relating to motions to suspend the rules made by committees.[7] Accordingly the point of order is overruled.

Mr. BAUMAN. Mr. Speaker, may I be heard further, at the sufferance of the Chair?

The SPEAKER pro tempore. The Chair will hear the gentleman.

Mr. BAUMAN. I thank the Speaker for permitting me to be heard further.

I would just point out that the Speaker has pointed out that it is within the prerogatives of the House to change the rules of the House, but this is not a rule of the House. It is a provision of a statute which is being waived, and while I would not appeal the ruling, I do not think that is a proper basis for the ruling.

The SPEAKER pro tempore. The specific provision which the gentleman states has the status of a rule of the House of Representatives under the statute and under the Constitution.

§ 9. Section 303

Background

Section 303(a) of the Congressional Budget Act[1] provides that it shall not be in order in the House to consider a measure that first provides new budget authority in that fiscal year or first provides an increase or decrease in revenues[2] or the public debt limit for that fiscal year, before the adoption of the concurrent resolution on the budget.

Section 303(a) is fundamentally a timing point of order: it is no longer applicable to a given fiscal year *after* the adoption of a pertinent concurrent resolution on the budget. Its purpose is to prevent the consideration of certain fiscal measures prior to congressional adoption of a comprehensive budget framework, as represented by the concurrent resolution on the budget.

Unlike sections 302[3] and 311[4] of the Congressional Budget Act, section 303 does not contain language of causation and does not require the Chair to consider arguments on points of order focusing on levels of revenue or budget authority. Estimates as to such levels provided by the Committee on the Budget or the Congressional Budget Office, while potentially useful in maintaining scorekeeping consistency, are not conclusive as to points of

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7. *Parliamentarian's Note:* Rep. Bauman's earlier reference to 5 Hinds' Precedents 6848 was inapplicable to the instant proceeding, as the division of suspension days between "individual" and "committee" days had been eliminated in the 93d Congress. See *House Rules and Manual* § 888 (2011).

1. 2 USC § 634(a).

2. See § 9.5, *infra*.

3. See § 11, *infra*.

4. See § 10, *infra*.

order under section 303.[5] The Chair may take into account certain economic assumptions in evaluating the likely budgetary effects resulting from a change to existing law.[6] The Chair evaluates amendments on the basis of the marginal effect of the amendment on the underlying measure.[7]

The point of order applies to bills, joint resolutions, motions, amendments[8] and conference reports.[9] The point of order is applicable to new entitlement authority.[10] In the Senate, the point of order also applies to measures increasing or decreasing outlays. The point of order in the Senate is also applicable to any fiscal years covered by the concurrent resolution on the budget, while in the House (as noted above), the point of order is only applicable to the first fiscal year covered by the resolution.

A special order may waive points of order under section 303 with respect to a bill, but leave amendments thereto unprotected by such waiver.[11]

In the 106th through the 112th Congresses, the House adopted a separate order on opening day[12] to evaluate section 303(a) points of order against reported bills or joint resolutions considered under a special order of business on the basis of either the text made in order as original text for purposes of amendment or the text on which the previous question is ordered directly to passage.

303(b) Exceptions

Section 303(b) of the Budget Act provides exceptions to this point of order in the House. The point of order does not apply to bills or joint resolutions

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5. See §§ 9.11, 9.12, *infra*.

6. See § 9.13, *infra*.

7. See § 9.10, *infra*.

8. See § 9.1, *infra*.

9. 2 USC § 634(a).

10. Section 303 originally applied to entitlement authority via a broad definition of "spending authority" (including both contract authority and entitlement authority) and later by an explicit textual reference in former section 303(a)(4) following the Gramm-Rudman-Hollings reforms of 1985. The Budget Enforcement Act of 1997 removed the explicit reference to entitlement authority in section 303, but the legislative history of that Act explains that entitlement authority would thereafter be scored as "budget authority" and thus would continue to be covered by that section. See H. Rept. 105–217, pp. 988, 989. The explicit reference to entitlement authority as applied to the Senate remains in current section 303(a)(4) of the Congressional Budget Act (2 USC § 634(a)(4)).

11. See § 9.4, *infra*.

12. 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(2)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(2)); 153 CONG. REC. 19, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 6, sec. 511(a)(2)); 151 CONG. REC. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3(a)(2)); 149 CONG. REC. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(2)); 147 CONG. REC. 24, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)(2)); 145 CONG. REC. 47, 106th Cong. 1st Sess., Jan. 6, 1999 (H. Res. 5, sec. 2(a)(3)).

providing discretionary new budget authority that first becomes available in the first or second year after the budget year (so-called "out-year" spending). It also does not apply to bills or joint resolutions increasing or decreasing revenues in any fiscal year after the fiscal year to which the budget resolution applies.[1]

Furthermore, after May 15, it is not applicable to any general appropriation bill or amendment. This exception allows the House to begin work on the annual general appropriation bills after May 15 even if Congress has, at that time, failed to agree to a concurrent resolution on the budget.

Finally, under the terms of section 303, the point of order does not apply to any bills or joint resolutions not reported by committee. However, Rule XXI clause 8[2] provides that all points of order under title III of the Congressional Budget Act (including section 303(a)) apply to unreported measures, effectively negating this exception in section 303(b). Previously, the point of order under section 303(a) of the Budget Act did not lie against consideration of an unreported measure,[3] although a point of order did lie against an amendment to an unreported measure.[4]

Unlike appropriations, mere authorizations do not obligate funds to be drawn from the United States Treasury, and as such they do not engage section 303(a).[5]

Applicability to Amendments

§ 9.1 Section 303(a)(1) of the Congressional Budget Act[1] prohibits consideration of an amendment granting new budget authority for a fiscal year for which the first budget resolution[2] has not been adopted by both Houses.

On Aug. 1, 1984,[3] the following took place:

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1. See § 9.8, *infra*.

2. *House Rules and Manual* § 1068c (2011). This clause was first adopted at the beginning of the 110th Congress.

3. See 141 CONG. REC. 8491, 104th Cong. 1st Sess., Mar. 21, 1995.

4. See § 9.6, *infra*.

5. See §§ 9.2, 9.3, *infra*.

1. 2 USC § 634(a)(1).

2. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

3. 130 CONG. REC. 21870, 21871, 98th Cong. 2d Sess.

AMENDMENT OFFERED BY MR. DAVIS

Mr. [Robert] DAVIS [of Michigan]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.[4] Was the amendment printed in the RECORD?

Mr. DAVIS. Yes, Mr. Chairman; it was.

The Clerk read as follows:

Amendment offered by Mr. DAVIS: Page 3, after line 16, insert the following:

For establishing and operating an Indian and Rural Youth Emphasis training center at Newberry, Michigan, as authorized by section 427 of the Job Training Partnership Act, $4,750,000, in addition to amounts otherwise provided herein.

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Chairman, I reserve a point of order on the amendment offered by the gentleman from Michigan. . . .

POINT OF ORDER

Mr. CONTE. Mr. Chairman, I rise to pursue my point of order.

The CHAIRMAN. The gentleman will state it.

Mr. CONTE. Mr. Chairman, let me say at the outset that I regret that I have to raise this point of order against my good friend from Michigan, but there are only a couple of berries left in the basket, and JOHN ERLENBORN took those berries out.

Mr. Chairman, I make the point that the amendment violates section 303A of the Congressional Budget Act of 1974, which sets forth in section 1007 of the House Manual, which provides that it shall not be in order in the House of Representatives to consider any bill or resolution or amendment thereto which provides new budget authority for the fiscal year until the first concurrent resolution on the budget for such a year has been agreed to.

The amendment provides new budget authority for the 1985 fiscal year. A concurrent resolution on the budget for the 1985 fiscal year has not been agreed to. Therefore, the amendment is not in order.

The CHAIRMAN [Mr. FUQUA]. Does the gentleman from Michigan desire to be heard?

The Chair is prepared to rule that the amendment is out of order under section 303 of the Budget Act. It does grant new budget authority for a fiscal year for which the first concurrent budget resolution, [sic] has not been adopted, and therefore the amendment is out of order.

Mere Authorizations

§ 9.2 The chairman of the Committee of the Whole overruled points of order under sections 402(a), 303(a)(1), 303(a)(2), 303(a)(4), and 401(c)(2) of the Congressional Budget Act[1] against an amendment, offered to an omnibus social services and education authorization bill reported from the Committee on Education and Labor, providing authorization for payments to the states for immigrant children's education but ratably reducing the allocation to each state

4. Don Fuqua (FL).

1. 2 USC §§ 652, 634(a)(1), 634(a)(2), 634(a)(4), 651(c)(2). Sections 402 and 401 of the Congressional Budget Act have undergone substantial revisions since this precedent. See § 1, *supra*, and §§ 12–14, *infra*.

if sums actually appropriated are insufficient to fully pay for the entitlement.

On Sept. 13, 1983,[2] a point of order having several bases within the Congressional Budget Act was raised against an amendment and overruled on the basis that the amendment in question merely authorized, but did not actually appropriate, certain amounts of budget authority.

AMENDMENT OFFERED BY MR. WRIGHT

Mr. [James] WRIGHT [of Texas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WRIGHT: Add at the end of the bill the following new title:

TITLE V—SPECIAL IMPACT AID FOR IMMIGRANT CHILDREN EDUCATION

SEC. 501. This title may be cited as the "Emergency Immigrant Education Act of 1983".

DEFINITIONS

SEC. 502. As used in this title—

(1) The term "immigrant children" means children who were not born in a State and who have been attending schools in any one or more States for less than three complete academic years.

(2) The terms "elementary school", "local educational agency", "secondary school", "State", and "State educational agency" have the meanings given such terms under section 198(a) of the Elementary and Secondary Education Act of 1965.

(3) The term "elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(4) The term "Secretary" means the Secretary of Education.

AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS

SEC. 503. (a) There are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986, such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

(b)(1) If the sums appropriated for any fiscal year to make payments to States under this title are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under this title for such year, the allocations to State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the vent [sic] that funds become available for making payments under this title for any period after allocations have been made under paragaph [sic] (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.

2. 129 CONG. REC. 23881–84, 98th Cong. 1st Sess.

STATE ADMINISTRATIVE COSTS

SEC. 504. The Secretary is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this title, except that the total of such payments for any period shall not exceed 1.5 per centum of the amounts which that State educational agency is entitled to receive for that period under this title.

WITHHOLDING

SEC. 505. Whenever the Secretary, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of any provision of this title, the Secretary shall notify that agency that further payments will not be made to the agency under such title, or in the discretion of the Secretary, that the State educational agency shall not make further payments under such title to specified local educational agencies whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under such title, or payment by the State educational agency under such title shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

STATE ENTITLEMENTS

SEC. 506. (a) The Secretary shall, in accordance with the provisions of this section, make payments to State educational agencies for each of the fiscal years 1984, 1985, and 1986 for the purpose set forth in section 507.

(b)(1) Except as provided in paragraph (3) and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this title shall be equal to the product of (A) the number of immigrant children enrolled during such fiscal year in elementary and secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, and in any elementary or secondary nonpublic school within the district served by each such local educational agency, multiplied by (B) $500.

(2) The local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of immigrant children who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, and in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this title, is equal to—

(A) at least 500; or

(B) at least 5 per centum of the total number of students enrolled in such public or nonpublic schools during such fiscal year; whichever number is less. . . .

PAYMENTS

SEC. 509. (a) Except as provided in section 503(b), the Secretary shall pay to each State educational agency having an application approved under section 508 the amount which that State is entitled to receive under this title. . . .

POINT OF ORDER

Mr. [John] ERLENBORN [of Illinois]. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN.[3] The gentleman from Illinois (Mr. ERLENBORN) will state his point of order.

□ 1640

Mr. ERLENBORN. Mr. Chairman, I make the point of order against the pending amendment on the grounds that section 503 of the pending amendment violates section 402(a) and 303(a)(1) and (2).

In addition, Mr. Chairman, I make a point of order against the amendment in that section 503(b)(1) violates sections 303(a)(4) and 401(c)(2) of the Budget Control Act.

Now, Mr. Chairman, section 303(a) of the Budget Control Act states that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution or amendment thereto which provides: First, new budget authority for a fiscal year; or second, an increase or decrease in revenues to become effective during a fiscal year.

Mr. Chairman, 503(a) of the pending amendment creates new budget authority in that it states that there are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986 such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

Mr. Chairman, the effect of section 503(b)(1) and later provisions of this amendment, the amendment providing for $500 per pupil entitlement under this bill for this new impact act program to be funded jointly from 503(a), which is the direct budget authority, and 503(b)(1) which authorizes transfers from other existing budget authority, violates 401(c)(2) in that it creates new entitlement authority.

For these reasons I believe that the pending amendment violates these provisions of the Budget Act and is subject to this point of order.

The CHAIRMAN. Does the gentleman from Texas (Mr. WRIGHT) wish to be heard on the point of order?

