



# House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110<sup>th</sup> Congress

**Bill Heniff Jr.**

Analyst on the Congress and Legislative Process

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## Summary

On January 5, 2007, the House agreed to H.Res. 6, adopting the standing rules for the 110<sup>th</sup> Congress. The changes to the congressional budget process include (1) prohibiting the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus; (2) applying points of order under the Congressional Budget Act of 1974 to the text of a measure considered by the House regardless of whether or not the measure was reported by a committee; (3) requiring the disclosure of congressional earmarks, limited tax benefits, and limited tariff benefits in a bill or report, along with the names of the sponsors; and (4) prohibiting the consideration of direct spending and revenue legislation that is projected to increase the deficit or reduce the surplus in either of two specified time periods.

In addition to these standing rules changes, the House agreed to several separate orders that clarify the applicability of certain points of order under the Congressional Budget Act of 1974, deem the FY2007 budget resolution adopted by the House in the 109<sup>th</sup> Congress to have been agreed to by the 110<sup>th</sup> Congress for budget enforcement purposes, and continue a point of order established in the 109<sup>th</sup> Congress that supplements the enforcement of the appropriations subcommittees' allocations.

This report will not be updated.

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On January 5, 2007, the House agreed to H.Res. 6, adopting the standing rules for the 110<sup>th</sup> Congress, including several changes affecting the congressional budget process.<sup>1</sup> In addition, the House agreed to separate orders that will apply during the 110<sup>th</sup> Congress. This report provides an explanation of these rules changes.

## Legislative History

On the opening day of the 110<sup>th</sup> Congress, January 4, 2007, the House agreed to H.Res. 5, which provided for the consideration of H.Res. 6 (i.e., the “opening-day rules package”) and divided the question of adopting the resolution into five parts, each part consisting of one of its five titles. Changes affecting the congressional budget process were included in Title IV, entitled “Fiscal Responsibility,” and Title V, entitled “Miscellaneous.” On January 5, the House adopted Titles IV and V of H.Res. 6 by votes of 280-152 and 232-200, respectively.<sup>2</sup>

## Changes to Standing Rules

Title IV of H.Res. 6 contains four House standing rules changes affecting the budget process. Each of these changes added a new clause to Rule XXI, which generally places restrictions on primarily budgetary legislation. The new clauses involve four separate matters: (1) reconciliation directives in the annual budget resolution; (2) the application of points of order under the 1974 Congressional Budget Act; (3) disclosure requirements relating to congressional earmarks, limited tax benefits, and limited tariff benefits; and (4) a deficit-neutrality requirement for direct spending and revenue legislation (see **Table 1**).

### Deficit-Neutral Reconciliation Directives

Section 402 of H.Res. 6 amended Rule XXI by adding a new clause 7 to prohibit the consideration of a budget resolution that contains reconciliation directives instructing committees to change existing law to increase the deficit or reduce the surplus in either of two time periods: (1) the current fiscal year and the five fiscal years thereafter; and (2) the current fiscal year and the 10 fiscal years thereafter.

**Table 1. Changes to House Standing Rules Affecting the Congressional Budget Process in the 110<sup>th</sup> Congress**

Section of H.Res. 6	New clause to Rule XXI	Description
402	Clause 7	Prohibits the consideration of a budget resolution containing reconciliation instructions having a net effect of reducing the surplus or increasing the deficit.
403	Clause 8	Provides that points of order under Title III of the Budget Act, as amended, apply to any text made in order by a special rule, regardless of whether or not the measure was

<sup>1</sup> The House must adopt its rules anew at the beginning of each Congress. Following customary practice, it does this by adopting the rules of the preceding Congress with certain amendments.

<sup>2</sup> For the consideration and adoption of Titles IV and V of H.Res. 6, see *Congressional Record*, daily edition, vol. 153 (January 5, 2007), pp. H69-H85.

Section of H.Res. 6	New clause to Rule XXI	Description
		reported by a committee.
404	Clause 9	Prohibits the consideration of legislation unless it is accompanied, in a report or printed in the Congressional Record, with a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill or report, along with the name of the sponsor.
405	Clause 10	Prohibits the consideration of legislation affecting direct spending and revenue that is projected to have the net effect of increasing the deficit or reducing the surplus in either of two time periods: (1) the current fiscal year and the following five fiscal years; or (2) the current fiscal year and the following 10 fiscal years.

**Note:** “Budget Act” refers to the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 621 et seq.).

Budget reconciliation, provided by Section 310 of the Budget Act, is an optional two-step process Congress may use to bring direct spending, revenue, and debt-limit levels into compliance with those set forth in budget resolutions.<sup>3</sup> To accomplish this, Congress first includes reconciliation directives in a budget resolution directing one or more committees in each chamber to recommend changes in statute to achieve the levels of direct spending, revenues, debt limit, or a combination thereof, agreed to in the budget resolution. If more than one committee is directed, the legislative language recommended by all of the committees is packaged “without any substantive revision” into one or more reconciliation bills, as set forth in the budget resolution, by the House and Senate Committees on the Budget. In some instances, such as when a single committee is directed, a committee may be required to report its legislative recommendations directly to its chamber.

