

COMMITTEE ALLOCATIONS

§ 302(a) SEC. 302.²¹⁴ (a) ALLOCATION OF TOTALS. —

§ 302(a)(1) (1) For the House of Representatives, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays,²¹⁵ total new budget authority,²¹⁶ and total entitlement authority²¹⁷ among each committee of the House of Representatives which has jurisdiction over laws, bills and resolutions providing such new budget authority,²¹⁸ or such entitlement authority.²¹⁹ The allocation shall, for each commit-

²¹⁴ Section 302 is codified as amended at 2 U.S.C. § 633 (1988 & Supp. IV 1992). For fiscal years through 1998, section 602 (*see infra* pp. 314-322) supersedes much of section 302.

²¹⁵ Section 3(1) defines "budget outlays." *See supra* p. 11.

²¹⁶ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²¹⁷ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(i) of the Budget Enforcement Act struck a reference here to "total credit authority" (*see infra* p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 3(10) defines "credit authority." *See supra* p. 19.)

²¹⁸ Section 13201(b)(3)(A)(ii) of the Budget Enforcement Act, which amended this language, should have struck this comma. *See infra* p. 714.

²¹⁹ Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(ii) of the Budget Enforcement Act struck a reference here to "such credit authority." *See infra* p. 714.

tee, divide new budget authority,²²⁰ and entitlement authority²²¹ between amounts provided or required by law on the date of such conference report (mandatory or uncontrollable amounts), and amounts not so provided or required (discretionary or controllable amounts), and shall make the same division for estimated outlays that would result from such new budget authority.

§ 302(a)(2)

(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of social security outlays²²² for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,²²³ total budget outlays²²⁴ and total new budget authority²²⁵ among each

²²⁰ Section 13201(b)(3)(A)(iii) of the Budget Enforcement Act, which amended this language, should have struck this comma. *See infra* p. 714.

²²¹ Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(iii) of the Budget Enforcement Act struck a reference here to "credit authority." *See infra* p. 714.

²²² Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 145.

²²³ Section 13303(c)(1) of the Budget Enforcement Act added the words "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years." *See infra* p. 757.

²²⁴ Section 3(1) defines "budget outlays." *See supra* p. 11.

²²⁵ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

Effective for fiscal year 1992 and after, section 13201(b)(3)(B) of the Budget Enforcement Act struck a reference here to "new credit authority" (*see infra* p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

committee of²²⁶ the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

§ 302(b) (b) **REPORTS BY COMMITTEES.** — As soon as practicable after a concurrent resolution on the budget is agreed to —

§ 302(b)(1) (1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House,

§ 302(b)(1)(A) (A) subdivide among its subcommittees the allocation of budget outlays²²⁷ and new budget authority²²⁸ allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and

§ 302(b)(1)(B) (B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

§ 302(b)(2) (2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made,

²²⁶ Because this paragraph deals with procedures for the Senate, section 13112(a)(6) of the Budget Enforcement Act deleted the words "the House of Representatives and" that used to appear here. *See infra* p. 708.

²²⁷ Section 3(1) defines "budget outlays." *See supra* p. 11.

²²⁸ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

Effective for fiscal year 1992 and after, section 13201(b)(3)(C) of the Budget Enforcement Act struck a reference here to "new credit authority" (*see infra* p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

§ 302(b)(2)(A)

(A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and

§ 302(b)(2)(B)

(B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report²²⁹ to its House the subdivisions made by it pursuant to this subsection.²³⁰

²²⁹ Because this section here requires committees to "report," committees must comply with the provisions of rule XXVI(7)(a), which requires (among other things) that "no measure or matter or recommendation shall be *reported* from any committee unless a majority of the committee were physically present," (STANDING RULES OF THE SENATE Rule XXVI(7)(a)(1) (1992) (emphasis added)) and: "The vote of any committee to *report* a measure or matter shall require the concurrence of a majority of the members of the committee who are present." *Id.* Rule XXVI(7)(a)(3) (emphasis added).

