority waiver

[53] For information on budget enforcement during the congressional consideration of budgetary measures, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno. For information on budget enforcement once such measures have been enacted, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.; and CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan, pp. 13-14.

[54] U.S. Congress, House Committee on the Budget, *Compilation of Laws and Rules Relating to the Congressional Budget Process*, as amended through August 3, 2012, Committee Print, 112th Cong., 2nd sess. (Washington, DC: GPO, 2012), pp. 313-318.

[55] Ibid, p. 314.

[56] For further information on these discretionary spending limits, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan S. Lynch.

[57] See, for example, CBO, *2001 Budget and Economic Outlook*, pp. 14-15; Daniel L. Crippen, CBO, *Extending the Budget Enforcement Act*, testimony before the House Committee on the Budget, June 27, 2001, p. 5.

[58] Sections 203 and 204 of H.Con.Res. 290. Also in FY2001, a related provision was included in H.Con.Res. 290

and appeal in the Senate.[59] Similar restrictions were in the FY2002 budget resolution, which also included new provisions exempting advance appropriations for the Corporation for Public Broadcasting from these limits.[60] The FY2004 and FY2006 budget resolutions both carried similar language to FY2002, except that advance appropriations were further restricted to a list of eligible accounts.[61] In FY2008 and FY2009, the House discontinued the exemption for the Corporation for Public Broadcasting, although the Senate continued to include it in its procedures for advance appropriations.[62] The FY2010 budget resolution added the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration to the list of accounts that were explicitly exempt in the House and Senate from the advance appropriations cap.[63]

Although the House and Senate did not agree on a budget resolution for FY2011, FY2012, FY2013, or FY2014,[64] the Bipartisan Budget Act of 2013 (Division A, H.J.Res. 59, 113th Congress) reinstated procedural limits on advance appropriations in the House and the Senate. Section 112 of the Bipartisan Budget Act limited the aggregate total of advance appropriations in the Senate for FY2015 and FY2016. Section 113 deemed the provisions of the House-adopted

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(§204[c]):

> (c) POINT OF ORDER WITH RESPECT TO DELAYED OBLIGATIONS-
>
> (1) IN GENERAL- Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that contains an appropriation of new budget authority for any fiscal year which does not become available upon enactment of such legislation or on the first day of that fiscal year (whichever is later).
>
> (2) EXCEPTION- Paragraph (1) shall not apply with respect to appropriations in the defense category; nor shall it apply to appropriations reoccurring or customary.

This provision would appear to prohibit forward funding and advance funding not "recurring or customary," as such funds are available after the beginning of the budget year. Such language was not included in budget resolutions in future fiscal years.

[59] Such procedures provided that, if the point of order is sustained, the provision providing advance appropriations would be stricken.

[60] H.Con.Res. 83 (FY2002), §§201, 202. An additional new provision also expressed the sense of Congress that the Congressional Budget Act should be amended to address procedures for advance appropriations. This provision was not included in subsequent restrictions on advance appropriations.

[61] H.Con.Res. 95, §501 (FY2004); H.Con.Res. 95, §402 (FY2006).

[62] S.Con.Res. 21, §206 (FY2008). In addition, this section carried different aggregate limits on advance appropriations for each chamber ($25,158,000,000 for the Senate; $25,558,000,000 for the House). Presumably this was to allow appropriations for the Corporation for Public Broadcasting appropriations, which were no longer exempted from the House limit. S.Con.Res. 70, Sections 302 and 313 (FY2009), however, carried the same aggregate limits on advance appropriations for each chamber ($28,852,000,000 for the House and Senate).

[63] S.Con.Res. 13 (FY2010), §§402, 424.

[64] To provide budget enforcement for FY2012, the House adopted<LISRef number="287" congress="112" title="" type="houseRes" id="995531664" />, which deemed the House-adopted version of the budget resolution (H.Con.Res. 34) to be enforceable in the House as a budget resolution agreed to by Congress. Section 402 of H.Con.Res. 34 imposed limits on FY2013 advance appropriations. Similarly, the following year, the House adopted H.Res. 614, which deemed the House-adopted version of the FY2013 budget resolution (H.Con.Res. 112) to be enforceable in the House. Section 501 of H.Con.Res. 112 imposed limits on FY2014 advance appropriations. No new limits were provided in the Senate for FY2012 or FY2013. For further information on these "deeming resolutions," see CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Megan S. Lynch.

version of the budget resolution (H.Con.Res. 25) to be enforceable in the House for the remainder of the 113th Congress, including the provisions therein that limit FY2015 advance appropriations (Section 601).[65]

Most recently, the FY2016 budget resolution (S.Con.Res. 11) imposed separate procedural limits for the House and Senate on advance appropriations. The form of the limit in the House was the same as the FY2014 limit associated with the Bipartisan Budget Act. The form of the Senate restriction, however, differed from previous fiscal years in that it was specific to advance appropriations in discretionary accounts.

