House Legislative Procedures and House Committee Organization: Options for Change in the 112th Congress

-name redacted-
Specialist on the Congress

-name redacted-
Senior Specialist in American National Government

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Summary

Members and leaders of both parties have questioned whether legislative practices, while consistent with House rules, have gotten out of balance, with too much deliberation sacrificed to efficiency or electioneering. They have made speeches, introduced resolutions, and, when in the minority, issued critiques of the House's legislative management. Practices targeted have included waivers of layover rules, use of structured and closed special rules, and waivers of committee assignment limitations. The purpose of this report is to provide Members with an analysis of House legislative rules and practices, and committee organization and procedures, that could be changed in the 112th Congress. Some analyses respond to bipartisan Member concerns over the House's legislative management, others to the needs of leaders in managing such a large body.

Change to legislative procedures and to committee organization in the House of Representatives can be achieved in a number of ways, including the opening-day rules resolution, freestanding resolutions, the Speaker's announced policies, party rules, and majority-party leadership commitments.

A House rule or set of rules might be drafted a number of ways. Questions for a proponent of a rules change include: What is the balance being sought between deliberation and decision making? What leader or group of Members will be empowered by a change, or will the House be the decision maker? Will an action be allowed, forbidden, or made conditional? How will the rule be enforced? How could party rules supplement or supplant an existing or new rule?

Numerous House rules address the committee system, including structure, membership, jurisdiction and referral, and procedures. Numerous Democratic Caucus and Republican Conference rules and decisions on committees supplement or even circumvent House rules to ensure the majority party's dominance of committees' policymaking and to organize committees to reflect the majority party's values. The number, jurisdiction, size, and party ratios of committees are important for these reasons. In addition, as the number of waivers and temporary assignments has expanded, the average number of assignments for Members has risen. These attributes of the committee system, and others, could be changed if Members wish to do so.

The means by which legislation is developed has become an issue in and of itself in recent Congresses. Members of both parties, whether their party has been in the majority or the minority, have criticized departures from "regular order" and the development of leadership alternatives outside of and subsequent to the committee process. The evolution of rules and practices in the House in the past 25 years, however, has favored decision making and efficiency. Members seem now to be asking whether the House favors decision making too much over deliberation? Whether the minority has been excluded too much from influencing legislative outcomes?

Because important legislation, including conference reports and amendments between the houses, is almost always considered in the House chamber under a special rule reported by the Rules Committee—the "arm of the leadership"—the use of structured and closed rules has become the principal means by which the House makes decisions efficiently. If the House wishes to rebalance decision making and deliberation, numerous options exist for working within the special rules process to increase deliberation and Member participation in policymaking.

This report will not be updated.

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Introduction

The House is a chamber characterized by rules that favor decision making. The rules, practices, and traditions of the House also favor the majority, which is normally the majority party, and allow the majority to employ procedures to bring the House relatively expeditiously to a decision on a motion, including a motion to amend; passage of a measure; or another question.

For the past 130 years, the House has regularly reinforced its rules to favor the majority, decision making, and efficiency. Through a number of amendments to its rules, for example, the House has given a chair discretion to postpone and cluster votes on both the House floor and in committee, and the authority to reduce the time of floor votes to 5 minutes after a 15-minute vote.

In the past 35 years, the House through its rules has also regularly increased the openness of its proceedings and operations to public view. Committees, for example, may close a meeting to the public only for four specified reasons and only after a vote in public to close the meeting. An example of openness in operations is the annual financial audit of the House.

House practices also change over time. They often reinforce majority control, decision making, and efficiency, but sometimes favor Member participation. Use of structured rules is an example of the former; use of amendment rosters in some committees' markups is an example of the latter.

Members and leaders of both parties have questioned whether practices, while consistent with House rules, have gotten out of balance, with too much deliberation sacrificed to efficiency or electioneering. They have made speeches, introduced resolutions, and, when in the minority, issued critiques of the House's legislative management. Practices targeted have included waivers of layover rules, use of structured and closed special rules, and waivers of committee assignment limitations.

The purpose of this report is to provide Members with an analysis of House legislative rules and practices, and committee organization and procedures, that could be changed in the 112th Congress. Some analyses respond to bipartisan Member concerns over the House's legislative management, others to the needs of leaders in managing such a large body. Ideas presented in this report originated from many sources, including Members' resolutions to change rules, experts' and media critiques, and the authors' analysis of the House's lawmaking environment.

The first part of this report examines generally how rules changes can be effected, what forms of rules exist, and some of the implications of choices for change. The second part examines committee organization and procedures, analyzing considerations underlying potential changes. The third part examines House floor procedures and agreement between the chambers, again analyzing considerations underlying potential changes.

A reader might wish to select specific topics for study, after the first part, rather than read this report from beginning to end. The authors sought to address numerous rules and practices that have been the subject of discussion in recent years, which makes a cover-to-cover reading challenging.

The authors' colleagues at the Congressional Research Service are available to committees, Members, and staff to analyze potential changes to budget procedures, administrative operations, congressional ethics, constitutional authorities, continuity, and other institutional issues.

Part I. House Standing Rules

I. 1. Mechanisms to Effect Changes to Rules and Their Implementation

Change to legislative procedures and to committee organization in the House of Representatives can be achieved in a number of ways. The majority often includes changes in the opening-day rules resolution, but the majority leadership may bring freestanding resolutions to the House floor throughout a two-year Congress. The House, Senate, or both might also exercise its rulemaking authority in statute. The Speaker's announced policies, House practices, and party rules can also be used to effect change in the House, but, not being a House rule, these approaches are not enforceable by a point of order.

I. 1.1. Opening-Day Rules Resolution

The House adopts its rules on the day of convening of each Congress. Normally, in its "rules resolution," the House adopts the rules of the preceding Congress with specific amendments. Changes to floor procedures, the committee system, and committee procedures are frequently included in rules resolutions, as are changes in the administration of the House, ethics rules, and the budget process. Upon adoption, the rules immediately take effect.[1]

Development of a rules resolution for a new Congress often begins during the second session of the previous Congress. The Rules Committee might solicit ideas from Members and might hold one or more hearings on these ideas. The Rules Committee and the majority leadership might also or instead take a less formal route in identifying possible rules changes. Rules changes might be discussed in the Democratic Caucus and Republican Conference, especially in early organization meetings, and the caucus and conference on occasion have voted on rules changes. A party might even set up a task force or, when there is a majority-party change, a transition team.[2]

The House on occasion at times other than the day it convenes for a new Congress adopts simple resolutions to change rules—another route for change.

I. 1.2. Standing Orders

A rules resolution often contains a separate section of "standing orders," which spells out procedures and practices related to rules, authorities in law where Congress or the House exercised its rulemaking authority, or non-rules matters. On opening day, the House might also separately adopt other standing orders, such as those related to the daily time of the House's

[1] See CRS Report RL33610, *A Retrospective of House Rules Changes Since the 104th Congress*, by (name redac ted) and (name redacted).

[2] The 112th Congress Republican transition office website is: http://gopleader.gov/NewMajority/Default.aspx. For background on early organization meetings, see CRS Report RS21339, *Congress's Early Organization Meetings*, by (name redacted).

meeting. The House on occasion adopts standing orders at times other than the day it convenes for a new Congress.

I. 1.3. Speaker's Announced Policies

On the day the House convenes or within the first few days of convening, it has become the custom for the Speaker to announce policies on a number of matters. In 2009 and in preceding years, these policies concerned privileges of the floor, the introduction of bills and resolutions, unanimous consent requests for the consideration of legislation, recognition for one-minute speeches, decorum in debate, the conduct of votes by electronic device, use of handouts on the House floor, and use of electronic equipment on the House floor. These policies might operationalize one or more House rules (such as those on floor privileges), permit or regulate a matter not covered by House rules (such as one-minute speeches), or in another way exercise discretion that resides in the Speaker (such as unanimous consent requests to consider legislation). The Speaker on occasion has announced new policies or changes to policies at times other than the convening of a new Congress.

At least some items included in the Speaker's announced policies could alternately be effected as rules or standing orders, but the Speaker's announced policies are neither rules nor standing orders and therefore do not give rise to points of order.

I. 1.4. Rulings of the Chair and Parliamentary Inquiries

The Speaker and other occupants of the chair, normally with the advice of the parliamentarian, make rulings on points of order throughout a two-year Congress. Such rulings are grounded in any applicable precedent established by earlier rulings and create new precedent. A chair's ruling may ordinarily be appealed, although that is not a regular occurrence, and a ruling is normally sustained on appeal.[3]

The Speaker and other occupants of the chair also respond to parliamentary inquiries concerning House rules, procedures, and precedents relevant to pending proceedings. While the chairs' responses might inform precedent, they do not establish precedent, and they may not be appealed.

I. 1.5. Temporary Resolutions

The House on occasion has adopted resolutions, which have the duration of only the Congress in which they were adopted, to deal with some matter. Select committees, for example, have been created in this manner. In the Congress following the one when a resolution was first agreed to, the subject of the resolution might not be renewed; or it might be renewed for another Congress, with the adoption of a new simple resolution; or the temporary change might incorporated into House rules. The House, for example, on three occasions in the 108th Congress agreed to resolutions that eventually allowed motions to suspend the rules to be considered on Wednesdays throughout that Congress; this temporary change was incorporated into the rules resolution for the

[3] See CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by (name re dacted).

109th Congress.[4] Such resolutions might be adopted at the beginning of a Congress or at any time during a Congress.

I. 1.6. Rulemaking Through Statutes

The House, or both the House and Senate, might adopt rules changes in statute, through the exercise of congressional rulemaking authority. Such an exercise often relates to specific types or pieces of legislation, such as trade agreements, but it might also pertain to the congressional component of a larger statutory scheme, such as the changes affecting Congress included in the lobbying and ethics law passed in the 110th Congress.[5] Changes to the committee system, the administration of the House, congressional ethics, and other matters affecting the House have also been accomplished through statute. [6] As with any rule, the House might change or circumvent rules made by statute through special rules, other simple resolutions, or other mechanisms.

I. 1.7. Rules, House Administration, Appropriations, and Budget Committees

The Rules Committee, the House Administration Committee, and the Appropriations Committee play special roles within the House. The Rules Committee may report simple resolutions changing House rules or simple resolutions known as special rules that establish a specific set of procedures for one piece of legislation, several pieces of legislation, one time period, or for a piece of legislation related to some anticipated action or event. (See "III. 1. Rules Committee," below.)

The House Administration Committee, known as the House's housekeeping committee because of its broad discretion to consider and adopt policies on the House's administration, may in many areas act on its own initiative or on its own authority to make changes to the administration of the House, without further House action. Two examples of where this committee exercises its authority is in policies on Members' spending from the Member Representational Allowances (MRAs) and on committees' spending of funds authorized by committee funding resolutions.

The Appropriations Committee, in the annual legislative branch appropriations bill or another appropriations bill or a report covering such a bill, might make changes to House or congressional processes or include resolutions previously approved by the House Administration Committee, at that committee's request, to be enacted into permanent law. For example, statutory changes to the franking law have been made through appropriations bills.

In addition, the Budget Committee often includes changes to budget procedures in the annual budget resolutions that it reports. As a concurrent resolution, such changes might be drafted to affect only the House or both the House and Senate. Senate agreement and reconciliation of

[4] *Constitution, Jefferson's Manual, and Rules of the House of Representatives, 111th Congress of the United States,* prepared by John V. Sullivan, Parliamentarian, H.Doc. 110-162, 110th Cong., 2nd sess. (Washington, DC: GPO, 2009), § 885, pp. 662-663. (Hereafter *House Rules and Manual*.)

[5] P.L. 110-81 (2007). See CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted Into Law*, by (name redacted).

[6] See also CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by (name redacted), (name redacted), and (name redacted).

differences between House and Senate versions of the budget resolution are necessary for these changes to take effect.

I. 1.8. House Practices

Change in the operation of a rule also results from an adaptation in practices. For example, in the early 1970s, the House sought a procedural means of dealing with nongermane subject matter inserted in legislation by the Senate and insisted on by the Senate's conferees. The House amended its rules to include a procedure that allowed it to effectively agree or disagree to such amendments and, if disagreeing, consider a motion that kept the possibility of House-Senate agreement alive.[7] Over time, however, it has become House practice to adopt a special rule waiving points of order against conference reports. The rule has not changed; rather, the practice of the House has changed.

I. 1.9. Party Rules

The Democratic Caucus and the Republican Conference have also both adopted policies, which are fully in effect when their respective party is in the majority, that supplement House rules. For example, each party has in its rules several guidelines to be followed by the Speaker in determining whether a piece of legislation may be considered under the suspension of the rules procedure. Changes to caucus and conference rules are often developed in the fall preceding an election and debated and might be voted on by the caucus or conference, respectively, during early organization meetings. Party rules on committee service are extensive, compared to the few provisions in House rules. Party rules, however, do not give rise to points of order in the House. The caucus and conference have also debated and even voted on legislation and legislative issues to establish party positions and to seek to advance, change, or impede legislation.

I. 2. Perspectives on Standing Rules

A House rule or set of rules might be analyzed in a number of ways. This section presents a few perspectives that might be useful in thinking about how to redraft a rule. What is the balance being sought between deliberation and decision making? What leader or group of Members will be empowered by a change, or will the House be the decision maker? Will an action be allowed, forbidden, or made conditional? Will there be an enforcement mechanism? How might party rules supplement or supplant an existing or new rule?

I. 2.1. Differing Objectives of Standing Rules

The constitutional arrangement of lawmaking—passage of exactly the same measure by both the House and Senate, followed by the President's signing or veto, the latter of which can be overridden only by a two-thirds vote in each chamber—puts a mountain in the path of a potential new law. Through more than two centuries, the House and Senate through laws, rules, precedents, and practices have added other complexities to the lawmaking process, although with the objective of ensuring and balancing deliberation and decision making. Moreover, in that same

[7] *House Rules and Manual*, § 1089, pp. 912-913.

time frame, the openness of Congress to viewing and influence by the citizenry and their interests has ensured that Congress is, whatever the nature and duration of advocacy for and against specific propositions, ultimately politically responsive.

I. 2.1.1. Deliberations vs. Decision Making

House rules take into account the large number of Members, and have favored decision making over deliberation. When a Member stands to speak in the House, he or she must be recognized for that purpose by the chair and then speaks subject to a time limit, frequently five minutes or less. The standing rules restrict what a Member may do and when the Member may do it in the course of House proceedings, and allow the majority to vote to further restrict debate time, the amendment procedure, the availability of motions, and other legislative procedures from what the standing rules permit. If it votes together, a majority will be able to reach a decision on its preferred legislative outcome within a limited amount of time.

Changes to House rules tend to keep in place the rules' decision-making bias, even when enhancing the House's deliberation. For example, when the Republicans organized the House in the 104th Congress (1995-1997), their rules package ensured the minority of a right to make a motion to recommit with instructions. This opportunity to offer an alternative had eroded in the preceding decades. However, the rules change did not increase the normal debate time on a motion to recommit with instructions beyond the 10 minutes (or one hour, upon the demand of the majority floor manager) in the earlier version of the rule.

A rule or a rules change can add to deliberation or enhance decision making, although such changes rarely depart from the existing features of House rules. So, for example, when the House in 1971 first allowed debate on a motion to recommit with instructions, it added to the House's deliberation. However, in keeping with the feature of limiting time, the rules change allowed just 10 minutes for debate, equally divided between a proponent and an opponent. The House, on the other hand, enhanced its decision making with a rules change in the 104th Congress that allowed the majority leader to make a motion for the Committee of the Whole to rise and report after an appropriations bill had been read for amendment. In keeping with the feature of majority decision making, the House could preclude the consideration of limitation amendments if it agreed to the majority leader's motion.

I. 2.1.2. Ease or Difficulty of Passing Legislation

A rule or rules change can make it easier or harder to pass legislation. In 1979, for example, the House first adopted a rule to provide that, when the House agreed to a budget resolution that required an increase in the statutory limit on the public debt, a vote to agree to the budget resolution also constituted passage of a joint resolution increasing the statutory limit, an engrossment to be prepared by the clerk of the House. An argument was made that Congress had no choice but to periodically raise the limit on the debt, which resulted from numerous congressional decisions, and the House should therefore not have to spend time trying to pass a debt limit measure. The House repealed this rule in the 107th Congress (2001-2003), but reinstated it in the 108th Congress (2003-2005).

In contrast, the House in the 104th Congress (1995-1997) sought to make it more difficult to pass a measure "carrying a Federal income tax rate increase" by adopting a rule to require a three-

fifths vote for such a measure. There are limited instances in the House where a super-majority is required on a vote.

I. 2.1.3. Efficiency vs. Deliberation

A rule or rules change might favor efficiency over deliberation. Beginning in the 1970s, the House undertook changes to its rules in order to curtail quorum calls, and began to allow the postponing and clustering of roll-call votes. While some Members argued that these changes would lead to a reduction in the amount of time that Members were in the House chamber during debate, other Members argued that there was too much work to do in committees, with constituents, in other meetings, and in other ways to be constantly interrupted with quorum calls and roll-calls. These changes are now accepted as normal House procedures. In addition, motions to suspend the rules—where debate is limited to 40 minutes and no amendments from the floor are allowed—are now in order on all Mondays, Tuesdays, and Wednesdays, the current state of an evolution beginning in the 1970s when such motions were in order only on the first and third Mondays of a month.

I. 2.1.4. Where Authority Is Vested

A rule might vest control of a decision in the Speaker or in the membership of the House. The rules changes that allowed roll-call votes to be postponed and clustered largely authorized the presiding officer to decide whether to postpone one or more votes and when to hold the postponed vote or votes. Rules changes also authorized the presiding officer to reduce the time for voting to five minutes after the first 15-minute vote. Other changes allowed the Speaker to approve the Journal, unless a vote is demanded, and to resolve the House into the Committee of the Whole following the adoption of a special rule providing for consideration of a measure in the Committee of the Whole.

Other rules and rule changes vest a decision in the House—in its membership. For example, Congress exercised its rulemaking authority in drafting a part of the Unfunded Mandates Act (P.L. 104-4). The law requires unfunded mandates information to be included in committee reports and prohibits consideration of a measure if the cost of an unfunded mandate exceeds a certain amount. If a special rule proposes to waive these requirements and a point of order is made against the special rule for this reason, the House may waive the point of order by agreeing to a question of consideration.

I. 2.1.5. Consideration of Alternatives

A rule or rules change might foster the consideration of alternatives. The House rule on amendments, for example, allows an amendment, a substitute for that amendment, and a perfecting amendment to each of these two amendments. The rule creates a binary choice between the amendment and a substitute for it, but it further allows perfecting amendments to be considered first and requires them to be voted on first. While special rules tend to structure the amendment process on the floor to disallow substitute and second-degree amendments, the amendment process in a committee markup normally follows the standing rule.

I. 2.1.6. Transparency

A rule might enhance transparency and inclusion. Rule XIII contains most of the House's requirements for committee reports, including the requirement for a written report on a measure or matter to be available for three days before the House may consider the measure or matter. Rule XIII has been added to over the course of many Congresses to make additional information available, such as the requirement added in the 104th Congress (1995-1997) to include in reports all roll-call votes taken in a markup, showing the names of committee members and positions taken. A committee report must also include committee members' supplemental, minority, or additional views, and members must be given time to submit their views for inclusion in a report.

I. 2.2. Who Is Empowered by a Standing Rule?

While rules increase predictability in House proceedings, not every rule works to the equal advantage of each Member. The rule on the sponsorship and cosponsorship of bills and resolutions in Rule XII, for example, seems neutral in its impact on each and every Member. Many other rules, however, tend to favor the majority, the minority, the Speaker, or another leader.

Rule XIII bestows privilege on special rules reported by the Rules Committee. Because of the organization of this committee, this rule favors the majority generally and the majority leadership specifically. Majority members of the committee outnumber minority members by a two-to-one-plus-one ratio, and the majority members are appointed by the Speaker. The Speaker and majority leadership determine what legislation will be considered by the House, and work with the majority members of the Rules Committee to tailor a special rule to accomplish the majority's legislative goals.

Rule XII, pertaining to the referral of measures, provides specific direction to the Speaker, but it also accords the Speaker discretion, without review, to make a number of decisions related to referral. The Speaker may or may not designate a primary committee, may choose when to make an additional referral and how to do so, may impose time limits initially or later, and may impose other conditions that the Speaker deems appropriate. While an erroneous referral may be corrected, the discretion exercised by the Speaker may not be challenged.

Certain rules empower or favor a leader other than the Speaker. In Rule XXI, for example, the majority leader is authorized to make a motion for the Committee of the Whole to rise and report a general appropriations bill that has been read for amendment. The majority leader would presumably not make such a motion unless the Speaker also favored it, but he or she might make the motion although some majority Members hoped to offer amendments that would be cut off by adoption of the motion. Rule IX, pertaining to questions of privilege, favors the majority and minority leaders. If one of them raises a question of the privileges of the House, it is privileged and accorded immediate consideration. A Member, Delegate, or the Resident Commissioner may also raise a question of the privileges of the House, but it is privileged only at a time designated by the Speaker within two legislative days, once the Member has given notice.

The motion to recommit is the minority's motion. In Rule XIX, the Speaker must recognize a Member opposed to the legislation to make the motion, and Rule XIII proscribes the Rules Committee from reporting a special rule that would prevent a recommital motion "if offered by the Minority Leader or a designee…."

While the existence of rules generally allow the minority some advantage in that the minority can at least make points of order or insist on strict adherence to a rule, some rules in their effect give a specific advantage to the minority. For example, amendments must be read. On the House floor, this reading is frequently dispensed with by a provision in a special rule, which takes effect if adopted. In committee, however, reading can be dispensed with only by unanimous consent. A determined minority can hold up a committee markup for hours if it objects to unanimous consent to dispense with the reading of a lengthy amendment in the nature of a substitute.

I. 2.3. How Standing Rules May Be Structured

Rules often contain a process for taking an action. House rules, for example, contain processes for taking votes, considering measures under the procedure called suspension of the rules, and raising a question of the privileges of the House. A process is but one example of how a rule may be structured.

In addition to providing a process, a rule may—

- Disallow an action, such as the proscription in Rule XIII on the Rules Committee from reporting a special rule prohibiting the motion to recommit;
- Allow an action, such as the demand for the division of a question in Rule XVI;
- Require an action to be taken, such as the referral of legislation by the Speaker in Rule XII;
- Establish conditions precedent for an action, such as placing a motion to discharge on the Discharge Calendar only after a majority of the membership has signed the motion, as provided in Rule XV;
- Establish consequences for an action, such as the call to order ("words taken down") in Rule XVII;
- Determine who may take an action, such as the authorization of the majority leader in Rule XXI to make a motion for the Committee of the Whole to rise and report a general appropriations bill that has been read for amendment;
- Determine whether, how, and when an individual or entity may make a decision on an action, such as the authority of the Speaker in Rule 1 to approve the Journal, subject to a demand by a Member for a vote by the House for its approval;
- Create a rigid process, such as that under Rule XI that allows a committee to report a measure only when a majority of the committee's membership is physically present;
- Create a flexible process, with discretion vested in an individual or an entity, such as the discretion vested in the Speaker in Rule XX to postpone votes and, after the first vote in a series is taken, to reduce the time for voting to five minutes;
- Make an exception to a process, such as the requirement for a so-called one-day layover of a special rule reported by the Rules Committee unless, as provided in Rule XIII, the House by a two-thirds vote waives the requirement;

- Allow a motion and attach conditions to it, such as the motion in Rule XI to dispense with the first reading of a bill or resolution in a committee if printed copies are available, which motion is privileged and nondebatable;
- Disallow a motion, such as the motion to reconsider on an affirmative vote to approve the Journal in Rule I;
- Create an entity and give responsibility or authority, or both, to it, such as the officers and officials of the House in Rule II;
- Establish requirements, such as those in Rule XIII on the contents of committees' reports on legislation;
- Bestow privilege, such as to measures listed in Rule XIII; or
- Bring deliberation to an end, such as the motion for the previous question allowed under rule XIX.

In most instances, however, the House may adopt a special rule that circumvents or modifies a House rule. The House often adopts special rules to provide for the consideration of specific bills and resolutions, and these special rules regularly suspend the operation of House rule.

I. 2.4. How Standing Rules May Be Implemented

Through adoption of a special rule, agreeing to unanimous consent, or failure of any Member to make a point of order alleging a violation of a House rule, the House may adapt, circumvent, or ignore a House rule. It is difficult to enforce a rule as written if a majority of Members wish to operate in a different manner in the consideration of a measure or matter, or if no Member will object to a unanimous consent request or make a point of order.

Rules, however, contain a variety of mechanisms that seek to ensure that they are implemented as written, including—

- A specific prohibition in a rule that is important to a large number of Members may act as a deterrent to circumvention, for example, Rule XIII's proscription of the Rules Committee from reporting a special rule prohibiting the motion to recommit. The recommit motion is of paramount importance to the minority.
- The process attached to a rule might allow a waiver of the rule by a majority vote. For example, the Unfunded Mandates Act (P.L. 104-4) requires unfunded mandates information to be included in committee reports and prohibits consideration of a measure if the cost of an unfunded mandate exceeds a certain amount. If a special rule proposes to waive these requirements and a point of order is made against the special rule for this reason, the House may waive the point of order by agreeing to a question of consideration.
- The process attached to a rule might allow standing rules to be circumvented by a supermajority vote. The most common procedure used in the House to pass legislation, for example, is the suspension of the rules procedure. It allows a motion to suspend all of the rules of the House but requires a two-thirds vote to agree to the motion. In the instance of waiving a specific rule, Rule XIII requires a two-thirds vote to consider a special rule on the same day that the Rules

Committee reports it, thus dispensing with the so-called one-day layover rule applicable to special rules.

