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A Retrospective of House Rules Changes Since the 104th Congress

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Summary

One of the majority party's prerogatives is writing the House rules and using its majority status to effect the chamber's rules on the day the new House convenes. It is a feature of the House that it must adopt rules at the convening of each Congress. While each new House largely adopts the chamber rules that existed in the previous Congress, each new House also adopts changes to those rules. Developments in the Democratic majority 103rd Congress were a prelude to the rules changes made by the Republicans when they took control of the House in the 104th Congress.

Rules changes beginning with the convening of the 104th Congress have addressed most aspects of the committee system: decision-making autonomy, jurisdictions, internal committee procedures and structure, and the role of committee staff. Rules changes since the 104th Congress have also addressed most aspects of consideration of legislation on the House floor and organization of the chamber. For example, the minority was guaranteed the ability to offer the motion to recommit with or without instructions, commemorative legislation was banned, the names of signatories of discharge petitions were publicized, provisions were made for convening a House with a reduced membership due to a terrorist attack, and the Speaker was subjected to a term limit that was later repealed.

Two of the eight goals of the Contract with America dealt with budgetary legislation. House rules were changed to require a three-fifths vote to pass a federal income tax rate increase, and cost estimates replaced baselines as the preferred way of understanding the year-to-year changes in federal spending.

Rules changes in the administration of the House were extensive. Offices were abolished and others created. Responsibilities were shifted and accountability clarified. Rules changes affecting ethical standards were largely technical, with most major changes taking place through freestanding and other legislation.

The House rules changes made starting in the 104th Congress reflected a Republican frame of reference that was built over many years as the minority party. Most rules, however, did not change, either at all or substantially, since they had been built up over decades to support the majority in its organization and operation of the House. Rules changes do not necessarily enable a majority to pass legislation, to overcome voter sentiments, or to work smoothly with the minority. Rules facilitate the majority's organization and operation of the House; they do not dictate to party leaders and others how to run the House or what outcomes can be achieved.

This report describes and analyzes only rules changes made on the opening day of a new Congress, but it references other legislation and actions that also changed or affected House rules beginning with the convening of the 104th Congress. This report will not be updated.

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A Retrospective of House Rules Changes Since the 104th Congress

Introduction

In the 1994 general election, Republicans won a majority of seats in the House for the first time since the 83rd Congress (1953-1955). By practice, the majority party organizes the House. It elects its Speaker, chairs its committees, holds majorities on its committees, selects its officers, and manages its legislative agenda.

One of the majority's prerogatives is writing the House's rules and using its majority status to effect the chamber's rules on the day the new House convenes. It is a feature of the House, but not of the Senate, that it must adopt rules at the convening of each Congress. It is also a feature of the House that it relies heavily on its formal rules, and formal means of temporarily changing them, rather than on the informal, ad hoc procedures so often used in the Senate. Although each new House largely adopts the chamber rules that existed in the previous Congress, each new House also adopts changes to those rules. Among the many subjects that the rules may cover, these changes can strengthen the ability of the majority to control the legislative process and the legislative agenda, and they can bestow rights on the minority party, minority interests, and individual Members.¹

House rules might also be changed for other reasons, such as the contemporary needs of the chamber. For example, the suspension of the rules procedure has evolved from occasional use just 40 years ago, to specifically being in order on several days each month, to being in order in the 108th and 109th Congresses on Mondays, Tuesdays, and Wednesdays of each week the House is in session.

The House, often concurrently with the Senate, has also made many extensive changes in its organization and rules at times other than the convening of a new Congress. The Legislative Reorganization Act of 1946, the Legislative Reorganization Act of 1970, the Congressional Budget and Impoundment Control Act of 1974, and the Committee Reform Amendments of 1974 are representative of extensive changes made at other times.² Changes are also made through freestanding

¹ The Constitution empowers the House and Senate to make their rules: "Each House may determine the Rules of its Proceedings...." U.S. Const. art. I, §5, cl. 2.

² Legislative Reorganization Act of 1946, 60 Stat. 812; Legislative Reorganization Act of 1970, 84 Stat. 1140; Congressional Budget and Impoundment Control Act of 1974, 88 Stat. 287; and the Committee Reform Amendments of 1974, H.Res. 988, agreed to in the House Oct. 8, 1974.

For a detailed history of House reform efforts since 1946, see CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by Judy Schneider, (continued...)

legislation, such as the lobbying reform legislation (H.R. 4975 and S. 2349) being considered in the 109th Congress, and as provisions of other bills, such as the annual legislative branch appropriations acts. Changes might also be contained in report language on legislation and in joint explanatory statements accompanying conference reports. The rules and decisions of the Democratic Caucus and Republican Conference can also have a profound influence on the organization and procedures of the House.

The House and Senate, together or independently, have also established a process for reform but then not followed through on recommendations. For example, in the 102nd Congress, the House and Senate established a Joint Committee on the Organization of Congress to report reform recommendations during the 103rd Congress.³ The joint committee performed extensive work and made far-reaching recommendations. Legislation embodying the recommendations was introduced in both chambers (H.R. 3801 and S. 1824) in the 103rd Congress, but action was not taken on either of these bills.

While the majority party in the House can use its numbers to effect the chamber rules it desires, the minority party often tries to amend the rules proposed by the majority and, at least, critique the rules for what they contain and do not contain. The disagreement in the House between the parties over the rules of the 103rd Congress, organized by the majority Democrats, and the failure of Congress to act on the recommendations of the Joint Committee on the Organization of Congress provide a background or context for some of the rules changes made by the Republicans when they organized the House in the 104th Congress.

103rd Congress: Prelude to a Republican Frame of Reference

103rd Congress Rules. The Democratic Caucus at its early organization meeting in December 1992 approved a number of rules changes, which continued to be developed until the rules package (H.Res. 5) was put before the House at the convening of the 103rd Congress on January 5, 1993. Except for a rules change that removed the House general counsel from the Office of the Clerk and created an Office of General Counsel under the Speaker and another rules change that conformed House rules on franked mail to a new law of the 102nd Congress,⁴ the

² (...continued)

Christopher M. Davis, and Betsy Palmer. Also see CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by Michael L. Koempel; CRS Report RL33061, *Homeland Security and House Committees: Analysis of 109th Congress Jurisdiction Changes and Their Impact on the Referral of Legislation*, by Michael L. Koempel and Judy Schneider; and CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes, 1920-2005*, by James V. Saturno.

³ H.Con.Res. 192, final action in the House occurring Aug. 6, 1992, with House agreement to a Senate amendment. H.Con.Res. 192 was continued in effect to Dec. 31, 1993, in the Legislative Branch Appropriations Act for Fiscal Year 1993 (P.L. 102-392, §317).

⁴ The 103rd Congress rules package proposed to conform House rules to provisions of fiscal (continued...)

Democratic rules package was silent on ethics issues of the previous Congress: the House bank, the House post office, use of the frank, and criminal indictments and investigations of Members, both Democratic and Republican.⁵

An innovation of the rules package provided a vote in the Committee of the Whole to the four Delegates and the Puerto Rican Resident Commissioner, and allowed these five individuals to chair the Committee of the Whole as other Members were able to do. This change was modified before the rules package was brought to the House floor to allow a re-vote in the House if the Delegates' or Resident Commissioner's votes affected the outcome of a vote in the Committee of the Whole. The Delegates and Resident Commissioner were not to be given a vote in the House meeting as the House. The Delegates and Resident Commissioner could also be appointed to any conference committee, not just those created for legislation reported from a committee on which they served. During debate, Democratic Members portrayed this change as a matter of fairness and democracy in action, and pointed out the services of citizenship undertaken by residents of the territories, Puerto Rico, and the District of Columbia. They argued that allowing the Delegates and Resident Commissioner to vote in the Committee of the Whole did not flout constitutional requirements since their votes could not affect the outcome of votes in the House.⁶

Democratic Members indicated that other major changes proposed to the House rules were made for purposes of legislative efficiency and productivity. Committees were allowed to meet while the House was sitting under the five-minute rule, without

⁴ (...continued)

2003 Legislative Branch Appropriations Act, P.L. 102-392, that disallowed Members from using the frank for mass mailings outside their districts.

⁵ In the 102nd Congress, the House on April 9, 1992, agreed to H.Res. 423, the House Administrative Reform Resolution of 1992. Among its provisions, this resolution abolished the Office of Postmaster of the House, removed certain authorities of the Clerk and Sergeant-at-Arms of the House, created a bipartisan Subcommittee on Administrative Oversight of the Committee on House Administration, and established two new entities: the Director of Non-Legislative and Financial Services (Rule LII) and the Office of Inspector General (Rule LIII). The 103rd Congress rules package proposed to recodify Rules LII and LIII within Rule IV.

Votes occurred on additional resolutions during the 102nd Congress to authorize investigations, such as the one concerning the House bank, and to release information, such as a list of all sitting and former Members who had written overdraft checks.

For background information on ethics matters, including House votes, in the 102nd Congress, see *Congressional Quarterly Almanac*, 1992, vol. XLVIII (Washington, DC: Congressional Quarterly Inc., 1993): "Voters Enraged Over House Banking Abuses," pp. 23-46; "Post Office Probe Hints at Large Scandal," pp. 47-51; "Cloud of Scandal Hovers over Capitol Hill," pp. 51-55; and "House Tightens Limits on Franked Mail," p. 61.

For background information on ethics matters in the 103rd Congress, see *Congressional Quarterly Almanac*, 1993, vol. XLIX (Washington, DC: Congressional Quarterly Inc., 1994): "Rostenkowski Investigated in Stamp Scan," pp. 64-68; and "Indictments, Convictions Plague Congress," pp. 68-74; and *Congressional Quarterly Almanac*, 1994, vol. L (Washington, DC: Congressional Quarterly Inc., 1995): "Rostenkowski Indicted, Defeated," pp. 43-48, and "Misconduct Charges Plague Members," pp. 50-55..

⁶ Debate on the 103rd Congress House rules appears in *Congressional Record*, vol. 139, Jan. 5, 1993, pp. 49-100.

seeking permission to do so. Committee records were dispositive on the presence of a quorum to report a measure, reducing the opportunity to raise a point of order on the floor, and a point of order on the floor was prohibited in most instances when a measure was reported by a voice vote or unanimous consent. Teller vote procedures in the Committee of the Whole were eliminated, except when the electronic voting system malfunctioned.

The Speaker was authorized to declare short recesses throughout a Congress, rather than only by authorization of a special rule, usually agreed to at the end of a Congress. If a question of the privileges of the House was raised by the majority or minority leader, it would be considered immediately. If a privileges of the House resolution was offered by another Member, it would be noticed, and the Speaker was required to schedule debate on it within two legislative days. Debate time on a question of the privileges of the House would be divided between the proponent, on the one hand, and the leadership of the party in opposition to the motion, on the other, as determined by the Speaker.

In instances where the Senate added legislative language to a general appropriation bill and a motion was made to, in effect, change existing law, the chair of the authorizing committee with jurisdiction over the subject matter could make a motion to insist on disagreement to the amendment. The motion would then be debated for one hour, with time divided between the proponent of the motion to insist on disagreement and a proponent of the motion to change existing law. The Speaker was also authorized to add Members to, and remove them from, conference committees and select committees.

The House Fair Employment Practices resolution was codified in the rules, and changes were made in procedures of the Office of Fair Employment Practices. The permanent authorization of the Select Committee on Aging was repealed, and the temporary authorizations of three existing select committees were not included in the rules package, thus terminating the life of those select committees.⁷

A rules change that had been endorsed by the Democratic Caucus was dropped from the proposed rules package. This change would have limited special orders to three hours or not later than 9:00 p.m., whichever came first.

Republican Critique. Republicans argued against the proposed rules on the basis of what they did and what they failed to do. Representative Gerald Solomon, as ranking Republican on the Rules Committee and Republican floor manager of the rules debate, used his opening remarks to argue that, after the events of the last Congress, voters had chosen change in the 1992 election and Democrats were misreading the voters' message: "The American people thought last November they were voting for a change. Where is it?"⁸

⁷ The lives of the Select Committees on Children, Youth, and Families; Hunger; and Narcotics Abuse and Control were not extended. In addition, changes in Democratic Caucus rules related to subcommittees resulted in the elimination of more than 15 subcommittees.

⁸ Rep. Gerald Solomon, remarks in the House, *Congressional Record*, vol. 139, Jan. 5, 1993, p. 55. Several Republican Members and media editorials noted the Republicans' 10-seat gain (continued...)

Many of the Republican Members who spoke during debate on the rules spoke against allowing the Delegates and Resident Commissioner to vote in the Committee of the Whole. Their arguments were based on constitutional objections that only Representatives of states are Members of the House;⁹ the constitutionality of Delegates and the Resident Commissioner voting on committees had not been established; the disparity in population among the territories, Puerto Rico, and the District of Columbia and between the territories and the congressional districts; and the return of federal income tax receipts to the territories and Puerto Rico. Some Members also argued that, practically, the votes of the Delegates and Resident Commissioner would be sought to build a majority and, politically, the change reduced the Republicans' election gains by half since the Delegates and Resident Commissioner were all Democrats. This last point was reinforced in editorial columns representing a range of political orientation.

Although other specific proposals in the rules package evoked criticism, none besides the Delegate voting was criticized so much as the loosening of the requirement for a quorum to be physically present in committee to report out legislation. Minority Leader Robert Michel stated:

...a rolling quorum defeats the purpose of collective deliberation and decision making. The very word 'Congress' has at its root the concept of coming together, of being together, of political community, and to institute procedures that fragment the collective sense of decision making and responsibility in the House is to demean the very concept of the Congress.¹⁰

In discussing the proposed change to this rule, Representative Bob Walker's remarks revealed a sense of the comity that appeared to be lacking between the two parties:

Under the rolling quorum concept, what can happen is that legislation can be passed not by a committee meeting in a room and deciding that it is time to pass the legislation, but by a declaration that 'what we are going to do is allow the vote to remain open until sufficient members of the committee have shown up to

⁸ (...continued)

in the House in the 103rd Congress. Perhaps more indicative of the change that occurred in the congressional elections was the number of new Members elected — 110 — of whom 63 were Democrats and 47 were Republicans.

⁹ The Constitution states: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. art. I, §2, cl. 1. The Constitution also states: "No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art I, §2, cl. 2.

Several Republican Members challenged in court the granting of voting rights in the Committee of the Whole to Delegates and the Resident Commissioner. The court found the rule valid since the votes were rendered "meaningless" in instances where they would be decisive in a vote's outcome. *Michel v. Anderson*, 817 F. Supp. 126 (D.D.C., 1993), *aff'd*, 14 F.3d 623 (D.C. Cir., 1994).

