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Regular Appropriations Acts: Selected Statutory Interpretation Issues

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Regular Appropriations Acts: Selected Statutory Interpretation Issues

The Constitution’s Appropriations Clause provides that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” Congress, and not another branch of government, therefore decides whether and on what terms to fund government programs. When it does, Congress provides appropriations or other budget authority. This statutory authority is essential to carry out nearly all government programs.

As a legal matter, Congress can include an appropriation or other budget authority in any bill or joint resolution; as a procedural matter, Congress has chosen to supply funding for many of the continued operations of federal departments, agencies, and programs through a type of bill referred to as a *regular appropriations bill*. Under current committee structures, Congress may separately enact up to 12 regular appropriations bills for a given fiscal year, though more and more, Congress enacts one or more regular appropriations bills together in a statute sometimes referred to as a *consolidated* or *omnibus appropriations act*.

Regular appropriations acts stand apart from other statutes in content, structure, and context. Since 1789, regular appropriations acts have been drafted “for the service” (i.e., for the use of) a single fiscal year; much of the legal authority such acts provide comes with its own expiration date. When Congress enacts regular appropriations acts, its primary focus is the granting of appropriations and other budget authority, and procedural rules discourage the inclusion of “legislation” in such acts. Modern-day regular appropriations acts—those enacted for Fiscal Year (FY) 2000 and thereafter—employ a legislative format that differs in key respects from that of other statutes enacted during the same time period. Congress’s consideration of regular appropriations acts also generates detailed committee and other legislative reports, such as explanatory statements, which Congress might use to further control or influence, in varying ways, use of appropriated funds.

Because modern-day regular appropriations acts employ structure and include matter that does not appear in other contemporary statutes, these appropriating acts raise questions for agencies that other statutes typically do not. For example, the fact that most of the appropriations contain an expiration date requires agencies to ensure that particular expenses are properly incurred using time-limited funds. Agencies may also have to consider the effect that the various reports that accompany regular appropriations acts have on their authority to use appropriated funds, potentially implicating the constitutional doctrine of bicameralism and presentment and the statutory doctrine of incorporation by reference.

Not only do modern-day regular appropriations acts pose unique questions, courts often read such acts through lenses that are not applied to other statutes. That is because, over time, courts have arrived at a particular understanding of Congress’s appropriating function, influenced by such factors as the perceived nature of appropriations acts and the effect of chamber rules that govern consideration of general appropriations bills. Given this understanding, courts have crafted presumptions concerning regular appropriations act provisions to yield conclusions about statutory meaning that appear to most faithfully reflect legislative intent. Thus, when Congress writes the unnumbered paragraphs of an appropriations act using a principal clause/proviso format, as it has for centuries, courts will usually read the proviso as being confined to the subject matter of its principal clause; the proviso will not be read to introduce new matter that is not connected to the principal clause. Courts will also presume that matter in a regular appropriations act does not modify preexisting substantive law that fixes rights, duties, and obligations. Even when an act overcomes this presumption, courts will further presume that the act in question only modifies substantive law for the fiscal year. By understanding these and other presumptions, Congress can tailor the language of appropriations acts to ensure that courts interpret that language as intended.

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A *regular appropriations act* is a statute that provides funding for the continued operation of federal departments, agencies, and government activities for a particular fiscal year.¹ The legal meaning of a regular appropriations act is generally determined by applying the same rules that govern the interpretation of other statutes.² Just as with statutes that authorize government programs or otherwise regulate public or private conduct,³ courts⁴ and agencies⁵ usually interpret the undefined words and phrases of an appropriations act by looking to their ordinary meaning. Ordinary meaning is usually found in dictionary definitions.⁶ Like other statutes,⁷ words and phrases in an appropriations act are interpreted in context of the act in which they appear.⁸ Other canons of construction apply just as much to appropriations acts as to other statutes.⁹ When construing statutory text, including provisions in appropriations acts,¹⁰ a court might also look to a statute’s legislative history. This record of Congress’s consideration of and

¹ GOV’T ACCOUNTABILITY OFF., A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS, GAO-05-734SP, at 13 (2005) [hereinafter GAO GLOSSARY].

² For an overview of rules and presumptions generally used in interpreting federal statutes, see CRS Report R46484, *Understanding Federal Legislation: A Section-by-Section Guide to Key Legal Considerations*, by Victoria L. Killion [hereinafter *Understanding Federal Legislation*].

³ See, e.g., *Gross v. FBL Fin. Serv., Inc.*, 557 U.S. 167, 175–76 (2009) (interpreting Age Discrimination in Employment Act of 1967) (“Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” (internal quotation marks omitted)).

⁴ See, e.g., *California v. Trump*, 963 F.3d 926, 944 (9th Cir. 2020) (“Section 8005 does not define ‘unforeseen.’ Therefore, we start by considering the ordinary meaning of the word.”) (interpreting appropriations act provision allowing the Department of Defense to transfer funds between appropriations based on “unforeseen” military requirements), *vacated sub nom. Biden v. Sierra Club*, No. 20-138, 2021 WL 2742775 (U.S. July 2, 2021).

⁵ See, e.g., *Expenditure of Appropriated Funds for Informational Video News Releases*, 28 Op. O.L.C. 109, 119 (2004) (looking first to ordinary meaning to interpret an appropriations act general provision prohibiting the use of any part of any appropriation for “publicity or propaganda purposes”).

⁶ Compare *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 569 (2012) (“Based on our survey of the relevant dictionaries, we conclude that the ordinary or common meaning of ‘interpreter’ does not include those who translate writings. Instead, we find that an interpreter is normally understood as one who translates orally from one language to another.”) (statute authorizing a federal judge or clerk of court to tax the “compensation of interpreters” as litigation costs), with *United States v. McIntosh*, 833 F.3d 1163, 1175–76 (9th Cir. 2016) (consulting dictionary definitions of the word “implement” to construe appropriations act provision barring the Department of Justice from using appropriated funds to prevent specified States from “implementing” state medical marijuana laws); see also *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (looking to dictionary definitions roughly contemporaneous with a statute’s enactment in 1925 rather than a dictionary edition published in 2014 to interpret the statutory phrase “contracts of employment”).

⁷ See, e.g., *King v. Burwell*, 576 U.S. 473, 486 (2015) (tax credit) (“[W]hen deciding whether the language” of a statute “is plain, we must read the words in their context and with a view to their place in the overall statutory scheme.” (internal quotation marks omitted)); *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004) (Truth in Lending Act statutory damages provision) (“A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.” (internal quotation marks omitted)).

⁸ See, e.g., B-230110, 1988 WL 227660, at *1–2 (Comp. Gen. Apr. 11, 1988) (interpreting the phrase “this Act,” as used in a statute that consolidated for enactment what had been drafted as stand-alone regular appropriations bills, as referring only to “the individual appropriation act in which [the phrase] appears before incorporation into the Continuing Resolution”).

⁹ Compare *McDonald v. United States*, 279 U.S. 12, 18, 23 (1929) (act amending statutes governing petitions for citizenship) (refusing to read proviso as only a limitation on its principal clause), with *Republic of Iraq v. Beatty*, 556 U.S. 848, 857–58 (2009) (reading a similar conclusion with respect to proviso in a supplemental appropriations act).

¹⁰ See, e.g., *Mullis v. United States*, 230 F.3d 215, 220–21 & 220 n.3 (6th Cir. 2000) (consulting committee reports and floor statements when examining effect of appropriations act general provision prohibiting the Bureau of Alcohol, Tobacco, and Firearms from processing an application of a convicted felon seeking relief from provisions of federal law barring the possession of a firearm or ammunition).

commentary on the bill that became law might be used to confirm the meaning that is otherwise evident in the statutory text itself,¹¹ or it might be used to clarify the meaning of an ambiguous statute.¹² Regardless of the type of statute at issue, whether appropriating or not, the ultimate goal of statutory interpretation is to determine congressional intent.¹³

However, regular appropriations acts also differ from other statutes in important respects, in form but more importantly in substance. Regular appropriations acts look different from most other federal statutes, using what commentators have called a “maverick style” of organization.¹⁴ Their chief function is the granting of appropriations, a constitutionally unique legal authority that is necessary for an agency to draw funds from the Treasury to pay the government’s debts.¹⁵ Reinforcing this focus on funding government programs, chamber rules discourage Members of Congress from including “legislation” in a regular appropriations act, creating, at least as a procedural matter, a “separation between policy and money decisions.”¹⁶ As a rule, the primary legal authority provided in a regular appropriations act is qualified in its duration—most of its appropriations have an expiration date. Regular appropriations acts are also accompanied by detailed committee reports. Sometimes on their own and sometimes in conjunction with references in the statute to the committee or other legislative reports, these reports state that the funds within an appropriation should be allocated in a certain way, issue directives to agencies, or otherwise exercise oversight over the agencies and programs that the act funds.

These differences in the form and function of regular appropriations acts and the context in which Congress considers appropriations acts affect the types of interpretive questions that such acts raise. Moreover, because courts perceive differences between regular appropriations and other statutes, courts may conclude that on certain questions, congressional intent is most accurately gauged using rules of interpretation tailored to appropriations acts. After discussing the typical format of a regular appropriations act, this report examines frequently recurring questions of statutory interpretation raised by such acts. This report compiles the terms it defines in a glossary **Appendix**.

¹¹ See, e.g., *Small v. United States*, 544 U.S. 385, 393 (2006) (construing statute prohibiting a felon “convicted in any court” from possessing a firearm as applying only to domestic convictions and stating that statute’s “lengthy legislative history confirms” that foreign convictions would not trigger the firearms disability).

¹² See, e.g., *Milner v. Dep’t of the Navy*, 562 U.S. 562, 572 (2011) (Kagan, J.) (“Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text.”); but see *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631, 647 (2005) (Scalia, J., concurring in part) (disagreeing with the Court’s use of a committee report to interpret the Indian Self-Determination and Education Assistance Act and arguing that the report “at most indicates the intent of one Committee of one Chamber of Congress”).

¹³ See *United States v. Mitchell*, 109 U.S. 146, 150 (1883) (stating that the “whole question” of whether Congress had used an appropriations act to amend substantive law “depends on the intention of congress as expressed in the statutes”).

¹⁴ LAWRENCE FILSON & SANDRA STROKOFF, *THE LEGISLATIVE DRAFTER’S DESK REFERENCE*, §§ 33.2 & 33.7 (2d ed. 2008) (distinguishing the “maverick style” of “general appropriations acts” from the “four principal Federal Drafting styles”).

¹⁵ See U.S. CONST. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”).

¹⁶ See CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by James V. Saturno, at 1, 3 [hereinafter *Limitations in Appropriations Measures*].

Anatomy of a Statute Making Regular Appropriations

This report addresses a type of statute referred to as a *regular appropriations act*, which is only one of a number of appropriations acts that Congress might enact in a given year. A regular appropriations act provides funding for the continued operation of federal departments, agencies, and government activities for a particular fiscal year.¹⁷ As used in this report, the term excludes appropriations acts that make only continuing, deficiency, or supplemental appropriations.¹⁸ It also does not describe those laws, other than appropriations acts, that provide budget authority.¹⁹

Budget authority is statutory authority to incur financial obligations on behalf of the United States that will result in an outlay of federal funds.²⁰ Usually, this authority takes the form of an *appropriation*, which is statutory authority to both obligate the government and make payments out of the Treasury.²¹ After enactment of such funding authority, the Department of the Treasury (Department) issues appropriation warrants, which are “evidence of Congressional action to fund programs” and establish the money that an “entity is authorized to withdraw from the General Fund of the U.S. Government.”²² The Department establishes *appropriations accounts* corresponding to each appropriation.²³ Agencies use accounts to reflect their use of appropriations.

Under the current structure of the House and Senate Appropriations Committees, there are 12 regular appropriations acts, each drafted annually by a subcommittee with jurisdiction over specified agencies and programs.²⁴ While the Appropriations Committees might typically first draft and mark up the different regular appropriations bills as stand-alone measures, Congress increasingly enacts the regular appropriations bill into law by combining one or more into a measure that is designated as, variously, a “consolidated” or “omnibus” appropriations act.²⁵

Modern-day statutes making regular appropriations²⁶ typically include up to four basic components: prefatory matter, so-called “preceding matter,” unnumbered paragraphs, and general

¹⁷ See GAO GLOSSARY, *supra* note 1, at 13.

¹⁸ See *id.* at 13–14.

¹⁹ Cf. GOV’T ACCOUNTABILITY OFF., FEDERAL BUDGET: GOVERNMENT-WIDE INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS, FISCAL YEARS 1995 TO 2015, GAO-19-36, at 8 fig. 2 (2018) (comparing discretionary and mandatory spending).

²⁰ *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1322 (2020) (“Budget authority is an agency’s power provided by Federal law to incur financial obligations that will result in immediate or future outlays of government funds.” (internal citation and quotation marks omitted)).

²¹ *Andrus v. Sierra Club*, 442 U.S. 347, 360 n.18 (1979).

²² See DEP’T OF THE TREASURY, 1 TREASURY FIN. MANUAL § 2025.10; see also 31 U.S.C. § 3323(a) (directing that “the Secretary of the Treasury may pay out money only against a warrant”).

²³ See, e.g., DEP’T OF THE TREASURY, FEDERAL ACCOUNT SYMBOLS AND TITLES (FAST) BOOK: AGENCY IDENTIFIER CODES, ii (July 2021), <https://fiscal.treasury.gov/files/fast-book/fastbook-july-2021.pdf> (“Receipt, appropriation, and other fund account symbols and titles are assigned by the Department of the Treasury . . . consistent with the principles and standards prescribed by the Comptroller General of the United States.”); see also GEN. ACCT. OFF., POLICY AND PROCEDURES MANUAL FOR GUIDANCE OF FEDERAL AGENCIES, tit. 7, § 2.1 (May 1993).

²⁴ CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno, at 12.

²⁵ See CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by James V. Saturno, at 3 tbl. 1.

²⁶ Subsequent discussion in this report is based on Congressional Research Service review of statutes making regular

provisions. Moreover, while the text of committee and other legislative reports that are drafted to accompany regular appropriations acts do not appear within the four corners of the act, such reports are important products of the legislative process.

Prefatory Matter

A statute making regular appropriations begins with statutorily prescribed *prefatory matter*. First, the act's title will indicate the fiscal year and, in general terms, the objects for which the act makes appropriations.²⁷ Second, the measure will contain an enacting clause if it is styled as an act²⁸ or a resolving clause if it is styled as a joint resolution.²⁹

Preceding Matter

The next component of a statute making regular appropriations is a collection of what in recent fiscal years³⁰ has been styled as numbered sections that precede the portions of the act that make particular appropriations (“preceding matter”).³¹ When they appear, preceding matter provisions tend to appear in the same form from year to year,³² but whether a statute making regular appropriations includes a particular preceding matter provision depends on the content of the act,

appropriations for Fiscal Year (FY) 2000 and thereafter. Thus, this report's use of the modifier “modern-day” should be understood to refer to the time period FY2000 through FY2021.

²⁷ See 1 U.S.C. § 105 (“The style and title of all Acts making appropriations for the support of Government shall be as follows: ‘An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).’”). Beginning with FY1977, appropriations acts have made appropriations for fiscal years ending September 30. Previously, a fiscal year ended on June 30 of a calendar year. See Congressional Budget Act of 1974, Pub. L. No. 93-344, § 506(a)–(b), 88 Stat. 297, 322 (1974). The style and title of acts making appropriations for FY1975 and prior fiscal years therefore track this earlier fiscal-year calendar. See, e.g., Foreign Assistance and Related Programs Appropriations Act, 1972, Pub. L. No. 92-242, 86 Stat. 48, 48 (1972) (“Making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1972, and for other purposes.”). Acts making appropriations for FY1976 included funding for an additional three-month period, after June 30, 1976, to enable transition to the new fiscal year calendar. See, e.g., Department of Transportation and Related Agencies Appropriation Act, 1976, Pub. L. No. 94-134, 89 Stat. 695, 695 (1975) (“Making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes”).

²⁸ See 1 U.S.C. § 101; see also Killion, *Understanding Federal Legislation*, *supra* note 2, at 19.

²⁹ See 1 U.S.C. § 102; see also Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 13, 13 (2019) (joint resolution); CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES ONE HUNDRED SIXTEENTH CONGRESS, H.DOC. NO. 116-177, § 397 (2021) [hereinafter RULES OF THE HOUSE] (A joint resolution “is a bill so far as the processes of the Congress in relation to it are concerned,” and, except for a joint resolution proposing a constitutional amendment, “are sent to the President for approval and have the full force of law” when enacted. “They are used for what may be called the incidental, unusual, or inferior purposes of legislating,” including the making of certain appropriations).

³⁰ The use of numbered sections to delineate preceding matter is more common in more recent statutes making regular appropriations, in particular those pertaining to FY2008 or thereafter. Before then usually only a statement of appropriations followed the act's prefatory matter and preceded its appropriating provisions. Preceding matter is the product of more complex appropriations act structure, and in particular Congress's use of a consolidated or omnibus measure to enact two or more regular appropriations acts.

³¹ See, e.g., Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. A., tit. II, § 222(a), 133 Stat. 2534, 2582 (2019) (referring to “the *matter preceding* division A of this consolidated Act” in directing certain transfers (emphasis added)).

³² *But see* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, §§ 9–11, 128 Stat. 2130, 2133–35 (2014) (preceding matter provisions appropriating funds, amending provisions of law relating to the Northern Marianas Islands, and directing a study of electric rates in insular areas).

its method of enactment, and whether the act combines two or more regular appropriations bills.³³ Typical preceding matter include:

- In measures that consolidate several appropriations bills, a provision regarding the meaning of the phrase “this Act.”³⁴
- A statement of appropriations, reciting that sums in the Act are appropriated for a designated fiscal year out of any money in the Treasury not otherwise appropriated.³⁵
- A provision regarding the availability or rescission of funds designated by Congress for Overseas Contingency Operations³⁶ or as an emergency requirement.³⁷
- A provision reciting that the explanatory statement printed by the Chair of the House Committee on Appropriations, or another designee, on a specified date, shall have the same effect for funds allocation and act implementation “as if it were a joint explanatory statement of a committee of conference.”³⁸

Unnumbered Paragraphs

Following any preceding matter are the regular appropriations acts themselves, which begin with *unnumbered paragraphs*. These paragraphs are the primary provisions of the act that provide an agency with the budget authority that allows federal officers and employees to incur financial obligations on behalf of the United States that will result in an outlay of federal funds.³⁹

The unnumbered paragraphs of a given regular appropriations act will typically be organized by title, each reflecting, in the case of executive branch agencies, funding for a given agency⁴⁰ or related functions of an agency.⁴¹ If a statute making regular appropriations enacts two or more

³³ See, e.g., *infra* “Preceding Matter Concerning the Explanatory Statement.”

³⁴ See, e.g., Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, § 3, 125 Stat. 552, 552 (2011) (“Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act shall be treated as referring only to the provisions of that division.”).

³⁵ See, e.g., Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 5, 131 Stat. 135, 137 (2017).

³⁶ See, e.g., Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, § 6, 128 Stat. 5, 7 (2014).

³⁷ See, e.g., Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 6(a), 128 Stat. 2130, 2133 (2014).

³⁸ See, e.g., Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 4, 121 Stat. 1844, 1846 (2007). Certain National Defense Authorization Acts included a similar provision. See Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 4, 128 Stat. 3292, 3312-13 (2014); National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 4, 127 Stat. 672, 689 (2013); Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, § 4, 122 Stat. 4356, 4372 (2008).

³⁹ *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1322 (2020) (“Budget authority is an agency’s power provided by Federal law to incur financial obligations that will result in immediate or future outlays of government funds.” (internal citation and quotation marks omitted)).

⁴⁰ See, e.g., Energy and Water Development Appropriations Act, 2004, Pub. L. No. 108-137, tit. I, 117 Stat. 1827, 1827 (2003) (regular appropriations act title making appropriations for the civil functions of the Army Corps of Engineers).

⁴¹ See, e.g., Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Div. C, tit. II, 128 Stat. 5, 89 (2014) (regular appropriations act title making appropriations for service branch and Department of Defense operations-and-maintenance expenses).

regular appropriations acts together,⁴² the practice is that the measure will be drafted so that each such act will appear in the statute in its own division.⁴³

Appropriations are said to be made “under” a heading.⁴⁴ A *heading* is a phrase in the appropriations act that immediately precedes an unnumbered paragraph. The heading names the appropriation or other authority contained in the paragraph.⁴⁵ The heading may also include one of a handful of frequently recurring parenthetical statements, some required by chamber rules,⁴⁶ which serve to highlight that the text of the unnumbered paragraph contains particular types of legal authorities.⁴⁷

One of the most frequently recurring of these parenthetical heading statements reads “Including Transfer of Funds.”⁴⁸ A *transfer* shifts budget authority in one appropriation or fund account to another.⁴⁹ An agency needs statutory authority to transfer budget authority.⁵⁰ Statutory authority to make a transfer is called *transfer authority*.⁵¹ Thus, this parenthetical heading statement usually denotes that the unnumbered paragraph includes transfer authority, permitting agencies to make discretionary transfers, subject to the terms of the transfer authority.⁵² Occasionally, though, the

⁴² For a discussion of the jurisdictional divisions between subcommittee of the Appropriations Committees, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2021*, by James V. Saturno (discussing House and Senate committee and subcommittee structure).