²³⁰ See, e.g., 135 CONG. REC. S9051 (daily ed. July 27, 1989) (Agriculture, Nutrition & Forestry Comm., fiscal year 1990); *id.* at S8147-48 (daily ed. July 18, 1989) (Armed Services Comm., fiscal year 1990); *id.* at S7950 (daily ed. July 13, 1989) (Energy & Natural Resources Comm., fiscal year 1990); S. REP. NO. 101-75, 101st Cong., 1st Sess. (July 12, 1989) (Appropriations Comm., fiscal year 1990); S. REP. NO. 100-562, 100th Cong., 2d Sess. (Sept. 28, 1988) (Veterans' Affairs Comm., fiscal year 1989); S. REP. NO. 100-384, 100th Cong., 2d Sess. (June 10, 1988) (Appropriations Comm., fiscal year 1989); H.R. REP. NO. 100-687, 100th Cong., 2d Sess. (June 10, 1988) (House Appropriations Comm., fiscal year 1989); S. REP. NO. 100-217, 100th Cong., 1st Sess. (Nov. 12, 1987) (Banking & Urban Affairs Comm., fiscal year 1988); S. REP. NO. 100-144, 100th Cong., 1st Sess. (Aug. 6, 1987) (Appropriations Comm., fiscal year 1988); H.R. REP. NO. 100-253, 100th Cong., 1st Sess. (July 29, 1987) (House Appropriations Comm., fiscal year 1988); H.R. REP. NO. 100-228, 100th Cong., 1st Sess. (July 22, 1987) (Ways & Means Comm., fiscal year 1988); H.R. REP. NO. 100-227, 100th Cong., 1st Sess. (July 22, 1987) (Interior & Insular Affairs Comm., fiscal year 1988); S. REP. NO. 100-103, 100th Cong., 1st Sess. (July 8, 1987) (Finance Comm., fiscal year 1988); S. REP. NO. 99-533, 99th Cong., 2d Sess. (Oct. 6, 1986) (Energy & Natural Resources Comm., fiscal year 1987); S. REP. NO. 99-442, 99th Cong., 2d Sess. (Sept. 16, 1986) (Environment & Public Works Comm., fiscal year 1987); S. REP. NO. 99-416, 99th Cong., 2d Sess. (Aug. 15, 1986) (Rules & Administration Comm., fiscal year 1987); S. REP. NO. 99-398, 99th Cong., 2d Sess. (Aug. 13, 1986) (Labor & Human Resources Comm., fiscal year 1987); S. REP. NO. 99-387, 99th Cong., 2d Sess. (Aug. 8, 1986) (Veterans' Affairs Comm., fiscal year 1987); S. REP. NO. 99-346, 99th Cong., 2d Sess. (July 29, 1986) (Appropriations Comm., fiscal year 1987).

§ 302(e)

(c) **POINT OF ORDER.**²³¹ — It shall not be in order²³² in the House of Representatives or the Senate to consider any bill,²³³ joint resolution, amendment,²³⁴ motion,²³⁵ or confer-

²³¹ Sections 904(c) of the Congressional Budget Act (*see infra* pp. 361-363) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671) provide that the Senate may waive or suspend section 302(c) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. (Section 211 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added section 302(c) to the list of points of order with this requirement. Pub. L. No. 101-119, § 211, 101 Stat. 754, 787 (1987) (codified at 2 U.S.C. § 900 note (Supp. IV 1992).) Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 690.

²³² Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 293 (regarding section 303(a)).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 520 (regarding section 311(a)).

²³³ Because section 302(c) does not contain the words "as reported" here, points of order under section 302(c) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(c). *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)).

²³⁴ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 295 (regarding section 303(a)).

²³⁵ Section 13207(a)(1)(A) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. It is a rare instance when a motion can worsen the deficit. Two situations raise possibilities, however. First, a motion to recommit might include instructions specific enough that they would cause the deficit to increase.