¹⁰ Rep. Robert Michel, remarks in the House, *Congressional Record*, vol. 139, Jan. 5, 1993, pp. 93-96.

vote on the matter,' so literally the vote can take place over a matter of hours, over a matter of days, over a matter of weeks, over a matter of months.¹¹

The Republican minority did three other things during the debate on the proposed rules package. First, they prepared an extensive alternate package of rules changes (see **Table 1**), although they were not allowed to offer the alternate as an amendment.¹² Second, they inserted in the *Congressional Record* nearly 24 pages of documentation explaining and in support of their alternate rules package. Third, they offered two motions that provided alternative ways (to amending) to get votes on changes to the proposed rules package. As soon as the resolution containing the majority's rules package was reported on the floor, Representative Gerald Solomon offered a motion to refer the resolution to a special committee to study the constitutionality of giving voting rights in the Committee of the Whole to the Delegates and Resident Commissioner. The motion was tabled on a vote of 224-176. At the conclusion of debate on the majority's rules package, Representative Michel offered a motion to commit the resolution to a select committee with instructions to report back forthwith with two amendments to strike provisions related to new privileges for the Delegates and Resident Commissioner and to add a new provision of term limits of three consecutive Congresses for chairs and ranking minority members of standing committees, effective immediately. The motion was defeated on a 187-238 vote.¹³

¹¹ Rep. Bob Walker, remarks in the House, *Congressional Record*, vol. 139, Jan. 5, 1993, pp. 115-117. Mr. Walker spoke during rules debate. These remarks are from a 60-minute special order for which Mr. Walker was recognized in the evening following the debate. The complete special order appears on pp. 115-122.

¹² The majority's proposed rules package was debated in the House under the hour rule, and an additional 30 minutes was added to the debate time by unanimous consent. The previous question was ordered on a 249-176 vote, thereby eliminating the possibility of amendment. One motion to commit by the minority was in order after the previous question was ordered.

¹³ The partisan lineup at the convening of the 103rd Congress was 258 Democrats, 176 Republicans, and one independent. On the motion to recommit, all Republicans present and 14 Democrats voted for the motion. The rules package was subsequently agreed to on a 221-199 vote, with all Republicans present and 27 Democrats voting against it.

Table 1. Summary of Republican Rules Package, 103rd Congress

Congressional-Presidential Relations
When cleared by Congress, House-originated bills are transmitted to the President within 10 calendar days
Upon reading of veto message in House, the Speaker immediately puts question on reconsideration
Administrative Matters
At the beginning of a session of Congress, the Speaker announces the legislative program, target dates for considering major legislation, weeks in session (assuming a five-day work week), weeks of district work periods, and a target adjournment date
Reprogramming of House funds is allowed only with the approval of the Speaker and minority leader
Speaker provides for uniform visual broadcast coverage of House
Office of Doorkeeper is abolished
Chief Financial Officer of the House is established, with responsibilities for reviewing and analyzing the House's financial operations, managing specified operations, and reporting to the Speaker, minority leader, and House Administration Committee
Office of General Counsel is created, accountable to a bipartisan leadership group; House approval of a resolution is required for the general counsel to appear before a court or file a brief
Members and staff on foreign travel must disclose their official itinerary
Members are disallowed from sending franked mass mailings outside their districts
Appropriate committees are directed to report legislation bringing the House under coverage of specific laws: National Labor Relations Act, Occupational Safety and Health Act, Equal Pay Act, Age Discrimination Act, Freedom of Information Act, Privacy Act, title VII of the Civil Rights Act, and Independent Counsel Act
Committees: Organization
House elects committee members within seven calendar days of Congress's convening, and committees organize within seven calendar days of election
Party ratios on committees, subcommittees, select committees, and conference committees reflect party ratios of full House, unless House rules provide otherwise
House Administration Committee has an equal party ratio
House Subcommittee on Legislative Appropriations has an equal party ratio
Chair and majority of members of the Government Operations Committee are of the opposite party to that of the President
Size of the Permanent Select Committee on Intelligence is reduced to 13 from 19 members, with a 7-6 majority-minority party ratio
Existing select committees are abolished

Committees are limited to five subcommittees, except for the Committee on Appropriations , which may have not more than 13 subcommittees, and nine major committees, which may have not more than six subcommittees: Committees on Agriculture, Armed Services, Banking, Education and Labor, Energy and Commerce, Foreign Affairs, Judiciary, Public Works, and Ways and Means
No Member may serve on more than four subcommittees
A three-Congress term limit is placed on committee chairs and ranking minority members
House members of the Joint Committee on the Organization of Congress are directed to request the joint committee to study and recommend committee jurisdiction realignment on functional lines and with parallel jurisdictions between House and Senate committees and with executive departments
Committees: Procedures
Joint referral of measures is eliminated; Speaker may designate a committee of principal jurisdiction
The majority of a committee or subcommittee constitutes its quorum to conduct business, including markup of legislation
Proxy voting is banned
Committee meetings may be closed only for reasons of national security or personal privacy, and only by majority roll-call vote
Committee reports on measures and other matters must include the names of those voting for and against reporting; if reporting was done without a record vote, a list of Members present must appear in the report
Committees: Additional Matters
Committee and subcommittee prints may be released to the public by vote, with the opportunity for inclusion of minority or additional views, or they may be released without a vote but must carry a disclaimer that the document does not reflect the views of the committee or its members
Oversight plans from committees for a new Congress are sent to the House Administration Committee, which reports the plans to the House by March 15 with any recommendations to ensure coordination; Speaker may appoint ad hoc oversight committees when committees share jurisdiction
Prior to consideration of a committee expense resolution, the House must adopt a resolution establishing an overall ceiling on House committee staff; the Budget and Appropriations Committees are subject to same staff ceiling and committee expense resolutions
The number of committee staff is reduced by 10% a year over three years
The minority is entitled to up to one-third of investigative staff funds.
Members, officers, and employees must take an oath not to disclose classified materials

Floor Procedures: Special Rules
Special rules may not be considered on same calendar day as they are reported or on a subsequent calendar day of the same legislative day, except by a two-thirds vote of the House
Rules Committee may not report a special rule limiting floor amendments on a measure, unless the Rules Committee chair announces to the House at least four days in advance of a committee meeting that such a rule may be reported
House must agree by a two-thirds vote to consideration of a special rule that provides for automatic adoption of an amendment, bill, joint resolution, conference report, motion, or matter
Rules Committee may not report a special rule disallowing amendatory instructions in a motion to recommit
Floor Procedures: Suspension of the Rules
Measures may be considered by suspension of the rules only by direction of the committees of jurisdiction or on request of the chair and ranking minority member of such committees
Notice that a measure will be considered by suspension of the rules is placed in the <i>Congressional Record</i> at least one day in advance of consideration, together with the text of any amendment
No measure may be considered by suspension of the rules that authorizes or appropriates more than \$50 million for a fiscal year
No constitutional amendment may be considered by suspension of the rules
Floor Procedures: Additional Matters
Automatic roll-call votes are required for final passage of appropriations, tax, and Member pay-raise bills; conference reports; and adoption of budget resolutions and conference reports containing debt-limit increases
Names of signers of discharge petitions are published in the <i>Congressional Record</i> once 100 signatures are obtained; updates are published weekly thereafter
Pledge of Allegiance is required as the third item in the House's order of business
<i>Congressional Record</i> is a verbatim account of proceedings
A commemorative calendar is established
Conference Matters
Members are allowed three days to file supplemental, minority, or additional views in conference reports
Budgetary Legislation
Rules Committee reports on special rules must justify any proposed Budget Act waiver, and must contain comments on the waiver received from the Budget Committee; a separate vote could be demanded in the House on a Budget Act waiver;

a Point of order would lie against a provision of a reconciliation bill not directly related to reconciliation instructions to reduce spending or raise revenues, as determined by the Budget Committee
To consider an appropriations bill under a special rule, a three-fifths vote is required to agree to the special rule if it waives points of order against, or denies amendments to, an unauthorized or legislative provision, if such a provision had not been previously agreed to for that fiscal year by the House
Committee reports on appropriations bills must include a list of unauthorized activities funded in such bills
Restrictions on limitation amendments to appropriations bills are abolished
Offsetting, deficit-neutral amendments may be offered en bloc to an appropriations measure
Continuing appropriations measures of less than 30 days may provide only for the lesser spending amount of the House bill, Senate bill, conference report, or previous year's appropriation; this ceiling could be waived only by a three-fifths vote
Continuing appropriations of more than 30 days must carry the full text of the provisions to be enacted
Prohibition on legislation and unauthorized appropriations in appropriations bills is extended to long-term continuing resolutions
CBO cost estimate is required to be included in the committee report on a long-term continuing resolution
Authorization measures for a fiscal year, if reported after May 15 immediately preceding the beginning of that fiscal year, may not be considered
House members of the Joint Committee on Organization of Congress are directed to request that the joint committee study and make recommendations on biennial budgeting
Rules and Government Operations Committees are directed to report a bill granting the President enhanced rescission authority, which would be subject to disapproval by congressional enactment
Campaign Reform
House Administration Committee is directed to report a campaign reform bill

Joint Committee on the Organization of Congress. As noted above, the 102nd Congress created a Joint Committee on the Organization of Congress (JCOC).¹⁴ The joint committee was directed in H.Con.Res. 192 to report to the two

¹⁴ For additional information, see U.S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress: Final Report of the House Members of the Joint Committee on the Organization of Congress*, 103rd Cong., 1st sess., H.Rept. 103-413 (Washington, DC: Government Printing Office, 1993); and CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, from which some information in this section was drawn.

chambers by December 31, 1993, the end of the 103rd Congress's first session, on its work:

[The joint committee shall] (1) make a full and complete study of the organization and operation of the Congress of the United States; and (2) recommend improvements in such organization and operation with a view toward strengthening the effectiveness of the Congress, simplifying its operations, improving its relationships with and oversight of other branches of the United States Government, and improving the orderly consideration of legislation.¹⁵

The study shall include an examination of — (1) the organization and operation of each House of the Congress, and the structure of, and the relationships between, the various standing, special, and select committees of the Congress; (2) the relationship between the two Houses of Congress; (3) the relationship between the Congress and the executive branch of the Government; (4) the resources and working tools available to the legislative branch as compared to those available to the executive branch; and (5) the responsibilities of the leadership, their ability to fulfill those responsibilities, and how that relates to the ability of the Senate and the House of Representatives to perform their legislative functions.¹⁶

For the House, the House subcommittee of the joint committee recommended changes affecting the breadth of House organization and operation. Many of these recommendations were mirrored in the Senate subcommittee's recommendations. The following is a synopsis of the House subcommittee's recommendations:

Legislative-Executive Relations. All standing House committees are required to prepare an oversight agenda at the beginning of each Congress and submit it to the House Administration Committee for consideration in the committee funding process. The House Administration Committee is to publish these agendas and its recommendations for coordination among committees' oversight activities. Committees are also required to hold oversight hearings on reports concerning the executive branch, such as inspectors general's reports. All committees are directed to eliminate unessential executive reporting requirements.

With House approval, the Speaker is authorized to appoint ad hoc oversight committees.

Although there were no specific recommendations on legislative-judicial relations, appropriate committees were encouraged to develop formal and informal means of dialogue between the two branches.

Committee System. Members' committee assignments are limited to two standing committees and four subcommittees. Waivers could be granted only by the House after recommendation of a Member's party caucus. If enforcement of the assignment limit causes a committee to have less than half the number of Members serving on it as it had in the 103rd Congress, the Rules Committee must report a resolution abolishing the committee and transferring its jurisdiction.

¹⁵ H.Con.Res. 192, §2(a).

¹⁶ Ibid., §2(b).

A Member would be allowed to serve on the Permanent Select Committee on Intelligence for eight years (rather than six years), and the chair could serve an additional term if he or she were named chair in his or her final term.

Except for the Committee on Appropriations, exclusive or major committees may not have more than five subcommittees. Non-major committees are limited to four subcommittees. The Speaker should designate a “primary” committee of jurisdiction in referring legislation, and should set time or subject-matter limits on other committees of referral after the primary committee reports a piece of legislation.

Subcommittees are prohibited from meeting when the parent committee is meeting, without the written permission of the committee chair. A week’s notice of a committee or subcommittee meeting is generally required. Committee reports must include the roll-call vote on a motion to report or, if reporting was by voice vote, to contain a list of those Members present for the voice vote. Committees must publish their committee and subcommittee attendance and voting records semiannually in the *Congressional Record*.

Standing committees must prepare an oversight agenda at the beginning of each Congress, and report at the end of the Congress on how that agenda was fulfilled. The reports are taken into consideration by the House Administration Committee during the committee funding process.

Floor Procedure. A minority motion to recommit with instructions is guaranteed, and Members are permitted in debate to make references to certain actions taken by the Senate or its committees that are a matter of public record.

The House should have a four-day legislative week, and specific times should be set aside for only floor proceedings or only committee meetings. The *Congressional Record* must be a substantially verbatim transcript of House proceedings. The House parliamentarian is directed to prepare a recodification of House rules.

Budgetary Legislation. Congress establishes a two-year budget cycle for presidential budget submissions, budget resolutions, multiyear authorizations, and appropriations. A budget resolution and appropriations bills are considered in the first year of the two-year cycle, and multiyear authorizations and committee oversight occur in the second year.

The Appropriations Committee is required to notify appropriate committees of jurisdiction whenever it reports a measure containing unauthorized appropriations or legislative provisions. A point of order lies against an appropriation in excess of an authorization level set by the House.

Budget resolutions must include a statement on total tax expenditures attributable to special provisions of the tax code. Committee reports, and joint explanatory statements to conference reports, on tax bills must list tax expenditures, and committee reports, and joint explanatory statements to conference reports, on appropriations bills and authorization bills must list earmark provisions.

To gain better control over entitlement spending, a new process is established that requires the President to submit targets for direct spending and to make recommendations for reaching the targets in the event they will be exceeded.

Ethics Process. The Committee on Standards of Official Conduct, the “Ethics Committee,” may use a panel of private citizens as fact finders to investigate complaints against Members and report to the committee any formal charges of violations.

Staffing and Support Agencies. A Speaker task force is to study the legislative branch to achieve cost savings consistent with reductions implemented in the executive branch under the National Performance Review.