The full text of the provisions limiting advance appropriations since FY2001 is provided in the **Appendix**.

Legislating on Appropriations

As was previously discussed, delayed periods of availability for funds can be established either in the corresponding authorization law or through the annual appropriations process. The way in which such schedules are established has implications for points of order related to legislating on appropriations.

Both House and Senate Rules contain provisions that restrict the content of appropriations measures.[66] In general, such rules restrict the inclusion of appropriations not previously authorized by law or other "legislative provisions" that have the effect of changing existing law under certain circumstances.[67] Precedents associated with these rules may prohibit advance appropriations or forward funding when it is not authorized by law. House precedents generally prohibit appropriations for durations that are beyond the fiscal year covered by the bill, such as appropriations that are made "available until expended," except when "existing law can be interpreted to permit that availability."[68] Because both advance appropriations and forward funds are by definition available for a duration that is beyond the budget year, it appears that these periods of availability would need to be authorized, or at least permitted, by law in order for such subsequent appropriations to be in order under House rules. Senate precedents are more ambiguous. However, as was the case for the House, those that prohibit no-year appropriations when no authorization for such availability exists may be applicable to advance appropriations and forward funding.[69]

There appear to be no House or Senate precedents that directly address the issue of advance funding. Such provisions could be considered to be legislative if they are determined to

[65] Section 115(c) of the Bipartisan Budget Act further provided for the House to extend the current limits on FY2015 advance appropriations through the following fiscal year.

[66] These restrictions are primarily located in House Rule XXI and Senate Rule XVI.

[67] For further information related to legislating on appropriations, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup. For further information related to unauthorized appropriations, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh.

[68] House debate, *Congressional Record*, vol. 119, part 21 (August 1, 1973), p. 27288; House debate, *Congressional Record*, vol. 152, part 8 (June 9, 2006), p. 10671. See also See W[illia]m Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, 112th Cong., 1st sess. (Washington: GPO, 2011), ch. 4, §28, pp. 95-96; §39, pp. 108-109. This principle is discussed further in Lewis Deschler, *Deschler's Precedents of the U.S. House of Representatives*, 94th Cong., 1st sess., H.Doc. 94-661 (Washington: GPO, 1977-1991), vol. 8, ch. 26, §§32.1, 32.2.

[69] See Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S. Doc. 101-28 (Washington: GPO, 1992), p. 212.

improperly restrict the timing of expenditures, the authority for which has been conferred under existing law to both the Office of Management and Budget and the agency.[70]

On this and other matters, the rules of the House and Senate are not self-enforcing. A Member must raise a point of order against a measure or amendment to trigger the procedures described above.[71] In addition, the House may waive clause 2(b) and (c) of Rule XXI through the adoption of a special rule, unanimous consent, or suspension of the rules.[72] The Senate, likewise, may waive paragraphs (2) and (4) of Rule XVI through unanimous consent or suspension of the rules.[73]

[70] The House has explicitly addressed this issue in other appropriations contexts in *Deschler's Precedents*, vol. 8, chapter 26, §51.23.

[71] For further information, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen; and CRS Report 98-306, *Points of Order, Rulings, and Appeals in the Senate*, by Valerie Heitshusen.

[72] For a discussion of these practices in the context of regular appropriations measures, see CRS Report R42933, *Regular Appropriations Bills: Terms of Initial Consideration and Amendment in the House, FY1996-FY2015*, by Jessica Tollestrup.

[73] For further information on suspension of the rules for Rule XVI, see *Riddick's Senate Procedure*, pp. 177.

Appendix. Restrictions on Advance Appropriations in Congressional Budget Resolutions and the Bipartisan Budget Act of 2013

FY2001 (H.Con.Res. 290)

SEC. 203. ENHANCED ENFORCEMENT OF BUDGETARY LIMITS.