Mr. WRIGHT. Yes, Mr. Chairman, I would like to be heard.

As I understand the gentleman's point of order, he argues that this amendment would not be in order because it would create a new entitlement and because it would be contrary to and excessive of the budget resolution.

With respect to the latter, I should simply point out that this does not create any entitlement which would be triggered absent an appropriation. There would have to be an appropriation in order for these moneys to be made available to the school districts which the amendment would make eligible for said moneys.

503(a), Subsection b, provides that to the extent the Congress should fail to appropriate adequate funds, there would be a rateable reduction to each of the States otherwise made eligible.

In other words, by its own provisions it contains a means of restraining the entitlement that otherwise would be created within the amounts that are appropriated by Congress.

Nothing thus far has been appropriated. This is simply an authorizing proposal. It is no more violative of the provisions cited by the distinguished gentleman from Illinois than are other provisions already adopted in this legislation in title IV in that they also create, just as this new title would create, an additional eligibility for Federal assistance.

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3. David Bonior (MI).

Inasmuch as the Supreme Court has ruled that it is the responsibility, under the Constitution, of every school district to provide educational opportunity for all of the children residing within that district, whether legally or not, then quite clearly, it falls within the responsibility of the Federal Government to be able, if the Congress in its wisdom so determines, to provide assistance to those school districts upon whom this burden has been imposed by decree of the Supreme Court.

The CHAIRMAN. Does the gentleman from Kentucky (Mr. PERKINS) desire to be heard on the point of order?

Mr. [Carl] PERKINS [of Kentucky]. I do, Mr. Chairman.

Mr. Chairman, I concur in the argument made by the gentleman from Texas that the amendment is germane. It is not an entitlement. This amendment creates no entitlements. The program is purely an authorization of appropriations. All grants are subject to reduction if appropriations are not sufficient.

There is nothing here that is nongermane about this amendment. The amendment is germane.

Mr. ERLENBORN. Mr. Chairman, I would submit, respectfully, that the arguments of the gentleman from Texas and the gentleman from Kentucky neither of them addressed the issue of violation of section 303(a) of the Budget Control Act which prohibits the consideration of bills or amendments creating new budget authority until the first concurrent resolution on the budget[4] for such year has been agreed to, pursuant to section 301.

And the provisions of this amendment create new budget authority for fiscal years 1984, 1985, and 1986.

I might also state in support of my point of order, Mr. Chairman, that the amendment may well also—depending upon the interpretation of the Parliamentarian—violate section 402(a) of the Budget Control Act, which prohibits the consideration of bills or resolutions creating new budget authority unless they are reported before May 15.

Now, I submit that this bill was not reported before May 15.

There is a waiver for the bill, but there is no waiver in the rule for amendments to the bill.

Now it could be argued, Mr. Chairman, that because the rule does not prohibit the consideration of an amendment, but only bills and resolutions, that therefore this does not apply.

I would submit, however, that if this amendment is adopted, we will then, in further consideration of the bill, be considering a bill which at that time after the adoption of this amendment would contain new budget authority that had not been reported in the bill before May 15. So that is one additional reason for the sustaining of my point of order.

Mr. WRIGHT. Mr. Chairman, very briefly I would like to be heard. In the first place, it is my distinct impression, and I believe would be confirmed by a reading of the act, that section 402(a) of the Budget Act does not apply to amendments, but only to bills.

Second, that a waiver of that section has been obtained with respect to this bill.

□ 1650

Third, that the language proposed in this amendment provides nothing by way of educational spending authorization beyond that which already has been done in the bill itself

4. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

and that inasmuch as this bill is permitted to come before the House and is being considered by the House under a waiver of section 402(a), and since section 402(a) has no application whatsoever, by its own terms, to an amendment per se, then the amendment is germane and the amendment would be in order.

The CHAIRMAN. The Chair is prepared to rule.

On the first question that the gentleman from Illinois raised with respect to the amendment, an amendment is not covered by the May 15 reporting deadline in section 402(a) of the Budget Act and, therefore, that point of order is not sustained.

With regard to the issue of budget authority, the Chair would rule that the amendment contemplates that budget authority would rest in an appropriations bill. This is an authorization proposal that is being put forth by the gentleman from Texas.

Now, with respect to the third question that was raised by the gentleman from Illinois on the question of an entitlement, the Chair will read the Congressional Budget Act definition of "entitlement," in section 401(c)(2)(C) of that act, and I quote:

> . . . to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments. . . .

Now, the Chair would point out that in section 503(b)(1) of the amendment by the gentleman from Texas, language pertaining to ratable reduction is being offered by the gentleman from Texas, which negates the entitlement features which the gentleman from Illinois alludes to by giving discretion to the Appropriation Committee and, therefore, the Chair would rule that indeed it does not constitute an advance entitlement that the gentleman referred to. The point of order is overruled.

§ 9.3 An amendment establishing a new executive position to be compensated at a statutorily specified level but also making such salary subject to the availability of appropriations does not provide new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year in violation of section 303(a) of the Congressional Budget Act[1] and a point of order raised on that basis was overruled.

On Mar. 26, 1992,[2] a section 303(a) point of order was raised against an amendment and was overruled:

AMENDMENT OFFERED BY MR. GRADISON

Mr. [Willis] GRADISON [of Ohio]. Mr. Chairman, I offer an amendment, which was printed in the RECORD beginning on page H1698.

The Clerk read as follows:

Amendment offered by Mr. GRADISON:

—Page 233, beginning on line 6, strike out all of Section 439 through page 251, line 15 and insert the following new section.

SEC. 439. STUDENT LOAN MARKETING ASSOCIATION FINANCIAL SAFETY AND SOUNDNESS.

(a) SHORT TITLE.—This section may be cited as the ''Government-Sponsored Education Association Financial Safety and Soundness Act of 1992''. . . .

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1. 2 USC § 634(a).

2. 138 CONG. REC. 7195, 7197, 7202, 7203, 102d Cong. 2d Sess.

(c) DEFINITIONS.—For purposes of this Act:

(1) COMPENSATION.—The term ''compensation'' means any payment of money or the provision of any other thing of current or potential value in connection with employment. . . .

(d) ESTABLISHMENT OF OFFICE OF SLMA MARKET EXAMINATION AND OVERSIGHT.—Effective January 1, 1993, there shall be established in the Department of Treasury the Office of SLM Market Examination and Oversight, which shall be an office within the Department.

(e) DIRECTOR.—The Office shall be under the management of a full-time Director, who shall be selected by and report to the Secretary. An individual may not be selected as Director if the individual has served as an executive officer of the Association at any time during the 5-year period ending upon the selection of such individual. . . .

(h) FUNDING.—

(1) ASSESSMENTS AND FEES.—The Director may establish and collect from the Association such assessments, fees, and other charges that the Director considers necessary so that the amount collected is an amount sufficient to provide for reasonable costs and expenses of the Office of SLMA Market Examination and Oversight, including the expenses of any examinations under subsection (z).

(2) FUND.—There is established in the Treasury of the United States a fund to be known as the SLMA Market Examination and Oversight Fund. Any assessments, fees, and charges collected pursuant to paragraph (1) shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriations Acts—

(A) to carry out the responsibilities of the Director relating to the Association; and

(B) for necessary administrative and nonadministrative expenses of the Office to carry out the purposes of this Act. . . .

(n) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—

(1) DIRECTOR AT LEVEL II OF EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by inserting at the end the following new item: ''Director of the Office of SIMA Market Examination and oversight, Department of Treasury.''.

(2) DEFINITION OF AGENCY.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by inserting ''the Office of SIMA Market Examination and Oversight of the Department of Treasury,'' after ''Farm Credit Administration,''. . . .

POINT OF ORDER

Mr. [Jack] REED [of Rhode Island]. Mr. Chairman, I rise to a point of order.

The CHAIRMAN.[3] The gentleman will state his point of order.

Mr. REED. Mr. Chairman, under section 303(a) of the Congressional Budget Act, it is not in order to consider any amendment which creates new entitlement authority or direct spending authority first effective in a fiscal year prior to the adoption of the budget resolution for that fiscal year.

The instant amendment creates new spending authority first effective in fiscal year 1993 by establishing a new executive level salaried position for the Director of the Office of SLMA Market Examination and Oversight, Department of the Treasury. This position would not be specifically subject to the availability of appropriations.

The fact that the amendment establishes a fund to finance costs under the amendment does not defeat the fact that the Director's salary is not specifically subject to the availability of appropriated funds.

Deschler's Procedure, chapter 13, section 14.5 states that "a provision amending title 5 of the United States Code to provide that certain federal employees 'shall be paid'" specific compensation constitutes new entitlement authority within the definition of section 401(c)(2)(C) of the Budget Act.

Subchapter II of chapter 53, title 5, United States Code, sets forth executive schedule pay rates as minimum fixed rates of pay for designated officers listed in the subchapter which are not specifically subject to appropriations.

As such, the amendment creates new entitlement authority first effective in fiscal year 1993.

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3. Donald Pease (OH).

Since Congress has yet to agree to the budget resolution for fiscal year 1993, the amendment violates section 303(a) of the Budget Act.

Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman from Ohio [Mr. GRADISON] wish to be heard on the point of order?

Mr. GRADISON. Mr. Chairman, the definition of "new spending authority" contained in the Budget Act refers to budget authority not provided for in advance by appropriation acts. This amendment before us, the one we are debating specifically states the following:

Sallie Mae is required to pay assessments to cover all reasonable costs of the Office created by this amendment. These expenses include administrative costs. Thus no additional Government spending will be occasioned by this amendment.

All expenses of the Office created by this amendment, Mr. Chairman, are explicitly subject to prior appropriations. Thus the definition of new spending authority clearly does not apply.

In addition, Mr. Chairman, identical language was included in H.R. 2900, which was passed by the House last year. That bill did not result in a point of order and both CBO and OMB have indicated that in their opinion, the bill does not result in direct spending.

Mr. Chairman, CBO has reviewed this amendment and determined that it does not contain any new entitlement authority or direct spending.

In conclusion, Mr. Chairman, the entity which will pay the cost of this position and of all other costs under this amendment is a private entity. Thus it cannot be said that Federal funds will be used to pay for this amendment, which in any event is subject to appropriations.

The CHAIRMAN. Does the gentleman from Texas [Mr. PICKLE] wish to be heard on the point of order?

Mr. [James] PICKLE [of Texas]. Mr. Chairman, I simply want to support the remarks of the gentleman from Ohio [Mr. GRADISON] in his contention that it is not a new entitlement. These funds clearly go into specific funds subject to appropriations, and I support the position that the gentleman from Ohio has advocated.

To me, this is clearly not an entitlement and, therefore, we should proceed and rule that the point of order is not well taken.

The CHAIRMAN. Does the gentleman from Rhode Island [Mr. REED] wish to be heard further on the point of order?

Mr. REED. Mr. Chairman, I have just two points: First, the point turns upon the issue of whether there is specific authorization in the trust fund to pay the director's salary. I do not believe that is the case. We would be obligated, the Federal Government, to pay his salary regardless of how much money is in that trust fund.

The second issue is one in which the CBO's role is not really pertinent. The question is whether or not we have passed a budget resolution. Clearly we have not. And this would constitute new authorization prior to passing that resolution.

□ 1420

The CHAIRMAN. Is there further debate on the point of order?

Mr. GRADISON. Very briefly, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio.

Mr. GRADISON. Mr. Chairman, my basic argument is, if there is no appropriation, there is no spending. All this amendment does on the point that we are discussing is to indicate what the salary level would be if an appropriation is later provided.

The CHAIRMAN (Mr. PEASE). If there is no further debate, the Chair is prepared to rule on the point of order.

The offeror of the amendment has made it clear to the Chair that the language of the amendment in creation of this position or at least the payment of the salary of the person holding the position would be subject to appropriation as an administrative or non-administrative expense, and no payment would occur absent an appropriation. That being the case, the Chair is of the opinion that there would not be a violation of the Budget Act. The point of order is overruled.

Waivers

§ 9.4 Where points of order against consideration of a bill have been waived under section 303 of the Congressional Budget Act[1] to permit consideration prior to the first concurrent resolution on the budget,[2] that waiver does not permit consideration of amendments increasing the budget authority in the bill, because section 303 separately precludes consideration of amendments providing new budget authority in advance of the budget resolution.[3]

On July 17, 1985,[4] an amendment contained in a motion to recommit was ruled out of order.

POINTS OF ORDER

The CHAIRMAN.[5] Does the gentleman from California [Mr. EDWARDS] insist on his point of order?

Mr. [Don] EDWARDS of California. Mr. Chairman, did the gentleman from Florida [Mr. YOUNG] withdraw his amendment?

Mr. [Bill] YOUNG of Florida. Mr. Chairman, I did not withdraw the amendment, no.

