

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

§ 302(f)(2)(A)

(A)²⁶⁵ the appropriate allocation²⁶⁶ of such

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

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

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

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

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

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

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

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

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

²⁶ The appropriate allocation setting the ceiling may be an allocation of no dollars. See 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

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

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

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

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

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

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

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

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

²⁶⁶(...continued)

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

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

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

²⁶⁷ *See supra* pp. 88-90.

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

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

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

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