



# EXPLAINER

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## Understanding “Must-Pass” Bills

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It is common to hear members of Congress, their staff, and other stakeholders refer to certain bills as “must-pass”—e.g., “Congress will definitely act on that bill before it recesses for the year, because that’s a ‘must-pass’ bill.” But what *is* a must-pass bill, and why is it so important that it passes? This explainer will briefly describe what must-pass bills are and how they can be used. It will also discuss possible upcoming must-pass bills.

This explainer uses numerous terms that are common parlance within Congress, but may be unfamiliar to some readers. It may be useful to consult this glossary, [Understanding Capitol Hill Jargon](#), developed by the Congressional Progressive Caucus Center, when encountering such terms.

### What is a “Must-Pass” Bill?

Must-pass bills are bills that Congress, as the term suggests, *must pass* in order to avoid something undesirable happening. Sometimes, that “undesirable” outcome has practical implications: appropriations bills, for instance, are considered must-pass bills because they are necessary to keep the government open and avoid a shutdown, which is harmful for federal workers, the operation of government-run programs, and the U.S. economy.<sup>1</sup> Other times, bills are considered must-pass because failing to pass them would have political ramifications. For example, if the White House and Congressional leaders have deemed a particular bill a high priority and underscored that in the press, failing to pass that bill may result in negative headlines and even gloating from the opposition party.

Sometimes, there are both practical *and* political consequences for failing to advance a must-pass bill. Returning to the previous example of appropriations bills, without which the government shuts down, both the public and the media are likely to blame the White House and Congress for any fallout a shutdown precipitates, causing political headaches *on top of* the shutdown’s economic implications and the pain it causes for American families.

Must-pass bills can be authorizing bills or appropriations bills. An authorizing bill *allows* Congress to allocate funding for a specific priority, while appropriations legislation *actually allocates* the funding. This is why appropriations bills are

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<sup>1</sup> For more information on the appropriations process, see the Congressional Progressive Caucus Center’s, [“FY22 Appropriations Explainer.”](#)

sometimes referred to as “spending bills.” Again, because appropriations bills are necessary to keep federal programs funded and, accordingly, avoid government shutdowns, they are always considered must-pass.

## Using Must-Pass Bills to Advance Priorities

### *Policy Riders*

Members of Congress often use must-pass bills to advance measures that may be unlikely to become law as standalone bills, either because the measure in question is not a high priority for other members or because it lacks sufficient support to pass on its own. Members can do this in a number of ways. They might work with the lead author of the must-pass legislation—often, a committee chair—to get their priority included in the bill’s initial draft. Others who sit on the bill’s committee of jurisdiction might use the bill’s markup to offer their priority as an amendment. Members who do not sit on the committee of jurisdiction, meanwhile, could propose an amendment to the bill when it is considered in their full chamber for a vote, if allowed by the rules governing floor proceedings for the must-pass bill. Such rules will be discussed in greater detail later in this explainer.

These individual member priorities are sometimes referred to as “riders,” as they advance by hitching a *ride* on a moving legislative vehicle. This term is typically used when a policy is not obviously related to the vehicle it is attached to. Occasionally, a rider remains attached to future iterations of the legislation it initially “rode” on. This is most typical for appropriations bills, which expire and must be passed again annually. These riders are often called “legacy riders.”

Must-pass bills have been used to advance all manners of policies, and some have had long-lasting consequences. One example of a legacy rider that has had far-reaching implications is the Hyde Amendment, first passed in 1976. Authored by Congressman Henry J. Hyde (R-IL), it [prohibited coverage of abortion care under Medicaid](#). For decades, it has been attached to the annual appropriations bill that funds the Department of Health and Human Services (HHS), preventing insurance programs run through HHS—including [Medicaid, Medicare, the Children’s Health Insurance Program and the Indian Health Service](#)—from covering abortion. Over time, the Hyde Amendment was added to other appropriations bills, expanding the populations impacted by abortion coverage bans.<sup>2</sup>

A more recent example of a must-pass bill being used to advance significant policy occurred in 2019 via the annual National Defense Authorization Act (NDAA). This mammoth bill authorizes defense spending and lays out policies related to the military. The 2019 NDAA ([Public Law 116-92](#)) was used to create a paid leave benefit for federal employees.

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<sup>2</sup> Impacted programs are (i) Medicaid, Medicare, and Children’s Health Insurance Program beneficiaries; (ii) federal employees and their dependents; (iii) Peace Corps volunteers; (iv) Native Americans; (v) people getting health services through CHAMPVA and the Department of Veterans Affairs; (vi) people in federal prisons and detention centers, including those detained for immigration purposes; and (vii) people with no or low incomes in the District of Columbia through the use of local funds.