(b) PROHIBITION ON USE OF ADVANCE APPROPRIATIONS—

(1) It shall not be in order in the House to consider any reported bill or joint resolution, or amendment thereto or conference report thereon, that would cause the total level of discretionary advance appropriations provided for fiscal years after 2001 to exceed $23,500,000,000 (which represents the total level of advance appropriations for fiscal year 2001).

(2) As used in this subsection, the term 'advance appropriation' means any discretionary new budget authority in a bill or joint resolution making general appropriations for fiscal year 2001 that first becomes available for any fiscal year after 2001.

(c) EFFECTIVE DATE—This section shall cease to have any force or effect on January 1, 2001.

SEC. 204. MECHANISMS FOR STRENGTHENING BUDGETARY INTEGRITY.

(b) POINT OF ORDER WITH RESPECT TO ADVANCE APPROPRIATIONS—

(1) IN GENERAL—It shall not be in order in the Senate to consider any bill, resolution, amendment, motion or conference report that—

(A) provides an appropriation of new budget authority for any fiscal year after the budget year that is in excess of the amounts provided in paragraph (2); and

(B) provides an appropriation of new budget authority for any fiscal year subsequent to the year after the budget year.

(2) LIMITATION ON AMOUNTS—The total amount, provided in appropriations legislation for the budget year, of appropriations for the subsequent fiscal year shall not exceed $23,500,000,000.

(d) WAIVER AND APPEAL—Subsections (b) and (c) may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(e) FORM OF THE POINT OF ORDER—A point of order under this section may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(f) CONFERENCE REPORTS—If a point of order is sustained under this section against a conference report, the report shall be disposed of as provided in section 313(d) of the Congressional Budget Act of 1974.

(i) SUNSET—Except for subsection (g), this section shall expire effective October 1, 2002.

FY2002 (H.Con.Res. 83)

SEC. 201. RESTRICTIONS ON ADVANCE APPROPRIATIONS IN THE HOUSE.

(a) IN GENERAL—

(1) In the House, except as provided in subsection (b), an advance appropriation may not be reported in a bill or joint resolution making a general appropriation or continuing appropriation, and may not be in order as an amendment thereto.

(2) Managers on the part of the House may not agree to a Senate amendment that would violate paragraph (1) unless specific authority to agree to the amendment first is given by the House by a separate vote with respect thereto.

(b) EXCEPTION—In the House, an advance appropriation may be provided-

(1) for fiscal year 2003 for programs, projects, activities or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $23,159,000,000 in new budget authority; and

(2) for the Corporation for Public Broadcasting.

(c) DEFINITION—In this section, the term 'advance appropriation' means any discretionary new budget authority in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2002 that first becomes available for any fiscal year after 2002.

SEC. 202. RESTRICTIONS ON ADVANCE APPROPRIATIONS IN THE SENATE.

(a) IN GENERAL—Except as provided in subsection (b), it shall not be in order in the Senate to consider any reported bill or joint resolution, or amendment thereto or conference report thereon, that would provide an advance appropriation.

(b) EXCEPTION—An advance appropriation may be provided—

(1) for fiscal year 2003 for programs, projects, activities or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $23,159,000,000 in new budget authority; and

(2) for the Corporation for Public Broadcasting.

(c) APPLICATION OF POINT OF ORDER IN THE SENATE—

(1) WAIVER AND APPEAL—In the Senate, subsection (a) may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a).

(2) FORM OF THE POINT OF ORDER—A point of order under subsection (a) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(3) CONFERENCE REPORTS—If a point of order is sustained under subsection (a) against a conference report in the Senate, the report shall be disposed of as provided in section 313(d) of the Congressional Budget Act of 1974.

(d) DEFINITION- In this section, the term 'advance appropriation' means any discretionary new budget authority in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2002 that first becomes available for any fiscal year after 2002.

(e) SENSE OF CONGRESS—It is the sense of Congress that the Budget Enforcement Act of 1990 should be amended to address procedures for advance appropriations for fiscal years beginning with fiscal year 2003.

FY2004 (H.Con.Res. 95)

SEC. 501. RESTRICTIONS ON ADVANCE APPROPRIATIONS.

(a) IN THE HOUSE—

(1)(A) In the House, except as provided in paragraph (2), an advance appropriation may not be reported in a bill or joint resolution making a general appropriation or continuing appropriation, and may not be in order as an amendment thereto.