Eight-year authorizations are imposed on the Congressional Budget Office, Congressional Research Service, General Accounting Office (now the Government Accountability Office), the Office of Technology Assessment (subsequently abolished), and Government Printing Office. Appropriate committees must study means to better coordinate nonpartisan services in the legislative branch and minimize duplication, and must assess the feasibility of opening such services to competitive bidding by the private sector. Appropriate committees must report on the feasibility of granting to private firms by competitive bid the right to operate certain congressional facilities, including the barber and beauty shops, gymnasium, health and medical services, restaurants, and child care facilities.

A bicameral “office of compliance” is created to study how to apply labor laws to Congress, and to issue regulations applying those laws to Congress, effective on House and Senate approval of a concurrent resolution. The office would also promulgate administrative enforcement mechanisms, using independent hearing officers and providing recourse to federal appellate review.

The House Administration Committee is given a goal of creating professional development programs for congressional employees. Appropriate House and Senate committees should study staff salaries and take steps to achieve greater parity between the chambers

Information Technology. The Joint Committees on the Library and on Printing are abolished, and their functions are transferred to a Joint Committee on Information Management, which would oversee information management for Congress.

Public Understanding. To foster public understanding of Congress and the legislative process, the House should undertake different activities such as experimenting with alternative forms of debate, such as Oxford Union-style debates; encourage the creation of a congressional education center; and enhance orientation programs for journalists covering Congress. Legislative information should be more readily available to Members, the public, and the media, and bills, committee reports, conference reports, and amendments (to bills to be considered under suspension of the rules) should be available for review at least 24 hours before consideration.

As indicated above, legislation embodying the JCOC’s recommendations was introduced (H.R. 3801 and S. 1824), but no action was taken on these measures. The

House passed H.R. 4822, the Congressional Accountability Act, which the Senate did not act on. The House also agreed to H.Res. 578, establishing an Office of Compliance and effecting other recommendations related to the applicability of labor laws to Congress.

Contract with America. As part of the campaign preceding the 1994 elections, most Republican candidates for U.S. Representative signed the Contract with America, a plan for institutional change and priority legislation, should Republicans become the majority party in the House in the 104th Congress. The provisions of the Contract that related to Congress as an institution were as follows:

On the first day of the 104th Congress, the new Republican majority will immediately pass the following major reforms, aimed at restoring the faith and trust of the American people in their government:

First, require all laws that apply to the rest of the country also apply equally to the Congress;

Second, select a major, independent auditing firm to conduct a comprehensive audit of Congress for waste, fraud or abuse;

Third, cut the number of House committees, and cut committee staff by one-third;

Fourth, limit the terms of all committee chairs;

Fifth, ban the casting of proxy votes in committee;

Sixth, require committee meetings to be open to the public;

Seventh, require a three-fifths majority vote to pass a tax increase;

Eighth, guarantee an honest accounting of our Federal Budget by implementing zero base-line budgeting.¹⁷

Frame of Reference. The House rules changes made in the 104th Congress, and since, including changes affecting the organization of committees and the administration of the House, reflected a Republican frame of reference that was built over many years as the minority party. Republican criticisms of changes in the House made at the direction of the Democratic Caucus beginning after the 1974 election and continuing through the 103rd Congress, the ideas of the Conservative Opportunity Society in the 1980s, the Republican '92 Group, the Republican rules package of the 103rd Congress, the recommendations of the bipartisan Joint Committee on the Organization of Congress, the Contract with America, and other sources came together in the rules package the Republicans put before the House in the 104th Congress.

Scope of Report. In describing and analyzing the rules changes made in the House beginning in the 104th Congress, this report covers only those changes made in conjunction with the House rules resolution agreed to at the beginning of each Congress, which was numbered H.Res. 6 in the 104th Congress and H.Res. 5 in subsequent Congresses. This report analyzes the rules, special orders, and Speaker's announcements at the convening of a Congress and not all of the actions taken during

¹⁷ The text of the Contract with America can be found at [<http://www.house.gov/house/Contract/CONTRACT.html>], visited Aug. 2, 2006. These eight items in the Contract were the basis for the eight sections of title I of H.Res. 6, agreed to in the House Jan. 4, 1995.

a Congress that effected permanent and temporary organizational, procedural, administrative, and other changes in the House.¹⁸

As indicated above, changes may also be made through freestanding legislation and as provisions of other bills, and in report language on legislation and in joint explanatory statements accompanying conference reports. Legislative-branch appropriations bills and budgetary legislation frequently contain organizational, procedural, and other changes that may be temporary or permanent. Selected references to major freestanding bills and resolutions are provided in footnotes in the following sections of this report.

Between the 103rd and 109th Congresses, committees were created and abolished, and their names were changed. In this report, the names of committees appear as they existed in the specific Congress being referenced.

Rules Changes Affecting Committees

In the years before the Republican takeover of the House in the 1994 elections, criticism of the committee system increased among many Members, staff, and outside groups. Surveys conducted by the Joint Committee on the Organization of Congress confirmed that Members and staff, in overwhelming numbers, ranked

¹⁸ Debate on rules packages (including the text of the resolutions containing the rules changes, section-by-section explanations, and other materials inserted by Members) and the Speaker's announcements appear in the *Congressional Record* as follows:

(1) H.Res. 5 (special rule) and H.Res. 6 (104th Congress rules): "Making in Order Immediate Consideration of House Resolution Adopting the Rules of the House of Representatives for the 104th Congress" and "Rules of the House," *Congressional Record*, daily edition, vol. 141, Jan. 4, 1995, pp. H9-H90. Speaker's announcements: "Policies of the Chair," *Congressional Record*, daily edition, vol. 141, Jan. 4, 1995, pp. H110-H112.

(2) H.Res. 5 (105th Congress rules): "Rules of the House," *Congressional Record*, daily edition, vol. 143, Jan. 7, 1997, pp. H8-H27. Speaker's announcements: "Announcement by the Speaker Pro Tempore on Procedures for the 105th Congress," *Congressional Record*, daily edition, vol. 143, Jan. 7, 1997, pp. H32-H34.

(3) H.Res. 5 (recodification of House rules, and 106th Congress rules): "Rules of the House," *Congressional Record*, daily edition, vol. 145, Jan. 6, 1999, pp. H6-H207. Speaker's announcements: "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 145, Jan. 6, 1999, pp. H217, H218-H220.

(4) H.Res. 5 (107th Congress rules): "Rules of the House," *Congressional Record*, daily edition, vol. 147, Jan. 3, 2001, pp. H6-H18. Speaker's announcements: "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 147, Jan. 3, 2001, pp. H20-H22.

(5) H.Res. 5 (108th Congress rules): "Rules of the House," *Congressional Record*, daily edition, vol. 149, Jan. 7, 2003, pp. H7-H20. Speaker's announcements: "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 149, Jan. 7, 2003, pp. H21-H23.

(6) H.Res. 5 (109th Congress rules): "Rules of the House," *Congressional Record*, daily edition, vol. 151, Jan. 4, 2005, pp. H7-H31. Speaker's announcements: "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 151, Jan. 4, 2005, pp. H33-H35.

committee structure and membership assignments among the major problems in the House. Although the Democratic-controlled 103rd Congress made changes in the rules of the House, most notably defunding several select committees, the election of a Republican majority for the first time in 40 years brought extensive change to the committee system. Most of the changes were previously recommended by the Republican members of the Joint Committee on the Organization of Congress, but no action was taken. Other changes were traditionally included in the Republican alternative to the Democratic rules package adopted on the opening day of a new Congress. Still others were part of the Contract with America or developed from other sources.

Changes to the committee system made in the 104th Congress and since address most aspects of the committee system: decision-making autonomy, committee jurisdictions, internal committee procedures and structure, and the role of committee staff. For example, term limits were placed on committee and subcommittee chairs; committees were abolished but a new Homeland Security panel was created; committee names were changed in the 104th Congress, although many were changed again over the next several years; proxy voting and rolling quorums were abolished; and new requirements were imposed on committees related to information contained in committee reports.

The following section identifies changes made to the committee system on opening day of each Congress since the 104th pursuant to adoption of the resolution amending the rules of the House and establishing special orders, and pursuant to the Speaker's announcements. The section is organized around three central themes: (1) structure and organization, including committee chairmanships and committee assignments, committee jurisdiction, and subcommittees; (2) procedure, including committee hearings and meetings, committee reports, referral, and oversight; and (3) staff and funding.¹⁹

¹⁹ For a description of rules changes affecting committees made at the beginning of each Congress, see:

CRS Report 95-187, *Committee System: Rules Changes in the House, 104th Congress*, by Judy Schneider. Archived; available from author on request.

CRS Report 97-138, *Committee System: Rules Changes in the House, 105th Congress*, by Judy Schneider. Archived; available from author on request.

CRS Report RS20017, *Committee System: Rules Changes in the House, 106th Congress*, by Judy Schneider. Archived; available from author on request.

CRS Report RS20769, *Committee System: Rules Changes in the House, 107th Congress*, by Judy Schneider.

CRS Report RS21382, *Committee System: Rules Changes in the House, 108th Congress*, by Judy Schneider.

CRS Report RS22018, *Committee System: Rules Changes in the House, 109th Congress*, by Judy Schneider.

Structure and Organization

Assignments. H.Res. 6, agreed to in the 104th Congress, prohibited Members from serving on more than two standing committees and four subcommittees of standing committees, with individual exceptions approved by the House upon recommendation of the respective party caucus or conference. In addition, the permissible duration of Members' service on the Budget Committee was changed to four Congresses in six Congresses from three Congresses in five Congresses. Membership on the Intelligence Committee was changed from three terms to four, while the chair and ranking minority member were allowed to serve a fifth term.

In the 106th Congress, H.Res. 5 eliminated the requirement that four members of the Standards of Official Conduct Committee rotate off the panel every Congress, and changed service on the committee to three Congresses in any five Congresses from two Congresses in any three Congresses. The prohibition of service on the Budget Committee for more than four Congresses in any six successive Congresses was waived for the 106th Congress.

In the 108th Congress, H.Res. 5 provided that the Budget Committee's membership would include one member from the Rules Committee, thus codifying a decision made in the Republican Conference's early organization meetings.

H.Res. 5 in the 109th Congress contained a provision that one member of the majority party and one member of the minority party were to be "designated" by the respective elected leaderships as members of the Budget Committee. The rule that was amended had previously required the members to be "from" the elected leaderships.

Chairmanships/Term Limitations. Pursuant to H.Res. 6, effective with the 104th Congress, committee and subcommittee chairs were limited to serve no more than three terms as chair. Relatedly, the resolution permitted any majority member, not the senior most ranking majority member, to be designated as the vice-chair of a committee or subcommittee.²⁰

In the 108th Congress, H.Res. 5 abolished the term limitation for service as chair or ranking minority member of the Permanent Select Committee on Intelligence. The term limitation for service as chair or ranking minority member of the Budget Committee was codified to six years, equal to the term limitation for other standing committee chairs.

H.Res. 5 in the 109th Congress authorized the chair of the Rules Committee to serve as chair notwithstanding the rule limiting service of committee chairs to three consecutive terms.

²⁰ The House also voted twice, once in the 104th Congress and once in the 105th Congress, on a constitutional amendment imposing terms limits on service in Congress. A two-thirds vote is required to propose an amendment to the Constitution, and both votes fell short. See H.J.Res. 73, failed passage 227-204, March 29, 1995, and H.J.Res. 2, failed passage 217-211, Feb. 12, 1997.

Committee Abolition. The District of Columbia Committee, the Committee on Merchant Marine and Fisheries, and the Committee on Post Office and Civil Service were abolished pursuant to H.Res. 6 in the 104th Congress.

Committee Creation. H.Res. 5 in the 108th Congress created a Select Committee on Homeland Security with legislative jurisdiction to develop recommendations and report to the House on matters relating to the Homeland Security Act of 2002.²¹ The Select Committee was also charged with conducting a study of committee jurisdiction over the issue of homeland security and reporting any recommended changes to the House by September 30, 2004.²²

H.Res. 5 in the 109th Congress created a Committee on Homeland Security with legislative and oversight jurisdiction. The new panel was granted jurisdiction over the following:

- (1) Overall homeland security policy.
- (2) Organization and administration of the Department of Homeland Security.
- (3) Functions of the Department of Homeland Security related to the following:
 - (A) Border and port security (except immigration policy and non-border enforcement;
 - (B) Customs (except customs revenue);
 - (C) Integration, analysis, and dissemination of homeland security information;
 - (D) Domestic preparedness for and collective response to terrorism;
 - (E) Research and development; and
 - (F) Transportation security.”²³

²¹ 116 Stat. 2135.

²² In the 107th Congress, in response the President’s proposal to create the Department of Homeland Security, the House created a Select Committee on Homeland Security to receive proposed legislation on the department’s creation from a number of standing committees and to “develop recommendations and report to the House on such matters that relate to the establishment of a department of homeland security as may be referred to it by the Speaker.” H.Res. 449, agreed to in the House June 19, 2002.

In the 105th Congress, the House created another select committee: the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China. H.Res. 463, agreed to in the House June 18, 1998. The life of the select committee was ultimately extended to May 31, 1999. H.Res. 5, §2(f), agreed to in the House Jan. 6, 1999; H.Res. 129, agreed to in the House March 24, 1999; H.Res. 153, agreed to in the House April 29, 1999; and H.Res. 170, agreed to in the House May 13, 1999.

²³ For background and analysis on the creation and existence of the Homeland Security Committee, see CRS Report RL32711, *Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House*, by Michael L. Koempel; and CRS Report RL33061, *Homeland Security and House Committees: Analysis of 109th Congress Jurisdiction Changes and Their Impact on the Referral of Legislation*, by Michael L. Koempel and Judy Schneider.

The House Appropriations Committee reorganized its subcommittees in the 108th Congress and the 109th Congress. In the 108th Congress, it created a Homeland Security Subcommittee, and changed the jurisdiction of other subcommittees while retaining a total of 13 subcommittees. U.S. House, Committee on Appropriations, “Chairman Young (continued...) ”

Committee Names. Several committees were given new names under H.Res. 6 for the 104th Congress: Banking and Financial Services (formerly Banking, Finance, and Urban Affairs); Commerce (formerly Energy and Commerce); Economic and Educational Opportunities (formerly Education and Labor); Government Reform and Oversight (formerly Government Operations); House Oversight (formerly House Administration); International Relations (formerly Foreign Affairs); National Security (formerly Armed Services); Resources (formerly Natural Resources); Science (formerly Science, Space, and Technology); and Transportation and Infrastructure (formerly Public Works and Transportation).

The following Congress, H.Res. 5 in the 105th Congress changed the name of the Committee on Economic and Educational Opportunities to the Committee on Education and the Workforce.