## SIDE BAR: Understanding the Appropriations Process

Federal programs are funded by appropriations bills on an annual basis, giving Congress regular opportunities to conduct oversight and provide direction on how federal money is spent. Congress must pass new appropriations bills every year by September 30. If Congress misses that deadline, the government shuts down and important activities—[food safety inspections](#), [plane safety inspections](#), [toxic pollution clean-ups](#), and more—cease. Thus, appropriations bills are considered must-pass legislation. Since appropriations bills must pass, members of Congress and advocates often look to them to serve as vehicles for their legislative priorities. To organize effectively and advance those priorities, it is important to understand key moments in the appropriations process. Below is a brief explanation of this process. For a more thorough description, see the Congressional Progressive Caucus Center's [FY22 Appropriations Explainer](#).

- 1) Member requests.** Every Spring, before appropriations bills for the upcoming year are written, members of Congress advocate for their priorities with Appropriations Committee members. Often, these priorities reflect concerns they have heard from advocates and constituents.
- 2) Bill drafting.** Then, the Appropriations Committee's 12 subcommittees draft their respective bills, taking into account the priorities they heard. Members typically try to get their priorities included in these first drafts, as this is easier than adding something later when new additions garner more attention—and, potentially, opposition.<sup>3</sup>
- 3) Subcommittee markups.** The subcommittees then hold markups, allowing the public to see the draft spending bills for the first time and determine if their priorities were incorporated. While members *can* attempt to amend the bills at this point, they usually offer amendments during the next step.
- 4) Full Committee markups.** Next, the full Appropriations Committee marks up the bills subcommittees have approved, and full committee members can offer amendments. A member might offer an amendment to boost spending on a specific program they support, or prevent money from being spent on an activity they do not believe is worthwhile, etc.
- 5) Floor consideration.** Then, the bills head to the full House or Senate for consideration. This gives members that do not sit on the Appropriations Committee a chance to propose amendments. However, those amendments must adhere to certain rules about the kinds of items that can be included in appropriations bills (see the section of this explainer titled "Limitations on the Use of Must-Pass Bills").
- 6) Conference.** The House and Senate may craft different versions of the same appropriations bill. When this happens, they must "conference" with each other to come up with a compromise version that can be signed into law. This often happens through direct talks between House and Senate Appropriations Committee leaders. Once a deal is reached, it must be approved by both chambers before heading to the President's desk.

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<sup>3</sup> There are 12 appropriations bills that must-pass annually: 1) Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations; 2) Commerce, Justice, Science, and Related Agencies Appropriations; 3) Defense Appropriations; 4) Energy and Water Development, and Related Agencies Appropriations; 5) Financial Services and General Government Appropriations; 6) Homeland Security Appropriations; 7) Interior, Environment, and Related Agencies Appropriations; 8) Labor, Health and Human Services, Education, and Related Agencies Appropriations; 9) Legislative Branch Appropriations; 10) Military Construction, Veterans Affairs, and Related Agencies Appropriations; 11) State, Foreign Operations, and Related Programs Appropriations; and 12) Transportation, and Housing and Urban Development, and Related Agencies Appropriations.

## Earmarks

During the 117th Congress, appropriations bills became a vehicle for members of Congress to advance their priorities related to specific needs in their districts. Congressionally-directed spending, commonly referred to as an “earmark,” is a member-requested allocation of discretionary spending for a specific project, typically within a member’s district. A moratorium on this practice was put in place in 2011. However, in the 117th Congress, both the House and the Senate Appropriations Committee Chairs indicated that they would once again begin accepting members’ earmark requests, now called [“Community Project Funding.”](#) Appropriators established new guidelines to govern the earmark process, forbidding any member of Congress from pursuing funding to further their financial interests or that of their spouse and mandating that [members’ requests be made public](#). In addition, only government or non-profit entities were eligible to receive earmarked funds, and the total allocation of earmarks for the fiscal year were not permitted to exceed 1 percent of discretionary spending. Members were allowed to submit up to 10 funding requests.

Many of the projects members requested were included in the final Fiscal Year 2022 omnibus appropriations bill ([Public Law 117-103, Consolidated Appropriations Act, 2022](#)) that was signed into law in March. Members obtained funding for [lead pipe replacements in Michigan](#), [substance use treatment services in Massachusetts](#), [housing for young adults experiencing homelessness in Texas](#), [safer public housing in Minnesota](#), and many more projects targeting local needs. Thus, this bill—already a must-pass bill as a government funding measure—took on additional importance for members and the communities seeking earmarked funds.

