

# Provisions Affecting the Congressional Budget Process Included in H.Res. 5 (115<sup>th</sup> Congress)

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## Summary

On January 3, 2017, the House passed H.Res. 5, adopting the standing rules for the House of Representatives for the 115<sup>th</sup> Congress. In addition to the standing rules, H.Res. 5 included several separate orders. This report provides information on the standing rules and separate orders that might affect the congressional budget process.

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**A**t the beginning of each Congress, the House of Representatives must adopt rules to govern its proceedings. The House does this by readopting the rules of the previous Congress along with any changes that will apply in the new Congress. On January 3, 2017, the House passed H.Res. 5, adopting the standing rules for the House of Representatives for the 115<sup>th</sup> Congress. In addition to the standing rules, H.Res. 5 includes several additional provisions, called separate orders, that also govern proceedings in the House. A number of the provisions adopted both as part of the standing rules of the House and as separate orders affect budgetary legislation. In many cases, these provisions are similar to provisions adopted in previous Congresses.

## **Rules Changes Related to Authorization and Oversight**

### **Authorization and Oversight Plans**

The 104<sup>th</sup> Congress (1995-1996) added a provision to clause 2(d) of House Rule X requiring that each standing committee adopt (by February 15 of the first session of a Congress) its own oversight plan for the Congress. H.Res. 5 (115<sup>th</sup> Congress) adds a requirement that committees also include a statement concerning authorizations for programs or agencies within their jurisdiction.

These statements are required to identify programs or agencies with lapsed authorizations that received funding in the prior fiscal year, as well as programs or agencies with a permanent authorization that have not been subject to a comprehensive review by the committee in the prior three Congresses. The new rule also requires a description of each such program or agency to be authorized in the current or next Congress and a description of any oversight planned to support such authorizations.

In addition, the committees are to include recommendations for:

- the consolidation or termination of such programs or agencies that are duplicative, unnecessary, or “inconsistent with the appropriate roles and responsibilities of the Federal Government”;
- changes to existing law in order to convert mandatory funding to discretionary appropriations, where appropriate; and
- changes to existing law related to federal rules, regulations, statutes, and court decisions affecting such programs and agencies that are inconsistent with Congress’s authority under Article I of the Constitution.

Finally, each committee chair is expected to coordinate with other committees of jurisdiction to ensure that programs and agencies are subject to routine, comprehensive authorization efforts.

## **Rules Changes Related to the Appropriations Process**

### **Allowing Certain Legislative Amendments: The Holman Rule**

Although congressional rules establish a general division of responsibility under which questions of policy are kept separate from questions of funding, 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.

Since the period immediately after its initial adoption, 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.

In addition, the House has also adopted a separate order for the first session of the 115<sup>th</sup> Congress that provides 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—

- (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.

This language mirrors language that had previously appeared in Rule XXI prior to the 98<sup>th</sup> Congress. Precedents from that period may be illustrative for understanding what may be in order. 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.<sup>1</sup>

## **Prohibiting Amendments Increasing Net Spending**

One change to the standing rules related to the appropriations process incorporates text into House Rule XXI that was in effect as a separate order in the 112<sup>th</sup>, 113<sup>th</sup>, and 114<sup>th</sup> Congresses. This provision prohibits amendments to general appropriations bills that would result in a net increase in the level of budget authority in the bill. This does not, however, prohibit amendments that would increase budget authority in the bill if the amendment also includes an equal or greater decrease in budget authority.

## **Requiring Spending Reduction Account**

This standing order has been in effect each Congress since the 112<sup>th</sup> Congress. The order, which previously included the provision described above, seeks to ensure that during House consideration of appropriations bills, any “savings” that occurs as a result of a floor amendment reducing total spending is not available as an “offset” for another amendment.

To accomplish this goal, the order requires that any general appropriations bill include a spending reduction account. This “account” is a provision in the last section of the bill that functions as a

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<sup>1</sup> For more information on this provision see CRS Report R44736, *The Holman Rule (House Rule XXI, Clause 2(b))*, by James V. Saturno.



temporary deposit box into which budget authority is transferred so that it is not available for further appropriation during consideration of that bill.