- In many circumstances, without any special authorization in the rule, a Member may make a point of order to allege that a rule is being violated. Once the chair rules on the point of order, either sustaining it or overruling it, a Member may normally appeal the chair's ruling.
- Absent a point of order, it is possible that the chair might still make a decision or ruling that is subject to an appeal. For example, when a question of the privileges of the House is called up, the Speaker makes a determination whether a valid question has been raised. The Speaker's determination is subject to appeal.[8]

I. 2.5. Effect of Party Rules and Decisions

As already mentioned, the Democratic Caucus and the Republican Conference have both adopted policies, which are fully in effect when their respective party is in the majority, that supplement House rules. An example was given of each party having in its rules several guidelines to be followed by the Speaker in determining whether a piece of legislation may be considered under the suspension of the rules procedure. These are guidelines for the Speaker, not directives to the Speaker. It was also noted that caucus and conference rules do not give rise to points of order in the House.

During early organization meetings or at another time prior to the convening of a new Congress, the caucus or conference of the party that will organize the new Congress might debate and vote on changes to House rules before the rules package is proposed in the House. The decisions of the caucus or conference are then reflected in the rules package, although changes until the last minute are possible.

Party rules and other party decisions themselves may in addition affect how House rules operate or may adapt, circumvent, or ignore them. One decision, which both parties regularly make, ignores a House rule that limits Members to service on two committees. For a variety of reasons, both parties choose to place individual Members on three or more committees. The House makes committee assignments by agreeing to one or more committee assignment resolutions presented by the two parties. If a Member is listed for membership on three committees in these resolutions, the House by its vote tacitly waives its rule for that Member.

Party rules also play an important role in the organization of committees, particularly in the organization of each committees' subcommittees, the selection of subcommittee chairs, and the assignment of committee members to subcommittees. Democratic Caucus rules were the source of the Subcommittee Bill of Rights that enhanced the responsibilities and authority of subcommittees in the 1970s and 1980s.

Prior to floor consideration of major legislation, either party might convene a meeting of its members to discuss the legislation. From this discussion as well as discussions between party leaders and individual Members or small groups of Members, a strategy often evolves in the majority for the content of the special rule that will govern the consideration and amendment of

[8] A number of decisions or actions by the chair are not subject to appeal, such as the chair's count of a quorum or determination of the result of a voice vote.

the legislation and in the minority for a countering the majority's legislative and procedural strategy.

Part II. Committee Organization and Procedures

II. 1. Committee System Overview

Numerous House rules address the committee system, including committee and subcommittee membership, and committee jurisdiction and referral. Other House rules addressing the committee system have changed in the last few years, such as those affecting committee and subcommittee leadership tenure. Many Democratic Caucus and Republican Conference rules also govern the organization, structure, and procedures of House committees, and many party rules, in addition, supplement or even circumvent House rules to reflect, for example, the size of the majority and the political and other needs of both the majority party and its members.[9]

Appointment of Members to committees is essentially a party rather than a chamber function, with the Democratic Steering and Policy Committee and the Republican Steering Committee having primary responsibility for making their party's respective committee assignments. With some degree of input from the minority party, the majority party has the further responsibility of determining the size and party ratio of each panel.

A Member might retain throughout his or her legislative service the committee assignments that he or she initially receives, although some Members subsequently seek appointment to a committee with greater subject-matter relevance to their constituency or to a more prestigious exclusive committee, a slot becoming available.[10] By remaining on a committee, a Member accrues seniority and may eventually be elected as a subcommittee or committee chair or ranking minority member.[11] Since each party, and the House, imposes limitations on the number of committees and subcommittees on which a Member may serve, Members gain expertise in the issue areas handled by their committees. Members' specialized knowledge has been viewed as one of the hallmarks of the House committee system.

Waivers for additional assignments, nonetheless, are often granted on a case-by-case basis.

As the number of committees, subcommittees, and informal groups and task forces have increased, and the number of waivers and temporary assignments has expanded, the average number of assignments for Members has also risen. Further, as the party caucus or conference attempts to grant Member requests for specific assignments, committee sizes have increased, often to accommodate a requested assignment. The majority party has also occasionally changed a committee's majority-minority ratio to alter the political makeup of the committee. (See below, "II. 2.3. Number of Assignments.")

[9] See CRS Report RS20794, *The Committee System in the U.S. Congress*, by (name redacted).

[10] See CRS Report 98-151, *House Committees: Categories and Rules for Committee Assignments*, by (name redacted); and CRS Report 98-367, *House Committees: Assignment Process*, by (name redacted).

[11] See CRS Report RS21165, *House Standing Committee Chairs and Ranking Minority Members: Rules Governing Selection Procedures*, by (name redacted).

These developments have created problems for committees in managing their workloads. They have given rise to concerns that Members' capacity is spread too thin, that minority-party Members are underrepresented, and that there are in general too many committees and subcommittees. These developments also suggest that specialized knowledge is no longer seen as important as it formerly was within the House committee system.

Some Members have called for removing the decisions on committee size and ratio from the party caucus or conference, and making them decisions for the House. Others have called for strict adherence to party committee assignment limitations by not granting waivers or temporary assignments, while still others have suggested rotating committee assignments or rotating chairmanships. Some Members have even suggested allowing committee sizes to be set in accommodating requests by Members. Some have called for barring all select committees, while others have suggested abolishing standing committees with limited jurisdiction and a paucity of Members interested in serving on them. Some have advocated more reliance on subcommittee government, while others have advocated less. (See below, "II. 2.1. Committee Sizes," and "II. 2.2. Committee Party Ratios.")

Proposals relating to jurisdiction and referral can be viewed as sweeping, incremental, or cosmetic. Some Members have suggested a system of more numerous committees with relatively narrow jurisdictions, while others have advocated having fewer committees with relatively broad jurisdiction. Proposals have also been put forward for House and Senate committees to correspond in their jurisdiction, or to have congressional committees correlate with federal agencies, federal programs, or budget functions. (See below, "II. 4. Committee Jurisdiction and Referral.")

Some Members have suggested merely clarifying Rule X (committee jurisdictions) by making terminology more explicit or more representative. Some have also called for codifying informal precedents and agreements in the language of Rule X. Still others have recommended making Rule X reflect programmatic responsibilities by using specific statutory names rather than the general terminology currently used. Some seek a more definitive listing of subject responsibilities among committees.

II. 1.1. Party Rules

In drafting Democratic Caucus and Republican Conference rules for the next Congress, the respective party members must consider what the party, individual factions within the party, and individual Members want to achieve through party rules and how the rules can be drafted to achieve those objectives. For example, are the rules intended to define the relationship of party members to party leadership, or are they to define the pathway to committee membership and seniority? Are the rules merely guidelines, or are they enforceable? If the latter, is the enforcement process clear? Are the rules available and their operation transparent to all party members, regardless of a member's status within the caucus or conference or the member's record of support for leadership initiatives?

Current caucus and conference rules address some of these questions, but not entirely or completely transparently. If a rule is not plain, it leaves individual party members ignorant of how a member relates to the leadership, the party, and the House. Rules that are not definitive or transparent obscure how individual Members may obtain committee, leadership, and other positions within the House.

II. 2. Committee Sizes, Ratios, Assignments, and Leaders

The majority takes the lead in all aspects of committee organization, except for the assignment of minority Members to committees and the designation of minority committee leaders. The majority takes the initiative in creating or terminating committees, and, for each committee, establishing its size and the majority-minority ratio. Each party has a process for assigning its members to committees and selecting its committee leaders.

II. 2.1. Committee Sizes

For each new Congress, majority-party leaders generally establish the size of each committee and determine the ratio of majority to minority members on each committee, having engaged in some level of discussion with minority-party leaders. At issue for the majority are the desired number of committees and subcommittees, their size, and the party ratio on each. The minority has little influence in these decisions.

Some Members and experts charge that there are too many panels and that panels are too large, which results in too many assignments for Members generally and in unwieldy panels. (See also "II. 6. Specific Committees.") Together, these factors, it is argued, make it difficult to aggregate committee members' ideas, proposals, and points of view into a coherent legislative policy. Some have also argued that party ratios on panels are too favorable to the majority party and do not uniformly reflect party strength in the chamber on each committee. On the other hand, some argue that the current arrangement gives each Member the opportunity to formulate policy in multiple areas and to lead panels, and that ratios reflect the understandable and time-honored desire of the majority party through its voting strength to have the dominant hand in policymaking.

II. 2.1.1. Committee Sizes under House Rules and Practice in Modern Congress

A House rule in the past established the size of committees, but that rule, attenuated through circumvention, was stricken in the Committee Reform Amendments of 1974.[12] **Table 1** shows the size of committees by House rule in the 93rd Congress, the last Congress in which it was in effect before repeal, and the actual size of the committees in that Congress. In his history of the House of Representatives, Dr. George B. Galloway, a senior specialist in American government and public administration with the Legislative Reference Service (later renamed the Congressional Research Service), explained the evolution of committee sizes from the early 1900s through the late 1950s. His explanation shows the interplay between committee size, majority control, and the assignment of Members to one or more committees.

[12] Sec. 301 of H.Res. 988, agreed to in the House October, 8, 1974.

From the 64th to the 80th Congress, when the Legislative Reorganization Act[13] became effective, the House had 11 major or 'exclusive' committees whose chairmen served on no other standing committee of the House while the Democrats were in power. The 11 'exclusive' committees were: Agriculture, Appropriations, Banking and Currency, Foreign Affairs, Interstate and Foreign Commerce, Judiciary, Military Affairs, Naval Affairs, Post Offices and Post Roads, Rules, and Ways and Means.

Under the one-committee assignment rule adopted in 1946 all the standing committees of the House were 'exclusive' committees, except that Members who were elected to serve on the District of Columbia Committee or on the Un-American Activities Committee might be elected to serve on two committees and no more, and Members of the majority party who were elected to serve on the Committee on Government Operations or on the Committee on House Administration might be elected to serve on two standing committees and no more. These exceptions were made so that the majority party could maintain control of all the committees. In the 83rd Congress, however, when the Republicans had a 'paper thin' majority of only 7 seats in the House, 18 Republicans were given second committee assignments so as to enable them to control all the standing committees of the House. This necessary departure from the one-committee-assignment rule apparently marked the beginning of the breakdown of that rule, for an examination of committee assignments in the 2d session of the 85th Congress showed that 118 Members of the House had 2 or more committee assignments in 1958. In addition to the four excepted committees mentioned above, five more had been added to the list of those groups upon which some Representatives had second seats: Education and Labor, Interior and Insular Affairs, Merchant Marine and Fisheries, Public Works, and Veterans' Affairs.[14]

[13] The standing committees were established and their sizes set in the Legislative Reorganization Act of 1946. P.L. 601, § 121; 60 Stat. 812, 822-823 (1946).

[14] U.S. Congress, House, Committee on House Administration, *History of the United States House of Representatives*, H.Doc. 246, 87th Cong., 1st sess. (Washington, DC: GPO, 1962), pp. 73-74.

Table 1. Committee Sizes in House Rules and Actual Sizes, 93rd Congress

Committee	Size in House Rules	Actual Size
Agriculture	27	36
Appropriations	43	55
Armed Services	33	43
Banking and Currency	27	40
District of Columbia	25	25
Education and Labor	25	38
Foreign Affairs	25	40
Government Operations	25	41
House Administration	25	26
Interior and Insular Affairs	25	41
Internal Security	9	9
Interstate and Foreign Commerce	27	43
Judiciary	27	38
Merchant Marine and Fisheries	25	39
Post Office and Civil Service	25	26
Public Works	27	39
Rules	15	15
Science and Astronautics	25	30
Standards of Official Conduct	12	12
Veterans' Affairs	27	26
Ways and Means	25	25
Total Committee Seats	524	687

Source: Former House Rule X, cl. 1 contained committee sizes. U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives, 93rd Congress,* H.Doc. 384, 92nd Cong., 2nd sess. (Washington, DC: GPO, 1973), § 670, pp. 332-333. Authors calculated actual committee seats from committee rosters in the *Congressional Directory* for the 93rd Congress, checked against the corresponding *Congressional Staff Directory*. U.S. Congress, Joint Committee on Printing, *Congressional Directory, 93rd Congress, First Session, 1973* (Washington, DC: GPO, 1973), and *Congressional Staff Directory, 1973* (Alexandria, VA: Congressional Staff Directory Inc., 1973).

Growth in committee seats took a substantial jump in the 94th Congress (1975-1977). Some of this increase can be attributed to added seats on standing committees, but more of it can be attributed to the creation of two new standing committees. With the 1974 election of the Watergate class of House Democrats, Democrats won 291 seats to the Republicans' 144 seats. In preparations for organizing the 94th Congress, the Democratic Caucus approved a proposal that committees should reflect the 2-to-1 House majority by having a 2-to-1-plus-1 majority on all committees, except for the Committee on Standards of Official Conduct. The caucus also voted to increase the size of the Ways and Means Committee by one-half, to 37 from 25 members. The

expansion allowed additional Democratic assignments so that the committee's membership better reflected the ideological composition of the caucus.[15]

In addition, the Committee Reform Amendments of 1974 established the Committee on Small Business as a standing committee; it had previously existed as a select committee, lacking legislative authority.[16] Congress in 1974 also passed the Congressional Budget and Impoundment Control Act, which among its many provisions created the House and Senate Budget Committees.[17] The House, however, also voted in January 1975 to abolish one committee, the Internal Security Committee, and to transfer its jurisdiction and staff to the Judiciary Committee.[18]

By the 103rd Congress (1993-1995), the last Congress organized by Democrats before a Republican majority was elected in 1994, the number of committee seats had substantially increased since 1975, by over 16 percent. An increase of only 19 seats can be allocated to the creation of a new standing committee, the Permanent Select Committee on Intelligence;[19] the preponderance of the increase resulted from larger standing committee sizes.

When the new Republican majority organized the House in the 104th Congress (1995-1997), it abolished three committees—District of Columbia, Merchant Marine and Fisheries, and Post Office and Civil Service—and transferred their jurisdiction to other standing committees. Small decreases and some increases in size affected many committees, with the number of standing committee seats being reduced by 110, or over 12%.

Through the last Congress in which Republicans held the majority, the 109th Congress (2005-2007), the increase in the number of committee seats approached the crest in the 103rd Congress. Slightly over one-third of the increase can be attributed to the creation of the new standing Committee on Homeland Security.[20] While a few committees were smaller after five Congresses, most committees had larger memberships.

After controlling the House again in the 110th and 111th Congresses, Democrats made a nine-seat reduction from the number of seats in the Republican-controlled 109th Congress.

Table 2 shows the size of each standing committee that has existed or been created since the 93rd Congress (1973-1975) for each of the Congresses discussed. The total number of seats and number of standing committees for each of these Congresses is also shown.

[15] *Congressional Quarterly Almanac, 1975*, vol. XXXI (Washington, DC: Congressional Quarterly Inc., 1976), p. 30.

[16] H.Res. 988, § 321.

[17] P.L. 93-344, § 101; 88 Stat. 297, 299-300 (1974).

[18] Para. 6 of H.Res. 5, agreed to in the House January 14, 1975.

[19] H.Res. 658, agreed to in the House July 14, 1977.

[20] Sec. 2 of H.Res. 5, agreed to in the House January 4, 2005.

Table 2. Seats on Standing Committees for Selected Congresses

Committee	93rd Congress (1973-1975)	94th Congress (1975-1977)	103rd Congress (1993-1995)	104th Congress (1995-1997)	109th Congress (2005-2007)	111th Congress (2009-11)
Agriculture	36	43	48	49	46	46
Appropriations	55	55	60	56	66	60
Armed Services	43	40	56	55	62	62
Budget	n/a	25	43	42	39	39
District of Columbia	25	23	12	n/a	n/a	n/a
Education and Labor	38	40	42	43	49	49
Energy and Commerce	43	43	44	47	57	59
Financial Services	40	43	51	49	70	71
Foreign Affairs	40	37	45	42	50	47
Homeland Security	n/a	n/a	n/a	n/a	34	34
House Administration	26	25	19	12	9	9
Internal Security	9	n/a	n/a	n/a	n/a	n/a
Judiciary	38	34	35	35	40	40
Merchant Marine and Fisheries	39	40	n/a	n/a	n/a	n/a
Natural Resources	41	43	43	45	49	49
Oversight and Government Reform	41	43	42	49	41	41
Post Office and Civil Service	26	28	24	n/a	n/a	n/a
Rules	15	16	13	13	13	13
Science and Technology	30	37	55	50	44	43
Small Business	n/a	37	45	41	33	29
Standards of Official Conduct	12	12	14	10	10	10
Transportation and Infrastructure	39	40	64	60	75	75
Veterans' Affairs	26	28	35	33	28	29
Ways and Means	25	37	38	36	41	41
Intelligence, Permanent Select	n/a	n/a	19	16	21	22
Total Committee Seats	687	769	893	783	877	868
Number of Committees	21	22	23	20	21	21

Source: Created by the authors. Committee seats were calculated from committee rosters in the *Congressional Directories* of the respective Congresses, checked against corresponding *Congressional Staff Directories*. U.S. Congress, Joint Committee on Printing, *Congressional Directory, [year]* (Washington, DC: GPO, [year]), and *Congressional Staff Directory, [year]* (Washington, DC: CQ Press, [year]).

Notes: While committee names have changed over the period covered by this table, the committee names used are those in effect in the 111th Congress. Jurisdictions also evolved over this period—by rule change or other actions—but each committee has a readily traceable provenance.

II. 2.1.2. Options for Committee Sizes

One of the most frequently mentioned approaches is to set the size of committees in House rules and determine whether and under what conditions they can be altered. The House could also limit the size of any committee to a fixed number. Alternatively, the House could establish uniform sizes across committees.

Reducing the size of committees could increase the opportunities for meaningful deliberation during hearings and meetings. It would likely reduce assignments, thus lessening the burden from Members serving on too many committees. Fixed sizes could provide more stability and predictability of memberships and could forestall pressures on party leaders and committees to increase sizes. Establishing a uniform number of seats on all committees might foster changes to reduce differences in committee workloads and jurisdictional breadth. For these alternatives to work, the majority and minority would need to be prepared to adjust their ratios within a given committee's size.

However, reducing committee sizes, and thus assignments, might have an adverse effect on Members' opportunities to participate in the legislative process.[21] Also, party leaders and committees need flexibility to adjust committee sizes to ensure majority-party control, to respond to the changing nature and importance of policy issues, and to accommodate Members' requests for seats. Limiting leaders' flexibility could create conflicts among party members interested in the same panels, and might require additional bumping of members from panels to reflect reduced party strength in the chamber following an election. Adjustments of ratios within a set committee size could conceivably leave some Members without a committee assignment.

II. 2.2. Committee Party Ratios

Following an election, Democratic and Republican leadership to some degree discusses committee sizes and ratios, recognizing the majority party's goal of having dominant representation on committees. Any discussions normally occur simultaneously with debate on and adoption of caucus and conference rules. Individual committee ratios can reflect the proportion of majority and minority seats in the House, or they can reflect other factors and decisions.[22] The aggregate number of majority and minority committee seats might reflect proportions in the House, with some committees having a larger majority and some a smaller one. **Table 3** shows the history of the allocation of seats for the Congresses that were discussed above.

[21] Members desire to participate in as broad array of committee decision making as possible is a motivation behind both committee structure and the expanding number of assignments for Members; see CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by (name redacted).

[22] Following the 1980 election, in which Republicans gained 33 seats in the House, Democrats chose to maintain majorities disproportionate to their chamber majority on the Appropriations, Budget, Rules, and Ways and Means Committees. Republicans lost several votes during January 1981 that sought to impose different committee ratios. *Congressional Quarterly Almanac*, vol. XXXVII (Washington, DC: Congressional Quarterly Inc., 1982), pp. 9-10. Thirteen Republican Members in July 1981 then sued the Speaker and several other Democratic Members in U.S. district court, alleging that the committee ratios violated their constitutional rights as both voters and Members. The district court dismissed the case, and the dismissal was upheld on appeal. *Vander Jagt v. O'Neill*, 524 F.Supp. 519 (D.C. 1981), *aff'd on other grounds*, 699 F.2d 1166 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 823 (1983). The appellate court ruled "prudential and separation-of-power concerns counsel us not to exercise our judicial power." 699 F.2d at 1168.

Table 3. Majority-Minority Allocation of Committee Seats in Selected Congresses

	93rd Congress (1973-1975), Democratic majority	94th Congress (1975-1977), Democratic majority	103rd Congress (1993-1995), Democratic majority	104th Congress (1995-1997), Republican majority	109th Congress (2005-2007), Republican majority	111th Congress (2009-2011), Democratic majority
Size of House majority (% seats)	243 (55.86%)	291 (66.90%)	259[a] (59.54%)	230 (52.87%)	232 (53.33%)	257 (59.08%)
Majority committee seats (% seats)	393 (57.20%)	518 (67.36%)	549[b] (61.48%)	436 (55.68%)	487 (55.53%)	526[c] (60.60%)
Size of House minority (% seats)	192 (44.14%)	144 (33.10%)	176 (40.46%)	204[a] (47.13%)	201[a] (46.67%)	178 (40.92%)
Minority committee seats (% seats)	294 (42.80%)	251 (32.64%)	344 (38.52%)	347 (44.32%)	390 (44.47%)	342 (39.40%)

Source: Created by the authors. Committee seats were calculated from committee rosters in the *Congressional Directories* of the respective Congresses, checked against corresponding *Congressional Staff Directories*. See citations in Source for **Table 2**. The House majority and minority numbers were taken from annual *Congressional Quarterly Almanacs* for the election years preceding the respective Congresses and reflect the election outcomes. *Congressional Quarterly Almanac* [vol., year] (Washington, DC: Congressional Quarterly Inc., [year]). All calculations include the Resident Commissioner and Delegates with the party of which the individual was a member.

a. Includes an independent Member who received committee assignments from the Democratic Caucus.

b. A Delegate from American Samoa was authorized in law in 1978. The Delegate joined those from the District of Columbia, the Virgin Islands, and Guam and the Resident Commissioner from Puerto Rico. The Delegates and Resident Commissioner are allocated seats by their party or the party with which they caucus. In the 103rd Congress, the Delegates and Resident Commissioner were all Democrats.

c. A Delegate from the Commonwealth of the Northern Mariana Islands was authorized in law in 2008; he is a Democrat.

II. 2.2.1. Options for Committee Ratios

House rules could require membership of each committee and subcommittee to reflect the ratio of majority to minority members in the chamber, but ensure at least a one vote margin on each panel for the majority party. Alternatively, the House could increase the majority's allotment of seats on committees by establishing a 2-to-1-plus-1 ratio on each, or it could have committees reflect the party ratio in the House but award the majority an additional seat only on exclusive committees. There could also be a tiered system to translate majorities of different sizes into related committee ratios, so that, for instance, a majority of up to 25 seats correlated to one set of committee ratios, a majority of up to 50 seats correlated to another set of committee ratios, and so on.

A ratio on a specific committee might be arrived at, in part, to accommodate the assignment of one or more Members whose electability is perceived will benefit from a specific committee assignment. Members of the party caucus or conference might ask whether the party leader should be able to make such assignments unilaterally, or whether all factions or groups within the party should be consulted or have a vote on an accommodation. Placement of a Member from one

faction or group within a party could adversely affect the policy input from others within the party.

If party leaders desire the flexibility to strategically place Members on certain committees, then caucus or conference rules, or Democratic Steering and Policy Committee and Republican Steering Committee guidelines, could make clear what is allowed. When the full caucus and conference votes on assignment resolutions, transparency would also be served if party members were aware when such accommodations were being made.

Aggregating all committee assignments into one omnibus resolution makes it difficult to object to one committee's membership at the expense of other committees' makeup. If accommodations are made in assignments of individual party members, separate votes could be held on those assignments.

II. 2.3. Number of Assignments

Each party uses a panel—the Democratic Steering and Policy Committee and the Republican Steering Committee—to recommend its members for assignment to, and leadership of, committees. The full party caucus or conference reviews and votes on their steering committee's nominees, and the slates are then sent to the House in the form of committee assignment resolutions (House Rule X, clause 5). House approval has been pro forma.[23]

House Rule X, clause 5(b)(2) limits Members to service on two committees and four subcommittees. However, in the assignment resolutions submitted to the House by the caucus and conference, some number of Members are assigned to just one committee and other Members are assigned to more than two committees. In the first instance, the parties consider some committees to be exclusive, and that a Member appointed to one of these committees should not serve on another standing committee. Nonetheless, service on some committees, such as the Budget Committee, is treated differently, and does not seem to violate a limit for a member on an exclusive committee. In the second instance, some Members obtain an assignment to a third or fourth standing committee, or obtain assignment to a second standing committee despite their service on an exclusive committee. Parties make these additional assignments for a variety of reasons, some related to the party and some unique to an individual Member. **Table 4** shows the number of assignments for the Congresses discussed above.

[23] See CRS Report 98-367, *House Committees: Assignment Process*, by (name redacted). Republican Leader John A. Boehner raised his concern with the number of committee assignments in a recent speech:

> We can't ask members to become more engaged if they sit on three different committees and more than a handful of subcommittees. We currently have rules regarding member limitations [on committee service], but of course they're frequently waived to have warm bodies in those slots. We need to rethink that.

