

# CRS Report for Congress

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## House Rules Changes Affecting the Congressional Budget Process in the 109<sup>th</sup> Congress (H.Res. 5)

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### Summary

On the opening day of the 109<sup>th</sup> Congress, the House made several rules changes affecting the congressional budget process. The House amended its standing rules regarding the composition of the Budget Committee to provide for the inclusion of a Member “designated by” each party’s elected leadership, instead of a Member “from” each party’s leadership. The House also agreed to several separate orders that address the applicability of certain points of order under the Congressional Budget Act of 1974, and deem the FY2005 budget resolution adopted by the House in the 108<sup>th</sup> Congress to have been agreed to by the 109<sup>th</sup> Congress for budget enforcement purposes. This report will not be updated unless developments warrant.

The House customarily adopts its rules for a new Congress in H.Res. 5 on the first day of the new Congress.<sup>1</sup> In the 109<sup>th</sup> Congress, H.Res. 5, agreed to on January 4, 2005, included several provisions affecting the congressional budget process. These changes include an amendment to the standing rules of the House as well as four separate orders that apply during the 109<sup>th</sup> Congress only (see **Table 1**). This report provides a brief explanation of each of these rules changes.

### Change in Standing Rules

H.Res. 5 contains one change in the House standing rules relative to the budget process, involving the membership of the Budget Committee.<sup>2</sup>

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<sup>1</sup> The House must adopt its rules anew at the beginning of each Congress. The Senate, on the other hand, is a continuing body, and its rules remain in effect from one Congress to the next.

<sup>2</sup> H.Res. 5 (Section 2(1)(7)) also made a technical correction to the language of House Rule XXI, which applies to the consideration of general appropriations bills.

**Table 1. House Rules Changes Affecting the Congressional Budget Process in the 109<sup>th</sup> Congress (H.Res. 5)**

Section of H.Res. 5	Description
Amendment to House Standing Rules	
2(c)(1)	Amends clause 5(a)(2) of Rule X, regarding the composition of the Budget Committee, to provide for the inclusion of a Member “designated by” each party’s elected leadership, instead of a Member “from” each party’s elected leadership.
Separate Orders	
3(a)(1)	Provides that the term “resolution” in Section 306 of the CBA 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 Budget Committee unless it is reported by that committee.
3(a)(2)	Provides that Section 303 of the CBA 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.
3(a)(3)	Provides 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 CBA.
3(a)(4)	Provides that the conference report on the FY2005 budget resolution (S.Con.Res. 95, H.Rept. 108-498), adopted by the House during the 108 <sup>th</sup> Congress, be considered to have been adopted by the 109 <sup>th</sup> Congress, for budget enforcement purposes.

**Note:** “CBA” refers to the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344), as amended.

**Membership of Budget Committee.** Clause 5(a)(2) of House Rule X specifies the composition of the Budget Committee. During the 108<sup>th</sup> Congress, the rule required that five Members from the Appropriations Committee, five Members from the Ways and Means Committee, one Member from the Rules Committee, one Member “from” the elected majority party leadership, and one Member “from” the elected minority party leadership serve on the Budget Committee.<sup>3</sup>

Section 2(c)(1) of H.Res. 5 amends clause 5(a)(2) of Rule X regarding the Budget Committee’s composition to provide for the inclusion of one Member “designated by” the elected leadership of the majority party and one Member “designated by” the elected leadership of the minority party, instead of a Member “from” each party’s elected leadership. The rule change appears to formalize, or clarify, the practice of selecting “leadership Members” of the Committee. At least in the past few Congresses, majority

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<sup>3</sup> Since 1974, when the House Budget Committee, along with the Senate Budget Committee, was established, the House has made several changes to the membership composition requirements of the Committee. See U.S. Congress, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Eighth Congress*, H.Doc. 107-284, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2003) (hereafter *House Rules and Manual*), sec. 758, pp. 488-490.

Members of the Budget Committee designated by the elected leadership of the majority party under this provision have not themselves been members of the elected leadership.<sup>4</sup>

## Separate Orders

H.Res. 5 also contains four “separate orders” affecting the congressional budget process. The term “separate orders” has come to be used for provisions in H.Res. 5 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 (CBA);<sup>5</sup> each of these orders had been agreed to in previous Congresses. The fourth separate order deems the FY2005 budget resolution adopted by the House in the 108<sup>th</sup> Congress to have been agreed to by the 109<sup>th</sup> Congress for budget enforcement purposes.

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

Section 3(a)(1) of H.Res. 5 renews a separate order, also adopted at the beginning of the 107<sup>th</sup> and 108<sup>th</sup> Congresses,<sup>6</sup> providing that the term “resolution” in Section 306 refers to a joint resolution. 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 Rules Committee, as explained in the “Enforcement of the FY2005 Budget Resolution” section, below) presumably would not be subject to a Section 306 point of order.

**Application of Point of Order under Section 303 of the CBA.** Section 303 of the CBA 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>7</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

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<sup>4</sup> The Speaker’s designee on the Committee was Rep. Christopher Shays in the 108<sup>th</sup> Congress, Rep. John Sununu in the 107<sup>th</sup> Congress, and Rep. Saxby Chambliss in the 106<sup>th</sup> Congress.

<sup>5</sup> Titles I-IX of P.L. 93-344, as amended.

<sup>6</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.