Once the Budget Committees, or individual committees if so directed, report reconciliation legislation to their respective chambers, consideration is governed by special procedures.<sup>4</sup> These special rules serve to limit what may be included in reconciliation legislation, to prohibit certain amendments, and to encourage its completion in a timely fashion.

Section 310 of the Budget Act places no requirements on reconciliation directives contained in a budget resolution regarding their impact on the deficit or surplus. It simply provides for the directives to instruct committees to recommend changes to existing law “to accomplish a change” in spending, revenues, the statutory limit on the public debt, or a combination of these matters. In fact, the last eight budget resolutions containing reconciliation directives, agreed to by Congress, contemplated at least one reconciliation measure that would increase the deficit or reduce the surplus.<sup>5</sup>

The new clause 7 of Rule XXI places a substantive restriction on the reconciliation directives regarding their impact on the deficit or surplus. The new rule effectively requires that the reconciliation process be used for the net effect of deficit reduction. Moreover, if the proposed

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<sup>3</sup> For a more detailed discussion of the reconciliation process, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

<sup>4</sup> For a brief summary of these procedures, see CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration*, by Bill Heniff Jr.

<sup>5</sup> See CRS Congressional Distribution Memorandum, *Reconciliation Directives to House Committees in Budget Resolutions for FY1976-FY2005*, by Bill Heniff Jr. (available from the author).

budget resolution contemplates multiple reconciliation bills, under the new rule, each of the bills must not increase the deficit or reduce the surplus in the two time periods specified.

## **Application of Budget Act Points of Order to Text Considered**

Section 403 of H.Res. 6 amended Rule XXI by adding a new clause 8 to provide that points of order under Titles III of the Budget Act, as amended, apply to any text made in order by a special rule, regardless of whether or not the measure was reported by a committee.

Previously, points of order under Titles III of the Budget Act did not apply to *unreported* bills and joint resolutions.<sup>6</sup> Such points of order under the Budget Act, therefore, could be circumvented by considering, pursuant to a special rule reported by the House Committee on Rules, a measure which a committee has not reported. Even if the bill were projected to increase spending above, or reduce revenues below, the levels associated with the budget resolution, for instance, it would not be subject to the applicable point of order simply because it was not reported by a committee.

The new clause 8 of Rule XXI closes this loophole. Under the new rule, for bills considered pursuant to a special order of business (e.g., a special rule reported by the House Committee on Rules), points of order under Title III of the Budget Act apply effectively to the text considered pursuant to the special order: (1) the text recommended by the reporting committee; (2) the text made in order as an original bill for the purpose of amendment; or (3) the text on which the previous question has been ordered directly to passage, as the case may be.<sup>7</sup>

## **Disclosure of Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits**

Section 404 of H.Res. 6 amended Rule XXI by adding a new clause 9 to prohibit the consideration of legislation unless congressional earmarks, limited tax benefits, and limited tariff benefits are disclosed, including the name of the requesting Member (or sponsor) of each, prior to its consideration.<sup>8</sup>

The new rule effectively requires that any bill, joint resolution, amendment,<sup>9</sup> and conference report<sup>10</sup> must be accompanied by a list of congressional earmarks, limited tax benefits, and

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<sup>6</sup> The applicable provisions of the Budget Act refer to a bill or joint resolution “as reported,” and therefore do not contemplate an unreported bill or joint resolution. These points of order still apply to an amendment to an unreported bill and a conference report to a bill not originally reported by a committee.

<sup>7</sup> Section 315 of the Budget Act provides that points of order under Titles III and IV apply to the latter two forms of a measure considered pursuant to a special order of business, but for reported bills only.

<sup>8</sup> In the 109<sup>th</sup> Congress, on September 14, 2006, the House agreed to a free-standing rule (H.Res. 1000) that provided a similar point of order.

<sup>9</sup> The rule explicitly prohibits “an amendment to a bill or joint resolution *to be offered at the outset* of its consideration for amendment *by a member of a committee of initial referral*” (emphasis added), suggesting that a substitute offered by a committee member would be subject to the rule but an amendment offered after the beginning of consideration of the bill would not be subject to the rule. Some Members, however, have complied with the requirement even though they did not meet the explicit qualifications set forth in the rule. See, for example, the statements in the following entries in the *Congressional Record*, daily edition, vol. 153: March 19, 2007, p. H2672; April 17, 2007, p. H3478; and May 22, 2007, p. H5623.