In the 106th Congress, pursuant to H.Res. 5, the name of the Committee on Government Reform and Oversight was changed to the Committee on Government Reform, the Committee on House Oversight was returned to the Committee on House Administration, and the Committee on National Security was returned to the Committee on Armed Services.

H.Res. 5 of the 107th Congress changed the name of the Committee on Commerce to the Committee on Energy and Commerce. Further, the resolution reconstituted the Committee on Banking and Financial Services as the Committee on Financial Services.

Jurisdiction. H.Res. 6 in the 104th Congress transferred jurisdiction from the District of Columbia Committee and the Post Office and Civil Service Committee (both abolished by the resolution) to the Government Reform and Oversight Committee. Also abolished was the Merchant Marine and Fisheries Committee. Its jurisdiction was dispersed among several panels: merchant marine was transferred to the National Security Committee; Coast Guard to the Transportation and Infrastructure Committee; and fisheries and endangered species to the Resources Committee. From the Commerce Committee, Glass-Steagall was transferred to the Banking and Financial Services Committee; food inspection was sent to the Agriculture Committee; railroads and inland waterways were absorbed by the Transportation and Infrastructure Committee; the Trans-Alaska Pipeline was transferred to the Resources Committee; and energy research and development was moved to the jurisdiction of the Science Committee.

H.Res. 6 also expanded the Budget Committee's jurisdiction to include "Measures relating to the congressional budget process, generally" and "Measures relating to the establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and

²³ (...continued)

Announces Homeland Security Reorganization," news release, Jan. 29, 2003. In the 109th Congress, it reorganized its subcommittees and reduced their number to 10. U.S. House, Committee on Appropriations, "Chairman Lewis Announces Major Reorganization of the House Appropriations Committee and Slate of Subcommittee Chairmen," news release, Feb. 9, 2005. See also CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes, 1920-2005*, by James V. Saturno.

measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.” A paragraph of the committee’s jurisdiction regarding concurrent budget resolutions and matters under titles III and IV of the Congressional Budget Act was amended to add: “and other measures setting forth appropriate levels of budget totals for the United States Government.”²⁴

In the 105th Congress, H.Res. 5 revised the jurisdictions of the Budget and Government Reform and Oversight Committees. The Budget Committee was given oversight over the “budget process” rather than over solely the “congressional budget process.” The Government Reform Committee was given jurisdiction over “government management and accounting measures, generally” rather than “budget and accounting measures, generally.”

H.Res. 5 in the 107th Congress transferred jurisdiction over securities and exchanges, and insurance generally, to the Committee on Financial Services from the Committee on Energy and Commerce.²⁵ In addition, the resolution reinforced that the Permanent Select Committee on Intelligence had exclusive oversight responsibility over the sources and methods of the core intelligence agencies.

H.Res. 5 in the 109th Congress transferred jurisdiction over transportation security and port security to the Committee on Homeland Security, but the Committee on Transportation and Infrastructure retained jurisdiction over the Coast Guard and transportation safety. The resolution also transferred jurisdiction over domestic preparedness for terrorist acts to the Committee on Homeland Security, but the Transportation and Infrastructure Committee retained jurisdiction over natural disasters and other emergencies. Further, the resolution transferred jurisdiction over border security to the Committee on Homeland Security, but the Judiciary Committee retained jurisdiction over immigration and non-border related policy. The resolution also added “criminal law enforcement” to the jurisdiction of the Judiciary Committee, and transferred jurisdiction over the Customs Service to the Committee

²⁴ The section-by-section analysis of H.Res. 6 indicated that the Budget Committee “would gain jurisdiction over budgetary legislation from the Committee on Government Reform and Oversight.” Rep. Gerald Solomon, remarks in the House, “Section-by-Section Analysis of House Rules Resolution,” *Congressional Record*, daily edition, vol. 141, Jan. 4, 1995, p. H35. See also jurisdictional understandings inserted in the *Congressional Record*: Rep. Richard Armey, remarks in the House, *Congressional Record*, daily edition, vol. 141, Jan. 4, 1995, p. H45; and Rep. John Kasich, extension of remarks, *Congressional Record*, daily edition, vol. 141, Jan. 5, 1995, p. E36.

²⁵ Memoranda of understanding and other announcements can explain the meaning of jurisdictional changes and the settlement of jurisdictional disagreements. For explanation of the jurisdictions of the Energy and Commerce Committee and the Financial Services Committee, see Speaker Dennis Hastert, remarks in the House, “Memorandum of Understanding between Energy and Commerce Committee and Financial Services Committee,” *Congressional Record*, daily edition, vol. 147, Jan. 20, 2001, p. H67. This memorandum was updated in the 109th Congress. See “Announcement by the Speaker Pro Tempore,” *Congressional Record*, daily edition, vol. 151, Jan. 4, 2005, p. H35.

on Homeland Security, although the Committee on Ways and Means retained oversight of customs revenue.²⁶

Size. In the 107th Congress, pursuant to H.Res. 5, the Permanent Select Committee on Intelligence was increased from not more than 16 members to not more than 18 members, of which not more than 10 may be from the same party, pursuant to H.Res. 5.

Subcommittees. H.Res. 6 in the 104th Congress prohibited any committee from having more than five subcommittees, except for Appropriations (13), Government Reform and Oversight (7), and Transportation and Infrastructure (6).

In the 106th Congress, H.Res. 5 maintained the existing rule restriction regarding the limitation of five subcommittees; however, committees that maintained an oversight subcommittee were restricted to no more than six subcommittees. Further the Committee on Government Reform, in order to maintain a Census Subcommittee, was entitled to have eight subcommittees for the 106th Congress.

H.Res. 5 in the 107th Congress maintained the rule regarding the number of subcommittees each committee could create. However, the Committee on Government Reform was allowed to create up to eight subcommittees and the Committee on International Relations and the Committee on Transportation and Infrastructure were entitled to create up to six subcommittees each.

The 108th Congress's H.Res. 5 also maintained the existing rule on subcommittees. However, the Committee on Armed Services, the Committee on International Relations, and the Committee on Transportation and Infrastructure were allowed to create up to six subcommittees each.

H.Res. 5 in the 109th Congress maintained the existing rule on subcommittees. However, the Committee on Armed Services and the Committee on Transportation and Infrastructure were entitled to create up to six subcommittees each, and the Committee on International Relations was allowed to create up to seven subcommittees in the 109th Congress.

H.Res. 5 in the 109th Congress maintained the existing rule on subcommittees. However, the Committee on Armed Services and the Committee on Transportation and Infrastructure were entitled to create up to six subcommittees each, and the Committee on International Relations was allowed to create up to seven subcommittees in the 109th Congress.

Procedure

Committee Reports. H.Res. 5 in the 105th Congress authorized committees to (1) file joint investigative or oversight reports with other committees on matters

²⁶ For a detailed explanation of the homeland security jurisdictions of the Committee on Homeland Security and 10 standing committees, see Rep. David Dreier, remarks in the House, "Legislative History to Accompany Changes to Rule X," *Congressional Record*, daily edition, vol. 151, pp. H25-H26.

on which they conducted joint studies or investigations, (2) file investigative or oversight reports after the final adjournment of a Congress if they were properly approved by the committee and at least seven calendar days were permitted for filing views, and (3) file final activity reports after an adjournment if at least seven calendar days were permitted for filing views. H.Res. 5 also stipulated that proposed investigative reports would be considered as read if available for at least 24 hours in advance of their consideration.

In addition, H.Res. 5 changed the period for filing views on reports from three full days after the day on which the bill or matter was ordered reported to two days. The resolution granted a committee an automatic right to have an hour after midnight on the second day to file its report, if an intention to file views was announced. The resolution repealed the requirement that committee reports include an inflationary impact statement. Instead, reports must include a new “constitutional authority statement” that cites the specific powers granted to Congress by the Constitution upon which the proposed measure was based.

H.Res. 5 stated that to committees must make their publications available in electronic form “to the maximum extent feasible.” It also conformed the layover requirements for Budget Committee reports on budget resolutions to those of other committees for other legislation.

H.Res. 5 in the 107th Congress repealed the requirement that committee reports include a summary of oversight findings and recommendations by the Committee on Government Reform and required a new statement of general performance goals and objectives, including outcome-related goals and objectives for which the measure authorized funding. In addition, committees were allowed to file supplemental reports, without additional layovers, to correct errors in the depiction of record votes taken in committee.

Appropriations Committee. H.Res. 6 in the 104th Congress prohibited the inclusion of non-emergency provisions in emergency appropriations measures, unless the provisions rescinded budget authority, reduced direct spending, or reduced an amount for a designated emergency. The rules changes also required the Appropriations Committee to identify unauthorized appropriations in its committee reports on general appropriations bills, in addition to the existing requirement to list legislative provisions.

With regard to reports on general appropriations bills, H.Res. 5 in the 107th Congress required the Appropriations Committee to include additional information on unauthorized appropriations — a statement of the last year for which expenditures were authorized, the level authorized for that year, the actual level of spending for that year, and the level of appropriations in the current bill.

Ways and Means Committee. H.Res. 5 in the 105th Congress allowed the majority leader, after consultation with the minority leader, to designate “major tax legislation” on which the report by the Ways and Means Committee could then include a “dynamic estimate” — the macroeconomic feedback emanating from the proposed change in tax policy. The dynamic estimate was to be “used only for informational purposes,” not for enforcement or scorekeeping purposes.

In the 108th Congress, H.Res. 5 required the Ways and Means Committee to include in committee reports on measures amending the Internal Revenue Code a “macroeconomic impact analysis” by the Joint Taxation Committee. A macroeconomic impact analysis was defined as an estimate of “changes in economic output, employment, capital stock, and tax revenues expected to result from enactment of the proposal.” The joint committee’s analysis was also to include a statement of assumptions and data sources. The reporting requirement could be waived if the Joint Taxation Committee certified that such an analysis was not calculable, or the chair of the Ways and Means Committee inserted the analysis in the *Congressional Record* prior to the measure’s consideration by the House.

Hearings. H.Res. 5 in the 105th Congress authorized committees to adopt a rule or motion to (1) permit selected majority and minority members, in equal numbers, to take more than five minutes to question witnesses, up to a limit of 30 minutes per side, per witness, and (2) permitted staff to question witnesses if the other side was given equal time and opportunity to do so. (This rule was clarified pursuant to H.Res. 5 in the 106th Congress.)

The resolution also clarified the procedure for closing a hearing, saying that the hearing would not be closed if a majority of those voting, instead of a majority of committee members, determined that the evidence or testimony would not tend to defame, degrade, or incriminate any person.

H.Res. 5 in the 106th Congress clarified the rule to permit committees to adopt a rule or motion to extend questioning for selected majority and minority members and to permit questioning of witnesses by staff.

In the 107th Congress, H.Res. 5 modified procedures for committee hearings to resolve an unintended implication about hearings labeled as something other than investigative, clarified that a copy of the committee rules and hearing procedures should be made available to witnesses “upon request,” and clarified that an assertion that evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person must be made either by a member of the committee or by a witness at a hearing.

Meetings. H.Res. 6 in the 104th Congress prohibited committees from sitting while the House was reading a measure for amendment under the five-minute rule without special leave to sit. Special leave would be granted unless 10 or more Members objected to the unanimous consent request, or a motion offered by the majority leader was adopted by the House. The Committees on Appropriations, Budget, Rules, Standards of Official Conduct, and Ways and Means were exempted from the prohibition on sitting.

H.Res. 5 in the 105th Congress allowed all committees to meet at any time the House was in session without first obtaining special leave from the full House.

Motion to Go to Conference. H.Res. 5 in the 109th Congress allowed committees to adopt a rule allowing the committee chair to offer a privileged motion to go to conference whenever the chair deemed it appropriate to do so.

Openness. H.Res. 6 in the 104th Congress prohibited committee meetings from being closed to the public except by majority roll-call vote if the meeting would endanger national security, compromise sensitive information, or defame any person. Further, broadcast coverage was allowed for any open hearing or meeting.

H.Res. 5 in the 105th Congress required committees, to the maximum extent feasible, to make all committee publications available in electronic form.

Oversight. H.Res. 6 in the 104th Congress required all committees to adopt oversight plans and submit them to the House Oversight and Government Reform and Oversight Committees by February 15 of the first session. The Government Reform and Oversight Committee was required to report the plans back to the House by March 31 with recommendations.²⁷

In the 106th Congress, H.Res. 5 repealed the prohibition against consideration of a committee expense resolution when a committee has not submitted its oversight plan to the House Administration and Government Reform Committees by February 15 of the first session.

H.Res. 5 in the 107th Congress required committees to include in their oversight plans a review of specific problems with federal rules, regulations, statutes, and court decisions that were ambiguous, arbitrary, or nonsensical, or imposed a serve financial burden on individuals.

Also pursuant to H.Res. 5 in the 107th Congress, the Permanent Select Committee on Intelligence gained exclusive oversight responsibility over the sources and methods of the core intelligence agencies.

H.Res. 5 in the 109th Congress required committees, in oversight plans provided to the Government Reform Committee and the House Administration Committee, to “have a view toward insuring against duplication of federal programs.”

Proxy Voting. The 104th Congress, pursuant to H.Res. 6, prohibited proxy voting in both committees and subcommittees.

Quorums. Pursuant to H.Res. 6, the 104th Congress eliminated “rolling quorums.” Committees were allowed to adopt a one-third quorum rule for any business except reporting, which would still require a majority.

In the 107th Congress, H.Res. 5 clarified the rules on the majority quorum requirement for ordering a measure reported, the release of executive session materials, the issuance of subpoenas, and determining if evidence or testimony may defame, degrade, or incriminate any person.

Recess Authority. H.Res. 5 in the 109th Congress allowed for a privileged motion in committee to recess subject to the call of the chair for a period of less than

²⁷ Congress also passed Congressional Review of Agency Rulemaking, subtitle E, title II, of the Contract with America Advancement Act of 1996 (110 Stat. 847, 868), providing a process for congressional review and disapproval of agencies’ proposed major rules.

24 hours, rather than the existing rule that allowed for a privileged motion to recess from day to day.

Referral. H.Res. 6 for the 104th Congress prohibited joint referral. The Speaker was authorized to designate a committee of primary jurisdiction upon introduction. Split and sequential referrals, either upon introduction or after the primary committee reported, were allowed.

H.Res. 5 in the 108th Congress allowed the Speaker to refer measures to more than one committee without a designation of a primary committee under “exceptional circumstances.”

In the 109th Congress, the Speaker’s announced policies included a provision that indicated that referral of measures to the Select Committee on Homeland Security in the 108th Congress “will not constitute precedent for referrals to the new [standing] committee.”

