



House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 112th Congress

Bill Heniff Jr.

Analyst on Congress and the Legislative Process

July 20, 2011

Congressional Research Service

7-5700

www.crs.gov

R41926

Summary

On January 5, 2011, the House agreed to H.Res. 5, adopting the Standing Rules for the 112th Congress, including several changes affecting the congressional budget process.

H.Res. 5 made six changes to the House Standing Rules affecting the congressional budget process:

- amended clause 10 of Rule XXI (now referred to as the CutGo rule) to prohibit the consideration of legislation that would cause a net increase in mandatory spending, replacing the former House PAYGO rule, which required that legislation affecting either mandatory spending or revenue not increase the deficit;
- repealed Rule XXVIII, the so-called “Gephardt rule,” which had provided for the automatic engrossment of a House joint resolution changing the statutory limit on the public debt when Congress had completed action on the congressional budget resolution;
- added a new clause 4 to Rule XXIX to provide that the House Budget Committee chair may provide “authoritative guidance,” on behalf of the full Committee, about the impact of legislation on the levels of spending and revenues;
- amended clause 3 of Rule XXI to prohibit the consideration of general appropriations measures that provided spending authority derived from the Highway Trust Fund for purposes not authorized for the highway or mass transit categories, replacing the former rule that effectively guaranteed transportation funding at the level set forth in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users;
- amended clause 7 of Rule XXI to prohibit the consideration of a budget resolution containing budget reconciliation directives that would have the net effect of increasing mandatory spending, replacing the former rule that prohibited budget reconciliation directives that would increase the deficit; and
- repealed clause 11 of Rule XVIII, which allowed amendments striking unfunded intergovernmental mandates on the House floor, unless a special rule adopted by the House specifically prohibited such action.

In addition, H.Res. 5 includes several separate orders affecting the congressional budget process that will apply during the 112th Congress. Four separate orders renew orders adopted at the beginning of several previous Congresses; these orders address the application of certain points of order under the Congressional Budget Act of 1974 and strengthen the enforcement of allocations under Section 302(b) of the Budget Act. Five separate orders establish certain procedural provisions for the purposes of budget enforcement in the absence of Congress completing action on the FY2011 budget resolution in 2010. One separate order creates a limit on long-term mandatory spending legislation. Two separate orders allow the chair of the House Committee on the Budget to exempt the budgetary effects of certain legislation in providing estimates of such legislation for purposes of budget enforcement under the Budget Act and House Rules, as well as for purposes of the Statutory Pay-As-You-Go Act of 2010. Finally, one separate order effectively prevents the consideration of amendments to a general appropriations bill that propose to restore spending that had been cut by a previously adopted amendment.

Contents

Changes to Standing Rules	1
Cut-As-You-Go (CutGo) Rule	2
Repeal of Automatic Engrossment of Public Debt-Limit Legislation.....	4
“Authoritative Guidance” by Chair of House Committee on the Budget	6
Restrictions on General Appropriations Measures Relating to the Highway Trust Fund	7
Restriction on Budget Reconciliation Directives	8
Repeal of Ability to Offer an Amendment to Strike an Unfunded Intergovernmental Mandate Under Certain Conditions	10
Separate Orders.....	11
References to “Resolution” in Section 306 of the Budget Act	12
Application of Point of Order Under Section 303 of the Budget Act	12
Prospective Compensation Level for an Executive Position	13
Enforcement of Section 302(b) Allocations	14
Budget Enforcement Provisions for FY2011.....	16
Limitation on Long-Term Mandatory Spending Legislation.....	22
Exemptions From Budget Enforcement	23
Spending Reduction Amendments to General Appropriations Bill	24

Tables

Table 1. Changes to House Standing Rules Affecting the Congressional Budget Process in the 112 th Congress.....	1
---	---

Contacts

Author Contact Information	26
----------------------------------	----

The congressional budget process represents a set of rules and procedures governing the consideration and adoption of legislation affecting the federal budget. These budget rules and procedures supplement the regular legislative procedures of the House and Senate; that is, they are generally additional rules and procedures that apply specifically to budgetary legislation. They stem from the U.S. Constitution, various statutes (specifically, the Congressional Budget Act of 1974, as amended), House and Senate rules, and congressional practices.¹ Each Congress often alters these rules and procedures. In particular, the House, at the beginning of each Congress, typically modifies certain rules and procedures affecting the congressional budget process when it adopts its Standing Rules.

On January 5, 2011, the House agreed to H.Res. 5, adopting the Standing Rules for the 112th Congress, including several changes affecting the congressional budget process.² In addition, the House agreed, as part of H.Res. 5, to several separate orders affecting the congressional budget process that will apply during the 112th Congress. This report provides an explanation of these rules changes.

Changes to Standing Rules

H.Res. 5 contains six changes to the House standing rules affecting the congressional budget process (see **Table 1**). The rules changes involve six separate matters: (1) legislation affecting mandatory spending; (2) voting on debt limit legislation; (3) budgetary estimates provided by the House Committee on the Budget; (4) general appropriations measures affecting the Highway Trust Fund; (5) budget reconciliation directives contained in a congressional budget resolution; and (6) amendments striking unfunded intergovernmental mandates on the House floor.

Table 1. Changes to House Standing Rules Affecting the Congressional Budget Process in the 112th Congress

Section of H.Res. 5	House Rule Amended	Description
2(d)(1)	Rule XXI, Clause 10	Prohibits the consideration of legislation that would have the net effect of increasing mandatory spending (i.e., direct spending) over a six-year period and an 11-year period.
2(d)(2)	Rule XXVIII	Repeals Rule XXVIII, the so-called “Gephardt rule,” which provided for the automatic engrossment of a House joint resolution changing the statutory limit on the public debt when Congress completed action on the congressional budget resolution, thereby requiring a separate vote on such legislation.
2(d)(3)	Rule XXIX	Provides that the chair of the House Budget Committee may provide “authoritative guidance,” on behalf of the full Committee, about the impact of legislation on the levels of spending and revenues.

¹ For an overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by Bill Heniff Jr.

² The House must adopt its rules at the beginning of each Congress. Following customary practice, it does this by adopting the rules of the preceding Congress with certain amendments. The House agreed to H.Res. 5 by a vote of 240-191. For the consideration and adoption of H.Res. 5, see *Congressional Record*, daily edition, vol. 157 (January 5, 2011), pp. H7-H27.

Section of H.Res. 5	House Rule Amended	Description
2(d)(4)	Rule XXI, Clause 3	Prohibits the consideration of a general appropriations bill that provides spending authority derived from the Highway Trust Fund, or reduces or limits the accruing balance in the Fund, for any purpose other than those authorized for the highway and mass transit categories.
2(d)(5)	Rule XXI, Clause 7	Prohibits the consideration of a congressional budget resolution that contains reconciliation directives that would have the net effect of increasing direct spending (i.e., mandatory spending) over the period covered by the budget resolution.
2(e)(5)	Rule XVIII, Clause 11	Repeals clause 11 of Rule XVIII, which allowed, in the Committee of the Whole, a Member to offer an amendment proposing only to strike an unfunded intergovernmental mandate provision in a bill, unless a special rule adopted by the House specifically prohibited such action.

Cut-As-You-Go (CutGo) Rule

Section 2(d) of H.Res. 5 amended clause 10 of House Rule XXI to replace the former Pay-As-You-Go (PAYGO) rule with a new Cut-As-You-Go (CutGo) rule. This new CutGo rule generally prohibits the consideration of any legislation that would have the net effect of increasing mandatory spending in either of two time periods: (1) the six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years; and (2) the 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years.³ Prior to this rules change, the former PAYGO rule generally prohibited the consideration of any legislation affecting either mandatory spending or revenues that would increase the deficit over the same two time periods.⁴

The new rule applies to legislation affecting *mandatory spending* only. Mandatory spending, also referred to as direct spending, is provided in or controlled by authorizing laws, generally continues without any annual legislative action, and includes spending authority provided for such programs as Medicare, unemployment compensation, and federal retirement programs. Mandatory spending also includes many offsetting collections, such as Medicare premiums, which are treated as negative spending instead of as revenues.⁵ Like the former PAYGO rule, the new CutGo rule does not apply to *discretionary spending*, which is provided and controlled through the annual appropriations process.⁶

³ The “budget year” refers to the fiscal year that begins on October 1 of the calendar year in which the session of Congress begins. The “current fiscal year” is the fiscal year immediately preceding the “budget year.” Between October and December of any given year, the requirement would cover five- and 10-year periods, instead of the six- and 11-year periods.

⁴ The House created the PAYGO rule at the beginning of the 110th Congress to prohibit the consideration of legislation affecting direct spending and revenues that had the net effect of increasing the deficit. This rule was continued in the 111th Congress with modifications to provide some flexibility to its application and to align it more closely with the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111-139, 124 Stat. 8-29). For further information on the legislative history of the House PAYGO rule, see CRS Report R41510, *Budget Enforcement Procedures: House Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

⁵ For further information on offsetting collections, see Ch. 16, “Offsetting Collections and Offsetting Receipts,” in Office of Management and Budget, *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2012*, Washington, DC, 2011, pp. 223-238.

⁶ Discretionary spending may be constrained by other budget enforcement procedures associated with the annual (continued...)

Most significantly in relation to the former PAYGO rule it replaced, the new CutGo rule does not apply to legislation affecting revenues.⁷ This exclusion has at least two implications: (1) the House could consider legislation affecting revenues, regardless of whether it would increase the projected budget deficit, without being subject to the CutGo rule;⁸ and (2) legislation projected to increase mandatory spending may not be offset with increases in revenues to comply with the new rule.

Other than the exclusion of the revenue effects of legislation, the new CutGo rule generally retains the procedures related to the operation of the former PAYGO rule.⁹ First, the CutGo rule operates on a measure-by-measure basis. That is, the rule generally requires that each bill or amendment not have the net effect of increasing mandatory spending in either of the two time periods specified.¹⁰ In effect, to comply with the rule, each measure projected to increase mandatory spending must also include changes to existing law that would result in a reduction in mandatory spending by equivalent amounts. A projected reduction in mandatory spending as a result of a measure previously passed by the House or one to be considered subsequently by the House could not be used to offset an increase in mandatory spending in a measure under consideration.

Second, the rule provides an exception to this measure-by-measure application under clause 10(b) of House Rule XXI. This clause allows the savings from a previously-passed measure to be included in determining compliance with the CutGo requirement of a separate measure if a special rule provides that the two measures are to be combined upon engrossment.

(...continued)

budget resolution and the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 601-688). For further information on such other points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno. Also like the former PAYGO rule, the new rule counts as mandatory spending any “provisions in appropriations Acts that make outyear modifications to substantive law.”

⁷ Revenues are the funds collected from the public primarily as a result of the federal government’s exercise of its sovereign powers. They consist of receipts from individual income taxes, social insurance taxes (or payroll taxes, such as Social Security and Medicare taxes), corporate income taxes, excise taxes, duties, gifts, and miscellaneous receipts. For a comprehensive overview of federal revenues, see CRS Report RL32808, *Overview of the Federal Tax System*, by Molly F. Sherlock and Donald J. Marples.