Mr. EDWARDS of California. Mr. Chairman, it was my understanding there was a commitment made to withdraw the amendment. If that is not true, I insist on my point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from California [Mr. EDWARDS] will state his point of order.

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1. 2 USC § 634.

2. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

3. As the proceedings here indicate, a waiver of section 303 for consideration of the bill operates differently from a waiver of Rule XXI clause 2 for unauthorized appropriations. In the latter case, the waiver permits amendments to increase the unauthorized amount that has been permitted to remain. Section 303, however, separately prohibits amendments increasing budget authority in the bill. For more on Rule XXI clause 2, see *House Rules and Manual* §§ 1036–1063b (2011).

4. 131 CONG. REC. 19435, 99th Cong. 1st Sess.

5. George Brown (CA).

Mr. EDWARDS of California. Mr. Chairman, the amendment violates clause 2 of House rule XXI, which provides no appropriation shall be reported in any general appropriation bill for any expenditure not previously authorized by law.

The CHAIRMAN. Does the gentleman from Iowa [Mr. SMITH] desire to press his point of order?

Mr. [Neal] SMITH of Iowa. I do, Mr. Chairman. I have a different point of order.

The CHAIRMAN. The gentleman will state it.

Mr. SMITH of Iowa. I am very reluctant to make a point of order, but I feel I have to in this case.

It would add budget authority for fiscal year 1986. The waiver of the points of order against the provisions in the bill did not waive points of order against amendments. Therefore, an amendment to add money to the bill would not be in order.

I am very constrained to do that, but if I do not do that in this case, I know there will be a lot of amendments all over the place.

The CHAIRMAN. Does the gentleman from Florida [Mr. YOUNG] wish to be heard on the point of order?

Mr. YOUNG of Florida. Mr. Chairman, I do.

Regarding the point made by our colleague, the gentleman from California [Mr. EDWARDS], that it is an unauthorized item, this paragraph in question is not authorized but it is protected by the rule. It is well established under the precedents of the House that where an unauthorized appropriation is permitted to remain in the bill by waiver of points of order, that appropriation may be amended to increase the sum, provided the amendment does not add unauthorized items.

My amendment does exactly that, and I believe that that point of order should be overruled.

On the point of my friend and colleague from Iowa [Mr. SMITH], dealing with the Budget Act, again, Mr. Chairman, I suggest that the point of order is not well taken. The purpose of House Resolution 221, the rule covering points of order against the Budget Act, is to allow an appropriations bill to be considered on the House floor before the first concurrent budget resolution has been approved by Congress. And since consideration of an appropriations bill on the House floor generally does not require a rule and does not limit amendments, interpretation of this language should follow usual House procedures and allow amendments to appropriation bills whether the amendment would increase or decrease an uncertain budget ceiling.

Therefore, the point of order I think should be overruled. I make the point again that the first budget resolution is still pending, it has still not been finalized by the Congress.

Second, on the same point, Mr. Chairman, House Resolution 221, the rule covering points of order against the Budget Act, provides that all points of order for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974, Public Law 93–344, are hereby waived. Section 303(a) of the Budget Act states that "it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) * * *." Since House Resolution 221 does not specifically limit amendments and since it is to be read in conjunction with section 303(a), my amendment offered during consideration of a general appropriations bill that was reported by the Appropriations Committee prior to July 12, 1985, should be allowed and the point of order overruled.

The CHAIRMAN (Mr. BROWN of California). If no one else wishes to be heard on the point of order, the Chair is prepared to rule.

With regard to the point of order raised by the gentleman from California [Mr. EDWARDS], as to appropriation without authorization, the Chair is constrained to overrule that point of order on the grounds that a waiver has been provided in the rule against the amount in the bill, and the amendment merely increases that amount without an earmarking for an unauthorized purpose.

With regard to the point of order made by the gentleman from Iowa [Mr. SMITH] as to whether it has not been waived by the rule, the Chair is constrained to uphold that point of order on the grounds that, while consideration of the bill itself has in House Resolution 221 received a waiver from section 303(a) of the Budget Act, that does not apply to amendments adding new budget authority to the bill and the Chair, therefore, sustains the point of order.

Amendments Increasing or Decreasing Revenues

§ 9.5 An amendment imposing a fee on electric utilities for each kilowatt hour of electric energy generated was held to constitute a "revenue" provision under section 303(a)(3) of the Congressional Budget Act[1] which prohibits consideration of measures increasing or decreasing revenues that become effective prior to adoption of the budget resolution for that year.

On July 23, 1985,[2] an amendment was ruled out of order on a section 303(a) point of order on the basis that the amendment increased revenue:

AMENDMENT OFFERED BY MR. CONTE

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Chairman, I offer an amendment.
The Clerk read as follows:

Amendment offered by Mr. CONTE: Page 113, after line 13, insert the following new title:

TITLE II—ACID DEPOSITION CONTROL

SECTION 1. SHORT TITLE.

This title may be cited as the ''Water Quality Improvement and Acid Deposition Reduction Act of 1985''.

SEC. 2. PURPOSE.

The purpose of this Act is to improve water quality, protect human health and preserve aquatic resources in the United States by reducing the threat of acid deposition.

Subtitle I—Acid Deposition Control and Assistance Program

SEC. 101. AMENDMENT OF CLEAN AIR ACT.

Title I of the Clean Air Act is amended by adding the following new part at the end thereof:

"PART E—ACID DEPOSITION CONTROL

"Subpart 1—General Provisions

"SEC. 181. PURPOSE OF PART.

''The purpose of this part is to decrease sulfur dioxide emissions in the 48 contiguous States by requiring certain electric utility plants and other sources to reduce their rates

1. 2 USC § 634(a)(3).
2. 131 CONG. REC. 20041, 20044, 20045, 20050–52, 99th Cong. 1st Sess.

of sulfur dioxide emissions. The reduced rates shall be rates which (if achieved by those sources in the emissions baseline year) would have resulted in total emissions from such sources 12,000,000 tons below the actual total of sulfur dioxide which those sources emitted in the emissions baseline year. The reduction is to be achieved within 10 years after the date of the enactment of this part. Such reduction shall be achieved through—

''(1) a program under subpart 2 consisting of direct federally mandated emission limitations for 50 of the largest emitters of sulfur dioxide; and

''(2) a program under subpart 3 consisting of State plans to provide for such reductions in the emission rates of other existing sources as may be necessary to achieve the remaining portion of such 12,000,000 ton reduction.

90 percent of the capital costs of continuous emission control technology used for the purpose of the program under subpart 1 shall be funded through a fee on the generation of electric energy as provided in subpart 4. Such fee shall also be used to provide revenue to the States to carry out the program under subpart 2.

''SEC. 182. CERTAIN ACTIVITIES NOT AFFECTED. . . .

''Subpart 4—Acid Deposition Control Fund

''SEC. 196. ESTABLISHMENT OF FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Acid Deposition Control Fund' (hereinafter in this subpart referred to as the 'Fund'), consisting of such amounts as may be transferred to such Fund as provided in this section.

''(b) CREDITS.—There are hereby credited, out of any money in the Treasury not otherwise appropriated, to the Fund amounts determined by the Secretary of the Treasury (hereinafter in this title referred to as the 'Secretary') to be equivalent to the amount received in the Treasury under section 196. . . .

''SEC. 197. FEES.

''(a) IMPOSITION OF FEE.—Under regulations promulgated by the Administrator, there shall be imposed a fee for each kilowatt hour of electric energy generated in the contiguous 48 States by an electric utility and for each kilowatt hour of electric energy imported into the contiguous 48 States.

''(b) AMOUNT OF FEE.—The fee shall be applied during each calendar quarter at a rate per kilowatt hour which is equal to 1.5 mill multiplied by the inflation adjustment for the calendar quarter in which the electric energy is generated or imported. The inflation adjustment for a calendar quarter is the percentage by which—

''(1) the implicit price deflator for the gross national product for the second preceding calendar quarter, exceeds

''(2) such deflator for the calendar quarter ending on December 31 of the year in which this part is enacted.

For the purposes of this subsection, the first revision of the price deflator shall be used.

''(c) NUCLEAR AND HYDROELECTRIC POWER.—

''(1) EXEMPTION.—The fee imposed under this section shall not apply to any electric energy (including imported electric energy) which is generated by nuclear or hydroelectric power. . . .

''(h) EFFECTIVE DATE; TERMINATION.—The fees imposed under this section shall take effect with respect to electric energy generated or imported after December 31 of the year in which this part is enacted. The fee shall cease to apply on December 31 of the first year which ends more than 10 years after such enactment.

''Subpart 4—Accelerated Research on Cleaner Burning Industrial Processes . . .

The CHAIRMAN.[2] Does the gentleman from Kentucky [Mr. SNYDER] insist on his point of order?

Mr. [Marion] SNYDER [of Kentucky]. Mr. Chairman, I do insist on the point of order and I would like to be heard on it.

The CHAIRMAN. The gentleman will state his point of order.

POINT OF ORDER

Mr. SNYDER. Mr. Chairman, the amendment is subject to a point of order on two grounds. First it is in violation of House rule XVI which states that "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

2. Harry Reid (NV).

The amendment which the gentleman offers is not germane. It is, with minor changes, substantially that embodied in H.R. 1030, which the gentleman introduced on February 7, 1985. The purpose of that bill was to decrease sulphur dioxide emissions by requiring certain electric utilities plants and other sources to reduce their rates of emissions. Since the bill made extensive amendments to the Clean Air Act, it was referred solely to the Committee on Energy and Commerce, who have jurisdiction of this matter.

Today we have almost identical provisions before us embodied in Mr. CONTE'S amendment which are far beyond the scope of the bill we are now considering, H.R. 8, and deal with the subject properly within the jurisdiction of another committee, that is, the Committee on Energy and Commerce.

The scope of H.R. 8 is limited to the Clean Water Act and does not include extensive amendments to the Clean Air Act as the gentleman has proposed.

The gentleman's amendment would set air emission standards for certain electric utilities and other sources and would set up a financing mechanism to fund the program. According to subpart 4 of the amendment, a fund would be established to pay for the owner operators' capital costs to install appropriate air emission equipment required under the amendment.

Mr. Chairman, therein lies the other problem making this subject to a point of order. It is in violation of section 303 of the Budget Act since it increases revenues before the first Budget Act[3] has been enacted. As we know, we do not have the first Budget Act enacted at this time.

So for those two reasons, Mr. Chairman, I strongly suggest that it is subject to a point of order.

I might say, too, Mr. Chairman, as an aside that having looked at the New York Times, when the gentleman from Massachusetts says that the Public Works Committee—on last Sunday—never says "no" to anything, our leadership; today we are saying no to this.

The CHAIRMAN. Does the gentleman from Massachusetts [Mr. CONTE] want to be heard on the point of order?

Mr. CONTE. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Massachusetts is recognized.

Mr. CONTE. Mr. Chairman, it is very difficult to refute that scholarly legal opinion offered by the jurist from Kentucky. But I will do my humble best.

Mr. Chairman, the amendment I feel is germane to the committee amendment. It deals with the same subject matter as contained in the bill.

For example, the committee amendment includes a program to address the acidification of this Nation's lakes. If implemented, this amendment would accomplish the same goal by controlling the source of this acidity. Also, the bill, as a whole, is concerned with the protection and improvement of water quality in this country. And this amendment directly addresses the protection of water quality by controlling acid rain.

For these reasons, the amendment is in order and germane to the bill. . . .

The CHAIRMAN (Mr. REID). It is the ruling of the Chair that the amendment changes a law not amended in the pending bill and outside the jurisdiction of the reporting committee, and deals with the regulation of emissions not within the scope of the bill.

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3. As the context here indicates, Rep. Snyder was most probably referring to the fact that the first *budget resolution* had not been adopted at this time (not the first "Budget Act," as was stated).

For that reason, the amendment is not germane.

As to the point of order under section 303(a) of the Budget Act, the amendment does raise revenues through fees on electrical energy for fiscal year 1986, to be deposited in the Treasury, and since Congress has not adopted a first budget resolution[4] for fiscal year 1986, the Chair also sustains the point of order on that basis.

Unreported Bills and Amendments Thereto

§ 9.6 A motion to recommit proposing an amendment to replace one revenue provision in the pending unreported bill[1] with another such provision, thereby providing an "increase or decrease in revenues" in the upcoming fiscal year before adoption of a concurrent resolution on the budget for that year, was ruled out of order under section 303(a) of the Congressional Budget Act (sustained by tabling of the appeal).[2]

On July 24, 1998,[3] the following occurred:

The SPEAKER pro tempore (Mr. [James] KOLBE [of Arizona]). Pursuant to House Resolution 509, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BERRY

Mr. [Marion] BERRY [of Arkansas]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman from Arkansas opposed to the bill?