Second, as the Chairman of the Appropriations Committee, Senator Robert C. Byrd, pointed out through his unanimous consent request in connection with the Dire Emergency Supplemental Appropriations bill for Fiscal Year 1989, H.R. 2072, where a Senate amendment reduces spending by striking the underlying text received from the House of Representatives, a motion to table the Senate amendment would result in increasing spending. Chairman Byrd avoided this threat to the fiscal integrity of the pending appropriations bill by seeking the following unanimous consent request:

Mr. BYRD. Mr. President, I ask unanimous consent that any motion, the effect of which, if adopted, would be to prevent the striking of the House language or any part thereof in chapter 1 of title I of the House bill, be
(continued...)

ence report,²³⁶ providing —

§ 302(e)(1)

(1) new budget authority²³⁷ for a fiscal year;

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(2) new spending authority as described in section 401(c)(2)²³⁸ for a fiscal year;²³⁹



²³⁵(...continued)

subject to any points of order authorized in titles III and IV of the Budget Act.

135 CONG. REC. S5898 (daily ed. June 1, 1989).

Section 13207(a)(1)(A) of the Budget Enforcement Act makes the result sought in the unanimous consent request the norm: Points of order apply to motions that in and of themselves caused the deficit to increase.

Note, however, that application of the point of order to motions to table also creates a paradox: A motion to table a money-saving amendment could be subject to a point of order, where the Senate could simply vote down the amendment by a straight up-or-down vote and achieve the same result as the tabling motion by a majority vote. Even so, in the case of most points of order (those that do not contain the words "as reported," *cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a))), a point of order would then lie against the bill or resolution after the Senate had defeated the amendment.

²³⁶ Section 13207(a)(1)(A) of the Budget Enforcement Act struck the words "bill or resolution, or amendment thereto" at this point and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 723.

²³⁷ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²³⁸ *See infra* pp. 251-254.

²³⁹ *See, e.g.*, 132 CONG. REC. S10,693-94 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 302(c)); 132 CONG. REC. S10,145-46 (1986); Senate Precedent PRL19860801-003 (Aug. 1, 1986) (LEGIS, Rules database) (amendment providing entitlement authority within the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry subject to section 302(c)); 132 CONG. REC. S10,017 (1986); Senate Precedent PRL19860731-002 (July 31, 1986) (LEGIS, Rules database) (same).

Effective for fiscal year 1992 and after, section 13201(b)(3)(D) of the Budget Enforcement Act struck a reference here to "new credit authority for a fiscal year" (*see* (continued...))

within the jurisdiction of any committee which has received an appropriate allocation of such authority pursuant to subsection (a)²⁴⁰ for such fiscal year, unless and until such committee makes the allocation or subdivisions required by subsection (b),²⁴¹ in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

§ 302(d)

(d) **SUBSEQUENT CONCURRENT RESOLUTIONS.** — In the case of a concurrent resolution on the budget referred to in section 304,²⁴² the allocations under subsection (a)²⁴³ and the subdivision under subsection (b)²⁴⁴ shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

§ 302(e)

(e) **ALTERATION OF ALLOCATIONS.** — At any time after a committee reports the allocations required to be made under subsection (b),²⁴⁵ such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by

²³⁹(...continued)

infra p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

²⁴⁰ *See supra* pp. 88-90.

²⁴¹ *See supra* pp. 90-91.

²⁴² *See infra* pp. 117-119.

²⁴³ *See supra* pp. 88-90.

²⁴⁴ *See supra* pp. 90-91.

