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# Points of Order in the Congressional Budget Process

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## Summary

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended) created a process that Congress uses each year to establish and enforce the parameters for budgetary legislation. Enforcement of budgetary decisions is accomplished through the use of points of order, and through the reconciliation process. Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point of order against legislation that may violate these rules when it is considered by the House or Senate.

This report summarizes the points of order currently in effect under the Congressional Budget Act of 1974, as amended, as well as related points of order established in various other measures that have a direct impact on budget enforcement. These related measures include the budget resolution adopted by Congress in 2015 (S.Con.Res. 11, 114<sup>th</sup> Congress), as well as earlier related provisions. These include the budget resolution adopted by Congress in 2009 (S.Con.Res. 13, 111<sup>th</sup> Congress), as well as selected provisions in the Rules of the House and separate orders for the 114<sup>th</sup> Congress (H.Res. 5, 114<sup>th</sup> Congress), the Budget Enforcement Act of 1990 (P.L. 101-508), and the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139). In addition, the report describes how points of order are applied and the processes used for their waiver in the House and Senate.

These provisions have been adopted pursuant to the constitutional authority of each chamber to determine its rules of proceeding. This report will be updated to reflect any additions or further changes to these points of order.

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## Introduction

The Congressional Budget Act of 1974<sup>1</sup> established the basic framework that is used today for congressional consideration of budget and fiscal policy. The act provided for the adoption of a concurrent resolution on the budget (budget resolution) as a mechanism for coordinating congressional budgetary decisionmaking. This process supplements other House and Senate procedures for considering spending and revenue legislation by allowing Congress to establish and enforce parameters with which those separate pieces of budgetary legislation must be consistent. The parameters are established each year when Congress adopts the budget resolution, setting forth overall levels for new budget authority, outlays, revenues, deficit, and debt.

These overall spending levels are then allocated to the various committees in the House and Senate responsible for spending legislation. The overall levels and allocations are then enforced through the use of points of order, and through implementing legislation, such as that enacted through the reconciliation process.<sup>2</sup> Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point of order against legislation that is alleged to violate these rules when it is considered by the House or Senate. Points of order are not self-enforcing. A point of order must be raised by a Member on the floor of the chamber before the presiding officer can rule on its application, and thus for its enforcement.

Although the congressional budget process encompasses myriad procedures dealing with spending, revenue, and debt legislation, this report focuses only on that portion of the process that stems from the Congressional Budget Act. The tables below list the points of order included in the Congressional Budget Act, as amended through the Bipartisan Budget Act of 2013 (P.L. 113-67) (**Table 1**), as well as related points of order established in various other measures. These points of order include provisions in the FY2010 budget resolution (**Table 3**); the FY2008 budget resolution (**Table 4**); the Budget Enforcement Act of 1990 (**Table 5**); the rules of the House and separate orders adopted under H.Res. 5 (114<sup>th</sup> Congress) (**Table 6**); and the provisions of the Statutory Pay-As-You-Go Act of 2010 (**Table 7**) that pertain to the consideration, contents, implementation, or enforcement of budgetary decisions.

Points of order are typically in the form of a provision stating that “it shall not be in order” for the House or Senate to take a specified action or consider certain legislation that is inconsistent with the requirements of the Budget Act. Other provisions of the act, formulated differently, establish

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<sup>1</sup> The Congressional Budget Act (Titles I-IX of P.L. 93-344) has been amended on a number of occasions since its enactment. The most salient of the modifications has been as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177, also known as Gramm-Rudman-Hollings or GRH); the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119); the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508); Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66); Title X of the Balanced Budget Act of 1997 (P.L. 105-33), and the Bipartisan Budget Act of 2013 (P.L. 113-67). For the text of the Budget Act, as amended through 2013, see U.S. Congress, House Committee on the Budget, *Bipartisan Budget Act of 2013*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 2014 (Washington: GPO, 2014), pp. 275-352.

<sup>2</sup> The reconciliation process is an optional procedure set forth in Section 310 of the Congressional Budget Act. First used in 1980, reconciliation is a two-step process triggered when the budget resolution includes instructions to one or more committee(s) directing them to recommend changes in revenue or spending laws necessary to achieve the overall levels agreed to. The recommendations are then considered in one or more reconciliation measures under expedited procedures. Certain features of the reconciliation process are enforced by points of order that are included in this report. For more on the reconciliation process generally, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by (name redacted) and (name redacted)

various requirements or procedures, particularly concerning the contents and consideration of the budget resolution or reconciliation legislation. These provisions, however, are not typically enforced through points of order, and are not included here.<sup>3</sup>

As amended through the Bipartisan Budget Act of 2013, points of order in the Congressional Budget Act are permanent. None of the provisions listed in **Table 1** is scheduled to expire, although several points of order have limited applicability or have been rendered moot by the expiration of limits they were intended to enforce.<sup>4</sup> The freestanding point of order protecting the Social Security trust fund in the House established in the Budget Enforcement Act (see **Table 5**) is also permanent. However, other points of order established under recent budget resolutions have various sunset provisions or limited application.

