

Instructing House Conferees

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The House of Representatives and Senate Explained

Congressional Procedure

A Practical Guide to the Legislative Process in the U.S. Congress

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 **TheCapitolNet**

The two houses must agree on the same final version of a bill before it can be presented to the President. The House and Senate often reach final agreement on major legislation through negotiations among conferees that the two houses appoint. Because a conference committee is a negotiating forum, the two houses impose few rules governing its work, leaving it to the conferees themselves to decide how they can conduct their negotiations most productively. Also, the House and Senate give their conferees considerable latitude regarding the content of the agreements they can reach. Nonetheless, there are circumstances, described in this report, under which the House can vote to give instructions to its conferees.

The House may vote to instruct its conferees under two circumstances: (1) before its conferees are appointed; and (2) after they have been appointed for a time specified in the rules but have not yet filed a report. In each case, the House might instruct its conferees to insist on a certain House position in conference, to accept a certain Senate position, or to attempt to negotiate a compromise position with the Senate that satisfies certain conditions or requirements. The House is instructing only its own conferees and not the conferees appointed by the Senate. Under clause 7(c) of Rule XXII, motions to instruct House conferees “may not include argument,” meaning that the motions cannot include language presenting reasons to support the instructions.

Whenever the instructions are given and whatever form they may take, there are two points to bear in mind about instructions to conferees. First, *it is not in order to instruct House conferees to reach some agreement that is not within their authority as conferees*. The House requires that its conferees limit themselves to the matters on which the two houses have disagreed and that they resolve each such matter within the scope of the differences between the House and Senate positions.¹ Second, *instructions to conferees are never binding*; no point of order can be sustained against a conference report on the grounds that it is not consistent with instructions that the House gave its conferees.

Instructions Before Conferees Are Appointed

The House takes three steps in the process of arranging a conference with the Senate. First, the House usually either disagrees to the Senate’s amendments to a bill the House has passed or insists on its amendments to a bill the Senate has passed. Second, the House either requests a conference with the Senate or agrees to the conference that the Senate has already requested. And third, the Speaker then appoints the House conferees to meet and negotiate with their Senate counterparts.

These three stages often occur quickly, routinely, and one right after the other. However, between the second and third stages—after the House decides to go to conference but before the Speaker appoints the House conferees—a motion to instruct the conferees is in order. Only one valid motion to instruct is in order at this time. (If one motion is made and a point of order is sustained against it, a second motion is in order.) The House debates this motion under the one-hour rule, and under House Rule XXII, clause 7(b), the hour is equally divided between the majority and minority parties. In practice, the time is usually controlled by the chairman and ranking minority Member of the House committee with jurisdiction over the bill. However, if both of those Members support the motion, another Member who opposes the motion may claim and control one-third of the time for debating it. The instructions could be amended if the House did not order the previous question on the motion to instruct. In practice, the previous question, which ends debate and brings the House to an immediate vote, is ordered after the first hour of debate on a motion to instruct. If a majority did not order the previous question, then debate could continue

¹ See CRS Report RS20219, *House Conferees: Restrictions on Their Authority*.

and an amendment could be offered. To preclude debate on the motion to instruct, a Member can move to lay the motion on the table after it is read.

Under well-established House precedents, *recognition to propose the motion to instruct before conferees are appointed is a prerogative of the minority party*. The Speaker is likely to give first preference in recognition to the minority leader or to the ranking minority Member of the committee that originally had reported the bill to the House. If neither of these Members seeks recognition, the Speaker is likely to recognize a minority party committee member before a minority party member who does not serve on the committee of jurisdiction.

Instructions After Conferees Have Been Appointed

Motions to instruct House conferees are also in order beginning 45 calendar days and 25 legislative days after conferees were appointed if the conferees have not yet filed a conference report. A legislative day begins each time the House meets after an adjournment. If the House goes out of session for several days after a conference committee is appointed but before it has reported, only calendar days will accumulate and count toward the requirement. Such motions to instruct are also in order during the last six days of a session if the House's conferees have been appointed for at least 36 hours without presenting their report. However, this opportunity only arises after the House has fixed the date of adjournment *sine die*, which, in current practice, it often does only hours before the end of the session. The 45 calendar day and 25 legislative day period starts from the time both the House and the Senate have formally appointed conferees through action on the floor.

Once the time requirement has been met, motions to instruct are privileged under Rule XXII, clause 7(c). More than one motion to instruct is in order, and Members of both parties are entitled to recognition to make such motions. However, the Speaker temporarily defers consideration of a motion to instruct that is made under clause 7(c). When a Member announces to the House his or her intention to make such a motion and presents the text of the motion, the Speaker designates a time or place in the legislative schedule for considering the motion on the next calendar day the House meets. The motion is subject to debate under the same terms as the motion to instruct offered before conferees are appointed.

Instructions Not Allowed When a Conference Committee Report Is Recommitted

After the House orders the previous question on a conference committee report, a Member might move to recommit the conference report if the Senate has not already approved the report. When the Senate agrees to a conference report, the effect of that vote is to discharge the Senate conferees, and there is no longer a conference committee to which the House might recommit the report. In the past, nonbinding instructions were permitted in a motion to recommit a conference report. When the House agreed to H.Res. 8 in the 117th Congress, however, it eliminated the motion to recommit with instructions that was previously permitted by clause 2(a) of House Rule XIX. It also omitted the provision of Rule XXII prohibiting instructions in motions to recommit from containing argument because it was no longer applicable.

The motion to recommit is a prerogative of the minority party unless no minority party Member seeks recognition to offer the motion. The motion to recommit is not debatable. If a motion to recommit a conference report is agreed to, then the same House conferees return to meet with the

Senate conferees. Any report emerging from these further negotiations is procedurally treated as a new report with a new number.

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