Subpoena. H.Res. 5 in the 106th Congress clarified House rules to state the practice that a subpoena may specify the terms of return other than at a meeting or hearing of a committee or subcommittee.

Transcripts. The 104th Congress, pursuant to H.Res. 6, required hearing and meeting transcripts to be substantially verbatim accounts of the proceedings.

Voting. Pursuant to H.Res. 6 in the 104th Congress, committee reports were to include the names of committee members voting for or against any amendments or the motion to report.

H.Res. 5 in for the 108th Congress permitted committees to adopt a rule that allowed the chair of the committee or subcommittee to postpone votes on approving a measure or matter, on agreeing to an amendment, and resuming proceeding on a postponed question at any time after reasonable notice. An underlying proposition would remain subject to further debate or amendment to the same extent as when the question was postponed.

Witnesses. H.Res. 5 in the 105th Congress required non-governmental witnesses who appear before a committee to provide with their advance written testimony, to the greatest extent practical, a curriculum vitae and a disclosure by source of the federal grants and contracts received by them and any entity they represent in the current and preceding two fiscal years.

Staff and Funding

Allocation of Staff. The 104th Congress, under the provisions of H.Res. 6, required committee chairs to provide sufficient staff to subcommittees, which would lose independent hiring authority.

Associate Staff. H.Res. 5 in the 108th Congress stated that the associate, or shared, staff of the Committee on Appropriations were not subject to the review of the Committee on House Administration with respect to the reporting of a committee expense resolution. Such staff were still to be subject to the general restrictions of

House Rule X, cl. (9). Further, H.Res. 5 clarified that the professional staff of the Appropriations Committee should comply with the same rules regarding their duties as professional staffs of other committees.

Consultants. H.Res. 5 in the 106th Congress required consultants to abide by provisions of the Code of Official Conduct.

H.Res. 5 in the 107th Congress provided that consultants could not lobby the contracting committee or the members or staff of the contracting committee on any matter; lobbying other members or staff on matters outside the jurisdiction of the contracting committee was allowed.

Funding. H.Res. 6 in the 104th Congress consolidated separate salary authorization levels for statutory and investigative staff into a single, two-year committee expense resolution.

In the 105th Congress, H.Res. 5 allowed committee primary expense resolutions reported by the House Oversight Committee to include a reserve fund for unanticipated expenses, provided that any allocation from such a fund was approved by the House Oversight Committee.

Number of Staff. Committee staff were to be reduced by at least one third from the 103rd Congress level pursuant to H.Res. 6 in the 104th Congress.

Rules Changes Affecting the Chamber and Floor

While in the minority, Republican complaints included being denied the opportunity to offer amendments to measures because of restrictive rules, their inability to offer a motion to recommit with instructions, the increased use of commemorative legislation, and a floor schedule that was neither family friendly nor conducive to deliberation. On the opening day of the 104th Congress, the new majority rules package attempted to address some of these complaints, while still providing procedures that allowed them to control the schedule, agenda, and proceedings. Over the next several Congresses, some rules changes agreed to in 1995 were modified or even repealed as the majority party coped with these competing demands. In the 108th Congress and in response to the September 11, 2001, and anthrax terrorist attacks, the majority's rules package addressed a previously unanticipated concern: How could a House with fewer Members conduct business?

The following section identifies changes made to the operations of the House floor on the opening day of each Congress since the 104th pursuant to adoption of the resolution amending the rules of the House and establishing special orders, and pursuant to the Speaker's announcements.²⁸

²⁸ For a description of rules changes affecting the chamber and floor made at the beginning of the 104th, 107th, 108th, and 109th Congresses, see:

CRS Report 96-850, *House Rules Changes Affecting Floor Proceedings in the 104th Congress*, by Stanley I. Bach. Archived; available from Elizabeth Rybicki on request.

(continued...)

Amendment Process. H.Res. 6 in the 104th Congress provided for amendments to be numbered when submitted for printing in the *Congressional Record* before being offered on the floor.

Appropriations Process. H.Res. 6 in the 104th Congress permitted Members to offer en bloc a pair of amendments to a general appropriations bill if the only effect of the amendments was to “transfer appropriations among objects without increasing the levels of budget authority or outlays in the bill,” so-called offsetting amendments. The rules change also disallowed any Member from demanding that the question (vote on the offsetting amendment) be divided. The rules change thus allowed Members to offer amendments to parts of an appropriations bill not yet open for amendment.

H.Res. 6 provided that all points of order be automatically considered as reserved when a general appropriations bill was reported on the floor, obviating the need for Members to reserve them. H.Res. 6 also gave precedence (over a motion to further amend) to a motion that the Committee of the Whole rise and report, when the motion is offered by the majority leader or his designee, after a general appropriation bill has been read for amendment. The majority leader is thereby allowed, if the motion is agreed to, to preclude consideration of limitation amendments.

H.Res. 5 in the 105th Congress prohibited the Appropriations Committee from reporting a measure, or the House from considering an amendment, making the availability of funds contingent on the receipt or possession of information by the funding authority if that information was not already required by law. This change was directed at so-called made-known provisions and amendments that could be used despite a ban on legislating on appropriations bills. The resolution further tightened the precedence of the majority leader’s motion to rise and report over a further motion to amend by clarifying that the majority leader’s motion has precedence over any motion to amend, not just over a motion to offer a limitation amendment.

In the 108th Congress, H.Res. 5 defined “tax or tariff provisions” vis-à-vis a general appropriation bill. Tax and tariff measures may not be reported from a committee not having jurisdiction over such a measure, and an amendment with tax or tariff provisions is not in order to a bill reported by a committee not having jurisdiction. The rules change provided that a tax or tariff measure “includes an amendment proposing a limitation on funds in a general appropriation bill for the administration of a tax or tariff.”

²⁸ (...continued)

CRS Report RS20782, *House Rules Changes Affecting Floor Proceedings in the 107th Congress*, by Stanley I. Bach.

CRS Report RS21388, *House Rules Changes Affecting Floor Proceedings in the 108th Congress*, by Elizabeth Rybicki.

CRS Report RL32772, *House Rules Changes Affecting Floor Proceedings in the 109th Congress*, by Thomas P. Carr and Elizabeth Rybicki.

Classified Materials. In the 104th Congress, H.Res. 6 implemented a nondisclosure oath by any Member, officer, or employee before being granted access to classified information.

In the 107th Congress, the clerk was directed to publish in the *Congressional Record* the names of Members who had taken the nondisclosure oath.

Commemorative Legislation. H.Res. 6 in the 104th Congress banned the introduction and consideration of commemorative legislation.

Conference. H.Res. 5 in the 109th Congress allowed a committee to adopt a committee rule to grant the committee chair the general authority to make motions in committee necessary to send a bill to conference.

Motion to Instruct Conferees. H.Res. 5 in the 107th Congress clarified that a motion to instruct conferees was in order after a conference committee had been appointed for 20 calendar days without having filed its report, but only after the Member proposing to make such a motion gave one calendar day notice of his or her intent to do so. Further, the resolution barred motions to instruct conferees and motions to recommit conference reports with instructions from including “argument.”

H.Res. 5 in the 108th Congress stated that a motion to instruct conferees was in order after a conference committee had been appointed for 20 calendar days and 10 legislative days without making a report.

Continuity of Congress. Even prior to the terrorist attacks of September 11, Congress considered the possibility of a catastrophe affecting the ability of Congress to function, such as the joint bipartisan leadership directive in 2000 to the Capitol Police Board to develop a comprehensive emergency preparedness plan for the legislative branch.²⁹ The 108th Congress, the first after the attacks, modified House rules to prepare for a catastrophic event, authorizing the Speaker to adjust the whole number of House in the event of a Member’s death, resignation, expulsion, disqualification, or removal.³⁰ The 109th Congress further addressed the issue by creating procedures to enable the House to function with fewer Members.³¹

Emergency Recess. H.Res. 5 in the 108th Congress entitled the Speaker, when notified of an imminent threat to the House’s safety, to declare an emergency

²⁹ For information on Congress’s COOP, see CRS Report RL31594, *Congressional Continuity of Operations: An Overview of Concepts and Challenges*, by R. Eric Petersen and Jeffrey W. Seifert.

³⁰ In addition, H.Con.Res. 1, agreed to in the House Jan. 7, 2003, and in the Senate Feb. 13, 2003, authorized the Speaker and the Senate majority leader to convene Congress outside the District of Columbia.

³¹ The House also passed bills in the 108th and 109th Congresses to provide for continuity in representation by setting standards for special elections for Representatives. H.R. 2844, which passed the House April 22, 2004, and H.R. 841, which passed the House March 3, 2005.

recess subject to the call of the chair, and allowed the Speaker to accelerate or postpone the reconvening of the House in the event of an emergency.

Provisional Quorum. H.Res. 5 in the 109th Congress allowed for the House to conduct business with a provisional quorum only after a motion to compel Members' attendance had been disposed of and the following actions were taken in the following sequence: (1) a call of the House totaling 72 hours was taken without producing a quorum; (2) the Speaker and majority and minority leaders receive from the sergeant-at-arms a catastrophic quorum failure report; and (3) a further call of the House is conducted within 24 hours and a quorum does not appear.

Speaker Succession. H.Res. 5 in the 108th Congress required the Speaker to submit to the clerk of the House a list of Members who would take over the responsibilities of the speakership in the event of a vacancy.

Corrections Calendar. H.Res. 5 in the 105th Congress permitted consideration of Corrections Calendar measures at any time on a corrections day and permitted bills to be called up in any order from the calendar.³²

H.Res. 5 in the 107th Congress exempted that measures placed on the Corrections Calendar from having to satisfy the three-day layover and availability requirements before being eligible for floor consideration.

H.Res. 5 in the 109th Congress repealed the Corrections Calendar.

Debate. H.Res. 5 in the 109th Congress allowed remarks in debate to include references to the Senate or its Members, although the remarks were to be confined to the question under debate and not to individual personalities.

Decorum. House rules and precedents address who has access to the floor, what exhibits can be shown, and what electronic devices can be used. The Speaker controls the floor of the House and is responsible for maintaining order on the floor. In order to preserve decorum, the House has taken both formal and informal action to disallow occurrences that might be disruptive of appropriate decorum. For example, in 1995, a caricature of the Speaker presented during debate was ruled out of order.³³ Rules changes since the 104th Congress have addressed issues of decorum.

Electronic Devices. H.Res. 5 in the 108th Congress amended House rules banning the use of electronic devices on the floor to forbid only "a wireless telephone or personal computer," thereby allowing handheld electronic devices, such as BlackBerries®.

³² H.Res. 168, agreed to in the House June 20, 1995, replaced the Consent Calendar with a new Corrections Calendar, part of an expedited procedure to repeal or correct laws, rules, and regulations.

The 105th Congress House agreed to H.Res. 7 on Jan. 7, 1997, creating a Corrections Calendar office.

³³ "Point of Order," *Congressional Record*, daily edition, vol. 141, Nov. 16, 1995, p. H13041.

Exhibits. H.Res. 5 in the 107th Congress clarified that, whenever there was an objection on the floor to the use of an exhibit, the presiding officer may rule on the objection. The existing rule implied that the issue would be submitted to the House for a vote.

Staff Access. H.Res. 5 in the 108th Congress granted designated party leadership staff access to the House floor with the approval of the Speaker.

Delegate/Resident Commissioner. H.Res. 6 in the 104th Congress prohibited Delegates and the Resident Commissioner from voting in the Committee of the Whole.

Discharge Petitions. H.Res. 6 in the 104th Congress provided for publication of, and other means of public access to, the names of Members who signed discharge petitions. The language clarified and specified how public disclosure of names was to take place.

H.Res. 5 in the 105th Congress clarified that the intent of permitting discharge petitions on resolutions from the Rules Committee was for the purpose of a resolution making in order the consideration of a single measure that had been introduced for at least 30 legislative days (and not multiple measures), and that such a resolution may only make in order germane amendments to such a measure.

Motion to Adjourn. H.Res. 5 in the 108th Congress clarified that a Member could move to adjourn during a call of the House.

Naming Public Works. H.Res. 5 in the 107th Congress barred consideration of any measure, amendment, or conference report that names a “public work” in honor of a Member, Delegate, Resident Commissioner, or Senator while that person is serving in Congress.

Order of Business. H.Res. 6 in the 104th Congress incorporated the Pledge of Allegiance into the daily order of business, following approval of the *Journal*, codifying practice of the House since 1988.

H.Res. 5 in the 108th Congress clarified that a motion to adjourn was in order during a call of the House.

Public Debt Ceiling. H.Res. 5 in the 107th Congress repealed the House rule that had provided for the automatic engrossment and transmittal to the Senate of House joint resolutions changing the public-debt ceiling — the so-called Gephardt rule, named for former Representative Richard Gephardt. The rule operated with congressional agreement to a concurrent resolution on the budget, and allowed the House to avoid a separate vote on debt-limit legislation.

H.Res. 5 in the 108th Congress reinstated the Gephardt rule. The House’s final vote on congressional agreement to a concurrent resolution on the budget was deemed also to be the vote on the joint resolution. The rules change also mandated that the Budget Committee’s report on the budget resolution and a joint explanatory to accompany a conference report contain a “clear statement of the effect the

eventual enactment of a joint resolution engrossed under this rule would have on the statutory limit on the public debt.”

Recommit. H.Res. 6 in the 104th Congress assured the minority the right to offer a motion to recommit, either with or without instructions.

Speaker of the House. H.Res. 6 in the 104th Congress authorized the creation of an Office of Legislative Floor Activities in the Office of the Speaker.

H.Res. 5 in the 108th Congress repealed the limit of four consecutive terms for a Speaker.

Special Rules. H.Res. 6 in the 104th Congress required special rules to the extent possible to identify the specific House rules being waived in a special rule.

Suspension of the Rules. H.Res. 5 in the 108th Congress included a standing order allowing consideration of measures under suspension of the rules on Wednesdays through the second Wednesday in April (April 9, 2003).³⁴

H.Res. 5 in the 109th Congress allowed the Speaker to entertain motions to suspend the rules on Wednesdays.

Tax Legislation. H.Res. 6 in the 104th Congress required a three-fifths vote (of the Members voting, a quorum being present) to pass a bill or joint resolution or agree to an amendment or conference report “carrying a Federal income tax rate increase.”³⁵ The resolution further disallowed the House from considering bills, joint resolutions, amendments, and conference reports containing a “retroactive Federal income tax increase.” “Retroactivity” was defined as making the tax rate increase apply to a period “beginning prior to the enactment of the provision.”