## Application of Points of Order

Most points of order in the Budget Act apply to measures as a whole, as well as to motions, amendments, or conference reports to those measures. When a point of order is sustained against consideration of some matter, the effect is that the matter in question falls.

The application of points of order in the House is clarified in Section 315 of the Budget Act. This provision states that for cases in which a reported measure is considered pursuant to a special rule, a point of order against a bill “as reported” would apply to the text made in order by the rule as original text for the purpose of amendment or to the text on which the previous question is ordered directly to passage. In this way, no point of order would be considered as applying (and no waiver would be required) if a substitute resolved the problem. In addition, the Rules of the House for the 111<sup>th</sup> Congress include a provision further specifying that for measures considered pursuant to a special rule, points of order under Title III of the Budget Act apply without regard to whether the measure considered is actually that reported from committee. Under Rule XXI, clause 8, points of order apply to the form of a measure recommended by the reporting committee where the statute uses the term “as reported” (in the case of a measure that has been reported), the form of the measure made in order as an original text for the purpose of amendment, or the form of the measure on which the previous question is ordered directly to passage.

The effect of a point of order in the Senate is clarified under Section 312(f), which provides that when a point of order against a measure is sustained, the measure is recommitted to the appropriate committee for any further consideration. This allows the Senate an opportunity to remedy the problem that caused the point of order. Section 312(d) is also designed to provide the Senate with the opportunity to remedy a problem that would provoke a point of order. This provision states that a point of order may not be raised against a measure, amendment, motion, or conference report while an amendment or motion that would remedy the problem is pending.

Section 312(e) clarifies that any point of order that would apply in the Senate against an amendment also applies against amendments between the houses. Further, this section also states that the effect would “be the same as if the Senate had disagreed to the amendment.” This would

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<sup>3</sup> For example, the prohibition against motions to recommit concurrent resolutions on the budget in the House under Section 305(a)(2) of the act is typically not counted as a separate point of order. Likewise, the requirement under Section 308(a) of the act for reports on legislation to include cost estimates is not formulated as a point of order, although the House has deemed it necessary to formally waive the provision on occasion.

<sup>4</sup> The expiration of some of the provisions of the Balanced Budget and Emergency Deficit Control Act at the end of FY2002 rendered moot a number of points of order. For example, the point of order in the Congressional Budget Act to enforce maximum deficit amounts in the Senate (Section 312(c)) has been rendered moot because no statute currently specifies such an amount.

allow the Senate to keep the underlying measure pending, and thus retain the ability to resolve their differences with the House. This provision therefore means that any resolution of the differences between the House- and Senate-passed versions of a measure, whether it is in the form of a conference report or not, must adhere to the provisions of the Budget Act.

There are exceptions to the general principle of applying points of order to a measure as a whole. The most salient is probably Section 313, the so-called Byrd Rule. This section applies to matter “contained in any title or provision” in a reconciliation bill or resolution (or conference report thereon), as well as any amendment or motion. If a point of order is sustained under this section, only the provision in question is stricken, or the amendment or motion falls.<sup>5</sup> Several of the points of order in the Senate subsequently established under budget resolutions have been written so that they too apply to individual provisions rather than the measure as a whole, in the same manner as provided in Section 313(e) of the Budget Act. In particular, this construction is applied to the points of order against emergency spending designations (Section 403(e)(1) of S.Con.Res. 13 (111<sup>th</sup> Congress), Section 314(e) of the Budget Act, and Section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010). These sections further provide that, if sustained, the effect of the point of order is that the provision making an emergency designation shall be stricken, and may not be offered as an amendment from the floor.

## Procedures for Waiving Points of Order

The Congressional Budget Act sets forth certain procedures, under Section 904, for waiving points of order under the act. These waiver procedures apply in the Senate only. Under these procedures, a Senator may make a motion to waive the application of a point of order either preemptively before it can be raised, or after it is raised, but before the presiding officer rules on its merits.<sup>6</sup>

In the Senate, most points of order under the Budget Act may be waived by a vote of at least three-fifths of all Senators duly chosen and sworn (60 votes if there are no vacancies) (see **Table 1**). The three-fifths waiver requirement was first established for some points of order under the Balanced Budget and Emergency Deficit Control Act of 1985. Beginning with the Balanced Budget Act of 1997, this super-majority threshold was applied to several additional points of order on a temporary basis. These points of order are identified in Section 904(c)(2), and the three-fifths requirement is currently scheduled to expire September 30, 2025.<sup>7</sup> The three-fifths threshold has also been required for the Senate to waive the application of many of the related points of order established in budget resolutions and other measures, such as the Statutory Pay-

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<sup>5</sup> Section 313(d) provides a special procedure for further consideration of a measure should a point of order under this section be sustained against a provision in a conference report.