Rep. John A. Boehner, "Congressional Reform and 'The People's House'," speech to the American Enterprise Institute for Public Policy Research, September 30, 2010; available online at http://www.aei.org/event/100308#doc. (Hereafter, Rep. John A. Boehner, "Congressional Reform," September 30, 2010.)

Table 4. Number of Members' Assignments to Standing Committees for Selected Congresses

Number of Assignments	93rd Congress (1973-1975)	94th Congress (1975-1977)	103rd Congress (1993-1995)	104th Congress (1995-1997)	109th Congress (2005-2007)	111th Congress (2009-2011)
1	189	124	98	134	133	115
2	244	305	241	259	183	214
3	1	6	93	42	115	102
4	0	0	6	1	7	4

Source: Created by the authors. Assignments were calculated from committee assignments section of the *Congressional Directories* for the respective Congresses, See citations in Source for **Table 2**.

Notes: In the 93rd, 94th, and 103rd Congresses, the Speaker and minority leader were listed as having no committee assignments. In the 104th Congress, the Speaker, majority leader, minority leader, and minority whip were listed as having not committee assignments. In the 109th Congress, the Speaker and minority leader were listed as members of the Permanent Select Committee on Intelligence, and the majority leader was listed as having no committee assignments. In the 111th Congress, the Speaker, majority leader, majority whip, and minority leader were listed as having no committee assignments.

II. 2.3.1. Options

House Rules could be amended to reflect the reality of current committee assignments or to set different limits. As one option, for example, the rule could be changed to allow Members to serve on no more than two standing committees, with an exception for service on either the Budget Committee or the Permanent Select Committee on Intelligence. It would be up to each party to determine if a third or fourth assignment would be allowed, for example, service on both term-limited panels in addition to two standing committees. A provision allowing such service could be explicit in House rules. Conversely, both parties could enforce a one-Member, one-committee rule.

A waiver of the two-committee assignment limit could be disallowed with specific exceptions. For example, an exception could be allowed for the duration of a House vacancy, or it could be allowed for service on select committees.

The rule could also be altered to allow service on up to three committees. Democratic Caucus rules, for example, have often exempted service on the Committee on House Administration. House rules could be altered to reflect that service on the committee would not count against the two-committee limit. Similarly, the rule could be revised to provide an allowance for service on the Standards of Official Conduct Committee, notwithstanding the service limitation.

Another approach could be to assign only Members with one committee assignment to serve on the Standards of Official Conduct Committee or the Permanent Select Committee on Intelligence.

The option discussed most often is to group committees into categories with assignment limits applicable to all Members. Each Member could alternatively be limited to one committee and to a fixed number of subcommittees. The parties could also instead remove restrictions on the number of committees and subcommittees on which a Member may serve or chair, and allow each Member to serve on panels of his or her choice.

Term limits have often been discussed as a way to address the assignment issue. (Discussed immediately below, "II. 2.3.2. Rotation of Committee Leadership and Membership.")

One of the issues related to committee assignments is the role of the party caucus and conference and the role of the party leader. One option might be to allow the party leader to nominate party colleagues for assignment to all, or to additional, key committees, subject to caucus or conference and House approval or only to House approval. Alternatively, each party could be allowed to nominate and choose its committee members without subsequent House approval. Another option might be to require the party caucus or conference to determine all committee assignments without the involvement of the party leader.

II. 2.3.2. Rotation of Committee Leadership and Membership

While a limit on tenure of service exists for two committees, and a limit on service by chairs exists only in Republican Conference rules, the House might wish to consider placing a fixed tenure on committee service and on committee leadership.

If it was thought that rotation would be beneficial, either House rules or party rules could place a fixed tenure limit on Members' service on and leadership of all committees, or perhaps only some committees, for example, 6 to 12 years for service, and 4 to 8 years for leadership positions. Membership could be rotated, possibly one-third of a panel's members at a time, but allow for later reassignment. Alternatively, Members could be encouraged to switch committees, such as by calculating committee seniority based on all or part of a Member's House seniority. Further, Members could be permitted to change or swap assignments by voluntary agreement.

Another option would be to encourage Members to take temporary leaves of absence from committees, perhaps by according them favorable seniority rankings on their temporary assignments. Alternatively, temporary leaves of absence from committees could be prohibited.

Several potential advantages to rotating committee memberships have been suggested. First, oversight of the implementation of programs by the executive branch might be conducted by Members who did not have a role in establishing them, and thus might have an open mind about their change or retention. Second, the assignment panels might have more latitude to assign Members in accordance with anticipated policy debates and attendant party needs. Third, committees might better reflect the makeup of the House, with decreased self-selection by Members. Fourth, frequent membership changes might more fully expose committees to Members with fresh perspectives and ideas. Fifth, rotation would broaden Members' knowledge base, perhaps encouraging and enhancing the quality of floor deliberation. Sixth, important criteria such as expertise and leadership abilities might be weighed more heavily in choosing committee leaders. Finally, periodic reorganization or realignment of committees might be easier because Members' attachments to specific committees would be weaker.

There are also potential drawbacks that can be identified with such a proposal. It could diminish Member specialization and hence expertise, long a unique strength of House committee service; decrease the institutional memory of committees; increase Member reliance on staff with long committee service; potentially lead to dramatic shifts in policy; create uncertainty for agency and interest groups who depend on regular contacts; and, if the House sees rotation as decreasing committee expertise, increase the amount of legislating on the floor. This change could result in Members serving on committees that do not benefit their constituents as directly as others, possibly decreasing chances of reelection.

A further decrease from current practices in the reliance on seniority for choosing committee leaders might create problems if a less knowledgeable or experienced leader is supposed to lead a committee membership that is more knowledgeable and experienced than he or she.

Unless both chambers, and both parties in a chamber, adopt such a change, the chamber or party with term limits might consider itself at an expertise disadvantage in dealing with its counterpart.

II. 2.4. Chairs and Ranking Minority Members

Committee chairs and ranking members are selected by either their party steering committee or their party leader. While seniority is a factor in their selection, that is not always the case.

Selection of committee leaders has always been a subject of discussion. Should the party leader unilaterally choose a committee leader, or should the party caucus or conference make that decision, perhaps voting on a recommendation from an entity such as the steering committee? If the latter, it would be important to understand how membership on the steering committee is determined. Should a committee caucus select its leader from among its membership? And, what role, if any, would the party caucus or conference have in ratifying committee members' choice? Finally, should all committees be treated equally, that is, could the party leader select exclusive panel leaders, while the party machinery could choose other committee leaders, or vice versa, or some combination thereof?

Another option to consider is to have the assignment panels nominate multiple individuals for committee leadership positions, regardless of seniority on a committee or even length of service on a committee or in the House.

The issue of rotation of committee chairs and ranking members has been raised often in recent years. Term limits have been both included in, and removed from, House rules; term limits have also on occasion been waived and modified by the party caucus and conference. Further, not all committee leaders are subject to limits. One option could be to place a fixed tenure limit on leadership of all committees, regardless of whether the leader is selected by the party steering committee or appointed by the party leader. Alternatively, term limits could be imposed only on the leaders of exclusive committees, or only on the leaders of non-exclusive committees. If term limits are imposed, should they be included in House rules and therefore applicable to both parties, or only in party caucus or conference rules? Would it be problematic if one party imposed term limits while the other party did not? Finally, if term limits are imposed, most Members would presumably want it to be clear whether service as ranking member counts as service as chair. (See discussion immediately above, "II. 2.3.2. Rotation of Committee Leadership and Membership.")

II. 3. Subcommittees

The role and authority of subcommittees under House rules is unclear, and their treatment in individual committees varies widely. Is clarity and consistency desirable?

II. 3.1. Subcommittees in House Rules

The rules of the House are the rules of its committees and subcommittees, to the extent applicable (House Rules XI, clause 1(a)(1)(A)). Each subcommittee is subject to the direction of its parent committee and the rules of the parent committee to the extent these rules are applicable (House Rules XI, clause 1(a)(1)(B)). However, various provisions of House rules are not expressly applicable to both committees and their subcommittees. Questions have occasionally arisen with regard to interpreting subcommittee authority: if House rules do not make a procedure specifically applicable to subcommittees, does the general provision that House rules are applicable to both committees and subcommittees govern any apparent variability? Intermittent attempts to clarify or codify the relationship have met with limited success in the past but some Members and staff have suggested undertaking another review.[24]

II. 3.1.1. Options

Perhaps the most-often mentioned recommendation is to specify in House rules those that apply specifically to subcommittees. House rules could also make all House rules that mention committees clearly state that those rules also apply to subcommittees. Alternatively, House rules could clarify those specific rules that apply; for example, subcommittees could be required to have regular meeting days, especially if they have authority to report legislation, and there could be specific public access to their records. Further, rules could require written subcommittee reports on legislation, with a Ramseyer analysis to be included. Rules could also require supplemental views to be included in subcommittee reports. (See below, "II. 7.4. Subcommittee Markups.")

Another series of options relates to the authority of legislative subcommittees generally. That is, should committee rules require that all legislation be referred to subcommittee, and should each subcommittee have authority to mark up legislation? If so, should a subcommittee have authority to request a sequential referral of a measure reported from another subcommittee of the parent committee? Alternatively, subcommittees could be limited to holding hearings and conducting oversight, with the authority to mark up legislation being reserved for the full committee.

II. 3.2. Number of Subcommittees Per Committee

Current House rules generally limit committees to five subcommittees. In every Congress since the 104th Congress, several different committees in each Congress have been allowed to create additional subcommittees.

[24] See CRS Report 98-544, *Subcommittees in the House of Representatives*, by (name redacted).

II. 3.2.1. Options

Several panels have routinely been granted waivers to have more than five subcommittees. House rules could be amended to allow specified panels to have six or seven subcommittees, or to allow committees with the broadest jurisdiction to have additional subcommittees. That could reduce the need for a rules change each Congress to enable those panels to create additional subcommittees.

House rules could also be amended to raise the existing limit to six subcommittees from five. Such a change might mitigate the need for waivers of the rule each Congress.

Another option could be to raise the existing limit to six subcommittees, and allow a committee to create a seventh subcommittee if that panel is an oversight subcommittee. Alternatively, if additional subcommittees are to be created, each committee waiver could be voted on individually so that each committee's need could be weighed on its own merits.

Members often complain about having too many committee assignments. Increasing the number of subcommittees exacerbates the problem. House rules could reduce the permitted number of subcommittees, rather than increase them.

II. 3.3. Subcommittee Assignments

Rule X, clause 5(b)(2)(A) also generally limits Members to service on no more than four subcommittees of standing committees. As just mentioned, the rule limiting the number of subcommittees each committee can create is often modified. Because of these factors, scores of Members serve on more than four subcommittees, theoretically in violation of the House rule limiting service to two committees.[25]

II. 3.3.1. Options

One option for change in House rules is to increase the allowable number of subcommittees per Member. Although a limit of four is arguably possible for Members serving on two committees, the limit might be raised for Members serving on more than two committees.

It has been assumed that an additional committee assignment automatically enables a Member to have additional subcommittee assignments. An alternative approach could be to revise the rule so that Members are limited to a total of four subcommittees, but, if a Member serves on a third committee, that Member must select subcommittees on all three committees to remain within the limit to four. Another option could be to prohibit a Member with a third committee assignment to serve on any subcommittee of the third committee in order to stay within the four-subcommittee limit.

[25] See CRS Report 98-610, *House Subcommittees: Assignment Process*, by (name redacted).

II. 4. Committee Jurisdiction and Referral

Committees have both legislative and oversight jurisdiction. The former refers to the authority of a committee to report legislation on subject matter. The latter refers to the authority to conduct oversight on subject matter. Legislative jurisdiction generates the most conflict between committees. Committees carefully monitor legislative referrals and committee reports to ascertain any encroachment on their jurisdiction, and seek a referral whenever they believe a new measure or a reported measure has provisions that fall within their jurisdiction.

II. 4.1. Jurisdiction

No characteristic of the committee system is more critical than its jurisdictional structure—the way it divides and distributes control over policy subjects.[26] Questions are continually raised over duplication, overlap, and neglect of some issues, and the resulting impediment to policymaking. In addition, the use of task forces or non-legislative select committees seemingly highlights the jurisdictional problems among committees and adds another layer of consideration and duplication of effort. These additional entities' existence often fosters turf battles and legislative gridlock.[27]

II. 4.1.1. Options

In the past 20 years, there have been numerous suggestions of how to realign committee jurisdictions, both to make them more rational and to equalize importance among committees. The most-often mentioned recommendations are to realign jurisdiction to parallel budget functions, federal agency organization, or federal programs, or to at least bring the House and Senate committee structures into alignment.

The congressional committee structure sometimes follows large changes in the executive branch, as the creation of the House Committee on Homeland Security and the Senate committee on Homeland Security and Governmental Affairs after Congress organized the Department of Homeland Security. But, such changes are generally imperfect, with many committee retaining pieces of jurisdiction. The Senate somewhat overcomes this problem with its one-bill-one-committee referral system, which the House abandoned in 1975.

Other options relate to the number of committees, such as creating a system of numerous committees with relatively narrow jurisdictions, or alternatively, creating a system of few committees with broad and integrated jurisdictions. A larger number of committees would bring focus to individual committees' work, and perhaps allow committees to work on their subject matter without looking over their shoulders at parallel work in other committees. It would also allow Members to serve on two or more committees with distinctive jurisdictions and play a substantive policymaking role in each area. A larger number of committees could conceivably make it harder to integrate related policymaking. A smaller number of committees should allow

[26] See CRS Report 98-175, *House Committee Jurisdiction and Referral: Rules and Practice*, by (name redacted).

[27] Republican Leader Boehner recently commented on the committee structure: "To ensure there is proper oversight, Congress should also review its internal committee structure and eliminate duplicative programs and jurisdictions. This hasn't been done in 15 years." Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

each committee to deal comprehensively with policymaking within their subject-matter jurisdiction. For such a system to be effective, Members would likely need to serve on just one committee.

Another approach might be to eliminate some committees, combine others, and realign jurisdictions accordingly, resulting in the least change to the current system other than no change.

II. 4.2. Referral

Rule X establishes the jurisdiction of each House committee. Measures are referred to a committee based primarily on the language in Rule X. Referral itself is address in Rule XII, clause 2, and confers, within the strictures of the rule, authority to the Speaker to refer measures.

Prior to 1995, measures could be referred to one committee or to more than one committee—jointly or simultaneously, sequentially, or in a split manner. Such referrals were often called "multiple referrals." In 1995, with the new Republican majority, House rules were changed to require the Speaker to determine a committee of "primary" referral, essentially abolishing joint or simultaneous referral. Additional referrals could be made, but only in a sequential manner. In the 108th Congress, House rules were changed to allow the Speaker to refer a measure without designating a primary committee "under extraordinary circumstances." The Speaker also has the authority to impose a time limit on a committee receiving a referral.

In addition to the jurisdiction language in Rule X, and the referral options granted to the Speaker, several committees have entered into memoranda of understanding (MOUs)—essentially jurisdictional agreements between or among committees related to issues in general, certain categories of bills, or the referral of specific measures. MOUs are printed in the *Congressional Record* and are viewed by the parliamentarian as binding.

Committee jurisdiction has been altered several times in the past 15 years. Major changes were made in the 104th Congress when the Republicans gained the majority and in the 108th Congress when the Committee on Homeland Security was created, with more modest adjustments effected in other Congresses. Several outside groups have recommended additional jurisdictional reform. The creation of a new House committee since 1995, the use of the select committees, and the increased use of sequential referrals, among other items, might support the perspective that jurisdictional realignment is needed.

Several committees will have new chairs and ranking members in the 112th Congress, and many subcommittee leaders will also be new.[28] The majority of Members of the House did not serve prior to 1995, and a number of newer Members do not serve on the same committee(s) as they did in their freshmen term. Consequently, it cannot be assumed that all Members are as protective of committee jurisdiction as some senior Members, especially those who are chairs.

[28] For guidance on chair and committee duties at the conclusion of one Congress and the beginning of another, see CRS Report RL34679, *House Committee Chairs: Considerations, Decisions, and Actions as One Congress Ends and a New Congress Begins*, by (name redacted) and (name redacted).

II. 4.2.1. Options

House rules for the new Congress could alter the language in Rule X to address perceived overlap or ambiguity among committees. Obviously, such change could be minimal or extensive. The change could affect as few as two committees or as many as all of them. Another option could be to change the language of Rule X to more accurately reflect the programs and agencies understood to be within the jurisdiction of each committee. Such a change could arguably make it easier for the House parliamentarian to be more consistent and transparent in referrals.

In part because attempts to realign jurisdictions are rarely successful, other ways to minimize conflicts among committees could be employed. In fact, it could be argued that the 1974 reforms adopted pursuant to the Bolling committee recommendations were not as successful as anticipated, since the jurisdictional realignments were not wholly adopted but the recommendations related to referral were.[29] In 1995, when referral procedure was changed, it once again was not accompanied by wide-ranging jurisdictional realignment.[30]

There are, therefore, some possible changes to referral procedures which, whether adopted along with jurisdictional change or not, could be effected. One option could be to limit the use of sequential referrals, or to rely on split referrals. Although referral language normally states that sequential referrals are limited to matters within a committee's jurisdiction, there is little specificity in determining what subjects or provisions of an introduced or reported measure that might entail. Further, some committees receiving a sequential referral consider the entire measure, in part as a way to increase their jurisdictional portfolio. A referral could specify sections or titles that could be considered by the additional committees when a bill or resolution is introduced. A rules change could require more detail to be included regarding what portions of a measure are within the responsibility of a committee receiving a sequential referral.

Another option might be to require that time limits be imposed on all committees receiving a referral. Current procedures allow a time limit to be imposed by the Speaker, but do not require one. No knowing the vehicle that might be chosen for markup, it could be impossible to implement such a proposal, although leaders could use this opportunity to identify the vehicle they want to move through the House. Alternately, the Speaker could be required to impose a time limit on sequential referrals at the time the primary committee reports. Such a change would limit the power of a secondary committee to control the fate of legislation reported by a primary committee.

Since House rules were changed to allow the Speaker to make a referral without designating a primary committee under "extraordinary circumstances," it appears that this authority has been invoked no more than once or twice. House rules could be amended to clarify the intent of the current language or to specify committees or issues that might qualify for such a referral.

[29] H.Res. 988, agreed to in the House October 8, 1974.

[30] H.Res. 6, agreed to in the House January 5, 1995.

II. 5. Select and Joint Committees

Appointments to select and joint committees are discretionary with the party leader, with little guidance appearing in either House or party rules. Neither party assignment committee plays any role in approving the leader's selections. As such, decisions may entitle the leader to reward political supporters or those who share the views of party leaders. Some select and joint committees have, or can have, important policy responsibilities. Further, although select committees are intended to be temporary, they sometimes continue for several Congresses. Select committees with legislative authority have been used successfully.[31]

II. 5.1. Options

Eliminating the party leader's unilateral authority for assignments might be considered, instead allowing the party assignment committee to have a role in confirming appointments to select and joint committees. Alternatively, individual Members might be granted the right to request a vote in the full caucus or conference for the party leaders' individual selections.

If a select committee is to be continued for more than one Congress, a rule change could require that the entire party caucus or conference approve assignment decisions prior to an assignment resolution being offered on the floor.

The Select Committee on Energy Independence and Global Warming was initially created in the 110th Congress pursuant to a self-executing amendment in a special rule to a committee expense resolution.[32] House rules could be changed to require any resolution creating a select committee to be freestanding.

In recent years, several resolutions have been introduced to create additional select committees, and historically some important select committees have considered issues of national importance. The House might consider creating such panels, both to enable Members to serve on panels that might not count against assignment limitations but also to provide an outlet for Members' interests and to achieve interdisciplinary consideration of issues. Alternatively, the House might limit the creation of all select committees and require standing committees to address the breadth of issues within their jurisdiction.

Select committees *with legislative authority* have been used effectively to integrate policy that is split between three or more committees. The House has used such select committees both to report legislation instead of the committees of jurisdiction and to report legislation integrating the work of the committees of jurisdiction. Representation of the committees of jurisdiction in the membership of the select committees and sufficient time to work seemed to be key factors in their success.[33]

[31] See CRS Report RS20794, *The Committee System in the U.S. Congress*, by (name redacted).

[32] Sec. 4 of H.Res. 202, agreed to in the House March 8, 2007.

[33] See CRS Report R40233, *House Ad Hoc Select Committees with Legislative Authority: An Analysis*, by (name redacted).

II. 6. Specific Committees

Some changes to the House committee structure could be made readily in preparing a rules package for the 112th Congress. Other changes that might be desired, such as increasing or decreasing the number of committees and making major shifts in jurisdiction might be done after additional study revealed the implications of the changes.[34]

II. 6.1. Budget Committee Rotation

Rule X, clause 5(a)(2)(A) currently limits service on the Budget Committee to no more than four Congresses in a period of six successive Congresses. The limitation was changed in the 96th Congress to relax the limitation to three Congresses from two, in any period of five successive Congresses; to exempt representatives of the party leadership from the limitation; and to permit an incumbent chair who had served on the committee for three Congresses and as chair for not more than one Congress to be eligible to serve as chair for an additional Congress. In the 101st Congress, a minority Member who had served for three terms was allowed to serve an additional term as ranking minority member. In the 102nd Congress, the rule was amended to extend the waiver of the tenure restrictions for the ranking minority member. In the 103rd Congress, the provision related to the ranking minority member was stricken as obsolete.

In the 104th Congress, the limitation was changed to four Congresses from three, in any period of six successive Congresses—the current scheme. There was an exception for a Member who had served as chair or ranking minority member during a fourth Congress—the Member could serve in either capacity during a fifth Congress, so long as that Member would not exceed two consecutive terms as chair or ranking minority member. The tenure limitation was suspended during the 106th Congress. In the 108th Congress, the tenure limitation for the chair and ranking minority member was replaced with a provision subjecting only the chair to the overall tenure limitation applicable to all other standing committee chairs.

It is clear that the assignment limitation for Members had been changed in many Congresses to accommodate individual Members. Further, the limitation has been relaxed so that Members can generally serve for eight years on the committee.

II. 6.1.1. Options

Members continue to seek assignment to the Budget Committee, and the changing limitation rules apparently confirm the committee's popularity. As such, the House might wish to consider making the committee a permanent assignment and remove the rotation provisions in House rules, bringing the House committee into line with the Senate Budget Committee.

Alternately, the House might also consider extending the term limits allowed on the panel, for example to five or six Congresses.

[34] As noted earlier, Republican Leader Boehner recently commented on the committee structure: "To ensure there is proper oversight, Congress should also review its internal committee structure and eliminate duplicative programs and jurisdictions. This hasn't been done in 15 years." Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

A third option could be to limit the terms of Members who serve on the Budget Committee because of their assignment on other panels, such as the Appropriations Committee, but make the Budget Committee a permanent assignment for at-large members or for Members who serve on only one other standing committee.

II. 6.2. House Administration

The Committee on House Administration Committee serves a unique role in the House. Its chair is often referred to as "the mayor of Capitol Hill." The majority of the panel's responsibilities relate to the internal operations of the House, and, in most cases, its work is neither partisan nor controversial. However, it does not exercise full responsibility over all administrative aspects of the internal House structure. For example, House officers are not in its portfolio; its jurisdiction might be expanded accordingly. Relatedly, because of the nonpartisan nature of much of its work, the committee's membership might be made equal in number of majority to minority members, or, assigning only one more majority member than there are minority members.[35]

Not all of this committee's jurisdiction can be considered administrative, since, for example, the issue of campaign finance is within the committee's purview. Should this committee continue to exercise this jurisdiction?

II. 6.3. Other Committees

As noted earlier in this report, jurisdictions lead to tensions among committees. Assuming an extensive revision of Rule X is not undertaken, several specific concerns might be addressed. For example, the recommendations of the 9/11 Commission regarding the jurisdiction of the Homeland Security Committee can be revisited. Overlaps between this committee and others still exist, and continued use of memoranda of understanding is indicative of that overlap.[36] Alternatively, the House could adopt by unanimous consent the "Legislative History to Accompany changes to Rule X" inserted by then-Rules Committee Chairman David Dreier in the *Congressional Record*, which differentiated the Homeland Security Committee's jurisdiction from that of 10 standing committees. Since this document was inserted in the *Record* but not acted on by the House, referrals are not made subject to its provisions.

Similarly, the Permanent Select Committee on Intelligence has a limited jurisdiction, although several issues considered by the panel are also claimed by other committees as within their jurisdiction. Further, there are recommendations made by the 9/11 Commission related to the Intelligence Committee that have never been implemented.[37]

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[35] For the same reasons, the Legislative Branch Appropriations Subcommittee could also have equal majority-minority representation.

[36] See CRS Report RL32711, *Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House, and 109th and 110th Congresses Epilogue*, by (name redac ted); and CRS Report RL33061, *Homeland Security and House Committees: Analysis of 109th Congress Jurisdiction Changes and Their Impact on the Referral of Legislation*, by (name redacted) and (name redacted).

[37] See CRS Report RL32659, *Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives*, by (name redacted); and CRS Report RL32711, *Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House, and 109th and 110th Congresses Epilogue*, by (name redacted).

Committees also have unequal jurisdictions and workloads. The Committee on Energy and Commerce and the Committee on Ways and Means, for example, both have extensive jurisdictional portfolios, while the Veterans' Affairs Committee has a very specific jurisdiction. Committees like Energy and Commerce and Ways and Means can both lay claim to overlapping jurisdictional subject matter, such as health, where both claim primary responsibility. The health-care reform legislation was referred to these two committees and also to the Education and Labor Committee. Similarly, energy jurisdiction arguably falls within the jurisdiction of the Energy and Commerce Committee, the Natural Resources Committee, and other committees; financial services issues lie within the jurisdiction of the Financial Services and Agriculture Committees; and other subject matter is split between two or more committees.