On March 18, 2022, House Appropriations Committee [Chair Rosa DeLauro announced](#) that House members would be permitted to make earmark requests for Fiscal Year 2023 and released [updated guidance](#) for members to follow when submitting their requests. In one notable change, members will be permitted to submit up to 15 funding requests—five more than last year. It is important to note that earmarks’ inclusion in the 2022 omnibus appropriations bill is not a guarantee that they will be allowed in future appropriations bills. It is possible that future Appropriations Committee leaders will again proscribe the practice.

### **“Moving the Needle”**

While must-pass bills have been used successfully to advance major policies, as in the aforementioned examples, it is not always possible to do so. The logic behind attaching a particular policy to a must-pass bill is that it would be unlikely to become law on its own, perhaps because the policy does not have sufficient support in the House, Senate, or White House. However, opponents of the policy in question might be willing to let it advance within a must-pass bill in order to win the votes of the policy’s advocates in Congress.

In some cases, though, a policy might face *too much* opposition to advance even via this method, risking losing the votes of members who otherwise support the

must-pass bill. However, this does not mean that no progress is possible for the policy's proponents. In these cases, a member might put forward a narrower version of their policy or another option that "moves the needle" in favor of their policy, such as requiring a study from the Government Accountability Office (GAO) that might make the case for their policy change, or a report from a federal agency that could similarly be used to indicate the need for their policy in the future.

## Anticipating Opportunities within Must-Pass Bills

Predicting which bills will be deemed must-pass is not an exact science. However, looking at historical trends can help to forecast when must-pass bills might come up.

There are two types of must-pass bills that reliably come before Congress every year: appropriations bills and the NDAA. These bills are perhaps the most common must-pass vehicles to which members will attempt to attach their priorities, both because they are annual and because there are reliably opportunities to amend them. These bills also tend to come together around the same time each year. Early in a calendar year, before the House or Senate Appropriations Committee begins drafting spending bills, constituents, advocacy organizations, and lobbyists will request meetings with members and their staffers to seek support for spending priorities. Because these meetings tend to occur in March and make the month busy for offices, this time of year is sometimes called "March madness." The Appropriations Committees will typically meet to write the bills themselves later in the spring and summer, and the House often works to pass the bills before the August recess. Appropriations bills must be finalized in both chambers and sent to the president's desk to become law before the fiscal year ends on September 30 to avoid a government shutdown.<sup>4</sup> With respect to the NDAA, timing for action in Congress varies more, but action at the committee level tends to begin in early-to-mid summer. In certain instances, members of Congress may wait for the President to release his budget proposal before beginning NDAA discussions, as was the case [last year](#).

Outside of appropriations bills and the NDAA, one might examine funding authorizations that are expiring in the year ahead to anticipate which spending authorities Congress might need to update. The [Congressional Budget Office \(CBO\)](#) compiles a list of those sunseting authorizations each year. However, Congress will *not* necessarily act to extend every authority that is set to expire. To discern which pending expirations Congress will act on, it is useful to look back at prior congresses to identify which authorizations are routinely renewed. For example, roughly every five years, Congress will pass what is known as the "farm bill," a comprehensive package concerning food and agricultural policy. This bill is considered must-pass because, as the [Congressional Research Service](#) explains, "some farm bill programs would expire without reauthorization, such as the nutrition assistance programs and

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<sup>4</sup> Congress does not always pass new appropriations bills for the fiscal year ahead prior to this deadline. Occasionally, a stopgap measure known as a continuing resolution (CR) is necessary to avoid a shutdown and allow Congress more time to negotiate a full-year spending package. A CR funds the government at current spending levels. For more information, please see the Congressional Progressive Caucus Center's ["Continuing Resolutions Aren't Enough: Our Communities Can't Wait."](#)

the commodity programs. Without reauthorization, certain basic farm commodities would revert to long abandoned—and potentially costly—supply-control and price regimes under permanent law dating back to the 1940s.” Because this bill has typically been reconsidered every five years, it is relatively easy to anticipate when Congress will work on a new farm bill.

Monitoring the statements of Congressional leaders and committee chairs can also help to identify must-pass bills on the horizon. These leaders will often work to garner public attention around high-priority legislation. The Senate’s United States Innovation and Competition Act and the House’s America COMPETES Act offer a recent example: both bills seek to address supply chain and manufacturing disruptions, and [the White House has stated its support](#) for this effort. While differences between the two bills must still be ironed out, the fact that both chambers and the White House have signaled their commitment to doing so indicates that a compromise version is, indeed, likely to be signed into law, thus rendering this a must-pass bill.