In the 105th Congress, H.Res. 5 sought to clarify the definition of “Federal income tax rate increase” by limiting the relevant rules’ effect to specified provisions of the Internal Revenue Code. The changes were meant to clarify that the requirement of a three-fifths vote to approve an income tax rate increase did not apply to provisions that merely increased revenues or effective tax rates.

Unfunded Mandates. H.Res. 5 in the 105th Congress clarified the opportunity to offer a motion to strike an unfunded mandate provision from a bill (unless the motion was disallowed pursuant to a special rule). The clarification was that the motion was solely for unfunded intergovernmental mandates, not for private sector mandates.

³⁴ On April 30, 2003, the House agreed by unanimous consent to consider suspension measures through the last Wednesday in June (June 25, 2003). On June 26, 2003, the House agreed to H.Res. 297, extending this authorization to the end of the 108th Congress.

³⁵ This rules change was challenged in court by House Democrats and others. The court dismissed the complaint with prejudice, finding “federal courts should generally refrain, as a matter of policy, from intruding in the name of the Constitution upon the internal affairs of Congress at the behest of lawmakers who have failed to prevail in the political process.” *Skaggs v. Carle*, 898 F. Supp. 1 (D.D.C., 1995), *aff’d* 110 F.3d 831 (D.C. Cir., 1997).

Voting. H.Res. 6 in the 104th Congress required a roll-call vote on final passage or adoption of any bill, joint resolution, or conference report making general appropriations or increasing federal income tax rates, and on final approval of any concurrent budget resolution or the conference report on a budget resolution.

H.Res. 5 in the 106th Congress abolished the practice of pairing, other than live pairs.

Postponed Votes. H.Res. 6 in the 104th Congress expanded the authority of the Speaker to postpone votes on ordering the previous question, and to reduce to five minutes the time for votes that immediately followed votes on ordering the previous question.

H.Res. 5 in the 105th Congress extended the Speaker's authority to postpone votes to any manager's amendment and motion to recommit (or any previous question thereon) considered under the Corrections Day process.

H.Res. 5 in the 107th Congress permitted the chair to postpone record votes on amendments, allowing at least 15 minutes for the first vote and reducing the subsequent votes to not less than five minutes.

H.Res. 5 in the 108th Congress clarified House rules to allow the Speaker to reduce the minimum time allowed for voting on a second or subsequent electronic vote to five minutes, provided the Speaker gave notice and no business had taken place between votes.

H.Res. 5 in the 109th Congress added the motion to reconsider, tabling motions to reconsider, and amendments reported from the Committee of the Whole among those votes the Speaker might postpone within two additional legislative days.

Rules Changes Affecting Budgetary Legislation

Two of the eight goals of the institutional reforms of the Contract with America dealt with budgetary legislation: a three-fifths vote "to pass a tax increase" and an "honest accounting of our Federal Budget by implementing zero baseline budgeting." The Republican majority fine tuned and implemented the following changes and others in the rules for the 104th Congress: changes to the Budget Committee, which has been the subject of incremental change in nearly every Congress since the 104th Congress; prohibitions and limitations placed on the appropriations process; and requirements added to the processing of tax legislation.

Other Contract with America goals related to public policy, which also affected House and congressional procedures, were achieved through other pieces of legislation, like the Unfunded Mandates Act and the Line Item Veto Act. Still other policy initiatives with implications for House and congressional procedures developed and were realized through legislation such as the Budget Enforcement Act of 1997.

The annual concurrent resolution on the budget is regularly a source of permanent and temporary changes in the budget process.³⁶ Other process changes are included in appropriations acts and other freestanding legislation.

This report analyzes the rules, special orders, and Speaker's announcements at the convening of a Congress and not all of the actions taken during a Congress that have affected the consideration of budgetary legislation.

104th Congress. Ten of the changes made by H.Res. 6 affecting budgetary legislation were described above.³⁷ Those changes discussed in the section Rules Changes Affecting Committees were:

- Members were permitted to serve four Congresses out of six consecutive Congresses on the Budget Committee, with existing exceptions continuing for majority and minority leadership representatives and, under certain circumstances, for chairs and ranking minority members.
- The Budget Committee was given jurisdiction over "Measures relating to the congressional budget process, generally" and over "Measures relating to the establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985."

³⁶ Permanent and temporary changes to budget process rules are regularly included in the annual concurrent resolutions on the budget. Beginning with the 104th Congress, the budget resolutions that passed at least the House are as follows:

(1) 104th Congress: H.Con.Res. 67 (FY1996), conference report adopted in both the House and the Senate June 29, 1995; and H.Con.Res. 178 (FY1997), conference report adopted in the House June 12, 1996, and in the Senate June 13, 1996.

(2) 105th Congress: H.Con.Res. 84 (FY1998), conference report adopted in both the House and the Senate June 5, 1997; and H.Con.Res. 284 (FY1999), agreed to in the House June 5, 1998.

(3) 106th Congress: H.Con.Res. 68 (FY2000), conference report adopted by the House April 14, 1999, and by the Senate April 15, 1999; and H.Con.Res. 290 (FY2001), conference report adopted by both the House and the Senate April 13, 2000.

(4) 107th Congress: H.Con.Res. 83 (FY2002), conference report adopted by the House May 9, 2001, and by the Senate May 10, 2001; and H.Con.Res. 353 (FY2003), agreed to in the House March 20, 2002.

(5) 108th Congress: H.Con.Res. 95 (FY2004), conference report adopted by both the House and the Senate April 1, 2004; and S.Con.Res. 95 (FY2005), conference report adopted by the House May 19, 2004.

(6) 109th Congress: H.Con.Res. 95 (FY2006), conference report adopted by both the House and the Senate April 28, 2005; and H.Con.Res. 376 (FY2007), agreed to in the House June 22, 2006.

³⁷ H.Res. 6, agreed to in the House Jan. 4, 1995. For an analysis of the rules changes made in the 104th Congress that affected budgetary legislation, see CRS Report 95-432, *Budget Process Changes Made in the Rules of the House in January 1995 (H.Res. 6)*, by Robert Keith. Archived, available from author on request.

The House and Senate in the 104th Congress also passed the Line Item Veto Act (110 Stat. 1200), and the Unfunded Mandates Act (109 Stat. 48).

- The Appropriations Committee was prohibited from including non-emergency provisions in emergency appropriations measures, unless the provisions rescinded budget authority, reduced direct spending, or reduced an amount for a designated emergency.
- The Appropriations Committee was also required to identify unauthorized appropriations in its reports on general appropriations bills.

Those changes discussed in the section Rules Changes Affecting the Chamber and Floor were:

- A three-fifths vote was required to pass legislation containing a federal income tax rate increase.
- The House was barred from consideration of legislation containing a retroactive federal income tax rate increase.
- An automatic roll-call vote was required on final passage of (or adoption of the conference report on) any budget resolution or any measure making general appropriations or increasing federal income tax rates.
- A motion to rise and report during consideration of a general appropriation bill has precedence over motions to further amend the bill only if offered by the majority leader or a designee.
- A Member may offer en bloc offsetting amendments, which may affect parts of a measure not yet read for amendment.
- Whenever an appropriations bill is reported, all points of order against it are automatically reserved.

H.Res. 6 also contained a “truth-in-budgeting baseline reform” provision requiring a comparison (when practicable) of total funding in legislation to the “appropriate levels under current law.” The purported effect of this rules change was to require that the entire amount of authorizations, appropriations, and entitlement spending to be shown in cost estimates, not solely in increments of change. The “truth” aspect was intended to get at a criticism of baseline budgeting that allowed spending increases above a current year’s level, but below baseline levels, to be characterized as spending cuts.³⁸

Finally, since H.Res. 6 also eliminated committees and changed the jurisdictions of committees, a provision of H.Res. 6 provided for the revision of spending allocations made under the budget resolution for FY1995.³⁹

³⁸ The House passed a bill in the 103rd Congress that eliminated inflation adjustments from baseline estimates for discretionary programs, among other provisions. H.R. 4907, passed by the House Aug. 12, 1994. No action was taken in the Senate.

³⁹ H.Con.Res. 218, conference report agreed to in the House May 5, 1994, and in the Senate May 12, 1994. The revisions were subsequently printed in the *Congressional Record*: Rep. John Kasich, remarks in the House, “Communication from the Chairman of the Committee on the Budget Regarding Revised 302(a)/602(a) Allocation for Fiscal Years 1995-1999,” *Congressional Record*, daily edition, vol. 141, pp. H2301-H2305

105th Congress. The changes made by H.Res. 5 in the 105th Congress affecting budgetary legislation were described above.⁴⁰ Those changes discussed in the section Rules Changes Affecting Committees were:

- The majority leader was allowed, after consultation with the minority leader, to designate “major tax legislation,” on which the report by the Ways and Means Committee could then include a “dynamic estimate” — the macroeconomic feedback emanating from the proposed change in tax policy.
- The jurisdictions of the Budget and Government Reform and Oversight Committees were revised. The Budget Committee was given oversight over the “budget process” rather than solely the “congressional budget process.” The Government Reform Committee was given jurisdiction over “government management and accounting measure, generally” rather than “budget and accounting measures, generally.”
- The layover requirements for Budget Committee reports on budget resolutions were conformed to those of other committees for other legislation.

Those changes discussed in the section Rules Changes Affecting the Chamber and Floor were:

- The definition of “Federal income tax rate increase” was sought to be clarified by limiting the relevant rules’ effect to specified provisions of the Internal Revenue Code. The changes were meant to clarify that the requirement of a three-fifths vote to approve an income tax rate increase did not apply to provisions that merely increase revenues or effective tax rates.
- The Appropriations Committee was prohibited from reporting a measure, or the House from considering an amendment, making the availability of funds contingent on the receipt or possession of information by the funding authority if that information was not already required by law, so-called made-known provisions and amendments.
- The precedence of the majority leader’s motion to rise and report over a further motion to amend was further tightened by clarifying that the majority leader’s motion has precedence over any motion to amend.
- The opportunity to offer a motion to strike an unfunded mandate provision from a bill (unless the motion was disallowed pursuant to a special rule) was clarified. The clarification was that the motion was solely for unfunded intergovernmental mandates, not for private sector mandates.

⁴⁰ H.Res. 5, agreed to in the House Jan. 7, 1997. During the 105th Congress, the House and Senate also passed the Budget Enforcement Act of 1997 (111 Stat. 251, 677), putting in place in title X of the act enforcement procedures to ensure compliance with laws having the goal of achieving a balanced budget by FY2002. For a brief description of the Budget Enforcement Act, see CRS Report 97-930, *The Budget Enforcement Act of 1997: A Fact Sheet*, by Robert Keith.

106th Congress. In the absence of a concurrent resolution agreed to by Congress on the budget for FY1999, a separate order included in the rules package authorized the chair of the Budget Committee to publish budget allocations under section 302(a) of the Congressional Budget Act in the *Congressional Record*, and stated that “those budget levels shall be effective in the House as though established by passage” of a budget resolution.⁴¹

A technical change conformed House rules to the Budget Enforcement Act of 1997, relating to oversight requirements of the Budget Committee, consideration of bills providing new entitlement authority, and submission of views and estimates on the President’s budget. Two technical changes were included in separate orders: service limits on the Budget Committee were waived for the 106th Congress, and a clarification was made concerning the text against a point of order that would lie under section 303 of the Congressional Budget Act.

107th Congress. The rules mechanism providing for automatic engrossment and transmittal to the Senate of a joint resolution to increase the debt limit, known as the Gephardt rule after former Representative Richard Gephardt, was repealed. The rule operated with congressional agreement to a concurrent resolution on the budget, and allowed the House to avoid a separate vote on debt-limit legislation.⁴²

As described in the section Rules Changes Affecting Committees, rules changes required the Appropriations Committee to include in reports on general appropriations bills additional information on unauthorized appropriations — a statement of the last year for which expenditures were authorized, the level authorized for that year, the actual level of spending for that year, and the level of appropriations in the current bill.

The separate order related to a point of order under section 303 of the Congressional Budget Act was repeated. Two additional technical changes were included in separate orders: The word “resolution” in section 306 of the Congressional Budget Act was interpreted to mean “joint resolution,” and not simple or concurrent resolution, and a provision of or amendment to legislation to create at federal office or position at a specified or minimum level of compensation and funded by annual appropriations was not to be considered as entitlement authority under the Congressional Budget Act.

108th Congress. In the absence of a concurrent resolution agreed to by Congress on the budget for FY2003, a separate order in H.Res. 5 established the provisions of H.Con.Res. 353 as having effect in the 108th Congress until congressional agreement to a FY2004 budget resolution. The chair of the Budget Committee was also directed to submit allocations under section 302(a) of the Congressional Budget Act for printing in the *Congressional Record*.⁴³

⁴¹ H.Res. 5, agreed to in the House Jan. 6, 1999.

⁴² H.Res. 5, agreed to in the House Jan. 3, 2001.

⁴³ H.Con.Res. 353, agreed to in the House March 20, 2002. The allocations may be found at Rep. Jim Nussle, remarks in the House, “Allocations of Spending Authority to House Committees,” *Congressional Record*, daily edition, vol. 149, Jan. 8, 2003, pp. H74-H75.

(continued...)

The separate order related to a point of order under section 303 of the Congressional Budget Act was repeated. Two additional separate orders were also repeated: The word “resolution” in section 306 of the Congressional Budget Act was interpreted to mean “joint resolution,” and a provision of or amendment to legislation to create a federal office or position was not to be considered as entitlement authority under the Congressional Budget Act.

Three provisions were described above in the section Rules Changes Affecting Committees:

- H.Res. 5 required the Ways and Means Committee to include in committee reports on measures amending the Internal Revenue Code a “macroeconomic impact analysis,” also known as “dynamic scoring,” by the Joint Taxation Committee. A macroeconomic impact analysis was defined as an estimate of “changes in economic output, employment, capital stock, and tax revenues expected to result from enactment of the proposal.” The joint committee’s analysis was also include a statement of assumptions and data sources. The reporting requirement could be waived if the Joint Taxation Committee certified that such analysis was not calculable, or the chair of the Ways and Means Committee inserted the analysis in the *Congressional Record* prior to the measure’s consideration by the House.
- Two provision of H.Res. 5 affected the Budget Committee’s makeup. The membership of the Budget Committee was changed to include one member of the Committee on Rules, codifying action taken in the Republican Conference’s early organization meetings.
- The term limitation for service as chair or ranking minority member of the Budget Committee was codified to six years, equal to the term limitation for other standing committee chairs.