Whether a Member prefers a system of few committees with broad jurisdictional portfolios or a system of more committees than exist now, but with more focused portfolios, he or she might ask whether committees should have overlapping jurisdiction and whether two or three committees should have broad jurisdiction over two or more key sectors of the American economy and society. The House could examine a jurisdictional realignment of all committees, or it could examine committees that the parties have designated as exclusive to determine whether some of their jurisdiction should be redistributed to existing or new committees. Questions related to jurisdiction are not ones with right or wrong answers, but ones that might lead to different answers than exist now. A look at the American economy and society, at the organization of the executive branch, at the purposes Members wish committees to serve, and at the legislative work Members wish committees to conduct might suggest a different House committee alignment.

Former Representative and Republican Leader Robert H. Michel long proposed that the predecessor committee to the Oversight and Government Reform Committee have a chair and majority of the party opposite that of the President so that the House conducted oversight of the executive, no matter which party controlled the House.[38] This is an idea that could be resurrected. State legislatures and foreign legislatures have allocated some committees to organization or chairmanship by a minority party, and Congress has some past examples as well.

Some Members and experts have called for abolition of the Appropriations Committee, instead allowing authorizing committees to also propose appropriations for programs within their jurisdiction.[39] This proposal was most recently advanced as part of the 9/11 Commission's recommendations related to intelligence.[40] Conversely, others have called for an end to allowing unauthorized appropriations to be included in appropriations measures, in essence requiring authorizing committees to quit ceding legislative responsibility to the Appropriations Committee.

[38] See CRS Report RL33610, *A Retrospective of House Rules Changes Since the 104th Congress*, by (name redac ted) and (name redacted).

[39] See CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by (name redacted).

[40] See CRS Report RL32659, *Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives*, by (name redacted); and CRS Report RL32711, *Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House, and 109th and 110th Congresses Epilogue*, by (name redacted).

II. 7. Committee Procedures

II. 7.1. House Rules Pertaining Committee Rules

House Rules, especially House Rule XI, provide direction and impose certain requirements on committees regarding how they should conduct their business. Committees are also required by House rules to adopt their own internal operating procedures within the constraints of House rules, but are given latitude to adapt for the political, procedural, and policy needs of each panel. As concerns are raised about perceived problems and inefficiencies in floor procedures, many similar questions are also raised in connection with committee procedures. (See also below, "II. 8. Regular Order and Committee Processing of Legislation.")

Is more specificity needed regarding which House rules are applicable to committees, and is more specificity needed in what committee rules may provide? Is it clear what committee rules are indeed in violation of House rules, and what opportunities, if any, either party has to question possible violations?

As committee move from print to electronic resources, it might be worth considering clarifying notice requirements included in most committee rules. For example, does e-mail notification comply with House notice, or does the rule necessitate delivery of appropriate printed materials?

II. 7.2. Quorums in Committees

House rules determine how many committee members must be present to transact committee business. For the most part, these quorum requirements vary depending on the nature of the business. Unless committee rules set a higher number, not less than two members must be present to take testimony, one-third of the membership is required to conduct other committee business, including marking up legislation, and a majority must be present to report a measure.

Some have argued that the one-third rule is unfair and should be changed to the same quorum requirement for reporting a measure. The argument is that amending legislation is just as important, if not more so, than reporting it and should be accorded the same quorum status. Moreover, some claim that since quorum rules are not self-enforcing and rarely the subject of a point of order, committee chairs often disregard the rule and take up business with less than the required number of committee members present. A majority quorum rule might increase committee attendance. Defenders of the one-third rule say that the rule provides committee members relief from scheduling conflicts while the majority quorum to report legislation assures integrity in the legislative process.

Another issue relates to the two-member quorum for hearings. Some believe that this discourages attendance at one of the most public facets of committee business. A mostly empty dais could portray a poor image of Congress at work. Defenders assert again that committee members are faced with scheduling conflicts, that this quorum provides some relief, and that the hearing transcripts are available for absent members to review.

II. 7.2.1. Options

One of the most-often-heard options is to require a majority of committee members to conduct all business, including hearings, markups, and reporting of legislation. Of course, such a change would probably need to be made in concert with limitations on the number of committee assignments for each Member and attention to scheduling of committees.

The Senate allows a single Senator to be present to take testimony. The House could consider adopting such an approach. Alternatively, committees could change the quorum requirement for hearings to encourage more attendance, but not make it as stringent as either one-third or a majority.

II. 7.3. Committee Hearings

Many issues, and most legislation, is subject to public hearings by one or more House committees. The committee chair is responsible for making a public announcement of the date, place, and subject matter of any hearing at least one week prior to the hearing (House Rule XI, clause 2(g)(3)).

Hearings on or in anticipation of legislation can take many forms, or they might be skipped. Might some minimal standards be developed and included in House rules on what hearings should precede the markup of legislation? Might there be a requirement for a hearing on a measure as ordered reported before the report is filed in the House? (See below, "II. 8.1. Hearings and Oversight.")

The role of the minority in determining if a hearing should be held, and if so, when and where it should be held, and who should be invited to testify, is quite limited. The minority party is limited to requesting, if a majority of the minority agrees, a hearing day with witnesses of its choosing. It is incumbent on the chair to call such a hearing, although the chair may determine when a minority hearing will be held.

There might be other ways that the rule on a minority hearing could work—on a committee-by-committee basis or, perhaps, on a hearing-by-hearing basis. Party control of the House, Senate, and White House might also be taken into consideration. If both chambers are controlled by the President's party, it is clear who is the minority. If the Senate is controlled by the President's party, but the House is not, who is the minority? And, if the House is controlled by the President's party, but the Senate is not, who is the minority? Should the minority, or a bipartisan group of committee members, be empowered to force the chair to schedule a hearing? Finally, should a quorum for a hearing require the presence of at least one minority member?

Perhaps most importantly, if the House minority party is the President's party, should a committee majority be able to force the minority to call and count as its witnesses the Administration's witnesses?

In this era of technological advancement, most committee hearing rooms are capable of using video conferencing. The House might consider expanding the use of video conferencing for hearings in order to expand witness lists to include experts, government officials, members of the public directly affected by the program or activity that is the subject of the hearing, or others. This approach would reduce the need for travel, include witnesses who cannot travel to Washington,

and, in addition, highlight the importance of issues to local audiences. Similarly, increased use of field hearings, especially during district work periods, might be considered.

Finally, a transcript of each hearing is made by each committee. Although they are often printed, printing may not be timely or may not even occur, and distribution might also be very limited. In addition, costs serve as a disincentive for printing under many committees' budgets. Committees might wish to put hearing transcripts, witness testimony, hearing summaries, or all of these items on their websites in a timely matter at the conclusion of a hearing.

II. 7.4. Subcommittee Markups

Some have argued that subcommittee markups add an unnecessary step to an already complicated process, and may cause extensive delay or otherwise threaten future parent committee action on measures. It is asserted that subcommittee markups are duplicative. Eliminating them might avoid disputes over conflicting recommendations that differ from the views of committee leaders or committee majorities.[41] Also, members may be more able to compromise or modify views during full committee markups if not already on record at the subcommittee level. (See also discussion above, "II. 3. Subcommittees.")

If the authority of subcommittees to mark up and report is continued, subcommittees could prepare reports on legislation similar to those of the full committees, with, for example, minority views and a Ramseyer analysis. Such reports might assist a full committee in its deliberations and might facilitate preparation of full committee reports.

An opposing view is that subcommittee markups help weed out measures either not ready for or unworthy of parent committee attention. Subcommittee markups might enhance full committee deliberation since many major issues might already have been aired. Subcommittee consideration enables the smallest and most specialized committee unit to take the first cut at legislation. Requiring extensive documentation by subcommittees could be an inefficient use of time on measures not ultimately considered or reported by full committees, and could burden subcommittee resources, especially when there are subcommittees without autonomous staff.

II. 7.5. Committee Markups

Most consequential legislation is subject to a markup by one or more committees and, perhaps, their subcommittees. House rules provide limited guidance on how markups are conducted, using the phrase that the rules of the House are the rules of committee "so far as applicable." (House Rule XI, clause 1(a)(1)(A).) Individual committee rules, which are required by House rule and which cannot be inconsistent with House rules, generally govern the conduct of markups.[42] (House Rule XI, clause 2(a)(1).)

There is a maxim that the level of formality in a markup is generally determined by the level of controversy over the measure being considered. As such, the use of procedure, either to advance a

[41] See, for example, Avery Palmer, "House Democrats Mum on Energy Bill Details, but Markup Could Come Soon," *CQ Today*, May 12, 2009, p. 3.

[42] See CRS Report R41083, *House Committee Markups: Manual of Procedures and Procedural Strategies*, by (name re dacted) and (name redacted).

measure or to stop it, often overshadows the discussion of the measure's substance. For example, pursuant to committee rules, do all amendments need to be provided in advance, or only first-degree amendments, assuming a committee has a prefiling rule? Should committees be required to include a prefiling rule for amendments in the nature of a substitute in their rules? Must markup notices delivered by e-mail have the measure vehicle attached? Should they?

As with hearings, transcripts of markups are made, but they are nearly always simply filed in committee offices without printing or other distribution. Committee reports on reported legislation normally tersely summarize the panel's markup action. Should markup transcripts be made available? A House rules change required committee reports to include information on votes taken in markup. (House Rule XIII, clause 3(b).) Should that same information be posted on a committee's website, either pending filing of a committee report or independent of whether or not a report is filed?

II. 7.6. Committees in the Internet Age

Committees make inconsistent use of the Internet. Some committees put a great deal of information on their website, some routinely "webcast" their proceedings, some archive their webcasts. In nearly all instances, it is difficult to use a committee's website to access the content from a previous Congress. The House might wish to step in with rules setting a floor on committee website expectations, or empower an entity such as the House Administration Committee to make rules for committee website expectations. (See also above, "II. 7.3. Committee Hearings.")

New rules might address the coverage of a committee's website. For example, not all committees have their committee rules on their website or list (or link to) all printed committee documents. New rules could also require committee calendars, activity reports, oversight plans, and other documents to be available in full text on a committee's website or to be available through a link where the full text is available. New rules could require all committee proceedings to be webcast and for the webcasts to be archived on the committee website. New rules could also require transcripts of any committee proceedings to be available on a committee's website within a certain period of time.

The public and the House itself loses a substantial record of committee information with each new Congress. A policy for archiving previous Congresses' majority and minority committee websites might benefit committees, Members, and all those who interact with the House.

II. 7.7. Committee-Floor Scheduling Conflicts

Committees formerly were disallowed from meeting when the House was meeting or, more recently, when the House was proceeding under the five-minute rule. At various times, certain committees were exempted from the operation of the rule. The rule was stricken in the 105th Congress.[43]

The House might wish to consider reinstituting a rule of this nature, trying to better schedule chamber sessions and committee meetings to minimize overlap, at least when the House is

[43] Sec. 11 of H.Res. 5, agreed to in the House January 7, 1997.

debating measures and amendments and other motions related to them. (See also the discussion below, "III. 6.2. House Schedule.")

A rule could prohibit committee meetings during chamber sessions, after the first hour (or another designated time) of the House's meeting, during proceedings under the five-minute rule, or by some other determinable measure. The House could divide the day so that committees meeting mornings, or mornings and early afternoons, and the House meets afternoons. The House could also divide the week so that the House debates and votes on measures under the suspension of the rules procedure on Mondays, with all day Tuesday open for committee meetings; committees could also meet Wednesday, Thursday, and Friday mornings, and the House could meet on the afternoons of those days.

II. 8. Regular Order and Committee Processing of Legislation

The means by which legislation is developed has become an issue in and of itself in recent Congresses. Members of both parties, whether their party has been in the majority or the minority, have criticized departures from "regular order" and the development of leadership alternatives outside of and subsequent to the committee process. (See also below, "III. 2.3. Regular Order in Chamber Deliberations.")

This section briefly explores regular order as it relates to the committee processing of legislation. Regular order related to floor consideration of legislation is examined throughout much of the balance of this report.

House rules place many requirements on committees. These requirements, set forth principally in Rules X and XI, include oversight, hearings, meetings conducted publicly in all but a few specified instances, and reporting legislation and drafting written reports thereon.[44] Many of the requirements for written reports are set forth in Rule XIII. [45] The Speaker may also set time limits on committee action on legislation, pursuant to Rule XII.[46]

Although hearings on legislation followed by a markup followed by reporting might be informally described as the regular order by which a committee considers a piece of legislation and recommends its passage to the House, a committee has a number of options within House rules for how to procedurally structure this process. In addition, in the House, through a motion to suspend the rules, unanimous consent, or a special rule, the House may partially or completely bypass committee consideration of legislation.

Both Democratic and Republican Members of the 111th Congress have spoken about the need for "regular order" and "transparency" in the House's development and consideration of legislation, including within its committees, and some have introduced resolutions to change House rules to promote these concepts. The foundation for Members' arguments dates in part to the Democrats'

[44] See CRS Report 98-312, *House Rules Governing Committee Markup Procedures*, by (name redacted); and CRS Report 97-1045, *House Rules and Precedents Affecting Committee Markup Procedures*, by (name redacted).

[45] See CRS Report 98-169, *House Committee Reports: Required Contents*, by (name redacted).

[46] See CRS Report 98-175, *House Committee Jurisdiction and Referral: Rules and Practice*, by (name redacted).

critique during the 109th Congress (2005-2006) of Republican management of the House. In May 2006, then-Democratic Leader Nancy Pelosi announced the House Democrats' "New House Principles: A Congress for All Americans." In June 2006, Leader Pelosi released the Democrats' "New Direction for America." In both documents, there were proposals or principles for regular order in the development of legislation. One recommendation listed had implications for regular order and transparency during committee consideration of legislation:

> Bills should be developed following full hearings and open subcommittee and committee markups, with appropriate referrals to other committees. Members should have at least 24 hours to examine a bill prior to consideration at the subcommittee level.[47]

In speaking more recently to the American Enterprise Institute for Public Policy Research about changes he believed were needed in the legislative management of the House, Republican Leader John A. Boehner indicated:

> Chairmen shouldn't be content to churn out flawed bills and then rely on their leadership to bail them out. Chairmen should operate with the assumption that their bills are going to be on the floor, and assume that once their bills are on the floor, they'll be subject to an open rule.[48]

Republican Whip Eric Cantor wrote recently about the centrality of committee work:

> The legislative agenda ought to reflect the importance of hearings and oversight. Setting aside specific time each week for committees to meet without interruption from floor activities … would provide a protected, regular time for committees to conduct their important business.[49]

II. 8.1. Hearings and Oversight

The recommendation that "[b]ills should be developed following full hearings" might seem self-evident but it is an aspirational statement about contemporary House practice. Hearings might precede the introduction of legislation or at least the selection of a legislative vehicle from among measures that have been introduced. Hearings might be held on specific measures, or a specific set of measures, with witnesses commenting on specific provisions. Hearings are also sometimes skipped, perfunctory, biased, or partisan.

An interpretation of the leaders' comments is that drafting of a legislative vehicle should occur after hearings. Would this paradigm result in different and more widely supported legislation than the current paradigm might yield? Members could consider how hearings could better contribute to—

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[47] Rep. Nancy Pelosi, "A New Direction for America," June 16, 2006, available at http://www.speaker.gov/pdf/thebook.pdf (hereafter "A New Direction for America," June 16, 2006); and Rep. Nancy Pelosi, "New House Principles: A Congress for All Americans," press release, May 25, 2006, available at http://web.archive.org/web/20061012100316/democraticleader.house.gov/press/articles.cfm?pressReleaseID=1634 (hereafter "New House Principles," May 25, 2006).

[48] Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

[49] Rep. Eric Cantor, "Delivering on Our Commitment," statement in support of candidacy for majority leader, November 3, 2010, available online at http://republicanwhip.house.gov/Majority/Cantor.pdf. (Hereafter, Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.)

- transparency in the legislative process and in Members' and parties' legislative objectives;
- a more informed membership and public;
- improved understanding of perspectives among experts, the public, and Members, which might include ensuring that a wide range of perspectives was presented;
- separation of facts from interpretation and the opportunity to understand and debate different interpretations;
- constructive participation by interested committee members through committee consideration;
- enhanced public support for policy outcomes in legislation, the forum having been used to lay a foundation for choices and decision making; and
- legislative proposals, the forum providing additional or better information, political as well as policy implications, and factual bases for decision making.

Hearings are a mechanism for attaining a legislative objective responsibly and with public support, requiring one or more committees to examine proposed and existing federal programs and activities on the basis of decision-making criteria, including, for example,

- cost-benefit,
- effectiveness,
- duplication of programs or activities,
- constitutional authority,
- administrative controls and potential for corruption,
- national purpose,
- need for federal action and capacity of states and localities,
- market failure addressed,
- economic impact,
- demographic and socioeconomic impact,
- alternatives, or
- continuing need.

A listener often hears phrases such as "the American people believe [or want or reject]" invoked on the House floor, in committee meetings, and in other fora. Yet, there is not unanimity in the electorate on any matter. Hearings are one mechanism that Congress developed over the last two centuries to allow competing points of view, both among Members on a committee dais and among witnesses, including executive branch officials, to inform Members by making their case for a point of view and to attempt to convince others, including the public, of the soundness of their view and the limitations of competing perspectives. Would "full" hearings assist Members and the public in understanding policy issues, developing legislative proposals, and, ultimately, supporting legislative responses? Are they an efficient and effective use of congressional

resources? Is holding hearings on Capitol Hill the most cost-effective means of obtaining information?

Although there are a number of House rules on the conduct of hearings, few require hearings (such as the oversight requirement added in the 111th Congress)[50] and none contain an enforcement mechanism. Rules could be changed to be specific and to contain an enforcement mechanism, but it could prove difficult to write a rule to cover all legislation. A rules change could, however, empower subcommittees' or committees' membership to petition their chair and obtain a vote on holding a hearing or even on a hearings package proposal. Speaker announcements or caucus or conference rules could contain guidelines for committees and their chairs. Or, committee chairs could be asked to make commitments concerning hearings on legislation when they are elected each Congress by their caucus or conference.[51]

Standing congressional committees have oversight power circumscribed only by constitutional limits, and legislative authority circumscribed only by chamber rules and precedents. Either chamber can direct one or more of its committees to undertake an activity or set of activities or series of activities, and party conferences can condition chairmanships on adherence to an oversight or legislative agenda. Coordination of many actors in a large legislative purpose, however, can be a complex exercise for leadership.

II. 8.2. Notice

In addressing "transparency" in committee proceedings, Republican Leader Boehner drew on his experience as a committee chair:

> At Education and Workforce, we operated with a set of transparency rules that encouraged deliberation and limited problems: First, we gave at least three days notice on all bills. Actually, we normally went above and beyond this standard, giving about a week's notice on each bill, but three days was the rule. That gave Members plenty of time to gain an appropriate depth of knowledge and scrub each bill for potential landmines.[52]

Then-Democratic Leader Pelosi listed a feature of regular order as "at least 24 hours to examine a bill prior to consideration at the subcommittee level." House rules require committees in their own rules to establish a regular meeting day; House rules also allow committees to adopt rules for calling "additional or special meetings."[53]

The great number of committee and subcommittee meetings are held as additional or special meetings pursuant to the notice requirements in a committee's rules.[54] These rules, as they pertain to markups, typically require notice of 24 or 48 hours. Committee rules pertaining to hearings

[50] Additions to Rule XI, cl. 2, made by H.Res. 40, agreed to in the House January 14, 2009. For a list of House rules pertaining to hearings and oversight, see CRS Report R41465, *History of the Joint Committee on Reduction of Non-Essential Federal Expenditures (1941-1974), with Observations on Oversight Today*, by (name redacted), (name r edacted), and (name redacted).

[51] For an examination of chairs' role and duties as one Congress concludes and another begins, see CRS Report RL34679, *House Committee Chairs: Considerations, Decisions, and Actions as One Congress Ends and a New Congress Begins*, by (name redacted) and (name redacted).

[52] Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

[53] Rule XI, cl. 2(b) and (c)(1).

[54] A committee's rules generally apply to its subcommittees. House Rule XI, clause 1(a)(1)(B).

typically follow the directive in House Rule XI, clause 2(g)(3) and require at least a week's notice.[55] Many committees provide a mechanism for shortening notice for meetings or hearings, such as requiring the chair to obtain the concurrence of the ranking minority member, which is what House Rule XI, clause 2(g)(3) specifically requires for hearings to be held on less than a week's notice.

To change the operation of notices of committees' meetings and hearings, House rules could be amended to be more specific or to require minimum periods of notice for meetings or longer minimum periods of notice for hearings.

House rules could also be amended to apply new notice requirements to markups so that amendments in the nature of a substitute or all first-degree amendments to be offered at a committee or subcommittee markup are available in advance; some committees already have a pre-filing requirement for amendments in the nature of a substitute.[56]

Based on the authors' observations, the amendment in the nature of a substitute has become the most common form of markup vehicle when committees plan a markup at which amendments are expected. The changes to the underlying text that are contained in an amendment in the nature of a substitute may be major or minor, substantive or technical. The first time that committee members see an amendment in the nature of a substitute in final form might be when it is offered at a markup; minority members might not have seen drafts of the amendment if the majority and minority were not working together.

As an amendment, an amendment in the nature of substitute must be read when it is offered; unanimous consent must be obtained to dispense with the reading. Once reading is completed or dispensed with and debate has begun, it is in order to move the previous question at any time. If moved, the previous question ends the markup process and brings the committee to a vote on the amendment in the nature of a substitute, as it may have been amended, and then to votes on approving and reporting the underlying measure with the amendment. The prospect, on the one hand, of reading in full an amendment in the nature of a substitute and the prospect, on the other hand, of suddenly moving the previous question can facilitate the committee majority and minority in agreeing on an amendment process.[57]

Considering how common the use of an amendment in the nature of a substitute has become in committee markups and how such an amendment could differ substantively from the underlying measure, House rules could be amended to direct committees to have a notice requirement for it.

II. 8.3. Concluding Observations

A fundamental question behind regular order and committee processing of legislation is the relationship between party leaders, committee chairs, and committees. In the days of strong seniority, committee chairs were sometimes referred to as barons. They obviously do not have that kind of authority today. Reforms in the Democratic Caucus in the 1970s led to both a

[55] See CRS Report 98-339, *House Committee Hearings: Scheduling and Notification*, by (name redacted).

[56] See, for example, Committee on Homeland Security, Rule III, and Committee on Science and Technology, Rule 4 available at http://www.rules.house.gov/rules_publications/111_rules_of_committees_1.pdf.

[57] See CRS Report 98-188, *House Committee Markup: Vehicle for Consideration and Amendment*, by (name redacted); and CRS Report 98-335, *House Committee Markup: Amendment Procedure*, by (name redacted).

diffusion of power to subcommittees and to a strengthened role for party leaders and the caucus. Evolution continued, however, and the Republican majority established a pattern of strong, centralized leadership that the Democrats in the majority have continued. Where should authority reside or how should it be divided? In party leaders, in committee chairs, in committees, in the majority caucus or conference? How should power be balanced between these contenders in committee policymaking? What roles should each have? What deference is due each in its exercise of its role?

II. 9. Oversight

In addition to the year-round work of the Appropriations Committee and its survey and investigations unit, legislative committees are already authorized by House rules to study, inform themselves, or make recommendations on matters related directly or indirectly to spending and other oversight. These rules provisions include:

- General oversight authority granted all standing committees (Rule X, cl. 2(a) and (b));
- A requirement for an oversight plan for each standing committee (Rule X, cl. 2(d));
- Special oversight authority granted named standing committees (Rule X, cl. 3);
- Additional functions assigned to the Appropriations Committee (Rule X, cl. 4(a)), the Budget Committee (Rule X, cl. 4(b)), the Oversight and Government Reform Committee (Rule X, cl. 4(c)), and the House Administration Committee (Rule X, cl. 4(d));
- An additional function assigned to the Oversight and Government Reform Committee to make recommendations based on reports of the Government Accountability Office;
- A requirement for standing committees to review appropriations for legislation and programs within their jurisdiction (Rule X, cl. 4(e));
- A requirement for each standing committee to submit "views and estimates" to the Budget Committee following the submission of the President's budget to Congress (Rule X, cl. f);
- A requirement that each standing committee hold at least one hearing in each 120-day period on "waste, fraud, abuse, or mismanagement," one hearing in any session when a committee has "received disclaimers of agency financial statements from auditors," and one hearing whenever the Government Accountability Office (GAO) has identified a federal program as high risk (Rule XI, cl. 2(n), (o), and (p)).
- A requirement for committees' reports on legislation to include oversight findings, cost estimates, and related information (Rule XIII, cl. 3(c) and (d));
- A requirement that information on unauthorized appropriations and other matters be included in reports on general appropriations measures reported from the Appropriations Committee (Rule XIII, cl. 3(f));

- A requirement that a special rule be specific in precluding consideration of an amendment to strike an unfunded mandate from a measure to be considered on the floor (Rule XVIII, cl. 11);
- Restrictions on appropriations bills, such as disallowing unauthorized appropriations (Rule XXI, cl. 2);
- Disallowing appropriations in legislative measures (Rule XII, cl. 4);
- A requirement for disclosing earmarks (Rule XXI, cl. 9); and
- A pay-go requirement (Rule XXI, cl. 10).