²⁴⁵ *See supra* pp. 90-91.

its House on legislation within the committee's jurisdiction.²⁴⁶

§ 302(f)

(f) LEGISLATION SUBJECT TO POINT OF ORDER.²⁴⁷ —

§ 302(f)(1)

(1) IN THE HOUSE OF REPRESENTATIVES. — After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill,

²⁴⁶ See, e.g., S. REP. NO. 103-141, 103d Cong., 1st Sess. (Sept. 14, 1993) (Appropriations Comm., fiscal year 1994); S. REP. NO. 103-140, 103d Cong., 1st Sess. (Sept. 14, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 103-128, 103d Cong., 1st Sess. (Aug. 6, 1993) (Appropriations Comm., fiscal year 1994); S. REP. NO. 103-99, 103d Cong., 1st Sess. (July 1, 1993) (Appropriations Comm., fiscal year 1994); S. REP. NO. 103-83, 103d Cong., 1st Sess. (July 1, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 103-60, 103d Cong., 1st Sess. (June 22, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 103-52, 103d Cong., 1st Sess. (June 8, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-455, 102d Cong., 2d Sess. (Oct. 5, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-449, 102d Cong., 2d Sess. (Oct. 1, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-421, 102d Cong., 2d Sess. (Sept. 24, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-396, 102d Cong., 2d Sess. (Sept. 10, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-350, 102d Cong., 2d Sess. (July 30, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 100-519, 100th Cong., 2d Sess. (Sept. 19, 1988) (Finance Comm., fiscal year 1989); S. REP. NO. 100-379, 100th Cong., 2d Sess. (June 7, 1988) (Finance Comm., fiscal year 1989); S. REP. NO. 100-252, 100th Cong., 1st Sess. (Dec. 10, 1987) (Finance Comm., fiscal year 1988); S. REP. NO. 100-199, 100th Cong., 1st Sess. (Oct. 9, 1987) (Finance Comm., fiscal year 1988); S. REP. NO. 100-190, 100th Cong., 1st Sess. (Oct. 6, 1987) (Appropriations Comm., fiscal year 1988); S. REP. NO. 99-540, 99th Cong., 2d Sess. (Oct. 6, 1986) (Appropriations Comm., fiscal year 1987).

²⁴⁷ Section 904(c) of the Congressional Budget Act (*see infra* pp. 361-363) and section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671) provide that the Senate may waive or suspend section 302(f) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. *See also* 132 CONG. REC. S14,202 (1986); Senate Precedent PRL19860929-002 (Sept. 29, 1986) (LEGIS, Rules database). Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 690.

Note also the provisions for the suspension of section 302(f) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 619-630.

joint²⁴⁸ resolution, or amendment providing new budget authority²⁴⁹ for such fiscal year or new entitlement authority²⁵⁰ effective during such fiscal year,²⁵¹ or any conference report on any such bill or joint²⁵² resolution, if —

§ 302(f)(1)(A) (A) the enactment of such bill or resolution as reported;

§ 302(f)(1)(B) (B) the adoption and enactment of such amendment; or

§ 302(f)(1)(C) (C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate allocation made pursuant to subsection (b)²⁵³ for such fiscal year of new discretionary budget authority or new entitlement authority²⁵⁴ to be

²⁴⁸ So that one could not read this language to apply to simple House resolutions setting forth rules, section 13207(a)(1)(B) of the Budget Enforcement Act added the word "joint." See *infra* p. 723.

²⁴⁹ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

²⁵⁰ Section 3(9) (see *supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (see *infra* p. 252).

²⁵¹ Effective for fiscal year 1992 and after, section 13201(b)(3)(E)(i) of the Budget Enforcement Act struck a reference here to "new credit authority for such fiscal year" (see *infra* p. 714), as title V now addresses credit (see *infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (see *infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (see *supra* p. 19).)

²⁵² So that one could not read this language to apply to simple House resolutions setting forth rules, section 13207(a)(1)(B) of the Budget Enforcement Act added the word "joint." See *infra* p. 723.

²⁵³ See *supra* pp. 90-91.

²⁵⁴ Effective for fiscal year 1992 and after, section 13201(b)(3)(E)(ii) of the Budget Enforcement Act struck a reference here to "new credit authority" (see *infra* p. 715), as
(continued...)

exceeded.

