



BASIC » TRAINING

PARLIAMENTARY PROCESS,
FACTS, AND STRATEGIES

Rules Changes in the 114th Congress

On January 6, 2015, the House adopted H. Res. 5, the rules package for the 114th Congress. This package executed changes in the standing rules of the House, and put in place numerous standing orders for the congress. The package addressed issues of transparency, budget enforcement, House operations, and other matters. While less expansive than other rule packages at the beginning of recent congresses, it nonetheless brought about significant changes in the areas of budget enforcement, ethics, and committee operations.

OPTIONS TO CHANGE POLICIES IN THE HOUSE

Before describing the actual changes to the rules, it is important to understand the mechanisms available to the majority party to effect changes in House operations. The options range from the formal to the informal, and give the majority varying levels of flexibility in the application and enforcement of the changes. These mechanisms fall along a spectrum (as illustrated in figure 1), ranging from the most formal and highly enforceable to less formal and more flexible.

The options available to the majority include:

» **Changes to the Standing Rules of the House**—The most formal kind of change is an amendment to the standing rules of the House. Generally, these rules are enforceable through a point of order available to any Member.

» **Standing Orders**—A standing order has the same parliamentary effect as an amendment to the Rules of the House in that it is both formal and easily enforceable; however, because it is an order, and not an amendment to the standing rules, it is only effective during the current congress, and would have to be affirmatively carried forward at the beginning of each Congress.

» **Conference/Caucus Rule Changes**—The House Republican Conference or the House Democratic Caucus can adopt rules which effectively bind the majority party leadership with respect to floor scheduling or other policies, which has an effect on the House as a whole. These rules are only enforceable within the party caucus, and not by a Member from the opposite party.

» **Speaker's Announced Policies**—On the opening day of each congress, and

at other points should circumstances warrant, the Speaker makes a number of announcements regarding how the Chair will exercise his or her discretion in applying the rules of the House. These policies are printed in the Congressional Record for reference. These policies usually address issues of decorum or administration of the House, and are usually enforced through the Chair's power of recognition rather than from the floor through a point of order.

» **Informal Policies**—The majority leadership (or committee leadership) may use less formal policies to guide how it uses its discretionary authority, such as how they will schedule the floor or process amendments. These policies are usually unenforceable, other than by the leadership. ▲

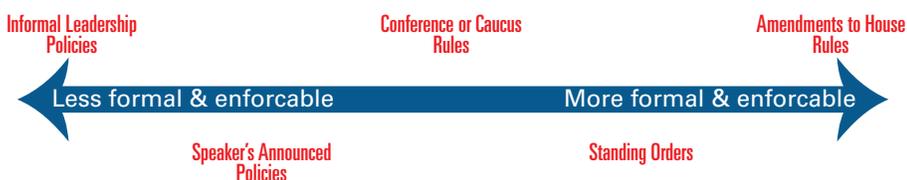


Figure 1. Spectrum of types of rule and policy changes related to House rules.

CHANGES FOR COMMITTEES

Jurisdiction. In the 114th Congress, the rules package contained a small, but important, change to the jurisdiction of the Committee on the Judiciary. The change added “criminalization” to the committee’s existing jurisdiction over criminal law enforcement. This change is intended to cover a narrow set of circumstances where an authorizing committee could establish a new crime, but because the bill did not create a new penalty, the Committee on the Judiciary was unable to obtain a referral. This change is intended to capture that narrow set of circumstances without affecting other committees’ abilities to determine the underlying behavior subject to regulation which may could lead to a criminal offense.

“Truth-in-Testimony.” The 114th Congress also saw the first significant change to the so-called “truth-in-testimony” require-

ments since the House adopted the requirements in the mid-1990s. In addition to modernizing the rule and incorporating current practice, the biggest change was the additional disclosure required for witnesses who receive payments from foreign governments related to the topic of the hearing. The change also changed the disclosure period from a fiscal year to a calendar year.

Expanded “Ramsayer.” The rules package also included a provision intended to provide greater context for changes to existing law in committee reports. Clause 3(e) of rule XIII requires the inclusion of a comparative print showing the changes to existing law. The change would require the inclusion of the entire section being amended in addition to the abbreviated form traditionally carried in the “Ramsayer” rule comparative print. The Office of Legislative

Counsel and the Committee on Rules are still working through implementation issues related to this rule change.

Timing of Motions to Instruct. The use of conference committees under majorities of both parties has declined significantly in recent years. One of the reasons for this change has been the availability of unlimited motions to instruct conferees shortly after House-Senate conferences begin their work. This changes extended the period before motions to instruct are ripe from 10 legislative days and 20 calendar days to 25 legislative days and 45 calendar days, permitting conference committees more time to reach an agreement before these often politically motivated motions are available to Members from both parties. This change does not affect the motion to instruct available to the minority when the House votes to go to conference. ▲

Budget & Ethics Protections

Macroeconomic (“dynamic”) scoring. One of the most noteworthy changes in the 114th Congress was a provision directing the inclusion of a macroeconomic score—commonly referred to as a “dynamic” score—which will show the effect of provisions on the broader economy. Previously, the rules permitted inclusion of such a score, but it was purely for informational purposes.

Under the new rule, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) are required to include macroeconomic effects in their estimates of “major

legislation.” The rule defines “major legislation” as any bill which causes a gross budgetary effect in excess of .25 percent of the projected gross domestic product in a particular year, or is designated by the chair of the Budget Committee or the senior House Member on the JCT.

Social Security Disability Trust Fund. It also contains an order for the 114th Congresses establishing a point of order against a bill, amendment, or conference report that would reduce the actuarial balance of the Federal Old-Age and Survivors Insurance Trust Fund unless that measure improves

the overall health and longevity of the combined Social Security trust funds. The intention of this provision is to limit the common practice of diverting funds from the Social Security trust fund to cover projected shortfalls in the Social Security disability trust fund and to encourage policies to reform Social Security Disability Insurance.

Ethics Protections. The 114th Congress rules package contained a number of changes intended to provide greater knowledge of the standards of official conduct among Members and greater protections for those who find themselves

subject to investigation for potential violations.

First, the standing rules now require newly elected Members to complete ethics training within 60 days of being sworn in. This change brings the House requirements on par with those of the Senate.

Second, the rules package directs the Office of Congressional Ethics and the Ethics Committee to preserve the Constitutional rights of individuals under investigation. It also prevents the OCE from making a negative inference when an individual chooses to be represented by counsel. ▲