### Limitations on the Use of Must-Pass Bills

Not every must-pass bill can be used as a vehicle for other priorities, often due to procedural hurdles. Appropriations bills, for example, focus exclusively on government spending and typically cannot be used to advance significant policies. As such, there are strict rules around amendments to appropriations bills. Members may propose amendments that state “no funds shall be used for X,” or “increase spending on A by \$100 million and decrease spending on B by the same amount.” Members may *not*, however, offer amendments that propose providing funding for a new project not already authorized by law, or condition funding for an existing program on specific policy changes. Bills passed via the reconciliation process also have requirements that preclude the inclusion of certain policies.<sup>5</sup>

In addition, members using the amendment process to advance their priorities are limited by requirements around the “germaneness” of amendments, which vary depending on where the underlying bill sits at the time (i.e., in a committee, the full House, or the Senate) and the type of bill it is (e.g., an appropriations bill). In addition, the House will often pass legislation that has overwhelming support “under suspension of the rules,” a process that requires two-thirds approval of a bill and that does not allow members to offer amendments. Members may avoid these obstacles by working to insert their priority into the underlying legislative text or, if they must use an amendment process, tailoring their amendment carefully to avoid it being thrown out for procedural reasons.

### Upcoming Must-Pass Bills

Below are examples of must-pass bills that Congress may consider in 2022 and 2023. This list is *not* exhaustive, *nor* is it certain that Congress will consider all of these bills.

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<sup>5</sup> For more information about the reconciliation process, see the Congressional Progressive Caucus Center’s [“Overcoming the Filibuster Through Budget Reconciliation.”](#)

This list is meant only to provide guidance that may help identify must-pass legislation.

Legislation:	Why is it “must-pass”?
<b>FY 2023 appropriations bills</b>	Congress must pass appropriations bills each year to allocate funding for federal agencies and avoid a government shutdown.
<b>National Defense Authorization Act</b>	The National Defense Authorization Act (NDAA) authorizes funding and sets policy for U.S. military and defense programs. Congress has passed an NDAA every year since 1961.
<b>Water Resources Development Act</b>	The Water Resources Development Act (WRDA) authorizes funding for U.S. Army Corps of Engineers civil infrastructure projects, typically focused on water resources. According to the <a href="#">House Transportation and Infrastructure Committee</a> , WRDA has been “successfully enacted, on a bipartisan basis, in each of the last four Congresses.” <a href="#">In a letter</a> dated January 13, 2022, the Committee’s chair and ranking member noted their plans “to introduce and consider a WRDA 2022 this spring” and solicited members’ “project, study, and policy requests for consideration.”
<b>Food and Drug Administration (FDA) user fees</b>	The FDA uses appropriations from Congress and user fees paid by the drug and medical device industries to fund its review of medical products. According to the <a href="#">Congressional Research Service</a> , “the human medical product user fee programs require reauthorization every five years...the reauthorization legislation typically includes additional provisions related to FDA, since for many the bill is considered ‘must-pass’ legislation in order to not interrupt FDA product review activities.” The last reauthorization, <a href="#">the FDA Reauthorization Act</a> , became law on August 18, 2017 and therefore must be renewed in 2022.
<b>The “farm bill”</b>	Roughly every five years, Congress passes what is known as the “farm bill,” a comprehensive package concerning food and agricultural policy. This bill is considered must-pass because, as the <a href="#">Congressional Research Service</a> explains, “some farm bill programs would expire without reauthorization, such as the nutrition assistance programs and the commodity programs. Without reauthorization, certain basic farm commodities would revert to long abandoned—and potentially costly—supply-control and price regimes under permanent law dating back to the 1940s.” The last farm bill, the <a href="#">Agriculture Improvement Act of 2018</a> , was signed into law on December 20, 2018 and therefore must be renewed in 2023.
<b>Provisions in the SUPPORT for Patients and Communities Act</b>	On October 24, 2018, the <a href="#">SUPPORT for Patients and Communities Act</a> , legislation aimed at addressing the opioid epidemic, became law. This legislation included several provisions set to expire in 2023, such as CDC grants for overdose-prevention activities, funding for state-run prescription drug monitoring programs, and more. The <a href="#">CDC reported in November 2021</a> that “estimated overdose deaths from opioids increased to 75,673 in the 12-month period ending in April 2021, up from 56,064 the year before.” Given the ongoing crisis, it is possible Congress will update the provisions slated to expire in 2023.