<sup>7</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.

provision.<sup>8</sup> Moreover, a 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 CBA that was intended to correct this anomaly.<sup>9</sup> Section 315 provides that the words “as reported” in Titles III and IV of the CBA 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 CBA. 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>10</sup>

Section 3(a)(2) of H.Res. 5 renews for the 109<sup>th</sup> Congress a separate order, also agreed to at the beginning of the previous three Congresses,<sup>11</sup> to provide that 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.<sup>12</sup>

**Prospective Compensation in Appropriations Measures.** Section 3(9) of the CBA 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

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<sup>8</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 (Mar. 21, 1995), p. 8491. For a detailed discussion of the effect of the words “as reported” in the CBA, 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, Oct. 1993), notes on pp. 107, 179-185.

<sup>9</sup> See U.S. Congress, Committee on 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, July 30, 1997), p. 994.

<sup>10</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 (Apr. 23, 1998), p. H2242.

<sup>11</sup> 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.

<sup>12</sup> Section 303(b)(3) of the CBA provides an exception to the Section 303(a) point of order for any *unreported* bill or joint resolution. Presumably, the separate order also would supersede this exception.

(B) the food stamp program.

Section 401(b) of the CBA prohibits the consideration of a measure that provides new entitlement authority that is to become effective in the current fiscal year.<sup>13</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) associated with the most recently adopted budget resolution, the measure may be referred to the House Appropriations Committee for a period not to exceed 15 days.<sup>14</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 Congressional Budget Act.<sup>15</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>16</sup>

Section 3(a)(3) of H.Res. 5 effectively makes this ruling a standing order for the 109<sup>th</sup> Congress. The House also agreed to this separate order at the beginning of the previous three Congresses.<sup>17</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 109<sup>th</sup> Congress, such a provision presumably would not be subject to a point of order under Section 401(b) of the CBA, and it also would not be subject to the 15-day referral to the House Appropriations Committee.

**Enforcement of the FY2005 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>18</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

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<sup>13</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.

<sup>14</sup> In the Senate, Section 401(b) requires such a measure to be referred to the Senate Appropriations Committee instead of simply providing the authority to do so, as in the House.

<sup>15</sup> See the annotations to Section 401 of the CBA in *House Rules and Manual*, pp. 1015-1018.

<sup>16</sup> *Ibid.*, p. 1018. Also, see *Congressional Record*, vol. 138 (Mar. 26, 1992), pp. 7202-7203.

<sup>17</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) and 108<sup>th</sup> (Section 3(a)(2) of H.Res. 5) Congresses applied to the entire duration of the Congresses.

<sup>18</sup> For further information on the congressional budget process, see CRS Report RS20095, *The Congressional Budget Process: A Brief Overview*, by James V. Saturno.

revised or superseded by a subsequently-adopted budget resolution, even from one Congress to the next.

In 2004, however, Congress did not complete action on a budget resolution for FY2005. The House adopted the conference report to the FY2005 budget resolution (S.Con.Res. 95, H.Rept. 108-498) on May 19, 2004, but the Senate did not consider the conference report.

In the absence of an agreement between the House and Senate on an FY2005 budget resolution, the House adopted a so-called “deeming resolution.”<sup>19</sup> The House included a provision in the special rule (Section 2 of H.Res. 649, 108<sup>th</sup> Congress) governing the consideration of the conference report to S.Con.Res. 95 “deeming” the conference report to have been agreed to by Congress, for budget enforcement purposes.<sup>20</sup> As a result, the provisions of the conference report and the joint explanatory statement, such as the committee spending allocations (commonly referred to as 302(a) allocations) and the subsequent Appropriations Committee subdivisions (commonly referred to as 302(b) allocations), could have been enforced in the House under the procedures of the Congressional Budget Act, but only during the 108<sup>th</sup> Congress.

Section 3(a)(4) of H.Res. 5 provides that the conference report on S.Con.Res. 95 (H.Rept. 108-498) agreed to by the House in the 108<sup>th</sup> Congress be considered to have been adopted by the 109<sup>th</sup> Congress and continue to serve as the basis for budget enforcement in the House. Under this deeming resolution, as with the 2004 resolution, the enforcement procedures of the Congressional Budget Act will have force and effect in the House as if Congress had adopted the budget resolution, until Congress adopts an FY2005 budget resolution.<sup>21</sup>

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<sup>19</sup> The Senate also separately adopted a so-called “deeming resolution” provision for budget enforcement purposes. The Senate included a provision in the Defense Appropriations Act, 2005 (H.R. 4613, H.Rept. 108-622) setting forth the FY2005 spending allocations for the Senate Appropriations Committee. President Bush signed the act into law (P.L. 108-287) on Aug. 5, 2004. Section 14007 of the act established new limits on the total amounts, subject to certain adjustments and exemptions, for the FY2005 regular appropriations acts. For further information on “deeming resolutions,” see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Robert Keith.

<sup>20</sup> The House agreed to H.Res. 649 (H.Rept. 108-500) by a 220-204 vote on May 19, 2004. For the consideration and adoption of H.Res. 649, see *Congressional Record*, daily edition, vol. 150 (May 19, 2004), pp. H3236-H3241, H3256-H3257.

<sup>21</sup> Section 3(a)(4) of H.Res. 5 also specifies that the committee spending allocations [302(a)s] included in the conference report to S.Con.Res. 95, as adjusted during the 108<sup>th</sup> Congress, are to be the committee spending allocations enforced under the Congressional Budget Act. For those committee spending allocations and a revision to the House Appropriations Committee’s allocations, see U.S. Congress, Committee on Conference, *Concurrent Resolution on the Budget for Fiscal Year 2005*, conference report to accompany S.Con.Res. 95, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-498 (Washington: GPO, 2004), pp. 113-116, and *Congressional Record*, daily edition, vol. 150 (June 15, 2003), p. H4146, respectively.