<sup>6</sup> In the case of points of order under Section 313 of the Budget Act (and by extension, other points of order for which this construction applies) a single point of order may be raised against several provisions. The presiding officer may sustain the point of order “as to some or all of the provisions,” and a motion to waive the point of order may, likewise, be made concerning some or all of the provisions against which the point of order was raised.

<sup>7</sup> As originally provided in Title X of the Balanced Budget Act of 1997, the three-fifths requirement expired on September 30, 2002. The Senate subsequently adopted S.Res. 304 on October 16, 2002, renewing the three-fifths requirement for all of the points of order identified in Section 904(c)(2) (except for Section 302(f)(2)(B)) through April 15, 2003. The three-fifths requirement (including for Section 302(f)(2)(B)) was renewed through September 30, 2008, under Section 503 of H.Con.Res. 95 (108<sup>th</sup> Congress), extended through September 30, 2010, under Section 403 of H.Con.Res. 95 (109<sup>th</sup> Congress), extended through September 30, 2017, under Section 205 of S.Con.Res. 21 (110<sup>th</sup> Congress), and most recently, extended through September 30, 2025 under Section 3201(a)(1) of S.Con.Res. 11 (114<sup>th</sup> Congress).

As-You-Go Act of 2010. As with other provisions of Senate rules, Budget Act points of order also may be waived by unanimous consent.

In the House, Budget Act points of order are typically waived by the adoption of special rules, although other means (such as unanimous consent or suspension of the rules) may also be used. A waiver may be used to protect a bill, specified provision(s) in a bill, or an amendment from a point of order that could be raised against it. Waivers may be granted for one or more amendments even if they are not granted for the underlying bill. The House may waive the application of one or more specific points of order, or they may include a “blanket waiver,” that is, a waiver that would protect a bill, provision, or amendment from any point of order.

**Table I. Points of Order Under the Congressional Budget Act of 1974**

<b>Section</b>	<b>Description</b>	<b>Application</b>	<b>Senate Waiver Vote<sup>a</sup></b>
301(g)	In the Senate, prohibits consideration of a budget resolution using more than one set of economic assumptions.	Budget resolution, amendment, or conference report.	Simple majority
301(i)	In the Senate, prohibits consideration of a budget resolution that would decrease the Social Security surplus in any fiscal year covered by the resolution.	Budget resolution, amendment, motion, or conference report.	Three-fifths*
302(c)	Prohibits the consideration of any measure within the jurisdiction of the House or Senate Appropriations Committees that provides new budget authority for a fiscal year until the committee makes the suballocation required by Section 302(b).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
302(f)(1)	In the House, after action on a budget resolution is completed, prohibits consideration of legislation providing new budget authority for any fiscal year that would cause the applicable allocation of new budget authority made pursuant to Section 302(a) or (b) for the first fiscal year or for the total of all fiscal years to be exceeded. <sup>b</sup>	Bill, joint resolution, amendment, or conference report.	n/a
302(f)(2)(A)	In the Senate, after a budget resolution is agreed to, prohibits consideration of legislation (from any committee other than the Appropriations Committee) that would cause the applicable allocation of new budget authority or outlays made pursuant to Section 302(a) for the first fiscal year or for the total of all fiscal years to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
302(f)(2)(B)	In the Senate, after a budget resolution has been agreed to, prohibits consideration of legislation from the Appropriations Committee that would cause the applicable suballocation of new budget authority or outlays made pursuant to Section 302(b) to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
303(a)	Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a concurrent resolution for that fiscal year has been agreed to. <sup>b,c</sup>	Bill, joint resolution, amendment, motion, or conference report.	Simple majority <sup>d</sup>
303(c)	In the Senate, prohibits consideration of any appropriations measure until a concurrent resolution for that fiscal year has been agreed to, and an allocation has been made to the Committee on Appropriations under Section 302(a). <sup>c</sup>	Bill, joint resolution, amendment or conference report.	Simple majority <sup>d</sup>
305(b)(2)	In the Senate, prohibits consideration of nongermane amendments. <sup>e</sup>	Amendment.	Three-fifths