The Committee on Oversight and Government Reform also has very broad authority over the "overall economy, efficiency, and management of government operations and activities" (Rule X, cl. 1(m)), and may conduct investigations "without regard" to the jurisdiction of another committee (Rule X, cl. 4(c)(2)).

It could be argued that oversight is one of the most important roles for Congress. Having created regulatory agencies, also known as quasi-legislative bodies, and recognizing the need of the President to exercise his constitutional and statutory duties, Congress could spend a great deal of its time conducting oversight of federal programs and activities. Given the complexity of the economy, society, and world affairs, Congress also needs to gather information and knowledge congressionally—"coming together"—to understand changed circumstances. Oversight influences the implementation of laws and provides Congress with the information it needs to enact new laws or amend existing laws.

II. 9.1. Options

In both investigative authority and jurisdictional breadth related to oversight, standing committees seem to have every ability and reason under House rules to conduct oversight. Achieving additional oversight, if that is a desirable goal, may be more a matter of leadership and direction than anything lacking in House rules. (See also above, "II. 8.1. Hearings and Oversight.")

Republican Whip Cantor has indicated that the "legislative schedule ought to reflect the importance of hearings and oversight" so that committees might conduct their work without interruption. He has emphasized its role in how Congress can "solve problems." Visibility might also incentivize committee leaders, such as Representative Cantor's proposal for the House to debate and vote on adoption of committee oversight reports.[58] (See above and below, respectively, "II. 7.7. Committee-Floor Scheduling Conflicts," and "III. 6.2. House Schedule.") In addition, as mentioned above, video conferencing and field hearings can be used to broaden the witness lists for hearings. (See above, "II. 7.3. Committee Hearings.")

The Speaker could also use the requirement for an oversight plan for each standing committee under Rule X, clause 2(d) to require plans that can be carried out and then to hold chairs accountable for achieving those plans. The House Administration Committee in conjunction with its hearings on committee funding resolutions could also provide a mechanism for accountability, especially if the committee continues to hold a mid-Congress update as it did in 2010 or even

[58] Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.

expands its inquiries into how committees are using funds appropriated to them. House rules could also specifically allow committees to form task forces, perhaps with limited tenures, to conduct oversight and to give them the same authority as subcommittees.

II. 10. Committee Documents

Committees prepare and print a variety of documents, including prints, hearings, staff reports, calendars, and activity reports. They also prepare reports to accompany legislation reported out of committee. Issues related to committee documents include whether to require committee approval of each product; access to, and availability of, committee products; and the differences among the types of documents and the required contents of each.

II. 10.1. Committee Prints

Committee prints describes a range of items that a committee might print for its internal use, such as a draft of bill, an assemblage of information for the committee's use, or, in some committees, the recommendations of a subcommittee that has completed a markup.

II. 10.1.1. Options

The most-often discussed option is to require a committee or subcommittee vote, as appropriate, to approve any document containing the views, findings, or recommendations of a panel, and to require parent committee adoption of any document forwarded from a subcommittee before its release. As with committee reports since 1995, each document could reveal the total votes in favor and against its approval as well as a record of how each committee and subcommittee member voted. For those documents not receiving approval, the committee or subcommittee could release the document with a disclaimer on the cover page. Once released, all committee documents could be available for a certain period of time to all Members before they are released to the public.

In recent years, committee hearings either have not published or have been published months after the hearing itself. The House could require that hearings be timely published.

No published document exists that is essentially a transcript of a committee markup. A committee or subcommittee markup transcript could be published, or, alternatively, a summary of each markup session could be published. Such documents could be posted on a committee website, or published in printed form within a specified period of time after the conclusion of the committee meeting or both.

Committees prepare both calendars and activity reports, and in most cases, these two documents cover similar items. It might be worth reassessing the need for both documents, and if both are desired, to differentiate between them and establish criteria for uniform content of each type. Similarly, it could be decided whether these two items should be prepared each session or only at the end of a Congress.

II. 10.2. Committee Reports

House rules now require most committee reports to include numerous specific items as content. Each item was added at some different time to respond to particular legislative concerns. It might be appropriate to consider these items' overall utility, to review whether some requirements should be discarded, and to select additional requirements to impose. For example, inflationary impact statements are rarely comprehensive and generally describe the measure as introduced, rather than as reported.

In general, Members might consider whether they have sufficient time to file supplemental, minority, or additional views, allowed by Rule XI, clause 2(l). The rule provides that committee members may have "two additional calendar days," excluding weekends and holidays, to file views for inclusion in the written report. Committees interpret and enforce this rule somewhat differently. The rule could be clarified or amended if Members wished to shorten, lengthen, or standardize among committees the time available to file views.

Republicans have addressed new matters relevant to reporting a measure from committee. House rules already require committees to include in their report a statement of the constitutional basis for congressional authority for the enactment. The Pledge to America would require this statement to be included in each bill.[59] Both Leader Boehner and Whip Cantor proposed that a committee identify how a program or activity be paid for.[60] Representative Cantor has also proposed that the House debate and adopt committee reports on oversight.[61]

Procedures for filing committee reports on special rules from the Rules Committee could be revised. House rules have permitted the inclusion of minority and supplemental rules in committee reports to accompany legislation, although the rule does not provide for filing such views in reports on special rules from the Rules Committee. Such views are not permitted in order to allow the majority to file the report quickly and to call up the reported special rule the following day. Allowing minority views would trigger the three-day layover period and impede majority-party agenda control. Some of this delay could be overcome by reducing the three-day rule as it applies to minority views in a Rules Committee report.

The inclusion of minority views could inform members about the development of the special rule, and might highlight contentious debate and decisions made by the Rules Committee. Granting the minority a regular outlet to express opposition might lessen the controversy during debate on a special rule.

In addition, the Rules Committee in recent years has taken to filing two-part reports on special rules, with one part describing the general parliamentary scenario and the second part describing or listing amendments made in order. Rules reports might be more useful if all material were provided in a one-part report. Alternatively, the two-part report provides the Rules Committee with some flexibility in deciding which amendments to make in order.

[59] Republicans in Congress, "Pledge to America," September 23, 2010, available online at http://pledge.gop.gov. (Hereafter "Pledge to America," September 23, 2010.)

[60] Rep. John A. Boehner, "Congressional Reform," September 30, 2010; and Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.

[61] Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.

Part III. Chamber Procedures

III. 1. Rules Committee

The work of the Rules Committee is integral to House proceedings. For a major, important, or controversial piece of legislation to be taken off a calendar and considered on the floor at the time the majority leadership wishes to schedule it, a special rule reported by the Rules Committee and approved by the House is the mechanism for accomplishing that objective. As recently as 25 years ago, when the House considered numerous, specific authorization bills, two-thirds of legislation considered on the House floor was considered under an open rule, not by another form of special rule or by means of a motion to suspend the rules. In recent Congresses, ever fewer pieces of legislation are considered under open or even so-called modified open rules. (See the explanation of different types of special rules below at "III. 2.7. Amendments Made in Order.")

Rules Committee members are appointed by their party leadership, and the committee is often referred to as an "arm of the leadership." A ratio of 2-to-1-plus-1, majority to minority, seems to have become entrenched in the practice of both parties.

III. 1.1. Special Rules

Special rules—also called special orders or orders of business—take the form of a simple resolution (H.Res. _____), are privileged under the rules of the House, and usually make in order the consideration of one or more measures. Reported by the Committee on Rules, they typically address aspects of floor procedures for the consideration of a named measure, including consideration in the House or the Committee of the Whole,[62] general debate, amendment procedure, waivers of points of order, and action in the House preceding final passage. If agreed to by the House, a special rule may set aside some number of otherwise applicable procedures, such as reading the bill in full, and governs procedures for the consideration of the measure named therein. It may be changed only by the adoption of another special rule or by agreement in the House to a unanimous consent request.[63]

III. 1.2. Rules Committee Meeting and Layover of Special Rules

House rules require committees in their own rules for each Congress to establish a regular meeting day; House rules also allow committees to adopt rules for calling "additional or special meetings."[64] Pursuant to this authority, the Rules Committee established a regular meeting day of each Tuesday at 10:00 a.m., when the House is in session. The committee's rules also allow the chair to call a regular meeting of the committee with 48 hours' notice. Finally, the committee's

[62] See CRS Report 98-143, *Procedural Distinctions between the House and the Committee of the Whole*, by (name redacted).

[63] Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary*, 3rd ed. (Washington, DC: CQ Press, 2001), pp. 222-224. See also CRS Report 98-354, *How Special Rules Regulate Calling up Measures for Consideration in the House*, by (name redacted); and CRS Report 98-334, *Provisions of Special Rules in the House: An Example of a Typical Open Rule*, by (name redacted).

[64] Rule XI, cl. 2(b) and (c)(1).

rules allow the chair to call an emergency meeting of the committee "at any time on any measure or matter which the Chair determines to be of an emergency nature," exhorting the chair to make an "effort to consult" the ranking minority member.[65] While many Rules Committee meetings are announced in conjunction with the majority leader's customary Thursday announcements about the House's schedule for the succeeding week, the Rules Committee chairs have also made use of the emergency-meeting rule to move rapidly when the majority leadership wishes the committee to do so.

When the Rules Committee meets on a special rule, it normally conducts a hearing at which the chairs and ranking minority members of the reporting committees testify, followed by other committee members and other House Members who wish to offer amendments, seek rules waivers, or offer other information.[66] The committee then holds a markup of a draft rule and, after considering amendments to the draft, reports an original resolution. A written committee report is prepared to accompany the simple resolution containing the special rule.

With their large majority on the committee, majority-party members can always defeat proposals by minority-party members, even if one or more majority-party members votes with the minority or does not vote because of home-district concerns or for other reasons. (Rules Committee decision making on amendments is discussed below at "III. 2.7. Amendments Made in Order.")

House rules also provide that the House may not consider a special rule on the same *legislative* day it was presented to the House by the Rules Committee, except by a two-thirds vote or for other enumerated exceptions.[67] The House normally avoids a situation where a two-thirds vote would need to be obtained by keeping the House in session until the Rules Committee has filed a report or by adopting, in advance, by majority vote a special rule that disables the same-day rule for specific legislation.[68] Through an emergency Rules meeting and perhaps only a several-hour layover of a special rule, a measure may be brought quickly to the House floor, perhaps without Members having had much time to review it.

Democratic Members complained about the use of emergency Rules Committee meetings in their critique of Republican legislative management of the House, advocating that emergency meetings occur only before recesses or at the end of sessions when legislation moves "more quickly through the process than regular order allows."[69] With Democratic control of the House, Republicans have complained of receiving legislative proposals at the last minute.[70] Members of both parties have introduced resolutions to change House rules to better ensure that Members have sufficient time to review legislation before it is considered by the House. (See below, "III. 1.3. Special Rules in the 111th Congress:
Initial Consideration of Legislation.") If there are changes to address this issue, another change

[65] Committee Rule 2, Committee on Rules, available at http://www.rules.house.gov/111/111committee_rules.htm.

[66] See CRS Report 98-313, *House Rules Committee Hearings on Special Rules*, by Megan Suzanne Lynch.

[67] Rule XIII, cl. 6. See parliamentarian's notes in *House Rules and Manual*, § 857, pp. 642-645.

[68] This is one form of a so-called martial law rule.

[69] Rep. Louise M. Slaughter, "Broken Promises: The Death of Deliberative Democracy," compiled by the House Rules Committee Minority Office, March 8, 2005, pp. 45-46, available at http://www.citizen.org/documents/Broken_Promises.pdf. (Hereafter, "Broken Promises," March 8, 2005.)

[70] See, for example, Hon. David Dreier, remarks in the House, ""Providing for Consideration of Senate Amendments to H.R. 3590, Servicemembers Home Ownership Tax Act of 2009, and Providing for Consideration of H.R. 4872, Health Care and Education Reconciliation Act of 2010," *Congressional Record*, daily edition, vol. 156, March 21, 2010, p. H1835.

might also require that all amendments submitted to the Rules Committee be posted online in full text in advance of a hearing and markup.

If there is a desire to reduce the number of emergency Rules Committee meetings and the number of times that the layover requirement of special rules is brief in terms of hours or is breached, the issue could be addressed through House rules changes, party rules, or majority leadership commitment.

House rules could eliminate or limit the use of emergency meetings by disallowing the possibility, establishing criteria for their use, requiring the concurrence of the ranking minority member, or through other means. House rules applicable to the Rules Committee could be changed to require an announcement by the chair occur a set number of days before a meeting at which a structured or closed rule will be considered.

The layover requirement for a special rule could be expressed in calendar days or hours or made dependent on a schedule, such as reporting by a certain time on a previous calendar day. A waiver of the rule, including through use of a freestanding special rule, could be allowed only by a supermajority vote. The duration of the layover could also differ depending on whether a special rule's amendment process is open, structured, or closed.

Democratic and Republican party rules could also reflect one of these approaches as well or even without a change in House rules, or the Rules chair could be directed by party rules to seek the guidance or support of the caucus or conference before scheduling an emergency meeting. Finally, the majority-party leadership could on its own limit the occasions on which it seeks rapid action to bring a measure to the House floor through an emergency Rules Committee meeting.

III. 1.2.1. Observations

Whatever mechanism might be used, some restraint will be required for a new mechanism to be effective. A rule or commitment represents a value of the House or the majority party that all Members might expect to be routinely honored, with exceptions being relatively rare, able to be justified, and widely supported. On the other hand, the majority leadership's effective management of House business and floor time is another value that could be at odds with the longer time frame of changes that eliminate or limit emergency Rules meetings and truncation of the layover of special rules. The pressure of ending a workweek or beginning a recess can be effectively used by leadership to compress deliberation and force decision making, enticing leadership to justify rapid action more often than proponents of deliberation might desire. Perhaps a question for the leaderships of both parties and the members of both parties is whether regular order contributes to the long-term strategic advantage of their party, and of the House as an institution?

Therefore, any change to a House or caucus or conference rule would probably need to deal as well with limits or mechanisms for waiving the rule. The House, for example, waives the layover rule for a special rule on specific legislation by adopting, in advance, a special rule for that purpose by majority vote. The House could continue to allow this possibility as a reflection of majority sentiment, or it could disallow or limit this method of waiver as a way of enhancing a change that is intended to ensure the layover requirement is routinely followed.

Layover of a legislative vehicle itself, amendments to a vehicle contained in a special rule, amendments made in order, and related issues are addressed specifically in the following pages.

First, however, the next section of this report examines features of special rules in the 111th Congress.

III. 1.3. Special Rules in the 111th Congress: Initial Consideration of Legislation

Through April 30, 2010, of the 111th Congress, the House agreed to 89 special rules providing for the initial consideration of measures and 25 special rules providing for the consideration of Senate amendments to House measures or of conference reports. The 25 special rules are examined later in this report (see "III. 7. Reconciling Differences").

This section examines whether legislation made in order for consideration by special rule was reported from committee or not, the form of reported legislation, the content of the special rules, and the time that elapsed between the availability of reported or introduced legislation, agreement to a special rule by the House, and House passage of the legislation.

The purpose of this detailed examination is twofold: to provide a factual understanding of aspects of floor actions that were sometimes criticized in the House or by the media and the public and to provide a foundation for identifying potential changes to House rules or practices.

III. 1.3.1. Special Rules Governing Consideration of Committee-Reported Measures

From the convening of the 111th Congress through April 30, 2010, the House adopted 64 special rules that governed procedures for considering *measures that had been reported by one or more House committees*. One of these special rules was a modified open rule (requiring amendments to be printed in the *Congressional Record*), 54 were structured rules, and 9 were closed rules. For the measures made in order by these special rules, a mean of 10.5 days elapsed from the time a committee reported until the measure reported was passed by the House.[71] The median number of elapsed days was 7.[72]

[71] The number of special rules used to calculate the average was 59. Four special rules made in order the consideration of measures that had been reported from committee months before floor consideration: 4 months, 5 months, 6½ months, and 8 months. These four special rules were excluded from calculating the average in order not to distort it. The modified open rule operated for only one day and was then superseded by a structured rule subsequently adopted. The modified open rule was also therefore excluded from calculating the average.

[72] Only the modified open rule was excluded from this computation.

Table 5. Special Rules Governing Measures Reported by One or More Committees And Time Elapsed after Underlying Measure Reported and Its Passage

111th Congress, through April 30, 2010

Total Special Rules	Types of Special Rules	Average Time Elapsed After Underlying Measure Reported until Passage by House	Median Time Elapsed After Underlying Measure Reported until Passage by House
64	Modified open – 1 Structured – 54 Closed – 9	10.5 days	7 days

Source: Compiled by authors.

For the most part, then, legislation as reported and committee reports were available for the time—three calendar days (Saturdays, Sundays, and holidays excluded)—applicable to most reports as required by Rule XIII, clause 4(a)(1). The House nonetheless passed 12 measures, pursuant to a special rule, one or two days after they were reported from committee. House consideration of approximately one-third of the legislation reported from committee in the 111th Congress occurred within a week after committee reporting; committee reporting one week followed by House consideration the next week has long been a regular occurrence in the House.

Of the 63 structured and closed special rules, 44 of them governed consideration of measures that had been *reported from committee with an amendment in the nature of a substitute*. Potentially, then, measures as reported were substantively different from the vehicles that were scheduled for markup. Moreover, other measures, such as appropriations bills, were first available when they were reported.

Thirty-seven of these 44 special rules were structured rules. The measures covered by these rules were passed by the House an average of 12.8 days after being reported from committee;[73] the median elapsed time was 9 days. Seven of these 44 special rules were closed rules. The measures covered by these rules were passed by the House an average of 7.4 days after being reported from committee; the median elapsed time was 4 days.

Table 6. Special Rules Governing Measures Reported by One or More Committees With an Amendment in the Nature of a Substitute And Time Elapsed after Underlying Measure Reported and Its Passage

111th Congress, through April 30, 2010

Type of Special Rule	Number	Average Time Elapsed After Underlying Measure Reported until Passage by House	Median Time Elapsed After Underlying Measure Reported until Passage by House
Structured	37	12.8	9
Closed	7	7.4	4

Source: Compiled by authors.

[73] The number of special rules used to calculate the average was 33. Four special rules made in order the consideration of measures that had been reported from committee months before floor consideration: 4 months, 5 months, 6-1/2 months, and 8 months. These four special rules were excluded from calculating the average in order not to distort it.

Again, all but 12 of the bills and joint resolutions as reported and the accompanying committee reports were available for at least three calendar days. Under closed rules, the House passed legislation reported with an amendment in the nature of a substitute shortly after the legislation had been reported. Under structured rules, a longer time elapsed before House passage of legislation that had been reported with an amendment in the nature of a substitute.

Whatever the elapsed time between committee reporting and floor consideration, Members, especially those not serving on committees of jurisdiction, might have questioned whether they had sufficient time to review the legislation and to prepare floor amendments. In the contemporary Congress, when Members are typically present in Washington, DC, each week from Monday or Tuesday afternoon until Thursday or Friday afternoon, is the time that elapses between committee reporting and floor consideration sufficient? The public might also ask whether it has had sufficient time to review the legislation and contact Members. Any concern might be exacerbated when legislation has been substantively amended with individual amendments or an amendment in the nature of a substitute. Committees of jurisdiction and House leadership often desire to take advantage of the momentum of committee reporting in scheduling floor consideration and of the current critical mass of knowledge on a committee from just having marked up and reported a piece of legislation.

III. 1.3.1.1. Self-Executing Provisions, and Layover of Special Rules

Eleven of these 64 special rules—4 closed and 7 structured—also contained self-executing changes to the committee-reported measures they made in order. Five special rules—1 closed and 4 structured—made in order consideration an amendment in the nature of a substitute contained in the report on the special rule in lieu of the amendment(s) reported by the committee or committees of jurisdiction. There was a total of 14 special rules having these characteristics since 2 of these special rules contained both self-executing changes and made in order the consideration of an amendment in the nature of a substitute contained in the report on the special rule.

Table 7. Special Rules Making Changes to Committee-Reported Measures

111th Congress, through April 30, 2010

Type of Special Rule	Self-Executing Amendments	Amendment in the Nature of a Substitute in Rules Report
Structured	7	4
Closed	4	1

Source: Compiled by authors.

House Rule XIII, clause 6(a) requires a one-day layover of a report on a special rule. Of these 14 special rules, reports on all but one laid over for one legislative day, but not always one calendar day. One report laid over for two calendar days. The House agreed to 10 of these special rules on the same day it passed the legislation they made in order. The House agreed to the other four of these special rules one day and passed the legislation made in order the next day.

Again, Members might have asked whether sufficient time was available to review the changes proposed in conjunction with the special rules. For example, H.R. 2454, the American Clean Energy and Security Act, was governed by a special rule that adopted an amendment in the nature of a substitute contained in the report on the special rule after adopting an amendment in the report to the amendment in the nature of a substitute. The special rule had laid over for one

legislative day, although it was reported to the House on June 26 at 3:47 a.m. Consideration of the special rule began later on June 26 at 9:19 a.m. (the House having adjourned and convened a new legislative day in the meantime) and was concluded by 11:21 a.m. The House had passed H.R. 2454 that evening by 7:17 p.m.[74]

III. 1.3.2. Special Rules Governing Consideration of Measures Not Reported by a Committee

From the convening of the 111th Congress through April 30, 2010, the House adopted 25 special rules that governed procedures for considering *measures that had been introduced but not reported by a committee*, including two bills that originated in the Senate but were not referred to a House committee. Nine of these special rules were structured rules, and 16 were closed rules. For the measures made in order by these special rules, an average of 7.4 days elapsed from the time the measures were introduced or received from the Senate until the measures were passed by the House.[75] The median number of elapsed days was 4.

Table 8. Special Rules Governing Measures Not Reported by a Committee and Time Elapsed after Underlying Measure Reported and Its Passage

111th Congress, through April 30, 2010

Total Special Rules	Types of Special Rules	Average Time Elapsed After Underlying Measure Reported until Passage by House	Median Time Elapsed After Underlying Measure Reported until Passage by House
25	Structured – 16 Closed – 9	7.4	4

Source: Compiled by authors.

Five of these 25 special rules—3 closed and 2 structured—also contained self-executing changes to the measures they made in order. Four special rules—1 closed and 3 structured—made in order consideration an amendment in the nature of a substitute contained in the report on the special rule. There was a total of 8 special rules having these characteristics because 1 of these special rules contained both self-executing changes and made in order the consideration of an amendment in the nature of a substitute contained in the report on the special rule.

The same issue arises here as arose concerning reported measures: Whatever the elapsed time between introduction (or receipt from the Senate) and floor consideration, Members might have questioned whether they had sufficient time to review the legislation and to prepare floor amendments. They might have asked whether sufficient time was available to review the changes proposed in conjunction with the special rules. The public might also have asked whether it had time to learn about the legislation and contact Members. For example, H.R. 4872, the Health Care and Education Reconciliation Act, was governed by a special rule that adopted an amendment in the nature of a substitute contained in the report on the special rule after adopting an amendment

[74] Times were available on the Legislative Information System.

[75] The number of special rules used to calculate the average was 23. Two special rules made in order the consideration of measures that had been introduced months before floor consideration: 7 months and 10 months. These two special rules were excluded from calculating the average in order not to distort it.

in the report to the amendment in the nature of a substitute. The special rule had laid over for one legislative day, although it was reported to the House on March 21 at 12:12 a.m. Consideration of the special rule began later on March 21 at 2:11 p.m. (the House having adjourned and convened a new legislative day in the meantime), and was concluded by 6:29 p.m. The House had passed H.R. 4872 that evening by 11:36 p.m. Two points of order were raised against the special rule, each of which was resolved, following debate, by a vote on a question of consideration.[76]

III. 2. Chamber Debate and Amendment

Member concerns over regular order and transparency, including sufficient time to review legislation and amendments to be considered on the House floor, might be addressed through changes to House rules and through changes in practice related to special rules. Changes could add to the House's deliberative process but slow its decision making. Changes could also make it more difficult for the majority leadership to spare, if desired, its Members at least some difficult votes, which it is able to do through its control of the floor.[77]

III. 2.1. Amending Special Rules

To take a major measure off a calendar and bring it up for consideration on the floor, or to take a major unreported measure from a committee and bring it up for consideration on the floor, the House normally employs a special rule. (The House may resort to a special rule to make it in order to consider any measure, but it normally uses another procedure, such as suspension of the rules, to process noncontroversial legislation.) It first debates and votes on a simple resolution reported from the Rules Committee that contains a special rule. A special rule is privileged—having priority over the House's regular order of business—and, when agreed to, becomes a temporary, special order of the House. A special rule is debated in the House under the hour rule, with the majority floor manager traditionally allocating one-half of the hour to the minority floor manager for debate, but for no purpose other than debate. At the end of the hour, or when debate is completed prior to the expiration of the hour, the majority floor manager moves the previous question—the proposition that the House has heard sufficient debate and is ready to proceed to the main question, in this case the vote on the special rule. If the motion is agreed to, the House then votes on agreeing to the resolution.[78]

A special rule normally makes it in order for the Speaker to call up in the House a measure named in the special rule or to resolve the House into the Committee of the Whole House on the state of the Union—the Committee of the Whole—for the purpose of considering a measure named in the special rule. It is a two-step process to authorize consideration by means of a special rule and then to consider the named piece of legislation.

[76] Times were available on the Legislative Information System.

[77] See, for example: "'Our leadership in every way, shape and form is looking to avoid having Members take votes that in any way could cause them concern,' one senior Democratic aide said." Kathleen Hunter and Tory Newmyer, "House Looks to the Senate to Go First," *Roll Call*, May 12, 2010, available at http://www.rollcall.com/issues/55_131/news/46122-1.html.

[78] See CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by (name redacted).