Two rules changes were discussed above in the section Rules Changes Affecting the Chamber and Floor:

- H.Res. 5 reinstated the Gephardt rule. The House’s final vote on congressional agreement to a concurrent resolution on the budget was deemed also to be the vote on the joint resolution. The rules change also mandated that the Budget Committee’s report on the budget resolution and a joint explanatory to accompany a conference report contain a “clear statement of the effect the eventual enactment of a joint resolution engrossed under this rule would have on the statutory limit on the public debt.”⁴⁴

⁴³ (...continued)

For an analysis of the rules changes made in the 108th Congress that affected budgetary legislation, see CRS Report RL31728, *House Rules Affecting the Congressional Budget Process in the 108th Congress (H.Res. 5)*, by Bill Heniff Jr.

⁴⁴ For a history and analysis of the Gephardt rule, see CRS Report RL31913, *Developing Debt-Limit Legislation: The House’s “Gephardt Rule,”* by Bill Heniff Jr.

- H.Res. 5 also defined “tax or tariff provisions” vis-à-vis a general appropriation bill. Tax and tariff measures may not be reported from a committee not having jurisdiction over such a measure, and an amendment with tax or tariff provisions is not in order to a bill reported by a committee not having jurisdiction. The rules change provided that a tax or tariff measure “includes an amendment proposing a limitation on funds in a general appropriation bill for the administration of a tax or tariff.”

109th Congress. In the absence of a concurrent resolution agreed to by Congress on the budget for FY2004, a separate order in H.Res. 5 established the provisions of S.Con.Res. 95 as having effect in the 109th Congress until congressional agreement to a FY2005 budget resolution.⁴⁵

The separate order related to a point of order under section 303 of the Congressional Budget Act was repeated. Two additional separate orders were also repeated: The word “resolution” in section 306 of the Congressional Budget Act was interpreted to mean “joint resolution,” and a provision of or amendment to legislation to create a federal office or position was not to be considered as entitlement authority under the Congressional Budget Act.

As described above in the section Rules Changes Affecting Committees, H.Res. 5 contained a provision that one member of the majority party and one member of the minority party were to be “designated” by the respective elected leaderships as members of the Budget Committee. The rule that was amended had previously required the members to be “from” the elected leaderships.

Rules Changes Affecting Administration of the House

Rules changes from the 104th through the 107th Congresses affected the structure of the House’s administration and the relationships within it. Some offices were abolished, while others were created. Responsibilities were shifted, and accountability was clarified. Modern practices, such as financial audits, were put in place, and traditional practices, such as requirements for distribution of printed materials, were reformed in light of changed conditions, such as the proliferation of versatile desktop information technology.

Additional changes to the administration of the House have been implemented in all Congresses since the 104th Congress through other legislation, not covered here, including the annual legislative branch appropriations bills, and freestanding legislation, such as the House Administrative Reform Technical Corrections Act.⁴⁶

⁴⁵ H.Con.Res. 353, agreed to in the House March 20, 2002. For an analysis of the rules changes made in the 109th Congress that affected budgetary legislation, see CRS Report RS22021, *House Rules Affecting the Congressional Budget Process in the 109th Congress* (H.Res. 5), by Bill Heniff Jr.

⁴⁶ 110 Stat. 1718.

Many changes in the administration of the House, however, were taken at the initiative of the House leadership, the House Administration Committee or House Oversight Committee, the House Appropriations Committee, House officials, the House and Senate together, or legislative branch agencies. For example, in 1994, neither THOMAS nor the Legislative Information System existed, and the use of current information technology was not ubiquitous in the House. The World Wide Web was in its infancy, and use of e-mail was still somewhat novel. The BlackBerry® personal digital assistant was first introduced in 1999. The commitment to using information technology in the House was not generally effected through changes to House rules or specific provisions in legislation, but through initiatives exercised in various fora, including committee reports on legislation, joint explanatory statements accompanying conference reports, and actions of the House Administration Committee not requiring House consideration.

Again, this report analyzes the rules, special orders, and Speaker's announcements at the convening of a Congress and not all of the actions taken during a Congress.⁴⁷

104th Congress. Some of the most wide-ranging changes implemented with the convening of the 104th Congress were in the area of administration of the House. In the 104th Congress rules adopted by the House, the House abolished the position of the director of non-legislative and financial services and created the chief administrative officer, who would be elected by the House. The chief administrative officer (CAO) took over the duties of the abolished position and other duties as assigned by the Speaker or House Oversight Committee (formerly the House Administration Committee), and was made subject to the policy direction and oversight of the Speaker and House Oversight Committee.⁴⁸

⁴⁷ Changes affecting the administration of the House are regularly included in the annual legislative branch appropriations bills and in accompanying committee and conference reports. Beginning with the 104th Congress, the legislative branch appropriations bills are as follows:

- (1) 104th Congress: P.L. 104-53 (FY1996); and P.L. 104-197 (FY1997).
- (2) 105th Congress: P.L. 105-55 (FY1998); and P.L. 105-275 (FY1999).
- (3) 106th Congress: P.L. 106-57 (FY2000); and P.L. 106-554 (FY2001), an omnibus appropriations act incorporating by reference H.R. 5657, as introduced on December 14, 2000.
- (4) 107th Congress: P.L. 107-68 (FY2002); and P.L. 108-7 (FY2003), an omnibus appropriations act, with legislative branch appropriations appearing as Division H.
- (5) 108th Congress: P.L. 108-83 (FY2004); and P.L. 108-447 (FY2005), an omnibus appropriations act, with legislative branch appropriations appearing as Division G.
- (6) 109th Congress: P.L. 105-55 (FY2006); and H.R. 5521, passed the House June 7, 2006.

⁴⁸ H.Res. 6, agreed to by the House Jan. 4, 1995. The position of director of non-legislative and financial services had been created by the House Administrative Reform Resolution of 1992 (H.Res. 423), agreed to by the House April 9, 1992. For information on administrative changes during the 104th Congress, see CRS Report 96-764, *House Administrative Reorganization: 104th Congress*, by Paul S. Rundquist and Lorraine H. Tong. Archived, available from author upon request.

The rules also abolished the Office of the Doorkeeper, and folded the doorkeeper's duties into the Office of the Sergeant at Arms.⁴⁹

The rules strengthened the accountability of the House officers to the House Oversight Committee. All House officers were required to report semiannually to the committee with financial statements and an explanation of their office's operations, implementation of new policies and procedures, and future plans.

The House inspector general was directed in the rules to conduct a "comprehensive audit of House financial records and administrative operations" during the 104th Congress, and was authorized to contract with independent auditing firms to conduct the audit. The inspector general's authority was broadened to cover audits of the financial and administrative functions of the House and joint entities, not just those under the former director of non-legislative and financial services. The inspector general was also required to report to the Standards of Official Conduct Committee any violations of House rules or laws by Members, officers, or employees of the House committed in the performance of official duties.

The rules package also contained a special rule making in order the consideration of the Congressional Accountability Act (H.R. 1), and setting the terms of its debate and amendment. Making Congress subject to various federal labor and antidiscrimination laws was a provision of the Republican Contract with America.⁵⁰ The Congressional Accountability Act — applying 11 labor and antidiscrimination laws to Congress and the legislative branch and establishing the Office of Compliance as an independent entity within the legislative branch — became the first enactment of the 104th Congress.⁵¹

With the abolition by the rules of the Post Office and Civil Service Committee, that committee's jurisdiction over franking and congressional mail regulations was transferred to the House Oversight Committee. The House Oversight Committee's Subcommittee on Administrative Oversight, created in the 102nd Congress, was also abolished.⁵²

⁴⁹ In the FY1996 Legislative Branch Appropriations Act (P.L. 104-53), Congress also terminated the Office of Technology Assessment, a legislative branch agency, and made the first cut toward a planned 25-percent reduction in resources for the General Accounting Office (now the Government Accountability Office), another legislative branch agency.

⁵⁰ The text of the Contract with America can be found at [<http://www.house.gov/house/Contract/CONTRACT.html>], visited Aug. 2, 2006.

⁵¹ 109 Stat. 3. For information on the Congressional Accountability Act, see CRS Report 95-557, *Congressional Accountability Act of 1995*, by Charles Dale, Robin Jeweler, Nancy Lee Jones, Jay R. Shampansky, Kathleen S. Swendiman, and Vincent Treacy. Archived; available from Ms. Jones on request.

⁵² The subcommittee was created by the House Administrative Reform Resolution of 1992 (H.Res. 423), agreed to by the House April 9, 1992.

Legislative service organizations (LSOs) were prohibited, and the House Oversight Committee was authorized to “take such steps as are necessary to ensure an orderly termination and accounting for funds” of LSOs then in existence.⁵³

105th Congress. The Speaker, in consultation with the minority leader, was directed to develop “through an appropriate entity of the House” a system of drug testing that could provide for testing of Members, officers, or employees.⁵⁴

The chief administrative officer was made subject to the policy direction and oversight of only the House Oversight Committee. The Speaker was no longer also designated in the rule.

The House authorized the inclusion of a committee reserve fund for unanticipated expenses in a primary expense resolution, to be allocated on the approval of the House Oversight Committee.

The chair and ranking minority member of the House Oversight Committee must jointly approve the amount of a proposed settlement between an employee complainant under the Congressional Accountability Act and the employing House office.

Rule LI, Employment Practices, was repealed as obsolete, having been superseded by the Congressional Accountability Act.

106th Congress. Three largely technical changes to the House rules were made in the 106th Congress.⁵⁵ First, a clarification was made that the Speaker appoints and sets the annual rate of pay for employees of the Office of the Historian. Second, the requirement that a House employee must perform duties commensurate with his or her compensation “in the offices of the employing authority” was amended to conform with federal statutes allowing telecommuting. Finally, to conform the rules with changes in House officials’ duties made earlier, “chief administrative officer” was substituted for “clerk” as the entity responsible for disbursing pay.

As noted earlier, the House Oversight Committee’s earlier name was restored: House Administration Committee.

107th Congress. The House Administration Committee’s responsibilities to examine House-passed bills, joint resolutions, and amendments and enrolled bills and joint resolutions were transferred to the clerk of the House. In cooperation with the Senate, the clerk examines bill and joint resolutions passed by both houses to ensure their correct enrollment, and presents enrolled bills and joint resolutions

⁵³ The House Oversight Committee subsequently authorized “congressional member organizations” that were informal, in that they had no corporate identity. See CRS Report RL30301, *Informal Congressional Groups and Members Organizations: Selected Questions and Responses*, by Sula Pat Richardson.

⁵⁴ H.Res. 5, agreed to by the House Jan. 7, 1997.

⁵⁵ H.Res. 5, agreed to by the House Jan. 6, 1999.

originated in the House to the President, after obtaining the signatures of the Speaker and the President of the Senate.⁵⁶

The clerk was also authorized to distribute certain documents and other materials in nonprint forms. References to “print...,” “binding,” and “mail” were struck from the rule listing the documents.

The clerk, sergeant at arms, and chief administrative officer were made subject only to the oversight of the House Administration Committee. Only the inspector general is subject to the committee’s policy direction.

Rules addressing responses to the legal process were clarified to indicate that they applied to both judicial and administrative subpoenas and to judicial orders.

Rules Changes Affecting Ethics Standards

The rules packages before the House at the beginning of each Congress since the 104th Congress largely dealt with technical matters. Substantive changes were achieved at other times through House resolutions and new laws — many of them consequential and far-reaching — and through the parties’ revisions of their own rules. The House Committee on Standards of Official Conduct also regularly issues advisory memoranda and provides other assistance interpreting the ethical standards applicable to Members, officers, and employees of the House.

The ethics changes made in the rules package at the beginning of the 109th Congress, however, proved controversial, and the House rescinded those changes and reinstated the text of the ethics rules from the 108th Congress within four months. A dispute between the majority and minority over committee rules and staffing also delayed the organization of the Standards of Official Conduct Committee in the 109th Congress.⁵⁷

Again, this report analyzes the rules, special orders, and Speaker’s announcements at the convening of a Congress and not all of the actions taken during a Congress.

104th Congress. Democrats sought to commit a special rule (H.Res. 5) making in order the consideration of the Republican rules package (H.Res. 6) and setting the terms of its consideration. The motion to commit H.Res. 5 contained instructions to report the resolution back forthwith with the addition of a new section to H.Res. 6 relating to a ban on gifts from lobbyists and limitations on Members’ royalty income. The motion was defeated. At the conclusion of consideration of H.Res. 6, Democrats then sought to commit H.Res. 6 to a select committee, with instructions to report the resolution back forthwith with the addition of new sections

⁵⁶ H.Res. 5, agreed to by the House Jan. 3, 2001.

⁵⁷ See, for example, Susan Ferrechio, “Democrat Berman Brings Experience, Different Style to Stymied Ethics Panel,” *CQ Today*, May 2, 2006, pp. 3, 33; and Susan Ferrechio, “House Ethics Committee Members Finally Agree on Hiring of Top Staffer,” *CQ Today*, Nov. 4, 2005, p. 3.

relating to a ban on gifts from lobbyists, limitations on Members' royalty income, and changes to several provisions of H.Res. 6. The motion was defeated.⁵⁸

105th Congress. A rules change and an item included in the Speaker's announcements further regulated activities in the House chamber and in the rooms adjacent to the chamber. Under the rules change, Members, officers, employees, and others, such as former Members, entitled to admission to the House chamber or an adjoining room were proscribed from "knowingly" distributing a campaign contribution.⁵⁹

An announcement first made by the Speaker on August 1, 1996, was included in the Speaker's announcements for the 105th Congress. The announcement concerned the meaning of then-Rule XXXII, cl. 3, which allows former Members and other former officials access to the House floor unless they have a personal interest in legislation pending before the House or reported from committee, or are employed to lobby on legislation pending before the House, reported from committee, or under consideration by a committee or subcommittee. The announcement reiterated these prohibitions against access by former Members, indicated they applied to former Members whose employer is lobbying legislation, and stated that former Members could be prohibited from the House floor or the adjoining rooms.⁶⁰

A rules change also extended until January 21, 1997, the existence of a Select Committee on Ethics, established in the 104th Congress, to allow it to complete its work and make any recommendations to the House on a statement from an investigative subcommittee of the Standards of Official Conduct Committee related to the official conduct of Speaker Newt Gingrich.⁶¹

106th Congress. A change included in the 106th Congress rules package allowed lower-paid House employees to receive honoraria for activities not related to their official duties.⁶²

⁵⁸ "Making in Order Immediate Consideration of House Resolution Adopting the Rules of the House of Representatives for the 104th Congress" and "Rules of the House," *Congressional Record*, daily edition, vol. 141, Jan. 4, 1995, pp. H9-H90.