Section	Description	Application	Senate Waiver Vote <sup>a</sup>
305(c)(4)	In the Senate, prohibits consideration of nongermane amendments to amendments in disagreement to a budget resolution (Section 310(e) applies this prohibition to amendments in disagreement to reconciliation legislation as well).	Amendment in disagreement to a budget resolution (or to reconciliation legislation).	Three-fifths
305(d)	In the Senate, prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent.	Budget resolution or conference report.	Simple majority
306	Prohibits consideration of matters within the jurisdiction of the Budget Committee except when it is a measure reported by the committee, or the committee is discharged from further consideration of the measure, or an amendment to such a measure. <sup>f</sup>	Bill, joint resolution, amendment, or conference report.	Three-fifths
309	In the House, prohibits consideration of an adjournment resolution for more than three calendar days during July until the House has approved all regular appropriations bills for the upcoming fiscal year.	Resolution.	n/a
310(d)	Prohibits the consideration of amendments to reconciliation legislation that would cause a net increase in the deficit either by increasing outlays above the levels in the bill or reducing revenues below the level in the bill unless fully offset, except that in the Senate a motion to strike a provision shall always be in order. <sup>g</sup>	Amendment.	Three-fifths
310(e)	In the Senate, prohibits consideration of nongermane amendments to reconciliation legislation or to amendments in disagreement to reconciliation (by reference to Sections 305(b)(2) and 305(c)(4)).	Amendment.	Three-fifths
310(f)	In the House, prohibits consideration of an adjournment resolution of more than three calendar days during July until the House has completed action on any required reconciliation legislation.	Resolution.	n/a
310(g)	Prohibits the consideration of reconciliation legislation that contains recommendations with respect to Social Security.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
311(a)(1)	In the House, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a) <sup>b,h</sup>	Bill, joint resolution, amendment, motion, or conference report.	n/a
311(a)(2)	In the Senate, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year, or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
311(a)(3)	In the Senate, prohibits consideration of legislation that would cause a decrease in Social Security surpluses or an increase in Social Security deficits relative to the level set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
312(b)	In the Senate, prohibits the consideration of legislation that would cause any of the discretionary spending limits specified in Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, to be exceeded. <sup>i</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
312(c)	In the Senate, prohibits consideration of a budget resolution that provides for a deficit in excess of the maximum deficit amount specified in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, for the first fiscal year set forth in the resolution. <sup>j</sup>	Budget resolution, amendment, or conference report.	Three-fifths*
313	In the Senate, prohibits consideration of extraneous provisions in reconciliation legislation. <sup>k</sup>	Reconciliation bill or resolution (any title or provision), amendment, motion, or conference report.	Three-fifths
314(e)	In the Senate, provides for a point of order against the use of an emergency designation as allowed under Section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act. <sup>l</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths* <sup>m</sup>
314(f)	Prohibits consideration in the House or Senate of legislation that would cause the discretionary spending limits set forth in Section 251 of the Balanced Budget and Emergency Deficit Control Act, as amended by the Budget Control Act of 2011 to be exceeded. <sup>i</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths* <sup>n</sup>
401(a)	Prohibits consideration of legislation providing new contract authority, borrowing authority, or credit authority not limited to amounts provided in appropriations acts. <sup>o</sup>	Bill, joint resolution, amendment, motion, or conference report.	Simple majority
401(b)	Prohibits consideration of legislation providing new entitlement authority that is to become effective during the current fiscal year. <sup>o</sup>	Bill, joint resolution, amendment, motion, or conference report.	Simple majority
425(a)(1)	Prohibits consideration of legislation reported by a committee unless the committee has published a statement by CBO on the direct costs of federal mandates.	Bill or joint resolution.	Three-fifths* <sup>p</sup>

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
425(a)(2)	Prohibits consideration of legislation that would increase the direct costs of federal intergovernmental mandates by an amount greater than the thresholds specified as in Section 424(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths* <sup>p</sup>
426	In the House, prohibits consideration of a rule or order that would waive the application of Section 425.	Resolution, rule, or order.	n/a

**Source:** The Congressional Budget Act of 1974 (P.L. 93-344), as amended. U.S. Congress, House Committee on the Budget, *Bipartisan Budget Act of 2013*, 113<sup>th</sup> Congress, 2<sup>nd</sup> session, February 2014 (Washington: GPO, 2014), pp. 275-352.