<sup>10</sup> Subsequently, on June 18, 2007, the House agreed by unanimous consent to H.Res. 491, which prohibits the (continued...)

limited tariff benefits contained in the legislation, accompanying committee report, or joint explanatory statement (with regard to a conference report). Such list must also include the name of the Member requesting each item. The list may be included in the committee report for a reported bill, printed in the *Congressional Record* for an unreported bill or amendment, or included in the joint explanatory statement for a conference report. If the legislation, its accompanying report, or joint explanatory statement does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits, a statement stating as such must be printed in the accompanying report, the *Congressional Record*, or joint explanatory statement.<sup>11</sup>

Under subsection (c) of the new clause 9 of Rule XXI, the new rule is enforced based only on whether or not the required list or statement was printed in a report, the *Congressional Record*, or the joint explanatory statement. If a point of order is made, the Chair is required to base his or her ruling only on the existence of a list (or statement), and is not empowered to make a ruling based on the contents of the list.<sup>12</sup> As a result, a point of order under the new rule may be sustained only if the required list or statement was not printed.<sup>13</sup>

The new rule also prohibits the consideration of a special rule that waives the new point of order. If a special rule waives the new rule, a point of order against the consideration of the special shall be disposed of by the question of consideration. That is, if a point of order is raised against such a special rule, the House will proceed, after 20 minutes of debate equally divided between and controlled by a proponent and opponent of the point of order, to a vote on whether or not to consider the special rule even though it waives the new disclosure rule (one motion to adjourn also would be in order).

Subsections (d)-(f) of the new disclosure rule provide definitions of what constitutes a congressional earmark, a limited tax benefit, and a limited tariff benefit for purposes of the rule. The text of those definitions is provided in **Table 2**.

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(...continued)

consideration of a conference report to accompany a regular appropriations bill unless the joint explanatory statement includes a list of congressional earmarks, including the name of the requesting Member, “not committed to the conference committee by either House, not in a report on such bill, and not in a report of a committee of the Senate on a companion measure.” Like the new clause 9 of Rule XXI, the resolution prohibits the consideration of a special rule that waives this point of order. In addition, unlike the new clause 9 of Rule XXI, H.Res. 491 provides that any point of order under this resolution against a conference report shall be disposed of by the question of consideration. Consequently, under this free-standing rule, if a point of order under this rule is raised against a conference report, the House will proceed, after 20 minutes of debate equally divided between and controlled by a proponent and an opponent of the point of order, to a vote on whether or not to consider the conference report (one motion to adjourn also would be in order). See *Congressional Record*, daily edition, vol. 153 (June 18, 2007), pp. H6622-H6623.

<sup>11</sup> For an example of such a statement, see *Congressional Record*, daily edition, vol. 153 (January 9, 2007), p. H253.

<sup>12</sup> For an example of the application of the point of order, see *Congressional Record*, daily edition, vol. 153 (January 31, 2007), pp. H1088-H1090.

<sup>13</sup> Some Members have objected that the new rule prevents the Chair from sustaining a point of order against a matter if the list of earmarks is not comprehensive. See, for example, the parliamentary inquiry posed by Rep. Jeff Flake and the Chair’s reply in *Congressional Record*, daily edition, vol. 153 (May 10, 2007), pp. H4861-H4862. In other words, they argue that the rule is insufficient because the committee need only provide a partial list of earmarks to protect the measure from a point of order. On the other hand, others could argue that to make a ruling based on the content of the list would leave considerable discretion in the hands of the Chair to determine what constitutes an earmark. Such discretion is not typically given to the Chair, who is expected to enforce the rules and procedures of the House and, based on several precedents, “does not decide on the legislative or legal effect of propositions.” U.S. Congress, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, H.Doc. 108-241, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2003) (hereafter *House Rules and Manual*), p. 341.

**Table 2. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits As Defined in Clause 9 of Rule XXI**

Item	Definition
Congressional earmark	A provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific state, locality or congressional district, other than through a statutory or administrative formula driven or competitive award process.
Limited tax benefit	(1) Any revenue-losing provision that—  (A) provides a federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and  (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or  (2) Any federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.
Limited tariff benefit	A provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

Finally, as part of the new disclosure rule, Section 404(b) of H.Res. 6 amended Rule XXIII by adding clauses 16 and 17, both relating to congressional earmarks, limited tax benefits, and limited tariff benefits. The new clause 16 prohibits a Member<sup>14</sup> from conditioning the inclusion of a congressional earmark, limited tax benefit, or a limited tariff benefit in legislation on any vote cast by another Member. The new clause 17 requires any Member requesting a congressional earmark, limited tax benefit, or limited tariff benefit to submit to the chair and ranking minority Member a written statement containing the following items:

- the name of the Member;
- for congressional earmarks, the name and address of the intended recipient or intended location of the activity;
- for limited tax or tariff benefits, identification of the individual or entities “reasonably anticipated to benefit” to the extent known by the Member;
- the purpose of the congressional earmark, limited tax benefit, or limited tariff benefit; and
- a certification that the Member or spouse do not have any financial interest in the requested item.

The rule also requires committees to maintain this information, and make available “for public inspection” the written disclosures for congressional earmarks and limited tax or tariff benefits included in any measure reported by the committee or conference report filed by the chair of the committee or any subcommittee.<sup>15</sup>

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<sup>14</sup> Both clauses 16 and 17 apply to Delegates and the Resident Commissioner as well.

<sup>15</sup> It is worth noting that this public availability requirement does not pertain to requests for such items not granted (i.e., not included in legislation, a report, or a joint explanatory statement).

