

Changes to House Rules Affecting the Congressional Budget Process Included in H.Res. 5 (118th Congress)

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At the beginning of each Congress, the House of Representatives adopts rules to govern its proceedings. Traditionally, the House does this by readopting the rules of the previous Congress along with changes that will apply in the new Congress. These rules and changes may be incorporated into the standing rules of the House directly, or they may be adopted as separate orders. In both cases, they establish procedural and organizational parameters for the House for the new Congress. On January 9, 2023, the House considered and adopted resolution, H.Res. 5, providing for the rules of the House for the 118th Congress by a vote of 220-213. H.Res. 5 reinstitutes the standing rules of the 117th Congress with certain amendments and also adopts additional provisions as separate orders.

This report addresses several of these provisions, adopted both as part of the standing rules of the House and as separate orders, that affect the congressional budget process and the consideration of budgetary legislation. In some cases, these provisions are similar to provisions adopted in previous Congresses.

Rules Changes Related to the Consideration of Tax Legislation

Changing the Vote Threshold for the Passage of Tax Rate Increases

Section 2(b) of H.Res. 5 reinstates the requirement for a vote of a three-fifths majority to approve legislation that increases federal income tax rates¹ as Rule XXI, clause 5(b). This rule was originally added to House Rule XXI in the 104th Congress. It was modified in the 105th Congress and continued to be included in House rules until it was removed in the 116th Congress. Section 2(b)(2) also reinstates the requirement to automatically order the yeas and nays for a vote of the House on such measures, which had likewise been dropped in the 116th Congress. The rule applies to any bill, joint resolution, amendment, or conference report containing a federal income tax rate increase.

Requirement for Certain Cost Estimates to Include Macroeconomic Effects (Dynamic Scoring)

Section 2(f) of H.Res. 5 reinstates into Rule XIII a requirement that certain cost estimates provided by the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) incorporate macroeconomic effects, often referred to as dynamic scoring. (Generally, CBO and JCT estimates include projections of the budgetary effects that would result from proposed policy changes and incorporate anticipated individual behavioral responses to the policy but do not include the macroeconomic effects of those individual behavioral responses that would alter gross domestic product [GDP].)²

The requirement, which was previously in effect in the 114th and 115th Congresses, requires such dynamic estimates but only for “major legislation,” which is defined as (1) legislation that would be projected (in a conventional cost estimate) to cause an annual gross budgetary effect of at least

¹ *Federal income tax rate increase* is defined as “any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.”

² For more information on dynamic scoring rules, see CRS Report R46233, *Dynamic Scoring in the Congressional Budget Process*, by Megan S. Lynch and Jane G. Gravelle.

0.25% of projected U.S. GDP, (2) mandatory spending legislation designated as major legislation by the chair of the House Budget Committee, or (3) revenue legislation designated as major legislation by the chair or vice chair of the JCT.

Under this requirement, dynamic estimates are to incorporate the budgetary effects of changes in economic output, employment, capital stock, and other macroeconomic variables resulting from such legislation. The estimate is, to the extent practicable, to include a qualitative assessment of the long-term budgetary effects and macroeconomic variables of such legislation and to identify critical assumptions and the source of data underlying the estimate.

Rules Changes Related to the Consideration of Direct Spending Legislation

The “CUTGO” Rule

Section 2(a) of H.Res. 5 reinstates the “cut-as-you-go” rule, often referred to as the CUTGO rule, into Rule XXI, clause 10. The CUTGO rule prohibits the consideration of any legislation that would have the net effect of increasing direct spending over either of two time periods: (1) the six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years following the budget year or (2) the 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years following the budget year. The House first adopted the CUTGO rule at beginning of the 112th Congress, and it was in effect through the end of the 115th Congress.

The House CUTGO rule replaces the House PAYGO rule, which had been in effect in the 110th, 111th, 116th and 117th Congresses. The House PAYGO rule prohibited the consideration of any direct spending *or revenue* legislation that would have the net effect of increasing the deficit over the same two time periods noted above.

The CUTGO rule applies to any bill, joint resolution, amendment, or conference report that affects direct spending. This provision continues the current practice of counting multiple measures engrossed together after passage, allowing two separate measures to “offset” one another for purposes of compliance with the rule. The rule also provides a mechanism for addressing “emergency” designations by stating that provisions expressly designated as emergencies pursuant to the Statutory Pay-As-You-Go Act of 2010 shall not be counted.³

Restriction on Certain Reconciliation Directives

Section 2(a)(4) of H.Res. 5 reinstates a restriction on reconciliation directives that had been in place in several forms from the 110th Congress through the 116th Congress as Rule XXI, clause 7. The rule states that it is not in order to consider a budget resolution that contains directives triggering the reconciliation process if such reconciliation legislation would cause an increase in net direct spending for the period covered by the resolution.