⁸ Revenues may still be constrained by other budget enforcement procedures associated with the annual budget resolution and the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 601-688). For further information on such other points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

⁹ While not explicitly provided in the rule, as it was in the former PAYGO rule, the determination of the effects of legislation on mandatory spending presumably would be based on estimates provided by the House Committee on the Budget (i.e., the chair of the Committee, in accordance with the new clause 4 of Rule XXIX, as explained below) relative to the baseline estimates provided by the Congressional Budget Office (CBO). In fact, in ruling on a point of order under the new rule, the presiding officer stated the following: “Pursuant to clause 10 of rule XXI and clause 4 of rule XXIX, the Chair is authoritatively guided by estimates from the chair of the Committee on the Budget.” See *Congressional Record*, daily edition, vol. 157 (January 26, 2011), p. H495. With regard to baseline estimates, CBO generally is guided by Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; see specifically 2 U.S.C. 907).

¹⁰ It is important to note that an amendment is evaluated as to its net effect on mandatory spending relative to the measure it is proposing to change. That is, if the underlying measure is projected to reduce mandatory spending by \$250 million over both time periods, then an amendment complies with the CutGo rule only if the measure as amended by the amendment also has the net effect of reducing mandatory spending by at least \$250 million over both time periods. See, for example, *Congressional Record*, daily edition, vol. 157 (January 26, 2011), pp. H494-H406, in which the chair sustained a point of order under the CutGo rule against an amendment because it “would increase mandatory spending over a relevant period *as compared to the bill*” (emphasis added).

Finally, the new CutGo rule exempts provisions designated as an emergency from being counted in determining compliance with the rule. Under clause 10(c) of House Rule XXI, a determination as to whether legislation increases the deficit shall exclude any provision “expressly designated as an emergency for the Statutory Pay-As-You-Go Act of 2010.”¹¹ By reference to the Statutory PAYGO Act, the new CutGo rule incorporates the procedures related to the emergency designation provided by the act. Specifically, if legislation contains such a designation, the chair must put the question of consideration to the full House prior to its consideration. That is, the House must vote on whether to consider the legislation even though it contains an emergency designation exempting from the CutGo rule, as well as the Statutory PAYGO Act, all or certain budgetary effects resulting from such legislation. If the question is decided in the affirmative (by simple majority) the legislation is then considered. Alternatively, if the question is decided in the negative, the legislation may not be considered.

Although the House replaced its former PAYGO rule with this new CutGo rule, excluding the revenue effects of legislation on the budget deficit, the Statutory PAYGO Act of 2010 will continue to include such effects, unless changed or set aside by statute. That is, under the Statutory PAYGO Act, if the net effect of legislation affecting both mandatory spending and revenues (excluding certain policy initiatives) enacted over the course of a session of Congress increases the on-budget deficit over similar six-year and 11-year time periods, the President would be required to make largely across-the-board spending cuts in nonexempt programs.¹² Under authority provided in a separate order also included in H.Res. 5 (Section 3(i)), the chair of the HBC may exclude the budgetary effects of certain legislation, many having revenue effects, for purposes of the Statutory PAYGO Act, as explained below. However, excluding such revenue effects from the Statutory PAYGO requirements would require the agreement of the Senate, and the approval of the President, because it would require statutory action.

Repeal of Automatic Engrossment of Public Debt-Limit Legislation

Section 2(d)(2) of H.Res. 5 repealed the former Rule XXVIII, the so-called “Gephardt rule.” The former Rule XXVIII provided for the automatic engrossment of a House joint resolution changing the statutory limit on the public debt when the Congress had completed action on the congressional budget resolution, thus, not requiring a separate vote on the initial consideration of such legislation.¹³

The amount of money the federal government is allowed to borrow generally is subject to a statutory limit, which is set forth as a dollar amount in 31 U.S.C. 3101(b). From time to time, Congress and the President enact legislation adjusting the limit.¹⁴ Congress may initiate and consider such debt limit legislation under regular legislative procedures, either as legislation

¹¹ The exemption applies to an emergency designation contained in a bill or joint resolution, an amendment made in order as original text by a special rule, a conference report, or an amendment between the Houses. It does not apply to an emergency designation contained in other types of amendments, such as a floor amendment.

¹² For further information on the Statutory PAYGO Act, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr. (The referenced report was written by former CRS Specialist Robert Keith.)

¹³ For further information on the so-called “Gephardt rule,” see CRS Report RL31913, *Developing Debt-Limit Legislation: The House’s “Gephardt Rule”*, by Bill Heniff Jr.

¹⁴ For more information on the debt limit, see CRS Report RL31967, *The Debt Limit: History and Recent Increases*, by D. Andrew Austin and Mindy R. Levit.

affecting the debt limit only or as a part of a measure dealing with other topics.¹⁵ In 1979, however, the House amended its rules to provide for the automatic engrossment process for debt limit legislation, as provided in the former Rule XXVIII.¹⁶ The intent of the rule, as explained at the time of its establishment by its author, former Representative Richard Gephardt, was to place the consideration of the public debt limit within the context of the overall budget policies contained in the annual budget resolution.¹⁷ The Senate has never had a comparable procedure; if it chose to consider such a House-passed joint resolution, it did so under its regular legislative process.

Since its establishment as a House rule, the House explicitly suspended its operation in several years (calendar years 1988, 1990-1991, 1994-1997),¹⁸ and repealed it at the beginning of the 107th Congress in 2001.¹⁹ At the beginning of the next Congress (108th Congress) in 2003, however, the House reinstated it.²⁰

During the years in which it applied (i.e., in the 20 of the 31 years since it was first applied in 1980), the rule led to the automatic engrossment of 20 House joint resolutions changing the statutory limit on the public debt.²¹ In effect, under the rule, in these cases, the House was able to initiate legislation changing the level of the public debt limit without a separate, direct vote on the legislation. However, in only 10 of these cases did the Senate pass the measure without change, sending it to the President for his signature.²² In five cases, including the most recent change in the public debt limit (H.J.Res. 45, P.L. 111-139), the Senate amended the rule-initiated legislation, requiring the House to vote on the amended legislation before it could be sent to the President.²³

¹⁵ Congress may initiate and consider debt limit legislation through the budget reconciliation process provided under Section 310 of the Budget Act. In fact, in four instances, a change in the statutory limit on the public was included in budget reconciliation legislation. For further information, see CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill Heniff Jr.; and CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration*, by Bill Heniff Jr.

¹⁶ The rule was initially established as House Rule XLIX by P.L. 96-78 (93 Stat. 589-591), an act to provide for a temporary increase in the public debt limit. At the beginning of the 106th Congress, the rule was recodified as House Rule XXIII. When it was reinstated at the beginning of the 108th Congress, it was established as new House Rule XXVII. The rule was subsequently redesignated (without change) as Rule XXVIII during the 110th Congress upon the enactment of the Honest Leadership and Open Government Act of 2007 (S. 1, P.L. 110-81, September 14, 2007, see Section 301(a)).

¹⁷ See *Congressional Record*, vol. 125 (September 26, 1979), p. 26342.

¹⁸ In most cases, the House suspended the rule because legislation changing the statutory limit was not necessary; that is, at the time, the existing public debt limit was expected to be sufficient. In other cases, the House passed, or was expected to pass, separate legislation to increase the statutory limit. For additional information on these suspensions, see CRS Report RL31913, *Developing Debt-Limit Legislation: The House's "Gephardt Rule"*, by Bill Heniff Jr.

¹⁹ Section 2(s) of H.Res. 5, which was agreed to by the House on January 3, 2001. See *Congressional Record*, vol. 147 (January 3, 2001), pp. 24-37.

²⁰ Section 2(t) of H.Res. 5, which was agreed to by the House on January 7, 2003. See *Congressional Record*, vol. 149 (January 7, 2003), pp. 7-21.

²¹ For a listing of these House joint resolutions, see Table 1 in CRS Report RL31913, *Developing Debt-Limit Legislation: The House's "Gephardt Rule"*, by Bill Heniff Jr. While the rule was in effect, no House joint resolution was generated in years in which the House and Senate did not complete action on a budget resolution (calendar years 1998, 2004, 2006, and 2010); Congress did not complete action on a budget resolution in 2002 as well, but the rule had been repealed in the 107th Congress (2001-2002).

²² All 10 of these House joint resolutions were signed into law.

²³ Congress did not complete action on the remaining five House joint resolutions initiated under the rule: (1) the Senate amended one but the House took no further action; (2) the Senate began consideration on another but came to no resolution on it; and (3) the Senate took no action on three.

In addition, 32 (or 68%) of the 47 public-debt limit changes enacted into law during the period 1980 to January 2011 (when the House rule was repealed) were initiated by procedures other than the House rule, each requiring the House to vote on such legislation.²⁴ In total, in the 31 years since the House rule was first established, the rule effectively allowed the House to avoid a separate, direct vote on 10 (or 21%) of the 47 measures changing the debt limit that were ultimately enacted into law.

For the 112th Congress, the repeal of the automatic engrossment process under Rule XXVIII is intended to require the House vote directly on any legislation that changes the statutory limit on the public debt. Repeal of the rule, however, does not require the House to vote on the proposition of a change in the public debt limit as a separate matter.²⁵ That is, the House could still consider a change in the public debt limit as part of a measure, including budget reconciliation legislation, dealing with other topics.

“Authoritative Guidance” by Chair of House Committee on the Budget

Section 2(d)(3) of H.Res. 5 amended Rule XXIX by adding a new clause 4 to provide that the chair of the House Committee on the Budget (HBC) may provide “authoritative guidance” on the budgetary impact of legislation on behalf of the HBC.²⁶ Congressional budget enforcement rules provided in the Budget Act, as well as those occasionally contained in congressional budget resolutions and the House Rules, require the presiding officer to rely on estimates provided by the HBC in making determinations as to whether or not a legislative proposition violates such rules.²⁷ Generally, in practice, the chair of the HBC has provided such estimates, without necessarily basing them on any formal input from the full Committee. This new rule basically codifies in the House Rules this long-standing practice.

²⁴ The legislative history of each statute changing the public debt limit was derived from the Legislative Information System (LIS) based on the list of such statutes in Table 7.3 in Office of Management and Budget, *Historical Tables, Budget of the U.S. Government, Fiscal Year 2012*, Washington, DC, 2011, pp. 142-144.

²⁵ During the 111th Congress, several measures were introduced that would have required a separate vote on the proposition of increasing the statutory limit on the public debt. For example, see the following measures: (1) H.R. 4262; (2) H.Res. 272; (3) H.Res. 949; and (4) H.Res. 1071. So far in the 112th Congress (as of June 30, 2011), no such legislation has been introduced.

²⁶ For an example of the application of this new clause in relation to a point of order, see *Congressional Record*, daily edition, vol. 157 (January 26, 2011), pp. H494-H406.

