

# CRS Report for Congress

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## **Points of Order in the Congressional Budget Process**

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James V. Saturno  
Specialist on the Congress  
Government and Finance Division

# Points of Order in the Congressional Budget Process

## Summary

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended) created a process that Congress uses each year to establish and enforce the parameters for budgetary legislation. Enforcement is accomplished through the use of points of order, and through the reconciliation process. Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point of order against legislation that may violate these rules when it is considered by the House or Senate.

This report summarizes points of order under the Congressional Budget Act of 1974, as amended, as well as related points of order established in the Budget Enforcement Act of 1990 (P.L. 101-508) and those established in budget resolutions adopted by Congress in 2003 (H.Con.Res. 95, 108<sup>th</sup> Congress) and 2005 (H.Con.Res. 95, 109<sup>th</sup> Congress). In addition, it describes how points of order are applied and the processes used for their waiver in the House and Senate.

This report will be updated to reflect any additions or further changes to these points of order.

## Contents

Introduction .....	1
Application of Points of Order .....	3
Procedures for Waiving Points of Order .....	4

## List of Tables

Table 1. Points of Order Under the Congressional Budget Act of 1974 .....	5
Table 2. Points of Order Under H.Con.Res. 95 (109 <sup>th</sup> Congress) (Budget Resolution for FY2006) .....	11
Table 3. Point of Order Under H.Con.Res. 95 (108 <sup>th</sup> Congress) (Budget Resolution for FY2004) .....	12
Table 4. Point of Order Under P.L. 101-508 (Budget Enforcement Act of 1990) .....	13

# Points of Order in the Congressional Budget Process

## Introduction

The Congressional Budget Act of 1974<sup>1</sup> established the basic framework that is used today for congressional consideration of budget and fiscal policy. The act provided for the adoption of a concurrent resolution on the budget (budget resolution) as a mechanism for coordinating congressional budgetary decision making. This process supplements other House and Senate procedures for considering spending and revenue legislation by allowing Congress to establish and enforce parameters with which those separate pieces of budgetary legislation must be consistent. The parameters are established each year when Congress adopts the budget resolution, setting forth overall levels for new budget authority, outlays, revenues, deficit, and debt.

These overall spending levels are then allocated to the various committees in the House and Senate responsible for spending legislation. The overall levels and allocations are then enforced through the use of points of order, and through implementing legislation, such as that enacted through the reconciliation process.<sup>2</sup> Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point or order against legislation that is alleged to violate these rules when it is considered by the House or Senate. Points of order are not self-enforcing. A point of order must be raised by a Member on the floor of the chamber before the presiding officer can rule on its application, and thus for its enforcement.

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<sup>1</sup> The Congressional Budget Act (Titles I-IX of P.L. 93-344) has been amended on a number of occasions since its enactment. The most salient of the modifications has been as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177, also known as Gramm-Rudman-Hollings or GRH); The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119); The Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508); Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66); and Title X of the Balanced Budget Act of 1997 (P.L. 105-33).

<sup>2</sup> The reconciliation process is an optional procedure set forth in Section 310 of the Congressional Budget Act. First used in 1980, reconciliation is a two-step process triggered when the budget resolution includes instructions to one or more committee(s) directing them to recommend changes in revenue or spending laws necessary to achieve the overall levels agreed to. The recommendations are then considered in one or more reconciliation measures under expedited procedures. Certain features of the reconciliation process are enforced by points of order that are included in this report. For more on the reconciliation process generally, see CRS Report 98-720, *Manual on the Federal Budget Process*, by Robert Keith and Allen Schick.

Although the congressional budget process encompasses myriad procedures dealing with spending, revenue, and debt legislation, this paper focuses only on that portion of the process that stems from the Congressional Budget Act. The tables below list the points of order currently included in the Congressional Budget Act (**Table 1**), as well as related points of order established in the FY2006 budget resolution (**Table 2**), the 2004 budget resolution (**Table 3**), and the Budget Enforcement Act of 1990 (**Table 4**) that pertain to the consideration, contents, or implementation of the budget resolution.