⁴³ See, e.g., Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, § 2, 132 Stat. 2981, 2981 (2018) (table of contents).

⁴⁴ See, e.g., *Reuben Quick Bear v. Leupp*, 210 U.S. 50, 77 (1908) (“the appropriation of the ‘treaty fund’ has always been *under* the heading, ‘Fulfilling Treaty Stipulations and Support of Indian Tribes’” (emphasis added)); Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, Div. A, tit. VIII, § 8039, 133 Stat. 2317, 2344 (2019) (“Of the funds appropriated to the Department of Defense *under* the heading ‘Operation and Maintenance, Defense-Wide’, not less than \$12,000,000” shall be made available for certain purposes (emphasis added)).

⁴⁵ See, e.g., Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, Pub. L. No. 114-223, Div. A, tit. II, 130 Stat. 857, 875 (2016) (“Grants for Construction of Veterans Cemeteries”).

⁴⁶ See, e.g., CRS Report R44124, *Appropriations Report Language: Overview of Components and Development*, by Kevin P. McNellis, at 22 (describing House rules requiring headings for rescissions and transfers of unexpended balances) [hereinafter *Appropriations Report Language*].

⁴⁷ The parenthetical heading statements serve to highlight the presence of authority in the unnumbered paragraph itself but are not necessary, as a legal matter, for the paragraph to provide a particular type of authority or limitation. For example, Congress has written an unnumbered paragraph to function as a “limitation on obligations,” even though the paragraph’s heading did not reference a limitation. Compare Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. F, tit. I, 118 Stat. 3, 313 (2004) (Emergency Preparedness Grants) (imposing a limitation on amounts that could be made available in FY2004 for obligation from a permanent appropriation but lacking any reference in the paragraph’s heading to a limitation on obligations), with Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. L, tit. I (2020) (Emergency Preparedness Grants) (imposing a similar limitation on amounts that could be made available for obligation in FY2021 from the same permanent appropriation and including a heading reference to “limitation on obligations”).

⁴⁸ See, e.g., Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. D, tit. III, 132 Stat. 348, 523 (2018) (Naval Reactors).

⁴⁹ See GAO GLOSSARY, *supra* note 1, at 95.

⁵⁰ See 31 U.S.C. § 1532 (“An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law.”).

⁵¹ CRS Report R46417, *Congress’s Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff, at 34 [hereinafter *Power Over Appropriations*].

⁵² See, e.g., Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-76, tit. I, 115 Stat. 704, 712 (2001) (Animal and Plant Health Inspection Service Salaries and Expenses) (noting parenthetically that the appropriation includes “transfers of funds”).

parenthetical heading statement might signal that in enacting the statute, Congress, itself, has directed that a transfer be made, in which case the transfer is not discretionary.⁵³

Another common parenthetical heading statement is “Including Rescission of Funds.”⁵⁴ A *rescission* cancels the availability of existing, unexpired budget authority that was provided in a prior statute.⁵⁵ Thus, this parenthetical heading statement indicates that in addition to providing new budget authority, the unnumbered paragraph following the heading rescinds all or part of the unobligated balance of budget authority that was provided in a prior statute.⁵⁶

For each fiscal year Congress enacts unnumbered paragraphs that are preceded by a parenthetical heading statement that reads “Liquidation of Contract Authorization.”⁵⁷ Congress uses this parenthetical heading statement to flag an unnumbered paragraph that discharges obligations entered into using a type of budget authority called *contract authority*.⁵⁸ Contract authority only permits the making of a promise to pay in advance of appropriations.⁵⁹ Such unnumbered paragraphs provide *liquidating appropriations*, which are made only to pay the obligations already incurred using contract authority.⁶⁰

In addition, certain unnumbered paragraphs appear under headings that include the parenthetical phrase “Limitation on Obligations.” Such unnumbered paragraphs limit the amount or type of obligations that an agency may incur under budget authority provided in another statute, such as in a permanent appropriation⁶¹ or through contract authority provided in an authorizing statute.⁶²

⁵³ See, e.g., Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, Div. B, tit. I, 133 Stat. 2317, 2388 (2019) (Periodic Censuses and Programs) (“That within the amounts appropriated, \$3,556,000 shall be transferred to the ‘Office of Inspector General’ account for activities associated with carrying out investigations and audits related to the Bureau of the Census”); see also United States Capitol Police—Current Rate for Operations Under the 2007 Continuing Resolution, B-308773, 2007 WL 136313, at *4 (Comp. Gen. Jan. 11, 2007) (explaining that for purposes of calculating a current rate of operations under a continuing resolution, an agency must distinguish between a transfer that the agency makes “pursuant to statutory authority but at its discretion” and a transfer made because the transfer is “directed by law”).

⁵⁴ See, e.g., Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. D, tit. III, 132 Stat. 348, 523 (2018) (Defense Nuclear Nonproliferation).

⁵⁵ See GAO GLOSSARY, *supra* note 1, at 85.

⁵⁶ See, e.g., Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. D., tit. I, 133 Stat. 2534, 2686 (2019) (Bureau of Land Management, Management of Lands and Resources) (“Of the unobligated balances from amounts made available under this heading in fiscal year 2017 or before, \$19,000,000 is permanently rescinded.”).

⁵⁷ See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. L, tit. I, 129 Stat. 2242, 2841 (2015) (Grants-in-Aid for Airports).

⁵⁸ See GAO GLOSSARY, *supra* note 1, at 21.

⁵⁹ See Nat’l Ass’n of Reg’l Councils v. Costle, 564 F.2d 583, 586 (D.C. Cir. 1977) (“Contract authority is legislative authorization for an agency to create obligations in advance of an appropriation. It requires a subsequent appropriation or some other source of funds before the obligation incurred may actually be liquidated by the outlay of monies.”). Contract authority is not the general ability of an agency to enter into contracts in order to carry out programs; rather, it is statutory authority to enter into obligations in advance of available appropriations. See *id.*

⁶⁰ See GAO GLOSSARY, *supra* note *supra* note 1, at 65.

⁶¹ Congress has used this parenthetical heading statement for an unnumbered paragraph that related to the Hazardous Materials Emergency Preparedness Fund, a permanent appropriation. See, e.g., 49 U.S.C. § 5116(h); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. L, tit. I (2020) (Emergency Preparedness Grants).

⁶² See, e.g., Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, Div. K, tit. I, 131 Stat. 135, 735 (2017) (Federal-Aid Highways) (“Funds available for the implementation or execution of Federal-aid highway and highway safety construction programs authorized under titles 23 and 49, United States Code, and the provisions of the Fixing America’s Surface Transportation Act shall not exceed total obligations of \$43,266,100,000 for fiscal year 2017.”).

The unnumbered paragraph follows the heading. As noted above, the chief function of the paragraph is to provide budget authority. Congress usually defines the authority provided by a particular grant of budget authority by defining its “availability” along three dimensions: an amount of budget authority, the object or objects for which that budget authority is provided, and the time period for which the recipient agency may obligate the budget authority.

Congress might write single-sentence paragraphs.⁶³ Perhaps more commonly, Congress writes unnumbered paragraphs to follow a principal clause/proviso structure. In this form, the paragraph begins with a *principal clause* setting forth an amount of budget authority that the paragraph makes available.⁶⁴ Set off from the principal clause by means of a colon are one or more *provisos*, which are clauses that begin with the italicized word “*Provided*.” The first proviso following a principal clause will begin “*Provided, that*.” Any subsequent provisos relating to the same principal clause will begin “*Provided further, that*.” A proviso usually states conditions that apply to the allocation⁶⁵ or obligation⁶⁶ of the budget authority provided in the paragraph’s principal clause.⁶⁷

General Provisions

Following the unnumbered paragraphs that provide budget authority are *general provisions*.⁶⁸ They often appear as numbered sections. Relevant general provisions might appear in the same title⁶⁹ as the unnumbered paragraphs to which they relate or in separate titles of the same regular appropriations act.⁷⁰ Recent Financial Services and General Government appropriations acts contain general provisions that, by their terms, apply “government-wide.”⁷¹ It is possible for

⁶³ See, e.g., Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. A., tit. I, 128 Stat. 2130, 2144 (2014) (State Mediation Grants) (“For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101–5106), \$3,404,000.”).

⁶⁴ See, e.g., *id.*, Div. D, tit. IV, 128 Stat. at 2330 (“For expenses necessary of the [Nuclear Regulatory Commission] Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, \$12,071,000, to remain available until September 30, 2016 . . .”). The principal clause may itself allocate part of the aggregate sum to one of the several purposes for which the appropriation is available. See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. A, tit. I, 129 Stat. 2242, 2246 (2015) (providing roughly \$44 million for the Department of Agriculture’s Office of the Chief Information Officer “of which not less than” \$28 million “is for cybersecurity requirements of the Department”).

⁶⁵ Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. A., tit. II, 133 Stat. 2534, 2557 (2019) (Maternal and Child Health) (stating that notwithstanding specified provisions of the Social Security Act “not more than \$119,116,000 [of the appropriation] shall be available for carrying out special projects of regional and national significance pursuant to section 501(a)(2) of such Act”).

⁶⁶ *Id.*, Div. B, tit. I, 133 Stat. at 2618 (Animal and Plant Health Inspection Service, Salaries and Expenses) (stating that no funds shall be used to formulate or administer a brucellosis eradication program for FY2020 if the program did not require a specified State funding match).

⁶⁷ See *infra* “The Relationship Between Principal Clause and Proviso.”

⁶⁸ Certain regular appropriations acts style these numbered provision as “administrative provisions.” See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. E, tit. I, 129 Stat. 2242, 2429 (2015).

⁶⁹ See, e.g., Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, Div. E, tit. I, 122 Stat. 3574, 3697 (2008).

⁷⁰ See, e.g., Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, Div. A, tit. VIII, 125 Stat. 38, 55 (2011).

⁷¹ See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. D, tit. VII, 121 Stat. 1844, 2019 (2007). Prior to Appropriations Committee reorganization at the start of the 110th Congress, general provisions that by their terms applied government-wide appeared in regular appropriations acts making appropriations for the Departments of Transportation and the Treasury and for independent agencies under the title “General Provisions—Departments, Agencies, and Corporations.” See, e.g., CRS Report RL31572, *Appropriations Subcommittee Structure: History of*

general provisions that Congress last enacted in a prior fiscal year’s appropriations act to continue to affect an agency’s statutory authorities in the current fiscal year, including its authority to obligate new budget authority.⁷²

General provisions serve a range of functions. As in unnumbered paragraphs,⁷³ general provisions may grant transfer authority⁷⁴ or rescind existing budget authority.⁷⁵ As in unnumbered paragraphs, if general provisions include transfer authority or rescissions, the act will typically indicate the existence of such authority using a parenthetical statement that appears either at the beginning of the general provisions or before the general provision to which the parenthetical statement relates.⁷⁶ General provisions may impose limitations on the use of budget authority provided in the act.⁷⁷ General provisions may also impose new duties on an agency or provide the agency new authorities.⁷⁸ A general provision might, itself, appropriate funds.⁷⁹ General provisions may even express in precatory terms the sense of Congress on a particular subject.⁸⁰

Legislative Reports

The discussion above highlights the four basic components of modern-day statutes making regular appropriations—the provisions of an appropriations bill that become law after being passed in identical form by both houses, presented to the President, and either approved by the President or enacted into law over the President’s disapproval.⁸¹ The regular appropriations process also yields legislative reports drafted to accompany the regular appropriations bills. Unlike the bills they accompany, the reports are not subject to bicameral passage and presentment, and thus do not generally have legal effect unless an appropriations act contain legally sufficient terms of incorporation for report material.⁸²

Changes from 1920 to 2021, by James V. Saturno, at 11 (describing the 2007 subcommittee reorganization); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. F, tit. VI, 118 Stat. 3, 349 (2003) (reflecting organization of government-wide general provisions prior to the 2007 subcommittee reorganization).

⁷² See *infra* “Determining How Long a Provision Affects Substantive Law.”

⁷³ See *supra* notes 48–56 and accompanying text.

⁷⁴ See, e.g., Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-116, tit. III, § 304, 115 Stat. 2217, 2208 (2002) (Department of Education general transfer authority).

⁷⁵ See, e.g., Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Div. B, tit. V, § 524, 128 Stat. 5, 83 (2014) (rescinding or providing for the rescission of unobligated balances of six accounts).

⁷⁶ See, e.g., *id.*

⁷⁷ See, e.g., Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, Div. C, tit. VII, § 708, 133 Stat. 2317, 2486 (2019) (imposing limitations on interagency financing of boards and similar entities if the relevant interagency entity lacks specific statutory authority to receive financial support from more than one agency or instrumentality).

⁷⁸ See, e.g., Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, Div. A, tit. VIII, § 8030, 132 Stat. 2981, 3006 (2018) (allowing the Secretary of the Air Force to convey excess Air Force housing units to Indian tribes, without consideration and notwithstanding any other provision of law).

⁷⁹ See, e.g., Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, Div. A, tit. VIII, § 8121, 133 Stat. 2317, 2365 (2019) (appropriating an additional \$315 million under the heading “Operation and Maintenance, Defense-Wide” for the purpose of supporting public elementary and secondary public schools on military installations).

⁸⁰ See, e.g., *id.*, Div. C., tit. VII, § 727, 133 Stat. at 2490 (expressing the United States’ commitment to the health of Olympic, Pan American, and Paralympic athletes and to strict adherence to anti-doping in sport).

⁸¹ See U.S. CONST. art. I, § 7, cl. 2; see also *id.* (explaining that bills not returned by the President within 10 days of presentment “shall be a law” unless adjournment of Congress prevents a timely return).

⁸² See *infra* “Effect of Report Provisions.”

Over the course of its congressional consideration, a regular appropriations bill may be accompanied by several reports. These reports may include a report drafted by the relevant subcommittee of the House Committee on Appropriations to accompany the appropriations bill drafted by that subcommittee; a report drafted by the relevant subcommittee of the Senate Committee on Appropriations to accompany the bill that it considers; and, last of all, a report styled as either a *joint explanatory statement* or as an *explanatory statement*.⁸³ In their appearance, a joint explanatory statement or explanatory statement may be similar to a committee report.⁸⁴ Whether a regular appropriations act is accompanied by a joint explanatory statement, an explanatory statement, or no statement at all, depends on the procedure Congress used to enact the relevant appropriations statute.

A joint explanatory statement is a formal product of a conference committee, which is one method of resolving differences between the House- and Senate-passed versions of a bill. A conference committee drafts a conference report, which “contains only formal statements of whatever procedural actions the conferees propose that one or both houses take and the formal legislative language the conferees propose that the two houses approve.”⁸⁵ A conference committee also drafts a joint explanatory statement to accompany the conference report. The joint explanatory statement details the effect that the amendments or propositions of the conference report will have on bill to which they relate.⁸⁶

An explanatory statement is an informal product of action by Congress to resolve differences between the House- and Senate-passed versions of legislation using an exchange of amendments between the Houses rather than a conference committee. One or more bill managers involved in negotiating the proposed amendment typically drafts the explanatory statement.⁸⁷

Reports that accompany appropriations acts can serve several functions. Even when the reports do not impose legally binding requirements on the use of budget authority, the reports can, as a practical matter, influence an agency’s use of its authorities.⁸⁸ The reports may summarize the provisions of the act. The reports may also contain detailed directives for the agencies funded in the act, primarily (though not necessarily) related to program implementation. One common set of directives reflects expectations of how an agency will allocate the funds of a given appropriation among the various programs, projects, or activities that the appropriation funds.⁸⁹

⁸³ See generally McNellis, *Appropriations Report Language*, *supra* note 46.

⁸⁴ See, e.g., *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 236 (D.C. Cir. 2003) (noting that a joint explanatory statement of a conference committee takes “the form of a committee report”). As for an explanatory statement, a bill manager will enter the text of the statement in the *Congressional Record* before the bill’s enactment. See, e.g., 163 Cong. Rec. H3327 (daily ed. May 3, 2017) (joint explanatory statement accompanying H.R. 244, the Consolidated Appropriations Act, 2017). After enactment, the House Appropriations Committee may prepare a committee print of the regular appropriations act or acts, together with any explanatory statement, at which point the explanatory statement’s formatting more closely resembles a committee report. See H. COMM. ON APPROPRIATIONS, 1 CONSOLIDATED APPROPRIATIONS ACT, 2017 (Comm. Print 2017).

⁸⁵ See CRS Report 98-382, *Conference Reports and Joint Explanatory Statements*, by Christopher M. Davis, at 1.

⁸⁶ See *infra* note 341.

⁸⁷ See *infra* “Preceding Matter Concerning the Explanatory Statement.”

⁸⁸ *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993) (“[W]e hardly need to note that an agency’s decision to ignore congressional expectations” as expressed in a nonbinding fashion in a report accompanying a regular appropriations act “may expose it to grave political consequences.”).

⁸⁹ See CRS Report R46240, *Introduction to the Federal Budget Process*, by James V. Saturno, at 27 (“The appropriation [in the statute] sometimes includes directives or provisos that allot specific amounts to particular activities within the account, but the more common practice is to provide detailed information on the amounts intended for each activity in other sources, principally the committee reports accompanying the measures.”); McNellis,

Regular appropriations acts commonly refer to their accompanying reports. A regular appropriations act might, for example, state that an appropriation “shall be made available in the amounts specifically designated in the respective tables included in the explanatory statement” referenced in the act’s preceding matter.⁹⁰

Selected Statutory Interpretation Questions

Both in their drafting and in their implementation, regular appropriations acts raise a number of recurring questions of statutory interpretation. What does it mean for budget authority to be available for a particular time period? Might a provision proposed for inclusion in a regular appropriations act be construed as permanent or, alternatively, only effective for the fiscal year to which the act relates? A discussion of these and other frequently recurring questions follows.

The Relationship Between Principal Clause and Proviso

Usually, a statute’s provisions will be divided between two or more sections. Sections are the basic unit of organization for most federal statutes. Congress “ordinarily adheres to a hierarchical scheme in dividing statutory sections.”⁹¹ In this hierarchy appear units of text denoted, in descending order, as subsections, paragraphs, subparagraphs, clauses, subclauses, items, and subitems, among others.⁹² Congress uses this structure, among other things, to express the relationship between different parts of a section. For example, Congress might set forth the section’s general rule in an initial subsection, and then establish related points in paragraphs subordinate to that subsection.⁹³

By contrast, the unnumbered paragraphs of a regular appropriations act, which could be characterized as the basic unit of organization for appropriations acts, usually have no internal hierarchy of sections, subsections, and so on.⁹⁴ Instead, within unnumbered paragraphs Congress uses a principal clause/proviso structure. Congress once used this structure more widely⁹⁵ but now generally reserves it for regular and supplemental appropriations acts.⁹⁶ The principal clause

Appropriations Report Language, *supra* note 46, at 4 & fig. 1 (providing an example of a report allocation table).

⁹⁰ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. K, tit. VII, § 7019(a), 132 Stat. 348, 873 (2018); *see also infra* “The Exception: Incorporation by Reference.”

⁹¹ *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004).

⁹² *See id.* at 60–61 (relying on drafting manuals prepared by the House and Senate Offices of the Legislative Counsel to interpret the Truth in Lending Act’s use of the phrase “under this subparagraph” as a statutory cross reference).

⁹³ *See, e.g.*, M. DOUGLASS BELLIS, STATUTORY STRUCTURE AND LEGISLATIVE DRAFTING CONVENTIONS: A PRIMER FOR JUDGES 9 (Fed. Jud. Ctr. 2008) (demonstrating how a section’s internal structure can be used to express the section’s “main idea” in an initial subsection and related “sub-ideas” in hierarchically subordinate items such as paragraphs).

⁹⁴ FILSON & STROKOFF, *supra* note 14, § 8.2 (distinguishing between the unnumbered paragraphs of regular appropriations acts, which appropriate funds “under headings with no designations,” and the general provisions of a regular appropriations act, which “are drafted in the traditional style” using sections and, within sections, an internal hierarchy of subsections, paragraphs, and so on).