²⁷ Section 312 of the Budget Act provides that for purposes of enforcement, spending and revenue levels “shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.” Section 427(c) of S.Con.Res. 13 (H.Rept. 111-89, 111th Congress), the FY2010 budget resolution, the most recent congressional budget resolution agreed to by Congress, contained similar language. Even without such requirement provided in relation to a specific rule, in practice, the presiding officer generally would be guided by such estimates provided by the HBC, especially in the absence of contrary information. For example, in ruling on a point of order under Section 3(j)(3) of H.Res. 5 (112th Congress), the presiding officer stated that he had been “persuasively guided by an estimate from the chair of the Committee on the Budget.” See *Congressional Record*, daily edition, vol. 157 (February 18, 2011), p. H1203.

Restrictions on General Appropriations Measures Relating to the Highway Trust Fund

Section 2(d)(4) of H.Res. 5 amended clause 3 of Rule XXI, replacing the former text entirely, to change the focus to prohibit the consideration of a general appropriations bill that provides spending authority derived from the Highway Trust Fund (excluding funds transferred from the General Fund of the Treasury), or reduces or limits the accruing balance in the Fund, for any purpose other than those authorized for the highway and mass transit categories.²⁸ This new text aims to ensure that revenues collected for the purpose of authorized highway and mass transit activities will not be diverted for other purposes.

The significance of this rules change arguably is the effective repeal of the former rule.²⁹ The former clause 3 of Rule XXI prohibited the consideration of legislation that would cause the obligation limitations to fall below the levels specified in Section 8003 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, P.L. 109-59), as adjusted, for the highway or mass transit categories.³⁰ The former rule effectively created funding guarantees for transportation activities within the highway and mass transit categories. Any legislation, including an amendment, that basically had the effect of causing the spending to be less than the amount authorized would be subject to a point of order. For example, an amendment proposing to reduce the amount of the limitation on obligations for federal-aid highway funds (i.e., reducing the amount of spending authority for highway projects) below the levels authorized in statute generally would have been subject to the point of order.

Under the new rule, however, a general appropriations measure, or an amendment to it, could reduce spending authority for highway and mass transit activities below the level in statute without being subject to the point of order, as long as those funds were not made available for a purpose not authorized under SAFETEA-LU. For example, an amendment proposing to prohibit the funding of certain authorized highway projects that would have the effect of reducing transportation spending provided for in SAFETEA-LU for a fiscal year presumably would not violate the new rule.

²⁸ The highway and mass transit categories are defined in Sections 251(c)(4)(B) and 251(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (see 2 U.S.C. 900). The categories generally comprise the budget accounts “that are subject to the obligation limitations on contract authority set forth in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or for which appropriations are provided in accordance with authorizations in that Act.”

²⁹ For a brief colloquy between Representatives David Dreier and John Mica on the anticipated effect of the rules change on the funding of highway, highway safety, motor carrier safety, and transit programs, see *Congressional Record*, daily edition, vol. 157 (January 5, 2011), p. H21.

³⁰ The former rule was established as clause 9 of Rule XXI in 1998 by the Transportation Equity Act for the 21st Century, was transferred to clause 3 of Rule XXI in 1999 at the beginning of the 106th Congress, and modified in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. For additional information on the legislative history of the former rule, see U.S. Congress, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the 111th Congress*, H.Doc. 110-162, 110th Cong., 2nd sess. (Washington: GPO, 2009) (hereafter *House Rules and Manual*), sec. 1064, pp. 870-871.

Restriction on Budget Reconciliation Directives

Section 2(d)(5) of H.Res. 5 amended clause 7 of Rule XXI to prohibit the consideration of a congressional budget resolution³¹ that includes budget reconciliation directives that would result in legislation that would cause a net increase in direct spending (i.e., mandatory spending) over the period of the budget resolution.

Budget reconciliation, provided by Section 310 of the Budget Act, is an optional two-step process Congress may use to implement the direct spending, revenue, and debt-limit levels set forth in budget resolutions.³² In the first step, Congress includes reconciliation directives in a budget resolution instructing one or more committees in each chamber to recommend changes in statute to achieve the levels of direct spending, revenues, debt limit, or a combination thereof, agreed to in the budget resolution. In the second step, Congress develops and considers budget reconciliation legislation that includes such changes to existing law. If more than one committee is directed, the legislative language recommended by all of the committees is packaged “without any substantive revision” into one or more reconciliation bills, as set forth in the budget resolution, by the House and Senate Committees on the Budget. In some instances, such as when a single committee is directed, a committee may be required to report its legislative recommendations directly to its chamber.

Once the Budget Committees, or individual committees if so directed, report budget reconciliation legislation to their respective chambers, consideration is governed by special procedures.³³ These special procedures generally serve to limit what may be included in reconciliation legislation, to prohibit certain amendments, and to encourage timely action on the measure.

Section 310 of the Budget Act provides for the budget reconciliation directives to instruct committees to recommend changes to existing law “to accomplish a change” in spending, revenues, the statutory limit on the public debt, or a combination of these matters. It does not place any further constraints on the effect such changes would have on spending, revenues, and the deficit.

At the beginning of the 110th Congress, the House added clause 7 of Rule XXI, which placed a substantive restriction on budget reconciliation directives regarding their impact on the deficit or surplus. The former clause 7 effectively required that the reconciliation process be used for the net effect of deficit reduction only. This rules change apparently was in response to the use of the budget reconciliation process for legislation that would have the effect of increasing the deficit. In fact, prior to this rules change in 2007, the previous eight congressional budget resolutions that contained budget reconciliation directives and were agreed to by Congress contemplated at least one budget reconciliation measure that would increase the deficit or reduce the surplus.³⁴

³¹ The rule would also apply to amendments to a congressional budget resolution and a conference report to accompany a congressional budget resolution.

³² For a more detailed discussion of the budget reconciliation process, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

³³ For a brief summary of these procedures, see CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration*, by Bill Heniff Jr.

³⁴ See CRS congressional distribution memorandum, *Reconciliation Directives to House Committees in Budget Resolutions for FY1976-FY2005*, by Bill Heniff Jr. (available from the author).

This most recent rules change, for the 112th Congress, modifies the previous substantive restriction on budget reconciliation directives to require, as noted above, that such directives would not result in a budget reconciliation measure that would have the net effect of increasing mandatory spending over the period covered by the congressional budget resolution. Because the rule applies to budget reconciliation directives in a congressional budget resolution, it would appear that the rule simply would prohibit such directives from instructing one or more committees to increase mandatory spending over the period covered by the budget resolution. That is, as long as the directives did not expressly instruct one or more committees to increase mandatory spending over the time period of the congressional budget resolution, the rule presumably would not be violated.

In the 36 years that Congress has considered budget resolutions, it has twice included budget reconciliation directives that expressly instructed committees, in the net, to increase mandatory spending.³⁵ In 2001 and 2003, the budget resolutions for FY2002 (H.Con.Res. 83, 107th Congress) and FY2004 (H.Con.Res. 95, 108th Congress), respectively, contained budget reconciliation directives instructing the House Committee on Ways and Means and the Senate Committee on Finance to increase mandatory spending, in addition to reducing revenues, over the period of the budget resolutions. In each case, the directives to increase mandatory spending were apparently intended to allow for the outlay effects of anticipated tax provisions (such as refundable tax credits); such outlay effects are treated as mandatory spending.

In some cases, individual committees have been directed to change existing laws to increase mandatory spending, but when combined with the directives to other committees, the budget reconciliation directives did not have the net effect of increasing mandatory spending over the period of the budget resolution. In other cases, certain mandatory spending increases may have been contemplated but the directives themselves did not indicate such increases. For example, the most recent budget reconciliation directives included in the FY2010 budget resolution (Title II of S.Con.Res. 13, H.Rept. 111-89, 111th Congress) instructed committees to recommend changes in existing law to reduce the deficit over a six-year period. It would appear that such directives would not violate the new rule because they did not expressly instruct committees to increase mandatory spending, even though the resulting budget reconciliation legislation (H.R. 4872, 111th Congress) did have the net effect of increasing mandatory spending over the period of the budget resolution.³⁶

It is worth noting that regardless of the effect of this constraint on budget reconciliation directives in a budget resolution, the new CutGo rule (clause 10 of Rule XXI), as explained above, would apply to any resulting budget reconciliation legislation. Accordingly, the CutGo rule would require that any budget reconciliation legislation not have the net effect of increasing mandatory spending over the specified six-year and 11-year periods.

³⁵ *Ibid.*

³⁶ At the time of passage, CBO projected that H.R. 4872, Health Care and Education Reconciliation Act of 2010, would result in a net increase in mandatory spending of \$12 billion over the period FY2010-2014, the period of the budget resolution. See CBO, Letter to Honorable Nancy Pelosi, Speaker, U.S. House of Representatives, cost estimate for the amendment in the nature of a substitute for H.R. 4872, incorporating a proposed manager's amendment, Mar. 20, 2010, specifically Table 3.

Repeal of Ability to Offer an Amendment to Strike an Unfunded Intergovernmental Mandate Under Certain Conditions

Section 2(e)(5) of H.Res. 5 repealed clause 11 of Rule XVIII, which allowed a motion to strike an unfunded intergovernmental mandate unless a special rule specifically waived this rule. Under the previous rule, even under a structured or closed rule, a Member could offer an amendment to strike an unfunded intergovernmental mandate in the bill, unless the special rule specifically waived the rule.³⁷ Since 2005, special rules have usually waived the rule, as explained in more detail below, and therefore, the repeal of the rule effectively codifies this practice.

The former rule was added to the House Rules by the Unfunded Mandates Reform Act of 1995 (UMRA, P.L. 104-4, 109 Stat. 48-71; specifically, see Section 107(a), 109 Stat. 63).³⁸ The Unfunded Mandates Reform Act of 1995 established a framework for evaluating and imposing federal mandates on state and local governments, as well as the private sector.³⁹ Among other things, the act amended the Congressional Budget Act to create points of order against the consideration generally of any reported legislation lacking an estimate of the direct costs of such mandates (Section 425(a)(1)), any legislation estimated to increase the costs of intergovernmental mandates in excess of a threshold (Section 425(a)(2)), and any special rule reported by the House Committee on Rules waiving such points of order (Section 426).⁴⁰

Since it was established in House Rules, the rule had been used at least once to allow an amendment to be offered that otherwise would not have been in order.⁴¹ On April 21, 2005, the House was considering H.R. 6, Energy Policy Act of 2005, under a structured rule (H.Res. 219) limiting amendments to those printed in the report to accompany the rule (H.Rept. 109-49). The 30 amendments made in order by the rule did not include any that proposed only to strike an unfunded mandate in the bill, and the rule did not specifically set aside clause 11 of Rule XVIII. During the consideration of H.R. 6, Representative Lois Capps, citing clause 11 of Rule XVIII, offered, and the House considered, an amendment proposing to strike certain matter alleged to constitute an unfunded intergovernmental mandate, even though the structured rule did not make in order such amendment.⁴²

³⁷ For brief descriptions of the former rule, including its intent, at the time it was established, see U.S. Congress, House Committee on Rules, *Unfunded Mandate Reform Act of 1995*, report to accompany H.R. 5, 104th Cong., 1st sess., January 13, 1995, H.Rept. 104-1, Part 1 (Washington: GPO, 1995), p. 16; and U.S. Congress, Committee of Conference, *Unfunded Mandates Reform Act of 1995*, report to accompany S. 1, 104th Cong., 1st sess., March 19, 1995, H.Rept. 104-76 (Washington: GPO, 1995), p. 37.