The standing order requires that such an account be included in a general appropriations bill by (1) giving authority to the chairman of the House Appropriations Committee to add the spending reduction account to the bill after the bill has been ordered reported<sup>2</sup> and (2) prohibiting consideration of a general appropriations bill in the Committee of the Whole unless it includes a spending reduction account.<sup>3</sup>

During floor consideration of the general appropriations bill, it is in order to consider en bloc amendments proposing to transfer appropriations from one or more sections of the bill into the spending reduction account. When considered en bloc under this rule, it is in order to amend portions of the bill not yet read (i.e., open for) for amendment, and such amendments are not subject to a demand for a division of the question.<sup>4</sup>

### **Point of Order Prohibiting a Motion to Rise and Report to Enforce 302(b) Suballocations**

A point of order under Section 302(f) prohibits the consideration of measures or amendments that would cause the measure to exceed an allocation made pursuant to Section 302(a) or, in the case of appropriations bills, suballocation pursuant to Section 302(b). In order to supplement this and provide for additional enforcement, during the 109<sup>th</sup> Congress (2005-2006), the House adopted a resolution (H.Res. 248) providing that a motion that the Committee of the Whole rise and report an appropriations bill to the House is not in order if the bill, as amended, exceeds an applicable suballocation of new budget authority under Section 302(b) of the Congressional Budget Act of 1974. This provision has been adopted as a separate order in each subsequent Congress.

This prohibition allows a Member to make a point of order against the motion to rise and report and, if it is sustained, requires the chair to submit the question of whether to rise and report to a vote. Prior to the vote, the question is debatable for 10 minutes, equally divided between a proponent and an opponent. If the Committee of the Whole votes in the affirmative, the committee may rise and report the bill. If the Committee of the Whole votes in the negative, one proper amendment is in order that would bring the measure into compliance with Section 302(b) suballocations. The amendment is debatable for 10 minutes equally divided and controlled. The point of order does not apply to a motion to rise and report offered by the majority leader under clause 2(d) of Rule XXI.

### **Limiting Advance Appropriations**

Although budget authority for most federal programs is provided through annual appropriations actions that allow those funds to be obligated during the ensuing fiscal year, funding for certain

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<sup>2</sup> The spending reduction account must “bear that caption,” and at the time of being ordered, it must include a statement of the amount by which budget authority in the bill is below the corresponding 302(b) allocation. The budget resolution includes a 302(a) allocation to the House Appropriations Committee that holds the committees accountable for staying within the spending limits established by the budget resolution. Once an Appropriations Committee has received its 302(a) allocation, it then subdivides the committee allocation among its subcommittees as soon as practicable after the budget resolution has been adopted. These suballocations are known as 302(b) subdivisions and are enforced on the House floor through points of order.

<sup>3</sup> The standing order states that a point of order under Rule XXI, clause 2(b) (the rule prohibiting legislation on a general appropriations bill), shall not apply.

<sup>4</sup> No other amendments to spending reduction accounts are in order.

programs is provided with a different period of availability. The term “advance appropriations” is applied to funds that will become available for obligation one or more fiscal years after the budget year covered by the appropriations act.<sup>5</sup>

In recent years the House has adopted limits on the level of advance appropriations that may be provided as well as the programs or activities for which it may be provided. In some instances, these limits have been established in a budget resolution, as in S.Con.Res. 13 (111<sup>th</sup> Congress) and S.Con.Res. 11 (114<sup>th</sup> Congress). In other instances, the House has adopted the limit as a separate order as part of the resolution adopting the chamber’s rules, as in H.Res. 5 (112<sup>th</sup> Congress) and now H.Res. 5 (115<sup>th</sup> Congress).

In the 115<sup>th</sup> Congress, a separate order prohibits advance appropriations that exceed \$28,852,000,000 in new budget authority for programs or activities identified in a list submitted to the *Congressional Record* by the chair of the Budget Committee under the heading “Accounts Identified for Advance Appropriations” and \$66,385,032,000 in new budget authority for programs and activities identified under the heading “Veterans Accounts Identified for Advance Appropriations.” For either instance, the limit applies to funding provided in FY2017 appropriations acts that are to become available in any fiscal year following FY2017.