Opponents of a special rule may not offer an amendment to it unless they first defeat the previous question motion. Defeat of the motion for the previous question occurs infrequently since Members almost always support their party's position on this vote. For majority-party Members, defeat of the previous question motion means that some of them have voted to turn control of the floor over to the minority or to a bipartisan group of Members possibly dominated by the minority. If a majority Member is opposed to a special rule, he or she might vote for the previous question motion, in support of the Member's party, and then vote against adoption of the rule.

Once a resolution containing a special rule has been agreed to, the House or the Committee of the Whole is limited in a measure's consideration and amending process as provided in the special rule. The minority, if dissatisfied with the amendments allowed by the special rule, may employ a motion to recommit with or without instructions before the vote on final passage.

Both Democrats and Republicans, while in the minority, regularly argued during debate on many special rules that the House should defeat the previous question on a special rule so that the minority party might amend the special rule, and the minority floor manager inserted the text of a proposed amendment in the *Congressional Record* in the course of debate on a special rule. A proposed amendment to a special rule sometimes made in order consideration of amendments to the named measure that were germane or largely germane. Other times, an amendment would have made in order amendments that were nongermane or largely nongermane. When in the minority, each party has bridled at not being able to offer some germane or largely germane amendments to a measure that were a high priority for their party.

III. 2.1.1. Options

One way, among many ways, that this situation could be addressed, if there were a desire to do so, would be to allow the minority, a majority Member, or each to offer one amendment to (or a substitute for) a modified open, structured, or closed special rule that would make in order one or more amendments, complying with House rules and precedents, to the measure named in the rule. The vote, then, would not be directly on amendments to a measure but on a decision of whether to consider the amendments. This distinction would likely be ignored in fora other than the House floor. Additional debate time could be allowed, or the current hour rule could be followed, with amendment proponents choosing to argue against the special rule as drafted or for their amendment to the special rule or both.

Other ideas have circulated in recent Congresses to change the manner by which House considers a special rule. One proposal is to make special rules divisible or partially divisible, with limited debate allowed on a provision on which a division is demanded, in order to allow votes of some of the individual provisions of a special rule. One type of provision that has been highlighted for this type of consideration is a so-called blanket waiver. (See below, "III. 2.8. Waivers of Points of Order.")

Another idea is to require a larger majority to approve a special rule that contains waivers of House rules. Yet another idea has been to require at least one minority Rules Committee member to support a closed or structured rule for a majority vote to be sufficient to adopt it; lacking that support, a larger majority would be required. Finally, some Members have proposed in the past that a unanimous consent request to modify a special rule that has been agreed to be available 24 hours before being propounded on the House floor.

The majority and minority could act in good faith in drafting a special rule, on the one hand, and offering an amendment to it, on the other, but good faith would be difficult to determine or ensure. The majority could draft a rule that it believes allows a sufficient number of substantive majority and minority amendments. Or, it could choose few minority amendments and force the minority to try to amend the rule to be able to offer additional amendments. Conversely, the minority could offer an amendment to make in order additional substantive amendments important to it, or it could seek to make in order so-called message amendments.[79]

The purpose of an amendment to a special rule could also be unrestricted so that an amendment to the special rule could seek to add, delete, or change another provision in a special rule reported from the Rules Committee, for example, provisions dealing with waivers or motions.

Were the minority (or a majority Member) allowed to offer an amendment to a special rule, the minority could still seek to defeat the previous question. That may be acceptable. Or, to preempt this situation, a rule change that allowed an amendment to a special rule could also consider the previous question as ordered at the conclusion of debate.

Alternately, it could be a requirement placed on special rules that at least one substantive minority amendment presenting an alternative to the underlying legislation be made in order. This concept is discussed below under "III. 2.7. Amendments Made in Order."

III. 2.2. Self-Executing Rules and Unrelated Special Rules Provisions

The Rules Committee may report special rules that, if agreed to, execute provisions in the special rule. One hears the terms "self-executing provisions" or "self-executing rules" to describe the effect of such provisions. These provisions might pass a named measure with only a vote on the special rule, or might execute another House action, such as making a permanent change to a House rule.[80]

Special rules also on occasion apply to more than one piece of legislation, or contain unrelated provisions to establish procedures applicable to specific legislation and to effect other business of the House, such as engrossment instructions. By agreeing to such a special rule, the House might have given short shrift in debate to some of the special rule's provisions or might have strongly supported one part of a special rule so that the other part was able to ride along, whatever its support or lack of support.

Should there be rules governing the inclusion of unrelated or nongermane self-executing provisions in special rules? Should self-executing provisions be confined or limited in use in some way? For example, the Select Committee on Energy Independence and Global Warming was initially created in the 110th Congress pursuant to a self-executing amendment in a special rule to a committee expense resolution.[81] How long should Members have to examine self-executing provisions and their consequences before floor consideration begins? Should there be

[79] See, for example, Walter Oleszek, *Congressional Procedures and the Policy Process*, 8th ed. (Washington, DC: CQ Press, 2011), pp. 189-190, 267.

[80] See CRS Report 98-710, *"Self-Executing" Rules Reported by the House Committee on Rules*, by (name redacted).

[81] Sec. 4 of H.Res. 202, agreed to in the House March 8, 2007.

debate time specifically dedicated to self-executing provisions? While it could seem contradictory to the process, should the House be allowed to vote in some manner, directly or indirectly, on self-executing special rules provisions, and should the majority vote on the special rule be sufficient? For example, the House could vote directly, such as voting en bloc on self-executing provisions, or indirectly, such as on a question of consideration on a special rule containing self-executing provisions.

Some state legislatures operate under a single-purpose restraint on legislation. That has not been the rule or practice in Congress. Such a restraint could be more readily applied to special rules than to bills or joint resolutions. Would this kind of change applicable to special rules make a substantive difference in House deliberations?

III. 2.3. Regular Order in Chamber Deliberations

While leaders and Members of both parties have generally spoken about a need or desire for "regular order" for the consideration of legislation first in committee and then, as reported by committee, on the floor, the term technically applies to the sequence of business on the House floor and to the proper execution of rules and procedures.[82] Moreover, the role of committees and the structure of floor consideration of legislation has continued to evolve over the course of Congress's more than two centuries of lawmaking. Even a Member serving in an early post-World War II Congress when the seniority system was preeminent would have trouble recognizing some procedures and practices of the contemporary Congress, as would a Member serving today have trouble recognizing some procedures and practices of that earlier part of the modern congressional era.[83]

In his recent speech to the American Enterprise Institute, Republican Leader Boehner addressed the legislative management of the House. He proposed changes in practice that could contribute to a broader concept of regular order:

- Allow more floor debate and amendments, with a presumption that legislation will be considered under an open rule;
- Make committee-reported legislation the legislative vehicle for floor debate and amendment;
- Abide by House layover rules for legislation; and
- Require committees to give sufficient notice of measures to be marked up, to webcast proceedings and post transcripts online, and to promptly post online amendments adopted and votes cast.[84]

Leader Boehner observed in his speech:

> Woodrow Wilson once said that 'Congress in session is Congress on public exhibition, while Congress in its committee rooms is Congress at work.' If Wilson went from committee room to committee room today, he might take that statement back. Because the truth is, much of

[82] *Congressional Quarterly's American Congressional Dictionary*, p. 211.

[83] See CRS Report 95-563, *The Legislative Process on the House Floor: An Introduction*, by (name redacted).

[84] Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

> the work of committees has been co-opted by the leaderships. In too many instances, we no longer have legislators; we just have voters.[85]

Then-Democratic Leader Pelosi also defined a broader concept of regular order in 2006 as a part of "A New Direction for America." The principles enunciated there have since been articulated by Members of both parties in House debate and in other forums and have informed resolutions that Members have introduced to amend House rules. Leader Pelosi defined regular order thus:

- "Bills should be developed following full hearings and open subcommittee and committee markups, with appropriate referrals to other committees. Members should have at least 24 hours to examine a bill prior to consideration at the subcommittee level."
- "Bills should generally come to the floor under a procedure that allows open, full, and fair debate consisting of a full amendment process that grants the Minority the right to offer its alternatives, including a substitute."
- "Members should have at least 24 hours to examine bill and conference report text prior to floor consideration. Rules governing floor debate must be reported before 10 p.m. for a bill to be considered the following day."
- "Floor votes should be completed within 15 minutes, with the customary 2-minute extension to accommodate Members' ability to reach the House Chamber to cast their votes. No vote shall be held open in order to manipulate the outcome."
- "House-Senate conference committees should hold regular meetings (at least weekly) of all conference committee Members. All duly-appointed conferees should be informed of the schedule of conference committee activities in a timely manner and given ample opportunity for input and debate as decisions are made toward final bill language."[86]

An observer might ask if these principles describe any period in the modern House. They could describe the House in the 1950s, 1960s, and 1970s, especially after electronic voting was introduced. But, other characteristics, such as the power of committee chairs and the independence of the Rules Committee, had a very large impact on the legislative agenda in those years and were the target of earlier change or reform efforts. Increasingly in the last 25 years, however,

- the number of hearings has decreased, which has also reduced that form of oversight;
- markups have shortened, with the amendment in the nature of a substitute, on which the previous question is in order after brief debate, becoming the typical markup vehicle;
- the number of annual and multiyear authorizations considered has decreased;

[85] Ibid.

[86] "A New Direction for America," June 16, 2006.

- structured and closed rules have become the norm, with ever-fewer opportunities to offer minority amendments, substitute amendments, and second-degree amendments;
- leadership has become more engaged in detailed crafting of the legislative vehicle considered on the floor;
- layover requirements have been waived, and suspension of the rules, temporarily allowed in the 108th Congress on Wednesdays in addition to Mondays and Tuesdays, is now permanently allowed on those three days and on occasion, as permitted by special rules, on additional days of the week;
- partisan voting has increased, to the extent that each party complains that the other party's Members automatically dismiss its ideas, amendments, and legislation;
- conferences have become less common, while reconciling differences through amendments between the houses has become more common; and
- fewer substantive bills and joint resolutions have become law, with changes or additions to existing law aggregated in a few lengthy, complex public laws.[87]

The principles of regular order articulated by the leaders, then, seem to represent ideals or goals that favor deliberation and Member and minority participation in the legislative process. They are useful in identifying key stages of the legislative process where Members might wish to consider changes that enhance deliberation. The evolution of rules and practices in the House in the past 25 years, however, has favored decision making and efficiency. This evolution can be partially attributed to a shortened workweek resulting from Members' desire to be present in their districts each weekend and for longer periods close to national holidays and at other times, and partially attributed to the numerous other exogenous and endogenous influences on the role of a Member of Congress, such as campaign fund raising, the 24-hour news cycle, the rise of electronic media, and the ubiquity and role of lobbyists and grassroots organizations. Members might ask whether the House in recent years has favored decision making too much over deliberation? Whether the minority has been excluded too much from influencing legislative outcomes?

There are different ways to achieve or enforce in general the principles of regular order on the floor identified by Leader Boehner or Leader Pelosi, other than continuing the House's current legislative management and forcing dissenters to vote against special rules. For example, House rules could be changed to create points of order to enforce specific attributes of regular order, and a question of consideration could be allowed to decide such a point of order. Use of a question of consideration could also be clarified for situations where regular order has been breached, absent the creation of a new point of order. Proposed violations of regular order could also be subject to discussion in or decision by the majority-party caucus or conference. The Speaker, in policy

[87] While this list comprises observations made by the authors, support for these observations have appeared in numerous studies and commentaries. See, for example, Richard Rubin, "An Ever Thicker Dividing Line," *CQ Weekly*, vol. 68, January 11, 2010, pp. 122-125; Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress*, 2008 (Washington, DC: Brookings Institution Press, 2008), p. 124; Don Wolfensberger, "Role of Minority Party: Remain Positive, Relevant and Engaged," *Roll Call*, February 12, 2007, available at http://www.rollcall.com/issues/52_78/procedural_politics/16973-1.html; and James Thurber, "Bring Back the Conference Committees," *The Hill*, April 27, 2010, available at http://thehill.com/opinion/op-ed/94403-bring-back-the-conference-committees.

announcements or as a condition of election by the majority party, could make specific commitments regarding regular order.[88]

Most issues of regular order, however, arise with the ad hoc changes to standing rules contained in provisions of special rules. Members might look to changes in House and party rules and practices related to special rules to give meaning to broad attributes of regular order. These issues are examined in the following sections. (See also above, "II. 8. Regular Order and Committee Processing of Legislation.")

III. 2.4. Legislative Vehicle Made in Order

A special rule making in order one or more pieces of legislation identifies the legislation and designates the legislative vehicle,[89] which might be a bill or resolution

- as introduced;
- as reported from committee;
- as reported from committee with amendments deemed adopted;
- as reported from committee with an amendment in the nature of a substitute, which the special rule might deem as adopted;
- with the text of another named bill or resolution;
- with an amendment in the nature of a substitute printed in the special rule or accompanying report and possibly deemed adopted;
- with amendments printed in the special rule or accompanying report and possibly deemed adopted; or
- with another text variation.

III. 2.4.1. Reported Measures

There is an expectation that a reported measure is made in order for consideration on the floor. Basic civics of how a bill becomes a law accustoms us to this thinking. There are good reasons, as well, for this presumption: everyone is on notice about the form and content of a measure, debate and amendment has occurred in committee, and committee members are best able to articulate on the House floor their expertise and argue the options for legislative policy.

The measure made in order by the Rules Committee for consideration in the House or the Committee of the Whole, however, might be materially different from the measure approved by one or more House committees, as the list above shows. This occurrence has long been a feature of special rules, enabling the majority to place before the House a legislative vehicle that might better reflect the majority party's sentiment than the work product of individual committees, that integrates the work of several committees, that represents a compromise among several

[88] For one perspective on the impact of the House's legislative management on the Ways and Means Committee, see Joseph J. Schatz, "Wax and Wane of Ways and Means," *CQ Weekly*, vol. 68, March 8, 2010, pp. 536-538; and Richard E. Cohen, "The Waning of Ways and Means," *National Journal*, vol. 42, March 6, 2010, p. 44.

[89] *Congressional Quarterly's American Congressional Dictionary*, p. 273.

committees' competing versions, that contains changes or provisions to attract additional votes or to overcome Members' objections, or that serves another purpose.

Should another text than a committee-reported text be allowed to be made in order under the House rules? Should the expected way of proceeding be that the measure as reported by the primary committee will be the measure considered on the House floor? And that the amendments of other committees that considered the measure may be considered as floor amendments to it?

Should the decision to make another text in order be a decision for the Rules Committee, the majority-party leadership, the committees of jurisdiction, or a combination of these entities? Is it sufficient that the House tacitly endorses the leadership's decision on the floor vehicle through an affirmative vote on a special rule? Should a specific vote be required on a floor vehicle different from that reported by committee?

Do committee work products deserve an opportunity for debate and an up-or-down vote? Should the majority and minority floor managers of a measure, individually or together, be empowered to offer a committee-reported measure as full-text substitute for the legislative vehicle made in order by a special rule? Both majority and minority Members, under both Democratic and Republican control, who have had amendments adopted in committee only to find that those amendments are not included in the legislative vehicle to be considered on the floor, have been dissatisfied with the process and decisions for developing alternate texts. Should these amendment authors be able to offer their amendments on the floor?

If another text than a committee-reported text is made in order by a special rule, how long should Members (and the public) have to examine the text before floor consideration begins? Should there be a caucus or conference role prior to floor consideration in discussing or approving this other text? Should there be one or more hearings in the committee or committees of jurisdiction on this other text before floor consideration occurs? Should there be a substitute for a committee report or at least a Ramseyer rule analysis of the other text? Should some requirements be placed on the proponents of the unreported measure to disclose information concerning decisions or decision making?

Should the decision-making process be subjected to any of the rules applicable to committee markups? Should hearings be required before floor consideration is in order? Is there a need for additional debate time on the floor, when a different text is made in order, to ensure that Members are informed of a measure's provisions? Should an amended committee report be required?

Making committee-reported text in order could overcome some criticisms of a lack of transparency in the legislative process and about Members' and the public's inability to digest changing legislative vehicles before chamber consideration begins. Leader Boehner seemed clear that this direction is one he would like the House to take.[90] It would, however, constrain the majority leadership's options.

III. 2.4.2. Unreported Measures

Another practice of the House is to bring measures that have not been reported from committee, or that were not at all or only partially considered in committee, to the floor for consideration.

[90] Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

Sometimes, committees are bypassed due to time constraints, impasse within a committee, or delays. Sometimes, they are bypassed because the legislation they are producing is out of step with the majority party's sentiment. Sometimes, the majority leadership serves as the arbiter between competing perspectives within their party or between competing perspectives of committees of jurisdiction. Sometimes, leadership wishes to exert more control over legislative policy, the desire for which might have many sources, such as the legislative agenda at the convening of the 110th and 111th Congresses.

If legislation is a bill as introduced or as drafted in a forum other than an open markup by a committee of jurisdiction, how long should Members (and the public) have to examine the text after notice that it is the legislative vehicle and before floor consideration begins? Is there a need for additional debate time on the floor to ensure that Members are informed on a measure's provisions? Should, alternately, unreported measures be barred from consideration by procedures other than suspension of the rules or discharge petition?[91]

Since there will not be a committee report, should an equivalent document be required or at least a Ramseyer rule analysis? Should some requirements be placed on the proponents of the unreported measure to disclose information concerning decisions or decision making? Should the decision-making process be subjected to any of the rules applicable to committee markups? Should hearings be required before floor consideration is in order? Should there be one or more hearings in the committee or committees of jurisdiction on this other text before floor consideration occurs?

Is it sufficient that an affirmative vote on a special rule endorses the leadership's decision to bring an unreported measure to the floor? Should there be a caucus or conference role in the decision to bring an unreported measure to the floor?

III. 2.4.3. Amendments in the Nature of a Substitute

It has become commonplace for committees to mark up an amendment in the nature of a substitute to an introduced bill and, after debate and consideration of amendments to the amendment, to then report the measure with this one amendment as it may have been amended.[92] An amendment in the nature of a substitute might also be developed after the committee or committees of jurisdiction have reported, and be designated as the legislative vehicle by the Rules Committee. The latter amendment in the nature of a substitute might arise from negotiation and compromise between committees of jurisdiction, from discussions between the Rules Committee and committees of jurisdiction, from initiatives of the majority-party leadership, or from another process.

An amendment in the nature of a substitute may differ in minor ways or in substantive ways from the measure as introduced that it amends or, if developed after reporting from committee or committees of jurisdiction, from the measure as reported.

[91] See CRS Report 98-394, *Discharge Procedure in the House*, by (name redacted).

[92] A measure marked up and approved by a committee might also be reported as a so-called clean bill. In that instance, the committee's report explains the clean bill, just as it would explain an amendment in the nature of a substitute that the committee reported.

Whether an amendment in the nature of a substitute is developed in an open markup by a committee of jurisdiction or in another forum, how long should Members (and the public) have to examine the text before floor consideration begins? Is there a need for additional debate time on the floor to ensure that Members are informed of an amendment's provisions? If the forum where the amendment in the nature of a substitute was developed is other than an open committee markup, should this other forum be open in some way or at some point to Member and public view?

Should there be rules governing the development of an amendment in the nature of a substitute that occurs *after* committees of jurisdiction have reported? Should such an amendment be confined or limited in scope in some way? Should there be debate time specifically dedicated to such an amendment? Should the House be allowed to vote in some manner, directly or indirectly, on such an amendment in the course of consideration of the special rule? For example, the House could vote indirectly, such as on a question of consideration on a special rule containing such an amendment. Should an amendment in the nature of a substitute be subject to review by the Democratic Caucus or Republican Conference before a special rule is reported? Should, instead, an amendment in the nature of a substitute reported by the primary committee be required to be the text made in order on the House floor, with the possibility that another amendment in the nature of a substitute could be offered to it?

Since there will not be such a committee report if an amendment in the nature of a substitute is developed in another forum, should an equivalent document be required? Should there at least be a Ramseyer-type rule governing such an amendment? Should some requirements be placed on the proponents of the unreported measure to disclose information concerning decisions or decision making? Should the decision-making process be subjected to any of the rules applicable to committee markups?

If rules or practice changes are made applicable to an amendment in the nature of a substitute, should such changes also be applicable to so-called managers' amendments, which can be as extensive as amendments in the nature of a substitute?

Making a committee-reported amendment in the nature of a substitute in order could overcome some criticisms of a lack of transparency in the legislative process and about Members' and the public's inability to digest changing legislative vehicles before chamber consideration begins.

III. 2.4.4. Multi-Subject Legislation

The House does not have a single-subject rule for its legislation as some state legislatures have, either by rule or by state constitutional provision. A congressional bill may include more than one subject:

> The germaneness rule applies to amendments and not to the relationship between the various propositions set forth within the bill itself. … A bill may be composed in the first instance to embrace different subjects. The germaneness rule may preclude the introduction of a new subject by way of amendment during consideration of the bill.[93]

[93] Wm. Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2003), p. 527.

House Members, nonetheless, tend to draft and introduce legislation that can be referred to one committee or to as few committees as possible to increase the chances that the measure will be reported or that it can be redrafted as an amendment that is germane to a bill being marked up. A committee, in contrast, might combine a number of introduced bills and drafts into a single bill, which the chair introduces. The aggregated measure is likely to address only related subject matter within the committee's jurisdiction, to the extent that subject matter in another committee's jurisdiction can be circumvented or touched only tangentially. The committee will also likely avoid addressing unrelated subject matter that is also within its jurisdiction, which could lead to jurisdictional tangles with yet other committees.

If more than one committee has jurisdiction over provisions of a measure and each committee reports, it is possible that germane amendments agreed to in each committee could expand the bill's coverage. A special rule—consolidating the work of several committees, responding to a leadership request, allowing a different amendment in the nature of a substitute, or changing the text made in order for floor consideration in another way—could also expand a measure's coverage or even add nongermane subject matter.

The germaneness rule and its precedents protect the House from having to consider new subject matter when considering amendments to a measure. Allowing this rule to operate against amendments in committee to a reported measure and against floor amendments by not waiving potential points of order is one way of addressing concerns about a measure's subject matter. Careful drafting also protects measures since the germaneness rule's precedents generally disallow amendments from adding general provisions on the same subject matter to narrow, specific provisions.

The practices of committees, leaders, and the Rules Committee could also address concerns about measures' subject matter. Committees could be vigilant in defining the subject matter of a piece of legislation and rejecting opportunities, such as through the introduction of a new or clean bill, to incorporate nongermane subject matter. Leaders and the Rules Committee could refrain from seeking the protection of special rules to include nongermane subject matter.

Considering the thousands of precedents that have developed in response to points of order to determine whether an amendment is germane, it is difficult to imagine a one-bill, one-subject rule that would achieve a single-subject goal more efficiently than a commitment on the part of those who make decisions on the scope of legislation.[94]

III. 2.4.5. Self-Executing Amendments

The Rules Committee might in a special rule stipulate the automatic adoption of specific amendments to the legislative vehicle. These amendments might be minor or substantive, but the vote to approve the special rule is a vote for all of its provisions, including the automatic amending of the legislative vehicle without a vote on the self-executing amendments. Self-executing amendments to a measure may facilitate consideration of the measure reported by one or more committees, or they might bypass separate consideration and voting on amendments that might or might not receive a majority vote.

[94] Rep. Boehner included a proposal in his address on congressional reform to consider individual spending bills for federal departments and agencies rather than to consider "comprehensive" measures. Rep. John A. Boehner, "Congressional Reform," September 30, 2010. See also "Pledge to America," September 23, 2010.

Should there be rules governing the inclusion of self-executing amendments in special rules? Should self-executing amendments be confined or limited in use in some way? Should there be a Ramseyer-type rule governing self-executing provisions? How long should Members have to examine self-executing amendments and their consequences before floor consideration begins? Should there be debate time specifically dedicated to self-executing amendments, perhaps by an amendment to the hour rule? Could inclusion of substantive self-executing amendments in a special rule be contingent on approval by the Democratic Caucus or Republican Conference? While it could seem contradictory to the process, should the House be allowed to vote in some manner, directly or indirectly, on self-executing special rules provisions? For example, the House could vote directly, such as voting en bloc on self-executing amendments during the amendment process, or indirectly, such as on a question of consideration on a special rule containing self-executing provisions. Or, is deliberation in the House best served by debating and voting on a narrower set of choices?

III. 2.5. Layover Requirements of Measures To Be Considered on the Floor

The issue of layover requirements has been raised by Members in relation to both reported and unreported measures. House rules currently provide a layover of three calendar days, excluding Saturdays, Sundays, and legal holidays, unless the House is in session on one of those days, *for committee reports*, with enumerated exceptions.[95]

Members of both parties, whether in the majority or minority, and leadership of both parties, when serving in the minority, have raised the abridgement of layover requirements in floor debate, in press releases, and in other ways.[96] Majority-party leaders might cite exigencies necessitating the truncation of layover requirements, or might have worked to build a majority for a party position and want to debate and vote before Members change their minds or events intervene that constitute new information.

Members of both parties introduced resolutions in recent Congresses on layover requirements. Proposals would increase layover requirements for measures to as long as 10 days or change the three-day layover requirements to 72 hours.[97] Another potential question is when tolling begins and whether tolling should apply to hours or to days, as calendar or legislative days. For example, should tolling begin at noon if a measure is available before noon but begin at noon the next calendar day if a measure is first available later in a day? A majority larger than a simple majority could also be required to set aside a layover requirement, overcoming the current practice of the House adopting a rule by a simple majority to waive the layover requirement for a reported measure and to waive a future possibility of a waiver for a special rule that would require a two-thirds vote. A distinction could also be made between legislation so that there is a longer layover requirement for a multi-year authorization than an annual authorization, for an appropriations bill than a continuing resolution without other provisions, or for an omnibus or "minibus" bill rather

[95] Rule XIII, cl. 4. See CRS Report RS22015, *Availability of Legislative Measures in the House of Representatives (The "Three-Day Rule")*, by (name redacted).