³⁸ The rule was established as clause 5(c) of Rule XXIII, was modified to correct the reference to the appropriate act later in the 104th Congress, was modified to apply specifically to “intergovernmental mandates” at the beginning of the 105th Congress, and was recodified as clause 11 of Rule XVIII at the beginning of the 106th Congress. *House Rules and Manual*, sec. 991, pp. 788-789.

³⁹ For more detailed information on the Unfunded Mandates Reform Act of 1995, see CRS Report R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*, by Robert Jay Dilger and Richard S. Beth.

⁴⁰ For more information on these points of order, see “UMRA and Congressional Procedure (Title I)” section in *Ibid*.

⁴¹ This one instance is cited in the annotations to the rule in the *House Manual*. See *House Rules and Manual*, p. 789. A search of the *Congressional Record* for the 104th -111th Congresses, using the Legislative Information System (LIS), found no other references to the rule in relation to the offering of an amendment during the consideration of legislation on the House floor.

⁴² Initially, upon request of the chair, Representative Capps agreed to withhold her amendment without prejudice until a later time. Subsequently, the amendment was considered under a debate limitation and rejected on a recorded vote. See *Congressional Record*, daily edition, vol. 151 (April 21, 2005), pp. H2399, H2415, H2418-H242427, H2436. For (continued...)

After that instance, special rules reported by the Committee on Rules and agreed to by the House apparently routinely included a provision setting aside the rule.⁴³ By repealing clause 11 of Rule XVIII, therefore, the House effectively amended the House Rules to reflect its practice at least since 2005. Regardless of this repeal of the rule, the points of order provided in Sections 425 and 426 of the Budget Act, intended to provide information on federal mandates and discourage unfunded intergovernmental mandates, as noted above, remain and will continue to be available to Members.

Separate Orders

H.Res. 5 also contains 13 “separate orders” affecting the congressional budget process. The term “separate orders” has come to be used for provisions in the rules package considered at the beginning of a Congress that have procedural effects for the new Congress, but are not codified in the Standing Rules of the House.

Four separate orders renew orders adopted at the beginning of several previous Congresses; these orders address the application of certain points of order under the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 621 et seq.) and strengthen the enforcement of allocations under Section 302(b) of the Budget Act. Five separate orders provide certain procedural provisions for the purposes of budget enforcement in the absence of Congress completing action on the FY2011 budget resolution in 2010. One separate order creates a limit on long-term mandatory spending legislation. Two separate orders allow the chair of the House Committee on the Budget to exempt the budgetary effects of certain legislation in providing estimates of such legislation for purposes of budget enforcement under the Budget Act and House Rules, as well as for purposes of the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111-139, 124 Stat. 8-29). Finally, one separate order effectively prevents the consideration of amendments to a general appropriations bill that propose to restore spending that had been cut by a previously-adopted amendment.

(...continued)

information on the federal mandates included in the legislation, see Letter to Honorable David Dreier, Chairman, Committee on Rules, a preliminary review of H.R. 6, the Energy Policy Act of 2005, as introduced in the House of Representatives, April 19, 2005, indicating that CBO determined that the bill, in particular Section 1502, included an unfunded intergovernmental mandate estimated to exceed the threshold level established by UMRA.

⁴³ Such special rules providing for the consideration of bills in the Committee of the Whole included the provision, “Notwithstanding clause 11 of Rule XVIII,” apparently regardless of whether or not the bill included an unfunded intergovernmental mandate as determined by CBO. An exception to this routine inclusion of such provision appears to be “open rules” (which generally allow any amendments that comply with the standing rules of the House and the Budget Act). Prior to 2005, based on a search of the *Congressional Record* using the Legislative Information System (LIS), the House agreed to at least two special rules setting aside the rule, and thereby precluding a Member from offering an amendment proposing only to strike an unfunded mandate: (1) H.Res. 366, providing for the consideration of H.R. 2854, Agricultural Market Transition Act (104th Congress); and (2) H.Res. 283, providing for the consideration of H.R. 1270, Nuclear Policy Act of 1997 (105th Congress). In these cases, CBO had determined that the enactment of the bill would impose an unfunded private sector mandate (at the time, the rule applied to any federal mandate) and an unfunded intergovernmental mandate, respectively. See CBO cost estimates included in the committee reports to accompany each of the bills (H.Rept. 104-462, Part 1, pp. 87-95, and H.Rept. 105-290, Part 1, pp. 40-47, respectively).

References to “Resolution” in Section 306 of the Budget Act

Section 3(a)(1) of H.Res. 5 renews a separate order, also adopted at the beginning of the previous five Congresses,⁴⁴ providing that the term “resolution” in Section 306 of the Budget Act refers to a *joint resolution* only. Section 306 of the Budget Act prohibits the consideration of any “bill, resolution, amendment, motion, or conference report” dealing with matter under the jurisdiction of the Committee on the Budget unless the Budget Committee has reported it (or has been discharged from its further consideration), or unless it is an amendment to a measure reported by the Budget Committee.

Under this separate order, a simple or concurrent resolution dealing with matter under the jurisdiction of the Budget Committee (such as a so-called “deeming resolution”) presumably would not be subject to a Section 306 point of order.⁴⁵

Application of Point of Order Under Section 303 of the Budget Act

Section 3(a)(2) of H.Res. 5 renews for the 112th Congress a separate order, also agreed to at the beginning of the previous six Congresses,⁴⁶ to provide that, for a reported bill or joint resolution considered under a special order of business (e.g., a special rule reported by the House Rules Committee),⁴⁷ Section 303 of the Budget Act applies to the text made in order for the purpose of amendment or to the text on which the previous question is ordered directly to passage. Section 303 of the Budget Act prohibits the consideration of any measure that contains a provision affecting spending, revenues, or the debt limit that first becomes effective in a fiscal year for which a budget resolution has not been adopted.⁴⁸

Prior to 1997, Section 303 applied to any measure “as reported” only. Consequently, a measure that was amended on the floor to contain a budgetary provision for a fiscal year for which Congress had not yet agreed to a budget resolution would not be subject to this point of order as long as the measure, as reported, did not itself contain such a budgetary provision.⁴⁹ Moreover, a

⁴⁴ Section 3(b)(1) of H.Res. 5, 107th Congress; Section 3(a)(1) of H.Res. 5, 108th Congress; Section 3(a)(1) of H.Res. 5, 109th Congress; Section 511(a)(1) of H.Res. 6, 110th Congress; and Section 3(a)(1) of H.Res. 5, 111th Congress. *House Rules and Manual*, sec. 1127, pp. 1044-1045.

⁴⁵ For information on so-called “deeming resolutions,” see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Megan Suzanne Lynch.

⁴⁶ Section 2(a)(3) of H.Res. 5, 106th Congress; Section 3(b)(2) of H.Res. 5, 107th Congress; Section 3(a)(2) of H.Res. 5, 108th Congress; Section 3(a)(2) of H.Res. 5, 109th Congress; Section 511(a)(2) of H.Res. 6, 110th Congress; Section 3(a)(2) of H.Res. 5, 111th Congress. *House Rules and Manual*, sec. 1127, p. 1038.

⁴⁷ Section 303(b)(3) of the Budget Act provides an exception to the Section 303(a) point of order for any *unreported* bill or joint resolution. This exception, however, would seem to be inconsistent with, and might be superseded by, clause 8 of Rule XXI, first adopted at the beginning of the 110th Congress. Clause 8 of Rule XXI provides that points of order under Title III of the Budget Act, as amended, apply to any text made in order by a special rule, regardless of whether or not the measure was reported by a committee. For more information on this rule, see CRS Report RL34149, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress*, by Bill Heniff Jr., pp. 3-4.

⁴⁸ In the House, the applicable fiscal year is the first fiscal year covered by the budget resolution. Also in the House, the Section 303 prohibition does not apply to general appropriations measures after May 15; that is, general appropriations measures may be considered after May 15 if Congress has not agreed to a budget resolution by then.

⁴⁹ In 1995, for example, the chair responded to a parliamentary inquiry about the application of Budget Act points of order by noting that Section 303, among other sections, applied to a measure “in its reported state,” and, therefore, did not apply to an unreported measure. *Congressional Record*, vol. 141 (March 21, 1995), p. 8491. For a detailed (continued...)

measure that, as reported, contained such a budgetary provision would remain subject to this point of order, even when a special rule eliminated the violating provision by making in order as the text to be amended an amendment in the nature of a substitute that omitted the provision.

The Budget Enforcement Act of 1997 (Title X of P.L. 105-33, Balanced Budget Act of 1997) added a new section to the Budget Act that was intended to correct this anomaly.⁵⁰ Section 315 provides that the words “as reported” in Titles III and IV of the Budget Act refer to the text made in order for the purpose of amendment or the text on which the previous question was ordered directly for passage. The BEA of 1997, however, also eliminated the words “as reported” from Section 303 of the Budget Act. Consequently, there has been some ambiguity about whether or not Section 303 applies to text made in order by a special rule, as was intended.⁵¹ The separate order addresses this potential ambiguity to clarify that Section 303 applies to the text made in order for purposes of amendment of a reported measure considered under a special rule.

Prospective Compensation Level for an Executive Position

Section 3(a)(3) of H.Res. 5 codifies a long-standing interpretation that the establishment of a specified or minimum level of compensation for an executive position, subject to appropriations, does not constitute “entitlement authority” under the Budget Act. The House also agreed to codify this interpretation as a separate order at the beginning of the previous six Congresses.⁵²

Section 3(9) of the Budget Act defines “entitlement authority” as

(A) the authority to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriations Acts, to any person or government if, under the provisions of the law containing that authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by that law; and

(B) the food stamp program.

Section 401(b) of the Budget Act prohibits the consideration of a measure that provides new entitlement authority that is to become effective in the current fiscal year.⁵³ In addition, if a committee reports a measure that violates this prohibition and the amount of such spending

(...continued)

discussion of the effect of the words “as reported” in the Budget Act, see William G. Dauster, *Budget Process Law Annotated—1993 Edition*, 103rd Cong., 1st sess., S.Prt. 103-49 (Washington: GPO, 1993), notes on pp. 107, 179-185.

⁵⁰ See U.S. Congress, Committee of Conference, *Balanced Budget Act of 1997*, conference report to accompany H.R. 2015, 105th Cong., 1st sess., H.Rept. 105-217 (Washington: GPO, 1997), p. 994.

⁵¹ During the 105th Congress, the House continued to waive the point of order against reported measures that violated Section 303 even though the violation was corrected by the special rule making in order a different text for purposes of amendment. See, for example, the special rule providing for the consideration of H.R. 1252, Judicial Reform Act of 1998, in the *Congressional Record*, daily edition, vol. 144 (April 23, 1998), p. H2242.