⁹⁵ *See, e.g.*, Pub. Res. No. 76-87, 54 Stat. 611, 611 (1940) (codified as amended at 22 U.S.C. § 444(a)) (exempting American Red Cross vessels traveling to foreign states from Neutrality Act prohibitions on intercourse with belligerent states “provided, that” the destination state is not under a blockade that a belligerent is attempting to enforce by destroying vessels); Pub. L. No. 63-90, 38 Stat. 347, 347 (1914) (providing for the raising of a volunteer army in times of actual or imminent war and defining in a proviso volunteer terms of enlistment and mustering out requirements).

⁹⁶ *See* SENATE OFF. OF THE LEGIS., LEGISLATIVE DRAFTING MANUAL 69, § 308(b) (1997) (advising against use of the principal clause/proviso structure but stating “[t]his rule may be broken in the case of an appropriations Act”); *cf.* HOUSE LEGISLATIVE COUNSEL’S MANUAL ON DRAFTING STYLE, HLC DOC. NO. 104-1, at 63 (1995) (referring to use of

will grant an agency budget authority (i.e., legal authority to incur obligations). One or more provisos then typically follow the principal clause.⁹⁷

As a matter of ordinary meaning, and read in isolation, the term that separates the principal clause from its provisos, “provided,” might plausibly bear more than one meaning.⁹⁸ “Provided” might mean “except” that or “[o]n the condition that.”⁹⁹ The proviso might therefore create an exception to, or impose a condition on, the budget authority provided in its principal clause. “Provided” might also stand in the place of the conjunction “and.”¹⁰⁰ If “provided” is used as a conjunction, the proviso might not necessarily be confined to the budget authority provided in the principal clause. Such a proviso might stand, instead, as independent matter whose breadth does not depend on the principal clause.¹⁰¹

At least since 1841,¹⁰² Supreme Court case law has helped distinguish between these two potential meanings by establishing a presumptive relationship between the principal clause and a proviso that follows it: the scope of the proviso is confined to the subject matter of the principal clause only, and either creates an exception to, or otherwise restrains, the authority provided in the principal clause.¹⁰³

*United States v. Morrow*¹⁰⁴ illustrates the effect this presumption can have on budget authority. There, Congress appropriated amounts for military clerks in two appropriations. In one appropriation, Congress provided line-item amounts for clerks at the territorial departments’ headquarters, as well as an amount for additional pay for those in foreign service.¹⁰⁵ A proviso followed the line-item appropriation, directing a \$200 increase in the annual salary of certain clerks, including those in the headquarters of a territorial department, while serving in the Philippine Islands.¹⁰⁶ In the second appropriation, Congress provided a lump-sum amount for the

the term “provided” as “archaic”). Continuing appropriations acts typically do not include unnumbered paragraphs but rather appropriate sums by referencing the rate for operations provided in a particular regular appropriations act or bill. *See, e.g.*, Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159, Div. A, § 101, 134 Stat. 709, 710 (2020).

⁹⁷ *See supra* notes 65–67 and accompanying text.

⁹⁸ *Cf. McDonald v. United States*, 279 U.S. 12, 21–22 (1929) (noting that Acts of Congress employ the word provided in a principal clause/proviso structure “for many purposes”).

⁹⁹ *Provided*, BLACK’S LAW DICTIONARY (11th ed. 2019) (definitions 1 and 2).

¹⁰⁰ *Id.* (definition 3).

¹⁰¹ *Georgia R.R. & Banking Co. v. Smith*, 128 U.S. 174, 181 (1888) (“It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them to precede their proposed amendments with the term ‘provided,’ so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail; thus having no greater signification than would be attached to the conjunction ‘but’ or ‘and’ in the same place, and simply serving to separate or distinguish the different paragraphs or sentences.”).

¹⁰² *See Minis v. United States*, 40 U.S. 423, 445–46 (1841).

¹⁰³ *See, e.g.*, *United States v. McClure*, 305 U.S. 472, 478 (1939); *see also Abbott v. United States*, 562 U.S. 8, 25–26 (2010) (applying the same presumption to a subparagraph that began with the phrase “except that”).

¹⁰⁴ 266 U.S. 531 (1925).

¹⁰⁵ For example, the statute appropriated \$2,000 per year for the chief clerk of the Office of the Chief of Staff. *See, e.g.*, Pub. L. No. 63-91, 38 Stat. 351, 355 (1914).

¹⁰⁶ *See id.* “A lump-sum appropriation is one that is made to cover a number of specific programs, projects, or items,” while “a line-item appropriation is available only for the specific object described.” *South Carolina v. United States*, 144 Fed. Cl. 277, 284 (2019) (internal quotation marks omitted). These terms are relative concepts, and depending on the objects at issue even apparent “line-item” appropriations could be characterized as lump-sum appropriations. *See Stiff, Power Over Appropriations, supra* note 51, at 35& n.313 (citing Kate Stith, *Rewriting the Fiscal Constitution: The Case for Gramm-Rudman-Hollings*, 76 CAL. L. REV. 593, 612 (1988)).

incidental expenses of the Quartermaster Corps.¹⁰⁷ Morrow was the chief clerk of the depot quartermaster's office at the Philippine Department of the Army headquarters, and his regular salary was paid from the second appropriation (i.e., the lump-sum appropriation).¹⁰⁸ Morrow argued he fell within the terms of the first appropriation's proviso (i.e., the line-item appropriation) and was thus entitled to the \$200 increase¹⁰⁹—he was a “clerk[,]” serving abroad in the “Philippine Islands,” in the “headquarters” of a “territorial department.”¹¹⁰

The Court rejected Morrow's claim.¹¹¹ The general function of a proviso, the Court explained, “is to except something from” the principal clause “or to qualify and restrain its generality and prevent misinterpretation.”¹¹² Thus, the proviso's “grammatical and logical scope is confined to the subject-matter of the principal clause,” and presumptively “refers only to the provision to which it is attached.”¹¹³ Reading the proviso as confined to its principal clause, the \$200 increase applied only to those clerks whose annual salaries were supported by the line-item appropriation, excluding those clerks, such as Morrow, whose salaries were paid out of the lump-sum appropriation.¹¹⁴ The \$200 increase did not apply, more broadly, to any clerk who might fall within the scope of the proviso, as it might if it had been enacted as a free-standing provision not linked to the line-item appropriation's principal clause.¹¹⁵

As noted above, the presumption that a proviso is confined to the subject matter of its principal clause is only that: a presumption.¹¹⁶ The text and structure of a statute might overcome the presumption, so that a court would read a proviso in an appropriations act as introducing “new matter extending rather than limiting or explaining that which has gone before.”¹¹⁷

*Republic of Iraq v. Beaty*¹¹⁸ demonstrates how a proviso overcomes the presumption concerning its connection to its principal clause. There, the Republic of Iraq argued that a 2003 supplemental appropriations act¹¹⁹ enacted after the 2003 invasion of Iraq led to the removal of many of the consequences of the country's 1990 designation as a state sponsor of terrorism.¹²⁰ Among other things, the 1990 designation caused Iraq to lose its immunity from suit when, in 1996, Congress added a terrorism exception to the Foreign Sovereign Immunities Act (FSIA).¹²¹ With immunity

¹⁰⁷ See, e.g., Pub. L. No. 63-91, 38 Stat. 351, 362–63 (1914).

¹⁰⁸ *Morrow*, 266 U.S. at 533–34.

¹⁰⁹ *Id.* at 534.

¹¹⁰ Pub. L. No. 63-91, 38 Stat. 351, 355 (1914).

¹¹¹ *Morrow*, 266 U.S. at 536–37.

¹¹² *Id.* at 534.

¹¹³ *Id.* at 534–35.

¹¹⁴ *Id.* at 534.

¹¹⁵ See *id.* at 535.

¹¹⁶ Cf. *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349 (1984) (noting that “presumption favoring judicial review of administrative action is just that,” “a presumption” that “like all presumptions used in interpreting statutes, may be overcome by specific language or specific legislative history that is a reliable indicator of congressional intent”).

¹¹⁷ *Interstate Com. Comm'n v. Baird*, 194 U.S. 25, 37 (1904).

¹¹⁸ 556 U.S. 848 (2009).

¹¹⁹ Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. No. 108-11, 117 Stat. 559 (2003).

¹²⁰ See *Beaty*, 556 U.S. at 852–53 & 855.

¹²¹ See *id.* Congress repealed the exception at issue in *Morrow* in 2008, when it adopted a new terrorism exception, now codified at 28 U.S.C. § 1605A. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, Div. A, tit. X, § 1083(a), (b), 122 Stat. 3, 338, 341 (2008).

allegedly restored as a result of the 2003 appropriations act, Iraq sought dismissal of claims related to prisoner abuse that occurred during or after the Persian Gulf War.¹²²

Iraq's argument relied upon a general provision of the 2003 appropriations act that used a principal clause/proviso structure.¹²³ The principal clause permitted the President to suspend trade and economic sanctions imposed under "any provision" of the Iraq Sanctions Act of 1990 (ISA).¹²⁴ One of several provisos allowed the President to make inapplicable to Iraq a Foreign Assistance Act prohibition on providing aid to a state sponsor of terrorism.¹²⁵ The proviso also allowed the President to make inapplicable to Iraq "any other provision of law that applies to countries that have supported terrorism."¹²⁶ President George W. Bush exercised all of these waiver authorities via a presidential memorandum.¹²⁷

Applying the presumption in *Morrow*, the court of appeals read the disputed, any-other-provision-of-law proviso in the context of its principal clause.¹²⁸ The principal clause and the disputed proviso itself specifically referenced only statutes that imposed "obstacles to assistance to designated countries."¹²⁹ The court of appeals reasoned that "[n]one of these provisions remotely suggests any relation" to a statute like the FSIA that dealt with "the jurisdiction of the federal courts."¹³⁰ Thus, the disputed proviso's more general reference to "any other provision of law" included only those provisions that, like the principal clause, restricted "assistance and funding for the new Iraqi Government."¹³¹ The any-other-provision-of-law language did not include a statute, such as the FSIA, that related to the jurisdiction of federal courts.¹³²

The Supreme Court disagreed.¹³³ The Court explained, in keeping with *Morrow*, that a proviso usually creates an exception to a principal clause or qualifies, restrains, or explains that clause.¹³⁴ However, the *Beatty* Court noted that a proviso may introduce "independent legislation" whose scope is not confined to its principal clause.¹³⁵ The Court stated that this second usage "may be lazy drafting" in view of the presumptive function of a proviso, but the second usage nonetheless

¹²² See *Beatty*, 556 U.S. at 854.

¹²³ Emergency Wartime Supplemental Appropriations Act, 2003, § 1503, 117 Stat. at 579.

¹²⁴ *Id.*; see also generally Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Pub. L. No. 101-513, tit. V, §§ 586-586J, 104 Stat. 1979, 2047-55 (1990) (Iraq Sanctions Act of 1990).

¹²⁵ Emergency Wartime Supplemental Appropriations Act, 2003, § 1503, 117 Stat. at 579; see also 22 U.S.C. § 2371(a) (Foreign Assistance Act prohibition on assistance to a country if the Secretary of State determines that the government of that country has repeatedly supported acts of international terrorism).

¹²⁶ Emergency Wartime Supplemental Appropriations Act, 2003, § 1503, 117 Stat. at 579 (emphasis added).

¹²⁷ See *Beatty*, 556 U.S. at 854.

¹²⁸ See *Acree v. Republic of Iraq*, 370 F.3d 41, 52-53 (D.C. Cir. 2004) (citing *Morrow*, 266 U.S. at 534-35), *abrogated by Beatty*, 556 U.S. at 858; see also *Beatty*, 556 U.S. at 853, 854-55 (explaining how the D.C. Circuit's 2004 decision in *Acree*, an earlier case, bore on the cases consolidated for review in *Beatty*, which the lower courts decided by applying *Acree*).

¹²⁹ *Acree*, 370 F.3d at 55.

¹³⁰ *Id.*

¹³¹ *Id.* at 57.

¹³² *Id.*

¹³³ *Beatty*, 556 U.S. at 856 (holding that because the Foreign Sovereign Immunities Act's terrorism exception was a "provision of law" that applied to "countries that have supported terrorism" within the meaning of the supplemental appropriations act, the President's memorandum made that provision of law inapplicable to Iraq).

¹³⁴ *Id.* at 858 (characterizing this reading as a proviso's "general (and perhaps appropriate) office").

¹³⁵ *Id.* (internal quotation marks omitted).

applied to the disputed proviso.¹³⁶ Thus, the Court read the principal clause to grant “the President a power; the [disputed] proviso purported to grant him an *additional* power.”¹³⁷ The proviso “was not, on any fair reading, an exception to, qualification of, or restraint on the principal power.”¹³⁸ The Court supported this reading by contrasting the disputed proviso with other provisos to the same principal clause, the latter of which included language that “plainly sought to define and limit the authority granted” in the principal clause.¹³⁹ No such language appeared in the disputed proviso.¹⁴⁰ Thus, FSIA’s terrorism exception was a “provision of law” that applied to “countries that have supported terrorism.”¹⁴¹ The President’s memorandum made the terrorism exception inapplicable to Iraq,¹⁴² even if Congress did not have the terrorism exception in mind when it drafted the disputed proviso.¹⁴³

Deciding whether a proviso is either confined to the scope of its principal clause (the presumptive rule) or instead contains independent matter (the exception) depends on the text and structure of the appropriations act text at issue. One indication that the presumptive rule applies may be, as in *Morrow*, that the principal clause grants budget authority rather than, as in *Beatty*, new substantive authority.¹⁴⁴ On the other hand, the exception might apply if, as in *Beatty*, the proviso’s use of broad language, not expressly tied to the authority of the principal clause, appears alongside other provisos that are so expressly tied to the principal clause.¹⁴⁵

Duration of Budget Authority

A critical component of the budget authority provided in a regular appropriations act is its *duration*. This characteristic of budget authority describes the time period within which budget authority is available for obligation.¹⁴⁶ It is a key attribute of an agency’s obligational authority. If Congress limits the duration of particular funding authority, the agency must return to Congress when the funding lapses “to justify continuing the program or to debate about how much is needed to carry on the program at the same or a different level.”¹⁴⁷

Perhaps most commonly,¹⁴⁸ the duration of budget authority is of a “definite” or “fixed” period.¹⁴⁹ The appropriation will remain available for obligation until the end of the fiscal year for which

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* (emphasis in original).

¹³⁹ *See id.* at 859 (examining provisos containing express limitations on the authority of “this section”).

¹⁴⁰ *See id.*

¹⁴¹ *See id.* at 856.

¹⁴² *See id.*

¹⁴³ *Id.* at 860 (“It may well be that when Congress enacted the [supplemental appropriations act] it did not have specifically in mind the terrorism exception to sovereign immunity.”).

¹⁴⁴ Compare *supra* notes 105–106 and accompanying text, with *supra* notes 124–126 and accompanying text.

¹⁴⁵ *See supra* notes 139–140 and accompanying text.

¹⁴⁶ *See* GAO GLOSSARY, *supra* note 1, at 22.

¹⁴⁷ B-217722, 64 Comp. Gen. 359, 362 (Mar. 18, 1985).

¹⁴⁸ For example, in 2018, the Congressional Budget Office calculated that of the approximately \$1.155 trillion in “discretionary budget authority provided for FY 2017,” with certain exclusions, Congress made 84% of that amount available as fixed-period budget authority and 15% as no-year budget authority. *See* Letter from Keith Hall, Director, Cong. Budget Off., to Rep. Steve Womack, Co-Chair, Joint Select Comm. on Budget & Appropriations Process Reform, at 2 (May 21, 2018), <https://www.cbo.gov/system/files/2018-07/54155-appropriationsletter.pdf>.

¹⁴⁹ *See, e.g.*, GAO GLOSSARY, *supra* note 1, at 56; 31 U.S.C. § 1552 (prescribing account closing rules for a “fixed

the act makes appropriations (i.e., *one-year funds*), or the appropriation will remain available for obligation for more than one fiscal year (i.e., *multi-year funds*).¹⁵⁰ Alternatively, duration may be “indefinite.”¹⁵¹ Such an appropriation will remain available until it is expended (i.e., *no-year funds*).

Regular appropriations may pose two primary questions concerning the duration of budget authority. One such question arises when the appropriation itself omits express reference to its duration. The second such question, and the more important of the two given the frequency with which it affects agency decisionmaking, is what effect duration has on an agency’s ability to use a particular amount of funds to meet its expenses.

Determining Duration

In most cases, the portions of a regular appropriations act that provide budget authority will expressly state the duration of that budget authority. That is, the unnumbered paragraph will state not only the amount of the appropriation and the objects for which it is available, but also the time period within which the appropriation is available for obligation: “For necessary expenses of the Management Directorate [of the Department of Homeland Security] for research and development, \$2,545,000, *to remain available until September 30, 2020.*”¹⁵² In those cases, the status of an appropriation as one-year, multi-year, or no-year funds will be apparent from the statute.

However, it is possible for an unnumbered paragraph to omit reference to any duration; the paragraph might instead state only the amount of the appropriation and the objects for which it is available.¹⁵³ In those circumstances, and depending on the regular appropriations act at issue, several features of statute may interact to supply the duration that is missing from the unnumbered paragraph.

The style and title of a regular appropriations act, part of its prefatory matter, recites that the act makes appropriations for a particular fiscal year ending September 30.¹⁵⁴ Moreover, according to a statutory rule of construction that applies to appropriations generally, “an appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously” only if the appropriation is for particular objects or “expressly provides that it is available after the fiscal year covered by the law in which it appears.”¹⁵⁵ Together, according to the Government Accountability Office (GAO), these two provisions create an “implication of fiscal year availability” for those appropriations made in an appropriations act that lack an express duration.¹⁵⁶ Where no duration is stated, at least as an initial matter, the appropriation is a one-

appropriation account”).

¹⁵⁰ A multi-year appropriation might be available until the end of a subsequent fiscal year, but it is not necessarily the case that the period of availability of multi-year appropriations is measured in whole fiscal years. See GAO GLOSSARY, *supra* note 1, at 22 (including forward funding as a type of multiyear authority).

¹⁵¹ See, e.g., *id.*; 31 U.S.C. § 1555 (prescribing account closing rules an appropriation account that is available for obligation an indefinite period).

¹⁵² Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, Div. A, tit. I, 133 Stat. 13, 16 (2019) (emphasis added).

¹⁵³ See, e.g., Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. A., tit. IV, 133 Stat. 2534, 2602 (2019) (National Mediation Board, Salaries and Expenses) (“For expenses necessary to carry out the provisions of the Railway Labor Act, including emergency boards appointed by the President, \$14,050,000.”).

¹⁵⁴ See 1 U.S.C. § 105.

¹⁵⁵ 31 U.S.C. § 1301(c). The particular objects referenced in the statute are “rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps.” *Id.*

¹⁵⁶ B-145276, 45 Comp. Gen. 236, 236 (Nov. 5, 1965) (referencing 31 U.S.C. § 718, a predecessor of 31 U.S.C.

year appropriation, available for obligation only through the end of the fiscal year for which the regular appropriations act makes appropriations.¹⁵⁷

There is a potential qualification to this “implication of fiscal year availability” though. Before Congress makes an appropriation in a regular appropriations act, it typically enacts a statute authorizing appropriations.¹⁵⁸ This statute might state the duration of the budget authority whose appropriation it authorizes, including multi-year or no-year durations. Later, Congress might then reference the authorizing statute—the one authorizing appropriations of more than one fiscal year’s duration—when making an appropriation that does not, itself, state a duration.¹⁵⁹

A reference of this type in the appropriation to an authorizing statute usually identifies the object for which the appropriation is available (e.g., for a particular type of direct loan).¹⁶⁰ The reference might also be understood to supply the appropriation’s missing duration. Absent evidence of legislative intent to the contrary, a specific reference “to an authorization act which provides that appropriations made pursuant thereto shall remain available for longer than 1 year” might operate “to incorporate the provisions of the authorizing act into the provisions of the appropriation.”¹⁶¹ GAO has considered such incorporation by reference “sufficient to overcome the implication of fiscal year availability.”¹⁶²

This approach to imputing the duration of an authorization of appropriations to a later appropriation that specifically references the authorizing statute may not always align with congressional intent, a point emphasized by the House Appropriations Committee in 1965. A House-drafted supplemental appropriations measure carried a “new general provision” that would have the effect of limiting the time period within which the bill’s appropriations could be obligated. The new general provision stated that “[n]o part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.”¹⁶³ The Committee recommended the provision by noting varying ways in which authorizations of appropriations addressed duration.¹⁶⁴ “The result” of this perceived

§ 1301(c)); *see also* A-19557, 7 Comp. Gen. 153, 155 (Aug. 26, 1927) (appropriation for the construction of a comfort station in the Lincoln Memorial that lacked a stated duration was available for obligation for one fiscal year only as the appropriation did not fit any exception to the rule used to determine whether an appropriation is permanent or available continuously).