§ 302(f)(2)

(2) IN THE SENATE. — At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 301(a)²⁵⁵ for a fiscal year, it shall not be in order²⁵⁶ in the Senate to consider any bill,²⁵⁷ joint resolution, amendment,²⁵⁸ mo-

²⁵⁴ (...continued)

title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority.

²⁵⁵ *See supra* pp. 50-56.

²⁵⁶ *See, e.g.*, 132 CONG. REC. S14,716 (1986); Senate Precedent PRL19861002-003 (Oct. 2, 1986) (amendment causing allocation to Agriculture Subcommittee to be exceeded ruled out of order); 132 CONG. REC. S14,410 (1986); Senate Precedent PRL19861001-002 (Oct. 1, 1986) (amendment causing allocation to be exceeded ruled out of order).

Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 293 (regarding section 303(a)).

²⁵⁷ Because section 302(f) does not contain the words "as reported" here, points of order under section 302(f) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(f). *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)(1)).

²⁵⁸ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 295 (regarding section 303).

The Senate Budget Committee estimates the costs of an amendment based on the assumption that Congress has already enacted the pending bill (to which the amendment has been offered) into law. Thus, when the current level exceeds the appropriate allocation, and a bill is pending that would reduce spending by less than the amount by which the current level exceeds the appropriate allocation, an amendment that would increase spending at all (net of spending reductions in the amendment) will cause spending to exceed the appropriate allocation. Note, however, that an amendment to a *rescission bill* to restore funding resulting from appropriations enacted in a previous year does not give rise to a point of order under section 302, as the amendment does not (in the words of section 302(f)) "provide[] for budget outlays, new budget authority, or new spending authority." *See* 125 CONG. REC. 4987 (1981) (inquiry of Sen. Johnston regarding an amendment by Sen. Kennedy); Senate Precedent PRL19790314-001 (Mar. 14, 1979) (LEGIS, Rules database); ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 630 (1992); *infra* note 1104.

tion,²⁵⁹ or conference report,²⁶⁰ that provides²⁶¹ for budget outlays,²⁶² new budget authority,²⁶³ or new spending authority (as defined in section 401(c)(2))²⁶⁴ in excess of

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(A)²⁶⁵ the appropriate allocation²⁶⁶ of such

²⁵⁹ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. For a discussion of the motivation for the addition, *see supra* note 235.

²⁶⁰ Section 13207(a)(1)(B) of the Budget Enforcement Act struck the words "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 723.

²⁶¹ Senate Budget Committee staff have advised (for example, in August 1990) that legislation generally will not "provide[] for budget outlays, new budget authority, or new spending authority (as defined in section 401(c)(2)) in excess of . . . the appropriate allocation" unless it will, when added other legislation passed by the Senate, cause the appropriate allocation to be exceeded. Senate Budget Committee staff will generally not add into that calculation other legislation merely reported by a committee that the Senate has not passed.

²⁶² Section 3(1) defines "budget outlays." *See supra* p. 11.

A point of order lies under section 302(f) against an amendment that would increase outlays above the appropriate allocation by increasing an obligation ceiling. 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

²⁶³ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²⁶⁴ Section 13207(a)(2) of the Budget Enforcement Act added the reference to "new spending authority (as defined in section 401(c)(2))." *See infra* p. 724.

Section 13201(b)(2) of the Budget Enforcement Act (*see infra* p. 713) added a reference here to new credit authority for fiscal year 1991 only, as a stopgap for the period before the fiscal year 1992 effective date for the credit reform provisions of title V. *See infra* pp. 273-298. The words "or new credit authority" then dropped from this paragraph after fiscal year 1991. *See infra* p. 713. Since then, the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

²⁶⁵ Section 13112(a)(7)(A) of the Budget Enforcement Act added the letter "(A)" here. *See infra* p. 709. Note that section 13303(c)(3) of the Budget Enforcement Act (*see infra* p. 757) added another subsection (A) below. *See infra* p. 103.