## Pay-As-You-Go (PAYGO) Rule

Section 405 of H.Res. 6 amended Rule XXI by adding a new clause 10, referred to as the pay-as-you-go (PAYGO) point of order, to prohibit the consideration of legislation affecting direct spending and revenues that is projected to have the net effect of increasing the deficit or reducing the surplus in either of two time periods: (1) the six-year period consisting of the current fiscal year and the five ensuing fiscal years (currently FY2007-FY2012); and (2) the 11-year period consisting of the current year and the 10 ensuing fiscal years (currently FY2007-FY2017).<sup>16</sup> Any projected increase in direct spending or reduction in revenues resulting from such legislation must be offset by an equivalent amount of direct spending cuts, revenue increases, or a combination of the two.<sup>17</sup>

*Direct spending*, also referred to as mandatory spending, generally is provided in laws other than appropriations acts, generally continues without any annual legislative action, and provides spending authority for programs such as Medicare, unemployment compensation, and federal retirement programs.<sup>18</sup> It is distinguished from *discretionary spending*, which is controlled through the annual appropriations process. Furthermore, direct spending is under the jurisdiction of the respective authorizing committees, while discretionary spending is under the jurisdiction of the House and Senate Committees on Appropriations. *Revenues*, which are under the jurisdiction of the House Committee on Ways and Means and the Senate Committee on Finance, are the funds collected from the public primarily as a result of the federal government's exercise of its sovereign powers.<sup>19</sup> They consist of receipts from individual income taxes, social insurance taxes (or payroll taxes, such as Social Security and Medicare taxes), corporate income taxes, excise taxes, duties, gifts, and miscellaneous receipts.

Under the new rule, each measure affecting direct spending and revenues must not increase the deficit or reduce the surplus in either of the two time periods specified.<sup>20</sup> That is, to comply with the rule, each measure projected to increase direct spending or reduce revenues must also include changes to existing law that would result in a reduction in direct spending, an increase in revenues, or both, by equivalent amounts. The projected reduction in the deficit or increase in the surplus in a measure previously passed by the House or one to be subsequently considered by the House could not be used to offset an increase in the deficit or a reduction in the surplus in another measure.

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<sup>16</sup> The rule explicitly defines the two periods as (1) "the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year;" and (2) "the current fiscal year and the 10 fiscal years beginning with the fiscal year that ends in the following calendar year." Taken literally, between October and December of any given year, the requirement would cover the five- and 10-year periods, instead of the six- and 11-year periods.

<sup>17</sup> For more detailed information on the new House PAYGO rule, see CRS Report RL33850, *The House's "Pay-As-You-Go" (PAYGO) Rule in the 110<sup>th</sup> Congress: A Brief Overview*, by Robert Keith.

<sup>18</sup> While the new House rule does not explicitly define "direct spending," the term is defined in Section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; 2 U.S.C. 900 et seq.), commonly known as the Gramm-Rudman-Hollings Act. Section 250(c)(8) states that "'direct spending' means— (A) budget authority provided by law other than appropriations acts; (B) entitlement authority; and (C) the food stamp program."

<sup>19</sup> Other legislative committees may have jurisdiction over legislation affecting a small portion of revenues.

<sup>20</sup> The rule does not provide any allowance for even a *de minimis* increase in the deficit or reduction in the surplus. The rule presumably applies to appropriations bills containing provisions affecting revenues. It is less clear that the rule applies to appropriations acts containing provisions affecting direct spending because spending authority provided in an appropriations act would not be considered direct spending under the definition of direct spending contained in Section 250 of the Deficit Control Act (see fn. 18, above).

The rule specifies that a determination of the effect of direct spending and revenue legislation on the deficit or surplus is to be based on estimates made by the House Committee on the Budget relative to the most recent baseline estimates provided by the Congressional Budget Office (CBO). In producing its baseline estimates, CBO projects revenues, spending, and deficit or surplus levels under existing law (i.e., assuming no legislative changes). Under the rule, such baseline estimates are to be consistent with Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; 2 U.S.C. 900 et seq.).<sup>21</sup>

The establishment of a PAYGO rule in the House follows several years of a similar rule in the Senate.<sup>22</sup> First established in 1993 and modified several times since then, the Senate PAYGO rule also has generally prohibited the consideration of direct spending and revenue legislation that is projected to increase the deficit or reduce the surplus in the same time periods as the House rule.<sup>23</sup>

## Separate Orders

H.Res. 6 also contains five “separate orders” affecting the congressional budget process (see **Table 3**). The term “separate orders” has come to be used for provisions in the rules package considered at the beginning of a Congress that have procedural effects for the new Congress but are not codified in the standing rules of the House. Three separate orders address the application of certain points of order under the Congressional Budget Act of 1974;<sup>24</sup> each of these orders had been agreed to in previous Congresses. The fourth separate order deems the FY2007 budget resolution adopted by the House in the 109<sup>th</sup> Congress to have been agreed to by the 110<sup>th</sup> Congress, for budget enforcement purposes. Finally, the fifth separate order provides a point of order against a motion that the Committee of the Whole rise and report an appropriations bill to the House if the bill, as amended, exceeds the applicable Section 302(b) of the Budget Act.