¹⁵⁷ *See* U.S. Election Assistance Comm’n—Application of Account Closing Law to Election Security Grants Awarded and Disbursed to States, B-331892, 2020 WL 6798922, at *1 n.2 (Comp. Gen. Nov. 19, 2020) (“Because the amounts appropriated in FY 2018 and 2020 were provided in annual appropriations acts and the acts did not specify that such amounts were to be available for obligation for more than one fiscal year, such amounts were available for obligation only during the fiscal year in which they were appropriated.”).

¹⁵⁸ *See, e.g.,* Maine Cmty. Health Options v. United States, 140 S. Ct. 1308, 1319 (2020).

¹⁵⁹ *See* Adm’r, Hous. & Home Fin. Agency, B-145276, 45 Comp. Gen. 236, 237 (Nov. 5, 1965) (interpreting appropriation for “loans as authorized by section 3 of the Urban Mass Transportation Act of 1964 (78 Stat. 302), \$ 5,000,000”).

¹⁶⁰ Consumer Prod. Safety Comm’n—Period of Availability & Permissible Uses of Grant Program Appropriations, B-319734, 2010 WL 2930065, at *3 (Comp. Gen. July 26, 2010) (explaining that an appropriation’s reference to an authorizing statute “more specifically definin[ed] the purpose for which the \$2 million is available”).

¹⁶¹ *Adm’r, Hous. & Home Fin. Agency*, 45 Comp. Gen. at 237; *cf.* B-145153, 45 Comp. Gen. 508, 510 (Feb. 18, 1966) (concluding that an appropriation with no stated duration constituted one-year funds, even though made for a program for which no-year funds were authorized, because the regular appropriations act lacked “specific reference” to the authorizing statute).

¹⁶² *Adm’r, Hous. & Home Fin. Agency*, 45 Comp. Gen. at 237.

¹⁶³ *See* H.R. REP. NO. 89-1162, at 54 (1965). Congress later enacted the provision into law. *See* Supplemental Appropriation Act, 1966, Pub. L. No. 89-309, § 1201, 79 Stat. 1133, 1153 (1965).

¹⁶⁴ *See* H.R. REP. NO. 89-1162, at 54 (1965) (“There has been no unbroken current of congressional consistency in

inconsistency, the Committee continued, “has been occasional confusion, more frequent uncertainty, and, sometimes, ‘no-year availability’ when the Committee thought, from the terms of the budget and appropriation bill language, that a one-year appropriation was being made.”¹⁶⁵ The purpose of the new provision was to “provide control” of budget authority duration “wholly within the language of the Act in which the appropriation is carried.”¹⁶⁶ If an act included the new general provision, the reader could determine the duration of budget authority by looking to the regular appropriations act alone, without having to consider potential interactions between the appropriation and its corresponding authorization.¹⁶⁷

Most modern-day regular appropriations acts include a similar provision, directing that the act’s appropriations do not remain available beyond the fiscal year covered by the appropriations act unless the act expressly provides otherwise.¹⁶⁸ When a regular appropriations act includes this provision and makes an appropriation with no stated duration, the appropriation is available for obligation for the current fiscal year only. The terms of particular appropriations are read in the context of the statute in which they appear.¹⁶⁹ Thus, while a particular appropriation (e.g., the principal clause of an unnumbered paragraph) might lack a statement of duration, the appropriation is read in context with other parts of the act, including a general provision that states that no part of any appropriation provided in the act remains available for obligation beyond the current fiscal year unless the act expressly provides a longer period of availability.¹⁷⁰ This one-year availability applies even if the appropriation specifically references a statute that authorizes appropriations of greater duration.¹⁷¹ In that case, the authorizing statute contemplates (for example) a no-year duration, and the appropriations act states a one-year duration. As the last enacted of the two statutes, the appropriations act will likely control and specify the appropriation’s duration.¹⁷²

Duration’s Effect on Agency Obligations

Perhaps the more important question posed by the duration of an appropriation is the effect that duration has on an agency’s ability to use appropriated amounts to meet its expenses. An appropriation’s period of availability provides that the amounts are “to remain available” until a

structuring the stereotyped [sic] appropriation authorization sections of basic legislative enactments.”).

¹⁶⁵ *Id.* For example, in 1963, the House Appropriations Committee wrote that it was “astonished to learn” that the Department of Health, Education, and Welfare viewed a particular appropriation, which had no stated duration but was made pursuant to a no-year authorization, as being available for obligation on a no-year basis. See H.R. Rep. No. 88-1040, at 55–56 (1963) (urging revisions or updates to the predecessor statute of 31 U.S.C. § 1301(c) “to make its scope and meaning crystal clear and perhaps update it as may otherwise appear desirable”).

¹⁶⁶ H.R. REP. NO. 89-1162, at 54 (1965).

¹⁶⁷ *See id.*

¹⁶⁸ *See, e.g.*, Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. A., tit. V, § 502 133 Stat. 2534, 2605 (2019) (“No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.”).

¹⁶⁹ *See* *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”).

¹⁷⁰ *Id.*

¹⁷¹ *See* *Fed. Home Loan Bank Bd.*, B-149270, 1971 WL 4607, at *2–3 (Comp. Gen. June 23, 1971).

¹⁷² *Consumer Prod. Safety Comm’n—Period of Availability & Permissible Uses of Grant Program Appropriations*, B-319734, 2010 WL 2930065, at *3 (Comp. Gen. July 26, 2010) (relying on the “fundamental principle of statutory construction that when two laws are in irreconcilable conflict, the later enactment of Congress takes precedence over the earlier” to determine an appropriation’s period of availability).

fixed date or indefinitely. This limitation is substantially more complex than a mere deadline for obligating federal funds. Rather, for certain appropriations, a provision of permanent law, the so-called “time statute,”¹⁷³ requires an agency to consider the nature of the expenses or contracts that it proposes to fund from a given appropriation, to determine whether, as a temporal matter, the appropriation is available for the expense or contract.

The time statute originated in a provision enacted in 1870 to address the Civil War’s fiscal effects.¹⁷⁴ As it does today, Congress at that time appropriated funds for the general support of the government, in part, on an annual basis.¹⁷⁵ According to Senator John Sherman, those annually voted sums, more than \$111 million in FY1870, were “all that was required really for the expenses of the Government in the opinion of Congress.”¹⁷⁶ However, though prior statutes generally stated that annually appropriated amounts were for the “service” of a given fiscal year,¹⁷⁷ Congress was understood to have given agencies some leeway in retaining, year to year, the unexpended balances of prior-year appropriations.¹⁷⁸ At the end of one fiscal year the unexpended balance of such “old” appropriations (i.e., those made in a prior fiscal year’s appropriations act) were understood to potentially augment the agency’s “new” appropriations (i.e., those made for the current fiscal year).¹⁷⁹ By FY1870, according to Senator Sherman funds had thus accumulated so that federal agencies had available to them remaining, prior fiscal year appropriations of more than \$102 million, on top of the \$111 million amount that Congress had appropriated for that fiscal year.¹⁸⁰ In the opinion of at least some Members, this perceived flexibility undermined Congress’s control over agency spending.¹⁸¹

¹⁷³ See 31 U.S.C. § 1502(a).

¹⁷⁴ See, e.g., CONG. GLOBE, 41st Cong., 2nd Sess. 3328 (May 10, 1870) (statement of Sen. Sherman) (noting effects that had “sprung up only since the war”); see also Law of July 12, 1870, ch. 251, 16 Stat. 230, 251.

¹⁷⁵ Then as now, Congress also funded government programs using permanent appropriations. See, e.g., Law of March 3, 1849, ch. 129, 9 Stat. 414, 414–15 (permanent appropriation for paying compensation to military service members for the loss of a horse during military service).

¹⁷⁶ CONG. GLOBE, 41st Cong., 2nd Sess. 3328 (statement of Sen. Sherman) (referring to this sum as amount appropriated “[l]ast year”).

¹⁷⁷ For example, GAO has stated on a number of occasions that the bona fide needs rule has existed since 1789. See, e.g., B-235678, 1990 WL 278336, at *2 (Comp. Gen. July 30, 1990) (stating that the rule “initially appeared in 1789”); see also *infra* notes 192–218 and accompanying text (discussing bona fide needs rule). This statement appears to refer to language in the first appropriations act enacted under the Constitution, which appropriated sums “for the service of the present year.” Law of September 29, 1789, ch. 23, 1 Stat. 95, 95.

¹⁷⁸ Cf. Law of March 3, 1795, ch. 45, 1 Stat. 433, 437 (directing return to the Treasury’s “Surplus Fund” of the balances of prior-year appropriations that remained unexpended more than two calendar years after the end of the year in which the appropriation was made but only if the Secretary of the Treasury determined that the object of the appropriation had been fully satisfied).

¹⁷⁹ See, e.g., Unexpended Balance of Appropriation, 7 Op. Att’y Gen. 14, 15 (1856) (stating that “as a general rule, where a contract or other claim on the Government is a continuous one, and still current, there the balance remaining of the appropriation made in one year for such service laps over into the following year, and is continuously applicable to the same object”); 2 Op. Att’y Gen. 442, 445 (1831) (explaining that “unexpended” meant “unapplied to the objects of the appropriation”); CONG. GLOBE, 41st Cong., 2nd Sess. 3328 (statement of Sen. Sherman) (stating that the “lapping over” of funds resulted in the “fund to be drawn upon” being nearly “twice as large” as the amount appropriated in a fiscal year); see also *Wilder v. United States*, 16 Ct. Cl. 528, 543 (1880) (“Formerly, as we have said, but slight attempts were made to keep these accounts of the government by fiscal years.”).

¹⁸⁰ See CONG. GLOBE, 41st Cong., 2nd Sess. 3328 (statement of Sen. Sherman) (noting that funds had thus accumulated “during and since the war”).

¹⁸¹ See *id.* at 3330 (statement of Sen. Trumbull) (arguing that “if we are to have any control over the disbursements made by the Government, . . . the money should not be left thus at loose ends, hundreds of millions appropriated and unused which these bureaus and Departments may continue to use as they may find occasion for”); *cf. id.* at 3328 (statement of Sen. Sherman) (urging adoption of an amendment that would have the effect of starting each year “with

Congress's 1870 amendment required that amounts appropriated in a regular appropriations act specifically for the service of that year be used only to pay expenses incurred in that year or to fulfill contracts properly made for that year.¹⁸² The 1870 amendment directed the return to the Treasury of any balances not needed to pay such expenses.¹⁸³ The time statute of today contains substantially the same directive: "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title."¹⁸⁴

The time statute confines use of a fixed-period appropriation to obligations incurred during the appropriation's period of availability.¹⁸⁵ After the end of that period (i.e., after September 30 of a given fiscal year for one-year funds appropriated for that fiscal year), the appropriation is said to "expire" and cannot be used to incur new obligations.¹⁸⁶ Expired appropriations are available only to record or adjust obligations that were properly chargeable to the appropriation or to liquidate such obligations.¹⁸⁷ Suppose, for example, that an administrative panel resolves a labor dispute by ordering an agency to provide uniforms or uniform allowances to designated employees.¹⁸⁸ Under the statutory framework, this order establishes an obligation.¹⁸⁹ If the agency failed to record that obligation against an appropriation before the appropriation expired, it may use the expired appropriation to reflect the obligation that was actually incurred during its period of availability.¹⁹⁰ The agency may not use the expired appropriation to incur a new obligation.¹⁹¹ It

new books" by allowing use of "unpaid and old unexpended balances" only to pay existing liabilities incurred during the prior year).

¹⁸² Law of July 12, 1870, ch. 251, 16 Stat. 230, 251; *see also* 13 Op. Att'y Gen. 288, 292 (1873) ("Congress has the right to limit its appropriations to particular times as well as to particular objects, and when it has clearly done so, its will expressed in the law should be implicitly followed.").

¹⁸³ Law of July 12, 1870, ch. 251, 16 Stat. 230, 251. At that time, remaining balances of appropriations were to be returned two years after the end of the fiscal year for which the appropriation was made to the extent not needed to settle accounts. *See id.*

¹⁸⁴ 31 U.S.C. § 1502(a).

¹⁸⁵ By its terms, the time statute, which references appropriations or funds "limited for obligation to a definite period," *id.*, does not apply to no-year appropriations, which are available for an "unlimited period of time." Commodity Futures Trading Comm'n—Recording of Obligations for Multiple-Year Leases, B327242, 2016 WL 423697, at *6 n.9 (Comp. Gen. Feb. 4, 2016) (noting that no-year funds are "available for the needs of any fiscal year").

¹⁸⁶ *See* Continued Availability of Expired Appropriation for Additional Project Phases, B-286929, 2001 WL 717355, at *4 (Comp. Gen. Apr. 25, 2001) (stating that nothing "in the bona fide needs rule suggests that expired appropriations may be used for a project for which a valid obligation was not incurred prior to expiration" and that once "the obligational period has expired, new obligations must be charged to current funds even if a continuing need arose during the prior period.").

¹⁸⁷ 31 U.S.C. § 1553(a).

¹⁸⁸ Nat'l Guard—Fiscal Year to Be Charged for Mandated Unif. Purchases (Reconsideration), B-265901, 1997 WL 639970, at *4–5 (Comp. Gen. Oct. 14, 1997).

¹⁸⁹ *Id.* at *4–6 (explaining that the "the duty to either provide uniforms or pay a uniform allowance arose when the National Guard was legally required to provide those uniforms or pay allowances" and concluding that this requirement arose upon issuance of a Federal Service Impasses Panel (FSIP) order despite later agency action disapproving of the order where the disapproval exceeded the agency's authority to not comply with FSIP orders).

¹⁹⁰ *See* Nat'l Lab. Rels. Bd.—Improper Obligation of Severable Servs. Cont., B-308026, 2006 WL 2673583, at *4 (Comp. Gen. Sept. 14, 2006) ("Agencies are required to record against expired appropriations obligations previously incurred that were not recorded when the obligation was incurred and to adjust recorded amounts to reflect the amount actually incurred.").

¹⁹¹ *Cf.* Impoundment Control Act—Withholding of Funds through their Date of Expiration, B-330330.1, 2018 WL 6445177, at *4 (Comp. Gen. Dec. 10, 2018) ("[T]he permissible uses of an expired appropriation relate back to obligations incurred during the period of availability of the funds and do not constitute new obligations themselves.").

may not, for example, enter into a contract for the first time on October 14 of a given year and record the obligations thus assumed against the unobligated balances of an appropriation that expired two weeks earlier, on September 30.

Under the time statute, however, it is not enough for an agency to incur an obligation during an appropriation's period of availability.¹⁹² The time statute refers to particular types of expenses and contracts as permissible of fixed-period appropriations—those expenses “properly incurred” or those contracts “properly made” during the appropriation's period of availability.¹⁹³ GAO has derived from the time statute a “*bona fide needs rule*”: “contracts executed and supported under authority of fiscal year appropriations can only be made within the period that such funds are available for obligation and may be made only to meet a bona fide need arising within that period.”¹⁹⁴ The bona fide needs rule generally applies to all federal government activities carried out with fixed-period appropriations,¹⁹⁵ whether those activities occur by way of a contract with a nonfederal party,¹⁹⁶ an interagency agreement,¹⁹⁷ a cooperative agreement,¹⁹⁸ or a grant.¹⁹⁹

The concept of severability is key to deciding whether an expense incurred or contract formed using a particular fixed-period appropriation meets a need that arises during the period in which the appropriation was available for obligation—for example, whether funds available until September 30, 2021, are used to meet a need that arises on or before that date. Services are either severable or nonseverable, and the nature of the work funded determines which category a service fits.²⁰⁰

A *severable service* meets a continuing or recurring need of an agency.²⁰¹ Though an agency might enter into a single contract for a year's worth of such services, performance of the services

¹⁹² See B-130815, 37 Comp. Gen. 155, 158 (Sept. 3, 1957) (arguing that if the time statute were “construed to authorize the use of unexpended balances of appropriations specifically made for the service of a particular fiscal year for the purchase of supplies, etc., for the service of a subsequent fiscal year, *provided that a contract therefor should be entered into during the fiscal year for which the appropriation was made*, the effect would be to practically nullify the object of the statute” (emphasis added)); cf. Matter of Expired Funds & Interagency Agreements Between GovWorks & the Dep't of Def., B-308944, 2007 WL 2120292, at *9 (Comp. Gen. July 17, 2007) (examining an agency's use of non-Economy Act interagency agreements to “parking” or “banking” fixed-period appropriations with another agency in a manner that would effectively extend the obligational availability of those funds).

¹⁹³ See, e.g., Gen. Servs. Admin.—Availability of No-Year Appropriations for a Modification of an Interagency Ord., B-326945, 2015 WL 5674965, at *2 (Comp. Gen. Sept. 28, 2015) (“An important word in this statute is ‘properly’: expenses ‘properly incurred’ or contracts ‘properly made.’” (quoting 31 U.S.C. § 1502(a)).

¹⁹⁴ In the Matter of Storage Tech. Corp., B-188399, 56 Comp. Gen. 860, 861 (Aug. 4, 1977).

¹⁹⁵ U.S. Dep't of Educ.'s Use of Fiscal Year Appropriations to Award Multiple Year Grants, B-289801, 2002 WL 31950147, at *4 (Comp. Gen. Dec. 30, 2002).

¹⁹⁶ U.S. Small Bus. Admin.—Indefinite-Delivery Indefinite-Quantity Cont. Guaranteed Minimum, B-321640, 2011 WL 4376308, at *4 (Comp. Gen. Sept. 19, 2011) (contract to procure computer hardware and software).

¹⁹⁷ Transfer of Fiscal Year 2003 Funds from the Library of Congress to the Office of the Architect of the Capitol, B-302760, 2004 WL 1146276, at *7 (Comp. Gen. May 17, 2004) (interagency agreement between the Library of Congress and the Architect of the Capitol for the Architect to redesign and renovate a Library building loading dock).

¹⁹⁸ See Dep't of Agric.—Coop. Agreement for Use of Aircraft, B-308010, 2007 WL 1246850, at *4 (Comp. Gen. Apr. 20, 2007) (cooperative agreement between the U.S. Department of Agriculture and the owner of an airplane leasing the airplane to the Department for use in its wildlife predation program).

¹⁹⁹ See U.S. Dep't of Educ.'s Use of Fiscal Year Appropriations to Award Multiple Year Grants, 2002 WL 31950147, at *4.

²⁰⁰ See Funding for Air Force Cost Plus Fixed Fee Level of Effort Cont., B-277165, 2000 WL 267527, at *3 (Comp. Gen. Jan. 10, 2000) (“With respect to severability issues, it is the nature of the work being performed, not the contract type, that must be taken into account in reaching a judgment on that issue.”).

²⁰¹ B-235086, 1991 WL 122260, at *2 (Comp. Gen. Apr. 24, 1991).

is able to be separated into independent components.²⁰² The agency derives value when each such component is performed.²⁰³ For example, gardening or window-washing services benefit the agency each time the services are performed.²⁰⁴ The agency must fund these components using a fixed-period appropriation that is *current*—that is, still available for obligation—when the component is performed.²⁰⁵ Thus, an agency generally may not obligate a fixed-period appropriation for the cost of severable services that will be performed after the end of the appropriation’s period of availability.²⁰⁶

Nonseverable services are not capable of being divided in the same manner as severable services. As a general matter, a nonseverable service calls for the creation of an end product.²⁰⁷ While the agency or its contractor might develop that end product in stages or phases, unlike with a severable service the agency derives no independent benefit from the completion of those preliminary stages or phases.²⁰⁸ The agency’s need is instead met only when the entire task is performed.²⁰⁹ For example, an agency needing a new data retrieval system will not see that need met until the system is operational—a half-completed, nonfunctioning system does not meet the agency’s needs.²¹⁰ Unlike severable services, so long as a need for the nonseverable service exists and an obligation is incurred when a fixed-period appropriation is available for obligation, an agency may use the appropriation to pay for work performed in a later fiscal year, even after the appropriation expires.²¹¹ The work that will be performed in the later fiscal year is considered “not severable from the portion performed” in the current fiscal year.²¹²

Obligations for federal assistance programs, which take the form of a grant or cooperative agreement, present a special type of bona fide needs analysis. When an agency makes a grant or cooperative agreement, it awards funds to a third party recipient for the recipient’s use in carrying

²⁰² Incremental Funding of U.S. Fish and Wildlife Serv. Research Work Orders, B-240264, 73 Comp. Gen. 77, 79 (Feb. 7, 1994).

