Authorizing Policy

Hall, Thad

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How Short-Term Authorizations Work

In 1965, Congress created the Appalachian Regional Commission. Among other things, this legislation authorized the creation of the commission by stating in section 101 that:

(a) There is hereby established an Appalachian Regional Commission. . . .
In carrying out the purposes of this Act, the Commission shall . . . develop
. . . comprehensive and coordinated plans and programs.¹

The act also contained the following section, which served to make the authorization short-term:

Sec. 401. In addition to the appropriations authorized in section 201 for the Appalachian development highway system, there is hereby authorized to be appropriated for the period ended June 30, 1967, to be available until expended, not to exceed $252,400,000 to carry out this Act.²

This example illustrates three general features of authorization legislation in the post–World War II era. First, there is a substantive component that establishes a program and structures its operations so that the program will be implemented in the manner that the committee desires (Oleszek 1989; Schick 1995; Tiefer 1989). Second, authorizing legislation has a fiscal component that authorizes the appropriation of funds. This signals to appropriators and to other policy stakeholders the funding levels that the authorizing committee thinks are appropriate for the program. Third, the authorization may be limited in time, thus short-term in nature. The idea of control is the basis for these components of an authorization. The committee wants to control how a program operates, influence how much money is spent to make this happen, and identify the time at which the program should be reconsidered by Congress. Committees make an authorization short-term to attempt to achieve control over the program on an ongoing basis.
The Rules: How They Work and How to Break Them

The use of short-term authorizations is rule-based; it leverages House and Senate rules prohibiting unauthorized appropriations that were adopted in the mid-1800s. House rule XXI, clause 2, k and Senate rule XVI both state that (a) no appropriation shall be made for a program that does not have an authorization, and (b) no appropriation bill shall make changes to existing law (Schick 1995; Tiefer 1989). Short-term authorizations leverage this rule by making a portion of the authorization, typically the authorization of appropriations, temporary.

The language that was adopted by the House and Senate in the mid-1800s prohibiting unauthorized appropriations has been retained, with only slight modification, to this date, as tables 2.1 and 2.2 show (Schick 1995; Tiefer 1989). Although the Senate rules on unauthorized appropriations are more lenient than the rules of the House, both chambers have, for more than 150 years, attempted to limit substantially unauthorized appropriations, except in the case of continuing expenditures for public work projects and other capital projects for which construction is already in progress (Schick 1995).

The rules themselves contain exceptions that allow unauthorized appropriations to occur (Schick 1995; Tiefer 1989). Continuing resolutions, which provide interim funding in cases where regular appropriations bills do not pass, are not covered by the prohibition against unauthorized appropriations. There are also procedures for waiving the rules entirely. In the House, the Rules Committee can assign appropriations bills a special rule that waives the point of order on unauthorized appropriations. In some years, the percentage of the nondefense discretionary appropriations that are for unauthorized programs can be quite high (Meyers 1988). The rule can cover all or a limited number of unauthorized appropriations in a bill. For example, on July 24, 1991, the House of Representatives considered the Department of Transportation and Related Agencies Appropriations Act. The rule for this bill—House Resolution 200—read, in part:

Resolved, That during the consideration of the bill (H.R. 2942) making appropriations for the Department of Transportation and related agencies . . . all points of order against provisions in the bill for failure to comply with the provisions of clauses 2 and 6 of rule XXI are hereby waived. It shall be in order to consider the amendments printed in the report of the Committee on Rules accompanying this resolution, if offered by the Member specified or his designee, and all points of order against the amendments for failure to comply with the provisions of clause 7 of rule XVI and clause 2 of rule XXI are hereby waived.
Table 2.1 The Rules of the Senate Governing Expired Authorizations

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<th>Standing Rules of The Senate</th>
<th>Rule XVI: Appropriations and Amendments to General Appropriations Bills</th>
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<tr>
<td>1. On a point of order made by any Senator, no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law . . . or unless the same be moved by direction of the Committee on Appropriations or of a committee of the Senate having legislative jurisdiction of the subject matter . . .</td>
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<td>2. The Committee on Appropriations shall not report an appropriation bill containing amendments to such bill proposing new or general legislation or any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law if such restriction is to take effect or cease to be effective upon the happening of a contingency, and if an appropriation bill is reported to the Senate containing amendments to such bill proposing new or general legislation or any such restriction, a point of order may be made against the bill, and if the point is sustained, the bill shall be recommitted to the Committee on Appropriations.[. . .]</td>
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<td>4. On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency.[. . .]</td>
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<td>6. When a point of order is made against any restriction on the expenditure of funds appropriated in a general appropriation bill on the ground that the restriction violates this rule, the rule shall be construed strictly and, in case of doubt, in favor of the point of order.</td>
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Table 2.2 The Rules of the House Governing Expired Authorizations