[96] In addition to resolutions introduced in the 111th Congress and floor speeches and other addresses by Members of both parties, the Republican "Pledge to America" promises that bills will be "online for at least three days before coming up for a vote…." "Pledge to America," September 23, 2010.

[97] See, for example, H.Res. 216, introduced March 5, 2009, and H.Res. 554, introduced June 17, 2009.

than a temporary program extension. Layover waivers might also be vetted in the Democratic Caucus or Republican Conference prior to Rules Committee consideration of such a special rule.

Should some or all the exceptions to layover rule applicable to committee reports be eliminated? These exceptions in Rule XIII, clause 4 pertain to special rules reported by the Rules Committee, House funding resolutions reported by the House Administration Committee, questions of the privileges of the House reported by any committee, declarations of war or national emergency, and certain disapproval resolutions of government agency action.

It might be asked to what text should a layover requirement apply? Solely to the measure made in order for consideration on the House floor? An amendment in the nature of a substitute or a managers' amendment as well? Self-executing amendments? Should changes—to a text to be made in order—be frozen at some point so that only floor amendments may be proposed to make additional changes? Are there ancillary documents, such as hearings, that should also be available before the House begins consideration of a measure? The House might also wish to consider what availability means in the electronic age—should Internet access replace printing and distribution?

Practice could be changed or, as proposed in various resolutions, rules could be changed. In either instance, Members would benefit from having additional time to read and understand legislation. The current House rule can be circumvented by special rule, and a changed House rule could probably be circumvented by the majority or taken advantage of by the minority. A layover rule expresses a value of the House, and forbearance is required of Members and parties to allow a rule to operate.

III. 2.5.1. Waivers of Readings in the Committee of the Whole

Pursuant to House Rule XVI, clause 8, bills and joint resolutions are to be read three times:

- by title in the House, which is fulfilled by publication of a measure's number and official title in the *Congressional Record* and the *Journal* of the House of Representatives;
- in full in the Committee of the Whole; and
- by title before passage in the House.

Pursuant to House Rule XVIII, clause 5, governing readings in the Committee of the Whole, a measure is read in full before general debate begins, and the measure is then read again for amendment. This reading is traditionally by section or paragraph.

In the Committee of the Whole, a special rule or unanimous consent normally waives reading of the bill in full before general debate. A special rule or unanimous consent also often waives reading of bill for amendment.

One way of addressing Members' concerns over measures brought to the floor within the layover period might involve these readings. So, for example, if a measure is to be brought to the floor before the layover period expires, a new House rule or forbearance by the Rules Committee could allow House rules to operate by not waiving one or both readings in the Committee of the Whole. This approach would not necessarily be effective as an auditory mechanism, but it would allow additional time for Members and congressional staff to examine a measure.

Members might also feel there is merit in having a measure read for amendment in any case to better understand the relationship of proposed amendments to a measure. Again, by new House rule or by forbearance of the Rules Committee, special rules could allow the existing House rule to operate.

III. 2.6. General Debate

Consideration of a measure in the Committee of the Whole begins with a period of general debate, during which debate occurs on the measure but no amendments or other motions are in order.[98] By special rule or unanimous consent, the House often allocates one hour to general debate, equally divided between majority and minority floor managers representing the committee that reported the measure.

If a measure was referred to more than one committee, there are typically majority and minority floor managers representing each committee. The special rule or unanimous consent allocates time to the different committees. An hour of general debate might still be allowed, or the primary committee might be given an hour and other committees given much shorter time allocations.

Committees or individual members of committees have on occasion complained about time allocations for general debate under a special rule. If there is an interest in addressing these concerns or considering them in drafting special rules, the interest can be expressed through practices rather than a change to House rules.

First, it can be unclear whether the chair and ranking minority member of a committee must make a specific request for general debate time in their testimony before the Rules Committee. A large committee or an issue that has generated intense interest in the House might require more than an hour. A smaller committee or an issue of limited interest might require less, but an hour is normally allocated, with general debate time being yielded back when neither side has additional speakers.

Second, if more than one committee had jurisdiction over the measure on which a special rule is being written, what criteria or formula should be used to allocate general debate time? Does it matter that a committee had a primary referral as opposed to an additional or sequential referral? Does the quantitative portion of the measure matter, or the contentiousness of the issues, particularly between the committees of jurisdiction? Does the size of the committees matter, no matter what the referral or issues since committees range widely in size? If a committee did not report and was discharged, should it still have a claim to control a portion of general debate time?

Third, if a primary committee is not designated, should all committees have equal amounts of general debate time, or should another of the factors already mentioned figure into the allocation?

Fourth, should the Rules Committee assume that only a committee asking for time should be allocated time, or, conversely, should a committee with jurisdiction over provisions of a measure need to formally decline general debate time, such as by declaration of both the chair and ranking minority member? The onus for seeking general debate time could be placed on the committees;

[98] See CRS Report RS20200, *General Debate in Committee of the Whole*, by (name redacted).

or the onus for limiting time, or committees allocated time, could be placed on the Rules Committee.

Fifth, how should chamber-wide interest in a measure be factored in? Should Members be limited to speaking for 60 or 30 seconds or forced to insert statements in the *Congressional Record* because general debate time is too tightly drawn? If interest is widespread, should there be more time for general debate? If the amendment process is structured or closed, should there be more time for general debate?

III. 2.7. Amendments Made in Order

A special rule reported by the Rules Committee, making in order the House's initial consideration of a measure, always addresses the amendment process for the measure, unless the special rule is narrow in its purpose, for example, solely waiving points of order. If one or more amendments are allowed, a special rule typically provides for consideration in the Committee of the Whole.[99] Amendments may be debated under the five-minute rule or under controlled time, whichever is provided for in the special rule. If the five-minute rule is employed to debate amendments—the procedure anticipated by House rules for the Committee of the Whole—a Member may make a motion to close or limit debate on an amendment or on the unit of the measure open for amendment.[100] As explained immediately below, special rules are usually classified or referred to according to the amendment process provided for: open, structured, or closed.

III. 2.7.1. Amendment Process Options under a Special Rule

House rules themselves do not classify or refer to special rules by the amendment process provided for; but the Rules Committee, Members and staff, and congressional observers have developed commonly used terms to describe special rules. These terms are not precise, and proponents and opponents of a specific special rule might describe the same rule differently.[101]

If a special rule provides only that "the bill [resolution] shall be read for amendment under the five-minute rule," it is an open rule. An amendment that is germane and does not violate another House rule or precedent is allowed. Some observers classify a special rule that restricts an open amendment process in a minor way or in a narrow, even if substantive, way as a modified open rule. A special rule that requires first-degree amendments to be printed in the *Congressional Record* in advance of the amendment process is an example of such a rule.

At the opposite end of the spectrum from an open rule is a closed rule. This type of special rule proscribes all amendments, except, perhaps, amendments authorized by the reporting committee. Under a closed rule, the minority has only the option to offer a motion to recommit with or without instructions.

[99] See CRS Report RS20147, *Committee of the Whole: An Introduction*, by (name redacted); and CRS Report 98-564, *Committee of the Whole: Stages of Action on Measures*, by (name redacted).

[100] See CRS Report 98-995, *The Amending Process in the House of Representatives*, by (name redacted); and CRS Report 98-439, *Amendment Process in the Committee of the Whole*, by (name redacted).

[101] See CRS Report 98-613, *Amendments in the House: Types and Forms*, by (name redacted).

The type of special rule used most often today is a structured rule. In the past, this type of rule has been referred to as a restrictive or restricted rule or as a modified closed rule. As the amendment process is delineated in a structured rule, only specified amendments might be allowed; only amendments to certain portions of a measure might be allowed; or no amendments to certain portions of a measure might be allowed. Structured rules also often restrict the amendment process in other ways, such as limiting debate time on amendments made in order and disallowing substitute or second-degree amendments to first-degree amendments made in order.

III. 2.7.2. Which Amendments To Make in Order

While Members often speak of a desire for open rules, it is difficult to know whether they would want most bills and resolutions considered under a completely open rule, as was the practice in the modern Congress as late as the 106th Congress (1999-2001). Leader Boehner in his recent speech to AEI spoke favorably of open rules: "Chairmen should … assume that once their bills are on the floor, they'll be subject to an open rule."[102] Then-Democratic Leader Pelosi's "A New Direction for America" called for measures to "generally come to the floor under a procedure that allows open, full, and fair debate consisting of a full amendment process that grants the minority the right to offer its alternatives, including a substitute."[103] A modified open rule or even a structured rule might be able to accommodate openness objectives.

III. 2.7.2.1. Open Rule

An open rule provides advantages in the amendment process by allowing amendments that are germane and comply with other House rules and precedents to be offered to the bill or resolution being considered on the floor. Perhaps as important, another Member may offer a substitute for an amendment offered to the underlying bill or resolution, setting up the series of binary choices contemplated by House rules. Other Members may offer second-degree amendments to the amendment and to the substitute for it.[104] Debate would continue on the amendment or the portion of the bill being amended until Members finished debating and offering amendments, under the five-minute rule, or until a motion to close or limit debate had been adopted. The amendment process under an open rule fosters Member-to-Member debate.

Frequent use of an open rule, however, might be too unpredictable and inefficient for today's House, thinking about Members' schedules for being in Washington, DC, and especially for their time while in Washington. In 2009, the House abandoned the last routinely open amendment process when, except for one day on one bill, it considered its regular appropriations bills under structured rules. To the extent that open rules might be disfavored because they allow the possibility of frivolous, repetitious, or dilatory motions to amend, perhaps the Speaker's authority to rule motions dilatory, including motions to amend, could be clarified. Clearer authority to rule motions dilatory would allow the Speaker to keep debate moving toward conclusion of the amendment process and remove an objection to more use of open rules.[105]

[102] Rep. John A. Boehner, "Congressional Reform," September 30, 2010.

[103] "A New Direction for America," June 16, 2006.

[104] See CRS Report 98-426, *Amendments on the House Floor: Summary of Major Restrictions*, by (name redacted); and CRS Report 98-777, *The House Amendment Tree*, by (name redacted).

[105] House Rule XVI, cl. 1.

III. 2.7.2.2. Closed and Structured Rules

Closed rules, in opposition to open rules, disadvantage all Members. They force Members to cast a yes or no vote on whatever the leadership has allowed to come to the floor, assuming a majority of Members have ratified the leadership's decision by supporting a closed rule. There is not normally an opportunity to amend a measure under a closed rule, except for a motion to recommit with instructions, which may normally be debated for only 10 minutes.

Republican Members and their leaders and, previously during Republican control, Democratic Members and their leaders, have been concerned with the number of closed rules and the limited amendment opportunities under structured rules, which they believe foreclose important minority amendments from being offered. This same concern can affect Members within the Democratic Caucus or Republican Conference who have a perspective different from a majority of their party or Members not serving on committees of jurisdiction. If the minority party has a substantive alternative, it may be limited to offering it as a motion to recommit. If an amendment represents a minority perspective, either of the minority party or within the majority party, it might not be made in order, even if the majority party has the votes to defeat the amendment or the amendment could be dropped or changed in a later stage of the legislative process.

Limiting substantive amendments can result in majority Members being put in a difficult position when confronted with a motion to recommit, where their district politics favor the motion but leadership wants them to oppose the motion. Regularly blocked from offering its amendments in the course of the amendment process, the minority party has resorted to offering motions to recommit with instructions, and it has frequently done so by using forms that some consider both partisan message and substantive amendment. The confluence of a motion to recommit with wavering majority Members has occasionally led to the majority leadership pulling legislation from the floor to avoid a vote on the motion to recommit.

Is deliberation in the House best served by debating and voting on a narrow set of choices, which are determined by the Rules Committee majority working with majority-party leadership? Does this situation best serve the majority party, factions or groups within it, or individual Members? Are voters who elected minority Members disenfranchised by rules that are too restrictive or closed?

Considering the complexity and interrelatedness of issues and the complexity and length of major legislation, debate in the House today is compressed in time. Few pieces of legislation are considered on more than one day, although general debate is sometimes extended beyond one hour and occurs on one calendar day with the amendment process occurring on a second calendar day. Amendments are limited under structured rules, and amendments to amendments are normally disallowed. Yet, three or more days of each week are given over to noncontroversial legislation considered under the suspension of the rules procedure, which seems to indicate that, even though many Members return to their home districts each weekend, additional time could be made available during a week for debate and consideration of amendments on the House floor.[106]

[106] See also Rep. John A. Boehner, "Congressional Reform," September 30, 2010; and Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.

III. 2.7.3. Options

If there is a desire for a more open amendment process under special rules, but not for a fully open amendment process, some options for a *change in practice* that could be examined include

- allowing all amendments with majority-party sponsors;
- allowing factions or groups within the majority party to select their key amendments or allowing them to each offer an amendment in the nature of a substitute;
- allowing all amendments with bipartisan sponsorship;
- allowing all amendments with a specified number of sponsors,
- allowing all amendments with a specified number of sponsors, with some minimum portion from the political party that is not the sponsor's party;
- allowing only cut-and-bite amendments;
- allowing only amendments in the nature of a substitute;
- allowing all substantive minority amendments;
- allowing all amendments within the jurisdiction of the committee designated as primary, germane to the measure, and complying with other House rules and precedents;
- allowing the minority, or the minority leader, to select the minority party's substantive amendment or amendments;
- allowing the minority one amendment in the nature of a substitute or one minority managers' amendment;
- allowing the minority one amendment in the nature of a substitute and one or more additional amendments;
- allowing minority amendments that the majority probably has the votes to defeat;
- allowing full amendment trees to develop for amendments made in order under a structured rule, with debate under the five-minute rule;
- making more use of modified open rules, with, for example, only a prefiling requirement for first-degree amendments;
- disallowing only frivolous, repetitious, or dilatory amendments; or
- disallowing only amendments that violate a House rule or precedent (an open rule).

The House could also begin consideration under an open, modified open, or a relatively open structured rule and force Members to choose how to spend their floor time. A special rule could set an overall time limit for the amendment process or for each title of a measure, for example, and allow Members to offer amendments that are germane and comply with other House rules. When the time expires, that would be the end of the amendment process. Members of both parties would need to proceed in good faith for this option to work. Or, a second special rule could provide a structured amendment process that allows the majority to complete the amendment process on its terms. Another approach would be for the majority and minority to discuss an

overall time limit for a measure and employ an open rule during that time period, with a structured or closed rule used to complete consideration if consideration had not been completed. Another option is to allow many or all amendments, but to limit debate time on each. On key amendments, discretion could be given to the majority floor manager to expand the time available for debate.

It might also be considered whether the decision to remove a bill from the floor—temporarily, permanently, or in order to obtain a new special rule—should be possible only if done by motion.

It is difficult to see how a change in House rules could cover the variety of situations the House might face in its decisions on making amendments in order. The Democratic Caucus or Republican Conference, however, might be a forum for advising leadership and the Rules Committee on the amendment process. Had there been such a role for the Democratic Caucus, Financial Services Committee Chairman Barney Frank might have been successful in his request to the Rules Committee for a more open rule on H.R. 3121, the Flood Insurance Reform and Modernization Act of 2007.[107] Leadership could also commit to a more open amendment process, if that was desired, or to guidelines on the amendment process. Leadership currently follows or at least takes into consideration guidelines in caucus and conference rules on measures that may be considered under the suspension of the rules procedure.

III. 2.8. Waivers of Points of Order

Special rules may waive no, some, many, or all points of order that could be raised against a measure made in order for consideration on the House floor or against amendments that may be offered.[108] Many special rules contain this phrase: "All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. " The purpose of this provision in a special rule is to obviate the operation of *all* House rules, except two, and any statutory rules (for example, under the Budget Act), that would disallow the present consideration of the measure named in the rule, such as the rule that requires a three-day layover.[109] Rule XXI, clause 9 pertains to earmarks, and clause 10 is the House pay-go rule.

Many measures come to the House floor with an amendment in the nature of a substitute made in order for consideration. In that case, special rules typically contain this provision: "All points of order against the committee amendment in the nature of a substitute are waived except those arising under clause 10 of rule XXI. " Again, the purpose of this provision is to obviate the operation of *all* rules, except one, that could be raised against the amendment in the nature of a substitute, such as the rule that requires amendments to be germane.[110] Rule XXI, clause 10 is the House pay-go rule.

[107] Rep. Barney Frank, remarks in the House, "Flood Insurance Reform and Modernization Act of 2007," *Congressional Record*, daily edition, vol. 153, September 27, 2007, p. H10956; and Jackie Kucinich, "Frank Takes Issue with Slaughter on Lockout," *The Hill*, September 28, 2007, available at http://thehill.com/homenews/news/13192-frank-takes-issue-with-slaughter-on-lockout.

[108] See CRS Report 98-433, *Special Rules and Waivers of House Rules*, by Megan Suzanne Lynch; and CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by (name redacted).

[109] The provision appears in H.Res. 1248. The House rule is Rule XIII, cl. 4.

[110] The provision appears in H.Res. 1517. The House rule is Rule XVI, cl. 7.

Amendments are similarly protected, especially amendments made in order in a structured rule. A typical special rules provision states: "All points of order against such amendments are waived except those arising under clause 9 or 10 of rule XXI. " The purpose of this provision is to obviate the operation of *all* rules, except two, that could be raised against an amendment, including the germaneness rule.[111] Rule XXI, clause 9 pertains to earmarks, and clause 10 is the House pay-go rule.

Notice that in each example, the waiver covers all points of order, with exceptions carved out. This kind of waiver has frequently been called a "blanket waiver" since it is comprehensive and does not spell out specific House rules being waived.

Protection from potential points of order are sometimes given only to certain units of bills that were amended in committee or only to specified amendments, or only from specified points of order that might be raised. Protection might also be extended to provisions of a measure or an amendment in the nature of a substitute, but not to amendments to the provisions protected by the special rule.

Should points of order that are being waived be specified in a special rule, or in the accompanying report on the special rule? Rule XIII, clause 6(g) requests but does not require the listing of waivers in a special rule against a measure or its consideration. Should the Rules Committee be required to specifically justify its decisions on waivers in its reports on special rules? Should blanket waivers continue to be an option for the Rules Committee, or should they be disallowed? Should a supermajority be required to endorse a blanket waiver, or should a longer layover requirement exist for special rules with blanket waivers than for special rules with specific, identified waivers? Could there be a new point of order against blanket waivers, decided by a question of consideration? Could it be clarified that a question of consideration is available, in the absence of a new point of order?

Changes to measures recommended by committees and amendments proposed on the House floor must be germane and comply with other House rules and precedents. Special rules, as noted, however, often waive points of order based on germaneness and other rules against these amendments or amendments made by the Rules Committee and implemented through provisions in a special rule. Should all amendments made in order be treated the same? Should all amendments be treated the same as provisions of the measure to be amended? Should the Rules Committee be required to justify its decisions on differing waivers in its reports on special rules?

Why should committee and floor amendments, as a general principle, not comply with House rules?

Should a vote to retain or amend a special rule's waiver provisions be allowed before a vote on the previous question motion? After the previous question is ordered, perhaps it could be in order to allow a single motion to recommit to strike a specific or blanket waiver.

[111] The provision appears in H.Res. 1248. The House rule is Rule XVI, cl. 7.

III. 2.9. Motions and Requests

In many circumstances, the minority, or any Member, may make a procedural motion in order to obtain a recorded vote, such as making a motion to adjourn in the House, or demand a recorded vote on a procedural step that is normally taken by voice vote, such as laying the motion to reconsider on the table. A procedural motion may be made for any number of reasons, including for the purpose of slowing down floor proceedings. Through rules changes, the House has augmented the authority of the Speaker to exercise flexibility in scheduling votes. A vote, then, may be scheduled when it is most convenient or when votes can be clustered and only the first vote will consume more than 15 minutes. Through other rules changes, the House has also barred or limited the number of procedural motions that may be made, such as opportunities to make a point of order that a quorum is not present, or has generally discontinued the use of a motion, such as motion to resolve into the Committee of the Whole.[112]

Special rules sometimes disallow or restrict available motions, demands, or requests that might be made in the Committee of the Whole or the House. In the Committee of the Whole, a special rule might disallow or restrict a motion that the committee rise or a motion to strike the enacting clause (of the measure under consideration). In the House, a special rule might disallow a demand for a division of the question. The purpose of including such provisions in a special rule may be to expedite consideration of a measure, to preclude the minority from delaying proceedings with multiple motions or votes on those motions, or, for example, in the instance of disallowing a demand for a division of the question, to prevent separate votes on parts of an amendment that the leadership wants considered as a unit.[113]

Although such special rules provisions are often principally directed at potential motions that the minority could make, the provisions limit the procedural opportunities of all Members. Should a special rule be able to curtail Members' ability to employ procedures such as motions? Should such provisions of special rules be limited or curtailed? Should there be a justification in the report accompanying a special rule that disallows certain motions? If a motion is dilatory, should it be left to the Speaker or chair to rule it out of order, as authorized under House Rule XVI, clause 1, on the Speaker's own initiative or on a point of order?

Another approach is to designate in House rules or a special rule who may make certain motions. For example, pursuant to House Rule XXI, clause 2(d), the majority leader is authorized after an appropriations bill has been read for amendment to offer a motion that the Committee of the Whole rise and report, which, if adopted, cuts off limitation amendments. Special rules might limit the motion for the Committee of the Whole to rise to the majority floor manager, and unanimous consent requests governing Committee of the Whole debate might limit motions to strike the last word (to obtain additional debate time) to the majority and minority floor managers.

If the majority wishes to limit the use of procedural motions, it could amend House rules to reduce the opportunities, for instance, to move that the House adjourn, or the rules applicable to

[112] See CRS Report RL32207, *Commonly Used Motions and Requests in the House of Representatives*, by (name redacted); and CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by (name redacted) and (name redacted).

[113] For example, H.Res. 1436, agreed to in the House June 15, 2010, contained three such limitations: "Each amendment…shall not be subject to a demand for division of the question."; "The Chair may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services."; and "The Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII)."

the Committee of the Whole, for instance, to move that the committee rise. The advantage for the majority is it establishes a new norm. The disadvantage might be the lack of flexibility on the one hand and, on the other, increased partisanship that could result from a restriction of minority procedural opportunities and, as a potential consequence, an increased desire by the minority to identify and use other ways to upend the majority's agenda and schedule.

III. 3. Motion to Recommit

The rule allowing a motion to recommit before a vote on final passage has undergone two major changes in the past 15 years. In 1995, the Republican majority changed House rules to guarantee the right of the minority to offer a motion to recommit with or without instructions, which had eroded over the course of many years under the Democrats' legislative management of the House.[114] The former is an instruction to a committee to take an action related to the measure under consideration. In its most common form, a motion to recommit with instructions is a last attempt by the minority to amend a measure before a vote on final passage. The motion to recommit without instructions is an attempt to kill a measure and, if successful, would end deliberation and obviate a vote on final passage.[115]

Instructions included in a motion to recommit have included not only amendments but directions to a committee to hold hearings or take another action. Instructions have also indicated whether a committee should act "forthwith" or "promptly." If a motion to recommit with instructions contains an amendment to the measure under consideration, and the motion is agreed to, the amendment is immediately reported to the House for its consideration, but only if the term "forthwith" is used. If the term "promptly" is used, the measure is returned to the named committee and further floor consideration of the measure at that time ends. A motion to recommit with instructions must be germane and comply with other House rules and precedents.

The Republican minority in the 110th Congress offered some motions to recommit with instructions using the term "promptly," and some of these motions were agreed to. In its rules package for the 111th Congress, the Democratic majority changed the rule guaranteeing the motion to recommit to allow only motions that contained instructions using the term "forthwith."[116]

A question raised earlier about the relationship between amendments made in order and the motion to recommit bears repeating here. Repeatedly blocked from offering its amendments in the course of the amendment process, the minority party has resorted to routinely offering motions to recommit with instructions, and it has frequently done so by using forms that are both partisan message and substantive amendment, which can result in the majority leadership pulling legislation from the floor to avoid a vote on a motion to recommit. Might a more open amendment process reduce the emphasis the minority gives the motion to recommit?

[114] Sec. 210 of H.Res. 6, agreed to in the House January 5, 1995.

[115] See CRS Report 98-383, *Motions to Recommit in the House*, by (name redacted).

[116] Sec. 2(g) of H.Res. 5, agreed to in the House January 6, 2009. The rule change also allowed 10 minutes of debate on straight motions to recommit (without instructions); debate was previously allowed only on motions to recommit with instructions.

III. 3.1. Options

These two changes have not ended debate over the motion to recommit with instructions. For majority-party Members, the first look that they normally get at a motion to recommit with instructions is when the motion is offered. They object to the element of surprise, the lack of time to understand the motion and its implications, and the limited time to consider its policy and political merits. To address these concerns, while preserving the minority's right, it would be possible to again amend the House rule, for example, to allow additional debate time, to require pre-filing of a motion to recommit with instructions, or to postpone consideration of the motion for a period after it is offered.