²⁰³ Incremental Funding of Multiyear Contracts, B-241415, 71 Comp. Gen. 428, 430 (June 8, 1992).

²⁰⁴ Dep’t of Health and Human Servs.—Multiyear Contracting and the Bona Fide Needs Rule, B-322455, 2013 WL 4398954, at *5 & n.13 (Comp. Gen. Aug. 16, 2013) (noting that such tasks “confer the full benefit on the agency every time they are performed”); *see also* Acumenics Rsch. & Tech., Inc.—Cont. Extension, B-224702, 1987 WL 102680, at *9 (Comp. Gen. Aug. 5, 1987) (stating that “essentially clerical services” are “severable in nature”).

²⁰⁵ B-235678, 1990 WL 278336, at *3 (Comp. Gen. July 30, 1980).

²⁰⁶ *See* Severable Servs. Conts., B-317636, 2009 WL 1140240, at *3 (Comp. Gen. Apr. 21, 2009) (“[A]n agency using a multiple year appropriation would not violate the bona fide needs rule if it enters into a severable services contract for more than 1 year as long as the period of contract performance does not exceed the period of availability of the multiple year appropriation.”).

²⁰⁷ *See* Fin. Crimes Enf’t Network—Obligations Under a Cost-Reimbursement, Nonseverable Servs. Cont., B-317139, 2009 WL 1621304, at *4 (Comp. Gen. June 1, 2009).

²⁰⁸ *Cf. Incremental Funding of Multiyear Conts.*, 71 Comp. Gen. at 430 (“Although interim reports were to be provided during the progress of the study, such reports were merely informational and not independent, stand-alone work products.”).

²⁰⁹ Transfer of Fiscal Year 2003 Funds from the Library of Congress to the Office of the Architect of the Capitol, B-302760, 2004 WL 1146276, at *5 n.9 (Comp. Gen. May 17, 2004) (“Because the Library would receive no benefit if the Architect were not to complete construction of the Madison building loading dock, the interagency agreement between the Architect and the Library for that work represents a single, nonseverable undertaking.”).

²¹⁰ *Obligations Under a Cost-Reimbursement, Nonseverable Servs. Cont.*, 2009 WL 1621304, at *4 (categorizing a contract for a data retrieval system as nonseverable because the contract called for delivery of a “defined end product”).

²¹¹ Independent Statutory Authority of Consumer Product Safety Comm’n to Enter Interagency Agreements, B-289380, 2002 WL 31628522, at *2 (Comp. Gen. July 31, 2002).

²¹² Acumenics Rsch. & Tech., Inc.—Cont. Extension, B-224702, 1987 WL 102680, at *9 (Comp. Gen. Aug. 5, 1987).

out a stated public purpose.²¹³ The funds recipient will then later use those funds to cover the cost of goods and services needed to carry out that public purpose.

In reviewing agency obligations for federal assistance programs, GAO once considered whether the uses to which a recipient dedicated federal funds resembled severable services, which GAO opined could be supported only by grant or cooperative agreements awards made on an annual basis.²¹⁴ More recent decisions, though, draw a distinction between the agency's use of appropriated funds to make a grant or cooperative agreement award and the recipient's subsequent use of the funds. The agency's need under a financial assistance program is to extend funds to a recipient, and that need is met when the agency incurs an obligation to the recipient under a grant or cooperative agreement.²¹⁵ For purposes of the bona fide needs rule, it "does not matter" when the recipient, in turn, uses the funds to carry out the stated public purpose.²¹⁶ Thus, so far as the time statute is concerned, and assuming an agency has the need to make grants in the fiscal year when an appropriation is still current, an agency may obligate a fixed-period appropriation to award funds that the recipient could not first use until the following fiscal year²¹⁷ or to make a multiple-year grant award.²¹⁸

Determining Effects on Substantive Law

The chief function of a regular appropriations act is the granting of budget authority.²¹⁹ This focus results in part from chamber rules. Since the mid-1800s chamber rules have encouraged Members to separate decisions of *whether* and *how* Congress should authorize particular agency functions from decisions of whether Congress should *fund* such authorized functions.²²⁰ More specifically, chamber rules generally prohibit "legislation on appropriations measures."²²¹ For example, it is

²¹³ An agency is to enter a cooperative agreement with a funds recipient when the agency expects that it will be substantially involved in carrying out the award. An agency is to enter a grant agreement when it does not expect to be substantially involved in carrying out the award. See 31 U.S.C. §§ 6304, 6305 (setting criteria for use of a grant agreement or a cooperative agreement).

²¹⁴ B-217722, 64 Comp. Gen. 359, 364 (Mar. 18, 1985) (examining a National Institutes of Health program to "stimulate particular kinds of research that will be needed year-after-year" but which did not "contemplate a required outcome or product" and concluding that NIH could fund grant awards on an annual basis only).

²¹⁵ U.S. Dep't of Educ.'s Use of Fiscal Year Appropriations to Award Multiple Year Grants, B-289801, 2002 WL 31950147, at *4 (Comp. Gen. Dec. 30, 2002); see also Small Bus. Admin.—Questions About Funding of Small Bus. Dev. Centers, B-229873, 1988 WL 228272, at *4 (Comp. Gen. Nov. 29, 1988).

²¹⁶ See *Questions About Funding of Small Bus. Dev. Centers*, B-229873, 1988 WL 228272, at *4.

²¹⁷ See *id.* at *2, 4 (obligation of one-year funds on the last day of their temporal availability).

²¹⁸ U.S. Dep't of Educ.'s Use of Fiscal Year Appropriations to Award Multiple Year Grants, B-289801, 2002 WL 31950147, at *4 (noting that though the statute authorizing a particular grant program did not "provide explicit authority to award multiple year grants" by providing five-year grants the Department of Education (ED) would help ensure the continuity of student services "which the programs legislation seeks to provide" and that ED fulfilled "its bona fide need under this program when it awards these 5-year grants"). The statute authorizing a financial assistance program may, however, impose limits on the duration of a grant or cooperative agreement. See Dep't of Educ.—Grant Extensions, B-303845, 2006 WL 39269, at *3, 5 (Comp. Gen. Jan. 3, 2006) (concluding that because the authorizing statute or related regulations permitted ED to award grants to certain educational institutions for a period of up to five academic years ED could not extend a five-year award for an additional four years).

²¹⁹ See GAO GLOSSARY, *supra* note 1, at 13.

²²⁰ See Saturno, *Limitations in Appropriations Measures*, *supra* note 16, at 1 ("Under the rules of the House and Senate, legislative provisions and appropriations for purposes not authorized by law typically may not be included in appropriations measures. These rules were formally established in both chambers during the mid-1800s to address concerns with delays in enacting appropriations due to the inclusion of extraneous legislative matters that tended to provoke controversy.").

²²¹ *Id.* Chamber rules relating to legislation on appropriations apply to general appropriations measures, which include,

generally not in order for an Appropriations Committee to report a regular appropriations bill that includes a provision expanding the authority granted to an agency under other law, and one Member may raise a point of order if another Member offers such a provision as an amendment to a regular appropriations bill.²²²

So far as chamber rules are concerned, Congress in most cases is to make “money” and “policy” decisions separately, the former in appropriations acts and the latter in other statutes.²²³ Even so, regular appropriations acts commonly include matter that is alleged to affect what the courts often label as “substantive law.” For example, an agency or litigant might cast Congress’s decision to fund or not fund a particular obligation or activity as having changed the substantive law underlying that obligation or activity. Likewise, provisos or general provisions are often said to effect changes in substantive law.

To assess claims that a provision in a regular appropriations act alters substantive law, courts apply legal presumptions about a provision’s intended meaning. These presumptions are born of courts’ understanding of the purpose and procedure behind regular appropriations acts. The presumptions address two questions: the effect, if any, of a provision on substantive law, and the duration of any such effect.

Effects of Appropriations Act on Substantive Law

Case law interpreting the effect of regular appropriations act matter on “substantive law” typically does not expressly define that phrase. In general terms, *substantive law* means provisions of law fixing rights, duties, or obligations.²²⁴ The phrase’s use in the appropriations context is similar to this general definition. When courts refer to the effect of a regular appropriations act on “substantive law,” the courts mean (for example) those provisions of statute authorizing agency

but are not limited to, regular appropriations measures. *See id.* at 1 nn. 4, 9 (explaining that in the House “general appropriations bills are the annual appropriations acts (or any combination thereof) and any supplemental appropriations acts that cover more than one agency” while in the Senate such measures include regular and supplemental appropriations bills as well as continuing appropriations bills that cover more than one agency or purpose).

²²² *See id.* at 14 (“Limitations cannot expand the discretion previously provided in law to an official or agency to include actions not currently authorized, even if those actions are not explicitly prohibited by existing law.”).

²²³ *See* *Andrus v. Sierra Club*, 442 U.S. 347, 361 (1979) (stating that the distinction in chamber rules between “legislation” and “appropriations” encourages “program and financial matters” to be “considered independently of one another. This division of labor is intended to enable the Appropriations Committees to concentrate on financial issues and to prevent them from trespassing on substantive legislation.” (internal quotation marks omitted)).

²²⁴ *See, e.g., Substantive Law*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The part of the law that creates, defines, and regulates the rights, duties, and powers of parties.”).

functions,²²⁵ imposing duties on agencies,²²⁶ or creating rights in third parties.²²⁷ Most of the time, Congress establishes substantive law by enacting a statute other than an appropriations act.²²⁸

When the question is whether matter in an appropriations act affects provisions of statute establishing substantive law, courts employ presumptions that are born of courts' understanding of the purpose and procedure behind regular appropriations acts.²²⁹ The Supreme Court has thus distinguished between "substantive enactments and appropriations measures."²³⁰ Both are "Acts of Congress," but appropriations acts are understood to have "the limited and specific purpose of providing funds for authorized programs."²³¹ It is also true, though, that Congress regularly alters substantive law in appropriations acts,²³² and nothing in the Constitution requires it to make only "money" decisions in appropriations acts.²³³

²²⁵ See, e.g., *United States v. Burton*, 888 F.2d 682, 687 (10th Cir. 1989) (per curiam) (noting that while provisions of permanent law allowed the General Services Administration (GSA) to appoint police officers to patrol federal property only if the federal government had acquired criminal jurisdiction over that property an appropriations act granted GSA additional authority to appoint police officers even as to federal property for which no such criminal jurisdiction had been acquired); *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1558 (D.C. Cir. 1984) (considering the effect of a limitation on funding contained in an appropriations act on the Department of Labor's "statutory basis for enforcement litigation" under the Federal Mine Safety and Health Act).

²²⁶ See, e.g., *City of Chicago v. U.S. Dep't of Treasury, Bureau of Alcohol, Tobacco & Firearms*, 423 F.3d 777, 781 (7th Cir. 2005) (concluding that a proviso in a regular appropriations act amounted to a "change in substantive FOIA law in that it exempts from disclosure data previously available to the public under FOIA"); *Pontarelli v. U.S. Dep't of the Treasury*, 285 F.3d 216, 231 (3d Cir. 2002) (concluding that a proviso barring use of a Bureau of Alcohol, Tobacco, and Firearms (ATF) funds to investigate or act upon an application for relief from firearms disabilities prevented ATF from denying such applications and thus prevented federal courts from reviewing applications as an ATF denial was required for judicial review).

²²⁷ See, e.g., *Kane Cty. v. United States*, 136 Fed. Cl. 644, 649 (2018) (examining whether a regular appropriations act affected the federal government's "substantive obligation" under preexisting law to make payments to local governments to compensate for tax revenue lost on account of tax-exempt federal lands within the local governments' territorial jurisdiction).

²²⁸ Courts decide whether matter in an appropriations act alters preexisting substantive law using the same presumptions, detailed below, whether or not the substantive law was established in an appropriations act or in another statute. See, e.g., *Ctr. for Investigative Reporting v. U.S. Dep't of Just.*, 982 F.3d 668, 681 (9th Cir. 2020) (finding that general provisions contained in acts making appropriations for FY2010 and FY2012 repealed general provisions in acts making appropriations for FY2005 and FY2008 concerning disclosure of information from ATF's Firearms Tracing System); *Cherokee Nation v. Bernhardt*, 936 F.3d 1142, 1156 n.16 (10th Cir. 2019) (concluding that a proviso in a 1999 regular appropriations act demonstrated Congress's clear intent to modify substantive law contained in a proviso of a 1992 appropriations act concerning the Cherokee Nation's role in decisions to take into trust land located within the original boundaries of the Cherokee territory in Oklahoma).

²²⁹ *United States v. Vulte*, 233 U.S. 509, 515 (1914) (noting that the presumption against substantive law changes in an appropriations act "follows naturally from the nature of appropriation bills" and "is fortified by the rules of the Senate and House of Representatives").

²³⁰ *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 190 (1978).

²³¹ *Id.* (internal quotation marks omitted).

²³² See *Demby v. Schweiker*, 671 F.2d 507, 512 (D.C. Cir. 1981) (MacKinnon, J., announcing judgment of the court) (stating that while such repeals "are infrequent" they occur in "every session" of Congress); see also *United States v. Will*, 449 U.S. 200, 222 (1980) ("[W]hen Congress desires to suspend or repeal a statute in force, there can be no doubt that it could accomplish its purpose by an amendment to an appropriation bill, or otherwise." (internal quotation marks omitted)).

²³³ Cf. *The Last Best Beef, LLC v. Dudas*, 506 F.3d 333, 340 (4th Cir. 2007) ("What may seem inadvisable on the part of Congress is not unconstitutional.") (refusing to adopt a "a per se rule that Congress cannot amend or suspend prior legislation through appropriations riders" notwithstanding the district court's concern that use of an appropriations act to prevent one phrase from being trademarked could create an allegedly unduly complex trademark scheme).

Given this understanding of the normally limited function of matter in an appropriations statute, courts have developed a “very strong presumption” against finding that Congress changed substantive law by means of an appropriations act.²³⁴ Congress “may amend substantive law in an appropriations statute, as long as it does so clearly.”²³⁵ Thus, courts will find that matter in an appropriations act alters substantive law when that outcome is the only reasonable interpretation of the appropriations act.²³⁶ Courts have justified this reluctance to find substantive law changes in appropriations acts by referring to the perceived unpredictability that a less-demanding standard would yield.²³⁷

Most frequently, courts consider whether Congress’s decision to appropriate, or not appropriate, funds for a given purpose itself constitutes a change in law. Thus, when substantive law fixes a definite salary for an officer or employee,²³⁸ or directs an agency to make payments to health insurers,²³⁹ or establishes protections for wildlife that would prevent an agency action,²⁴⁰ a litigant might contend that Congress’s later decision of whether to fund these obligations or activities amounts to a change in preexisting law. If Congress funds less than the amount fixed in law for an employee’s salary,²⁴¹ or bars the use of funds for payments,²⁴² or allegedly continues to fund a project that substantive law would otherwise prohibit,²⁴³ the question is whether Congress has thereby altered the employee’s salary, changed the terms of the government’s payment obligation, or carved out an exception to federal environmental laws.

The answer to such questions largely depends on the language of the appropriation and its relation to preexisting substantive law. However, a few points emerge from the case law. If substantive law fixes an obligation, Congress later choosing not to appropriate enough funds to

²³⁴ Bldg. & Const. Trades Dep’t, *AFL-CIO v. Martin*, 961 F.2d 269, 273 (D.C. Cir. 1992); see also *Hill*, 437 U.S. at 190 (noting that the rule disfavoring implied repeals applies “with even *greater* force when the claimed repeal rests solely on an Appropriations Act” (emphasis in original)).

²³⁵ *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 440 (1992); see also *Calloway v. District of Columbia*, 216 F.3d 1, 9 (D.C. Cir. 2000) (framing the relevant inquiry as whether Congress “unambiguously expressed an intent” to change substantive law by means of an appropriations act).

²³⁶ *United States v. Vulte*, 233 U.S. 509, 515 (1914) (explaining that an appropriations act modifies substantive law where the language of the act “admits of no other reasonable interpretation” than modification (internal quotation marks omitted)).

²³⁷ See, e.g., *Hill*, 437 U.S. at 190–91 (justifying the presumption against substantive law changes in appropriations acts by claiming the presumption relieves Members of Congress of the need to “review exhaustively the background of every authorization before voting on an appropriation” to identify potential implied repeals); *Zbaraz v. Quern*, 596 F.2d 196, 199 (7th Cir. 1979) (raising the concern of “confusing and disruptive annual changes in the substantive law”).

²³⁸ *United States v. Langston*, 118 U.S. 389, 392 (1886) (examining Revised Statutes provision fixing salary of the minister resident and consul general to Haiti).

²³⁹ *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1320 (2020) (considering provision in the Affordable Care Act directing the Secretary of Health and Human Services to make payments to firms offering health insurance in the individual and small group markets).

²⁴⁰ *Hill*, 437 U.S. at 190 (applying the Endangered Species Act to a dam construction project on the Little Tennessee River that would probably jeopardize survival of an endangered species).

²⁴¹ *Langston*, 118 U.S. at 393 (considering effect of appropriation of \$5,000 for the salary of the minister resident and consul general to Haiti where substantive law fixed the official’s salary at \$7,500).

²⁴² *Maine Cmty. Health Options*, 140 S. Ct. at 1323 (deciding whether limitation in a regular appropriations act that barred use of the act’s funds to make payments to insurers suspended or repealed obligation created by a statutory directive that such payments be made).

²⁴³ *Hill*, 437 U.S. at 164, 167, 170, 190–92 (reviewing whether a lump-sum appropriation, dedicated in part to continued dam construction through committee report language, excepted the dam project from the Endangered Species Act).

meet the obligation, without express language repealing or modifying the obligation,²⁴⁴ leaves substantive law unchanged.²⁴⁵ Likewise, if substantive law fixes an obligation, and Congress thereafter includes in a regular appropriations act a limitation that prohibits use of appropriated funds to pay the obligation, on its own the limitation will not suspend or repeal the obligation.²⁴⁶ When substantive law prohibits a particular agency action (e.g., the construction of a dam that would probably jeopardize an endangered species), an appropriation that is subsequently enacted and generally available for projects of that type will not alter the substantive-law impediment.²⁴⁷ In these cases, it is possible to interpret the appropriations act as not effecting repeal of the substantive law requirement, and so courts will generally presume that Congress did not intend to modify substantive law.²⁴⁸

Case law can serve as data points for distinguishing these types of bare appropriations decisions, which do not affect substantive law, from appropriations act matter that suspends or repeals substantive law. Suppose for example that during a fiscal year substantive law would otherwise have the effect of obligating the government to pay an amount as compensation to a third party. If Congress then appropriates a lesser amount *and* specifies that the amounts provided are “full compensation” for debts that the government will subsequently incur,²⁴⁹ the appropriation suspends or repeals the substantive law provisions.²⁵⁰ Congress may also suspend or repeal the substantive law requirements by stating that they “shall not take effect.”²⁵¹ Congress might limit use of appropriated amounts to pay such compensation and specify that the limitation is made “notwithstanding” the provisions of the particular substantive law.²⁵² A court might conclude that

²⁴⁴ The Constitution may separately limit Congress’s authority to abrogate an already-incurred obligation. *See, e.g., Cherokee Nation v. Leavitt*, 543 U.S. 631, 646 (2005) (“A statute that retroactively repudiates the Government’s contractual obligation may violate the Constitution.”); *cf. Lynch v. United States*, 292 U.S. 571, 580 (1934) (stating that while the need for economy in 1933 was “great,” “Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation.”).

²⁴⁵ *See, e.g., Langston*, 118 U.S. at 394 (“[A] statute fixing the annual salary of a public officer at a named sum, without limitation as to time, should not be deemed abrogated or suspended by subsequent enactments which merely appropriated a less amount for the services of that officer for particular fiscal years.”); *cf. United States v. Will*, 449 U.S. 200, 224 (1980) (explaining that because appropriations acts manifested congressional intent to rescind pay raises the pay increases were not simply consigned “to the fiscal limbo of an account due but not payable” as would be the case if Congress simply failed to appropriate sufficient funds to meet the pay raises).

²⁴⁶ *See Maine Cmty. Health Options*, 140 S. Ct. at 1324; *see also City of Chicago v. U.S. Dep’t of Treasury, Bureau of Alcohol, Tobacco & Firearms*, 423 F.3d 777, 782 (7th Cir. 2005) (contrasting limitations in 2003 and 2004 regular appropriations acts, which prohibited use of funds to disclose information without changing substantive disclosure law, with matter in a 2005 regular appropriations act that contained “clear expressions of Congressional intent” to preclude disclosure).

²⁴⁷ *See Hill*, 437 U.S. at 190 (“When voting on appropriations measures, legislators are entitled to operate under the assumption that the funds will be devoted to purposes which are lawful and not for any purpose forbidden.”).