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<th>Rule XXI: RESTRICTIONS ON CERTAIN BILLS</th>
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<td>2. (a) (1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for public works and objects that are already in progress.</td>
</tr>
<tr>
<td>(2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress.</td>
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<td>(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill . . . and except rescissions of appropriations contained in appropriation Acts.</td>
</tr>
<tr>
<td>(c) An amendment to a general appropriation bill shall not be in order if changing existing law. . . Except as provided in paragraph (d), an amendment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.</td>
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<td>(d) After a general appropriation bill has been read for amendment, a motion that the Committee of the Whole House on the state of the Union rise and report the bill to the House with such amendments as may have been adopted shall, if offered by the Majority Leader or a designee, have precedence over motions to amend the bill. If such a motion to rise and report is rejected or not offered, amendments proposing limitations not specifically contained or authorized in existing law for the period of the limitation or proposing germane amendments that retrench expenditures by reductions of amounts of money covered by the bill may be considered.</td>
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As the floor manager for this bill, Congressman Joe Moakley (D-MA) explained after the rule was read on the floor:

House Resolution 200 is the rule waiving points of order against certain provisions of the bill, H.R. 2942, the Department of Transportation and Related Agencies appropriations bill, for fiscal year 1992. . . . It waives clause 2 and 6 of rule XXI, against the entire bill. Clause 2 of rule XXI prohibits unauthorized appropriations and legislative provisions in general appropriations bills. . . . The waivers are necessary because legislation for programs of the Coast Guard and surface transportation programs have not yet been enacted.4

The Rules Committee takes several factors into account when granting a waiver, including whether the authorizing committee has considered new authorization legislation that has been passed by the House but not enacted into law. Another factor the Rules Committee considers is how the waiver affects projects and programs in the districts of Rules Committee members. Special waivers are on occasion granted only to the programs or projects of committee members, and all other projects are left open to being stricken by a point of order (Tiefer 1989, 969–70). If an unauthorized program or project is not granted a waiver, members on the floor can strike the unauthorized appropriation from the bill. When an authorizing committee has not authorized a program, problems can ensue when an appropriations bill receives an open rule, as points of order can be brought against unauthorized spending. However, this spending potentially can be restored in a conference committee.5

How expired authorizations can cause problems in the appropriations process is illustrated in the following example. In 1993, the House Public Works Committee failed to authorize all components of the Department of Transportation. When the Appropriations Committee did not appropriate funds for several grants important to Public Works Committee Chairman Norm Mineta (D-CA), he asked for and received an open rule for the appropriations bill. The open rule allowed Mineta to offer amendments to restore his projects, but it also allowed other members “to bring points of order against 18 unauthorized sections of the bill, including the entire office of the Transportation Secretary” (Congressional Quarterly Almanac [CQA] 1993, 668). Open warfare between the appropriators and authorization committee members ensued. This case shows that without a special or closed rule, authorizing committee members can be in a precarious position when they ask for an open rule if there are unauthorized appropriations contained in the bill.

The Senate has weaker rules regarding unauthorized appropriations (Tiefer 1989, 972–77). The initial clause of Senate Rule XVI is parallel to the
House rule forbidding unauthorized appropriations. Senators are able to raise points of order against such appropriations. However, subsequent clauses in the Senate rule create exceptions that make it easier for the Senate to consider unauthorized appropriations. Typically, the rule is waived as part of a unanimous consent agreement. As is the case in the House, the failure of authorizing committees to authorize legislation can be problematic when appropriations bills are being considered on the Senate floor.

Expired authorizations can also lead to the Appropriations Committee issuing bills that include legislative riders. Representative Harold Rogers (R-KY), chairman of the subcommittee that writes the Commerce-Justice-State appropriations, notes that when authorizing committees fail to reauthorize legislation, it puts pressure on the Appropriations Committee to legislate. Because there is no legislative vehicle other than the appropriations bill that will address the unauthorized legislation, members frequently offer substantive policy amendments—riders—to the appropriations bill for the unauthorized program (Meyers 1997). As Chairman Rogers explains, when an authorizing committee fails to take care of its business, that committee is saying to all members, “Come on, bring your riders. We’ve forgotten what [we] are supposed to do” (Baumann 1999, 691). Riders complicate the appropriations process and are an expression of a loss of control over the policy process by authorizing committees.

The Russell Amendment

In the postwar period, authorizing committees began to use short-term authorizations to change the policy landscape in Congress. As Fenno (1966) noted in his seminal work, The Power of the Purse, the use of short-term authorizations broke up the monopoly power that the Appropriations Committees had over information about various programs. Annual and multiyear authorizations served to “develop a body of subject-matter experts in addition to the Appropriations Committee” (Fenno 1966, 71). Authorizing committees were attempting to be seen within the chamber as the power brokers, the informational experts who could use their power to influence the appropriations process. This power move by authorizing committees, and the ability of these committees to complete their work in a timely manner, affected the business of appropriations in both the House and Senate.

