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Changes to House Rules Affecting the Congressional Budget Process Included in H.Res. 6 (116th Congress)

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On January 3, 2019, the House adopted Title I of H.Res. 6, the standing rules for the House of Representatives for the 116th Congress. In addition to the standing rules, H.Res. 6 included a separate order related to the consideration of appropriations bills. This report provides information on changes to both the standing rules and separate orders that might affect the consideration of budgetary legislation in the House of Representatives. These include the following:

- Deleting language in Rule X added in the 115th Congress providing for committees to include a review of authorizations for programs or agencies within their jurisdiction in their oversight plans.
- Deleting language in Rule XIII, previously adopted in the 114th and 115th Congresses, requiring that any budgetary estimates provided by the Congressional Budget Office (CBO) include, to the extent practicable, a macroeconomic impact analysis (often referred to as “dynamic scoring”) as well as a requirement that any estimate provided to CBO by the Joint Committee on Taxation also include a macroeconomic impact analysis.
- Deleting language added to Rule XXI in the 104th Congress requiring the vote of a three-fifths majority to approve a federal income tax rate increase as well as a requirement in Rule XX to automatically order the yeas and nays for a vote of the House on such measures.
- Establishing new language as Rule XXVIII providing for certain measures concerning the debt limit to automatically be engrossed and deemed to have been passed by the House. This measure would suspend the debt limit through the end of the budget year in the concurrent resolution on the budget (but not through the period covered by any outyears beyond the budget year). The engrossed measure would then be transmitted to the Senate for further action. This rule is similar to language that was previously part of House rules from the 96th-107th Congresses (known as the “Gephardt Rule”).
- Reestablishing a PAYGO requirement in the House, which had previously been in effect during the 110th and 111th Congresses. This PAYGO rule (Rule XXI, clause 10) replaces the CUTGO rule that was a part of Rule XXI between the 112th and 115th Congresses. The new rule prohibits the consideration of direct spending or revenue legislation that is projected to increase or cause a deficit in either of two time periods: (1) the period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years following the budget year or (2) the 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years following the budget year. The rule applies to any bill, joint resolution, amendment, motion, or conference report that affects direct spending or revenues.

H.Res. 6 also included a separate order establishing a limit on advance appropriations, defined as applying to funding provided in FY2019 appropriations acts that are to become available in any fiscal year following FY2019.

In addition, several separate orders from previous congresses are not included in H.Res. 6 for the 116th Congress. These include

- language prohibiting House consideration of measures estimated by CBO as causing a net increase in spending in excess of \$5 billion in any of the four 10-year periods beginning with the fiscal year 10 years after the current fiscal year,
- two points of order that previously supplemented the point of order in Section 302(f) of the Congressional Budget Act of 1974 as a means for enforcing 302(b) suballocations,
- language requiring that appropriations bills include a spending reduction account, and
- language allowing certain legislative amendments in appropriations bills (known as the “Holman Rule”).

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At the beginning of each Congress, the House of Representatives must adopt rules to govern its proceedings. The House does this by readopting the rules of the previous Congress along with any changes that will apply in the new Congress. On January 3, 2019, the House considered and adopted H.Res. 5, a resolution providing for the consideration of H.Res. 6, including separate votes on each of the three titles comprising H.Res. 6. Title I, the standing rules for the House of Representatives for the 116th Congress, was adopted by a vote of 234-197 on January 3, 2019.¹ In addition to the standing rules, H.Res. 6 includes several additional provisions, called separate orders, that also govern proceedings in the House. A number of the provisions adopted both as part of the standing rules of the House and as separate orders might affect the consideration of budgetary legislation. In many cases, these provisions are similar to provisions adopted in previous Congresses. This report provides information on changes to both the standing rules and separate orders that might affect the consideration of budgetary legislation in the House of Representatives during the 116th Congress.

Rules Change Related to Authorizations

The 104th Congress (1995-1996) added a provision to clause 2(d) of House Rule X that required that each standing committee adopt (by February 15 of the first session of a Congress) its own oversight plan for the Congress. H.Res. 5 (115th Congress) added language specifically requesting that committees review authorizations for programs or agencies within their jurisdiction. *This language was dropped from Rule X for the 116th Congress.*

Rules Change Related to Budget Estimates

A provision was added to House rules in the 105th Congress that authorized the chair of the Committee on Ways and Means to request the Joint Committee on Taxation to prepare a dynamic estimate of revenue changes proposed in a measure designated by the majority leader as major tax legislation. In the 108th Congress, this provision was modified to establish a point of order against the consideration of a measure reported from the Committee on Ways and Means to amend the Internal Revenue Code of 1986 unless the report included a macroeconomic impact analysis (often referred to as “dynamic scoring”) or an explanation of why such an analysis was not calculable. In the 114th Congress, this provision was supplanted by a requirement that any budgetary estimates provided by the Congressional Budget Office (CBO) include, to the extent practicable, a macroeconomic impact analysis as well as a requirement that any estimate provided to CBO by the Joint Committee on Taxation also include a macroeconomic impact analysis.² *This language was dropped from Rule XIII for the 116th Congress.*

Rule Change Related to the Passage of Certain Revenue Legislation

A provision was added to House rules in the 104th Congress that required the vote of a three-fifths majority to approve a federal income tax rate increase. In the 105th Congress, this provision was modified to clarify its application. *This language was dropped from Rule XXI for the 116th Congress.*

¹ Title II, establishing a Select Committee on the Modernization of Congress, was adopted by a vote of 418-12 on January 4, 2019. Title III, concerning House intervention in litigation involving the Patient Protection and Affordable Care Act, was adopted by a vote of 235-192 on January 9, 2019.