The House on Nov. 16, 1995, agreed to H.Res. 250 prohibiting gifts to Members, officers or employees, except as provided for in the new rule created by the resolution. The House on Dec. 22, 1995, agreed to H.Res. 299, regulating Members' book contracts, royalties, and advances. In the 104th Congress, Congress also passed the Lobbying Disclosure Act of 1995, signed into law Dec. 19, 1995 (109 Stat. 691), superseding the Regulation of Lobbying Act, title III of the Legislative Reorganization Act of 1946 (60 Stat. 812, 839).

⁵⁹ H.Res. 5, agreed to in the House Jan. 7, 1997. Congress also passed the Lobbying Disclosure Technical Amendments Act (P.L. 105-166).

⁶⁰ "Announcement by the Speaker Pro Tempore on Procedures for the 105th Congress," *Congressional Record*, daily edition, vol. 143, Jan. 7, 1997, pp. H32-H34.

⁶¹ The House also on Sept. 18, 1997, agreed to H.Res. 168, implementing the recommendations of the bipartisan House Ethics Reform Task Force.

⁶² H.Res. 5, agreed to in the House Jan. 6, 1999.

The rules package also contained a special rule making in order the consideration of a resolution to amend recodified Rule XXVI, cl. 5, the House gift rule. Subsequently, the House agreed to H.Res. 9 allowing the acceptance of a gift of less than \$50 in value and of gifts from one source that were cumulatively valued at less than \$100. A gift of less than \$10 value does not count toward the \$100 limit.⁶³

The operating procedures of the Standards of Official Conduct Committee included in H.Res. 168 were made a separate order of the House.

The Speaker's 1996 announcement on access by former Members with an interest in legislation was again included in Speaker's announcements of policies.⁶⁴

107th Congress. The 107th Congress House changed the Code of Official Conduct rule pertinent to the House's employment of spouses, strengthening or clarifying the meaning of 5 U.S.C. §3110 in relation to personal office and committee employment. Beginning with the 107th Congress, a Member could not employ his or her spouse in a paid position, and a committee employee could not be compensated if his or her spouse was a member of that committee.⁶⁵

The rules changes also contained technical corrections to the meaning of various terms, such as "officer," in the gift rule to ensure the rule covered all House employees.

The operating procedures of the Standards of Official Conduct Committee included in H.Res. 168 were again made a separate order of the House.

108th Congress. The rules changes for the 108th Congress removed a prohibition related to outside earned income, affected accounting for the value of gifts of perishable food to an congressional office, and allowed reimbursement for transportation and lodging to attend a charitable event in certain circumstances.⁶⁶ The practice of medicine was exempted from the restriction on professional services involving a fiduciary relationship. A Member, therefore, was allowed to earn outside income, including from the practice of medicine, of up to 15 percent of his or her congressional pay.⁶⁷ The value of a gift of perishable food was to be allocated among

⁶³ "House Gift Rule Amendment," *Congressional Record*, daily edition, vol. 145, Jan. 6, 1999, pp. H208-H211.

⁶⁴ "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 145, Jan. 6, 1999, pp. H218-H220. This statement was also included in the Speaker's announcements in each subsequent Congress.

⁶⁵ H.Res. 5, agreed to in the House Jan. 3, 2001. In the second session, Congress (1) passed the Bipartisan Campaign Reform Act (P.L. 107-155), and (2) expelled Rep. James Traficant, with in excess of two-thirds of the House voting favorably July 24, 2002, for H.Res. 495.

⁶⁶ H.Res. 5, agreed to in the House Jan. 7, 2003.

⁶⁷ In a subsequent letter to Speaker Hastert and Minority Leader Pelosi, the chair and ranking minority member of the Standards of Official Conduct Committee stated their belief that such an exemption would require amendment of the Ethics Reform Act of 1989 (103 Stat. 1716, 1760). Joel Hefley and Alan Mollohan, letter to Speaker Dennis Hastert and Minority (continued...)

the individual recipients of an office rather solely to the Member whose office received the gift.

The prohibition on accepting reimbursement for transportation and lodging to attend a charitable event is waived if five conditions are met: the offer of free attendance was made by the charity benefitting from the event, the reimbursement was paid by that charity, the charity is a 501(c)(3) organization under the Internal Revenue Code, all net proceeds of the event are for the benefit of the charity, and the net proceeds are exempt from taxation under section 501(a) of the Internal Revenue Code.⁶⁸

The rules changes also incorporated into the rules the operating procedures for the Standards of Official Conduct Committee that were part of H.Res. 168 agreed to in the 105th Congress and that had existed as a separate order of the House in the 106th and 107th Congresses.

109th Congress. Some planned changes to House ethics procedures and standards were deleted from the rules package placed before the House shortly before House consideration. Some changes, however, were retained in H.Res. 5.⁶⁹ One change required a Member named in a complaint, or a Member whose official conduct was referenced in certain communications to or from the committee, to be notified before specified actions by the Standards of Official Conduct Committee. Once notified, the Member would then be able to submit written views or to request the creation of an adjudicatory subcommittee. A second change provided for the dismissal of a complaint after 45 days if an affirmative decision to establish an investigative subcommittee had not been made. A third change allowed a Member to have the same attorney as another Member or witness in an investigation.⁷⁰

Although Members are prohibited from maintaining unofficial congressional office accounts or using campaign funds to pay for office expenses such as

⁶⁷ (...continued)

Leader Nancy Pelosi, Dec. 8, 2003, available online at [http://www.house.gov/ethics/m_letter_on_medical_practice.htm], visited Aug. 2, 2006.

⁶⁸ H.Res. 5, agreed to in the House Jan. 7, 2003. For information on ethics changes in the 108th Congress, see CRS Report RS21439, *House Ethics Rules Changes in the 108th Congress*, by Mildred Amer.

⁶⁹ H.Res. 5, agreed to by the House Jan. 4, 2005. In addition, the House on Feb. 1, 2005, agreed to H.Res. 648, prohibiting former Members and others entitled to floor privileges from the floor if the person is a registered lobbyist or foreign agent; such individuals are also excluded from the House gym. The House and Senate have also passed lobby reform legislation (H.R. 4975 and S. 2349, respectively). For information on ethics changes in the 109th Congress, see CRS Report RS22034, *House Ethics Rules Changes in the 109th Congress*, by Mildred Amer.

⁷⁰ The House restored the earlier text of the ethics rule (Rule XI, cl. 3) changed by H.Res. 5 when it agreed April 27, 2005, to a special rule (H.Res. 241) providing for the adoption of H.Res. 240, which contained the earlier text of the ethics rule. For background, see Alan K. Ota, "No Pat on the Back for GOP as Intraparty Issues Dominate," *CQ Weekly*, Jan. 10, 2005, pp. 66-70; and Susan Ferrechio, "House Ethics: Republicans Blink," *CQ Weekly*, May 2, 2005, pp. 1144-1145.

information technology services, an earlier change in law allowed Members to use certain campaign funds for “handheld communications devices,” such as BlackBerries® and cell phones. The rules change conformed the House rule (Rule XXIV, cl. 1) to existing law, including the use of campaign funds for handheld communications devices (2 U.S.C. §59e(d)).

Another rules change also conformed House rules to federal law (39 U.S.C. §3210) by proscribing a Member who is a candidate in a primary or general election from sending a franked mass mailing less than 90 days before the election. The rule previously contained a 60-day limit.

Another rules change permitted family members other than a spouse or child to accompany a Member on privately funded, official travel.

Concluding Observations

As said earlier in this report, the House rules changes made in the 104th Congress, and since, including changes affecting the organization of committees and the administration of the House, reflected a Republican frame of reference that was built over many years as the minority party. Republican criticisms of changes in the House made at the direction of the Democratic Caucus beginning after the 1974 election and continuing through the 103rd Congress, the ideas of the Conservative Opportunity Society in the 1980s, the Republican ‘92 Group, the Republican rules package of the 103rd Congress, the recommendations of the bipartisan Joint Committee on the Organization of Congress, the Contract with America, and other sources came together in the rules package the Republicans put before the House in the 104th Congress.

The Republican majority continued to draw on these antecedents in rules packages for subsequent Congresses. The extensive changes of the 104th Congress were followed by incremental changes in the 105th, 106th, and 107th Congresses. At the same time, a number of rules did not change, either at all or substantially. The great bulk of House rules was continued from Congress to Congress since the rules had been built up over decades to support the majority in its organization and operation of the House.

After control of four Congresses, however, a confluence of events caused the Republicans to revisit the rules and some of the changes they had made. With the events of 9/11 and anthrax attacks on Capitol Hill, publication of the 9/11 Commission report, the return of the federal budget deficit, a Republican President in the White House and Republican control of both houses of Congress, and a widening of Republican margins in the House and Senate, House Republicans made more extensive changes in House rules in the 108th and 109th Congresses.

In these Congresses, the Republican majority adapted to changed conditions. They adjusted to the end of the first round of committee chair term limits, discontinued the Speaker’s term limit, accommodated demands for additional subcommittees, created a Homeland Security Committee and altered other committees’ jurisdictions vis-à-vis homeland security, realigned Appropriations Committee subcommittees to handle homeland security spending and then

reorganized the subcommittees to better handle Republican spending priorities, implemented new analyses of tax legislation, grappled with the possibility of a terrorist attack that could kill or disable many Representatives, and picked their way through ethical breaches by both Democratic and Republican Members.

Through actions intended to open up Congress, and especially the House — including the advent of THOMAS, putting documents online at committee and other websites, and “webcasting” — Congress allowed more citizens to know more, and to know more quickly, about Congress, and, concomitantly and unavoidably, readily gave lobbyists and political activists more knowledge and insight into Congress and policymaking. Committee and floor actions were increasingly accompanied by intense lobbying, grassroots communications, public relations, and coverage 24/7 by an array of traditional and new news and opinion outlets in a variety of media. Most Members also felt compelled to be in their districts three or four days every week, and many full weeks, making themselves available to their constituents.

The cost of campaigns and the pressure to raise money for their parties, too, opened many Members to more contact with more people who became interested in an individual Member’s actions. Congressional districts have become more politically homogeneous through redistricting, and fewer voters are registering by party, leaving arguably a more politically homogeneous set of voters voting in each party’s primaries.

Rules changes do not necessarily enable a majority to pass legislation, to keep all the party’s Members together, to work smoothly with the minority, to achieve the same outcomes as the other body, or to overcome voter sentiments. Rules facilitate the majority’s organization and operation of the House, but they do not dictate to party leaders and others how to run the House. In more recent Congresses, the Republican majority needed to accommodate a wider, more assertive range of Republican Members’ perspectives, and to deal with an emboldened minority. Consequently, the number of open — and modified open — special rules diminished and the number of structured rules increased, a third day for the consideration of legislation by suspension of the rules was added, fewer days were spent in session, more competition over jurisdiction between committees occurred, and some measures passed by the House could not pass the Senate and convening conferences between the chambers was sometimes problematic.

Despite the extensive rules changes in the House since the 104th Congress, the House remains one of the two independent political institutions of Congress, designed to be so by the Framers. Interest balances interest, as noted in *The Federalist Papers*, and unless there is majority political will — not necessarily a party majority but a majority of Members of each house — to take an action, such as make a specific law, that action will not happen. One role of Congress is to make law, but its larger role is to winnow the proposals about what should be law — because some proposals are bad ideas or lack public support or offend a constituency or cost too much or are impractical or are for some other reason unable to generate the needed majorities. If rules — in the broadest sense, not House special rules — allow opportunities for all Members to participate at all stages of the legislative process, in both chambers, then the Framers’ system would be viewed by many as working.

In looking to the future, it is a telling statistic that 60% of Representatives, Delegates, and the Resident Commissioner have not known another set of rules and operational frame of reference than the one that has existed since the 104th Congress. Of the 438 Members of the House in August 2006, 265 sitting Members began their service in the 104th or a later Congress — 153 Republicans and 112 Democrats. Another 16 Members, so far, whose service began in the 103rd Congress or before, will be leaving the House, and there are currently two vacancies.

Rules changes are likely to be incremental rather than extensive with a Republican majority or at some future time with a Democratic majority. Looking to the very next Congress, the package of rule changes presented by the majority party would take into consideration the size of the party majority. The changes would need to balance that fact, and protect minority prerogatives, against the need to govern. A Republican House might consider further committee jurisdictional realignments, more changes to the budget process, incremental changes to reduce the number of times the minority might make certain motions or introduce certain resolutions, and other adjustments to House rules. A Democratic House would likely consider whether to abolish some changes made by the Republicans, giving consideration to the circumstance that nearly 60% of the Democratic Caucus is junior enough not to have served in the majority. Observers question whether Democrats might eliminate committee chairs' term limits, return some degree of autonomy to subcommittees, restore proxy voting, or use more open special rules.

The House majority party would also need to consider majority control of the Senate as it contemplates a rules package. The House majority party might contemplate the party arrangements and the effectiveness of the President and Congress over the past 25 years. President Reagan began with a Republican Senate and Democratic House and ended with a Democratic Congress. President George H.W. Bush held office with a Democratic Congress. President Clinton began office with a Democratic Congress and served most of his two terms with a Republican Congress. President George W. Bush has served only with a Republican Congress, except for a portion of the 107th Congress when Democrats controlled the Senate. The Presidents have succeeded and failed with their major policy initiatives under each arrangement.

The rules of the House do not exist to achieve a specific legislative result. They are available to all Members and to any majority. Many factors besides party control, and the party's use of rules, affect the congressional environment. To look back in history, Speaker Thomas Bracken Reed could be said to have created the modern, majority-minority House with his rulings, but he could not have contemplated how a very strong Speaker like Joseph Cannon would use the Speakership to dominate the House. The Corrections Calendar was announced with great fanfare when it was created in 1995; it had long been moribund when it was terminated in the rules package for the 109th Congress. As noted in the report, the consideration of legislation under suspension of the rules was a minor procedure 40 years ago; now motions to suspend the rules are in order Mondays, Tuesdays, and Wednesdays when the House is in session. The Congressional Budget Act of 1974 called for two budget

resolutions each year; the procedure was impractical and hugely time consuming and was abandoned.⁷¹

The House rules — the common language of the House — are very important components of governance, and they exist for all Members and all majorities to use.

⁷¹ Exogenous developments also affect Congress. For example, the installation of air conditioning in the Capitol complex after World War II made it thinkable to spend the summer and fall in Washington, DC; the jet plane and the growth of air travel made it possible for most Members to go home weekends and to have their families live at home rather than in the Washington, DC, area; and the World Wide Web, e-mail, and other information technology advances have connected probably every Member and his or her staff with the Member's constituents (and anyone else) to receive and send communications.