These efforts were facilitated, in part, by the passage of the 1946 Legislative Reorganization Act. The act called on committees to “exercise continuous watchfulness of the execution . . . of any laws . . . by the agencies in the executive branch of the Government” (Aberbach 1990; see also
Congress reiterated its desire to see committees perform effective oversight in 1971 when it amended the 1946 act (Aberbach 1979). These two laws were intended to build the capacities within Congress for committees to conduct oversight. Although some scholars of the oversight process have argued that Congress has not fulfilled its mandate to perform “continuous watchfulness” (e.g., Dodd and Schott 1979; Ogul 1976; Scher 1963), this view is undermined by data showing that the amount of oversight Congress conducts has increased dramatically over time. From the early 1960s to the mid-1980s, the number of days of oversight conducted by congressional committees increased by more than 300 percent. Oversight went from being less than one-tenth of the workload for congressional committees to being more than one-quarter of all activity (Aberbach 1990, 34–39). Also, it should not be forgotten that one of the most effective means of conducting oversight is to legislate. As McCubbins (1985) notes, legislation allows Congress to place controls on the implementation mechanisms available to agencies. Congress can delegate powers through legislation or rein in powers that agencies have acquired.

The first major postwar program subject to a short-term authorization was the Marshall Plan (Cox 1996). By making the authorization for the 1947 Foreign Aid Act short-term, Republican members of Congress hoped to exert more control over the way in which President Truman implemented it. The initial one-year authorization ensured that every year Congress would review how the Economic Recovery Agency was implementing the aid package to rebuild Europe and would be involved in any policy changes that were necessary as the conditions in Europe changed. The State Department would be limited in its ability to act unilaterally, and the foreign policy authorizing committees would exercise greater control over the monies that were expended and the form of these expenditures.

The Marshall Plan was a relatively unique use of short-term authorizations in the early postwar period. However, Senator Richard Russell (D-GA) set the stage for a broader change in the authorization environment when he added an amendment to the Military Construction Authorization Act for fiscal year 1960 that stated “[n]o funds may be appropriated after December 31, 1960 . . . for the procurement of aircraft, missiles, or naval vessels unless the appropriation of such funds has been authorized by legislation enacted after such date” (Dawson 1962, 42). This amendment was designed to make the Armed Services Committee a more powerful player in the debate over military policy. In his case study of this change in defense policy making, Dawson (1962, 42) argues that

[the Russell amendment] served to break the monopoly long held by the annual Department of Defense Appropriations Act as the single regular
confrontation of Congress, as a decision-making participant through its Appropriations Committees, with the strategic issues and choices contained in defense policy.

Perhaps the most interesting aspect of Russell’s efforts to move important components of the defense authorization to an annual appropriation is that Russell, and the other senators who developed the proposal, served on both the Armed Services Committee and the Appropriations Committee. Dawson argues that these senators made the defense authorization subject to an annual review because they wanted to exert more influence over defense policy and the military establishment. The existing system of having defense policy analyzed annually by the Appropriations Committee was not providing the oversight and policy control that these senators desired. Dawson (1962, 44) notes that

[control over defense appropriations] has been a disappointing instrumentality. . . . [Senators] have, and can have, no adequate facilities for formulating alternative programs [to the administration’s proposal] in any systematic fashion.

Defense appropriators recognized that they did not have the ability to evaluate defense policy in a comprehensive way, to determine the effectiveness of the various policies, and to craft alternative policies if necessary. The senators decided that in addition to the Appropriations Committee, the Armed Services Committee, which has jurisdiction over defense issues, should serve as a repository of expertise on defense policy. By having an annual authorization, Senator Russell envisioned that the Armed Services Committee would be able to analyze Department of Defense policy proposals and craft alternate proposals that could be considered by the appropriators. By dividing the labor between the authorization and Appropriations Committees, Congress would have two independent sources of expertise on defense policy, making it harder for the Department of Defense to exert undue control over defense policy vis-à-vis Congress.

One result of this change in authorization timing was to assist members in developing more expertise. “The authorization procedure lends itself to [‘involving more Congressmen more immediately in the intellectual, technical, and political processes from which policy and strategy emerge’] because it possesses . . . the utility of focus” (Dawson 1962, 56). With all of the things going on in the Congress, a reauthorization focuses the mind because it puts a specific policy issue before members at a known time for them to deliberate.
The movement of defense policy from a permanent to a short-term authorization with the passage of Russell’s amendment in 1959 began a larger trend toward the use of short-term authorizations by Congress. Russell’s efforts to constrain defense policy through the use of short-term authorizations continued until, by the early 1980s, all defense programs were subject to annual authorization (Art 1985; Cox 1996). This trend also affected domestic discretionary programs, with most new agencies and programs created after 1960 having a short-term authorization. In addition, authorizing committees changed many existing agencies from permanent to short-term authorizations. Of the thirty-six new federal agencies created after 1960, only nine (25 percent) were given a permanent authorization (Cox 1996). Of the four cabinet level agencies that were created, only Housing and Urban Development and Education were given permanent authorizations. Between 1969 and 1978, the total number of programs with an annual authorization increased from approximately twelve to more than thirty, with many more programs having multiyear short-term authorizations. In fact, short-term authorizations had become so prevalent that by the 1970s, more than 25 percent of all laws enacted were reauthorizations (Schick 1983).