- a. This column indicates the type of Senate vote (as provided under Section 904 of the Congressional Budget Act) necessary to approve a motion to waive the point of order listed. The term “simple majority” means that the provision may be waived by a majority vote of the Members voting, a quorum being present. The term “three-fifths” means that a motion to waive the provision must be approved by a vote of three-fifths of Senators “duly chosen and sworn.” For those provisions marked with an asterisk (\*), the three-fifths requirement is scheduled to expire on September 30, 2025, (as identified under Section 904(e) and extended under S.Con.Res. 11 (114<sup>th</sup> Congress)), reverting to simple majority after that time. See footnote 7 in the text of this report for details on previous extensions. The same voting requirement (either simple majority or three-fifths) would also apply to a vote to appeal a ruling of the chair connected with a point of order. The term “n/a” is used for those provisions that apply in the House only.
- b. Section 302(g) of the Congressional Budget Act (known as the Pay-As-You-Go exception) provides that Sections 302(f)(1), 303(a) (after April 15), and 311(a), as it applies to revenues, shall not apply in the House to legislation (bill, joint resolution, amendment, or conference report) if for each fiscal year covered by the most recently agreed to budget resolution such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under Section 301(b)(8). In the 109<sup>th</sup> Congress, the House adopted a provision in H.Res. 248 establishing that during the 109<sup>th</sup> Congress there would be a separate point of order in the Committee of the Whole against a motion to rise and report a general appropriations bill if that bill, as amended, were in a breach of the appropriate 302(b) allocation. This provision was subsequently readopted in the 110<sup>th</sup>-114<sup>th</sup> Congresses as a separate order of the House (see Section 3(e)(2) of H.Res. 5 (114<sup>th</sup> Congress)).
- c. Section 303(b) sets forth exceptions to the prohibitions under 303(a). In the House, the point of order does not apply to (1) advance discretionary new budget authority that first become available for the first or second fiscal year after the first fiscal year covered in a budget resolution; (2) revenue legislation that is to first become effective after the first fiscal year covered in a budget resolution; (3) general appropriations bills after May 15; or (4) any bill or joint resolution unless it is reported by a committee (see also table note b above for an additional exception to 303(a) provided under Section 302(g)). In the Senate, the point of order does not apply to advance appropriations for the first or second fiscal year after the first fiscal year covered in a budget resolution. The application of this point of order to appropriations bills in the Senate is provided specifically under Section 303(c), which requires an allocation be made to the Senate Appropriations Committee under Section 302(a) as well as agreement on a budget resolution.
- d. The points of order under Sections 303(a) and 303(c) were previously made subject to the three-fifths threshold under Section 403(b) of H.Con.Res. 95 (109<sup>th</sup> Congress). Section 205 of S.Con.Res. 21 (110<sup>th</sup> Congress), however, provided that Section 403 no longer apply in the Senate.
- e. Section 204(g) of H.Con.Res. 290 (106<sup>th</sup> Congress) provided that for purposes of interpreting Section 305(b)(2) of the Budget Act, an amendment not be considered germane if it contains predominately precatory language (e.g., Sense of the Senate provisions), although the enforcement of this provision is not clear.
- f. Since being amended by the Bipartisan Budget Act of 2013, this section provides separate, identical points of order in the Senate (306(a)) and House (306(b)). Prior to that time, this section provided a single point of order applicable in both chambers, and the House, by separate order, also provided that the point of order would apply to bills and joint resolutions (and amendments or conference reports thereto).

- g. Under Section 310(d)(1), the budgetary impact of amendments for purposes of enforcement in the House is measured in relation to the levels in the reconciliation measure. This section was also made effective in the Senate under Section 3206 of S.Con.Res. 11 (114<sup>th</sup> Congress). Under Section 310(d)(2), the budgetary impact in the Senate is also measured in relation to the levels provided in the reconciliation instructions which relate to the measure.
- h. Section 311(c) provides that 311(a) shall not apply in the House to legislation that would not cause a committee's spending allocation under 302(a) to be exceeded.
- i. The point of order in Section 312(b) was written to apply to spending limits included in Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985. The point of order in Section 314(f) was added to apply specifically to spending limits for FY2012-FY2021 included in Section 251(c) as amended by the Budget Control Act of 2011 (P.L. 112-25).
- j. Currently no maximum deficit amounts are specified under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.
- k. For more information on this provision (known as the "Byrd Rule"), see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*, by (name redacted)
- l. See also separate points of order against the use of emergency designations in the Senate that appear at Section 403(e) of S.Con.Res. 13 (111<sup>th</sup> Congress) and 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139).
- m. The threshold for waivers and appeals for this point of order appear at Sections 314(e)(2)(A) and (B), respectively, as well as in Section 904.
- n. This provision previously appeared at Section 314(e), but was redesignated as Section 314(f) under P.L. 112-78. The thresholds for waivers or appeals concerning this point of order was subsequently clarified as three-fifths of Senators "duly chosen and sworn" in the Bipartisan Budget Act of 2013, which added it to the sections enumerated in Section 904(c)(2) and 904(d)(3), respectively.
- o. Section 401(d) provides that Sections 401(a) and 401(b) shall not apply to new spending authority described in those sections that flow from (1) a trust fund established under the Social Security Act or any other trust fund for which 90% or more of its expenditures are supported by dedicated revenues; (2) certain wholly owned or mixed ownership government corporations; or (3) gifts or bequests made to the United States for a specific purpose
- p. Points of order under Sections 425(a)(1) and 425(a)(2) had previously been subject to the three-fifths threshold in the 109<sup>th</sup> Congress under Section 403(b) of H.Con.Res. 95 (109<sup>th</sup> Congress). Section 205 of S.Con.Res. 21 (110<sup>th</sup> Congress), however, provided that Section 403 no longer apply in the Senate. The three-fifths threshold is currently established under Section 3203 of S.Con.Res. 11 (114<sup>th</sup> Congress).