² For more information on “dynamic scoring,” see CRS Report R43381, *Dynamic Scoring for Tax Legislation: A Review of Models*, by Jane G. Gravelle; and CRS In Focus IF10632, *Key Issues in Tax Reform: Dynamic Scoring*, by Jane G. Gravelle.

In addition, a requirement in House Rule XX to automatically order the yeas and nays for a vote of the House on such measures was also dropped for the 116th Congress.

Rule Change Related to the Consideration of Public Debt Legislation³

A limit on the public debt is fixed by law⁴ and may be changed or suspended by enactment of a bill or joint resolution. A former rule of the House (known as the “Gephardt rule” after Representative Richard Gephardt of Missouri) provided for a measure to amend the debt to automatically be engrossed and deemed to have been passed by the House by the same vote as the adoption by the House of a conference report on a concurrent resolution on the budget setting forth a level of the public debt different from the existing statutory limit, thereby avoiding the need for a separate vote on the debt limit. The engrossed measure would then be transmitted to the Senate for further action.

This rule was first added to the standing rules of the House as Rule XLIX by P.L. 96-78,⁵ although it was renumbered as Rule XXVIII as part of the recodification of House rules in the 106th Congress. In several instances in the 104th-106th Congresses the rule was suspended so that it did not provide for the automatic engrossment of legislation based on changes in the public debt in concurrent resolutions. The rule was repealed in the 107th Congress, reinstated in the 108th Congress, and repealed again in the 112th Congress.

H.Res. 6 established a similar requirement as House Rule XXVIII. This new language provides for a measure to automatically be engrossed and deemed to have been passed by the House by the same vote as the adoption by the House of the concurrent resolution on the budget setting forth a level of the public debt different from the existing statutory limit. Rather than a specific level of debt, this measure would suspend the debt limit through the end of the budget year for the concurrent resolution on the budget (but not through the period covered by any outyears beyond the budget year). As with the earlier version of the rule, the engrossed measure would then be transmitted to the Senate for further action.

Rule Changes Related to the Consideration of Revenue and Direct Spending Legislation

The “PAYGO” Rule⁶

H.Res. 6 reestablished a PAYGO requirement in the House, which had been in effect during the 110th and 111th Congresses.⁷ The new PAYGO rule (Rule XXI, clause 10) prohibits the consideration of direct spending or revenue legislation that is projected to increase or cause a deficit in either of two time periods: (1) the period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years following the budget year or (2) the 11-year period

³ See CRS Report RL31913, *Debt Limit Legislation: The House “Gephardt Rule”*, by Bill Heniff Jr.

⁴ 31 U.S.C. §3101.

⁵ The provision was originally applicable to concurrent resolutions on the budget beginning with FY1981 but was subsequently made applicable to a third resolution for FY1980 by H.Res. 642 (96th Congress).

⁶ See CRS Report R41510, *Budget Enforcement Procedures: House Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

⁷ The House’s first PAYGO rule was contained in the House’s rules package for the 110th Congress in Section 405 of H.Res. 6. Title IV was considered separately and adopted by the House on January 5, 2007, by a vote of 280-152. (All five titles of H.Res. 6 were adopted by the House and took effect on that day.)

consisting of the current year, the budget year, and the ensuing nine fiscal years following the budget year. The rule applies to any bill, joint resolution, amendment, motion, or conference report that affects direct spending or revenues.

The House PAYGO rule replaced the House CUTGO rule that was adopted by the House at beginning of the 112th Congress and was in effect through the end of the 115th Congress. The CUTGO rule prohibited the consideration of any legislation that would have the net effect of increasing direct spending over the same two time periods noted above.

Under the House PAYGO rule, one or more provisions in a measure may be exempted from the rule by being designated as an “emergency.” Section (c) of the rule states that the exemption may apply to any legislative text designated as an emergency within a bill or joint resolution, an amendment made in order as original text by a resolution reported from the House Committee on Rules, a conference report, or an amendment between the Houses.⁸ The exemption does *not* apply to other amendments even if the amendment includes an emergency designation.

The House PAYGO rule also provides flexibility by allowing two measures that have been combined to “offset” one another so long as their net effect would comply with the rule. Specifically, Section (b) of the rule states that in the event that a resolution reported from the House Committee on Rules directs the Clerk of the House to add legislative text (that has already passed the House) as new matter to another piece of legislation, the legislative provisions can be evaluated together for compliance with the rule.