⁵² The separate order agreed to in the 106th Congress (Sec. 2(a)(3) of H.Res. 5) expired upon the adoption of the FY2000 budget resolution, whereas the orders agreed to at the beginning of the 107th (Section 3(b)(2) of H.Res. 5), 108th (Section 3(a)(2) of H.Res. 5), 109th (Section 3(a)(3) of H.Res. 5), 110th (Section 511(a)(3) of H.Res. 6), and 111th (Section 3(a)(3) of H.Res. 5) Congresses applied to the entire duration of the Congresses. *House Rules and Manual*, sec. 1127, p. 1070.

⁵³ A measure that provides new entitlement authority that is to become effective after the current fiscal year is not subject to this point of order.

exceeds the committee's spending allocation (also referred to as its Section 302(a) allocation) associated with the most recently adopted budget resolution, the Speaker may refer the measure to the House Committee on Appropriations for a period not to exceed 15 days.⁵⁴ If the Appropriations Committee does not act within the 15 days, the measure is discharged automatically and placed on the appropriate calendar. Within the 15-day period, however, the Appropriations Committee may report the measure with an amendment that limits the amount of spending.

Several House precedents have established the meaning of "new entitlement authority" as defined by the Budget Act.⁵⁵ Among them, in 1992, the chair ruled that an amendment creating a new executive position at a specified level of compensation subject to appropriation was not a new entitlement authority, because no payment would occur absent an appropriation.⁵⁶ Section 3(a)(3) of H.Res. 5 effectively makes this ruling a separate order for the 112th Congress.

Specifically, the separate order provides that a provision, in a measure, "that establishes prospectively for a Federal office or position a specified or minimum level of compensation to be funded by annual discretionary appropriations shall not be considered as providing new entitlement authority within the meaning of the Congressional Budget Act of 1974." Therefore, during the 112th Congress, such a provision presumably would not be subject to a point of order under Section 401(b) of the Budget Act, nor would it be subject to the 15-day referral to the House Appropriations Committee.

Enforcement of Section 302(b) Allocations

Section 3(a)(4) of H.Res. 5 renews for the 112th Congress a prohibition against a motion that the Committee of the Whole rise and report an appropriations bill to the House if the bill, as amended in the Committee of the Whole, exceeds the applicable Section 302(b) of the Budget Act.⁵⁷

Under the Budget Act, the total budget authority and outlays set forth in the budget resolution are allocated among the House and Senate committees with jurisdiction over specific spending legislation.⁵⁸ Accordingly, the total amount provided for discretionary spending in the budget resolution is allocated to the House and Senate Committees on Appropriations, which have exclusive jurisdiction over discretionary spending in appropriations acts. The House and Senate Appropriations Committees, soon after the budget resolution is adopted, subdivide their spending allocations among their subcommittees and formally report these subdivisions to their respective chambers.⁵⁹ These subdivisions, referred to as 302(b) allocations, after the applicable section of

⁵⁴ In the Senate, Section 401(b) requires such a measure to be referred to the Senate Committee on Appropriations instead of simply providing the authority to do so, as in the House.

⁵⁵ See the annotations to Section 401 of the Budget Act in *House Rules and Manual*, sec. 1127, pp. 1068-1071.

⁵⁶ *Ibid.*, p. 1070. For House proceedings on the matter, see *Congressional Record*, vol. 138 (March 26, 1992), pp. 7202-7203, as referenced in *House Rules and Manual*.

⁵⁷ This point of order was first established in the 109th Congress and subsequently agreed to at the beginning of the 110th and 111th Congresses. See Section 2 of H.Res. 248, 109th Congress, Section 511(a)(5) of H.Res. 6, 110th Congress, and Section 3(a)(4) of H.Res. 5, 111th Congress. *House Rules and Manual*, sec. 1044b, pp. 845-846.

⁵⁸ These allocations, commonly referred to as 302(a) allocations, after the applicable section of the Budget Act, are specified in the joint explanatory statement accompanying the conference report to the budget resolution. For further information on the spending allocations under the Budget Act, see CRS Report RS20144, *Allocations and Subdivisions in the Congressional Budget Process*, by Bill Heniff Jr.

⁵⁹ During the appropriations process, the House and Senate Appropriations Committees usually revise these (continued...)

the Budget Act, represent the spending ceilings on the individual regular appropriations acts. A point of order may be raised against the consideration of any appropriations measure (or amendment) that, if enacted, would cause a subcommittee's allocation to be exceeded.

In practice, the regular appropriations bills usually are reported by the House Appropriations Committee at the applicable subcommittee allocation level, thereby avoiding a point of order against the consideration of the measure.⁶⁰ During consideration of an appropriations bill in the Committee of the Whole,⁶¹ however, action might be taken, by amendment or point of order, that would cause the bill to exceed its allocation level. For example, the Committee of the Whole could adopt an amendment providing a spending increase that would cause the bill to exceed its allocation.⁶² Alternatively, on a point of order under clause 2 of House Rule XXI,⁶³ a legislative provision that exempts certain spending from being counted toward a subcommittee's allocation, such as an emergency designation,⁶⁴ or offsets spending, such as a change in mandatory spending, could be stricken, resulting in the bill exceeding its allocation. In each case, even though the bill would exceed its allocation as a result of the amendment or point of order, a point of order against the bill under Section 302(f) of the Budget Act could not be raised because it would not be timely. In the case of an amendment, in order to be considered timely, a point of order under Section 302(f) of the Budget Act must be raised before debate begins on the bill. Presumably, at the time an amendment has been adopted or a point of order is sustained against a provision in the bill, there has been debate on the bill.

The separate order under Section 3(a)(4) of H.Res. 5, however, would allow a Member during the 112th Congress to raise a point of order against the motion to rise and report the bill to the House

(...continued)

subdivisions several times.

⁶⁰ For an examination of this practice, see Richard G. Forgette and Jim V. Saturno, "302(b) or Not 302(b): Congressional Floor Procedures and House Appropriators," *Legislative Studies Quarterly*, vol. 19, no. 3 (August 1994), pp. 385-396.

⁶¹ Clause 3 of House Rule XVIII requires initial consideration of appropriations bills in the Committee of the Whole. In current practice, the regular appropriations bills are considered in the Committee of the Whole under a special rule reported by the House Committee on Rules. In the Committee of the Whole, under the special rule, consideration begins with general debate and then the appropriations bill typically is read for amendment by paragraph, under the five-minute rule.

⁶² Points of order under the Budget Act are not self-enforcing. A Member must raise a point of order against the consideration of the amendment. If no point of order is raised, the amendment may be considered and subsequently adopted. Moreover, the point of order must be timely, that is, before debate begins on the amendment. Once a proponent begins debate, the point of order is no longer in order. Often, a Member (usually the floor manager) will reserve a point of order against the amendment, before debate begins, in order to secure the right to make the point of order after debate on the amendment has commenced. After a proponent makes her remarks, the Member either withdraws the reservation or insists on the point of order. For additional explanation regarding the timeliness and reservation of points of order, see William Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003), pp. 665-667.

⁶³ Clause 2 of House Rule XXI prohibits provisions changing existing law in an appropriations measure. The special rule providing for the consideration of a regular appropriations bill typically waives this rule but sometimes exempts certain provisions from this waiver. In the latter case, during the consideration of the bill, a Member may raise a point of order against an "unprotected" provision and if sustained, the provision is stricken from the bill.

⁶⁴ Such a scenario might have occurred during the 109th Congress, but was avoided when the floor manager insisted that the point of order initially made against the emergency designation provision be extended to lie against the spending as well. As a result, when the Chair sustained the point of order, the entire paragraph containing the emergency designation as well as the additional spending was stricken. See *Congressional Record*, daily edition, vol. 152 (May 19, 2006), pp. H2931-H2939.

if the bill, as amended in the Committee of the Whole, exceeded its Section 302(b) allocation. If sustained, the Chair would be required to submit for a vote the question of whether or not the Committee of the Whole should rise and report the bill to the House, even though the bill exceeds its allocation. The question is to be decided without any intervening action except for 10 minutes of debate equally divided between and controlled by a proponent and an opponent. If the question is decided in the affirmative, the Committee of the Whole rises and reports to the House the bill with the amendments agreed to in the Committee. If the question is decided in the negative, the Committee does not rise and report, but instead proceeds to the consideration of one “proper” amendment, presumably proposing to bring the bill into compliance with its Section 302(b) allocation. This proper amendment, which may not be amended or divided, would be debatable for 10 minutes equally divided between and controlled by a proponent and an opponent. During the consideration of the proper amendment, the chair and ranking minority Member, or their designees, may offer pro forma amendments for purposes of debate.

A Member may not make the point of order against a motion offered under clause 2(d) of Rule XXI, which gives precedence to a motion to rise and report an appropriations bill if offered by the Majority Leader or a designee after the bill has been read for amendment,⁶⁵ or after the question of consideration provided by the new point of order has already been decided on a given bill.⁶⁶ It is nevertheless worth noting that regardless of whether or not the point of order would be in order, the motion to rise and report any bill back to the House requires an affirmative vote. The motion typically is agreed to by voice vote. Any Member, however, may request a recorded vote. If the motion is rejected, the consideration of the bill continues in the Committee, and a Member may offer an amendment which could propose to bring the bill into compliance with its allocation.

Budget Enforcement Provisions for FY2011

Sections 3(b)-3(f) of H.Res. 5 establish certain procedural provisions for the purposes of budget enforcement in the absence of Congress completing action on the FY2011 budget resolution in 2010. These provisions include the following: (1) a requirement for the chair of the House Committee on the Budget to set forth, in the *Congressional Record*, binding budget totals and committee spending allocations for FY2011-FY2015; (2) an exemption from budget enforcement rules for the budgetary effects of provisions designated as an “emergency” or “for contingency operations directly related to the global war on terrorism;” (3) a process to accommodate the revenue effects of certain legislation that would not increase the deficit over the period of FY2011-FY2021; (4) a limitation on advance appropriations provided in FY2011; and (5) procedures to enforce appropriations levels for administrative expenses of the Social Security Administration and the U.S. Postal Service.

Each year, under the Budget Act, Congress is required to adopt a concurrent resolution on the budget, setting forth spending, revenue, and debt levels, which are then enforced primarily

⁶⁵ Presumably, then, if the Majority Leader or his designee offers the motion to rise and report the bill to the House, instead of the floor manager, a Member would not be able to raise the point of order under Section 3(a)(4) of H.Res. 5, even if the appropriations bill exceeds its allocation.

⁶⁶ This exception would seem to prevent the point of order from being raised more than once during the consideration of any given appropriations bill. Presumably, then, if, after the new point of order is raised and sustained, the question of consideration is decided in the negative, and a proper amendment is offered but rejected, a Member could not raise the point of order again in order to have another opportunity to offer a different proper amendment to bring the appropriations bill into compliance with its allocation.

through points of order during the consideration of budgetary legislation.⁶⁷ After a budget resolution has been agreed to by both the House and Senate, the budget levels contained therein generally continue to be enforceable until they are revised or superseded by a subsequently-adopted budget resolution, even from one Congress to the next.⁶⁸

In 2010, however, Congress did not complete action on a budget resolution for FY2011.⁶⁹ In fact, neither the House nor the Senate took any floor action on a FY2011 budget resolution; the Senate Committee on the Budget reported a FY2011 budget resolution (S.Con.Res. 60, S.Prt. 111-45) but the House Committee on the Budget did not.