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

Section 306 of the Budget Act prohibits the consideration of any “bill, resolution, amendment, motion, or conference report” dealing with matter under the jurisdiction of the Committee on the Budget unless that committee has reported it (or has been discharged from its further consideration), or unless it is an amendment to such a measure.

Section 511(a)(1) of H.Res. 6 renews a separate order, also adopted at the beginning of the previous three Congresses,<sup>25</sup> providing that the term “resolution” in Section 306 refers to a *joint*

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<sup>21</sup> Section 257 sets forth rules for calculating the baseline levels of direct spending and revenues (as well as discretionary spending). Until the expiration of this section at the end of FY2006, CBO was required to follow the provisions of Section 257 in producing its baseline projections. At the beginning of 2007, CBO indicated that it will follow these practices until directed otherwise by Congress. See CBO, *The Budget and Economic Outlook: Fiscal Years 2008 to 2017*, p. xi, fn. 1.

<sup>22</sup> For additional information on PAYGO rules, see CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr., and CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

<sup>23</sup> Most recently, as part of the FY2008 budget resolution, the Senate modified its PAYGO rule to be generally consistent with the House PAYGO rule (see Section 201 of S.Con.Res. 21).

<sup>24</sup> Titles I-IX of P.L. 93-344, as amended (2 U.S.C. 621 et seq.).

<sup>25</sup> Section 3(b)(1) of H.Res. 5, 107<sup>th</sup> Congress; Section 3(a)(1) of H.Res. 5, 108<sup>th</sup> Congress; and Section 3(a)(1) of H.Res. 5, 109<sup>th</sup> Congress.

resolution only. Under this separate order, therefore, a simple or concurrent resolution dealing with matter under the jurisdiction of the Budget Committee (such as a “deeming resolution,” reported by the House Committee on Rules, as explained in the “Enforcement of the FY2007 Budget Resolution” section, below) presumably would not be subject to a Section 306 point of order.

**Table 3. Separate Orders Affecting  
the Congressional Budget Process in the 110<sup>th</sup> Congress**

Section of H.Res. 6	Description
511(a)(1)	Clarifies that the term “resolution” in Section 306 of the Budget Act refers to a joint resolution and not to a simple or concurrent resolution. Section 306 prohibits the consideration of any “bill, resolution, amendment, motion, or conference report” under the jurisdiction of the Committee on the Budget unless it is reported by that committee.
511(a)(2)	Clarifies that Section 303 of the Budget Act applies to the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage. Section 303 prohibits the consideration of budgetary legislation until Congress has agreed to a budget resolution.
511(a)(3)	Clarifies that a provision, in a measure, that establishes a new executive position at a specified level of compensation subject to appropriation is not considered “new entitlement authority” within the meaning of the Budget Act.
511(a)(4)	Provides that the FY2007 budget resolution adopted by the House during the 109 <sup>th</sup> Congress (H.Con.Res. 376) is considered to have been adopted by the 110 <sup>th</sup> Congress, for budget enforcement purposes, until the adoption of the FY2008 budget resolution.
511(a)(5)	Provides a point of order against a motion that the Committee of the Whole rise and report an appropriations bill to the House if the bill, as amended, exceeds the applicable Section 302(b) of the Budget Act.

**Note:** “Budget Act” refers to the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 621 et seq.).

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

Section 303 of the Budget Act prohibits the consideration of any measure that contains a spending, revenue, or debt-limit provision for a fiscal year until Congress has agreed to a budget resolution for that fiscal year.<sup>26</sup> In the House, general appropriations measures may be considered after May 15 if Congress has not agreed to a budget resolution by then.

Prior to 1997, Section 303 applied to any measure “as reported” only. Consequently, a measure that was amended on the floor to contain a budgetary provision for a fiscal year in which Congress had not agreed to a budget resolution would not be subject to this point of order as long as the measure, as reported, did not itself contain such a budgetary provision.<sup>27</sup> Moreover, a

<sup>26</sup> The annual budget resolution, which the Congressional Budget Act requires to be completed by April 15 of each year, sets forth spending, revenue, and debt levels for the upcoming fiscal year and at least four fiscal years thereafter.

<sup>27</sup> In 1995, for example, the chair responded to a parliamentary inquiry about the application of Budget Act points of order by noting that Section 303, among other sections, applied to a measure “in its reported state,” and, therefore, did not apply to an unreported measure. *Congressional Record*, vol. 141 (March 21, 1995), p. 8491. For a detailed discussion of the effect of the words “as reported” in the Budget Act, see William G. Dauster, *Budget Process Law Annotated—1993 Edition*, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., S.Prt. 103-49 (Washington: GPO, 1993), notes on pp. 107, 179-185.