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

Language prohibiting House consideration of legislation that would cause a long-term increase in spending was previously adopted by the House as a separate order in the 112th and 115th Congresses and adopted in budget resolutions in the 113th Congress (H.Con.Res. 96) and 114th Congress (S.Con.Res. 11). This language generally required CBO to estimate whether certain legislation would cause a net increase in spending in excess of \$5 billion in any of the four 10-year periods beginning with the fiscal year 10 years after the current fiscal year and also prohibited the House from considering legislation that would cause such an increase. *This language was not included in H.Res. 6.*

Rule Changes Related to the Consideration of Appropriations Legislation

Limiting Advance Appropriations

Although budget authority for most federal programs is provided through annual appropriations actions that allow those funds to be obligated during the ensuing fiscal year, funding for certain programs is provided with a different period of availability. The term *advance appropriations* is applied to funds that will become available for obligation one or more fiscal years after the budget year covered by the appropriations act.⁹

⁸ In the event that an emergency designation is included in one of the types of legislation, the rule requires that the presiding officer put the question of consideration with respect to the underlying legislation.

⁹ For more information on advance appropriations, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*, by Jessica Tollestrup.

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

In the 116th Congress, a separate order prohibits advance appropriations that exceed (1) \$28,852,000,000 for FY2020 in new budget authority for programs or activities identified in a list submitted to the *Congressional Record* by the chair of the Budget Committee under the heading "Accounts Identified for Advance Appropriations" and (2) \$75,550,600,000 for FY2020 in new budget authority for programs and activities identified under the heading "Veterans Accounts Identified for Advance Appropriations." *Advance appropriation* is defined in the provision to apply to funding provided in FY2019 appropriations acts that are to become available in any fiscal year following FY2019.

Enforcing Spending Limits

A point of order under Section 302(f) of the Congressional Budget Act prohibits the consideration of measures or amendments that would cause the measure to exceed an allocation made pursuant to Section 302(a) or, in the case of appropriations bills, a suballocation pursuant to Section 302(b). In addition, as a consequence of this point of order, Members may offer amendments to increase the amount of budget authority in an appropriations bill only if it included budget authority less than the level of the applicable 302(b) suballocation, or if it was accompanied by one (or more) provisions that could serve as an offset.¹⁰

This point of order was previously supplemented by a separate order—first adopted during the 109th Congress (2005-2006) as a freestanding resolution (H.Res. 248)—providing that a motion that the Committee of the Whole rise and report an appropriations bill to the House is not in order if the bill, as amended, exceeds the applicable 302(b) suballocation. This provision was adopted as a separate order for the 110th-115th Congresses, but *it is not applicable for the 116th Congress*.

The House also previously supplemented enforcement of 302(b) suballocations through language prohibiting amendments to general appropriations bills that would result in a net increase in the level of budget authority in the bill. This did not, however, prohibit amendments that would increase budget authority for an item in the bill if the amendment also included an equal or greater offset. This prohibition was adopted as a separate order in the 112th, 113th, and 114th Congresses and as part of House Rule XXI for the 115th Congress, but *it is not applicable for the 116th Congress*.

Requiring a Spending Reduction Account

This provision was previously included as a standing order for the 112th-115th Congresses. The order required that any general appropriations bill include a spending reduction account. This "account" was a provision in the last section of the bill to function as a temporary deposit box into which amendments could transfer budget authority and not be available as an offset for

¹⁰ For more on offset amendments to appropriations bills, see CRS Report RL31055, *House Offset Amendments to Appropriations Bills: Procedural Considerations*, by James V. Saturno.

further amendments during consideration of that bill. *This language was not included in H.Res. 6.*¹¹

Allowing Certain Legislative Amendments: The Holman Rule

Although congressional rules establish a general division of responsibility under which questions of policy are kept separate from questions of funding, House rules provide for exceptions in certain circumstances. One such circumstance allows for the inclusion of legislative language in general appropriations bills or amendments thereto for “germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill.” This exception appears in clause 2(b) of House Rule XXI and is known as the “Holman rule” (after Representative William Holman of Indiana, who first proposed the exception in 1876).

In the 115th Congress the House adopted a special order to provide that retrenchments of expenditures by a reduction of amounts of money covered by the bill shall be construed as applying to

any provision or amendment that retrenches expenditures by—

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

This language was initially adopted in H.Res. 5 (115th Congress) to apply to the first session of the 115th Congress. Its applicability was extended to the second session of the 115th Congress by H.Res. 787 (115th Congress), but *this language is not applicable in the 116th Congress.*¹²

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¹¹ For more on the requirement for a spending reduction account, see CRS Report R44769, *Provisions Affecting the Congressional Budget Process Included in H.Res. 5 (115th Congress)*, by Megan S. Lynch and James V. Saturno, p. 3.

¹² See CRS Report R44736, *The Holman Rule (House Rule XXI, Clause 2(b))*, by James V. Saturno.

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