²⁴⁶ The appropriate allocation setting the ceiling may be an allocation of no dollars. See 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. Cf. *infra* note 520 (regarding section 311(a)).

Which committee's or subcommittee's is the "appropriate allocation"? Specifically, where a subcommittee reports a bill affecting spending in the jurisdiction of another subcommittee, or where a floor amendment to a bill in one jurisdiction affects spending in the jurisdiction of another committee or subcommittee, to which committee or subcommittee should the Budget Committee charge the effect?

Two differing solutions present themselves: A *bill rule*, under which the Budget Committee would score against the committee or subcommittee that reported the bill, and a *subject matter rule*, under which the Budget Committee would score against the committee or subcommittee in whose jurisdiction the subject matter of the provision falls. The Senate Budget Committee generally follows the bill rule and scores legislation against the committee or subcommittee that reported the bill.

In some circumstances, however, such as a continuing resolution or a supplemental appropriations bill, no single subcommittee is responsible for the legislation. In such cases, the Budget Committee has advised (for example, in October of 1986) that it will score legislative provisions against the subcommittee in whose jurisdiction the subject matter of the provision falls.

Sequential referral of legislation presents another exception calling for the application of the subject matter rule. In July of 1990, Veterans' Committee staff posed such a case to the Director of the Congressional Budget Office. Director Reischauer responded to the Chairman of the Veterans' Affairs Committee as follows:

A member of your staff has requested an explanation of the scoring of bills that are sequentially referred, such as S.190, a bill to permit certain service-disabled veterans who are retired from the Armed Forces to receive compensation concurrently with military retired pay without a reduction in either benefit. While CBO develops the cost of legislation, the Budget Committee determines how that cost will be charged to Committees. The general rule that has been followed traditionally on sequential referrals is that the committee taking the first action on a measure is scored with the cost of the measure, regardless of the jurisdiction of the affected programs. When the bill is sequentially referred to a second committee, an adjustment may be made to the first committee's scoring dependent upon the action of the second committee.

In the case of S.190, the 1991 outlays from programs under the jurisdiction of the Veterans' Affairs Committee are estimated to be \$2 million. The 1991 outlays from programs under the jurisdiction of the Armed Services

(continued...)

outlays or authority reported under subsection
(a),²⁶⁷ or

²⁶⁶(...continued)

Committee are estimated at \$420 million. Thus when the Veterans' Affairs Committee reports the bill, the entire \$422 million will be charged against the Veterans' Affairs Committee's allocation. If S.190 is sequentially referred to the Armed Services Committee and that Committee reports it unchanged, the \$420 million in cost to their programs would at that time be scored against the Armed Services Committee's allocation and would no longer be charged against that of the Veterans' Affairs Committee. If, however, the Armed Services Committee takes no action on the bill, the full \$422 million cost would remain a charge against the Veterans' Affairs Committee.

Letter from Robert D. Reischauer to Sen. Alan Cranston (July 31, 1990). Director Reischauer referred to the Matsunaga Veterans Disability Benefits Improvement Act of 1990, S. 190, 101st Cong., 1st Sess., 135 CONG. REC. S551-52 (daily ed. Jan. 25, 1989). On September 20, 1990, the Veterans Affairs Committee reported the bill (without a written report), 136 CONG. REC. S13,507-08 (daily ed. Sept. 20, 1990), and the Presiding Officer referred it to the Armed Services Committee.

When Director Reischauer stated that "when the Veterans' Affairs Committee reports the bill, the entire \$422 million will be charged against the Veterans' Affairs Committee's allocation," he wrote of the assignment of responsibility, rather than the timing of the charge. Senate Budget Committee staff have advised that they will generally not charge legislation against a committee's allocation before the legislation comes to the Senate floor. *See supra* note 261.