Points of order are typically in the form of a provision stating that “it shall not be in order” for the House or Senate to take a specified action or consider certain legislation that is inconsistent with the requirements of the Budget Act. Other provisions of the act, formulated differently, establish various requirements or procedures, particularly concerning the contents and consideration of the budget resolution or reconciliation legislation. These provisions, however, are not typically enforced through points of order, and are not included here.<sup>3</sup>

As amended through the Balanced Budget Act of 1997, points of order in the Congressional Budget Act are permanent. None of the provisions listed in **Table 1** is scheduled to expire, although for some points of order the requirement for a three-fifths waiver vote in the Senate is not permanent. For points of order identified in Section 904(c)(2) the three-fifths requirement is currently scheduled to expire September 30, 2010.<sup>4</sup> In addition, several points of order have limited applicability or have been rendered moot by the expiration of limits they were intended to enforce.<sup>5</sup> The freestanding point of order protecting the Social Security trust fund in the House established in the Budget Enforcement Act (**Table 4**) is also permanent. However, other points of order established under recent budget resolutions have various sunset provisions or limited application (see **Table 2** for current examples).

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<sup>3</sup> For example, the prohibition against motions to recommit concurrent resolutions on the budget in the House under Section 305(a)(2) of the act is typically not counted as a separate point of order. Likewise, the requirement under Section 308(a) of the act for reports on legislation to include cost estimates is not formulated as a point of order, although the House has deemed it necessary to formally waive the provision on occasion.

<sup>4</sup> As originally provided in Title X of the Balanced Budget Act of 1997, the three-fifths requirement expired on Sept. 30, 2002. The Senate subsequently adopted S.Res. 304 on Oct. 16, 2002, renewing the three-fifths requirement for all of the points of order identified in Section 904(c)(2) (except for Section 302(f)(2)(B)) through Apr. 15, 2003. The three-fifths requirement was renewed through Sept. 30, 2008, under Section 503 of H.Con.Res. 95 (108<sup>th</sup> Congress), and extended through Sept. 30, 2010 under Section 403 of H.Con.Res. 95 (109<sup>th</sup> Congress).

<sup>5</sup> The expiration of the provisions of the Balanced Budget and Emergency Deficit Control Act has rendered a number of points of order moot. For example, points of order provided in the Congressional Budget Act to allow the Senate to enforce discretionary spending limits (Section 312(b)) or maximum deficit amounts (Section 312(c)) have been rendered moot because no statute currently specifies such a limit or amount. Likewise, the expiration of procedures provided in Sections 251 and 252 of the Balanced Budget and Emergency Deficit Control Act rendered moot some of the provisions in H.Con.Res. 290 (106<sup>th</sup> Congress) related to exemption from certain procedural consequences for emergency spending.

## Application of Points of Order

Most points of order in the Budget Act apply to measures as a whole, as well as to motions, amendments, or conference reports to those measures. When a point of order is sustained against consideration of some matter, the effect is that the matter in question falls.

The application of points of order in the House is clarified in Section 315 of the Budget Act. This provision states that for cases in which a measure is considered pursuant to a special rule, a point of order which would ordinarily lie against a bill “as reported” would instead be considered to apply to the text made in order by the rule as original text for purposes of amendment. In this way, no point of order would be considered as applying (and no waiver would be required) if a substitute resolved the problem.

Similarly, the effect of a point of order in the Senate is clarified under Section 312(f) which provides that when a point of order against a measure is sustained, the measure is recommitted to the appropriate committee for any further consideration. This allows the Senate an opportunity to remedy the problem that caused the point of order. Section 312(d) is also designed to provide the Senate with the opportunity to remedy a problem that would provoke a point of order. This provision states that a point of order may not be raised against a measure, amendment, motion, or conference report while an amendment or motion that would remedy the problem is pending.

Section 312(e) clarifies that any point of order that would apply in the Senate against an amendment also applies against amendments between the Houses. Further, this section also states that the effect would “be the same as if the Senate had disagreed to the amendment.” This would allow the Senate to keep the underlying measure pending, and thus retain the ability to resolve their differences with the House. This provision therefore means that any resolution of the differences between the House and Senate passed versions of a measure, whether it is in the form of a conference report or not, must adhere to the provisions of the Budget Act.