In the absence of any action on a FY2011 budget resolution in 2010, the House adopted a so-called “budget enforcement resolution,” providing enforceable spending levels for the annual appropriations acts for FY2011.⁷⁰ Among other provisions, the budget enforcement resolution (H.Res. 1493) set forth spending allocations (often referred to as Section 302(a) allocations) to the House Committee on Appropriations, and provided that these allocations would be enforceable under Section 302(f) of the Budget Act.⁷¹ The Senate did not take any similar action.⁷²

The budget enforcement resolution for FY2011 (H.Res. 1493) did not carry over into the new Congress. Instead, Section 3(b) of H.Res. 5 directed the chair of the House Budget Committee (HBC) to submit for printing in the *Congressional Record* “budget aggregates and allocations contemplated by Section 301” of the Budget Act and “allocations contemplated by section 302(a) of that Act for fiscal year 2011, and the period of fiscal years 2011 and 2015.”⁷³ The separate

⁶⁷ For a brief introduction to the congressional budget process, see CRS Report RS20095, *The Congressional Budget Process: A Brief Overview*, by James V. Saturno. For a compilation of the points of order related to the congressional budget process, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

⁶⁸ When the House adopts its Rules at the beginning of a new Congress, it generally adopts the Rules of the previous House, including “applicable provisions of law or concurrent resolution that constituted rules of the House,” with certain amendments. The provisions of the Budget Act and the concurrent resolution on the budget, when adopted by Congress, constitute rules of the House.

⁶⁹ Prior to 2010, Congress did not complete action on a budget resolution in four previous years (1998, 2002, 2004, and 2006). For additional historical information on the congressional budget resolution, see CRS Report RL30297, *Congressional Budget Resolutions: Historical Information*, by Bill Heniff Jr. and Justin Murray.

⁷⁰ In past years in which Congress did not complete action on a budget resolution, the House and Senate have often individually adopted so-called “deeming resolution” provisions that provide enforceable budget parameters during the consideration of budgetary legislation. For further information on “deeming resolution” provisions, see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Megan Suzanne Lynch.

⁷¹ H.Res. 1493 was agreed to by the House pursuant to Section 4 of H.Res. 1500, a special rule providing for the consideration of Senate amendments to H.R. 4899, Supplemental Appropriations Act, 2010 (111th Congress). The House agreed to H.Res. 1500 on July 1, 2010. For the consideration of H.Res. 1500, see *Congressional Record*, daily edition, vol. 156 (July 1, 2010), pp. H5342-H5358. The House Committee on Appropriations subsequently, on July 20, 2010, reported (H.Rept. 111-565) its subcommittee spending allocations (often referred to as Section 302(b) allocations), which basically serve as the spending ceilings for each of the regular appropriations measures and are enforced by points of order on the floor.

⁷² In the absence of a budget resolution or a so-called “deeming resolution” adopted by the Senate, the Senate Committee on Appropriations provided “FY2011 Subcommittee Spending Guidance,” which effectively represented the subcommittee spending allocations. In the absence of any formal action by the Senate, however, these allocations were not enforceable on the Senate floor. The “Guidance” was posted on the Committee’s website at <http://www.appropriations.senate.gov/news.cfm?method=news.view&id=0753bbc3-1b0d-4115-a277-63b041c69e12>.

⁷³ On February 8, 2011, the HBC chair, Representative Paul Ryan, submitted for printing in the *Congressional Record* allocations for FY2011 to the Committee on Appropriations. *Congressional Record*, daily edition, vol. 157 (February 8, 2011), pp. E167-E168. Prior to this action, on January 25, 2011, the House adopted H.Res. 38, directing the HBC chair (continued...)

order also provided that such aggregates and allocations would have force and effect as if they were included in and associated with a budget resolution for FY2011 adopted by Congress. As noted above, such budget levels associated with the budget resolution are enforced through points of order during the consideration of budgetary legislation.

Similar separate orders have been included in past opening-day rules packages when Congress did not complete action on the budget resolution in the year prior to the year in which a new Congress began.⁷⁴ Prior to 2010, Congress did not complete action on a budget resolution in four previous years (1998, 2002, 2004, and 2006). In each of these instances, the House passed its own version of the budget resolution for the applicable fiscal year, and subsequently adopted a so-called “deeming resolution,” deeming the House-passed budget resolution agreed to by Congress for budget enforcement purposes.⁷⁵ In each case, the following year, at the beginning of the new Congress, the House adopted a separate order providing for the enforcement of certain budget levels in the absence of completed action on the budget resolution for the applicable fiscal year, as part of the opening-day rules package.⁷⁶ In the first case (at the beginning of the 106th Congress in 1999), the separate order mirrored the authority provided to the HBC chair in the current instance. That is, in 1999, the HBC chair was also directed, without any formal guidance, to submit for printing in the *Congressional Record* certain budget levels for enforcement purposes.⁷⁷ In the three remaining cases (at the beginning of the 108th, 109th, and 110th Congresses), the separate order provided that the budget resolution adopted by the House in the previous year be

(...continued)

to submit such allocations that assume “non-security spending at fiscal year 2008 levels or less.” For the consideration and adoption of the resolution, see *Congressional Record*, daily edition, vol. 157 (January 25, 2011), pp. H446-H456. As of July 8, 2011, the HBC chair had not submitted for printing in the *Congressional Record* any other budget aggregates and allocations for the period of FY2011-FY2015.

⁷⁴ Without such actions, certain budget constraints associated with the Budget Act, particularly the constraints on spending provided in appropriations acts for the current fiscal year, would not have any force and effect in the new Congress. In 1999, in submitting interim budget levels pursuant to such a separate order, the then-chair of the HBC, Representative John Kasich, explained the reason for such actions as follows:

Without these interim levels, the House would be prohibited under section 303(a) of the Budget Act from considering legislation with even negligible budgetary effects in certain fiscal years because a budget resolution is not in effect for the current fiscal year. There would be no levels to make determinations under sections 302(f) and 311(a) for fiscal year 1999 and such determinations for the five year period would be based on the now-obsolete levels set forth under H.Con.Res. 84 (H.Rept. 105-116) [the budget resolution for FY1998] in 1997.

Congressional Record, daily edition, vol. 145 (February 25, 1999), p. H809.

⁷⁵ For more information on these actions, see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Megan Suzanne Lynch.

⁷⁶ See Section 2(a)(1) of H.Res. 5 (106th Congress), for enforcement of levels associated with the FY1999 budget resolution, Section 3(a)(4) of H.Res. 5 (108th Congress), for enforcement of levels associated with the FY2003 budget resolution, Section 3(a)(4) of H.Res. 5 (109th Congress), for enforcement of levels associated with the FY2005 budget resolution, and Section 511(a)(4) of H.Res. 6 (110th Congress), for enforcement of levels associated with the FY2007 budget resolution.

⁷⁷ See *Congressional Record*, vol. 145 (February 25, 1999), pp. H809-H810. In this case, without any formal guidance, the then-chair of the HBC explained the interim budget levels as follows:

The interim allocations and aggregates are essentially based on current status levels. They reflect enacted and House-passed legislation as estimated by the Congressional Budget Office (CBO). In the case of the Committee on Appropriations, the allocations are identical to the levels set forth in H.Res. 477 (H.Rept. 105-585) except that they reflect adjustments for emergencies, arrearages and other items under section 314 of the Congressional Budget Act.

considered to have been adopted by the new Congress, effectively continuing the force and effect of the budget resolution adopted by the House in the previous Congress.

In addition to providing for enforceable budget levels, H.Res. 5 also included separate orders (Sections 3(c)-(f)) to address matters related to budget enforcement that typically have been addressed by recent previous congressional budget resolutions. First, Section 3(c) of H.Res. 5 provides that any new spending or revenue reduction designated as an “emergency,” or any appropriations for FY2011 for “contingency operations directly related to the war on terrorism,” in a measure shall not be counted for budget enforcement purposes.⁷⁸ The separate order effectively allows the House to exempt such budgetary effects from certain enforcement rules that are generally intended to control spending and revenues. Since 1990, budget enforcement rules have provided, in various forms, similar procedural exemptions (or adjustments) for such provisions so designated.⁷⁹

Second, Section 3(d) of H.Res. 5 provides the HBC chair the authority to adjust the budget aggregates and allocations made pursuant to Section 3(b) of this resolution, as discussed above, to accommodate legislation reducing revenues reported by the Committee on Ways and Means, so long as the legislation would not increase the deficit over the period covering FY2011-FY2021.⁸⁰ Generally, under the Budget Act, legislation may not cause the projected level of revenues to fall below the level of revenues set forth in the budget resolution, regardless of any effect on the deficit. That is, if legislation is projected to cause revenues to fall below such level, even though the net effect of the legislation did not increase the deficit because, for example, it included direct spending cuts offsetting the revenue reductions, it could still be subject to a point of order under Section 311(a) of the Budget Act. In the present case, the same would apply in relation to the levels printed in the *Congressional Record* pursuant to Section 3(b) of H.Res. 5, as discussed above.⁸¹ The adjustment of the applicable levels, under the authority provided by the separate order, effectively would allow the House to consider, without vulnerability to such point of order, legislation reducing revenues if the legislation also includes provisions projected to reduce spending by an equivalent amount over the FY2011-FY2021 period. This authority is similar to authority granted to the HBC chair in past budget resolutions.⁸²

⁷⁸ Under the separate order, either designation would effectively exempt such budgetary effects for purposes of Titles III and IV of the Budget Act, and the “emergency” designation would exempt such effects for purposes of House Rules as well. For information on the points of order under these rules, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno. In addition, the “emergency” designation provision is applicable until a budget resolution for FY2012 is adopted, and the “contingency operations” designation provision is applicable effectively until September 30, 2011, the end of FY2011.

⁷⁹ For additional information on such designations, including the previous authorities since 1990, see CRS Report R41564, *Emergency Designation: Current Budget Rules and Procedures*, by Bill Heniff Jr.

⁸⁰ The adjustment authority could also be used to accommodate an amendment offered to such legislation and a conference report to accompany such legislation.

⁸¹ As of July 8, 2011, the HBC chair had not submitted for printing in the *Congressional Record* any budget aggregates, including revenue levels, and allocations for the period of FY2011-FY2015; only the allocations for FY2011 to the Committee on Appropriations have been submitted. Unless such additional levels are printed in the *Congressional Record* pursuant to Section 3(b) of H.Res. 5, this separate order presumably would have no effect.

⁸² Similar authority has often been provided in the form of “reserve fund” provisions in past budget resolutions. For example, Section 325 (“Deficit-Neutral Reserve Fund for Certain Tax Relief”) of S.Con.Res. 13 (111th Congress), the FY2010 budget resolution, provided such adjustment authority to the HBC chair for legislation “that provides for tax relief that supports working families (such as expanding the refundable child credit), businesses, States, or communities,” so long as the legislation did not increase the deficit over the periods covered by the House PAYGO rule then in effect (i.e., generally six-year and 11-year periods). For more information on such adjustments of budget (continued...)