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

The Budget Enforcement Act of 1997 (Title X of P.L. 105-33, Balanced Budget Act of 1997) added a new section to the Budget Act that was intended to correct this anomaly.<sup>28</sup> Section 315 provides that the words “as reported” in Titles III and IV of the Budget Act refer to the text made in order for the purpose of amendment or the text on which the previous question was ordered directly for passage. The BEA of 1997, however, also eliminated the words “as reported” from Section 303 of the Budget Act. Consequently, there has been some ambiguity about whether or not Section 303 applies to text made in order by a special rule, as was intended. For example, during the 105<sup>th</sup> Congress, the House continued to waive the point of order against reported measures that violated Section 303 even though the violation was corrected by the special rule making in order a different text for purposes of amendment.<sup>29</sup>

Section 511(a)(2) of H.Res. 6 renews for the 110<sup>th</sup> Congress a separate order, also agreed to at the beginning of the previous four Congresses,<sup>30</sup> to provide that, for a reported bill or joint resolution considered under a special order of business (e.g., a special rule reported by the House Rules Committee),<sup>31</sup> the Section 303 prohibition applies to the text made in order for the purpose of amendment or to the text on which the previous question is ordered directly to passage.

## Prospective Compensation in Appropriations Measures

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

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

(B) the food stamp program.

Section 401(b) of the Budget Act prohibits the consideration of a measure that provides new entitlement authority that is to become effective in the current fiscal year.<sup>32</sup> In addition, if a committee reports a measure that violates this prohibition and the amount of such spending exceeds the committee’s spending allocation (also referred to as its Section 302(a) allocation)

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<sup>28</sup> See U.S. Congress, Committee of Conference, *Balanced Budget Act of 1997*, conference report to accompany H.R. 2015, 105<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 105-217 (Washington: GPO, 1997), p. 994.

<sup>29</sup> See, for example, the special rule providing for the consideration of H.R. 1252, Judicial Reform Act of 1998, in the *Congressional Record*, daily edition, vol. 144 (April 23, 1998), p. H2242.

<sup>30</sup> See Sec. 2(a)(3) of H.Res. 5, 106<sup>th</sup> Congress; Section 3(b)(2) of H.Res. 5, 107<sup>th</sup> Congress; Section 3(a)(2) of H.Res. 5, 108<sup>th</sup> Congress; and Section 3(a)(2) of H.Res. 5, 109<sup>th</sup> Congress.

<sup>31</sup> Section 303(b)(3) of the Budget Act provides an exception to the Section 303(a) point of order for any *unreported* bill or joint resolution. This exception, however, would seem to be inconsistent with, and might be superseded by, the new clause 8 of Rule XXI, created by Section 403 of H.Res. 6 (see “Application of Budget Act Points of Order to Text Considered” section, above).

<sup>32</sup> A measure that provides new entitlement authority that is to become effective after the current fiscal year is not subject to this point of order.

associated with the most recently adopted budget resolution, the measure may be referred to the House Committee on Appropriations for a period not to exceed 15 days.<sup>33</sup> If the Appropriations Committee does not act within the 15 days, the measure is discharged automatically and placed on the appropriate calendar. Within the 15-day period, however, the Appropriations Committee may report the measure with an amendment that limits the amount of spending.

Several House precedents have established the meaning of “new entitlement authority” as defined by the Budget Act.<sup>34</sup> Among them, in 1992, the chair ruled that an amendment creating a new executive position at a specified level of compensation subject to appropriation was not a new entitlement authority, because no payment would occur absent an appropriation.<sup>35</sup>

Section 511(a)(3) of H.Res. 6 effectively makes this ruling a standing order for the 110<sup>th</sup> Congress. The House also agreed to this separate order at the beginning of the previous four Congresses.<sup>36</sup> Specifically, the separate order provides that a provision, in a measure, “that establishes prospectively for a Federal office or position a specified or minimum level of compensation to be funded by annual discretionary appropriations shall not be considered as providing new entitlement authority under section 401 of the Congressional Budget Act of 1974.” Therefore, during the 110<sup>th</sup> Congress, such a provision presumably would not be subject to a point of order under Section 401(b) of the Budget Act, and it also would not be subject to the 15-day referral to the House Appropriations Committee.

## **Enforcement of the FY2007 Budget Resolution**

Each year, Congress is required to adopt a budget resolution, setting forth spending, revenue, and debt levels, which are then enforced primarily through points of order during the consideration of budgetary legislation.<sup>37</sup> After a budget resolution has been agreed to by both the House and Senate, the budget levels contained therein continue to be enforceable until they are revised or superseded by a subsequently-adopted budget resolution, even from one Congress to the next.

In 2006, however, Congress did not complete action on a budget resolution for FY2007. The House and Senate each adopted its own version of the FY2007 budget resolution (H.Con.Res. 376 and S.Con.Res. 83, respectively), but they did not take any further action to resolve the legislative differences between the two versions.<sup>38</sup>

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<sup>33</sup> In the Senate, Section 401(b) requires such a measure to be referred to the Senate Committee on Appropriations instead of simply providing the authority to do so, as in the House.

<sup>34</sup> See the annotations to Section 401 of the Budget Act in *House Rules and Manual*, pp. 1015-1018.

<sup>35</sup> *Ibid.*, p. 1018. Also, see *Congressional Record*, vol. 138 (March 26, 1992), pp. 7202-7203.