There are exceptions to the general principle of applying points of order to measures as a whole. The most salient is probably Section 313, the so-called Byrd Rule. This section applies to matter “contained in any title or provision” in a reconciliation bill or resolution (or conference report thereon), as well as any amendment or motion. If a point of order is sustained under this section, only the provision in question is stricken, or the amendment or motion falls.<sup>6</sup> Several of the points of order in the Senate established under recent budget resolutions (currently Sections 401 and 402 of H.Con.Res. 95 (109<sup>th</sup> Congress)) have been written so that they apply to individual provisions rather than the measure as a whole, in the manner provided in Section 313(e) of the Budget Act. The point of order against emergency spending designations (Section 402(b)(5) of H.Con.Res. 95 (109<sup>th</sup> Congress)) further provides that, if sustained, the effect of this point of order is that a provision making

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<sup>6</sup> Section 313(d) provides a special procedure for further consideration of a measure should a point of order under this section be sustained against a provision in a conference report.

an emergency designation shall be stricken, and may not be offered as an amendment from the floor.

## Procedures for Waiving Points of Order

The Congressional Budget Act sets forth certain procedures, under Section 904, for waiving points of order under the act. These waiver procedures apply in the Senate only. Under these procedures, a Senator may make a motion to waive the application of a point of order either preemptively before it can be raised, or after it is raised, but before the presiding officer rules on its merits.<sup>7</sup>

In the Senate, most points of order under the Budget Act may be waived by a vote of at least three-fifths of all Senators duly chosen and sworn (60 votes if there are no vacancies) (see **Table 1**). Three-fifths waivers were first established under the Balanced Budget and Emergency Deficit Control Act of 1985 although many have been extended and modified through the further changes in the budget process, and are currently scheduled to expire September 30, 2010.<sup>8</sup> A three-fifths threshold has also been required for the Senate to waive the application of many of the points of order established in recent budget resolutions, such as the PAYGO point of order, established in H.Con.Res. 95 (108<sup>th</sup> Congress). As with other provisions of Senate rules, Budget Act points of order also may be waived by unanimous consent.

In the House, Budget Act points of order are typically waived by the adoption of “special rules” — simple resolutions reported from the House Rules Committee to provide for consideration of legislation by the House — although other means (such as unanimous consent or suspension of the rules) may also be used. A waiver may be used to protect a bill, specified provision(s) in a bill, or an amendment from a point of order that could be raised against it. Waivers may be granted for one or more amendments even if they are not granted for the underlying bill. The House may waive the application of one or more specific points of order, or they may include a “blanket waiver,” that is, a waiver that would protect a bill, provision, or amendment from any point of order.

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<sup>7</sup> In the case of points of order under Section 313 of the Budget Act (and by extension, under Sections 401 and 402 of H.Con.Res. 95 (109<sup>th</sup> Congress) as well), a single point of order may be raised against several provisions. The Presiding Officer may sustain the point of order “as to some or all of the provisions,” and a motion to waive the point of order may, likewise, be made concerning some or all of the provisions against which the point of order was raised.

<sup>8</sup> As originally provided in Title X of the Balanced Budget Act of 1997, the three-fifths requirement expired on Sept. 30, 2002. The Senate subsequently adopted S.Res. 304 on Oct. 16, 2002, renewing the three-fifths requirement for all of the points of order identified in Section 904(c)(2) (except for Section 302(f)(2)(B)) through Apr. 15, 2003. The three-fifths requirement was renewed through Sept. 30, 2008, under Section 503 of H.Con.Res. 95 (108<sup>th</sup> Congress), and extended through Sept. 30, 2010 under Section 403 of H.Con.Res. 95 (109<sup>th</sup> Congress).