Mr. BERRY. Yes, Mr. Speaker, in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BERRY moves to recommit the bill H.R. 4250 to the Committee on Ways and Means and to the Committee on Education and the Workforce with instructions to report back the same to the House forthwith with the following amendments to the portions of the same within their respective jurisdiction:

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4. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

1. Although section 303(b)(3) provides an exception to section 303(a) points of order for unreported bills and joint resolutions, this exception has been superseded by Rule XXI clause 8 (first adopted in the 110th Congress), which applies all points of order under title III of the Congressional Budget Act to unreported measures. The precedent described here occurred before this rules change, and while section 303(a) did not at that time apply to unreported measures, it did apply to amendments thereto (such as those contained in a motion to recommit).

2. 2 USC § 634(a).

3. 144 CONG. REC. 17276–79, 105th Cong. 2d Sess.

Page 38, beginning on line 9, strike "does not meet the plan's requirements for medical appropriateness or necessity" and insert "is not medically necessary and appropriate".

Page 39, beginning on line 16, strike "does not meet the plan's requirements for medical appropriateness or necessity" and insert "is not medically necessary and appropriate".

Page 48, beginning on line 17, strike "does not meet the plan's requirements for medical appropriateness or necessity" and insert "is not medically necessary and appropriate".

Page 53, beginning on line 17, strike "meets, under the facts and circumstances at the time of the determination, the plan's requirement for medical appropriateness or necessity" and insert "is, under the facts and circumstances at the time of the determination, medically necessary and appropriate".

Page 60, line 17, strike all that follows the first period.

Page 60, after line 17, insert the following new subparagraph:

"(V) MEDICAL NECESSITY AND APPROPRIATENESS.—The term 'medically necessary and appropriate' means, with respect to an item or service, an item or service determined by the treating physician (who furnishes items and services under a contract or other arrangement with the group health plan or with a health insurance issuer providing health insurance coverage in connection with such a plan), after consultation with a participant or beneficiary, to be required, according to generally accepted principles of good medical practice, for the diagnosis or direct care and treatment of an illness or injury of the participant or beneficiary.".

Page 227, strike line 1 and all that follows through page 233, line 3, and insert the following (and conform the table of contents accordingly):

Subtitle C—Deduction for Health Insurance Costs of Self-Employed Individuals

SEC. 3201. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—The table contained in subparagraph (B) of section 162(l)(1) of the Internal Revenue Code of 1986 is amended to read as follows:

In the case of taxable years beginning in calendar year:	**The applicable percentage is:**
1999, 2000, and 2001	60 percent
2002	70 percent
2003 or thereafter	100 percent."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1998.

Mr. BERRY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. [Dennis] HASTERT [of Illinois]. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk will continue to read.

The Clerk continued reading the motion to recommit. . . .

POINT OF ORDER

The SPEAKER pro tempore (Mr. KOLBE). Does the gentleman from Illinois insist on a point of order?

Mr. HASTERT. Mr. Speaker, I insist on a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. HASTERT. I yield to the gentleman from California (Mr. THOMAS).

The SPEAKER pro tempore. The Chair will recognize the gentleman from California (Mr. THOMAS) on the point of order.

Mr. [William] THOMAS [of California]. Mr. Speaker, contained among the numerous provisions in the motion to recommit is striking the medical savings accounts. Notwithstanding the gentleman's representation that this will save billions of dollars a year, the Congressional Budget Office says that simply is not so. In fact, it will save less than $1 billion a year. That is the point on which the point of order turns, because the gentleman's addition of the acceleration of the self-employed deduction in fact scores more than $1 billion and therefore is subject to a 303 Congressional Budget Act point of order. It in fact increases the budget before the final budget is adopted in a given fiscal year. It applies clearly in this particular instance. A point of order, therefore, lies against the gentleman and I would urge the Chair to sustain the 303(a) Congressional Budget Act point of order.

The SPEAKER pro tempore. The gentleman from California has made a point of order.

Does the gentleman from Arkansas (Mr. BERRY) wish to be heard on the point of order?

Does the gentleman from Maryland (Mr. CARDIN) wish to be heard on the point of order?

Mr. [Benjamin] CARDIN. Yes, I do, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Maryland is recognized on the point of order.

Mr. CARDIN. If I understand the gentleman from California's point is that the striking of the medical savings account provision would not save as much money as accelerating the self-employed insurance deduction by 4 years.

Mr. Speaker, I would like to include in the RECORD a document that has been received from the Joint Committee on Taxation that shows that striking the medical savings account provision will save $4.1 billion, the self-employed health insurance deduction would cost $3.4 billion, for a net revenue savings to the treasury of $687 million.

The SPEAKER pro tempore. The gentleman from Maryland may insert the documents after the point of order but not during debate on the point of order.

Is there any other Member who wishes to be heard on the point of order?

Mr. CARDIN. Mr. Speaker, on that point, if I am correct, the point of order is being raised as it relates to having—

The SPEAKER pro tempore. That is correct. The Chair must rely on what is being said to the Chair and so insertion into the RECORD during the debate on the point of order is not in order at this time.

Mr. CARDIN. I would just quote into the RECORD the document from the Joint Committee on Taxation dated July 23, 1998, and would be glad to make it available to the Parliamentarian.

The SPEAKER pro tempore. Does any other Member wish to be heard?

Mr. THOMAS. Mr. Speaker, on the point just registered, this is the House and not the Senate. The Senate just read 10-year numbers, the House operates on 5-year numbers, and the point of order still stands.

Mr. CARDIN. Mr. Speaker, let me put into the RECORD the 5-year numbers. The 5-year numbers on striking the medical savings account provision would save $1.3 billion, the self-employed would cost $1.2 billion, for a net savings to the treasury of $56 million.

The SPEAKER pro tempore. Is there any other Member who wishes to be heard on the point of order? If not, the Chair is prepared to rule.

Mr. THOMAS. Mr. Speaker, the gentleman is reading from a document that I do not believe is current. Would he cite the number and the date?

Mr. CARDIN. If the gentleman would yield, it is dated July 23, 1998.

Mr. THOMAS. I tell the gentleman the numbers I just read come from a Joint Tax Committee publication July 24, 1998. But the gentleman is not bad being only one day behind.

Mr. CARDIN. Mr. Speaker, I have the July 25 numbers.

The SPEAKER pro tempore. Does the gentleman from Illinois insist upon his point of order?

Mr. HASTERT. Mr. Speaker, I insist on my point of order.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order? Is there anybody else who wishes to be heard on the point of order? If not, the Chair is prepared to rule.

The amendment proposed in the motion to recommit would strike one of the revenue provisions from the bill. The amendment also would insert an alternate revenue change. In this latter respect, the amendment "provides an increase or decrease in revenues" within the meaning of section 303 of the Budget Act.

Because this revenue change would occur during fiscal year 1999, a year for which a budget resolution has yet to be finalized, the amendment violates section 303(a)(2) of the Act.

The point of order is sustained.

Mr. CARDIN. Mr. Speaker, this is not the point raised in the objection by the Member. I do not know how the Chair can on its own use as a basis for an appeal that was not raised and we did not have a chance to argue the point on.[4] That is blatantly against the rules of the House, and I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. ARMEY

Mr. [Richard] ARMEY [of Missouri]. Mr. Speaker, I move to table the appeal.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Texas (Mr. ARMEY).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. [Gary] ACKERMAN [of New York]. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 222, noes 204, not voting 9, as follows:

[Roll No. 337] . . .

So the motion to table was agreed to.

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4. For a discussion of points of order generally, see Deschler-Brown Precedents Ch. 31, *supra*.

The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

Expanding Entitlement Eligibility

§ 9.7 Against an amendment expanding the class of beneficiaries under a credit entitlement program beyond the class already covered by the bill as amended, the Chair sustained a point of order raised under section 303(a) of the Congressional Budget Act.[1]

On Mar. 26, 1992,[2] an amendment was ruled out on a section 303(a) point of order:

AMENDMENT OFFERED BY MR. PETRI

Mr. [Thomas] PETRI [of Wisconsin]. Mr. Chairman, I offer an amendment which was printed in the RECORD and which amends the bill at page 63.

The Clerk read as follows:

Amendment offered by Mr. PETRI:

Page 63, strike lines 12 through 14 and insert the following:

amended—

(A) by inserting after "full-time basis" in the first sentence the following: "(including a student who attends an institution of higher education on less than a half-time basis)"; and

(B) by inserting before the period at the end of such sentence the following: ", computed in accordance with this subpart".

Page 86, beginning on line 16, strike "and inserting the" and all that follows through line 20 and insert a period.

Page 165, after line 3 insert the following new section (and conform the table of contents accordingly):

LESS THAN HALF-TIME ATTENDANCE

SEC. 426A. (a) FISL PROGRAM.—Section 427 of the Act is amended—

(I) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) made to a student who (A) is an eligible student under section 484, and (B) has agreed to notify promptly the holder of the loan concerning any change of address; and"; and

(B) in paragraph (2)(B)(i), by striking out the semicolon at the end thereof and inserting in lieu thereof "and subsection (d)"; and

(2) by adding at the end thereof the following new subsection:

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1. 2 USC § 634(a).

2. 138 CONG. REC. 7228–31, 102d Cong. 2d Sess. For similar amendments to this bill also ruled out of order on section 303(a) grounds, see 138 CONG. REC. 7226, 7227, 102d Cong. 2d Sess., Mar. 26, 1992; and 138 CONG. REC. 7235, 7236, 102d Cong. 2d Sess., Mar. 26, 1992.

"(d) SPECIAL RULE FOR LESS THAN HALF-TIME STUDENTS.—A borrower who is attending an eligible institution on a less than half-time basis (as determined by the institution)—

"(1) shall be required—

"(A) without regard to the borrower's less than half-time attendance, to repay any loans received while attending an eligible institution on at least a half-time basis; and

"(B) to commence repayment of any loans received under this part while attending on a less than half-time basis immediately upon ceasing such attendance; and

"(2) may receive deferments under subsection (a)(2)(C)(ii) for loans received while attending on a less than half-time basis.".

(b) GSL PROGRAM.—Section 428(b) of the Act is amended—

(1) in the matter preceding clause (i) of paragraph (1)(A), by striking "who is carrying at an eligible institution at least one-half the normal full-time academic workload (as determined by the institution)" and inserting "who is enrolled at an eligible institution";

(2) by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULE FOR LESS THAN HALF-TIME STUDENTS.—A borrower who is attending an eligible institution on a less than half-time basis (as determined by the institution) shall be required—

"(A) without regard to the borrower's less than half-time attendance, to repay any loans received while attending an eligible institution on at least a half-time basis; and

"(B) to commence repayment of any loans received under this part while attending on a less than half-time basis immediately upon ceasing such attendance; and".

Page 233, after line 7 insert the following new subsection (and redesignate the succeeding subsections accordingly):

(a) LIFETIME LINE OF CREDIT; INCOME CONTINGENT LOAN REPAYMENT PROGRAMS.—Section 439 of the Act is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively; and

(B) by inserting immediately after paragraph (1) the following: "(2) through such corporation, to enable working men and women desiring to upgrade their job skills, and unemployed individuals, or those not in the labor force, who are seeking new skills, to borrow funds for less than half-time study as described in subsection (r); (3) to provide for agreements between such corporation and a limited number of institutions for the replacement of such institutions' current participation in the loan program under section 428A with loans originated by such corporation that shall be repaid on an income contingent basis in accordance with subsection (s);';

(2) in subsection (d)(1)—

(A) in subparagraph (D), by striking out "and" at the end thereof;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting immediately after subparagraph (D) the following:

"(E) to issue obligations to carry out the purposes of subsections (r) and (s), in the amounts specified therein; and"; and

(3) by adding at the end thereof the following new subsections:

"'(r) LIFETIME LINE OF CREDIT.—(1) PURPOSE.—In order to enhance the lifetime education and training opportunities available to working men and women desiring to upgrade their job skills, or unemployed individuals, or those not in the labor force who are seeking new skills, it is the purpose of this subsection to require the Association to originate loans for such individuals who are enrolled at an eligible institution on

a less than half-time basis, under the terms and conditions described in this subsection. The Association shall issue obligations in an amount sufficient to carry out the purposes of this subsection and subsection (s), but in no case to exceed $100,000,000 for fiscal year 1993 and each of the four succeeding fiscal years.

"(2) APPLICABILITY OF GSL LOAN LIMITS.—A student who is enrolled at an eligible institution on a less than half-time basis may borrow up to $25,000 in the aggregate under this section, which shall be counted toward his or her aggregate loan limits under sections 427, 428, and 428A. In no case may a loan made under this subsection for a period of enrollment exceed the student's cost of attendance for such period of enrollment. . . .

The CHAIRMAN.[3] Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. [William] FORD of Michigan. Mr. Chairman, briefly I rise to a point of order against the gentleman's amendment.

The CHAIRMAN. The gentleman from Michigan [Mr. FORD] raises a point of order against the amendment. Does the gentleman wish to proceed with his point of order?