## Rules Changes Related to Direct Spending

### Prohibiting Consideration of Legislation Causing a Long-Term Increase in Spending

The standing order, related to direct spending, is often referred to as the long-term spending point of order. It reprises a provision that has been in effect in some form in the House since the 112<sup>th</sup> Congress. It was included twice as part of House rules package and twice as part of the budget resolution.<sup>6</sup> This standing order has three main components:

1. It requires the Congressional Budget Office (CBO) to estimate whether certain legislation would cause a net increase in spending in excess of \$5 billion in any of the four 10-year periods beginning with the fiscal year 10 years after the current fiscal year.<sup>7</sup>
2. It prohibits the House from considering legislation that would cause such an increase.
3. It states that the prohibition does not apply to (1) legislation repealing the Patient Protection and Affordable Care Act and Title I and subtitle B of Title II of the Health Care and Education Affordability Act of 2010, (2) legislation reforming the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010, or (3) legislation for which the Budget

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<sup>5</sup> For more information on advance appropriations, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*, by Jessica Tollestrup.

<sup>6</sup> This was first included in H.Res. 5, the House Rules package for the 112<sup>th</sup> Congress. During the 113<sup>th</sup> and 114<sup>th</sup> Congresses, the provision was included in budget resolutions, H.Con.Res. 96 (113<sup>th</sup> Congress), and S.Con.Res. 11 (114<sup>th</sup> Congress).

<sup>7</sup> 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.



Committee chair has made adjustments to the levels in the most recently adopted budget resolution.<sup>8</sup>

## Social Security Solvency

This provision establishes a point of order against the consideration of legislation that would reduce the actuarial balance of the Federal Old-Age and Survivors Insurance (OASDI) Trust Fund. The point of order would apply against legislation that would reduce the present value of future taxable payroll of the Trust Fund for the 75-year period used in the most recent annual report of the Board of Trustees by more than 0.01%.<sup>9</sup> The point of order would not apply to legislation that would improve the combined actuarial balance of the OASDI Trust Fund and the Disability Insurance Trust Fund over the same 75-year period. An identical separate order was previously adopted in the 114<sup>th</sup> Congress, and a point of order was also previously included as Section 3301 of S.Con.Res. 11 (114<sup>th</sup> Congress), the Concurrent Resolution on the Budget for FY2016. A section-by-section analysis was inserted into the *Congressional Record* at the time that the rules for the 114<sup>th</sup> Congress were adopted, indicating that the intent of the provision was to prevent the consideration of legislation that would transfer funds from the OASDI Trust Fund to the Disability Insurance Trust Fund.<sup>10</sup>

## Rules Changes Related to Budgetary Treatment

### Budgetary Treatment of Land Conveyances

One standing 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 standing 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 standing order is not expected to change the way CBO estimates the budgetary impact of such provisions.<sup>11</sup> It will, however, likely affect House enforcement of budgetary points of order as well as the enforcement of House leadership protocols, meaning that such provisions will likely not be subject to budgetary points of order or leadership protocols related to budgetary legislation.<sup>12</sup>

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<sup>8</sup> Congress frequently includes “reserve funds” and “adjustments” in the annual budget resolution. These provisions provide the chairs of the House or Senate Budget Committees the authority to adjust the budgetary allocations, aggregates, and levels in the future if certain conditions are met. Typically these conditions consist of legislation dealing with a particular policy being reported by the appropriate committee or an amendment dealing with that policy being offered on the floor. If the specified condition is met, the Budget Committee chairman submits the revised levels to his or her respective chamber. Generally, the goal of such a reserve fund or adjustment is to allow certain policies to be considered on the floor without triggering a point of order for violating levels in the budget resolution.

<sup>9</sup> For more information, see CRS Report R43318, *The Social Security Disability Insurance (DI) Trust Fund: Background and Current Status*, by William R. Morton.

<sup>10</sup> Representative Pete Sessions, “Rules of the House,” insert, *Congressional Record*, daily edition, vol. 161 (January 6, 2015), p. H13.

<sup>11</sup> CBO has 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>.

<sup>12</sup> For more information about budgetary points of order in the House, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno. For more information on House leadership floor protocols, see <https://www.majorityleader.gov/protocols/>.

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