**Table 2. Points of Order Under S.Con.Res. 11 (114<sup>th</sup> Congress)  
(Budget Resolution for FY2016)**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
2001(b)(1)	In the Senate, prohibits consideration of legislation pursuant to reconciliation instructions in this resolution that would increase the public debt limit during the period of FY2016-FY2025.	Bill, joint resolution, amendment, motion, or conference report.	Two-thirds <sup>b</sup>
3101(b)(1)	In the Senate, prohibits the consideration of a measure that would cause a net increase in on-budget deficits in excess of \$5 billion in any of the four consecutive 10-year periods beginning with the first fiscal year that is 10 years after the budget year in the most recently agreed to budget resolution. <sup>c</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths
3101(b)(2)	In the House, prohibits consideration of a measure that would cause a net increase in direct spending in excess of \$5 billion in any of the four consecutive 10-year periods beginning with the first fiscal year that is 10 years after the budget year in the most recently agreed to budget resolution. <sup>d</sup>	Bill, joint resolution, amendment, motion, or conference report.	n/a
3103(b)(1)	In the Senate, prohibits consideration of a full-year appropriations measure that includes a change in a mandatory program producing a net change in direct spending that would be in excess of the amounts specified in Section 3103(b)(3) for FY2016-FY2019. <sup>e</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths
3103(b)(2)	In the House, prohibits consideration of a provision in a full-year appropriations measure that makes a change in a mandatory program producing a net change in direct spending that would be in excess of the amounts specified in Section 3103(b)(3) for FY2016-FY2019.	Bill, joint resolution, amendment, motion, or conference report.	n/a
3104	Prohibits the consideration of a provision in a full-year appropriations measure that makes a net change in a mandatory program affecting the Crime Victims Fund that would exceed \$10.8 billion.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths
3202(a)	In the Senate, prohibits consideration of advance appropriations in measures providing appropriations for FY2016 or FY2017, except as provided in Section 3202(b). <sup>f</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths
3205(a)	In the Senate, prohibits voting on passage of any matter that requires a cost estimate under Section 402 of the Congressional Budget Act (i.e., measures reported by a committee other than the Appropriations Committee), unless that cost estimate was made publicly available not later than 28 hours before the vote.	Reported bill (except a bill reported by the Appropriations Committee).	Three-fifths

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
3301(a)	In the House, prohibits consideration of legislation that would reduce the actuarial balance of the present value of future taxable payroll by at least 0.01% of the Federal Old-Age and Survivors Insurance Trust Fund for the 75-year period utilized in the most recent report of the Board of Trustees. <sup>g</sup>	Bill, joint resolution, amendment, motion, or conference report.	n/a
3304(a)	In the House, prohibits consideration of advance appropriations, except as provided in Section 3304(b). <sup>f</sup>	Bill, joint resolution, amendment, motion, or conference report.	n/a

**Source:** S.Con.Res. 11 (114<sup>th</sup> Congress).

- a. This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by a vote of three-fifths of Senators “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order.
- b. The threshold of two-thirds of Senators “duly chosen and sworn” for waiver of this point of order or appeals associated with it are specified in Sections 2001(b)(2) and 2001(b)(3), respectively.
- c. The budget year in S.Con.Res. 11 (114<sup>th</sup> Congress) is FY2016, so the first fiscal year that is 10 years after that budget year would be FY2026.
- d. The budget year in S.Con.Res. 11 (114<sup>th</sup> Congress) is FY2016, so the first fiscal year that is 10 years after that budget year would be FY2026. Under Section 3101(g), this section is scheduled to expire on September 30, 2017.
- e. This point of order supersedes earlier, similar points of order in S.Con.Res. 21 (110<sup>th</sup> Congress) and S.Con.Res. 70 (110<sup>th</sup> Congress).
- f. This point of order supersedes earlier, similar points of order. For more on advance appropriations generally, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*, by (name redacted) .
- g. Section 3(q)(2) provides that this point of order would not apply to legislation that would improve the actuarial balance of the combined balance of the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund over the same 75-year period. See also point of order under Separate Orders Adopted by the House, Section 3(q)(1).