Variations in Authorizations

Today, the congressional landscape is filled with short-term authorizations, and there is great variation among them. Consider the following four federal programs and each program’s form of authorization:

- The authorization for the Department of Defense lasts for only one year. The House and Senate Armed Services Committee must enact a new authorization for defense programs each year. These two committees are diligent in completing the defense authorization; the committee has never failed to renew the authorization.
- The authorization for surface transportation programs—which include highways, interstates, and public mass transit—historically has lasted for five or six years. The House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee have to act only twice in a decade to keep this program authorized. Similar to the defense committees, the committees with jurisdiction over surface transportation are diligent in enacting legislation renewing these programs, although the reauthorization legislation is often delayed for a short period as the authorizing committee fights to expand the size of the program.
- The Peace Corps began the 1990s with an expired authorization. In 1993 and 1995, the House International Relations Committee and the
Senate Foreign Relations Committee renewed the law reauthorizing the Peace Corps, but these renewals expired after only one year. Since 1996, the Peace Corps has operated with an expired authorization, which means that the legislative language authorizing appropriations for the program has expired, but these programs have received funding anyway because the rules governing unauthorized appropriations have been waived.

- Finally, the USA PATRIOT Act, passed in the aftermath of the September 11, 2001, terrorist attacks, contains numerous policy provisions that expire in 2005.

Any scholar interested in such issues as defense policy, foreign policy, transportation policy, education policy, welfare policy, environmental policy, regulatory policy, tax policy, and agriculture policy is studying programs and policies that function either totally or in part with short-term authorizations. The largest domestic discretionary programs are all subject to short-term authorizations. Defense policy is made in the annual defense authorization, as is foreign policy—as made in the Foreign Relations Authorization and Intelligence Authorization Acts. Air transportation and surface transportation—the largest domestic discretionary program—have short-term authorizations. Agriculture policy has one primary short-term authorization, but education policy has many, including the Elementary and Secondary Education Act, the Higher Education Act, the Vocational Education Act, and Individuals with Disability Education Act. Even tax policy is littered with taxes that have short-term authorizations, as readers of *Showdown at Gucci Gulch* (Birnbaum 1988) or followers of the 2001 Bush tax cut will remember. It is difficult to understand these policy areas without paying attention to and understanding how short-term authorizations impact policy making for the programs in these areas.

Short-term authorizations do not affect all policy areas. Many programs, especially entitlement programs that have permanent spending, are not subject to short-term authorizations. When considered in the context of the size of the federal government, this is not a trivial matter because entitlement programs account for more than half of all spending by the federal government. However, federal entitlement spending is limited to a small number of large programs such as Social Security. Entitlements remain outside the scope of the annual appropriations process, which is where the conflicts between authorizing and Appropriations Committees are played out. Thus, a study of short-term authorizations necessarily misses some components of the policy universe, but it still captures the majority of domestic and international programs the federal government administers. It also captures the only areas where legislators can control discretionary spending.
Summary

Tiefer (1989, 933) refers to short-term authorizations as an intrusion “on [the] appropriations’ [committees] former monopoly on the annual review and expression of congressional views.” Prior to the 1960s, the appropriations process was a primary locus of congressional review of programs and agencies. This is not to say that authorizing committees did not have hearings on these subjects, but they did not do so in a systematic or timely manner, except when a scandal occurred (Rockman 1984; Tiefer 1989). Thus, it was the appropriators, not the authorizers, who were best able to make adjustments to program policy and to expose program deficiencies.

Short-term authorizations helped authorizing committees shift the power back toward themselves. The authorizing committees were now able to gain the electoral benefits associated with legislative activity (e.g., Mayhew 1974). They also could attempt to put pressure on Appropriations Committees to fund programs at specific levels in order to achieve important program goals. After World War II, Congress first began to use short-term authorizations in foreign and defense policy, and then shifted their approach to the domestic policy arena. As the case of the Russell Amendment illustrates, this shift allowed authorizing committees to begin to exert more control over policies and programs under their jurisdiction. Policy committees were given greater incentives to acquire expertise and to use that expertise to influence the shape of existing programs under their jurisdiction on an ongoing basis.