**Table 1. Points of Order Under the Congressional Budget Act of 1974**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
301(g)	In the Senate, prohibits consideration of a budget resolution using more than one set of economic assumptions.	Budget resolution, amendment, or conference report.	Simple majority
301(i)	In the Senate, prohibits consideration of a budget resolution that would decrease the Social Security surplus in any fiscal year covered by the resolution.	Budget resolution, amendment, motion, or conference report.	Three-fifths*
302(c)	Prohibits the consideration of any measure within the jurisdiction of the House or Senate Appropriations Committees that provides new budget authority for a fiscal year until the committee makes the suballocation required by Section 302(b).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
302(f)(1)	In the House, after action on a budget resolution is completed, prohibits consideration of legislation providing new budget authority for any fiscal year that would cause the applicable allocation of new budget authority made pursuant to Section 302(a) or (b) for the first fiscal year or for the total of all fiscal years to be exceeded. <sup>b</sup>	Bill, joint resolution, amendment, or conference report.	n/a
302(f)(2)(A)	In the Senate, after a budget resolution is agreed to, prohibits consideration of legislation (from any committee other than the Appropriations Committee) that would cause the applicable allocation of new budget authority or outlays made pursuant to Section 302(a) for the first fiscal year or for the total of all fiscal years to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
302(f)(2)(B)	In the Senate, after a budget resolution has been agreed to, prohibits consideration of legislation from the Appropriations Committee that would cause the applicable suballocation of new budget authority or outlays made pursuant to Section 302(b) to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths* <sup>c</sup>
303(a)	Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a concurrent resolution for that fiscal year has been agreed to. <sup>b, d</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths* <sup>e</sup>
303(c)	In the Senate, prohibits consideration of any appropriations measure until a concurrent resolution for that fiscal year has been agreed to, and an allocation has been made to the Committee on Appropriations under Section 302(a). <sup>d</sup>	Bill, joint resolution, amendment of conference report.	Three-fifths* <sup>e</sup>
305(c)(4)	In the Senate, prohibits consideration of nongermane amendments to amendments in disagreement to a budget resolution (Section 310(e) applies this prohibition to amendments in disagreement to reconciliation legislation as well).	Amendment in disagreement to a budget resolution (or to reconciliation legislation).	Three-fifths
305(d)	In the Senate, prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent.	Budget resolution or conference report.	Simple majority
306	Prohibits consideration of matters within the jurisdiction of the House or Senate Budget Committee except when it is a measure reported by the committee, or the committee is discharged from further consideration of the measure, or an amendment to such a measure.	Bill, resolution, amendment, motion, or conference report.	Three-fifths

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
309	In the House, prohibits consideration of an adjournment resolution for more than three calendar days during July until the House has approved all regular appropriations bills for the upcoming fiscal year.	Resolution.	n/a
310(d)	Prohibits the consideration of amendments to reconciliation legislation that would increase the deficit either by increasing outlays or reducing revenues, except that in the Senate a motion to strike a provision shall always be in order.	Amendment.	Three-fifths
310(e)	In the Senate, prohibits consideration of nongermane amendments to reconciliation legislation or to amendments in disagreement to reconciliation (by reference to Sections 305(b)(2) and 305(c)(4)). <sup>f</sup>	Amendment.	Three-fifths
310(f)	In the House, prohibits consideration of an adjournment resolution of more than three calendar days during July until the House has completed action on any required reconciliation legislation.	Resolution.	n/a
310(g)	Prohibits the consideration of reconciliation legislation that contains recommendations with respect to Social Security.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
311(a)(1)	In the House, prohibits consideration of legislation that would cause new budget authority or outlays to exceed or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302 (a). <sup>b, g</sup>	Bill, joint resolution, amendment, motion, or conference report.	n/a

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
311(a)(2)	In the Senate, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year, or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
311(a)(3)	In the Senate, prohibits consideration of legislation that would cause a decrease in Social Security surpluses or an increase in Social Security deficits relative to the level set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
312(b)	In the Senate, prohibits the consideration of legislation that would cause any of the discretionary spending limits specified in Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, to be exceeded. <sup>h</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths*
312(c)	In the Senate, prohibits consideration of a budget resolution that provides for a deficit in excess of the maximum deficit amount specified in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, for the first fiscal year set forth in the resolution. <sup>i</sup>	Budget resolution, amendment, or conference report.	Three-fifths*
313	In the Senate prohibits consideration of extraneous provisions in reconciliation legislation. <sup>j</sup>	Reconciliation bill or resolution (any title or provision), amendment, motion, or conference report.	Three-fifths

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
401(a)	Prohibits consideration of legislation providing new contract authority, borrowing authority, or credit authority not limited to amounts provided in appropriations acts. <sup>k</sup>	Bill, joint resolution, amendment, motion, or conference report.	Simple majority
401(b)	Prohibits consideration of legislation providing new entitlement authority that is to become effective during the current fiscal year. <sup>j</sup>	Bill, joint resolution, amendment, motion, or conference report.	Simple majority
425(a)(1)	Prohibits consideration of legislation reported by a committee unless the committee has published a statement by CBO on the direct costs.	Bill, joint resolution.	Three-fifths* <sup>e</sup>
425(a)(2)	Prohibits consideration of legislation that would increase the direct costs of federal intergovernmental mandates by an amount greater than the thresholds specified in Section 424(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths* <sup>e</sup>
426	In the House, prohibits consideration of a rule or order that would waive the application of Section 425.	Resolution, rule, order.	n/a