²⁶⁷ *See supra* pp. 88-90.

Note that a later sentence of this paragraph (*see infra* p. 102) exempts appropriations from the point of order under this subparagraph.

Before enactment of the Budget Enforcement Act, the point of order under this paragraph lay only against exceeding a committee's allocation to a subcommittee or program, not against exceeding the budget resolution's allocation to a committee. Section 13112(a)(7) of the Budget Enforcement Act extended the point of order to legislation that would exceed either. *See infra* p. 709.

Before enactment of the Budget Enforcement Act, if a committee had not yet filed its allocation under section 302(b), no point of order could lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database). This precedent may have continuing application only for appropriations, which a later sentence of this paragraph (*see infra* p. 102) exempts from the point of order against exceeding the budget resolution's allocation to a committee.

(continued...)

§ 302(f)(2)(B)

(B)²⁶⁸ the appropriate allocation²⁶⁹ (if any) of such outlays or authority reported²⁷⁰ under subsection (b)²⁷¹ in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year

or provides for social security outlays²⁷² in excess of the appropriate allocation of social security outlays under subsection (a)²⁷³ for the fiscal year of the resolution or

²⁶⁷(...continued)

For examples of waiver of this point of order by unanimous consent, see, e.g., 138 CONG. REC. S15,365 (daily ed. Sept. 26, 1992) (Bentsen motion to waive points of order prospectively for a Chafee amendment creating a refundable tax credit); *id.* at S14,791 (daily ed. Sept. 23, 1992) (Bentsen motion to waive points of order prospectively for his health care amendment).

²⁶⁸ Section 13112(a)(7)(B) of the Budget Enforcement Act added the letter (B) and some of subparagraph (B) here. See *infra* p. 709. Note that section 13303(c)(3) of the Budget Enforcement Act (see *infra* p. 757) added another subsection (B) below. See *infra* p. 103.

²⁶⁹ For a discussion of what constitutes the "appropriate allocation," see *supra* note 266.

²⁷⁰ Section 13112(a)(7)(B) of the Budget Enforcement Act added the words "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported" here. See *infra* p. 709.

²⁷¹ See *supra* pp. 90-91.

²⁷² Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." See *supra* note 145.

²⁷³ See *supra* pp. 88-90.

Note that the last sentence of this paragraph (see *infra* p. 102) exempts appropriations from the point of order under this subparagraph.

Before enactment of the Budget Enforcement Act, the point of order under this paragraph lay only against exceeding a committee's allocation to a subcommittee or program, not against exceeding the budget resolution's allocation to a committee. Section 13112(a)(7) of the Budget Enforcement Act extended the point of order to legislation that

(continued...)

for the total of that year and the 4 succeeding fiscal years.²⁷⁴ Subparagraph (A)²⁷⁵ shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.²⁷⁶ In applying this paragraph²⁷⁷ —

²⁷³(...continued)

would exceed either. See *infra* p. 709.

Before enactment of the Budget Enforcement Act, if a committee had not yet filed its allocation under section 302(b), no point of order could lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database). This precedent may have continuing application only for appropriations, which the last sentence of this paragraph (see *infra* p. 102) exempts from the point of order against exceeding the budget resolution's allocation to a committee.

²⁷⁴ Section 13303(c)(2) of the Budget Enforcement Act added the words "or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years." See *infra* p. 757.

²⁷⁵ There are two subparagraphs (A) in this paragraph, above and below. This reference relates to the subparagraph (A) above. See *supra* p. 98. Section 13112(a)(7) of the Budget Enforcement Act added both this sentence and the letter (A) above. See *infra* p. 709.

²⁷⁶ Section 13112(a)(7)(C) of the Budget Enforcement Act added this sentence. See *infra* p. 709.