²⁴⁸ *Maine Cmty. Health Options*, 140 S. Ct. at 1324.

²⁴⁹ *See United States v. Fisher*, 109 U.S. 143, 145–46 (1883).

²⁵⁰ *See Maine Cmty. Health Options*, 140 S. Ct. at 1325 (explaining that such cases alter the terms upon which the government will incur obligations before it begins incurring the obligations).

²⁵¹ *See United States v. Will*, 449 U.S. 200, 222–24 (1980) (explaining that in four successive fiscal years Congress used appropriations acts, including matter phrased only “in terms of limiting funds,” to rescind automatic pay adjustments that federal justices and judges would otherwise receive under preexisting substantive law).

²⁵² *See United States v. Dickerson*, 310 U.S. 554, 555, 561 (1940) (“We are of opinion that Congress intended in” an appropriations act limitation “to suspend the enlistment allowance authorized” under substantive law); *see also id.* at 556–57 (recounting that earlier provisions of law covering four fiscal years stated that the substantive law formula was “suspended” and that the appropriations act provisions in question continued this suspension).

Congress has modified substantive law in an appropriation if Congress structures its appropriation in a way that cannot be reconciled with how substantive law would impose an obligation.²⁵³

In these examples, it is not possible for a court to give effect to both the preexisting substantive law and the appropriations act provision. For example, suppose preexisting substantive law would determine the amount of an obligation to be \$1,000, but Congress later appropriates \$900 for the obligation subsequently incurred and states this lesser amount shall be “full compensation.”²⁵⁴ In that event, the Supreme Court has stated that a court cannot give effect to both provisions—it “cannot say that” the sum appropriated (i.e., the \$900) “shall not be in full compensation” and allow, instead, the \$1,000 amount prescribed in the substantive law provision.²⁵⁵ Where the only reasonable interpretation of the appropriations act provision is one that results in the modification of substantive law, a court will likely find that the appropriations act’s text overcomes the “very strong presumption” that Congress did not intend to change substantive law when it passed the appropriations act.²⁵⁶

Determining How Long a Provision Affects Substantive Law

As to these provisions affecting substantive law, a second question commonly follows: whether the appropriations act provision responsible for a change in substantive law has effect beyond the fiscal year covered by the appropriations act. As noted above, the permanence (of lack thereof) of appropriations in a regular appropriations act can be determined by consulting a statutory rule of construction in Title 31 of the *U.S. Code* and common general provisions that appear in regular appropriations acts.²⁵⁷ However, strictly speaking these aids refer only to the duration of the act’s appropriations, and thus do not directly answer the question of whether other matter in the act is temporary or permanent.²⁵⁸

Instead, courts and agencies employ a legal presumption to decide whether matter in a regular appropriations act is temporary or permanent.²⁵⁹ Courts have noted that the core subject matter of a regular appropriations act, the appropriations themselves, are presumptively temporary. The appropriations are assumed to “spend their power in the course of the year.”²⁶⁰ Courts rely on the presumptively temporary nature of the appropriations to draw conclusions about legislative intent for appropriations act matter more generally. On this reasoning, it would be “somewhat unusual”

²⁵³ See *United States v. Mitchell*, 109 U.S. 146, 150 (1883) (examining interaction between substantive law that would fix an individual’s salary at \$400 and prohibit the Department of Interior (Interior) from providing any further emoluments or allowances and a later appropriations act that made \$300 available for salaries and further sums for Interior to allocate as additional compensation).

²⁵⁴ *Fisher* 109 U.S. at 145–46.

²⁵⁵ *Id.*

²⁵⁶ *Bldg. & Const. Trades Dep’t, AFL-CIO v. Martin*, 961 F.2d 269, 273 (D.C. Cir. 1992).

²⁵⁷ See *supra* “Determining Duration.”

²⁵⁸ See 31 U.S.C. § 1301(c) (referring to the permanence or continuous availability of an “*appropriation* in a regular, annual appropriation law” (emphasis added)); see also Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. A., tit. V, § 502 133 Stat. 2534, 2605 (2019) (“No part of *any appropriation* contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.” (emphasis added)); cf. *Smithsfork Grazing Ass’n v. Salazar*, 564 F.3d 1210, 1216 (10th Cir. 2009) (noting the presumption of fiscal-year duration in 31 U.S.C. § 1301(c) and holding that the “the same is true of specific provisions in an appropriations bill” that do not themselves make appropriations).

²⁵⁹ *United States v. Vulte*, 233 U.S. 509, 515 (1914) (concluding that this presumption “follows naturally from the nature of appropriation bills” and is “fortified by the rules of the Senate and House of Representatives” discouraging legislation on appropriations).

²⁶⁰ *United States v. Jarvis*, 26 F. Cas. 587, 588 (D. Me. 1846).

to “find engrafted upon an act making special and temporary appropriations” a “provision which was to have a general and permanent application to all future appropriations.”²⁶¹

To avoid drawing such an “unusual” conclusion, courts presume that whatever effect an appropriations act provision has on substantive law exists only for the fiscal year covered by the act.²⁶² Accordingly, it is possible for a regular appropriations act to alter substantive law, but only for the fiscal year.²⁶³ Put differently, the intent to alter substantive law might be clear, but the intent to make that alteration permanent might not be clear.²⁶⁴ When such temporary alteration of substantive law occurs, courts often say that the appropriations act has “suspended” conflicting provisions of substantive law.²⁶⁵ Once that suspension ends, usually after the fiscal year for which the relevant act makes appropriations, the once-suspended requirements of substantive law regain force.²⁶⁶

To constitute a permanent alteration of substantive law, the text of the provision must clearly indicate that it will continue in force even after the appropriations themselves presumptively

²⁶¹ *Minis v. United States*, 40 U.S. 423, 445 (1841); *see also Jarvis*, 26 F. Cas. at 588 (stating that courts are “not accustomed to look” to appropriations acts “for permanent regulations”).

²⁶² *Whatley v. D.C.*, 447 F.3d 814, 819 (D.C. Cir. 2006) (“The normal presumption is that appropriations acts do not amend substantive law, and that when they do, *the change is only intended for one fiscal year.*” (emphasis added) (internal quotation marks omitted)).

²⁶³ *See Seattle Audubon Soc’y v. Evans*, 952 F.2d 297, 304 (9th Cir. 1991) (“In this case Congress has expressed its intent to alter the substantive law, but has also demonstrated its intent to make this restriction effective for only a year at a time.”).

²⁶⁴ *See id.*

²⁶⁵ *See, e.g., United States v. Dickerson*, 310 U.S. 554, 561 (1940) (“We are of [the] opinion that Congress intended in § 402,” a limitation in an appropriations act, “to suspend the enlistment allowance authorized by § 9” of the Basic Military Pay Act “during the fiscal year ending on the 30th of June, 1939”). Sometimes, courts refer to a temporary alteration of substantive law as a single-year “repeal” of the substantive law. *See Granite State Chapter v. Fed. Lab. Rels. Auth.*, 173 F.3d 25, 28 (1st Cir. 1999) (stating that general provision in a defense appropriations act “repealed,” for a single fiscal year, substantive law provisions providing federal employee unions the “right” to lobby Congress on official time). Calling such a change a “repeal” is likely a misnomer. *See Brown v. Barry*, 3 U.S. 365, 367 (1797) (“The suspension of an act for a limited time, is not a repeal of it.”). A “repeal” of a federal statute has indefinite effect; “repealed” matter must be reenacted or revived via statute before it may take effect once again. *See Bender v. United States*, 93 F.2d 814, 815–16 (3rd Cir. 1937) (reversing criminal conviction for violation of an 1868 statute requiring a distiller to post a sign advertising its status as a registered distiller because the National Prohibition Act of 1919 impliedly repealed the 1868 sign requirement and the National Prohibition Act’s repeal in 1935 did not have the effect of reenacting or otherwise reviving those provisions of law that the National Prohibition Act itself repealed, including the 1868 statute’s sign requirement) (applying predecessor version of 1 U.S.C. § 108). Thus, without more, provisions of substantive law that are in fact “repealed” by an appropriations act likely would not regain effect after the end of the fiscal year for which the act made appropriations.

²⁶⁶ *See Bldg. & Const. Trades Dep’t, AFL-CIO v. Martin*, 961 F.2d 269, 274 (D.C. Cir. 1992) (noting that an appropriations act provision that lacks permanence “operates only in the applicable fiscal year”); *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1557 n.15 (D.C. Cir. 1984) (explaining that whatever “enforcement powers” a provision in a continuing appropriations act “took from” the Mine Safety and Health Review Commission the powers “were returned to the agency” when the act was superseded by another appropriations act that did not carry the same limitation); *cf. Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 438–39 (1992) (examining a regular appropriations act general provision modifying timber harvesting requirements for sales offered during FY1990 and explaining that for “challenges to sales offered before or after fiscal year 1990” the general provision “expressly reserved judgment upon the legal and factual adequacy of the administrative documents authorizing the sales” in that the provision did not by its terms apply to sales before or after FY1990 (internal quotation marks omitted)); *United States v. Vulte*, 233 U.S. 509, 515 (1914) (concluding plaintiff was entitled to a 10% bonus under a 1902 statute for service abroad in 1908–1909 because matter in 1906 and 1907 appropriations acts had only temporarily suspended the bonus entitlement); *United States v. Mitchell*, 109 U.S. 146, 150 (1883) (noting that appropriations that changed the salary for designated interpreters fixed by substantive law for designated interpreters “for the time covered by” the appropriations acts).

expire.²⁶⁷ The absence of an “expiration date apparent on” the provision’s face will not suffice.²⁶⁸ The Supreme Court has referred to such language as “words of prospective extension,”²⁶⁹ while other courts have referred to such language as indicating “futuraity.”²⁷⁰

Congress commonly uses stock words or phrases to define the scope of a regular appropriations act proviso or general provision, and as a result trends have developed in case law on permanence questions. Some words or phrases overcome the presumption of temporary application; others do not. Among the most common indications of futurity is the term “hereafter.”²⁷¹ Equivalently, a regular appropriations act provision that applies to a specific fiscal year “and thereafter” has been deemed permanent.²⁷²

Reflecting the close scrutiny that courts apply to permanence questions, a court refused to read the term “hereinafter” as a synonym for “hereafter,” finding instead that the term referred only to the appropriations act containing the limitation.²⁷³ Similarly, under GAO decisions whose reasoning courts have endorsed,²⁷⁴ on its own the commonly used phrase “this or any other act” refers only to the other acts that make appropriations for the same fiscal year as the act containing the provision whose permanence is in question.²⁷⁵ A court likewise held that a provision that required the U.S. Army Corps of Engineers (the Corps) to make wetlands determinations using a 1987 manual, and not its 1989 successor, “until” the Corps adopted a new manual after notice and comment was temporary.²⁷⁶

Courts look to factors beyond particular language of futurity to decide whether a provision is temporary or permanent. For example, courts have considered whether the provision at issue relates to appropriations or spending. If it does not, that lack of connection between the provision and the primary function of the act in which it appears might be evidence of permanence.²⁷⁷

²⁶⁷ *Martin*, 961 F.2d at 274 (“[A] provision contained in an appropriations bill operates only in the applicable fiscal year, unless its language clearly indicates that it is intended to be permanent.”).

²⁶⁸ *Id.* at 273.

²⁶⁹ *See Vulte*, 233 U.S. at 515.

²⁷⁰ *See, e.g., Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 806 n.19 (9th Cir. 2005).

²⁷¹ *See Tin Cup, LLC v. U.S. Army Corps of Eng’rs*, 904 F.3d 1068, 1073 (9th Cir. 2018) (“‘Hereafter’ is the most common word of futurity.”); *but see Auburn Housing Auth. v. Martinez*, 277 F.3d 138, 142, 146–47 (2d Cir. 2002) (concluding that the phrase “no funds in this Act or any other Act may hereafter be used” for certain housing assistance applied only to funds made available by the act but did not apply to funds appropriated for subsequent fiscal years).

²⁷² *See Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 984 F.3d 30, 41 (2d Cir. 2020) (observing that because a general provision stated that it applied “to fiscal year 2009 and thereafter” the provision “would remain in effect today if Congress had not” subsequently enacted a related general provision that the court found impliedly repealed the FY2009 provision (emphasis in original) (internal quotation marks omitted)); *see also Abdeljabbar v. Bureau of Alcohol, Tobacco & Firearms*, 74 F. Supp. 3d 158, 175 (D.D.C. 2014) (concluding that the provision referring to “fiscal year 2009 and thereafter” was “a permanent prohibition” effective until later repealed or modified).

²⁷³ *See Atl. Fish Spotters Ass’n v. Evans*, 321 F.3d 220, 226 (1st Cir. 2003) (stating that the “universally accepted meaning” of “hereinafter” “refers to that which follows in the same writing”).

²⁷⁴ *See id.*

²⁷⁵ *Permanency of Weapon Testing Moratorium Contained in Fiscal Year 1986 Appropriations Act*, B-222097, 65 Comp. Gen. 588, 589 (May 22, 1986) (opining that the phrase “this Act or any other Act” did “not make the anti-satellite weapon testing restriction permanent, but rather merely extend[ed] the applicability of the restriction to any other funds available during fiscal year 1986, in addition to funds made available by the Department of Defense Appropriations Act, 1986” that contained the restriction).

²⁷⁶ *See Tin Cup, LLC*, 904 F.3d at 1073–74.

²⁷⁷ *Compare Minnesota ex rel. Hatch v. Hoeven*, 456 F.3d 826, 831, 833 (8th Cir. 2006) (general provision stating policy of Congress that states should continue to regulate hunting and fishing within their boundaries including by

Courts have also concluded that the reenactment of an appropriations act provision is evidence that Congress intended each such enactment to be limited to the fiscal year covered by each such enactment.²⁷⁸ If Congress intended a prior enactment to have had permanent effect, so the courts' reasoning goes, it would not have reenacted the same provision for a subsequent fiscal year.²⁷⁹

Effect of Report Provisions

As noted above, appropriations acts are often accompanied by detailed reports containing a variety of directives to the agencies whose programs the act funds. At a minimum, these report directives are practically significant for the agency concerned—an agency will not ordinarily disregard views of the Appropriations Committees on matters deemed significant enough to be included in a committee report. A question that often arises, though, is whether seemingly mandatory language that appears only in a report—such as language in a committee report directing the submission of a report to the Appropriations Committees or allocating amounts within an appropriation to a particular program—is legally binding on the agency concerned. Would a court conclude that committee report language phrased in mandatory terms in fact compels an agency to take, or not take, the specified acts?

The answer to that question usually will be “no”; the report serves as legislative history only. As such, the report might aid in interpreting ambiguous language in an appropriations act, or the report might buttress a reading of the act that is arrived at through other interpretative means,²⁸⁰ but it cannot impose requirements that the statute does not.

In at least one circumstance,²⁸¹ of particular significance to appropriations acts, the answer may be more nuanced. It is possible for report language to have binding effect if the language is incorporated by reference into the appropriations act. This section discusses these concepts in turn.

The General Rule: Report Language Alone Is Not Legally Binding

Article I, Section 7 of the Constitution establishes “a single, finely wrought and exhaustively considered, procedure” for enacting laws.²⁸² A bill must pass both chambers in identical form and be presented to the President for approval. Thereafter, a bill can become law only in three circumstances: the President signs and thereby approves the bill; Congress overrides the President’s disapproval; or the President does not act on the bill within 10 days when Congress is

differentiating between residents and nonresidents in allocating licenses and permits) (rejecting argument that provision was temporary as “the disputed section does not relate to appropriations and spending”), *and* *Roccaforte v. Mulcahey*, 169 F. Supp. 360, 363 (D. Mass. 1958) (noting that matter enacted in an appropriations act and exempting deportation proceedings from the Administrative Procedure Act stood “apart from any specific item of appropriation”), *with Atl. Fish Spotters Ass’n*, 321 F.3d at 225 (observing that provision barring the Department of Commerce from using appropriated funds to issue permits to vessels that used spotter planes to fish for Atlantic bluefin tuna was “not so foreign to the surrounding appropriations as to make it unreasonable to interpret its text as creating temporary law”).

²⁷⁸ *See, e.g., United States v. Vulte*, 233 U.S. 509, 514 (1914).

²⁷⁹ *See id.*

²⁸⁰ *See supra* notes 10–12.

²⁸¹ Committee reports are also understood to figure in the implementation of reprogramming notice provisions that appear in regular appropriations acts. *See Stiff, Power Over Appropriations, supra* note 51, at 36–37.

²⁸² *INS v. Chadha*, 462 U.S. 919, 951 (1983).

in session.²⁸³ Congress only exercises legislative power in text that is enacted in this way.²⁸⁴ The houses do not vote on reports that are drafted to accompany a regular appropriations act. For that reason, the reports, themselves, do not have the force of law.²⁸⁵

A case in point, *Roeder v. Islamic Republic of Iran*, involved a default judgment on liability against the Islamic Republic of Iran, obtained by victims of the 1979 hostage crisis.²⁸⁶ Prior to a hearing on damages, the U.S. Department of State (State) intervened to have the default judgment vacated and the case dismissed on the separate grounds (1) that the FSIA deprived the district court of jurisdiction over claims against Iran and (2) that an executive agreement with Iran barred the claims.²⁸⁷ Congress responded in two appropriations acts, amending FSIA to defeat State’s first argument.²⁸⁸ Joint explanatory statements that accompanied both acts’ conference reports stated that the FSIA amendments “quashe[d]” State’s motion.²⁸⁹ The second joint explanatory statement added that the amendments allowed the default judgment to stand as a basis to award damages to the plaintiffs.²⁹⁰

While the appropriations acts amended FSIA, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) held that the acts did not abrogate the executive agreement.²⁹¹ Moreover, while the explanatory statement for the second appropriations act included broad language that might, if enacted, “abrogate an executive agreement,” the D.C. Circuit concluded that those statements lacked the force of law because “Congress did not vote on the [joint explanatory] statement and the President did not sign a bill embodying it.”²⁹²

While *Roeder* involved substantive amendments to the jurisdiction of federal courts, a subject that is outside the normal remit of an appropriations act, the rule applied in *Roeder* equally applies to report provisions that attempt to regulate use of budget authority in a manner that the appropriations act does not. For example, the Consolidated and Further Continuing Appropriations Act, 2013, appropriated \$500,000 as a line item within the Federal Bureau of Investigations (FBI) Salaries and Expenses appropriation to review the implementation of recommendations made by the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) related to the FBI.²⁹³ The act’s explanatory statement required the FBI to submit to the Appropriations Committees a report detailing results of this review and defined the scope of the review to include consideration of any new evidence “now known to the FBI that

²⁸³ See U.S. CONST. art. I, § 7, cl. 2.

²⁸⁴ See Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC, 140 S. Ct. 1649, 1656 (2020).

²⁸⁵ See Am. Hosp. Ass’n v. N.L.R.B., 499 U.S. 606, 616 (1991).

²⁸⁶ 333 F.3d 228 (D.C. Cir. 2003).

²⁸⁷ *Id.* at 231.

²⁸⁸ *Id.* at 235 (noting that the appropriations acts’ amendments to the Foreign Sovereign Immunity Act (FSIA) “created an exception, for this case alone, to Iran’s sovereign immunity, which would otherwise have barred the action”).

²⁸⁹ H.R. REP. NO. 107-278, at 170 (2001) (conf. rep. joint explanatory statement); H.R. REP. NO. 107-350, at 422 (2001) (conf. rep. joint explanatory statement).

²⁹⁰ See H.R. REP. NO. 107-350, at 422 (2001) (conf. rep. joint explanatory statement) (stating that the FSIA amendments “acknowledge[d] that, notwithstanding any other authority, the American citizens who were taken hostage by the Islamic Republic of Iran in 1979 have a claim against Iran under the Antiterrorism Act of 1996 and the provision specifically allows the judgment to stand for purposes of award damages”).

²⁹¹ *Roeder*, 333 F.3d at 236 (“The amendments do not, on their face, say anything about the Accords. They speak only to the antecedent question of Iran’s immunity from suit in United States courts.”).

²⁹² *Id.* at 237.