(B) Managers on the part of the House may not agree to a Senate amendment that would violate subparagraph (A) unless specific authority to agree to the amendment first is given by the House by a separate vote with respect thereto.

(2) In the House, an advance appropriation may be provided for fiscal year 2005 for programs, projects, activities or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations, Part A' in an aggregate amount not to exceed $23,158,000,000 in new budget authority, and an advance appropriation may be provided for fiscal year 2006 for any program identified in such statement under the heading 'Accounts Identified for Advance Appropriations, Part B'.

(3) In this subsection, the term 'advance appropriation' means any discretionary new budget authority in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2004 that first becomes available for any fiscal year after 2004.

(b) IN THE SENATE—

(1) Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, or conference report that would provide an advance appropriation.

(2) An advance appropriation may be provided for fiscal years 2005 and 2006 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $23,158,000,000 in new budget authority in each year.

(3)(A) In the Senate, paragraph (1) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(B) A point of order under paragraph (1) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(C) If a point of order is sustained under paragraph (1) against a conference report in the Senate, the report shall be disposed of as provided in section 313(d) of the Congressional Budget Act of 1974.

(4) In this subsection, the term 'advance appropriation' means any discretionary new budget authority in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2004 that first becomes available for any fiscal year after 2004 or making general appropriations or continuing appropriations for fiscal year 2005 that first becomes available for any fiscal year after 2005.

FY2006 (H.Con.Res. 95)

SEC. 401. RESTRICTIONS ON ADVANCE APPROPRIATIONS.

(a) IN THE HOUSE—

(1)(A) In the House, except as provided in paragraph (2), an advance appropriation may not be reported in a bill or joint resolution making a general appropriation or continuing appropriation, and may not be in order as an amendment thereto.

(B) Managers on the part of the House may not agree to a Senate amendment that would violate subparagraph (A) unless specific authority to agree to the amendment first is given by the House by a separate vote with respect thereto.

(2) In the House, an advance appropriation may be provided for fiscal year 2007 or 2008 for programs, projects, activities or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $23,158,000,000 in new budget authority.

(3) In this subsection, the term 'advance appropriation' means any new budget authority provided in a bill or joint resolution making general appropriations or any new budget authority provided in a bill or joint resolution continuing appropriations for fiscal year 2006 that first becomes available for any fiscal year after 2006.

(b) IN THE SENATE—

(1) Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, or conference report that would provide an advance appropriation.

(2) An advance appropriation may be provided for the fiscal years 2007 and 2008 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $23,158,000,000 in new budget authority in each year.

(3)(A) In the Senate, paragraph (1) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(B) A point of order under paragraph (1) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(C) If a point of order is sustained under paragraph (1) against a conference report in the Senate, the report shall be disposed of as provided in section 313(d) of the Congressional Budget Act of 1974.

(4) In this subsection, the term 'advance appropriation' means any new budget authority provided in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2006 that first becomes available for any fiscal year after 2006, or any new budget authority provided in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2007, that first becomes available for any fiscal year after 2007.

FY2008 (S.Con.Res. 21)

SEC. 206. POINT OF ORDER AGAINST ADVANCE APPROPRIATIONS.

(a) Senate—

(1) IN GENERAL—

(A) POINT OF ORDER—Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, or conference report that would provide an advance appropriation.

(B) DEFINITION—In this subsection, the term 'advance appropriation' means any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2008 that first becomes available for any fiscal year after 2008, or any new budget authority provided in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2009, that first becomes available for any fiscal year after 2009.

(2) EXCEPTIONS—Advance appropriations may be provided—

(A) for fiscal years 2009 and 2010 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading `Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $25,158,000,000 in new budget authority in each year; and

(B) for the Corporation for Public Broadcasting.

(3) SUPERMAJORITY WAIVER AND APPEAL—

(A) WAIVER—In the Senate, paragraph (1) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(B) APPEAL—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(4) FORM OF POINT OF ORDER—A point of order under paragraph (1) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(5) CONFERENCE REPORTS—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being

made by any Senator pursuant to this subsection, and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(6) REPEAL—In the Senate, section 401 of H.Con.Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006, shall no longer apply.

(b) House—

(1) IN GENERAL—In the House, except as provided in paragraph (2), a bill or joint resolution making a general appropriation or continuing appropriation, or an amendment thereto may not provide for advance appropriations.