<sup>36</sup> The separate order agreed to in the 106<sup>th</sup> Congress (Sec. 2(a)(3) of H.Res. 5) expired upon the adoption of the FY2000 budget resolution, whereas the orders agreed to at the beginning of the 107<sup>th</sup> (Section 3(b)(2) of H.Res. 5), 108<sup>th</sup> (Section 3(a)(2) of H.Res. 5), and 109<sup>th</sup> (Section 3(a)(3) of H.Res. 5) Congresses applied to the entire duration of the Congresses.

<sup>37</sup> For further information on the congressional budget process, see CRS Report RS20095, *The Congressional Budget Process: A Brief Overview*, by James V. Saturno.

<sup>38</sup> For more detailed information on action on the FY2007 budget resolution, see CRS Report RL33291, *Congressional Budget Actions in 2006*, by Bill Heniff Jr.

In the absence of an agreement between the House and Senate on an FY2007 budget resolution, the House adopted a so-called “deeming resolution.”<sup>39</sup> The House included a provision in the special rule (Section 2 of H.Res. 818) governing the consideration of the FY2007 Interior Appropriations bill (H.R. 5386) “deeming” the House-passed FY2007 budget resolution (H.Con.Res. 376) to have been agreed to by Congress.<sup>40</sup> As a result, the provisions of the House-passed budget resolution and its accompanying report (H.Rept. 109-402), such as the committee spending allocations [the so-called Section 302(a) allocations] and the subsequent Appropriations Committee subdivisions [the so-called Section 302(b) allocations], could have been enforced in the House under the procedures of the Budget Act, but only during the 109<sup>th</sup> Congress.

Section 511(a)(4) of H.Res. 6 provides that the provisions of H.Con.Res. 376 (109<sup>th</sup> Congress) agreed to by the House in the 109<sup>th</sup> Congress be considered to have been adopted by the 110<sup>th</sup> Congress and continue to serve, until Congress adopts a FY2008 budget resolution, as the basis for budget enforcement in the House. Under this deeming resolution, as with the 2006 resolution, the enforcement procedures of the Budget Act will have force and effect in the House as if Congress had adopted the budget resolution in the 110<sup>th</sup> Congress.<sup>41</sup>

## Enforcement of Section 302(b) Allocations

Section 511(a)(5) of H.Res. 6 provides a point of order, first adopted in the 109<sup>th</sup> Congress (Section 2 of H.Res. 248),<sup>42</sup> against a motion that the Committee of the Whole rise and report an appropriations bill to the House if the bill, as amended, exceeds the applicable Section 302(b) of the Budget Act.

Under the Budget Act, the total budget authority and outlays set forth in the budget resolution are allocated among the House and Senate committees with jurisdiction over specific spending legislation.<sup>43</sup> Accordingly, the total amount provided for discretionary spending in the budget resolution is allocated to the House and Senate Committees on Appropriations, which have exclusive jurisdiction over discretionary spending in appropriations acts. The House and Senate Appropriations Committees, soon after the budget resolution is adopted, subdivide their spending allocations among their subcommittees and formally report these subdivisions to their respective

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<sup>39</sup> The Senate also separately adopted a so-called “deeming resolution” provision for budget enforcement purposes. The Senate included a provision (Section 7035) in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (H.R. 4939, H.Rept. 109-494), setting forth the FY2007 spending allocations for the Senate Appropriations Committee, subject to certain adjustments and exemptions. President Bush signed the act into law (P.L. 109-234) on June 15, 2006. For further information on “deeming resolutions,” see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Robert Keith.

<sup>40</sup> The House agreed to H.Res. 818 by a vote of 218-191 after agreeing to order the previous question by a vote of 218-192. For the consideration and adoption of H.Res. 818, see *Congressional Record*, daily edition, vol. 152 (May 18, 2006), pp. H2765-H2773.

<sup>41</sup> Section 511(a)(4) of H.Res. 6 also required the chair of the Budget Committee to have printed in the *Congressional Record* the committee spending allocations [the 302(a)s] and the accounts identified for advance appropriations associated with H.Con.Res. 376, as passed the House. For those allocations and accounts, see *Congressional Record*, daily edition, vol. 153 (January 5, 2007), pp. H92-H95.

<sup>42</sup> On April 28, 2005, the House agreed to H.Res. 248 (the special rule providing for the consideration of the conference report to accompany H.Con.Res. 95, the FY2006 budget resolution) by voice vote after agreeing to order the previous question by a 228-196 vote. The point of order was never raised during the remainder of 109<sup>th</sup> Congress.

<sup>43</sup> These allocations, commonly referred to as 302(a) allocations, after the applicable section of the Budget Act, are specified in the joint explanatory statement accompanying the conference report to the budget resolution.

chambers.<sup>44</sup> These subdivisions, referred to as 302(b) allocations, after the applicable section of the Budget Act, represent the spending ceilings on the individual regular appropriations acts. A point of order may be raised against the consideration of any appropriations measure (or amendment) that would cause a subcommittee's allocation to be exceeded.