²⁹³ Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Div. B, tit. II, 127 Stat. 198, 247 (2013).

was not considered by the 9/11 Commission” concerning factors that contributed to the attacks.²⁹⁴ According to individual and organizational plaintiffs, the FBI report did not consider certain new alleged evidence of the causes of the terrorist attack. These plaintiffs sued, citing the FBI’s failure to comply with the supposed report mandate.²⁹⁵ A court rejected their claims for lack of standing, finding that the FBI did not in fact have a duty under the appropriations act to submit a report detailing its review, which in turn meant that the plaintiffs had not adequately pled any injury for failure to comply with the supposed report mandate. The appropriations act merely funded the review; the act did not require the FBI to prepare a report detailing its review, and the explanatory statement could not impose that requirement on its own.²⁹⁶

Similarly, the Consolidated Appropriations Act, 2014, appropriated amounts for certain Department of Labor (DOL) contracts for the operation and maintenance of Job Corps facilities.²⁹⁷ The act’s explanatory statement directed DOL to give “due consideration” to high-performing incumbent contractors when renewing or rebidding such contracts.²⁹⁸ In rebidding one contract DOL used a small business set-aside, thus barring the incumbent contractor, which did not qualify as a small business, from competing.²⁹⁹ The incumbent sued, arguing in part that use of a set-aside disregarded “congressional instructions.”³⁰⁰ The Court of Federal Claims dismissed the incumbent contractor’s claims.³⁰¹ The appropriations act merely appropriated amounts to fund Job Corps operations and maintenance contracts; the act did not impose any requirements concerning DOL’s means of procuring of such services.³⁰²

In each of these cases, Congress passed a bill making regular appropriations, and one or more committees wrote a report relating to the bill. The reports included language that by its terms sought to impose requirements or limitations on agencies—modifying executive agreements, requiring report submission, or dictating how services would be procured. However, the reports were not voted on by both houses, much less presented to the President for approval, and thus the reports’ seemingly mandatory language imposed no binding requirements on relevant agencies.

The Exception: Incorporation by Reference

A common feature of modern-day regular appropriations acts poses a variation on the question of whether committee reports can impose binding requirements: If a report, standing alone, may not

²⁹⁴ 159 CONG. REC. S1305 (daily ed. Mar. 11, 2013) (“The FBI shall submit a report to the Committees, no later than one year after enactment of this Act, on the findings and recommendations resulting from this review.”).

²⁹⁵ See *Lawyers’ Committee for 9/11 Inquiry, Inc. v. Wray*, 424 F. Supp. 3d 26, 29 (D.D.C. 2020), *aff’d* 848 F. App’x 428 (D.C. Cir. 2021).

²⁹⁶ *Id.* at 31 (“Even if some legislators wanted the FBI to issue a report—and to disclose information in doing so—the legislature enacted no disclosure requirement.”); see also *Lawyers’ Comm. for 9/11 Inquiry, Inc. v. Wray*, 848 F. App’x 428, 430 (D.C. Cir. 2021) (stating that “as the district court noted, the *text* of this provision does not require the disclosure of information” and that even assuming the explanatory statement “were relevant in interpreting an appropriations provision that unambiguously stops short of imposing any public disclosure requirement, the explanatory statement also makes no mention of disclosure of any information to the public” (emphasis in original) (internal quotation marks omitted)).

²⁹⁷ See Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Div. H, tit. I, 128 Stat. 5, 349–50 (2014) (Office of Job Corps); see also *Adams & Assocs., Inc. v. United States*, 120 Fed. Cl. 250, 251 (2015).

²⁹⁸ 160 CONG. REC. H1033 (daily ed. Jan. 15, 2014).

²⁹⁹ See *Adams & Assocs., Inc.*, 120 Fed. Cl. at 250–51.

³⁰⁰ See *id.* at 251.

³⁰¹ *Id.*

³⁰² *Id.* at 253 (“[T]he Act needs no explanation. It merely appropriates money. There is no ambiguity as to meaning.”).

impose binding requirements, may an appropriations act be written to give effect to report text *without* repeating that report text in the act itself? Modern-day appropriations acts often refer to allocations of funds or other directives contained in an accompanying committee report³⁰³ or classified annex³⁰⁴ in terms that appear intended to give effect to those allocations or directives.

Though no case law appears to address the permissibility of this particular mode of legislating as a means of regulating the use of budget authority provided in a regular appropriations act, decisions in analogous contexts appear to sanction its use.³⁰⁵ This case law suggests that an appropriations act gives legal effect to nonstatutory matter when the appropriations act contains legally sufficient words of incorporation for extrinsic matter that exists at the time the measure was enacted into law. Administrative interpretations from GAO and the Department of Justice (DOJ) confirm this conclusion.³⁰⁶

Incorporation by reference “antedates the federal system.”³⁰⁷ The centuries-old application of the doctrine to the law of wills demonstrates its operation. Historically, a testator (i.e., a person who makes a will) was required to follow certain formalities to execute a will—a legally significant document detailing how the testator’s property would be disposed upon death.³⁰⁸ In 1607, the Court of King’s Bench concluded that a will made a “good devise” of rents, even though the will itself referred only to “several annuities or annual rents” described in other writings that were not themselves executed.³⁰⁹ If the will is validly executed and unambiguously refers to a second document that contains the text to be incorporated, the text of the second document may be treated as part of the will even though the second document did not adhere to testamentary formalities.³¹⁰

³⁰³ See *supra* note 90 and accompanying text (quoting recurring general provision of the Department of State, Foreign Operations, and Related Programs Appropriations Act providing that certain appropriations “shall be made available in the amounts specifically designated in the respective tables included in the explanatory statement”).

³⁰⁴ See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. C, tit. VIII, § 8006(a) (2020).

³⁰⁵ The use of incorporation by reference may raise legal questions beyond whether that method of legislating complies with the “finely wrought” lawmaking process set forth in Article I, § 7. *Cf.* *United States v. Lanier*, 520 U.S. 259, 264 n.3, 264–67 (1997) (statute criminalizing the willful deprivation of “any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States” while acting under color of law) (discussing standard that applies to deciding whether the statute, which “in lieu of describing the specific conduct it forbids” incorporated “constitutional law by reference,” provided fair warning that particular conduct is criminal).

³⁰⁶ *Comm. Resolutions Under 40 U.S.C. § 3307(a) and the Availability of Enacted Appropriations*, 2018 WL 3450206 (O.L.C. Jan. 26, 2018); *Consolidated Appropriations Act, 2008—Incorporation by Reference*, B-316010, 2008 WL 540192 (Comp. Gen. Feb. 25, 2008).

³⁰⁷ *Gen. Elec. Co. v. Brenner*, 407 F.2d 1258, 1261 (D.C. Cir. 1968).

³⁰⁸ See, e.g., John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489, 489–90 (1975) (describing the law of wills as “notorious for its harsh and relentless formalism” and listing testamentary formalities such as requirements that a testator sign a will in the presence of witnesses who then attest that the testator in fact signed the will).

³⁰⁹ See *Molineux v. Molineux* (1607), 79 Eng. Rep. 126, 126–27 (K.B.).

³¹⁰ See *Habergham v. Vincent* (1793), 30 Eng. Rep. 595, 607 (K.B.) (“[I]f a testator refers [in the will] expressly to any paper already written, and has so described it, that there can be no doubt of the identity [of the paper], and the will is executed” in accordance with law, “that paper, whether executed or not, makes part of the will.”); see also *Cyfers v. Cyfers*, 233 W. Va. 528, 533–34 (2014) (similar statement as in *Habergham*); Gail Boreman Bird, *Sleight of Handwriting: The Holographic Will in California*, 32 HASTINGS L.J. 605, 625 (1981) (discussing *Habergham* and characterizing incorporation by reference as “a magical process by which a document not complying with testamentary formalities is given testamentary effect”).

It is one thing to say that a will, contract,³¹¹ or prior art document³¹² may employ incorporation by reference to give legal effect to extrinsic matter. It is another thing to say the same of a statute, given the Constitution’s “finely wrought” requirements for lawmaking.³¹³ One court appears to have considered this latter proposition in the context of a reference to nonstatutory matter in an appropriations act, albeit not in the context of a reference that sought to regulate the use of budget authority. In *Hershey Foods Corp. v. U.S. Department of Agriculture*, a district court concluded that the Consolidated Appropriations Act, 2000 (CAA), enacted into law a federal milk marketing order that was originally issued as a rule.³¹⁴ Rather than repeat the text of the order, the CAA employed a double cross-reference: the CAA stated that a specific bill was “hereby enacted into law,” and the referenced bill, in turn, referred to the order by its *Federal Register* citation.³¹⁵ Hershey challenged this method of enactment, arguing that the Constitution required “the entire text of a purported law [to] be voted on by both houses of Congress and presented to the President.”³¹⁶

The district court rejected that challenge.³¹⁷ The Constitution’s text did not directly speak to whether legislation could employ incorporation by reference, nor did case law.³¹⁸ For guidance on this question, the district court looked to the Presentment Clause’s purpose, which includes providing the President a “suitable opportunity to consider the bills presented” for approval.³¹⁹ The district court doubted that a court could review whether the President adequately reviewed a bill before signing it.³²⁰ In terms familiar to incorporation by reference doctrine more generally,³²¹ the court went on to stress that the CAA clearly identified extrinsic matter that existed at the time

³¹¹ See, e.g., *Am. Fed’n of Labor v. W. Union Tel. Co.*, 179 F.2d 535, 538 (6th Cir. 1950) (interpreting collective bargaining agreement) (“Where a contract makes reference to another agreement between the same parties in such fashion as to clearly import incorporation by reference, the contract and the pre-existing document should be read together and considered as one binding agreement or contract.”).

³¹² See, e.g., *Advanced Display Sys. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000) (considering whether a single prior art document, including any incorporated material, anticipated a claimed invention) (“[T]he host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents.”).

³¹³ See *supra* notes 282–284 and accompanying text.

³¹⁴ 158 F. Supp. 2d 37, 38 (D.D.C. 2001), *aff’d sub nom. Hershey Foods Corp. v. Dep’t of Agric.*, 293 F.3d 520 (D.C. Cir. 2002). The basis for this ruling is unclear—the relevant district court order states only that after considering briefing from the parties it appeared to the district court that “the rule originally challenged by plaintiff has been enacted into legislation.” See Order Sua Sponte Dismissing Plaintiff’s Complaint at 1, *Hershey Foods Corp. v. U.S. Dep’t of Agric.*, No. 99-2138 (EGS) (Dec. 30, 1999). However, the U.S. Court of Appeals for the District of Columbia Circuit subsequently decided that the appropriations act—the “legislation” referred to in the district court’s order—*did not* enact into law the relevant portions of the milk marketing order, rejecting the district court conclusion that was the predicate for the constitutional claim included in Hershey’s amended complaint. See *Hershey Foods Corp.*, 293 F.3d at 526 (affirming on other grounds) (“Congress sought only to legislate the terms of the Class I price differentials, not the entire milk marketing system. The Class II price remains the product of agency action and is subject to judicial review as such.”). Nevertheless, because it is evidently the only judicial decision examining whether Congress may incorporate non-statutory matter in an appropriations act, the district court’s analysis is instructive.

³¹⁵ *Hershey Foods Corp.*, 158 F. Supp. 2d at 38.

³¹⁶ *Id.* at 38–39 (emphasis added).

³¹⁷ *Id.* at 41.

³¹⁸ *Id.* at 39–40.

³¹⁹ *Wright v. United States*, 302 U.S. 583, 596 (1938); see also *Hershey Foods Corp.*, 158 F. Supp. 2d at 39–40.

³²⁰ *Hershey Foods Corp.*, 158 F. Supp. 2d at 41 (“The Court agrees with [the government] that the President’s decision whether to sign a bill is a non-justiciable political question. The Constitution provides no guidance for judicial review of the adequacy of the President’s consideration of a bill.” (internal citation omitted)).

³²¹ See *supra* text accompanying note 310 & notes 311–312.

the President signed the CAA, permitting the President to review the referenced material granting his approval of the act.³²²

Administrative decisions and practice confirm *Hershey Foods Corp.*'s conclusion. In 2008, GAO concluded that provisions in the Consolidated Appropriations Act, 2008, that incorporated limitations contained only in the act's explanatory statement imposed binding requirements on the agencies concerned.³²³ In describing particular appropriations in the statute, Congress plainly intended to employ incorporation by reference of extrinsic material that existed before the bill's enactment. Moreover, the incorporated matter could be ascertained with certainty.³²⁴

The DOJ has also recognized Congress's ability to use incorporation by reference as means of imposing limitations on budget authority. A statute directs that appropriations "may be made" to construct, alter, acquire, or lease a public building at a cost of more than \$1.5 million only if certain congressional committees (though not Congress as a whole) adopt resolutions approving the appropriation's purpose.³²⁵ DOJ concluded that the statute specified only how Congress would make appropriations (i.e., only after committee approval for particular projects) but that the statute did not state any limitations on how the executive branch could obligate or expend enacted appropriations.³²⁶ DOJ observed that Congress could use resolutions to impose conditions on enacted authority, but only if Congress recited existing committee-resolution conditions "in the text of the statute" or referenced an existing committee resolution in the statute.³²⁷ When Congress has clearly expressed an intent to incorporate report matter into the text of an appropriations act, DOJ has described the incorporated matter as binding on an agency's use of the affected appropriation.³²⁸

³²² See *Hershey Foods Corp.*, 158 F. Supp. 2d. at 41 ("The incorporated bill ([H.R.]3428) was published in the Congressional Record, and the final rule was issued by a Cabinet Department under the President's supervision. Both were public documents available to the President before the Appropriations Act was even passed.").

³²³ Consolidated Appropriations Act, 2008—Incorporation by Reference, B-316010, 2008 WL 540192, at *8 (Comp. Gen. Feb. 25, 2008) (concluding that the affected agencies "are required to obligate and expend the appropriations in accordance with the referenced provisions of the explanatory statement"). These limitations either required an appropriation to be allocated according to an explanatory statement's allocation tables or made an appropriation subject to terms and conditions contained in the explanatory statement. *Id.* at *1–3 (describing provisions under review).

³²⁴ *Id.* at *8 ("The seven provisions at issue here . . . evidence clear congressional intent to incorporate specific amounts, and in some cases terms and conditions, ascertainable with certainty by reference to the explanatory statement printed in the Congressional Record on December 17, 2007.").

³²⁵ 40 U.S.C. § 3307(a)(1). The statute directs the General Services Administration to submit a "prospectus" to "secure consideration" for the committees' "approval." *Id.* § 3307(b). For examples of committee resolutions adopted under this authority, see RESOLUTIONS ADOPTED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE APPROVING WATER PROJECTS AND PUBLIC BUILDING PROSPECTUSES DURING THE 114TH CONGRESS, S. PRT. NO. 114-40 (2018) (collecting committee resolutions adopted under 40 U.S.C. § 3307).

³²⁶ Comm. Resolutions Under 40 U.S.C. S 3307(a) and the Availability of Enacted Appropriations, 2018 WL 3450206, at *3 (O.L.C. Jan. 26, 2018) (explaining that the statute "makes committee approval a prerequisite to the enactment of an appropriation, but it does not regulate the actions of the Executive Branch or anyone else"). However, one subsection of the statute did appear to tie use of enacted appropriations to the committee approval process. See 40 U.S.C. § 3307(c) (permitting construction or alteration costs of a committee-approved project to increase not more than 10% above the estimated maximum cost set forth in a prospectus). The DOJ read this subsection in concert with the statute's other provisions to impose procedural limitations on Congress only, and buttressed this view by arguing a different reading raised the specter of an "unconstitutional legislative veto." See *Comm. Resolutions Under 40 U.S.C. S 3307(a)*, 2018 WL 3450206, at *7–8; see also Stiff, *Power Over Appropriations*, *supra* note 51, at 38.

³²⁷ *Comm. Resolutions Under 40 U.S.C. S 3307(a)*, 2018 WL 3450206, at *8.

³²⁸ Brief of Defendant-Appellant United States at 20, *South Carolina v. United States*, No. 19-2324 (Fed. Cir. Dec. 18, 2019) (stating that the Department of Energy "may not use appropriated funds" for programs, projects, or activities "not identified in the [incorporated allocation] table" that was set forth in the act's explanatory statement).

Preceding Matter Concerning the Explanatory Statement

Given the potential for a statute to incorporate by reference matter appearing only in a report, the question occasionally arises of how to interpret a common provision of modern-day appropriations acts that makes reference to the act’s explanatory statement and carries a directive concerning the effect the statement will carry. This provision appears in an act’s preceding matter and reads along the following lines:

The explanatory statement regarding this Act, printed in the House section of the Congressional Record on or about [a date certain], and submitted by the Chairwoman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of Divisions A through D of this Act as if it were a joint explanatory statement of a committee of conference.³²⁹

A version of this preceding matter provision first appeared in statute in the Consolidated Appropriations Act, 2008,³³⁰ a measure “developed through a legislative procedure referred to as ‘amendments between the Houses.’”³³¹ Ever since, Congress has included the provision in statutes making regular appropriations that were enacted using an exchange of amendments between the houses to resolve differences in House- and Senate-passed versions of regular appropriations bills.³³² The provision does not appear in appropriations acts, enacted after 2008, whose chamber differences were resolved using a conference committee.³³³

On its own, the preceding matter provision likely does not incorporate explanatory statement text into the act. The text of the provision lacks “clear congressional intent to incorporate by reference” material in the explanatory statement.³³⁴ That is, the provision does not state (for example) that an agency may only obligate the appropriations made available in the act according to allocations set forth in the explanatory statement.³³⁵ The provision only likens the act’s explanatory statement to a joint explanatory statement of a conference committee, a document that, on its own, also does not impose binding requirements.³³⁶ Accordingly, in cases involving statutes that include such preceding matter provisions—statutes making regular appropriations³³⁷

³²⁹ See, e.g., Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, § 4, 133 Stat. 2317, 2318 (2019).

³³⁰ Compare *id.*, with, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 4, 121 Stat. 1844, 1846 (2007).

³³¹ See H. COMM. ON APPROPRIATIONS, 1 CONSOLIDATED APPROPRIATIONS ACT, 2008, at v (Comm. Print 2008) (Clerk’s Note).

³³² See H. COMM. ON APPROPRIATIONS, 1 CONSOLIDATED APPROPRIATIONS ACT, 2018, at v (Comm. Print 2018) (Clerk’s Note) (“Because an ‘amendments-between-the-Houses’ process was used instead of a conference committee, there is no conference report and no ‘joint Explanatory Statement of the managers’” for the Act).

³³³ See, e.g., Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3035 (2009); see also 155 CONG. REC. S13,131 (daily ed. Dec. 13, 2009) (Senate vote agreeing to H. Rep. No. 111-366 (conf. rep.)); 155 CONG. REC. H14,479 (daily ed. Dec. 10, 2009) (House vote agreeing to H. Rep. No. 111-366 (conf. rep.)).

³³⁴ Consolidated Appropriations Act, 2008—Incorporation by Reference, B-316010, 2008 WL 540192, at *5 (Comp. Gen. Feb. 25, 2008).

³³⁵ See, e.g., Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, Div. A, tit. VIII, § 8006(a), 133 Stat. 2317, 2335 (2019) (stating that for programs, projects, or activities identified in the explanatory statement’s Explanation of Project Level Adjustments tables for which the act appropriated more funds than were requested for the program “the obligation and expenditure” of those amounts “are hereby required by law to be carried out in the manner provided by such tables to the same extent as if the tables were included in the text of this Act”).

³³⁶ See *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 237 (D.C. Cir. 2003) (“[C]ontrary to what plaintiffs suggest, the explanatory remarks in the ‘conference report’ do not have the force of law.”).

³³⁷ *Lawyers’ Committee for 9/11 Inquiry, Inc. v. Wray*, 424 F. Supp. 3d 26, 29 (D.D.C. 2020), *aff’d* 848 F. App’x. 428 (D.C. Cir. 2021), and *Adams & Associates, Inc. v. United States*, 120 Fed. Cl. 250 (Fed. Cl. 2015), discussed above, involved explanatory statements that the preceding matter of a regular appropriations act likened to a joint explanatory

and National Defense Authorizations Acts³³⁸—courts have not given binding effect to matter that appeared only in the referenced explanatory statement and was not alleged to be incorporated into the act by a provision other than the preceding matter provision.

Rather than effect incorporation by reference, the preceding matter provision likely serves the more limited role of identifying, for a given regular appropriations act, a document that will serve the same function as a joint explanatory statement of a conference committee, even though the regular appropriations act was not enacted using a conference committee and therefore lacks a joint explanatory statement. The practical significance of this directive is that it may result in a court giving greater weight to the explanatory statement than to other evidence of legislative intent, such as a committee report written by a single committee.

A conference committee is one method of resolving differences between the House- and Senate-passed versions of the same measure.³³⁹ Under this method, a conference committee consisting of Members of each chamber meets and negotiates resolution of chamber differences, a proposed resolution that the conference committee memorializes in a conference report. The chambers then vote on whether to agree to the conference report.³⁴⁰

House and Senate rules require that a joint explanatory statement accompany a conference report. The statement details the effect that the amendments or propositions of the conference report will have on the bill to which they relate.³⁴¹ The conference report and joint explanatory statement are printed together, usually in a report of the House of Representatives,³⁴² but the houses vote only

statement of a conference committee. *See supra* notes 293–302 and accompanying text.