(2) ADVANCE APPROPRIATION—In the House, an advance appropriation may be provided for fiscal year 2009 or 2010 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $25,558,000,000 in new budget authority.

(3) DEFINITION—In this subsection, the term 'advance appropriation' means any new discretionary budget authority provided in a bill or joint resolution making general appropriations or any new discretionary budget authority provided in a bill or joint resolution continuing appropriations for fiscal year 2008 that first becomes available for any fiscal year after 2008.

FY2010 (S.Con.Res. 13)

SEC. 402. POINT OF ORDER AGAINST ADVANCE APPROPRIATIONS.

(a) In General—

(1) POINT OF ORDER—Except as provided in subsection (b), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, or conference report that would provide an advance appropriation.

(2) DEFINITION—In this section, the term 'advance appropriation' means any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2010 that first becomes available for any fiscal year after 2010, or any new budget authority provided in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2011, that first becomes available for any fiscal year after 2011.

(b) Exceptions—Advance appropriations may be provided—

(1) for fiscal years 2011 and 2012 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $28,852,000,000 in new budget authority in each year;

(2) for the Corporation for Public Broadcasting; and

(3) for the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.

(c) Supermajority Waiver and Appeal—

(1) WAIVER—In the Senate, subsection (a) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) APPEAL—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a).

(d) Form of Point of Order—A point of order under subsection (a) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(e) Conference Reports—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being made by any Senator pursuant to this section, and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(f) Inapplicability—In the Senate, section 313 of S.Con.Res. 70 (110th Congress) shall no longer apply.

SEC. 424. POINT OF ORDER AGAINST ADVANCE APPROPRIATIONS.

(a) In General—In the House, except as provided in subsection (b), any bill, joint resolution, amendment, or conference report making a general appropriation or continuing appropriation may not provide for advance appropriations.

(b) Exceptions—Advance appropriations may be provided—

(1) for fiscal year 2011 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers to accompany this resolution under the heading 'Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $28,852,000,000 in new budget authority, and for 2012, accounts separately identified under the same heading; and

(2) for the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.

(c) Definition—In this section, the term 'advance appropriation' means any new discretionary budget authority provided in a bill or joint resolution making general appropriations or any new discretionary budget authority provided in a bill or joint resolution making continuing appropriations for fiscal year 2010 that first becomes available for any fiscal year after 2010.

FY2014 and FY2015 (Bipartisan Budget Act, Senate only)

SEC. 112. LIMITATION ON ADVANCE APPROPRIATIONS IN THE SENATE.

(a) Point of Order Against Advance Appropriations in the Senate—

(1) IN GENERAL—

(A) POINT OF ORDER—Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, amendment between the Houses, or conference report that would provide an advance appropriation.

(B) DEFINITION—In this subsection, the term `advance appropriation' means any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2014 that first becomes available for any fiscal year after 2014 or any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2015 that first becomes available for any fiscal year after 2015.

(2) EXCEPTIONS—Advance appropriations may be provided—

(A) for fiscal years 2015 and 2016 for programs, projects, activities, or accounts identified in a statement submitted to the Congressional Record by the Chairman of the Committee on the Budget of the Senate under the heading `Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $28,852,000,000 in new budget authority in each fiscal year;

(B) for the Corporation for Public Broadcasting; and

(C) for the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.

(3) SUPERMAJORITY WAIVER AND APPEAL—

(A) WAIVER—In the Senate, paragraph (1) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(B) APPEAL—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(4) FORM OF POINT OF ORDER—A point of order under paragraph (1) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

(5) CONFERENCE REPORTS—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being made by any Senator pursuant to this subsection, and such point of order being sustained, such material contained in such conference report or amendment between the Houses shall be stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this paragraph), no further amendment shall be in order.

(6) INAPPLICABILITY—In the Senate, section 402 of S.Con.Res. 13 (111th Congress) shall no longer apply.

(b) Expiration—Subsection (a) shall expire if a concurrent resolution on the budget for fiscal year 2015 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

FY2014 (H.Con.Res. 25, House only)[74]

SEC. 601. LIMITATION ON ADVANCE APPROPRIATIONS.

(a) Findings—The House finds the following:

(1) The Veterans Health Care Budget and Reform Transparency Act of 2009 provides advance appropriations for the following veteran medical care accounts: Medical Services, Medical Support and Compliance, and Medical Facilities.