**Table 3. Points of Order Under S.Con.Res. 13 (111<sup>th</sup> Congress)  
(Budget Resolution for FY2010)**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
403(e)	In the Senate, provides for a point of order against the use of an emergency designation as allowed under Section 403(a) of this budget resolution to provide for exemption in the Senate from budget enforcement mechanisms specified in Section 403(b). <sup>b</sup>	Bill, resolution, amendment, motion, or conference report	Three-fifths
404(a)	In the Senate, prohibits the consideration of direct spending or revenue legislation that would cause a net increase in the deficit in excess of \$10 billion in any fiscal year provided for in the most recently adopted budget resolution unless it is fully offset over the period of all fiscal years provided for in the most recently adopted budget resolution. <sup>c</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths
405(a)	In the Senate, prohibits consideration of any measure or provision that extends or reauthorizes surface transportation programs that appropriates budget authority from sources other than the Highway Trust Fund. <sup>c</sup>	Bill, joint resolution, amendment, or conference report	Three-fifths

**Source:** S.Con.Res. 13 (111<sup>th</sup> Congress).

- a. This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by a vote of three-fifths of Senators “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order.
- b. This section concerns the use of emergency designations, but does not establish a point of order against the spending or revenue itself. It also requires committees reporting legislation that include provisions designated as emergency to include in any accompanying written report a justification for the designation. The use of an emergency designation exempts resulting new budget authority, outlays, or receipts for purposes of enforcing Sections 302 and 311 of the Budget Act, as well as Sections 401 and 404 of this budget resolution. This point of order supersedes earlier, similar points of order under H.Con.Res. 68 and H.Con.Res. 290 (both 106<sup>th</sup> Congress), H.Con.Res. 95 (108<sup>th</sup> Congress), Section 14007(b)(2) of P.L. 108-287, H.Con.Res. 95 (109<sup>th</sup> Congress), and S.Con.Res. 21 (110<sup>th</sup> Congress). No expiration date is provided for the current point of order. See also points of order against the use of emergency designations that appear at Section 314(e) of the Budget Act and Section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010.
- c. The period covered in S.Con.Res. 11 (114<sup>th</sup> Congress) is FY2016-FY2025. This section was scheduled to expire on September 30, 2018, but the sunset provision in Section 404(e) was repealed by Section 3201(b)(2) of S.Con.Res. 11 (114<sup>th</sup> Congress).

**Table 4. Points of Order Under S.Con.Res. 21 (110<sup>th</sup> Congress)  
(Budget Resolution for FY2008)**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
201(a)	In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the period of the current fiscal year and the five ensuing fiscal years or the period of the current fiscal year and the ten ensuing fiscal years. <sup>b</sup>	Bill, joint resolution, amendment, or conference report.	Three-fifths

**Source:** S.Con.Res. 21 (110<sup>th</sup> Congress)

- a. This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by a vote of three-fifths of Senators “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order.
- b. This point of order supersedes earlier, similar points of order provided in H.Con.Res. 67 (104<sup>th</sup> Congress), H.Con.Res. 68 (106<sup>th</sup> Congress), and H.Con.Res. 95 (108<sup>th</sup> Congress). This section was scheduled to expire on September 30, 2017, but the sunset in Section 201(d) was repealed in Section 3201(b)(1) of S.Con.Res. 11 (114<sup>th</sup> Congress). Paragraph 5 of this section specifically excludes the budget resolution or legislation that affects or continues the full funding of the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990. Paragraph 6 of this section provides that the point of order would not apply in cases in which direct spending and revenue legislation when taken together with other direct spending and revenue legislation enacted since the beginning of the calendar year (and not accounted for in the baseline) result in a net decrease in the deficit (or increase in the surplus), although deficit reduction legislation enacted pursuant to reconciliation instructions may not be used in such calculations.

**Table 5. Point of Order Under P.L. 101-508 (Budget Enforcement Act of 1990)**

Section	Description	Application
13302(a)	In the House, prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of 0.02% of the present value of future taxable payroll for a 75-year period, or in excess of \$250,000,000 for the first five-year period after it becomes effective. <sup>a</sup>	Bill, joint resolution, amendment, or conference report.