³³⁸ Several district courts considered claims arising out of a Department of Defense proposal to bid certain contracts for janitorial and other custodial services at certain military base cafeterias without providing Randolph-Shepard Act (RSA) priorities to blind vendors. The explanatory statement accompanying the FY2015 National Defense Authorization Act stated that the RSA did not apply to these contracts. *See* 160 CONG. REC. H8691 (daily ed. Dec. 4, 2014) (distinguishing between full food services contracts and dining facility attendant services contracts). The district courts rejected the explanatory statement’s conclusion. *See* *Tex. Workforce Comm’n v. U.S. Dep’t of Educ., Rehab. Servs. Admin.*, 2018 WL 8619799, at *15 (W.D. Tex. Mar. 28, 2018) (stating that the explanatory statement “cannot be used to create congressional intent to narrow the RSA’s scope”); *SourceAmerica v. U.S. Dep’t of Educ.*, 2018 WL 1453242, at *10 (E.D. Va. Mar. 23, 2018) (explanatory statement did not carry the force of law and thus did not impose a rulemaking requirement concerning military cafeteria contracts that plaintiff could enforce under the Administrative Procedures Act); *Kentucky v. United States*, 2017 U.S. Dist. LEXIS 41229, *6 (W.D. Ky. 2017) (“The joint explanatory statement [sic] does not carry the force of law.”); *Kansas v. United States*, 171 F. Supp. 3d 1145, 1163 (D. Kan. 2016) (stating that the explanatory statement was “not the law”), *aff’d in part sub nom. Kansas v. SourceAmerica*, 874 F.3d 1226 (10th Cir. 2017).

³³⁹ *See* CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki, at 4 (“One method [for resolving legislative differences] involves a conference committee—a panel of Members representing each house that attempts to negotiate a version acceptable to both chambers.”).

³⁴⁰ CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by Elizabeth Rybicki, at 5–8.

³⁴¹ *See* RULES OF THE HOUSE, *supra* note 29, at Rule XXII, cl. 7(e) (“Each such [conference] report shall be accompanied by a joint explanatory statement prepared jointly by the managers on the part of the House and the managers on the part of the Senate. The joint explanatory statement shall be sufficiently detailed and explicit to inform the House of the effects of the report on the matters committed to conference.”); STANDING RULES OF THE SENATE, S.DOC.No. 113-18, at Rule XXVIII, cl. 7 (2013) (“[S]uch [conference] report shall be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement shall be sufficiently detailed and explicit to inform the Senate as to the effect which the amendments or propositions contained in such report will have upon the measure to which those amendments or propositions relate.”).

³⁴² Each chamber has a rule stating, in substance, that reports made by a conference committee to that chamber will be printed, together with the report’s joint explanatory statement, as a report of that chamber. *See* RULES OF THE HOUSE, *supra* note 29, at Rule XXII cl. 7(e); STANDING RULES OF THE SENATE, *supra* note 341, at Rule XXVIII, cl. 7. However, the provisions of the Senate rule are usually modified or suspended, such that only a report of the House of

on the conference report. Chamber rules do not require a joint explanatory statement when the houses resolve chamber differences using an exchange of amendments.³⁴³

When determining legislative intent for a statute enacted as a result of conference committee action, courts have frequently given greater weight to a joint explanatory statement of a conference committee than to other evidence of legislative intent for the same statute, including a committee report written by a single committee. *Demby v. Schweiker* is an often-cited statement of this approach.³⁴⁴ There, the D.C. Circuit concluded that a rescission in a supplemental appropriations act did not impliedly repeal a permanent-law provision requiring that not less than 10% of certain funds be set aside for dental residency program grants.³⁴⁵

The supplemental appropriations act's legislative history included reports, separately drafted by the House and Senate Appropriations Committees, indicating that the dental residency programs should be funded at less than the 10% level.³⁴⁶ However, as an aid in interpreting statutory text, Judge MacKinnon gave greater weight to the joint explanatory statement that accompanied the act's conference report. Judge MacKinnon explained that the joint explanatory statement "represent[ed] the final statement of terms agreed to by both houses."³⁴⁷ Thus, "next to the statute itself," the joint explanatory statement was "the most persuasive evidence of congressional intent."³⁴⁸ Many federal courts of appeals have followed suit,³⁴⁹ placing joint explanatory statements at or near the top of the "hierarchy of legislative history."³⁵⁰ Similarly, the Supreme

Representatives is prepared. See RIDDICK'S SENATE PROCEDURE: PRECEDENTS AND PRACTICES, S. DOC. NO. 101-28, at 491 (1992).

³⁴³ See CRS Report RL34611, *Whither the Role of Conference Committees: An Analysis*, by Walter J. Oleszek, at 28.

³⁴⁴ 671 F.2d 507 (D.C. Cir. 1981); see also *Moore v. District of Columbia*, 907 F.2d 165, 175 (D.C. Cir. 1990) (referring to proceedings in conference as the "strongest evidence" of legislative intent on the question of whether a statute allowed a party who prevailed in certain administrative proceedings to recover attorney's fees incurred in the administrative proceedings).

³⁴⁵ *Demby*, 671 F.2d at 513 (MacKinnon, J., announcing judgment of the court) (finding no implied repeal); see also *id.* (Skelly Wright, J., specially concurring) (reaching same result but for different reasons).

³⁴⁶ See *id.* at 514 (Wald, J., dissenting).

³⁴⁷ *Id.* at 510 (MacKinnon, J., announcing judgment of the court). In particular, Judge MacKinnon's analysis relies on matter detailing how the conference committee proposed to resolve disagreement between the chambers as to the size of the rescission. *Id.* Judge MacKinnon's opinion imprecisely states that this information appears in the "conference report"; the material appears instead in the conference report's joint explanatory statement. See H.REP. NO. 97-124, at 72-73 (1981) (conf. rep. joint explanatory statement) (referenced in *Demby*, 671 F.2d at 510 (MacKinnon, J., announcing judgment of the court)); see also H.REP. NO. 97-124, at 1-15 (1981) (conf. rep.). The D.C. Circuit has recognized a similar imprecision exists in many opinions—including in opinions discussed elsewhere in this report—that examine joint explanatory statements of conference committees. See *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 236 (D.C. Cir. 2003) ("Courts, including the Supreme Court, have not always been precise about" the distinction between a conference report and its accompanying joint explanatory statement, "referring sometimes to material in joint explanatory statements as the conference report."). The distinction is an important one to draw correctly, though, because the chambers vote on the conference report but not on its joint explanatory statement. See *id.*

³⁴⁸ *Demby*, 671 F.2d at 510 (MacKinnon, J., announcing judgment of the court).

³⁴⁹ See, e.g., *Resol. Tr. Corp. v. Gallagher*, 10 F.3d 416, 421 (7th Cir. 1993) ("We must first examine the Conference Report because it is the most persuasive evidence of congressional intent besides the statute itself."); *Cohn v. United States*, 872 F.2d 533, 534 (2d Cir. 1989) (similar); *Kuehner v. Heckler*, 778 F.2d 152, 160 (3d Cir. 1985) ("The Joint Statement is a particularly useful indicator of legislative intent because, more than any other document, it reflects the sentiments of both houses. It is the closest we have to an 'official legislative interpretation'" of the Social Security Disability Benefits Reform Act of 1984. (internal quotation marks omitted)); *Sierra Club v. Clark*, 755 F.2d 608, 615-16 (8th Cir. 1985) (stating that the conference report "must be given great weight").

³⁵⁰ CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon, at 40 & fig.1.

Court has suggested that a particular document “would be due great weight” if it were the product of a conference committee.³⁵¹

On occasion, though, federal courts have disagreed over the weight due to a legislative history document that arguably was intended to serve the same purpose as a joint explanatory statement for a statute enacted after an exchange of amendments between the houses. One such statute is the Bankruptcy Reform Act of 1978.³⁵² Prior to final passage, bill managers in each chamber inserted lengthy remarks into the *Congressional Record*. The bill managers’ remarks sought to “explain” how the proposed amendment exchange would resolve differences in the House- and Senate-passed versions of the bill.³⁵³

As a “significant” overhaul to bankruptcy law,³⁵⁴ the federal courts often referred to the Bankruptcy Reform Act’s legislative history to answer a range of statutory interpretation questions. Treatment of the bill managers’ joint statement varied. The Second Circuit, for example, characterized the joint statement as “offered in lieu of a conference report by the principal sponsors of the Act” and therefore “entitled to great weight.”³⁵⁵

However, in *In re Burns*, the Eleventh Circuit disagreed.³⁵⁶ The Eleventh Circuit noted features of conference committees that contribute to “the clout that conference committee reports carry” as evidence of legislative intent—conferees are “traditionally elite” (e.g., committee chairs, bill sponsors, or floor managers), and chamber rules give special structure to conference proceedings and privileged floor consideration for conference reports.³⁵⁷ Because the Bankruptcy Reform Act joint statement was not the product of a conference committee, it did not carry those same “indicia of reliability.”³⁵⁸ Thus, the joint statement was akin to a statement of a bill sponsor—“somewhat useful” as a “piece of legislative history” but not owed the “controlling” weight that a joint explanatory statement would enjoy.³⁵⁹

³⁵¹ Nat’l Ass’n of Greeting Card Publishers v. U.S. Postal Serv., 462 U.S. 810, 832 n.28 (1983) (concluding that a “Statement of Managers” did not have “the status of a conference report” or “even a report of a single House available to both Houses” because it “became available only after the Senate had completed its consideration” of a bill’s conference report).

³⁵² Pub. L. No. 95-598, 92 Stat. 2549 (1978). Congress enacted the statute through an exchange of amendments between the houses. See 124 CONG. REC. 34,143, 34,145 (Oct. 6, 1978) (agreeing to the Senate amendment to the House amendment to H.R. 8200); 124 CONG. REC. 34,019 (Oct. 5, 1978) (agreeing to the motion to concur in the House amendment to H.R. 8200 with an amendment).

³⁵³ See, e.g., 124 CONG. REC. 33,992 (Oct. 5, 1978) (statement of Sen. DeConcini) (“This statement is made in my capacity as chairman of the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, in order to explain the House amendment to the Senate amendment to H.R. 8200.”).

³⁵⁴ See, e.g., *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 53–54 (1982) (plurality) (noting that after “almost 10 years of study and investigation” the Bankruptcy Reform Act “made significant changes in both the substantive and procedural law of bankruptcy”).

³⁵⁵ *In re Spong*, 661 F.2d 6, 10 (2d Cir. 1981).

³⁵⁶ 887 F.2d 1541 (11th Cir. 1989).

³⁵⁷ *Id.* at 1548 n.8.

³⁵⁸ *Id.* at 1548–59.

³⁵⁹ *Id.* at 1549 (internal quotation marks omitted); cf. *D. C. Fed’n of Civic Ass’ns, Inc. v. Volpe*, 434 F.2d 436, 444 n.38 (D.C. Cir. 1970) (“The ‘Statement of the Managers on the Part of the House’ was only appended to the Conference Report. It did not represent the will of the Senate conferees and can only be said to represent the personal opinions of those who signed it.”).

More recent³⁶⁰ regular appropriations acts have frequently become law through an exchange of amendments between the houses and not through a conference committee.³⁶¹ Under the reasoning in *In re Burns*, the explanatory statements that accompany these acts might be thought to lack the “indicia of reliability” that characterize joint explanatory statements.

The preceding matter provision concerning the explanatory statement likely changes that conclusion. The concern of cases such as *In re Burns* is that a court might misjudge legislative intent by giving undue weight to the “[s]tray comments” of “individual legislators.”³⁶² In the preceding matter provision, though, Congress itself has directed that a statement inserted into the *Congressional Record* by one or two Members³⁶³ is not simply the “stray” comments of those legislators but rather should be treated as a joint explanatory statement of a conference committee—that is, as the authoritative congressional statement concerning the bill that it accompanies. Accordingly, with the preceding matter provision Congress appears to have directed that to the extent a court or agency examines a regular appropriations act’s legislative history, it should refer first to the explanatory statement and give it priority over other markers of legislative

³⁶⁰ As noted above, this report discusses statutes making regular appropriations for FY2000 and thereafter. *See supra* note 26. All acts making regular appropriations for Fiscal Years 2000 through 2007 became law following conference committee action. The one apparent exception, the District of Columbia Appropriations Act, 2001, likewise was the product of conference committee action. In October 2000, a conference committee filed a conference report for H.R. 4942, a measure whose report included appropriations for the District of Columbia in H.R. 5547. *See* H. R. REP. NO. 106-1005 (2000) (Conf. Rep.). The chambers agreed to the conference report. 146 CONG. REC. S11,241 (daily ed. Oct. 27, 2000); 146 CONG. REC. H11,296 (daily ed. Oct. 26, 2000). In November, the chambers passed by unanimous consent H.R. 5633, also titled the District of Columbia Appropriations Act, 2001. *See* 146 CONG. REC. D1179 (daily ed. Nov. 14, 2000); *see also* Pub. L. No. 106-522, 114 Stat. 2440 (2000). H.R. 5633 became law that same month. *See* 3 PUB. PAPERS OF PRESIDENT WILLIAM J. CLINTON 2578 (2000) (Statement on Signing the District of Columbia Appropriations Act, 2001”). Though no conference report accompanied H.R. 5633, with one exception the bill as passed was “identical to the conference report on the original D.C. appropriations bill for FY2001, H.R. 4942.” 146 CONG. REC. H11,915 (daily ed. Nov. 14, 2000) (statement of Rep. Istook). The sole difference between H.R. 5633 and H.R. 4942 was a reference in the former bill to the joint explanatory statement that accompanied the latter. *See* Pub. L. No. 106-522, § 167, 114 Stat. 2440, 2486 (2000); *see also* 146 CONG. REC. H11,915 (daily ed. Nov. 14, 2000) (identifying this provision as the sole difference between conference report on H.R. 4942 and H.R. 5633); Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 406(a), 114 Stat. 2763, 2763A-189 (2000) (repealing “[t]he provisions of H.R. 5547 (as enacted into law by H.R. 4942 of the 106th Congress)”).

³⁶¹ More broadly, use of conference committees has “plummeted” in recent decades. *See* CRS Report R46597, *The “Regular Order”: A Perspective*, by Walter J. Oleszek, at 40 (“[T]he number of conference committees plummeted from 62 (13% of 465 public laws) in the 103rd Congress (1993-1995) to 5 (1.5% of 329 public laws) in the 114th Congress (2015-2017) and to 6 (1% of 442 public laws) in the 115th Congress (2017-2019).”).

³⁶² *In re Kelly*, 841 F.2d 908, 912 n.3 (9th Cir. 1988) (privileging the “official committee reports” over the Bankruptcy Reform Act joint statement and further noting that such “stray comments” “cannot be attributed to the full body that voted on the bill. The opposite inference is far more likely.”).

³⁶³ Appropriations acts that have employed the preceding matter provision usually attribute the explanatory statement to the Chair of the House Appropriations Committee only, while National Defense Authorization Acts that have included the provision give authorship credit to the chairs of both congressional defense committees.

intent,³⁶⁴ just as courts or agencies would do if the act were the product of a conference committee.³⁶⁵

³⁶⁴ See Soc. Sec. Admin.—Application of Reprogramming Notification Requirement, B-329964, 2020 WL 5993901, at *3 (Comp. Gen. Oct. 8, 2020) (stating in the reprogramming context that an “explanatory statement accompanying the appropriation [act] provides the best evidence of Congress’s expectations for the division of funds within an appropriation, as it is a bicameral document that reflects the final, enacted funding level for the appropriation” and preferring the statement to other forms of legislative history). One court has disagreed with this general approach. See *Texas Workforce Comm’n v. U.S. Dep’t of Educ., Rehab. Servs. Admin.*, 2018 WL 8619799, at *15 (W.D. Tex. Mar. 28, 2018) (refusing to find that an explanatory statement that was the subject of the preceding matter provision had “legitimate explanatory value”). This conclusion may be the result of an error on the court’s part. In addition to attaching the wrong label to the explanatory statement—referring to the document, instead, as a “joint explanatory statement”—the court mistakenly stated the *explanatory statement* likened itself to a joint explanatory statement of a conference committee. See *id.* (“That the *Joint Explanatory Statement* [sic] explained that it was to be treated as if it was a legitimate explanatory statement [sic] does not make it one” (emphasis added)). In fact, this comparison between the explanatory statement and a joint explanatory statement appeared in the *statute*. See Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 4, 128 Stat. 3292, 3312–13 (2014).

³⁶⁵ See *supra* notes 344–350 and accompanying text.

Appendix. Glossary

Appropriation	A type of budget authority that allows an agency to incur obligations and expend money from the Treasury for a specified purpose.
Appropriation Account	The basic unit of appropriation accounting, reflecting transactions (e.g., obligations incurred) involving the appropriation to which the account relates.
Bona Fide Needs Rule	Legal doctrine that requires an obligation incurred using a fixed-period appropriation to meet a need of the agency that exists during the appropriation's period of availability.
Budget Authority	Statutory authority to enter into financial obligations on behalf of the United States that will result in the immediate or future outlays of federal funds.
Contract Authority	A type of budget authority that allows the making of an obligation. Contract authority does not, itself, provide authority for an agency to liquidate, or pay, the obligation.
Current Appropriation	An appropriation whose period of availability has not yet ended, and which therefore remains available as a temporal matter to incur new obligations.
Duration of Budget Authority	A characteristic of budget authority that describes the time period in which the authority is available for obligation.
Expired Appropriation	An appropriation whose period of availability has lapsed, and which therefore is no longer available to incur new obligations. Expired appropriations may still be available for other, limited purposes.
Explanatory Statement	A document written by one or more bill managers in connection with a bill proposed for enactment through an exchange of amendments between the houses.
Fixed-period Appropriation	An appropriation that is available for obligation only for a stated time period (e.g., until September 30, 2021). An agency must use such appropriations in compliance with the bona fide needs rule.
General Provision	Matter in a regular appropriations act that typically follows the act's appropriating titles. Often appearing as numbered sections, general provisions (also called administrative provisions) might include further budget authority, grant transfer authority, make rescissions, impose limitations on the act's appropriations, modify substantive law, or express the sense of Congress on an issue.
Heading	Matter in a regular appropriations act that immediately precedes an unnumbered paragraph and, among other things, serves to name the appropriation or other budget authority to which it relates.
Joint Explanatory Statement	A document written by a conference committee that details the effect that the amendments or propositions of a conference report will have on bill to which the conference report relates.
Limitation on Obligation	A provision in a regular appropriations act that constrains the obligations that may be entered using budget authority that existed prior to enactment of the regular appropriations act.
Liquidating Appropriation	An appropriation made only to liquidate, or pay, an obligation entered into under other budget authority, such as contract authority.
Nonseverable Service	A service that generally calls for the creation of an end product. While performance of a nonseverable service may be divided into stages, the agency derives value only when the end product is produced.
No-year Appropriation	An appropriation that is available for obligation indefinitely, until expended. The bona fide needs rule does not apply to no-year appropriations.

Obligation	A definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability based only on the actions of a third party.
Preceding Matter	As used in this report, the portions of a regular appropriations act that appear after the enacting clause and before the first appropriating title of the act.
Prefatory Matter	As used in this report, the initial matter of a regular appropriations act, consisting of the act's style and title and its enacting clause.
Principal Clause	In a regular appropriations act, typically the first clause of an unnumbered paragraph. The principal clause usually grants an amount of budget authority, subject to, among other things, one or more provisos that immediately follow the principal clause.
Proviso	In a regular appropriations act, matter that appears in an unnumbered paragraph following that paragraph's principal clause. The act will introduce each proviso with the phrase " <i>provided, that</i> " or " <i>provided, further.</i> "
Regular Appropriations	As used in this report, a modifier that describes an act (or bill) that provides (or if enacted would provide) funding for the continued operation of federal departments, agencies, and government activities for a particular fiscal year. Regular appropriations bills are under the jurisdiction of the Appropriations Committees.
Rescission	A provision of statute that cancels the availability of budget authority included in a prior statute.
Severable Service	A service that meets a continuing or recurring need of an agency. The service is capable of being divided into components, and the agency derives value from the performance of each component.
Substantive Law	Provisions of law that establish the rights, duties, authorities, or obligations of a federal officer or employee or of third parties.
Transfer	The act of shifting budget authority between appropriation accounts or funds.
Transfer Authority	Authority provided by statute to debit one appropriation account or fund to the credit of another.
Unnumbered Paragraph	The portions of a regular appropriations act, organized by title, that make appropriations or provide other budget authority. Each unnumbered paragraph is preceded by a heading and may consist of a principal clause and one or more provisos.

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