Third, Section 3(e) of H.Res. 5 limits advance appropriations provided in general and continuing appropriations acts for FY2011. An appropriations act for FY2011 generally would provide budget authority for FY2011, meaning that budget authority would be available to be obligated in FY2011, unless provided otherwise in the act. Budget authority provided in such an appropriations act that does not become available until after the end of FY2011 (i.e., after September 30, 2011) would generally constitute an advance appropriation.⁸³ Specifically, as defined in the separate order, an “advance appropriation” is any discretionary budget authority that first becomes available for a fiscal year after FY2011. The separate order limits advance appropriations in such acts to the following: (1) up to \$28.852 billion each for FY2012 and FY2013, for programs, projects, activities, or accounts identified in the *Congressional Record*;⁸⁴ and (2) for “the Department of Veterans Affairs for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.”⁸⁵ Similar limits on advance appropriations have been included in each of the budget resolutions adopted, or deemed by the House to have been adopted, by Congress, beginning in 2000.⁸⁶

Finally, Section 3(f) of H.Res. 5 requires that the amounts provided for discretionary administrative expenses of the Social Security Administration (SSA) and the Postal Service shall be counted for congressional budget enforcement purposes.⁸⁷ The “receipts and disbursements” of the Social Security trust funds (i.e., the Federal Old-Age and Survivors Insurance Trust Fund and

(...continued)

resolution levels, see CRS Report RL33122, *Congressional Budget Resolutions: Revisions and Adjustments*, by Robert Keith.

⁸³ For additional information on advance appropriations, see CRS Report RS20441, *Advance Appropriations, Forward Funding, and Advance Funding*, by Sandy Streever.

⁸⁴ As part of the submission for printing in the *Congressional Record* providing the interim budget levels pursuant to Section 3(b)(1) of H.Res. 5, as noted above, Representative Ryan included a list of 10 accounts for which advance appropriations would be allowed under this separate order. See *Congressional Record*, daily edition, vol. 157 (February 8, 2011), pp. E167-E168.

⁸⁵ Since 2001, the second year in which the budget resolution included such limits on advance appropriations, the report to accompany the budget resolution has included a list of the accounts for which an advance appropriations may be made, in addition to capping the aggregate amount. In 2009, Congress and the President enacted legislation (P.L. 111-81) requiring, beginning with FY2011, advance appropriations for certain medical care accounts of the Department of Veterans Affairs.

⁸⁶ Limits on advance appropriations in the House were provided in the following provisions included in budget resolutions adopted by Congress: (1) Section 203(b) of H.Con.Res. 290 (106th Congress), the FY2001 budget resolution; (2) Section 201 of H.Con.Res. 83 (107th Congress), the FY2002 budget resolution; (3) Section 501(a) of H.Con.Res. 95 (108th Congress), the FY2004 budget resolution; (4) Section 401(a) of H.Con.Res. 95 (109th Congress), the FY2006 budget resolution; (5) Section 206(b) of S.Con.Res. 21 (110th Congress), the FY2008 budget resolution; (6) Section 302 of S.Con.Res. 70 (110th Congress), the FY2009 budget resolution; and (7) Section 424 of S.Con.Res. 13 (111th Congress), the FY2010 budget resolution. Such limits were also provided in the following provisions included in budget resolutions deemed by the House to have been passed by Congress for budget enforcement purposes: (1) Section 301 of H.Con.Res. 353 (107th Congress), the House-passed FY2003 budget resolution; (2) Section 401 of H.Con.Res. 393 (108th Congress), the House-passed FY2005 budget resolution; and (3) Section 401 of H.Con.Res. 376 (109th Congress), the House-passed FY2007 budget resolution. Finally, Section (a)(2) of H.Res. 1493 (111th Congress), the so-called “budget enforcement resolution” for FY2011 adopted by the House, extended the limitation on advance appropriations provided in S.Con.Res. 13 (111th Congress), the FY2010 budget resolution, with modifications to reflect the applicable fiscal years.

⁸⁷ Amounts for the discretionary administrative expenses of the SSA are generally provided in the annual Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, mostly but not exclusively in the form of a limitation on administrative expenses. Amounts for the discretionary administrative expenses of the Postal Service are generally provided in the annual Financial Services and General Government Appropriations Act, specifically for the Postal Regulatory Commission and the Office of Inspector General of the U.S. Postal Service.

the Federal Disability Insurance Trust Fund) and the Postal Service Fund, from which the respective administrative expenses are derived, are currently “off-budget” by statute.⁸⁸ “Off-budget” spending and revenues are generally not included in the budget totals included in the congressional budget resolution and therefore not constrained by the enforcement provisions of the Budget Act.⁸⁹ Under the separate order, however, the spending allocations (i.e., the Section 302(a) allocations associated with the budget resolution) to the House Appropriations Committee (HAC) shall include the amounts for the discretionary administrative expenses of the SSA and the Postal Service, and the amounts provided in appropriations acts for such “off-budget” expenses shall be counted toward the HAC’s spending allocations.⁹⁰ In effect, the separate order requires that the amounts provided for such expenses must be within the limit on discretionary spending provided by the budget resolution. Since 2000, similar provisions have been included in each of the budget resolutions adopted, or deemed by the House to have been adopted, by Congress.⁹¹

⁸⁸ Section 346 of the Social Security Amendments of 1983 (P.L. 98-21, see specifically 97 Stat. 137-138) initially required that the Social Security trust funds were not to be included in the budget totals starting with the budget resolution for FY1993; Section 261 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, see specifically 99 Stat. 1093-1094) accelerated this process to require that the trust funds were not to be included in the budget totals starting with the budget resolution for FY1987; and Section 13301 of the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508, see specifically 104 Stat. 1388-623) reaffirmed this exclusion from the budget totals and amended the Budget Act to reflect this exclusion (see Section 301(a) of the Budget Act, as amended; 2 U.S.C. 631). The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239, see specifically 103 Stat. 2133) required that the “receipts and disbursements of the Postal Service Fund, including disbursements for administrative expenses incurred in connection with the Fund” were to be excluded from the budget totals, effective with the budget resolution for FY1991. No other spending and revenues are currently designated as “off-budget.”

⁸⁹ Such “off-budget” spending and revenues are also excluded from the totals in the President’s budget submission to Congress as well as generally from statutory budget limitations (such as the Balanced Budget and Emergency Deficit Control Act of 1985, as amended).

⁹⁰ Even though the Social Security trust funds were taken off budget in 1990, the spending totals and committee allocations to the appropriations committees associated with subsequent budget resolutions adopted by Congress apparently continued to include the “off-budget” administrative expenses of the SSA, even in the absence of any special provisions or exceptions for doing so, according to the joint explanatory statement to accompany the conference report on the FY2001 budget resolution (H.Con.Res. 290, H.Rept. 106-577, 106th Congress, pp. 88-89). This separate order, as well as similar provisions included in prior budget resolutions, therefore, reflects the conventional practice of including such amounts in the budget resolution and associated allocations ever since 1990.

⁹¹ Provisions requiring “off-budget” administrative expenses to be counted for budget enforcement purposes were provided in the following provisions included in budget resolutions adopted by Congress: (1) Section 231 of H.Con.Res. 290 (106th Congress), the FY2001 budget resolution (for SSA only); (2) Section 204 of H.Con.Res. 83 (107th Congress), the FY2002 budget resolution (for SSA only); (3) Section 506 of H.Con.Res. 95 (108th Congress), the FY2004 budget resolution (for SSA only); (4) Section 408 of H.Con.Res. 95 (109th Congress), the FY2006 budget resolution (for SSA only); (5) Section 210 of S.Con.Res. 21 (110th Congress), the FY2008 budget resolution (for SSA only); (6) Section 322 of S.Con.Res. 70 (110th Congress), the FY2009 budget resolution (for SSA and Postal Service); and (7) Section 426 of S.Con.Res. 13 (111th Congress), the FY2010 budget resolution (for SSA and Postal Service). Such requirements were also provided in the following provisions included in budget resolutions deemed by the House to have been passed by Congress for budget enforcement purposes: (1) Section 302 of H.Con.Res. 353 (107th Congress), the House-passed FY2003 budget resolution (for SSA only); (2) Section 403 of H.Con.Res. 393 (108th Congress), the House-passed FY2005 budget resolution (for SSA only); and (3) Section 406 of H.Con.Res. 376 (109th Congress), the House-passed FY2007 budget resolution (for SSA only). Finally, Section (a)(2) of H.Res. 1493 (111th Congress), the so-called “budget enforcement resolution” for FY2011 adopted by the House, extended the provisions provided in S.Con.Res. 13 (111th Congress), the FY2010 budget resolution, including Section 426, related to the “off-budget” administrative expenses of the SSA and the Postal Service.

Limitation on Long-Term Mandatory Spending Legislation

Section 3(g) of H.Res. 5 prohibits the consideration of legislation that would cause an increase in mandatory spending⁹² of more than \$5 billion in any of the four consecutive 10-year periods beginning with the 10-year period immediately after the final year covered by the applicable budget resolution.⁹³ For example, if the last year covered by the applicable budget resolution is FY2021, the standing order would prohibit the consideration of legislation that would have the net effect of increasing mandatory spending by more than \$5 billion in any of the following four 10-year periods: (1) FY2022-FY2031, (2) FY2032-FY2041, (3) FY2042-FY2051, and (4) FY2052-FY2061.⁹⁴ The separate order does not apply to *unreported* legislation or legislation reported by the House Appropriations Committee (HAC).⁹⁵

Budget enforcement rules applicable to the House generally cover shorter periods of time than the 40-year period covered by the separate order.⁹⁶ For example, as explained above, the House CutGo rule (House Rule XXI, clause 10) covers a total of 11 fiscal years (i.e., the current fiscal year and the 10 fiscal years thereafter).⁹⁷ Moreover, while the Budget Act provides for the enforcement of budget levels for the total of fiscal years covered by the budget resolution, Congress has adopted budget resolutions covering at the most 10 fiscal years (excluding revisions to the current fiscal year).⁹⁸

The Senate has had a similar long-term budget enforcement rule since the 109th Congress. Currently, however, the Senate rule (Section 311 of S.Con.Res. 70, 110th Congress), prohibits the consideration of legislation that would cause a *net increase in the deficit* of more than \$5 billion

⁹² As noted above, mandatory spending, also referred to as direct spending, is provided or controlled in authorizing legislation (rather than in appropriations acts), generally continues without any annual legislative action, and reflects spending authority provided for such programs as Medicare, unemployment compensation, and federal retirement programs.

⁹³ Under the separate order, the applicable budget resolution is the one most recently adopted prior to the reporting of the legislation. For example, if legislation is reported before the adoption of the FY2012 budget resolution, then the first 10-year period would begin with FY2015, the first fiscal year following the last fiscal year covered by the FY2010 budget resolution (S.Con.Res. 13, 111th Congress), the most recently adopted budget resolution.