Mr. FORD of Michigan. I will not, Mr. Chairman, at the same time repeat all the reasons I gave against the amendment offered by the gentlewoman from New Jersey [Mrs. ROUKEMA]. They all apply with equal force to the Petri amendment.

Mr. PETRI. Mr. Chairman, will the gentleman reserve his point of order so I can make a statement on the bill and then proceed with the point of order?

Mr. FORD of Michigan. Certainly. The gentleman is a valuable member of my committee. I reserve my point of order so the gentleman may speak for a few minutes.

The CHAIRMAN. The gentleman from Michigan [Mr. FORD] reserves a point of order, and the gentleman from Wisconsin [Mr. PETRI] is recognized for 5 minutes in support of his amendment. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Michigan [Mr. FORD] insist on his point of order?

Mr. FORD of Michigan. Yes, Mr. Chairman, I do.

The CHAIRMAN. The Chair will hear the gentleman.

Mr. FORD of Michigan. Mr. Chairman, I raise a point of order.

Under section 303(a) of the Congressional Budget Act, it is not in order to consider any measure which creates entitlement authority or direct spending authority first effective in a fiscal year prior to the adoption of the budget resolution for that fiscal year.

The instant amendment offered by Mr. PETRI creates new spending authority first effective in fiscal year 1993 by making eligible for student loan programs under the act students attending institutions of higher education on less than a half-time basis. This expansion of an entitlement program would be first effective in fiscal year 1993.

Since Congress has yet to agree to the conference report on the concurrent resolution on the budget for fiscal year 1993, the amendment is not in order.

Further, under section 402(a) of the Congressional Budget Act, it is not in order to consider any measure which creates credit authority which is not subject to prior appropriation.

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3. Donald Pease (OH).

The instant amendment expands the size of the guaranteed student loan program, and consequently creates additional authority to incur primary loan guarantee commitments.

Since the amendment does not make this credit authority specifically subject to appropriations, it violates section 402(a) of the Budget Act.

Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman from Wisconsin [Mr. PETRI] wish to be heard on the point of order?

□ 1800

Mr. PETRI. Mr. Chairman, earlier in the consideration of this bill an amendment offered by the gentleman from Wisconsin [Mr. GUNDERSON] was adopted to which this point of order at least in part would have pertained but was not made extending the provisions of the act to less than full-time students. Therefore, this amendment does not affect that since the bill has already been amended in that respect.

The CHAIRMAN (Mr. PEASE). The Chair is prepared to rule.

The Chair rules that, in the first place, this amendment goes beyond the Gunderson amendment which was adopted and against which no point of order was made.

Under the terms of the bill even as amended by the Gunderson amendment, a class of borrowers addressed by the amendment would not be eligible for guaranteed student loan interest rate subsidies. Under the amendment, that class of borrowers would be made so eligible. Because the amendment enlarges the class of borrowers eligible, it thus provides new entitlement authority within the meaning of section 303 of the Budget Act. For all the reasons stated by the gentleman from Michigan, the point of order is sustained.

Spending in "Out-Years"

§ 9.8 Section 303(a) of the Congressional Budget Act[1] prohibits the consideration in either House of any bill or amendment thereto (including a conference report) containing "new spending (entitlement) authority" which becomes effective during a fiscal year prior to the adoption of the first concurrent resolution on the budget for that fiscal year.[2]

On Sept. 30, 1976,[3] a conference report containing new spending "entitlement" authorities to become effective in fiscal years 1978–1980 in amounts increased over fiscal year 1977 was ruled out on a point of order under section 303(a) of the Congressional Budget Act, because the first concurrent resolution on the budget for those future fiscal years had not yet been

1. 2 USC § 634(a). See also Deschler-Brown Precedents Ch. 29 § 2.37, *supra*.

2. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

3. 122 CONG. REC. 34074, 34075, 94th Cong. 2d Sess.

adopted and the increased entitlements could not be considered merely continuations of entitlement authority which became effective in the fiscal year (1977) for which a concurrent resolution had been adopted.

CONFERENCE REPORT ON H.R. 13367, STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS OF 1976

Mr. [Jack] BROOKS [of Texas]. Mr. Speaker, I call up the conference report on the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill. . . .

POINT OF ORDER

Mr. [Brock] ADAMS [of Washington]. Mr. Speaker, I raise a point of order against the conference agreement.

The SPEAKER.[4] The gentleman will state the point of order.

Mr. ADAMS. Mr. Speaker, I raise a point of order against the conference agreement on H.R. 13367, to extend the State and Local Fiscal Assistance Act of 1972. The conference agreement contains a provision, not included in the House bill, which provides new spending authority for fiscal years 1978 and 1979 over the amounts provided for fiscal year 1977. This new entitlement increment for succeeding fiscal years violates section 303(a) of the Congressional Budget Act which provides in part:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides— . . . new spending authority described in section 401(c)(2)(C) to become effective during a fiscal year . . . until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

By increasing the fiscal year 1978 entitlement by $200 million over the amounts for fiscal year 1977, H.R. 13367 does provide new spending authority to become effective for a fiscal year for which a budget resolution has not been adopted. It would thereby allow that new spending increment to escape the scrutiny of the fical [sic] year 1978 budget process. While section 303 provides an exception for new budget authority and revenue changes for a succeeding fiscal year, entitlement programs were expressly omitted from the exception by the House-Senate conference on the Congressional Budget Act.

Mr. [Frank] HORTON [of New York]. Mr. Speaker, I rise in opposition to the point of order.

The applicable provision of the Budget Act in this matter concerns section 303(d)(1). This provision provides an exception for any bills on the full fiscal year for which the current resolution applies. The $200 million increase contained in the conference report begins in fiscal year 1978, the next fiscal year beyond 1977, the year for which our present budget resolution applies.

The $200 million increase, since it begins in fiscal year 1978, technically conforms with the Budget Act and deserves to be retained in the conference report. I might say to the membership that in making this point of order, this was brought up in the conference

4. Carl Albert (OK).

and we purposely did not provide for any increase in fiscal year 1977. We purposely skipped the first three-quarters. We agreed upon a term of 3¾ years for the Revenue Sharing Act to be in effect, but we skipped the first three-quarter year and applied a $200 million increment for the first fiscal year thereafter, namely, 1978, and for each of the 3 years subsequent thereto; or a total of $600 million. So, we purposely skipped this fiscal year 1977 so that we would not violate the budget resolution.

Accordingly, I believe that the point of order should be overruled.

Mr. [Clarence] BROWN of Ohio. Mr. Speaker, I also would like to be heard on the point of order.

The SPEAKER. The gentleman is recognized.

Mr. BROWN of Ohio. Mr. Speaker, if I understand the parliamentary situation, it is that the point of order has been made against the revenue sharing bill by the chairman of the Budget Committee on the theory that the revenue sharing bill contains, in the entitlement, language that would provide for the budget resolution to be broken in the future.

As I understand, the budget resolution applies to the 1977 fiscal year. In the 1977 fiscal year, the budget resolution contains $6.65 billion for the revenue sharing entitlement for that year. The fact of the matter is that for that year, the fiscal year 1977, the revenue sharing conference reported includes only $6.65 billion. So, in point of fact, it does not bust the budget resolution in that regard.

Now, in out years, the revenue sharing conference did report an additional $200 million. There are, if the point of order should be sustained, if I understand them, several ways in which this conflict in the conference—if, in fact, there is one—and the budget resolution could be resolved.

One is to have the Rules Committee convene and make an exception. The other is, if the gentleman from Texas, the chairman of the Government Operations Committee, who was chairman of the conference (Mr. BROOKS), offers an amendment which would take out the $200 million after the conference report is rejected on the parliamentary point; just take out the parliamentary issue, then we could vote down that amendment and we could offer at that point, if I understand, an indexing provision which would be in accordance with the budget resolution. That indexing provision could be capped at $200 million in such a way that the $200 million annual increase for the out years after 1977 would be both germane to the budget resolution and conform to the agreement made with the Senate in the conference.

We could save both the conference agreement and the virginity of the budget resolution if in fact there is a problem at this point. But it would be my contention, Mr. Speaker, that there is not a problem because for the fiscal year 1977 we had in that conference exactly what the budget resolution calls for.

The SPEAKER. The Chair recognizes the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS. Mr. Speaker, in response to the comments made by the gentleman from New York (Mr. HORTON), the provision that he refers to regards new budget authority, not entitlement programs where there is a reference over to the Committee on Appropriations and it is controlled in that fashion. This committee in its wisdom and the vote of the House was that this should be an entitlement program, and the violation is to the budget statute and process. We have applied this to all other committees of the House, that entitlement programs for the fiscal year, where we are changing the entitlement—and we have had this come up before—must be considered in the budget resolution for the fiscal year involved. This committee wishes for fiscal year 1978 to bring forth

something for fiscal year 1978 that can be done in the budget cycle of that year. But it is out of order to bring it up and try to put it into the process at this point.

The argument of the gentleman from Ohio (Mr. BROWN) is irrelevant to the discussion that we are having at this point because the discussion we are having at this point is on the violation of the budget statute, not the amounts of money in the budget resolution for fiscal year 1977.

I would say to the Members that the same amount of money will go in fiscal year 1977 to the cities, regardless of what happens, so long as the bill is passed this year. There is no dispute about the amount for this year. It is the violation of the budget process for fiscal year 1978, fiscal year 1979, and fiscal year 1980.

Mr. Speaker, I ask that my point of order be sustained.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I yield to the gentleman from New York (Mr. HORTON).

Mr. HORTON. I thank the gentleman for yielding.

Mr. Speaker, the gentleman understands, does he not, there is no additional amount in fiscal year 1977?

Mr. ADAMS. That is correct.

Mr. HORTON. The amount involved, $200 million, would not be applicable until fiscal year 1978. And in the next Congress, the next session, the Budget Committee would at that time have an opportunity to act on that budget.

Mr. ADAMS. No, the gentleman is not correct, because this represents one of the worst kinds of problems in budgeting.

If the entitlement goes in place, as the gentleman stated, that money would automatically be spent and would be required to be in the budget resolution. Neither the House nor the Budget Committee could consider the matter in the fiscal year 1978 budget cycle.

That is why those in the House on the conference and later the House and the Senate in their wisdom put this provision in, to control entitlement programs. That is the purpose of the provision, and it is vitally important to act.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I yield to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. I thank the gentleman for yielding.

Mr. Speaker, I refer to the Public Law 93–344, the language that exists on page 22(d)(2).

Mr. ADAMS. Would the gentleman refer to the motion, please? I am using both the conference report and the statute.

Mr. BROWN of Ohio. Section 401.

Mr. ADAMS. Is the gentleman referring to the statute or the conference report?

Mr. BROWN of Ohio. Section 401 of the statute.

The SPEAKER. The Chair has been liberal in enforcing the rules on arguing on a point of order. The Chair controls the time and each individual Member desiring to be heard should address the Chair and not yield to other Members.

Does the gentleman from Ohio (Mr. BROWN) desire to be heard?

Mr. BROWN of Ohio. Yes, Mr. Speaker, I do desire to be heard.

Mr. Speaker, I refer to Public Law 93–344 of the 93d Congress which was enacted July 12, 1974, and I refer to page 22 of that legislation, section 401(d)(2). Section 401(d) is entitled "Exceptions." Subsection (d)(2), under "Exceptions," says as follows:

> Subsections (a) and (b) shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or

a continuation of the program of fiscal assistance to State and local governments provided by that Act,—

meaning the Local Fiscal Assistance Act of 1972—

to the extent so provided in the bill or resolution providing such authority.

Mr. Speaker, it seems to me clearly designed in that legislation that the Local Fiscal Assistance Act of 1972 was meant to contain an exception from the entitlement procedure, a procedure which was in fact used in that legislation of 1972, the first Revenue Sharing Act, and I see no other way to read it except that we would provide an exception to sections 401(a) and (b) in accordance with the legislation that the Congress previously passed.

The act provides—and this is what the conference provided for—an entitlement, and the entitlement is in fact both an authorization and an appropriation. It provided for the funds for that purpose into the future. For the first year it did not result in any breaking of the Budget Resolution passed by this House in accordance with the Committee on the Budget.

So, Mr. Speaker, I see no way by which the extension of the Revenue Sharing Act could be prohibited, because this exemption which was provided is in the law.

It may be argued that the language in our extension does not specifically say, "in accordance with section (d)(2)," et cetera, so we can go ahead and pass an entitlement, but I am sure that that reference would not be necessary for any reasonable person to interpret both what we did in the conference and what was down in this basic Public Law 93–344, which is the Congressional Budget and Accounting Act of 1974.

The SPEAKER. Does the gentleman from Washington (Mr. ADAMS) desire to be heard further on the point of order?

Mr. ADAMS. Yes, I do, Mr. Speaker.

In reply to the argument of the gentleman from Ohio (Mr. BROWN), I refer the gentleman to the statement of the managers which defines and comments on the section that he mentioned. At page 66 of the report of the managers it states very clearly that the managers note that these exemptions that the gentleman has referred to relate only to the procedures in section 401, and that the programs are fully subject to the congressional budget process.