The drafters of the Budget Enforcement Act thus intended that an appropriations bill would be subject to the point of order for exceeding the appropriate subcommittee allocation under section 302(b), but not for exceeding the full committee's allocation under section 302(a). The drafters intended this result notwithstanding the language of section 602(c), which could be read to cause some ambiguity on this point. See *infra* note 886. Note, however, that section 601(b) creates much the same result, at least for fiscal years through 1998, by providing a point of order for exceeding the total of all discretionary spending. See *infra* p. 303.

²⁷⁷ Section 13303(c)(3) of the Budget Enforcement Act added the balance of this paragraph. See *infra* p. 757.

§ 302(f)(2)(A)

(A)²⁷⁸ estimated social security outlays²⁷⁹ shall be deemed to be reduced by the excess of estimated social security revenues²⁸⁰ (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;²⁸¹

§ 302(f)(2)(B)

(B)²⁸² estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appropriate level of social security revenues specified in the most recently

²⁷⁸ Section 13303(c)(3) of the Budget Enforcement Act added this subparagraph (A). *See infra* p. 757. Note that section 13112(a)(7)(A) of the Budget Enforcement Act (*see infra* p. 709) added another subparagraph (A) above. *See supra* p. 98.

²⁷⁹ Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 145.

²⁸⁰ Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 145.

²⁸¹ In other words, if Congress raises Social Security revenues in excess of those anticipated in the budget resolution, it may increase Social Security spending beyond that anticipated in the budget resolution by the amount of the excess. The drafters of the Budget Enforcement Act added this provision and subparagraph (B) of this section, as well as the provisions of section 311(a)(2)(B)(i) and (ii) (*see infra* pp. 189-191), to allow fungibility between Social Security revenues and outlays.

²⁸² Section 13303(c)(3) of the Budget Enforcement Act added this subparagraph (B). *See infra* p. 757. Note that section 13112(a)(7)(B) of the Budget Enforcement Act (*see infra* p. 709) added another subparagraph (B) above. *See supra* p. 101.

adopted concurrent resolution on the budget;²⁸³ and

§ 302(f)(2)(C)

(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues²⁸⁴ unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a)²⁸⁵ and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).²⁸⁶

²⁸³ In other words, if Congress cuts Social Security revenues below those anticipated in the budget resolution, it may not increase Social Security spending above the amount equal to the spending anticipated in the budget resolution minus the revenue shortfall. See also section 311(a)(2)(B)(ii)(I) *infra* p. 190.

²⁸⁴ The drafters of the Budget Enforcement Act intended this language to address the case where changes in income tax law had certain indirect effects on the Social Security trust fund. (See also section 311(a)(2)(B)(iii) *infra* p. 191 (to the same effect).) The drafters intended that these changes should not trigger a point of order under this section dealing with the levels in that trust fund. To achieve the intended result, however, the language should have read "social security revenues or outlays." This is so because when revenues result from the taxation of Social Security benefits, the revenues flow into the Treasury and the Treasury then makes a payment to the Social Security Trust Funds. The payment is scored as a positive outlay when made by the Treasury and a negative outlay when received by Social Security. Therefore, any changes to the income tax law that indirectly affect the amount of revenue collected from the income taxation of Social Security benefits would affect Social Security outlays rather than revenues.

²⁸⁵ See *supra* pp. 88-90.

²⁸⁶ See *supra* pp. 90-91.

§ 302(g)

(g) DETERMINATIONS BY BUDGET COMMITTEES. — For purposes of this section, the levels of new budget authority,²⁸⁷ spending authority as described in section 401(c)(2),²⁸⁸ outlays²⁸⁹ and new credit authority²⁹⁰ for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget²⁹¹ of the House of Representatives or the Senate, as the case may be.

²⁸⁷ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²⁸⁸ *See infra* pp. 251-254.

²⁸⁹ Section 3(1) defines "outlays." *See supra* p. 11.

²⁹⁰ Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

²⁹¹ This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 310(d)(4), *infra* p. 172; section 311(c), *infra* p. 194; section 313(e), *infra* p. 228; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 650.