(2) The President has yet to submit a budget request as required under section 1105(a) of title 31, United States Code, including the request for the Department of Veterans Affairs, for fiscal year 2014, hence the request for veteran medical care advance appropriations for fiscal year 2015 is unavailable as of the writing of this concurrent resolution.

(3) This concurrent resolution reflects the most up-to-date estimate on veterans' health care needs included in the President's fiscal year 2013 request for fiscal year 2015.

(b) In General—In the House, except as provided for in subsection (c), any bill or joint resolution, or amendment thereto or conference report thereon, making a general appropriation or continuing appropriation may not provide for advance appropriations.

(c) Exceptions—An advance appropriation may be provided for programs, projects, activities, or accounts referred to in subsection (d)(1) or identified in the report to accompany this concurrent resolution or the joint explanatory statement of managers to accompany this concurrent resolution under the heading 'Accounts Identified for Advance Appropriations'.

(d) Limitations—For fiscal year 2015, the aggregate level of advance appropriations shall not exceed—

(1) $55,483,000,000 for the following programs in the Department of Veterans Affairs—

(A) Medical Services;

(B) Medical Support and Compliance; and

(C) Medical Facilities accounts of the Veterans Health Administration; and

(2) $28,852,000,000 in new budget authority for all programs identified pursuant to subsection (c).

(e) Definition—In this section, the term `advance appropriation' means any new discretionary budget authority provided in a bill or joint resolution, or amendment thereto or conference report thereon, making general appropriations or any new discretionary budget authority provided in a bill or joint resolution making continuing appropriations for fiscal year 2015.

FY2016 (S.Con.Res. 11)

SEC. 3202. POINT OF ORDER AGAINST ADVANCE APPROPRIATIONS IN THE SENATE.

[74] These provisions were made enforceable in the House by Section 113 of the Bipartisan Budget Act of 2013.

(a) In General-

(1) POINT OF ORDER- Except as provided in subsection (b), it shall not be in order in the Senate to consider any bill, joint resolution, motion, amendment, amendment between the Houses, or conference report that would provide an advance appropriation for a discretionary account.

(2) DEFINITION- In this section, the term `advance appropriation' means any new budget authority provided in a bill or joint resolution making appropriations for fiscal year 2016 that first becomes available for any fiscal year after 2016, or any new budget authority provided in a bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2017, that first becomes available for any fiscal year after 2017.

(b) Exceptions- Advance appropriations may be provided—

(1) for fiscal years 2017 and 2018 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this concurrent resolution under the heading `Accounts Identified for Advance Appropriations' in an aggregate amount not to exceed $28,852,000,000 in new budget authority in each fiscal year;

(2) for the Corporation for Public Broadcasting; and

(3) for the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.

(c) Supermajority Waiver and Appeal-

(1) WAIVER- In the Senate, subsection (a) may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) APPEAL- An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a).

(d) Form of Point of Order- A point of order under subsection (a) may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974 (2 U.S.C. 644(e)).

(e) Conference Reports- When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill or joint resolution, upon a point of order being made by any Senator pursuant to this section, and such point of order being sustained, such material contained in such conference report or House amendment shall be stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

SEC. 3304. LIMITATION ON ADVANCE APPROPRIATIONS IN THE HOUSE OF REPRESENTATIVES.

(a) In General- In the House of Representatives, except as provided for in subsection (b), any bill or joint resolution, or amendment thereto or conference report thereon, making a general appropriation or continuing appropriation may not provide for advance appropriations.

(b) Exceptions- An advance appropriation may be provided for programs, projects, activities, or accounts identified in the report to accompany this concurrent resolution or the joint explanatory statement of managers to accompany this concurrent resolution under the heading—

(1) GENERAL- `Accounts Identified for Advance Appropriations'.

(2) VETERANS- `Veterans Accounts Identified for Advance Appropriations'.

(c) Limitations- The aggregate level of advance appropriations shall not exceed—

(1) GENERAL- $28,852,000,000 in new budget authority for all programs identified pursuant to subsection (b)(1).

(2) VETERANS- $63,271,000,000 in new budget authority for programs in the Department of Veterans Affairs identified pursuant to subsection (b)(2).

(d) Definition- The term `advance appropriation' means any new discretionary budget authority provided in a bill or joint resolution, or any amendment thereto or conference report thereon, making general appropriations or continuing appropriations, for the fiscal year following fiscal year 2016.

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