- a. This column indicates the type of Senate vote (as provided under Section 904 of the Congressional Budget Act) necessary to approve a motion to waive the point of order listed. The term “simple majority” means that the provision may be waived by a majority vote of the Members voting, a quorum being present. The term “three-fifths” means that a motion to waive the provision must be approved by three-fifths of the Members “duly chosen and sworn.” For those provisions, which are marked with an asterisk (\*), the three-fifths requirement is scheduled to expire on September 30, 2010, (as identified under Section 904(e) and extended under H.Con.Res. 95 (109<sup>th</sup> Congress)), reverting to simple majority after that time. The same voting requirement (either simple majority or three-fifths) would also apply to a vote to appeal a ruling of the chair connected with a point of order. The term “n/a” is used for those provisions that apply in the House only.
- b. Section 302(g) of the Congressional Budget Act (known as the Pay-As-You-Go exception) provides that Sections 301(f)(1), 303(a) (after April 15), and 311(a) shall not apply in the House to legislation (bill, joint resolution, amendment, or conference report) if for each fiscal year covered by the most recently agreed to budget resolution such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under Section 301(b)(8).
- c. The requirement for a three-fifths majority to waive the point of order under Section 302(f)(2)(B) expired on September 30, 2002, as provided in Section 904(e) of the Budget Act, but was reestablished in H.Con.Res. 95 (108<sup>th</sup> Congress), and extended through September 30, 2010 in H.Con.Res. 95 (109<sup>th</sup> Congress). See also footnote 4 in the text of this report.

- d. Section 303(b) sets forth exceptions to the prohibitions under 303(a). In the House, the point of order does not apply to (1) advance discretionary new budget authority that first become available for the first or second fiscal year after the first fiscal year covered in a budget resolution; (2) revenue legislation that is to first become effective after the first fiscal year covered in a budget resolution; (3) general appropriations bills after May 15; or (4) any bill or joint resolution unless it is reported by a committee (see also table note <sup>b</sup> above for an additional exception to 303(a) provided under Section 302(g)). In the Senate, the point of order does not apply to advance appropriations for the first or second fiscal year after the first fiscal year covered in a budget resolution. The application of this point of order to appropriations bills in the Senate is provided specifically under Section 303(c), which requires an allocation be made to the Senate Appropriations Committee under Section 302(a) as well as agreement on a budget resolution. Section 403(b) of H.Con.Res. 95 (109<sup>th</sup> Congress) provides that, notwithstanding the language in Section 303, the year covered by the budget resolution shall be construed as the upcoming fiscal year only.
- e. The points of order under Sections 303(a), 303(c), 425(a), and 425(b) were made subject to the three-fifths threshold in Section 403(b) of H.Con.Res. 95 (109<sup>th</sup> Congress). This voting requirement does not apply to waivers of points of order made against legislation reported pursuant to reconciliation instructions.
- f. Section 204(g) of H.Con.Res. 290 (106<sup>th</sup> Congress) provides that for purposes of interpreting Section 305(b)(2) of the Budget Act, an amendment is not germane if it contains predominately precatory language (e.g., Sense of the Senate provisions).
- g. Section 311(c) provides that 311(a) shall not apply in the House to legislation that would not cause a committee's spending allocation under 302(a) to be exceeded.
- h. Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, does not specify discretionary spending limits beyond FY2002.
- i. Currently no maximum deficit amounts are specified under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.
- j. For more information on this provision (known as the "Byrd Rule"), see CRS Report RL30862, *Budget Reconciliation Procedures: The Senate's "Byrd Rule,"* by Robert Keith.
- k. Section 401(d) provides that Sections 401(a) and 401(b) shall not apply to new spending authority described in those sections that flow from (1) a trust fund established under the Social Security Act or any other trust fund for which 90% or more of its expenditures are supported by dedicated revenues; (2) certain wholly owned or mixed ownership government corporations; or (3) gifts or bequests made to the United States for a specific purpose.