**Source:** Subtitle C of the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990).

- a. Section 13302(b) provides that the point of order would not apply to legislation that reduces Social Security taxes in excess of the threshold amounts if these reductions are offset by equivalent increases in Medicare taxes.



**Table 6. Related Points of Order Under the Standing Rules and Separate Orders Adopted by the House (114<sup>th</sup> Congress)**

Citation	Description	Application
Rule XXI, clause 7	In the House, prohibits consideration of a budget resolution that includes reconciliation instructions that would provide for an increase in net direct spending for the period covered by the resolution. <sup>a</sup>	Budget resolution, amendment, or conference report.
Rule XXI, clause 10	In the House, prohibits consideration of legislation that would have the net effect of increasing mandatory spending for the period comprising the current fiscal year, the budget year, and the four fiscal years following that budget year, or the current fiscal year, the budget year, and the nine fiscal years following that budget year. <sup>b</sup>	Bill, joint resolution, amendment, or conference report.
Separate Orders, Section 3(h)(1)	In the House, prohibits the consideration of a budget resolution that does not include separate presentation of means-tested and non-means-tested direct spending.	Budget resolution, amendment, or conference report.
Separate Orders, Section 3(q)(1)	In the House, prohibits consideration of legislation that would reduce the actuarial balance of the present value of future taxable payroll by at least 0.01% of the Federal Old-Age and Survivors Insurance Trust Fund for the 75-year period utilized in the most recent report of the Board of Trustees. <sup>c</sup>	Bill, joint resolution, amendment, or conference report.

**Source:** H.Res. 5 (114<sup>th</sup> Congress).

- a. This point of order was first adopted as a part of the rules of the House in the 112<sup>th</sup> Congress and supersedes earlier points of order adopted as part of the rules of the House for the 110<sup>th</sup> and 111<sup>th</sup> Congresses prohibiting reconciliation instructions that would increase the deficit (or decrease the surplus) for a period comprising the current fiscal year, the budget year, and the four fiscal years following that budget year, or the current fiscal year, the budget year, and the nine fiscal years following that budget year.
- b. Rule XXI, clause 10(b) provides that when a measure is considered by the House under the terms of a special order directing the Clerk to add at the end of the measure, the provisions of another measure previously passed by the House, those additional provisions are included in determining the application of this point of order. Rule XXI, clause 10(c) excludes provisions designated as an emergency for purposes of the Statutory PAYGO Act of 2010 from calculations to determine the application of this point of order. This point of order was first adopted as a part of the rules of the House in the 112<sup>th</sup> Congress and supersedes earlier points of order adopted as part of the rules of the House for the 110<sup>th</sup> and 111<sup>th</sup> Congresses prohibiting the consideration of direct spending or revenue legislation that would have the net effect of increasing the deficit (or reducing the surplus) for similar periods. For more on the House Pay-As-You-Go rule in the 110<sup>th</sup> and 111<sup>th</sup> Congresses, see CRS Report R41510, Budget Enforcement Procedures: House Pay-As-You-Go (PAYGO) Rule, by (name redacted)
- c. Section 3(q)(2) provides that this point of order would not apply to legislation that would improve the actuarial balance of the combined balance in the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund over the same 75-year period. See also point of order under Section 3301(a) of S.Con.Res. 11 (114<sup>th</sup> Congress).

**Table 7. Points of Order Under P.L. 111-139  
(Statutory Pay-As-You-Go Act of 2010)**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
4(g)(3)	In the Senate, if a point of order is raised during consideration of legislation subject to PAYGO against an emergency designation in that measure, the provision making the designation shall be stricken. <sup>b</sup>	Bill, joint resolution, amendment, or conference report.	Three-fifths
13(a)	Prohibits the consideration of legislation pursuant to expedited procedures (as recommended by a task force or other commission) that contains recommendations with respect to Social Security. <sup>c</sup>	Bill, resolution	Three-fifths

**Source:** P.L. 111-139.

- a. This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by a vote of three-fifths of Senators “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order.
- b. Section 4(g)(4) provides that estimates made by CBO or OMB shall not include the budgetary effects of spending in PAYGO legislation designated as emergency. For more information on the Statutory Pay-As-You-Go Act of 2010, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by (name redacted) also points of order against the use of emergency designations in the Senate that appear at Section 314(e) of the Budget Act and Section 403(e) of S.Con.Res. 13 (111<sup>th</sup> Congress).
- c. The language in Section 13(a) was written to apply to any potential recommendations that might result from a Task Force for Responsible Fiscal Action, such as that proposed in S. 2853 (111<sup>th</sup> Congress). Although such a task force was not created, the language in Section 13(a) would appear to continue to apply to the subsequent consideration under expedited procedures of the recommendations of any task force or commission, although none appear to exist currently.

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