That exemption, therefore, has no applicability to section 303 which provides, as I have explained before in my argument, a very careful system for the handling of entitlement programs.

Mr. Speaker, I ask that the point of order be sustained.

The SPEAKER. The Chair is prepared to rule. The Chair thinks he has heard about all the arguments he needs to hear.

Mr. BROWN of Ohio. Mr. Speaker, may I make one final comment in response to the statement of the gentleman from Washington (Mr. ADAMS)?

The SPEAKER. The Chair will hear the gentleman briefly.

Mr. BROWN of Ohio. Mr. Speaker, the gentleman from Washington (Mr. ADAMS) just quoted a reference to section 401. Section 401 clearly embraces section 401(d), which is the exemption section, and I do not see how it can be read any other way, even by the gentleman from Washington, for whom I have the greatest respect and affection, but who, I know, is generally opposed to the revenue sharing legislation.

The SPEAKER. The Chair is ready to rule.

The gentleman from Washington (Mr. ADAMS) makes a point of order against the conference report on the bill H.R. 13367 on the ground that section 5(a) of the conference report provides new spending authority and entitlement increment for fiscal years 1978 and 1979 over the amounts provided for in fiscal year 1977, in violation of section 303(a) of the Congressional Budget Act of 1974.

The gentleman from New York (Mr. HORTON) and the gentleman from Ohio (Mr. BROWN) rebut this argument by contending that a mere incremental increase in an entitlement for subsequent fiscal years is not new spending authority as prescribed in section 401(c)(2)(c) to become effective during the subsequent fiscal years, but rather, a continuation of the spending authority for fiscal year 1977, which is permitted under section 303(a).

The Chair has examined the conference report, and section 5(a) is structured so as to provide separate authorization for entitlement payments for each of the fiscal years 1977, 1978, and 1979, with a higher authorization for 1978 and 1979 than for 1977.

In the opinion of the Chair, such a separate increase in entitlement authorizations is new spending authority to become effective during those subsequent fiscal years, which may not be included in a bill or an amendment prior to the adoption of the first concurrent resolution for fiscal years 1978 and 1979, which does not come within the exception contained in section 303(b) for new budget authority, and which does not come within the section 401(d) revenue-sharing exception—applicable only to contract or borrowing spending authority as defined in subsections (a) and (b) of section 401(c)—cited by the gentleman from Ohio.

The Chair therefore sustains the point of order against the conference report.

Restoring Provisions Proposed To Be Cut

§ 9.9 Against an amendment constraining the size of a new discretionary student loan program and restoring for students thereby displaced from the new program benefits under an existing mandatory student loan program, the chairman of the Committee of the Whole sustained a point of order under section 303(a) of the Congressional Budget Act[1] on the basis that the amendment provided new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year.

On Mar. 26, 1992,[2] the following occurred:

"CHAPTER 6—NATIONAL STUDENT SAVINGS DEMONSTRATION PROGRAM

"SEC. 407A. NATIONAL STUDENT SAVINGS DEMONSTRATION PROGRAM.

''(a) STATEMENT OF PURPOSE.—It is the purpose of this section to—

''(1) create a demonstration program to test the feasibility of establishing a national student savings program to encourage families to save for their children's college education and thereby reduce the loan indebtedness of college students; and

''(2) help determine the most effective means of achieving the activities described in paragraph (1).

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1. 2 USC § 634(a).

2. 138 CONG. REC. 7139, 7152, 7171–73, 102d Cong. 2d Sess.

''(b) DEMONSTRATION PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary is authorized to award a demonstration grant to not more than 5 States to enable each such State to conduct a student savings program in accordance with this section.

''(2) AMOUNT OF GRANT.—The amount of each grant awarded pursuant to paragraph (1) shall be computed on the basis of—

''(A) a Federal match in an amount equal to the initial State deposit into each account established pursuant to subsection (c)(2)(B), except that such Federal match shall not exceed $50 per child; multiplied by

''(B) the number of children participating in the program assisted under this part.

''(3) PRIORITY.—In awarding grants under this section the Secretary shall give priority to States proposing programs that establish accounts for a child prior to the age of compulsory school attendance in the State in which such child resides. . . .

PART D—FEDERAL DIRECT LOANS

SEC. 451. ESTABLISHMENT OF FEDERAL DIRECT LOAN PROGRAM.

Part D of title IV of the Act is amended to read as follows:

''PART D—FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM

''SEC. 451. PROGRAM AND PAYMENT AUTHORITY.

''(a) PROGRAM AUTHORITY.—The Secretary shall, in accordance with the provisions of this part, carry out a loan demonstration program for qualified students and parents at selected institutions of higher education to enable the students to pursue their courses of study at such institutions during the period beginning on July 1, 1994 and ending on June 30, 1998.

''(b) PAYMENT AUTHORITY.—

''(1) GENERAL AUTHORITY.—The Secretary shall, from funds made available under section 459, make payments under this part for any fiscal year to institutions of higher education having an agreement under section 454, on the basis of the estimated needs of students at each institution and parents for student or parent loans taking into consideration the demand and eligibility of such students and parents for loans under this part.

''(2) ENTITLEMENT PROVISION.—An institution of higher education which has an agreement with the Secretary under section 454 shall be deemed to have a contractual right against the United States to receive payments according to that agreement.

''SEC. 452. PAYMENT RULES. . . .

''(5) provide that students at the institution of higher education and their parents will not be eligible to participate in the Federal Stafford Loan program, the Federal Supplemental Loans to Students program, or the Federal Plus loan program for the period during which such institution participates in the loan demonstration program[.] . . .

The CHAIRMAN.[3] Are there any amendments to title IV?

AMENDMENT OFFERED BY MR. COLEMAN OF MISSOURI

Mr. [Tom] COLEMAN of Missouri. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLEMAN of Missouri:

Page 273, line 24, after the quotation marks insert "(b) ADMINISTRATIVE EXPENSES.—", and before such line insert the following:

"(a) LOAN FUNDS AUTHORIZED.—There are authorized to be appropriated for the purpose of making direct loan payments under section 451(b)(1), not to exceed $500,000,000 for fiscal year 1994 and each of the 4 succeeding fiscal years.

Page 262, after line 15, after "shall" insert ", subject to subsection (c)".

Page 262, after line 17, insert the following new subsection:

"(c) ACCESS TO LOANS WHEN DEMAND EXCEEDS SUPPLY.—If the demand for loans under this part for any academic year at institutions with which the Secretary has an agreement under section 454 exceeds, in the aggregate, the amount available (pursuant to section 459A(a)) for such loans for such academic year, the Secretary shall

3. Donald Pease (OH).

notify each such institution of that fact and establish for each such institution an allocation (from such available amount) that such institution will be permitted to lend under this part. Each such institution shall make that allocation available or loans to its students on a first-come, first-served basis, in accordance with regulations prescribed by the Secretary. Any additional demand for loans from such students shall be met by providing such students with the certifications required to permit such students to obtain loans under part B of this title.

Page 263, beginning on line 14, strike "was $500,000,000 in the most recent year for which data is available" and insert "can reasonably be expected to be $500,000,000 in each year of the demonstration program".

Page 267, line 6, after "will not" insert ", except as necessary because of the application of section 451(c)." . . .

Mr. [Leon] PANETTA [of California]. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The gentleman from California [Mr. PANETTA] reserves a point of order on the amendment. . . .

Mr. COLEMAN of Missouri. . . .

My amendment tries to rein in, about $1.25 billion, we estimate, in additional borrowing that the Federal Government would have to make to put into this demonstration project. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from California [Mr. PANETTA] wish to insist on his point of order?

Mr. PANETTA. Mr. Chairman, we have a large number of amendments that are involved with this bill. We have made very clear to those Members with the amendments that we have to proceed with the points of order under the Budget Act. We get criticized if we do not make these points of order.

I regret to the gentleman in the well, Mr. COLEMAN of Missouri, I think the amendment does have some merit to it, but I also have a responsibility to enforce the Budget Act with points of order. We are going to do that on many amendments here today. I am not going to pick and choose. I apologize, but that is the case.

I wish to proceed with my point of order.

The CHAIRMAN. The gentleman from California [Mr. PANETTA] will state his point of order.

Mr. PANETTA. Mr. Chairman, under section 303(a) of the Congressional Budget Act, it is not in order to consider any measure which creates entitlement authority or direct spending authority first effective in a fiscal year prior to the adoption of the budget resolution for that fiscal year.

The instant amendment offered by COLEMAN of Missouri creates new entitlement authority first effective in fiscal year 1994. Since Congress has yet to agree to the budget resolution for fiscal year 1994, section 303(a) prohibits its consideration.

The bill under consideration, in establishing a Federal Direct Loan Demonstration Program, proposes an either/or proposition. For students at particular institutions, and their parents, eligibility to participate in the entitlement loan programs under part B of title IV of the Higher Education Act is extinguished by the terms of the bill.

The Coleman amendment, in capping the aggregate loan volume available for the demonstration program, specifically reestablishes the right to participation in the entitlement loan programs under part B as the means for satisfying additional demand beyond the

cap. The amendment goes so far as to mandate student eligibility, which would not otherwise exist, by directing the Secretary to provide students with the certifications required to permit such students to obtain loans under part B of this title.

By renewing this eligibility, the amendment creates new entitlement authority first effective in fiscal year 1994—the year in which the demonstration program begins and the year in which eligibility for participation in other student loan entitlement programs under the act would otherwise be extinguished.

Since Congress has yet to agree to the conference report on the concurrent resolution on the budget for fiscal year 1994, the amendment is not in order.

Further, section 402(a) of the Congressional Budget Act prohibits the consideration of any measure which creates credit authority which is not subject to prior appropriation.

The instant amendment, in creating additional eligibility for participation in entitlement loan programs not otherwise provided by the bill creates additional authority to incur primary loan guarantee commitments.

Since the amendment does not make this credit authority specifically subject to appropriations, it also violates section 402(a) of the Budget Act.

Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman from Missouri [Mr. COLEMAN] wish to be heard on the point of order?

Mr. COLEMAN of Missouri. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Missouri is recognized on the point of order.

Mr. COLEMAN of Missouri. Mr. Chairman, this truly is a time when we look at the Budget Act. The gentleman has just cited two sections of it, both of which the intent, and my point of order and my response to it is that the intent of section 402(a) and section 303(a) of the Budget Act does not intend that the Congress spend more money as a result of these budget provisions, and in fact my amendment saves money under these budget acts, and that the entitlements set up are in fact entitlements already in the bill being proposed to this body this afternoon. That is where the entitlements come from.

I am trying to limit those entitlements. I am trying to restrict the growth of borrowing. I do not care what citations the gentleman from California [Mr. PANETTA] wants to make of the Budget Act, I will cite the entire Budget Act. The entire Budget Act is supposed to get spending under control. I am trying to reduce borrowing and spending and the deficit by $1.25 billion.

Now, the gentleman can go into all the technicalities he wants to and he can present all of this. It does not make sense. It does not make to the American people for the chairman of the Committee on the Budget to stand up and make a point of order against the budget saving proposal amendment because it violates the Budget Act.

This truly is a bizarre world we live in here in Washington, in the House of Representatives, where we are going to stop money-saving, budget-saving, borrowing-saving amendments from themselves because they in fact would save money because they violate the Budget Act.

If that is what the Budget Act has, then it is not serving the American people very well. I am truly sorry, even though the gentleman from California says that my amendment has merits, that he is proposing a technicality, if he can find one, and we will find out if the Parliamentarian has found one, to avoid talking about this issue that ought to be debated in public and ought to be put out there for everybody to talk about.

That is my point of order. I do not know if it is nicely confined. I did not have somebody draw it up for me to cite all the citations. But the true point of order is that the

public thinks this whole place is out of order. Let us get back in order. Let us go ahead and sustain my position and not the position of the gentleman from California [Mr. PANETTA].

The CHAIRMAN (Mr. PEASE). Does any other Member wish to be heard on the point of order? If not, the Chair is prepared to rule.

Under the terms of the bill, paragraph 5 on page 267, Stafford loans are not available in institutions that participate in the pilot program. Under the amendment, Stafford loans are required to be to any overflow demands for the pilot program as constrained by the amendment. Because Stafford loans are entitlements, the amendment thus provides new entitlement authority within the meaning of section 303, which prohibits an increased use of existing entitlements or creation of new entitlements in future fiscal years prior to the final adoption of the budget resolution.

For that reason, the Chair sustains the point of order.

Proper Baseline for Evaluation

§ 9.10 Against an amendment enlarging (as compared to the pending bill)[1] the class of borrowers entitled to extension of the period during which the United States would subsidize (without recompense) their interest payments on student loans, the chairman of the Committee of the Whole sustained a point of order under section 303(a) of the Congressional Budget Act[2] on the basis that the amendment provided new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year.