Budget reconciliation legislation is developed and considered as a result of the adoption of a budget resolution that includes reconciliation directives to specified committees. Generally,

³ Rule XXI, clause 10(c)(2), states that this exemption for provisions designated as an emergency applies to bills, joint resolutions, and amendments made in order as original text by a special order of business, a conference report, or an amendment between the Houses but not to other amendments such as those offered on the House floor.

reconciliation legislation may include legislative language concerning direct spending, revenue, and changes to the statutory debt limit. Reconciliation is privileged for fast-track consideration and is particularly important in the Senate, as it does not require the support of three-fifths of Senators for passage.⁴

Requirement for Certain Cost Estimates to Include Information on Inflationary Effects

This standing order requires that certain cost estimates include, to the extent practicable, a statement estimating the inflationary effects of the legislation.⁵ The requirement applies only to (1) legislation projected to cause a gross budgetary effect in any fiscal year over a 10-year period that is equal to or greater than 0.25% of projected GDP or (2) legislation for which the estimate is requested by the chair of the House Committee on the Budget.

A similar provision was in place in the early 1980s, the last time that inflation was over 7%.⁶

Restriction on Legislation Increasing Long-Term Spending

This standing order, referred to as the long-term spending point of order, is similar to a rule that was in effect in some form from the 112th Congress through the 115th Congress.⁷ It requires CBO to estimate whether certain legislation would cause a net increase in spending in excess of \$2.5 billion in any of the four 10-year periods beginning with the fiscal year 10 years after the current fiscal year.⁸

In addition, the rule prohibits the House from considering legislation that would cause such an increase.

⁴ For more information on the reconciliation process, see CRS Report R44058, *The Budget Reconciliation Process: Stages of Consideration*, by Megan S. Lynch and James V. Saturno.

⁵ The statement is to include whether the legislation is determined to have no significant impact on inflation, is determined to have a quantifiable inflationary impact on the Consumer Price Index, or is determined likely to have a significant impact but the amount cannot be determined at the time the estimate is prepared.

⁶ For more information on inflation in the 1980s, see CRS In Focus IF12177, *Back to the Future? Lessons from the "Great Inflation"*, by Marc Labonte and Lida R. Weinstock. The FY1981 budget resolution (H.Con.Res. 307, 96th Congress) stated that CBO "should issue a periodic 'inflation scorekeeping' report which shall contain an estimate of the positive or negative inflationary effects, wherever measurable, of legislation enacted to date in the current session of Congress. The report shall also indicate for each bill, promptly after it is reported by a committee of Congress, whether: 1. It is judged to have no significant positive or negative impact on inflation; 2. It is judged to have a positive or negative inflationary impact on the amount specified in terms of both dollar amounts and change in the consumer price index; 3. It is judged likely to have a significant positive or negative impact on inflation, but the amount cannot be determined immediately."

⁷ Previously, it was included twice as part of the House rules package (112th and 115th Congresses) and twice as part of the budget resolution—H.Con.Res. 96 (113th Congress) and S.Con.Res. 11 (114th Congress).

⁸ CBO is to provide such estimates, to the extent practicable, for (1) bills or joint resolutions reported from committee (other than the House Appropriations Committee), (2) amendments to such legislation, or (3) conference reports on such legislation. Previous rules set the threshold at \$5 billion.

Rule Change Related to Voting on Public Debt Legislation: Eliminating the Gephardt Rule

A limit on the public debt is fixed by law and may be changed or suspended by enactment of a bill or joint resolution. A former rule of the House (known as the “Gephardt rule” after Representative Richard Gephardt of Missouri) provided for a measure to amend the debt to automatically be engrossed and deemed to have been passed by the House by the same vote as the adoption by the House of a conference report on a concurrent resolution on the budget setting forth a level of the public debt different from the existing statutory limit, thereby avoiding the need for a separate vote on the debt limit. The engrossed measure would then be transmitted to the Senate for further action.

This rule was first added to the standing rules of the House as Rule XLIX by P.L. 96-78, although it was renumbered as Rule XXVIII as part of the recodification of House rules in the 106th Congress. In several instances in the 104th-106th Congresses the rule was suspended so that it did not provide for the automatic engrossment of legislation based on changes in the public debt in concurrent resolutions. The rule was repealed in the 107th Congress, reinstated in the 108th Congress, repealed again in the 112th Congress, and reinstated for the 116th and 117th Congresses.⁹

H.Res. 5 repeals the Gephardt rule by deleting all of the language in House Rule XXVIII.

Rules Changes Related to the Appropriations Process

Allowing Certain Legislative Amendments: The Holman Rule

Congressional rules establish a general division of responsibility under which questions of policy are kept separate from questions of funding, although House rules provide for exceptions in certain circumstances. One such circumstance allows for the inclusion of legislative language in general appropriations bills or amendments thereto for “germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill.” This exception appears in clause 2(b) of House Rule XXI and is known as the Holman rule, after Representative William Holman of Indiana, who first proposed the exception in 1876.¹⁰

The House has interpreted the Holman rule through precedents that have tended to incrementally narrow its application. Under current precedents, for a legislative provision or amendment to be in order, the legislative language in question must be germane to other provisions in the measure and must produce a clear reduction of appropriations in that bill.