In practice, the regular appropriations bills usually are reported by the House Appropriations Committee at the applicable subcommittee allocation level, thereby avoiding a point of order against the consideration of the measure.<sup>45</sup> During consideration of an appropriations bill in the Committee of the Whole,<sup>46</sup> however, action might be taken, by amendment or point of order, that would cause the bill to exceed its allocation level. First, the Committee of the Whole could adopt an amendment providing a spending increase that would cause the bill to exceed its allocation.<sup>47</sup> Second, on a point of order under clause 2 of House Rule XXI,<sup>48</sup> a legislative provision that exempts certain spending from being counted toward a subcommittee's allocation, such as an emergency designation,<sup>49</sup> or offsets spending, such as a change in mandatory spending, could be stricken, resulting in the bill exceeding its allocation. In each case, even though the bill would exceed its allocation as a result of the amendment or point of order, a point of order against the bill under Section 302(f) of the Budget Act could not be raised because it would not be timely.<sup>50</sup>

The separate order under Section 511(a)(5) of H.Res. 6, however, would allow a Member during the 110<sup>th</sup> Congress to raise a point of order against the motion to rise and report the bill to the House if the bill exceeded its Section 302(b) allocation. If sustained, the Chair would be required

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<sup>44</sup> During the appropriations process, the House and Senate Appropriations Committees usually revise these subdivisions several times.

<sup>45</sup> For an examination of this practice, see Richard G. Forgette and Jim V. Saturno, "302(b) or Not 302(b): Congressional Floor Procedures and House Appropriators," *Legislative Studies Quarterly*, vol. 19, no. 3 (August 1994), pp. 385-396.

<sup>46</sup> Clause 3 of House Rule XVIII requires initial consideration of appropriations bills in the Committee of the Whole. In current practice, the regular appropriations bills are considered in the Committee of the Whole under a special rule reported by the House Committee on Rules. In the Committee of the Whole, under the special rule, consideration begins with general debate and then the appropriations bill typically is read for amendment by paragraph, under the five-minute rule.

<sup>47</sup> Points of order under the Budget Act are not self-enforcing. A Member must raise a point of order against the consideration of the amendment. If no point of order is raised, the amendment may be considered and subsequently adopted. Moreover, the point of order must be timely, that is, before debate begins on the amendment. Once a proponent begins debate, the point of order is no longer in order. Often, a Member (usually the floor manager) will reserve a point of order against the amendment, before debate begins, in order to secure the right to make the point of order after debate on the amendment has commenced. After a proponent makes her remarks, the Member either withdraws the reservation or insists on the point of order. For additional explanation regarding the timeliness and reservation of points of order, see William Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003), pp. 665-667.

<sup>48</sup> Clause 2 of House Rule XXI prohibits provisions changing existing law in an appropriations measure. The special rule providing for the consideration of a regular appropriations bill typically waives this rule but sometimes exempts certain provisions from this waiver. In the latter case, during the consideration of the bill, a Member may raise a point of order against an "unprotected" provision and if sustained, the provision is stricken from the bill.

<sup>49</sup> Such a scenario might have occurred during the 109<sup>th</sup> Congress, but was avoided when the floor manager insisted that the point of order initially made against the emergency designation provision be extended to lie against the spending as well. As a result, when the Chair sustained the point of order, the entire paragraph containing the emergency designation as well as the additional spending was stricken. See *Congressional Record*, daily edition, vol. 152 (May 19, 2006), pp. H2931-H2939.

<sup>50</sup> As in the case of an amendment, in order to be considered timely, the point of order under Section 302(f) of the Budget Act must be raised before debate begins on the bill. Presumably, at the time an amendment has been adopted or a point of order is sustained against a provision in the bill, there has been debate on the bill.

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

A Member may not make the point of order against a motion offered under clause 2(d) of Rule XXI, which gives precedence to a motion to rise and report an appropriations bill if offered by the Majority Leader or a designee after the bill has been read for amendment,<sup>51</sup> or after the question of consideration provided by the new point of order has already been decided on a given bill.<sup>52</sup> It is worth noting that regardless of the whether or not the new point of order would be in order, the motion to rise and report any bill back to the House requires an affirmative vote. The motion typically is agreed to by voice vote. Any Member, however, may request a recorded vote. If the motion is rejected, the consideration of the bill continues in the Committee, and a Member may offer an amendment which could propose to bring the bill into compliance with its allocation.

## **Author Contact Information**

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

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<sup>51</sup> Presumably then, if the Majority Leader or his designee offers the motion to rise and report the bill to the House, instead of the floor manager, a Member would not be able to raise the new point of order under Section 511(a)(5) of H.Res. 6, even if the appropriations bill exceeds its allocation.

<sup>52</sup> This exception would seem to prevent the new point of order from being raised more than once during the consideration of any given appropriations bill. Presumably then, if after the new point of order is raised and sustained, the question of consideration is decided in the negative, and a proper amendment is offered but rejected, a Member could not raise the new point of order again in order to have another opportunity to offer a different proper amendment to bring the appropriations bill into compliance with its allocation.