On Mar. 26, 1992,[3] the following occurred:

The CHAIRMAN.[4] The gentleman from Missouri reserves a point of order on the amendment.

The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mrs. MINK: Page 169, line 23, strike "and"; on page 170, line 5, insert "and" after the semicolon; and after line 5, insert the following.
>
> "(iii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service, or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training;". . . .

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1. As noted in the Chair's ruling, section 303(a) points of order raised against amendments are evaluated on the basis of the amendment's marginal effect on the pending legislation, and not its effect on existing law. Although the class of borrowers were eligible under existing law for the subsidies at issue, the pending bill eliminated such eligibility.

2. 2 USC § 634(a).

3. 138 CONG. REC. 7181–4, 102d Cong. 2d Sess.

4. Donald Pease (OH).

Page 170, line 16, strike "and"; on line 23, insert "and" after the semicolon; and after line 23, insert the following.

"(iii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service, or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training;".

POINT OF ORDER

The CHAIRMAN. The time of the gentlewoman from Hawaii has again expired.

Does the gentleman from Missouri [Mr. COLEMAN] wish to pursue his point of order?

Mr. [Tom] COLEMAN of Missouri. Mr. Chairman, I do.

Mr. Chairman, I am sympathetic to the concerns that are expressed here for this amendment. The bill already has extended hardship deferments for 3 years in the bill, and we are trying to make some rationality under all of these deferments.

My point of order, Mr. Chairman, is that I cite section 303(a) of the Budget Act, which prohibits any new spending authority first effective for fiscal year 1993 or beyond until the concurrent resolution on the budget for the fiscal year has been agreed to. Since the budget resolution has not been agreed to, all amendments that require spending for fiscal year 1993 or beyond violate the Budget Act.

Furthermore, I cite section 401(b)(1), which precludes any new entitlement authority first effective before October 1992.

The amendment in question would require the Government to pay an interest subsidy for an extended period of time for individuals not otherwise subsidized by the bill. The amendment expands the class of individuals entitled to an interest subsidy in repayment of their student loans. Consequently, the amendment establishes a benefit, a beneficiary, and a right to the benefit, in this case interest subsidy, satisfying the definition of new entitlement authority under the Budget Act.

While the Congressional Budget Office did not credit the committee bill with savings for changes in the deferment terms of student loan programs in the act, the present amendment expands the class of individuals entitled to the economic benefit of loan principal and repayment deferments and interest subsidies.

The CHAIRMAN. Does the gentlewoman from Hawaii [Mrs. MINK] wish to be heard on the point of order?

Mrs. [Patsy] MINK [of Hawaii]. Yes, Mr. Chairman, I wish to be heard on the point of order.

Mr. Chairman, the points that have been raised in opposition to my amendment come to me with a great deal of shock and surprise, because we had submitted this amendment to the Congressional Budget Office as we are required to do, and the process by which we make that inquiry is to send in our amendment, and noted thereon are three marks from the CBO on my amendment saying that it does not involve any direct spending or any new entitlement authority.

Under three of those lines, it says, "None, none, none," and it seemed to me that we were fully in our right to bring this amendment to the floor with the CBO having told us and assured us that there was no additional money or no additional entitlement authority.

Furthermore, in debating this matter in committee, time and time again we were assured that these students for which we are now seeking a special designation for their

deferments were already going to be covered under the amendment, that all we were doing by that general amendment in the bill was to clarify the process in order to avoid having all of these separate categories, but that medical interns and residents would be treated just as they were in the past.

It was with that assurance that I supported the refinement of the language and agreed to the passage of the bill. However, since that time we find that not to be necessarily true, because, as I have pointed out earlier, the interns and residents probably do not pay tuition and, therefore, would not be included in the category of being in school.

It seems to me, Mr. Chairman, this point of order comes very late. It comes at a time when we have no opportunity to refute it.

What can a Member of the House do in the face of an approved slip from the CBO which is the very process which we are expected to follow, when they tell us that our amendment is in order, does not cost additional money, does not direct additional spending, has no new entitlement authority, only to find that at the last minute that decision has been reversed and we find that we do not have an opportunity to offer this amendment which so many Members, I believe, support and would like to have included in the higher education bill?

The CHAIRMAN (Mr. [Donald] PEASE [of Ohio]). Are there other Members who wish to be heard on the point of order?

If not, the Chair is prepared to rule.

It is the understanding of the Chair that CBO may have advised various Members based on the assumption that medical interns and residents were already covered by the bill, which the Chair is advised is not the case.

It is the obligation of the Chair to measure the point of order against the pending bill before the Committee and to make a judgment as to the nature of the new spending authority. Under the terms of the bill, the class of borrowers addressed by the amendment would not be eligible for deferment of student loan repayments.

Under the amendment, that class of borrowers would be made so eligible. Because a deferment extends the period during which the United States subsidizes a borrower's interest payments, deferments are, in effect, entitlements.

Because the amendment enlarges the class of borrowers eligible for deferment, it does provide new entitlement authority within the meaning of section 303.

Accordingly, the Chair sustains the point of order.

Congressional Budget Office or Committee on the Budget Estimates

§ 9.11 Although under section 303 of the Congressional Budget Act[1] estimates provided by the Committee on the Budget may be treated as persuasive—whether for their analytical merit or simply to maintain consistency in determinations under title III of the Act—such estimates are not controlling, and the assumptions underlying such estimates are not dispositive of any matters to which they relate.[2]

1. 2 USC § 634. See also Deschler-Brown Precedents Ch. 31 § 8.14, *supra*.
2. The Budget Enforcement Act of 1997 amended section 312(a) of the Congressional Budget Act to provide that levels of new budget authority, outlays, direct spending, entitlement authority, and revenues shall be determined on the basis of estimates made

On Mar. 26, 1992,[3] the following occurred:

AMENDMENT OFFERED BY MR. KLUG

Mr. [Scott] KLUG [of Wisconsin]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.[4] Has the amendment been printed in the RECORD?

Mr. KLUG. Yes, Mr. Chairman, it has.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. KLUG: Page 169, line 23, and page 170, line 16, strike "and"; and on page 170 after line 5 and after line 23, insert the following new clauses:

"(iii) not in excess of 3 years during which the borrower is engaged as a full-time teacher in a public on nonprofit private elementary or secondary school in a teacher shortage area established by the Secretary pursuant to paragraph (4) of this subsection;

Page 177, strike lines 13 through 16 and redesignate the succeeding subsections accordingly.

Page 177, line 18, strike "428(b)(4) of the Act as redesignated)" and insert "428(b)(5) of the Act".

Page 178, line 4, and page 179, lines 14 and 23, redesignate paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively.

Mr. KLUG (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

POINT OF ORDER

Mr. [William] FORD of Michigan. Mr. Chairman, I am constrained to and must make a point of order on this amendment.

The CHAIRMAN. The gentleman will state his point of order.

Mr. FORD of Michigan. Mr. Chairman, I would have reserved a point of order, but what just happened when we tried to do that is an illustration that we will never get finished here if we use the reservation of a point of order for unlimited debate. For that reason I make the point of order without a reservation.

Mr. Chairman, in section 303(a) of the Congressional Budget Act it is not in order to consider any measure which creates entitlement authority or directs spending authority first effective in the fiscal year prior to the budget resolution for that fiscal year.

The amendment would require the Government to pay an interest subsidy for an extended period of time for individuals not otherwise subsidized by the bill.

The amendment expands the class of individuals entitled to an interest subsidy in repayment of their student loans. Consequently, the amendment establishes a beneficiary

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by the Committee on the Budget. Because section 303(a) points of order are fundamentally about the *timing* of new spending authorities, estimates of the *levels* of such authorities are not dispositive of questions raised under that section.

3. 138 CONG. REC. 7185, 7186, 102d Cong. 2d Sess.

4. Donald Pease (OH).

and a right to the benefit in the subsidy satisfying the definition of new entitlement authority under the Budget Act.

While the Congressional Budget Office did not credit the committee with savings for changes in the deferment terms of the student loan programs in the act, the present amendment expands the class of individuals entitled to the economic benefit of loan principal repayment deferments and interest subsidies.

I want to close by saying it makes me extremely sad to have to make this point of order, because I have been trying to get into the law what the gentleman is trying to do in the law. He is right. He is right, but we are operating with something called the Budget Act and we have squeezed every last little smidgeon of money out of everything that we could get our hands on to justify the bill, and we just cannot pass up the clear duty that places on us with the Budget Act.

I am sorry, Mr. Chairman, that we cannot accommodate the gentleman by accepting his amendment.

The CHAIRMAN. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. KLUG. Yes, very briefly, I might add, Mr. Chairman.

The CHAIRMAN. The gentleman may proceed.

Mr. KLUG. First of all, Mr. Chairman, this amendment, like the amendment offered by my colleague, the gentlewoman from Hawaii just a few minutes ago, attempts to expand the higher education authority to also allow deferments for teachers involved in teacher shortage areas. In fact, right now, 34 States have made application to the Federal Government because of shortages of teachers, much like the shortage of physicians in rural areas across the United States.

I accept the gentleman's point of order, but let me tell you, there is some frustration that I feel in that we in good faith went to the Congressional Budget Office last week and asked for an analysis, only to have now today an indication that the CBO estimate no longer holds. They told us there would be no additional expense. We come to the floor and suddenly find out that in this case the Congressional Budget Office, which happens to support our position, no longer holds.

I think that is a very dangerous precedent. If we are going to ask the CBO to do an analysis, then my sense is the CBO analysis should be the rule of law on this floor.

The CHAIRMAN. Does anyone else wish to be heard on the point in order?

Mr. [Robert] WALKER [of Pennsylvania]. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania may proceed. . . .

Mr. WALKER. At this point, Mr. Chairman, what I would ask is that the point of order not be sustained, that the point of order while it comes timely is not sustainable from the standpoint that the CBO has ruled that the matter before the House does not extent an entitlement, that it in fact is something where the particular people covered are assumed to have been covered previously, so therefore the amendment of the gentleman from Wisconsin is in order and should be considered by the House.

Mr. FORD of Michigan. Mr. Speaker, may I be heard further on the point of order?

The CHAIRMAN. The gentleman from Michigan may proceed.

Mr. FORD of Michigan. Mr. Chairman, the gentleman from Pennsylvania apparently was not on the floor when the previous ruling was made by the Chair on precisely the same point of order, and the point of order was raised from that side of aisle.

I think it is really unfair hyperbole for the gentleman to come in late and suggest that because I made the point of order that the ruling would be different than it was when

the gentleman from Missouri [Mr. COLEMAN] on the Republican side made the point of order. It is exactly the same point of order. The same issues are at stake and the same assertion was made on the previous point of order that the Congressional Budget Office made a mistake. It is not because it is my point of order that I expect them to rule on it. I expect them to rule exactly as they did with the Republican point of order.

The CHAIRMAN. Does anyone else wish to be heard on the point of order?

Mr. WALKER. Mr. Chairman, may I be heard?

Mr. FORD of Michigan. Mr. Chairman, the gentleman has already been heard on this point of order.

Mr. WALKER. So has the gentleman from Michigan, Mr. Chairman.

The CHAIRMAN. The gentleman may be heard more than once on a point of order. The gentleman from Pennsylvania may proceed.

Mr. WALKER. I thank the gentleman.

Mr. Chairman, I plead guilty to not raising the point on the previous question. But the point that I am making here is one of who is going to make determinations with regard to the Budget Act? Our understanding all the way along had been that the Budget Act was determined by the CBO. . . .

The CHAIRMAN (Mr. [Ed] PEASE [of Ohio]). Does anyone else desire to be heard on the point of order? If not, the Chair is prepared to rule.

The Chair would observe that the fact that CBO assumed the inclusion of these borrowers in its estimating model is not dispositive to the question of order under section 303. Moreover, under section 303 the Chair must be guided by the text and, unlike sections 302 and 311, is not required to accept Budget Committee estimates as conclusive.

Having said that, the Chair would point out that the issue here is identical to what it was in the amendment raised by the gentlewoman from Hawaii, and based on the same reasoning the Chair sustains the point of order.

§ 9.12 While under section 303 of the Congressional Budget Act[1] the chairman of the Committee of the Whole is not required to rely upon estimates from the Committee on the Budget in determining whether a provision constitutes new budget authority in advance of adoption of a budget resolution, the chairman of the Committee of the Whole may rely upon Congressional Budget Office estimates in order to maintain scorekeeping consistency under enforcement provisions of title III of the Congressional Budget Act.

An amendment repealing an agricultural marketing quota (entitlement) program for peanuts over a 5-year period was nevertheless held to provide new budget authority for the ensuing fiscal year and not to be in order under section 303(a) of the Congressional Budget Act prior to adoption of the concurrent resolution on the budget for that fiscal year, where the chairman was persuaded by estimates from the Congressional Budget Office that economic conditions under that repeal would result in decreased receipts and increased Federal outlays during that (first) fiscal year.