For the 118th Congress the House has adopted a separate order with language, identical to a separate order adopted for the 115th Congress, that retrenchments of expenditures by a reduction of amounts of money covered by the bill shall be construed as applying to:

any provision or amendment that retrenches expenditures by—

⁹ For more on the Gephardt rule, see CRS Report RL31913, *Debt Limit Legislation: The House “Gephardt Rule”*, by Bill Heniff Jr.

¹⁰ For more information on the Holman rule and its history, see CRS Report R44736, *The Holman Rule (House Rule XXI, Clause 2(b))*, by James V. Saturno.

- (1) the reduction of amounts of money in the bill;
- (2) the reduction of the number and salary of the officers of the United States; or
- (3) the reduction of the compensation of any person paid out of the Treasury of the United States.

Precedents from before the 98th Congress may be useful for understanding what legislative language may qualify for inclusion in an appropriations bill under the Holman rule. The Holman rule applies only when an obvious reduction of funds in a general appropriations bill is achieved by a legislative provision, such as the cessation of specific government activities, a specific reduction of federal employees, a consolidation or elimination of offices, a reduction in pay for a class of employees, or a specific reduction of total appropriations in the bill. The rule does not allow for retrenchments that would be applicable to funds other than those appropriated in the pending general appropriations bill. In addition, the requirement for germaneness would likely prohibit legislative provisions that would expand the scope of the bill.

Prohibiting Amendments Increasing Net Spending

Another provision in H.Res. 5 related to the appropriations process incorporates a new paragraph at the end of clause 2 of Rule XXI establishing that any amendment to a general appropriation bill that would increase the net level of budget authority in the bill shall not be in order. This language was previously a part of House Rule XXI in the 115th Congress and in effect as a separate order in the 112th, 113th, and 114th Congresses. This prohibition would be enforced by a point of order that can be raised on the floor against consideration of such an amendment. This would not, however, prohibit amendments that would increase budget authority for an account or item in the bill if the amendment also includes language that would offset that increase through an equal or greater decrease in budget authority.

Spending Reduction Accounts

This separate order was previously in effect during the 112th-115th Congresses. The order seeks to ensure that during House consideration of appropriations bills, any reduction of budget authority that was provided for in an amendment adopted on the floor can be transferred to a “spending reduction account.”

Spending reduction accounts are required to be included as the last section of all general appropriations bills. This account could then function as a temporary deposit box into which budget authority could be transferred and not available for further appropriation during consideration of that bill. Because the separate order provides that no further amendment would be in order that would transfer that budget authority to a different account, it would effectively prevent it from being available as an “offset” for another amendment.

During floor consideration of the general appropriations bill, it would be in order to consider en bloc amendments proposing to transfer appropriations from one or more sections of the bill into the spending reduction account.

Reduction of Unauthorized Appropriations

Clause 2 of House Rule XXI prohibits general appropriations bills, or any amendment thereto, from including funds for an expenditure not previously authorized by law except to continue appropriations for public works and objects that are already in progress. This prohibition may be enforced by points of order but is frequently waived for the consideration of appropriations bills.

H.Res. 5 includes a separate order that would establish an additional point of order that could be used to reduce the level of appropriation in an appropriations bill for an expenditure not authorized by law to a previously enacted level.

If the new point of order is sustained, an amendment would be considered to have been adopted reducing the amount of the appropriation in the bill to the level at which the appropriation was most recently enacted into law. The separate order specifies that the presiding officer entertain a point of order only if the appropriate levels have been submitted, but it does not specify who is to submit the levels, when, or in what form.

This language is in effect only during the first session of the 118th Congress.

Rule Change Related to Budgetary Treatment

Budgetary Treatment of Land Conveyances

One separate order applies specifically to the budgetary treatment of any legislative provision requiring or authorizing a conveyance of federal land to a state, local government, or tribal entity. The separate order states that in the House, such provisions shall not be considered as increasing spending or providing new spending, nor shall it be considered as decreasing revenues. This separate order is not expected to change the way CBO estimates the budgetary impact of such provisions.¹¹ It could, however, mean that such legislation would be less likely to be subject to budgetary points of order.

The provision was included as a standing order during the 115th Congress.

Rules Changes Related to Authorization and Oversight Plans

The 104th Congress (1995-1996) added a provision that appears in clause 2(d) of House Rule X requiring that each standing committee adopt (by March 1 of the first session of a Congress) its own oversight plan for the Congress. H.Res. 5 adds additional language requiring that committees, “to the maximum extent practicable,” include for programs or agencies within their jurisdictions:

- a list of such programs or agencies with lapsed authorizations that received funding in the prior fiscal year;
- in the case of a program or agency with a permanent authorization, a statement whether it had been subject to a comprehensive review by the committee in the prior three Congresses;
- recommendations for changes to existing law for moving programs or agencies from mandatory funding to discretionary appropriations where appropriate.

¹¹ CBO previously provided guidance on the general approach used to estimate the budgetary effects of legislation that would authorize or require the federal government to dispose of land and associated natural resources through sale, exchange, or transfer. Douglas W. Elmendorf, Director, CBO, letter to Honorable Paul Ryan, Chairman, Committee on the Budget, U.S. House of Representatives, December 2, 2014, <https://www.cbo.gov/publication/49811>.

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