⁹⁴ While not explicit in the separate order, the determination of the effects of legislation on mandatory spending presumably would be based on estimates provided by the HBC chair relative to the baseline estimates provided by the Congressional Budget Office (CBO). With regard to baseline estimates, CBO generally is guided by Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; see specifically 2 U.S.C. 907), which sets forth rules for calculating the baseline levels of direct spending (as well as revenues and discretionary spending).

⁹⁵ That is, legislation not reported by a committee or reported by the HAC presumably could cause an increase in mandatory spending in any of the applicable 10-year periods but not be subject to the rule. Such an increase in mandatory spending included in an appropriations bill reported by the HAC, however, would likely be subject to House Rule XXI, clause 2, which prohibits the inclusion of legislation changing existing law in an appropriations bill (generally, a provision increasing mandatory spending would be considered legislation changing existing law).

⁹⁶ An exception is the free-standing House rule, established by the Budget Enforcement Act of 1990, restricting the consideration of legislation that would affect Social Security benefits or taxes over a 75-year period. See Section 13302 of P.L. 101-508.

⁹⁷ The Statutory PAYGO Act also covers the same 11-year period.

⁹⁸ The budget resolutions for FY2000, FY2002, and FY2004 each covered 10 fiscal years (excluding revisions to the current fiscal year).

over the same four 10-year periods.⁹⁹ That is, the current Senate long-term budget rule takes into account any revenue effects of legislation, whereas the House long-term budget rule does not.

Exemptions From Budget Enforcement

Sections 3(h) and 3(i) of H.Res. 5 allow the HBC chair to exempt the budgetary effects of certain legislation in providing estimates of such legislation for purposes of budget enforcement under the Budget Act and House Rules, as well as for purposes of the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111-139, 124 Stat. 8-29).¹⁰⁰ Under the separate orders, the HBC chair could exempt the budgetary effects of measures pertaining to the following matters:

- extending the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16);
- extending the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27);
- repealing the Patient Protection and Affordable Care Act (P.L. 111-148) and Title I and Subtitle B of Title II of the Health Care and Education Affordability Reconciliation Act of 2010 (P.L. 111-152);
- reforming the Patient Protection and Affordable Care Act (P.L. 111-148), the Health Care and Education Affordability Reconciliation Act of 2010 (P.L. 111-152), and the payments for physicians' services under Medicare;¹⁰¹
- adjusting the Alternative Minimum Tax (AMT) exemption amounts;¹⁰²
- extending the estate, gift, and generation-skipping transfer tax provisions of Title III of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312);
- providing a 20% deduction in income to small businesses; and
- implementing trade agreements.

As noted above, under congressional budget enforcement rules and the new clause 4 of Rule XXIX, the presiding officer generally relies on estimates of the budgetary impact of legislation provided by the HBC chair in making determinations as to whether or not a legislative proposition violates such rules. By exempting the budgetary effects of such specific matters, the respective legislation would presumably avoid certain points of order otherwise applicable if such budgetary effects were counted.

⁹⁹ The initial Senate rule (Section 407 of H.Con.Res. 95, 109th Congress) was similar to the House separate order in that it prohibited the consideration of legislation that would cause a *net increase in mandatory spending* in excess of \$5 billion over four 10-year periods.

¹⁰⁰ This exemption authority will expire upon the adoption of a budget resolution for FY2012.

¹⁰¹ To qualify for the exemption, legislation pertaining to these matters must not increase the deficit over the period of FY2011-2021, and not increase revenues other than by repealing or modifying the individual mandate (Section 5000A of the Internal Revenue Code of 1986) or modifying the subsidies to purchase health insurance (Section 36B of the Internal Revenue Code of 1986).

¹⁰² Specifically, the adjustments to the exemption amounts must “prevent a larger number of taxpayers as compared with tax year 2008 from being subject to the Alternative Minimum Tax or of allowing the use of nonrefundable personal credits against the Alternative Minimum Tax, or both as applicable.”

In addition, under the Statutory Pay-As-You-Go Act of 2010, the budgetary effects of legislation for purposes of the act may be determined by a statement of such effects submitted by the HBC chair and printed in the *Congressional Record* prior to passage.¹⁰³ Under the separate order, the chair could exclude the budgetary effects related to the specified matters from such statements. However, excluding such budgetary effects from the Statutory PAYGO requirements would require the acquiescence of the Senate. That is, the Senate would have to give at least tacit consent to such statement by passing the respective legislation without amendment and without a new statement of budgetary effects submitted by the chair of the Senate Budget Committee (SBC) and printed in the *Congressional Record*. If the Senate amended the legislation, or the chair of the SBC submitted a new statement, the statement submitted by the HBC chair would have no force and effect for purposes of the Statutory PAYGO Act. Moreover, excluding such budgetary effects from the statutory PAYGO requirement ultimately would require the approval of the President, because it would require statutory action.

In recent years, the budgetary effects of certain legislation or policy propositions have been exempted from congressional and statutory budget enforcement rules. For example, the existing Statutory PAYGO Act exempts the budgetary effects of certain direct spending and revenue provisions from being counted: (1) any provision designated as an emergency and (2) any provision extending current policy in four specified areas, which are scheduled by statute to expire, within certain constraints.¹⁰⁴ The former House PAYGO rule also provided for these exemptions.

Spending Reduction Amendments to General Appropriations Bill

Section 3(j) of H.Res. 5 effectively prevents the consideration of an amendment to a general appropriations bill that proposes to restore spending that had been cut by a previously-adopted amendment. Moreover, the standing order prohibits the consideration of any amendment proposing a net increase in total spending provided in an appropriations bill. Prior to the approval of this separate order, if an amendment that proposed to reduce spending in the bill was adopted, a subsequent amendment that proposed to increase spending, and thereby restore the previous spending cut, could be offered and considered, as long as it did not cause the bill to exceed the applicable Section 302(b) allocation.¹⁰⁵

¹⁰³ If no statement is printed in the *Congressional Record* or other specified procedures are not followed, the Office of Management and Budget determines the budgetary effects. For further information on the Statutory PAYGO Act, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr. (The referenced report was written by former CRS Specialist Robert Keith.)

¹⁰⁴ The four policy areas include (1) Medicare payments to physicians; (2) the estate and gift tax; (3) the alternative minimum tax (AMT); and (4) middle-class tax cuts. The exemption for these current policy extensions applies only to legislation enacted before the end of 2011.

¹⁰⁵ As noted above (in the “Enforcement of Section 302(b) Allocations” section), under the Budget Act, the House and Senate Appropriations Committees, soon after a budget resolution is adopted, subdivide their spending allocations among their subcommittees and formally report these subdivisions to their respective chambers. These subdivisions, referred to as 302(b) allocations, represent the spending ceilings on the individual regular appropriations acts. A point of order may be raised against the consideration of any appropriations measure (or amendment) that would cause a subcommittee’s allocation to be exceeded. For further information on the spending allocations under the Budget Act, see CRS Report RS20144, *Allocations and Subdivisions in the Congressional Budget Process*, by Bill Heniff Jr.

The Section 3(j) separate order contains four key elements. First, the separate order requires that each general appropriations bill include, at the end of the bill, “a spending reduction account.”¹⁰⁶ This “spending reduction account” is defined by the separate order as an account entitled as such that specifies the amount by which the applicable Section 302(b) allocation exceeds the total amount of budget authority provided in the bill. For example, if the applicable Section 302(b) allocation is \$50 billion and the bill provided \$49 billion in budget authority, then the spending reduction account would specify an amount of \$1 billion. Given the same 302(b) allocation, if the bill provided \$50 billion in budget authority, the spending reduction account would specify an amount of zero.

Second, during the amendment process in the Committee of the Whole of such an appropriations bill, a Member may offer an amendment that proposes to effectively transfer funds provided in the bill to this “spending reduction account.” In effect, such an amendment proposes to reduce the amount of budget authority provided in the bill. Under the separate order, as is the case under clause 2(f) of House Rule XXI, such amendment may propose to amend portions of the bill “not yet read for amendment.”¹⁰⁷ Without this provision, an amendment proposing to amend a paragraph in a bill not yet read would not be in order until after the paragraph had been read for amendment.

Third, the separate order prohibits the consideration of any amendment proposing to change the amount in the “spending reduction account,” except those that effectively transfer funds to it. That is, the separate order prohibits the consideration of an amendment proposing to reduce the amount in the “spending reduction account.”

Finally, the separate order prohibits the consideration of any amendment proposing to increase the net amount of budget authority in the bill. That is, regardless of the Section 302(b) allocations under the Budget Act, any amendment reducing the amount of budget authority provided in the bill adopted in the Committee of the Whole effectively would create a new (lower) spending ceiling that any subsequent amendment could not cause the bill to exceed.

While the separate order precludes the consideration of amendments proposing to increase the amount of budget authority provided in each general appropriations bill, it does not actually adjust the applicable Section 302(b) allocation or the overall Section 302(a) allocation to the House Committee on Appropriations. Therefore, upon subsequent consideration in the form of a conference report or amendment between the two chambers, the general appropriations bill would

¹⁰⁶ A general appropriations bill provides budget authority for the upcoming fiscal year; currently there are 12 general appropriations bills, one for each of the appropriations subcommittees. The separate order does not apply to other types of appropriations bills: supplemental; special; and continuing. For further information on the types of appropriations bills, see William Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003), pp. 75-76. The separate order also provides that the chair of the Committee on Appropriations shall have the authority to add or modify a “spending reduction account” for any general appropriations bill ordered to be reported. In addition, the separate order provides that a point of order under clause 2(b) of House Rule XXI, which prohibits legislative provisions in a general appropriations bill, shall not apply to a “spending reduction account.”

¹⁰⁷ Also similarly to amendments considered pursuant to clause 2(f) of House Rule XXI, such an amendment would not be subject to a demand for a division of the question (i.e., forcing a separate vote on the reduction and the increase). In addition, an amendment generally may not propose to amend a bill in more than one place. Therefore, an amendment proposed pursuant to this separate order, as well as clause 2(f) of House Rule XXI, is technically considered en bloc amendments. For further information on the similar provisions under clause 2(f) of House Rule XXI, see CRS Report RL31055, *House Offset Amendments to Appropriations Bills: Procedural Considerations*, by Sandy Streeter.

not be subject to the spending ceiling effectively established during initial consideration. That is, the spending reduced through the amendment process could be restored in a subsequent legislative stage without rendering the bill vulnerable to a possible point of order, as long as the measure did not exceed the applicable Section 302(b) allocation.

Furthermore, the House Committee on Appropriations could revise the Section 302(b) allocations to reflect a lower allocation to the applicable appropriations subcommittee and increase one or more allocations for other appropriations subcommittees, as long as the sum of the subcommittee allocations does not exceed the Section 302(a) allocation. In such a case, the legislative actions during the amendment process would have the effect of reducing spending in the applicable appropriations bill but would not necessarily reduce the total level of budget authority provided in all the general appropriations bills for the upcoming fiscal year.

Author Contact Information

Bill Heniff Jr.
Analyst on Congress and the Legislative Process
wheniff@crs.loc.gov, 7-8646