1. 2 USC § 634.

On July 25, 1990,[2] the following occurred:

TITLE VIII—PEANUTS

SEC. 801. SUSPENSION OF MARKETING QUOTAS AND ACREAGE ALLOTMENTS.

The following provisions of the Agricultural Adjustment Act of 1938 shall not be applicable to the 1991 through 1995 crops of peanuts:

(1) Subsections (a) through (j) of section 358 (7 U.S.C. 1358(a)–(j)).

(2) Subsections (a) through (h) of section 358a (7 U.S.C. 1358a(a)–(h)).

(3) Subsections (a), (b), (d), and (e) of section 359 (7 U.S.C. 1359 (a), (b), (d), (e)).

(4) Part I of subtitle C of title III (7 U.S.C. 1361 et seq.).

(5) Section 371 (7 U.S.C. 1371). . . .

AMENDMENT OFFERED BY MR. ARMEY

Mr. [Richard] ARMEY [of Texas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ARMEY: Strike out title VIII (page 153, line 1 through page 189, line 22), and insert in lieu thereof the following:

TITLE VIII—PEANUTS

SEC. 801. REPEAL OF MARKETING QUOTA PROGRAM FOR PEANUTS.

(a) MARKETING QUOTAS.—Part VI of subtitle B of title III of the Agricultural Adjustment Act of 1933 (7 U.S.C. 1357–1359), relating to peanuts, is repealed.

(b) PRICE SUPPORT LEVELS.—The Agricultural Act of 1949 (7 U.S.C. 1441 et seq.) is amended—

(1) in section 101(b) (7 U.S.C. 1441(b)), by striking ''and peanuts'';

(2) in section 408(c) (7 U.S.C. 1428(c)), by striking ''peanuts,''; and

(3) by repealing sections 108, 108A, and 108B (7 U.S.C. 1445c, 1445c–1, and 1445c–2).

(c) CONFORMING AMENDMENTS.—(1) Sections 361, 371(a), 371(b), 373(a), 373(b), and 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361, 1371, 1373, and 1375) are amended by striking ''peanuts'' each place it appears.

(2) Section 373(a) of such Act (7 U.S.C. 1373(a)) is further amended—

(A) by inserting ''and'' in the first sentence after ''from producers,''; and

(B) by striking '', all producers engaged in the production'' and all that follows through ''peanut-threshing machines''.

(3) Section 8(b)(2) of the Agriculture Adjustment Act (7 U.S.C. 608b(b)(2)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking '', as determined under section 108B of the Agricultural Act of 1948 (7 U.S.C. 1445c–2),''.

SEC. 802. PRICE SUPPORT PROGRAM.

The Agricultural Act of 1949 (7 U.S.C. 1441 et seq.) is amended by inserting after section 107F (7 U.S.C. 1445b–5) the following new section:

''SEC. 108. PRICE SUPPORT PROGRAM FOR PEANUTS.

''(a) IN GENERAL.—Except as provided in subsection (c), the prices of the 1991 and subsequent crops of peanuts shall be supported at such level as the Secretary determines to be appropriate.

''(b) FACTORS.—In making the determination, the Secretary shall take into consideration—

''(1) the factors specified in paragraphs (1) through (8) of section 401(b);

''(2) the cost of production;

''(3) any change in the index of prices paid by farmers for production items, interest, taxes, and wage rates during the period beginning January 1 and ending December 31 of the calendar year immediately preceding the crop year for which the level of support is being determined;

''(4) the demand for peanuts for domestic edible use, peanut oil, and meal;

''(5) expected prices of other vegetable oils and protein meals; and

''(6) the demand for peanuts in foreign markets.

''(c) LIMITATION.—The level of price support determined by the Secretary for a crop of peanuts shall not result in a net loss to the Federal Government in excess of the average

2. 136 CONG. REC. 19155, 19160, 19161, 101st Cong. 2d Sess.

net loss to the Federal Government from supporting the 1987, 1988, and 1989 crops of peanuts.''.

SEC. 803. EFFECTIVE DATE.

The amendments made by this title shall take effect beginning with the 1991 crop of peanuts.

POINT OF ORDER

Mr. [Charles] HATCHER [of Georgia]. Mr. Chairman, I have a point of order.

The CHAIRMAN.[3] The gentleman will state it.

Mr. HATCHER. Mr. Chairman, the Armey amendment violates section 303 of the Budget Act because it provides new budget authority in 1991 with no budget resolution in place.

According to the Congressional Budget Office, commercial users of peanuts would suspend their 1990 purchasing in anticipation of lower 1991 prices. CBO estimates that 1990 carryover stocks would fall by 50 percent, about 335 million pounds. Producers would fail to redeem a similiar [sic] volume of peanut price support loans in the absence of commercial use, resulting in a reduction of loan repayments of $110 million in fiscal year 1991. CBO projects that CCC would be able to sell the acquired stocks of peanuts at about half the acquisition price, netting $55 million of receipts in fiscal year 1992 and no net cost in fiscal year 1993 through fiscal year 1995.

□ 1440

The CHAIRMAN. Does the gentleman from Texas [Mr. ARMEY] wish to be heard on the point of order?

Mr. ARMEY. I would like to be heard on the point of order, Mr. Chairman.

Mr. Chairman, if one reads the amendment on page 3, line 13, it begins "limitation," and the limitation is very, very much to the point. If I can just take a moment I will read the limitation. It says:

> The level of price support determined by the Secretary for a crop of peanuts shall not result in a net loss to the Federal Government in excess of the average net loss to the Federal Government for supporting the 1987, 1988 and 1989 crops of peanuts.

Mr. Chairman, on the basis of the inclusion of that limitation in the amendment I would suggest that it does not violate, it does not have the violation that the gentleman has raised as a point of order against the amendment.

The CHAIRMAN. . . .

Under section 302, where levels of spending and revenues are pertinent, the Chair must rely on estimates—this is important, the Chair has to rely on estimates—provided by the Committee on the Budget pursuant to subsection 302(g).[4] Under section 303, however, the Chair is guided by arguments as to whether an amendment provides new budget authority for the ensuing fiscal year.

In the instant case, having been informed by the gentleman from Georgia that the Congressional Budget Office has scored the language of the amendment as providing new

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3. David Bonior (MI).

4. Now section 312(a) of the Congressional Budget Act (2 USC § 643). Pursuant to Rule XXIX clause 4, adopted at the beginning of the 112th Congress, such authoritative guidance with respect to budgetary levels may now be provided by the chairman of the Committee on the Budget. *House Rules and Manual* § 1105d (2011).

budget authority of $110 million for fiscal 1991 based upon economic assumptions and estimates that are unique to the peanut program, the Chair is inclined to give weight to those estimates in order to maintain consistency in determinations under title III of the Budget Act.

The Chair sustains the gentleman's point of order.

Economic Assumptions

§ 9.13 To a section of a committee amendment providing eligibility for benefits under the food stamp program and allowing an excess shelter cost deduction not to exceed a certain dollar limit in computing household income, an amendment requiring an adjustment in the deduction ceiling, effective January 1, 1979, to reflect changes in shelter and utility costs, was ruled out (on the assumption that such costs would continue to rise) as providing new spending (entitlement) authority to become effective in a fiscal year for which a concurrent resolution on the budget had not yet been adopted, in violation of section 303(a) of the Congressional Budget Act.[1]

On July 27, 1977,[2] the following occurred:

The Clerk read as follows:

ELIGIBLE HOUSEHOLDS

SEC. 1205. (a) Participation in the food stamp program shall be limited to those households whose incomes and other financial resources held singly or in joint ownership are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Assistance under this program shall be furnished to all eligible households who make application for such participation. . . .

(e) In computing household income the Secretary shall allow (1) a standard deduction of $60 a month for each household, except those in Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands which shall be allowed a standard deduction determined by the Secretary in accordance with the best available information on the relationship of actual or potential itemized deductions claimed under the food stamp program in those areas to such deductions in the forty-eight other States and the District of Columbia. Such standard deductions, starting on July 1, 1978, shall be adjusted every July 1 and January 1 to the nearest $5 to reflect changes in the Consumer Price Index of the Bureau of Labor Statistics for items other than food for the six months ending the preceding March 31 and September 30, respectively. The Secretary shall allow additional deductions (2) equal to 20 per centum of all earned income (other than that excluded by subsection (d)), to any household receiving earned income in order to compensate for taxes, other mandatory deductions from salary, and work expenses, (3) for excess shelter costs to any household to the extent that the amount of actual shelter costs of such household are in excess of 50 per centum of its income after all other

1. 2 USC § 634(a).
2. 123 CONG. REC. 25222, 25223, 95th Cong. 1st Sess.

deductions have been subtracted, but such excess shelter deduction shall not exceed $75 in the forty-eight States in the contiguous United States and the District of Columbia, or in the case of Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, an amount determined by the Secretary in accordance with the best available information on the relationship of actual shelter costs of food stamp recipients in Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, to such costs in all of the other States, and such excess shelter deduction shall not be applied in any State for the purpose of computing household income in order to determine eligibility pursuant to subsection (c); and (4) a dependent care deduction, but not to exceed $75 a month per household, for the actual cost of payments necessary for the care of a dependent when such care enables a household member to accept or continue employment or training or education preparatory to employment. . . .

Mr. [Matthew] McHUGH [of New York]. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offecer [sic] by Mr. MCHUGH to the amendment offered by Mr. FOLEY: Insert the following language after the figure "$75" in section 1205(e)(3) at page 14, line 11: "(adjusted annually to the nearest $5, commencing January 1, 1979, (to reflect changes in the shelter and fuel and utilities components of housing in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the 12 month period ending the preceding September 30th)".

POINT OF ORDER

Mr. [Steven] SYMMS [of Idaho]. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN.[3] The gentlemen will state the point of order.

Mr. SYMMS. Mr. Chairman, I make a point of order against the amendment offered by the gentleman from New York (Mr. MCHUGH) on the grounds that it violates section 303(a)(4) of the Budget Control Act—Public Law 93–344.

Section 303(a) provides as follows:[4]

SEC. 303. (a) IN GENERAL.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides—

(1) new budget authority for a fiscal year;

(2) an increase or decrease in revenues to become effective during a fiscal year;

(3) an increase or decrease in the public debt limit to become effective during a fiscal year; or

(4) new spending authority described in section 401(c)(2)(C) to become effective during a fiscal year;

until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

The amendment obviously provides for additional entitlement in fiscal year 1979 and is offered prior to the adoption of the first concurrent resolution for 1979 and is, therefore, subject to a point of order.

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3. Frank Evans (CO).

4. Section 303 of the Congressional Budget Act (2 USC § 634) has been amended on several occasions since the time of this precedent and no longer takes the form described here. Section 303(a)(4) now relates only to Senate proceedings.

The CHAIRMAN. Does the gentleman from New York wish to be heard on the point of order?

Mr. McHUGH. Yes, Mr. Chairman.

Mr. Chairman, as anyone knows, this bill covers a 4-year period. All the provisions relating to entitlement relate to that 4-year period. Therefore, I think that the gentleman's point of order is not well taken.

Second, there is no guarantee that there will be any additional funds required by this amendment, if it should be adopted. It is an indexing amendment which is related to the cost of shelter in the Consumer Price Index. If those costs should not rise, then this amendment would have no impact.

So for those two reasons, I would indicate to the Chairman that this point of order is not well taken.

The CHAIRMAN. Does the gentleman from Idaho wish to be heard further on the point of order?

Mr. SYMMS. Mr. Chairman, speaking further on the point of order, the gentleman's own explanation of the amendment, the purpose of the cost index is to cover additional costs incurred, estimated by economic planners of the future, and I think it does, in effect, and will, in fact, incur additional funding. Therefore, the point of order should be sustained.

The CHAIRMAN. The Chair is ready to rule.

The gentleman from Idaho makes the point of order that the amendment offered by the gentleman from New York (Mr. MCHUGH) violates section 303(a) of the Congressional Budget Act of 1974 by providing for new spending—entitlement—authority which becomes effective in fiscal year 1979, and is proposed in advance of the adoption of the first concurrent resolution on the budget[5] for that fiscal year.

The amendment would, beginning January 1, 1979, change the formula in H.R. 7940 by which households are determined to be eligible for food stamp entitlement benefits. In determining such income level eligibility the bill provides that the household's deduction that it may claim for excess shelter costs shall not exceed $75. The amendment would permit an annual adjustment of that deduction to reflect changes in shelter and fuel housing costs, and would, if such costs continued to escalate as they have, result in new eligibility after January 1, 1979, for households which would not be eligible under H.R. 7940 for food stamps.

In the opinion of the Chair, the amendment as drafted appears to constitute new spending authority which first becomes effective in fiscal year 1979 and for that reason is in violation of section 303(a) of the Congressional Budget Act. The Chair sustains the point of order.

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5. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.