**Table 2. Points of Order Under H.Con.Res. 95 (109<sup>th</sup> Congress)  
(Budget Resolution for FY2006)**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
401(b)	In the Senate, prohibits the consideration of advance appropriations, except as specified in this budget resolution. <sup>b</sup>	Bill, resolution, amendment, motion, or conference report.	Three-fifths
402(b)(5)	In the Senate, prohibits consideration of provisions that include an emergency designation as allowed under Section 402(b)(2) of this budget resolution to provide for exemption in the Senate from budget enforcement mechanisms under Sections 302 and 311 of the Congressional Budget Act of 1974, Section 404 of this budget resolution and Section 505 of H.Con.Res. 95 (108 <sup>th</sup> Congress (except for discretionary appropriations for defense and overseas contingency operations related to the global war on terror)). <sup>c</sup>	Bill, resolution, amendment, motion, or conference report.	Three-fifths
404(c)	In the Senate, prohibits the consideration of a measure or provisions that would exceed any of the discretionary limits (FY2007-FY2008) specified in this section.	Bill, resolution, amendment, motion, or conference report.	Three-fifths
407(b)	In the Senate, prohibits the consideration of a measure that would cause a net increase on direct spending in excess of \$5 billion in any of the four 10-year periods beginning in 2016 through 2055. <sup>d</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths

a. This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by three-fifths of the Members “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order.

b. This section limits the consideration in the Senate of advance appropriations, except that advance appropriations may be provided for FY2007-FY2008 for those accounts specified in the joint explanatory statement of the conference report for this budget resolution (H.Rept. 109-62) in an aggregate amount not to exceed \$23.158 billion. Section 401(a) establishes a similar limit for the House, but does not establish a point of order to enforce that limit.

- c. This section concerns the use of emergency designations, but does not establish any point of order against the spending itself. It also requires committees reporting legislation that includes provisions designated as emergency to include in the accompanying written report a justification for the designation. Section 402(a) provides for the use of emergency designations to exempt in the House provisions so designated from budget enforcement mechanisms under Sections 302, 303, 311, and 401 of the Congressional Budget Act. This provision also provides an exemption for supplemental appropriations for FY2005 and FY2006 for contingency operations related to the global war on terrorism. The section does not, however, establish a point of order similar to that of the Senate to enforce or limit the use of such a designation. The point of order in the Senate supercedes earlier, similar points of order provided in H.Con.Res. 68 and H.Con.Res. 290 (both 106<sup>th</sup> Congress), H.Con.Res. 95 (108<sup>th</sup> Congress, and Section 14007(b)(2) of P.L. 108-287. No expiration date was provided for these earlier points of order. The procedures in Sections 251 and 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, however, as cited in the emergency spending provisions in the 106<sup>th</sup> Congress, expired on September 30, 2002, so the exemption from procedural consequence provided by an emergency designation no longer has the same application. No expiration date is provided for the current point of order. The exemption for overseas contingency operations related to the global war on terrorism is limited to \$50 billion for FY2006.
- d. This point of order does not apply to any legislation reported pursuant to reconciliation instructions.

**Table 3. Point of Order Under H.Con.Res. 95 (108<sup>th</sup> Congress)  
(Budget Resolution for FY2004)**

Section	Description	Application	Senate Waiver Vote <sup>a</sup>
505(a)	In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the first fiscal year covered by the most recently adopted budget resolution, the period of the first five fiscal years covered by the most recently adopted budget resolution, or the five fiscal years following the first five fiscal years covered by the most recently adopted budget resolution. <sup>b</sup>	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths

- a. This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by three-fifths of the Members “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order.
- b. Estimates used for enforcing this point of order are measured against the surplus or deficit specified in the most recently adopted budget resolution. The operation of this point of order is more fully explained in CRS Report RL31943, *Budget Enforcement Procedures: Senate’s Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff, Jr. This point of order supercedes earlier, similar points of order provided in H.Con.Res. 67 (104<sup>th</sup> Congress) and H.Con.Res. 68 (106<sup>th</sup> Congress). The application of the current point of order is scheduled to expire on September 30, 2008 (under Section 505(e) of this budget resolution).

**Table 4. Point of Order Under P.L. 101-508  
(Budget Enforcement Act of 1990)**

Section	Description	Application	Senate Waiver Vote
13302(a)	In the House, prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of 0.02% of the present value of future taxable payroll for a 75-year period, or in excess of \$250,000,000 for the first five-year period after it becomes effective. <sup>a</sup>	Bill, joint resolution, amendment, or conference report.	n/a

**Note:** This point of order provision is a freestanding provision of subtitle C of the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990).

- a. Section 13302(b) provides that the point of order would not apply to legislation that reduces Social Security taxes in excess of the threshold amounts if these reductions are offset by equivalent increases in medicare taxes.