Additional debate time would allow fuller consideration of the amendment in a motion to recommit, but Members would need to debate at the same time they are attempting to weigh the amendment; debate could be repetitious of earlier debate; and the vote on final passage would be delayed. Pre-filing would seem to disadvantage the minority at the same time that it gives ample notice to the majority. The minority's disadvantage is, in part, that the choice of what amendment to include a motion to recommit with instructions may depend on what amendments have been agreed to or defeated during the amendment process. Pre-filing also allows the majority leadership to whip its membership, probably further restricting the minority's role in the processing of legislation. Postponing consideration of a motion to recommit with instructions, once offered, by rule or at the initiative of the Speaker, would allow the minority to decide on the motion's content at the end of the amendment process. It would still allow the majority-party leadership to whip its Members, but it would allow majority-party Members to have time to understand and weigh their vote on the motion.

Variations on these ideas could place the decision of whether to proceed immediately to consideration of a motion to recommit with instructions in the hands of the majority floor manager or the majority leader or in the hands of the House. If the House wanted to allow the opportunity to delay consideration of a motion to recommit, it could add to Rule XIX, clause 2 to allow the majority floor manager to demand a delay for an amount of time, to a set time, or at a time to be determined. Alternately, the House could make a decision on whether to immediately consider a motion to recommit by voting on a question of consideration.

If the minority is to be able to take full advantage of the right and opportunity afforded by the motion to recommit with instructions, a return to the formulation in the 1995 House rule allows that. The House could amend its rule for the purpose. The majority could then avail itself of procedures that allow it an opportunity to amend a motion to recommit if it wished to resurrect that possibility.

The House could also amend its rule in favor of minority rights to allow other instructions in addition to those using the term "forthwith." For example, a motion to recommit could direct a committee to hold hearings or conduct an investigation. Perhaps the rule could be amended to allow that and other forms of instruction.

A way in which minority rights could be enhanced under the rule would be to allow more debate on a motion to recommit with instructions. Currently, a proponent receives five minutes and an opponent five minutes. The majority floor manager can demand that debate time be expanded to one hour. Perhaps each side should have more than five minutes, while leaving the majority floor manager's authority intact.

Finally, if Members are satisfied with the motion to recommit as it is now formulated, the House need not do anything.

III. 3.2. Opposed to a Measure

On occasion, Members make parliamentary inquiries concerning what it means to be "opposed" to a measure, in seeking the right to make the motion to recommit under the rule. In general, the Speaker relies on the "veracity" of a Member's assertion that he or she is opposed. Likewise, the Speaker assumes that a Member making a motion to recommit, which loses, who then votes for the measure has made another decision when faced with a different binary choice.[117] If Members in general feel strongly that a Member who offered a motion to recommit that was defeated should vote against the bill, the Speaker could question the proponent more closely.

III. 4. Suspension of the Rules

The House considers a very large number of bills and resolutions each week under a procedure called suspension of the rules. A single motion suspends all of the rules of the House and passes a measure. When recognized by the Speaker for the purpose of making the motion, the Member, normally a committee or subcommittee chair, states: "I move to suspend the rules and pass [the measure]." In exchange for consideration of a measure by this procedure, the House limits debate to 40 minutes, prohibits floor amendments, and requires a two-thirds vote for passage.[118]

The motion is in order on Mondays, Tuesdays, and, since the 108th Congress, Wednesdays. Both Democratic Caucus and Republican Conference rules allow the Speaker to decide what measures to consider by the suspension procedure, but contain guidelines for the Speaker's consideration. Both parties disallow under suspension of the rules consideration of a measure that was opposed on reporting by more than one-third of a committee and that breaches a cost ceiling. The Democratic Caucus sets that ceiling at an authorization of $100 million, while the Republican Conference sets it at an increase of 10% in spending. Members might ask whether these guidelines and perhaps others should be made rules of the House?

During the 109th Congress, Democrats in their critique of Republican's management of the House said about suspension of the rules: "The Suspension Calendar [sic] should be restricted to non-controversial legislation, with minority-authored legislation scheduled in relation to the party ratio in the House."[119]

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[117] *House Rules and Manual*, § 1002c, pp. 799-801. See also Rep. Ray LaHood, remarks in the House, "Parliamentary Inquiry," and "Rules of the House," *Congressional Record*, daily edition, vol. 152, April 26, 2006, p. H1812; and "Parliamentary Inquiries," and "Rules of the House," *Congressional Record*, daily edition, vol. 152, May 4, 2006, pp. H2153-H2154 and H2155.

[118] See CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by (name redacted).

[119] "A New Direction for America," June 16, 2006. The same recommendation was listed in "New House Principles," May 25, 2006. While many Members and others refer to a "suspension calendar," there is no such calendar in the House. Measures considered under the suspension of the rules procedure may be pending on a House calendar, may have been referred to a committee but not reported from it, or may have been introduced but not yet referred to committee. See CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by (name redacted); and CRS Report 98-142, *Days Reserved for Special Business in the House*, by (name redacted).

Republican Whip Eric Cantor most recently proposed reform of suspension's use so that the House no longer considers "expressions of appreciation and recognition," and spends just one day a month on naming public buildings.[120] Republican Leader Boehner suggested appreciation and recognition be handled through Members' special-order and one-minute speeches rather than by legislation.[121]

The House in 1995 banned commemorative legislation, defining commemoration as "recognition" for a "specified period of time."[122] The House, however, has allowed under suspension of the rules numerous commemorative-like resolutions, containing language such as "the House supports the goals and ideals of...." It has also recognized groups' and individuals' accomplishments and other events, anniversaries, and achievements. The House could review the operation of this rule and consider further restrictions, as, for example, the Republican leaders suggested.

Members in their representational capacity, however, like the opportunity to sponsor a resolution expressing appreciation or recognition and to speak for it in committee and on the floor, despite time and resources this legislation consumes. Might there be other ways to reclaim floor time from measures considered under the suspension procedure than cutting off Members' resolutions or as an alternative to special orders and one-minutes?

- Rather than considering measures involving appreciation and recognition under suspension of the rules, consider them by unanimous consent, with the proponent asking unanimous consent to pass the measure and unanimous consent to address the House for some period of time, such as 2-5 minutes, and with other Members speaking under a reservation.
- As with one-minute speeches, make time for the consideration of measures involving appreciation and recognition by unanimous consent available at the Speaker's discretion on any day of the week.
- Alternately, provide a different form of suspension of the rules for measures involving appreciation and recognition—10 minutes of debate, no floor amendments, passage by voice vote. Make such motions in order only on Mondays.
- Under any unanimous consent or suspension format, require Members to obtain House consideration within 30 calendar days of introduction of such a measure for the measure to be in order.
- Have "official objectors" from each party review such measures and alert their leadership to any problematic measure.
- If committee consideration of such measures is to continue, require committees to adopt rules for expeditious consideration of these measures.

[120] Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.

[121] Rep. John A. Boehner, "Congressional Reform," September 30, 2010. See also CRS Report RS21174, *Special Order Speeches and Other Forms of Non-Legislative Debate in the House*, by (name redacted); CRS Report RL30136, *Special Order Speeches: Current House Practices*, by (name redacted); and CRS Report RL30135,*One-Minute Speeches: Current House Practices*, by (name redacted).

[122] Rule XII, cl. 5.

On a different aspect of measures brought up under the suspension procedure, both Democratic and Republican leadership in the majority have scheduled controversial or at least important measures for consideration under suspension of the rules procedure, perhaps to obtain a test vote. It forces the House and its Members to make a decision where the only opportunity is to vote for or against the motion. Would it be desirable to prevent controversial or important measures from being considered under the suspension of the rules procedure? Who might decide if a measure is "controversial" or "important"? Should the Speaker continue to be solely responsible for determining which measures might be considered under the suspension of the rules procedure? Should the chair and ranking minority member of the committee or committees with jurisdiction need to concur in a decision to schedule a measure under the suspension procedure? Should there be a majority or bipartisanship leadership team deciding? Should the majority caucus or conference decide?

The House formerly might have taken two votes as part of considering legislation under the suspension of the rules procedure. The first vote—a demand for a second under former Rule XXVIII, clause 2—was intended to "prevent consumption of the time of the House by forcing consideration of undesirable propositions...."[123] If the second failed on a majority vote, the House did not then debate and vote on the motion to suspend the rules on the measure. If the House now wishes to consider controversial or major legislation under suspension of the rules procedures, it could consider having a new two-step procedure for motions concerning such legislation, with a procedural vote first on whether to consider a measure under suspension of the rules and then the existing procedure for debate and voting on the motion. A two-step procedure could prove to be more of an inconvenience than a contribution to management of the House's agenda, but it might be one way to respond to occasionally scheduled controversial or important legislation under the suspension of the rules procedure.

III. 5. Voting

House Rule XX, clause 2(a) is clear: "… the *minimum* time for a record vote or quorum call by electronic device shall be 15 minutes." *(Emphasis added.)* Yet, there has been heightened institutional and partisan attention to the duration of votes conducted by electronic device—and nearly every vote is conducted in this manner—since 1987 when the Democratic Speaker held a vote open for what the Republican minority considered an inordinate amount of time, alleging the duration affected the outcome.[124] While most attention has been paid to trying to have Members cast their votes in 15-17 minutes, most controversies have arisen over when the presiding officer has announced the final result of a vote—it has been alleged too early in some instances and too late in others.

Speaker Thomas S. Foley first addressed the duration of votes in the Speaker's announced policies in the 102nd Congress (1991-1993), exhorting Members to head to the floor "promptly"

[123] U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 95th Congress*, prepared by Wm. Holmes Brown, Parliamentarian, H.Doc. 94-663, 94th Cong., 2nd sess., (Washington, DC: GPO, 1977), § 906, p. 627.

[124] For an examination of the history of voting by electronic device, rules changes, the development of the Speaker's policies, and issues that have arisen, see CRS Report RL34570, *Record Voting in the House of Representatives: Issues and Options*, by (name redacted), (name redacted), and (name redacted). (Hereafter *Record Voting in the House of Representatives*.) See also CRS Report 98-228, *House Voting Procedures: Forms and Requirements*, by (name reda cted); and CRS Report RS20208, *Obtaining a Record Vote on the House Floor*, by (name redacted).

when the bells indicate a vote is underway, and indicating that Members in the chamber seeking to vote would not be disenfranchised.[125] All Speakers since have included, in the Speaker's biennial announcements of policies, guidance to Members and the chair on voting. Controversies have still occasionally arisen where individual Members have believed they were prevented from voting.[126]

Conversely, the most heated controversies have arisen when a presiding officer has been alleged to have held a vote open, or to have closed a vote at a specific juncture, to change the vote's expected outcome. In recent Congresses, two events have stood out. First, largely in response to the Republican leadership's action in 2003 of holding open a vote on the Medicare prescription drug program for approximately three hours, Democrats proposed holding votes open only for 15-17 minutes. "A New Direction for America" contained a specific recommendation:

> Floor votes should be completed within 15 minutes, with the customary 2-minute extension to accommodate Members' ability to reach the House Chamber to cast their votes. No vote shall be held open to manipulate the outcome.[127]

When Democrats organized the House in the 110th Congress, they included in their rules package an amendment to Rule XX, clause 2 to add a sentence: "A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote." This sentence was the subject of numerous parliamentary inquiries and several points of order in the 110th Congress.

Late in the 110th Congress, in response to one Democratic presiding officer's decision to end a vote at a particular juncture, the House subsequently approved the creation of a select committee to investigate the possibility of "irregularities" in the conduct of that vote. The investigation resulted in a recommendation in the House that the rules change be repealed.[128] The Select Committee to Investigate the Voting Irregularities of August 2, 2007, in its unanimously adopted report, indicated that the change was made with a "noble intent," but it was "difficult to enforce" and a "catalyst for raw anger."[129] In adopting its rules for the 111th Congress, the House repealed the sentence.[130]

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[125] Speaker Pro Tempore, "Policies of the Chair," *Congressional Record*, vol. 137, part 1 (January 3, 1991), pp. 65-66.

[126] See *Record Voting in the House of Representatives: Issues and Options.*

[127] "A New Direction for America," June 16, 2006. The same recommendation was listed in "New House Principles," May 25, 2006. Other approaches were advanced in H.Res. 659, introduced in the House January 31, 2006: Sec. 3(a)—

> The maximum time for a record vote by electronic device shall be 20 minutes, except that the time may be extended with the consent of both the majority and minority floor managers of the legislation involved or both the majority leader and the minority leader.

and in H.Res. 686, introduced in the House February 16, 2006: Sec. 6—

> Whenever the maximum time exceeds [by] 30 minutes, the Speaker shall have published in the Congressional Record for that legislative day a log of all voting activity occurring after the first 30 minutes of the recorded vote. The log shall set forth the names of any Members who changed their votes or first voted after such 30-minute period.

[128] U.S. Congress, House, Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Final Report and Summary of Activities*, 110th Cong., 2nd sess., H.Rept. 110-885 (Washington: GPO, 2008), pp. 22-24. (Hereafter *Final Report and Summary of Activities.*) See also the discussion of the electronic voting system and of voting in the House in CRS Report RL34366, *Electronic Voting System in the House of Representatives: History and Evolution*, by (name redacted); and*Record Voting in the House of Representatives: Issues and Options*.

[129] *Final Report and Summary of Activities*, p. 22.

[130] Sec. 2(h) of H.Res. 5, agreed to in the House January 6, 2009.

III. 5.1. Duration and Conduct of Votes

The Select Committee to Investigate the Voting Irregularities of August 2, 2007, made other recommendations, one of which was—

> The Majority leadership should proactively consult with the Minority leadership (either at the Member or senior floor staff level) as soon as practicable upon learning of rostrum problems to avoid miscommunication and suspicion regarding the source and resolution of those problems.[131]

The select committee identified better communication between the majority and minority as a mechanism for mitigating controversy over the duration of a vote. Another possibility would be to allow votes to be extended beyond some number of minutes, such as 20 minutes, only with the concurrence of the majority and minority leaders or the floor managers or only after consultation between them. Any change involving communications between the majority and minority could be done through the Speaker's announced policies or through a statement or commitment, such as through a scripted floor colloquy, between majority and minority leadership. The Speaker's discretion and authority would need to be preserved in any agreement since, under House Rule I, clause 6 and Rule XX, authority to conduct votes is given to the Speaker.

The select committee also recommended that the clerk's certification of an accurate vote with the so-called tally slip count be formalized. It suggested use of the Speaker's announced policies to do so, avoiding locking into House rules the current procedure.[132] The select committee explained, "The formalization of the policies and procedures regarding the tally slip ... will go a long way to ensuring that vote announcements are accurate, and thus instill confidence in the process."[133]Alternately, Rule XX, clause 2 could be amended to accomplish what the select committee recommended, while avoiding reference to the current practice. The first sentence of this clause states, "Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device." A new second sentence could be added, to the effect, "Upon certification of the record vote or quorum call by the Clerk, the Speaker shall announce the number of Members recorded as voting in the affirmative, the number of Members recorded as voting in the negative, and the number of Members answering present."

In the spirit of the select committee's recommendation, the Speaker amended her announced policies for the 111th Congress to include the following statement: "The Speaker believes the best practice for presiding officers is to await the Clerk's certification that a vote tally is complete and accurate."[134]

The select committee recommended that the total time that an electronic vote was "held open" be recorded and made available to Members upon request.[135] This information could also be used to ascertain whether specific Members typically vote last or nearly last so that they could be

[131] *Final Report and Summary of Activities*, p. 27.

[132] Ibid., p. 25.

[133] Ibid., p. 26.

[134] Speaker Pro Tempore, "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 155, January 6, 2009, pp. H22-H24.

[135] *Final Report and Summary of Activities*, p. 26.

counseled by their party leaders to demonstrate comity toward their colleagues by voting in a prompt or timely manner.

Another recommendation of the select committee has been the subject of the Speaker's announced policies since the commencement of the 102nd Congress. Speakers have sought to exhort Members to vote within 15-17 minutes and to support the chair in his or her efforts to conclude votes in that time frame. The select committee provided an option that could be pursued to eliminate voting by well card (ballot card) during an electronic vote, to have the chair determine that all Members present have voted, and then to declare that all voting machines will be closed after a specified grace period. After the grace period, voting machines would be shut off and the vote closed. The select committee noted:

> Although enfranchisement is rightly a tenet of House voting practice, the responsibility to exercise a vote rests with the Member and not the Chair. Reducing the Chair's responsibility for ensuring that each Member has cast a vote would go a long way to return timeliness to the conduct of votes in the House.[136]

This kind of change would add predictability, and presumably procedural fairness, to the conduct of votes, and arguably influence Members' behavior. Votes in state legislative chambers are normally conducted within a few minutes' duration, but legislators are normally present on the floor and have assigned seats and individual voting machines. Adding predictability as recommended by the select committee would reduce, however, the ability of each party's leadership to seek votes or vote changes.

With regard to well cards and vote changes, and well cards and initial voting by late-arriving Members, practices date to the 94th Congress (1975-1977), when Speaker Carl Albert sought to reduce the number of vote changes.[137] He allowed vote changes by electronic vote only during the first 10 minutes of a vote and required use of a well card for vote changes after that. In addition, once the voting machines were turned off, Members voting initially would also need to use a well card.[138]

III. 5.1.1. Members' Briefing

The clerk of the House provided a briefing to new Members of the 111th Congress, as also recommended by the select committee, but briefed Democratic and Republican Members separately. Would it be beneficial to have one briefing for all new Members? Might this training be routinized? Might there be continuing education for returning Members?

III. 5.2. Pairing

Until the 106th Congress, the House allowed general, specific, and live pairs. A House rule now allows only live pairs and only in limited instances.[139] The House could consider reinstituting

[136] Ibid., p. 27. See also the discussion in *Record Voting in the House of Representatives: Issues and Options*.

[137] Well cards are also used by Members who do not have their personalized electronic voting card in their possession when they are on the floor to vote.

[138] *Record Voting in the House of Representatives: Issues and Options.*

[139] Rule XX, cl. 3. See CRS Report 98-970, *Pairing in Congressional Voting: The House*, by (name redacted).

pairing to allow Members a formal way of making their positions known if they are absent from a vote.[140]

Alternately, the House could revisit the manner by which Members who have missed a vote are able to place a statement in the *Congressional Record* indicating their position. Beginning in the 106th Congress, a Member could submit a statement on his or her position shortly after a vote, which would appear with the vote. If a Member sought later to make his or her position known, he or she would need to obtain unanimous consent to do so.[141]

III. 5.3. Delegate Voting

In the 110th Congress, the Democratic majority restored to the Delegates and Resident Commissioner voting rights in the Committee of the Whole that the previous Democratic majority granted in the 103rd Congress.[142] Proponents of the change argued on the bases of fairness and democratic principle and emphasized, since a revote in the House would occur if the Delegates' votes were decisive in the Committee of the Whole, the symbolic nature of the voting right extended to the Delegates and Resident Commissioner. Opponents of the rules change argued constitutionality, pointing to representation by states in the House and the solely procedural, rather than substantive, differences between the House and the Committee of the Whole.[143]

Following the change of House rules in the 103rd Congress, 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.[144]

There were parliamentary inquiries in the 110th Congress concerning the operation of the rule granting voting rights in the Committee of the Whole to the Delegates and Resident Commissioner. The inquiries and the chair's responses did not generate continuing public controversy at that time. The House, nonetheless, could revisit its grant of voting rights in the Committee of the Whole to Delegates and the Resident Commissioner.

Prior to the 103rd Congress and again in the 104th – 109th Congresses, when Delegates and the Resident Commissioner did not vote in the Committee of the Whole, they had floor access and participated in debate.

[140] *Record Voting in the House of Representatives: Issues and Options.*

[141] Ibid.

[142] H.Res. 78, agreed to in the House January 24, 2007. See CRS Report R40170, *Parliamentary Rights of the Delegates and Resident Commissioner From Puerto Rico*, by (name redacted).

[143] "Providing for Consideration of H.Res. 78, Permitting Delegates and the Resident Commission to Cast Votes in the Committee of the Whole," and "Permitting Delegates and the Resident Commissioner to Cast Votes in the Committee of the Whole," *Congressional Record*, daily edition, vol. 153 (January 24, 2007), pp. H891-H902 and H903-H913.

[144] *Michel v. Anderson*, 817 F. Supp. 126 (D.D.C. 1993), *aff'd*, 14 F.3d 623 (D.C. Cir. 1994).

III. 6. Additional Floor Issues

III. 6.1. Privileges of the House

House Rule IX makes a procedural distinction between a question of the privileges of the House raised by the majority or minority leader, on the one hand, and by another Member, on the other. A question of the privileges of the House is a proposition "affecting the rights of the House and the safety, dignity, and integrity of its proceedings."[145]

If offered by the majority or minority leader, such a resolution takes precedence over all other business except the motion to adjourn. If offered by any other Member, a Delegate, or the Resident Commissioner, the resolution attains that precedence "only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day" on which the proponent announces the resolution to the House.[146] Several questions concerning this rule might be raised.

Should the distinction continue to exist between resolutions offered by the majority or minority leader and others? Should there be additional distinctions, such as for other party leaders, committee chairs or ranking minority members, or others? Or, should the Speaker be authorized to establish the time for the House to consider such a resolution no matter who offers it? Or, should such resolutions have immediate precedence no matter who offers it? Providing the Speaker with authority to schedule consideration of any such resolution would presumably be advantageous to the majority in managing the House's agenda and schedule, alerting majority Members to the existence of a resolution, and preparing for debate if debate might be desirable. As their party leaders, both Representative Pelosi and Representative Boehner made use of the leaders' prerogative. Eliminating the distinction to rank precedence to a resolution offered by any Member, a Delegate, or the Resident Commissioner could invite increased use of such resolutions.

Should the majority and minority leaders be authorized to appoint designees who could offer resolutions having immediate precedence? This change would be a relaxation of the rule, but not to the extent of allowing a resolution offered by any Member, a Delegate, or the Resident Commissioner to have precedence. A change like this would seem to shift consideration from an individual leader's priorities, time, and prestige in behalf of the leader's party to consideration of a party's priorities and time. It, too, could result in additional resolutions.

Should the proponent of such a resolution (or, alternately, the majority and minority leaders) be guaranteed up to one hour's debate by, for example, disallowing a motion disposing of the question, such as a motion to table, before the expiration of one hour's debate or the yielding back of the proponent's and opponent's balance of time? Or, might a proponent and an opponent each have five minutes at the time of the announcement or at the later time designated by the Speaker, before a motion disposing of the question is offered? One benefit of this kind of change might be that the minority could air its grievance in an official forum, rather than solely through media coverage, and the majority could, if it desired, have the opportunity to rebut the grievance

[145] Walter Kravitz, Congressional Quarterly's American Congressional Dictionary, 3rd ed. (Washington, DC: CQ Press, 2001), pp. 196-197.

[146] See CRS Report 98-411, *Questions of Privilege in the House*, by (name redacted).

on the House floor, rather than relying on media coverage to deliver its perspective and to do so accurately and completely. Such an end could also be achieved by the majority's forbearance in offering a debate-ending motion on minority resolutions, at least on a new resolution that is not repetitive of earlier resolutions. A change of this type would be a relaxation of House rules to allow Members an increased opportunity to discuss a matter on the floor. It, too, however, could result in more such resolutions.

III. 6.2. House Schedule

Many aspects of service in Congress have changed in little more than a generation and have had an impact on the House's schedule. Members have taken advantage of the convenience of commercial air service to be present in home districts nearly every weekend and nearly every district work period. Their families most often remain in their district homes rather than move to the Washington, DC, area, and Members feel they cannot afford representationally or politically to be absent from their district for more than a few days at a time. Seemingly, the only House activity that entices Members as a whole to travel to Washington and stay is recorded votes. These developments have impinged on the congressional workweek, with Members typically arriving in Washington Monday afternoon or Tuesday morning and departing Thursday night or Friday midday.

Members also now have different responsibilities while they are in Washington. Campaigns used to be relatively inexpensive so that fund raising largely occurred in a Representative's second year. Members did not necessarily contribute funds to each other's campaigns or to their party committees, or sponsor fund-raising events for their party colleagues. Lobbyists were far fewer in number; there were few grassroots campaigns; interest groups did not necessarily keep track of Members' voting during a Congress, even if they issued a "report card" prior to an election; and public and media relations were a small part of even large entities' congressional relations. Members were called on for fewer speeches and other appearances. Hearings and markups typically lasted several days, often over the course of several weeks. The constricted workweek along with changes in the political and policymaking environment have changed how Members spend their time when present in Washington.

Use of floor time has also changed. In the modern era, the 1880 rule on suspensions was updated in the 93rd Congress (1973-1975) to make suspension motions in order on the first and third Mondays of each month and the Tuesdays following these Mondays. Since the 108th Congress (2003-2005), suspension motions have been in order every Monday, Tuesday, and Wednesday. Open rules accounted for more than two-thirds of the special rules adopted by the House as late as the 98th Congress (1983-1985)[147] and for more than half of special rules even in the 106th Congress (1999-2001). There have been no open rules in the 111th Congress. Recorded votes were first allowed in the Committee of the Whole in 1971. Other rules changes have allowed votes to be clustered and the time for a vote to be reduced to 5 minutes after a 15-minute vote and restricted the opportunities for quorum calls. Practices have evolved as well so that, for example, amendments between the houses seem to be preferred to conference reports, and both conference reports and amendments between the houses come to the floor pursuant to a special rule. Fewer, bigger bills seem to make it through the legislative process, and ever more representational legislation seems to be considered under the suspension of the rules procedure.

[147] Percentages were much higher in Congresses prior to the 98th Congress.

As explained earlier, Leader Boehner and Leader Pelosi, when each was in the minority, called for changes to the use of House floor time, both expressing support for a more open amendment process in House consideration of legislation. Both Leader Boehner and Republican Whip Cantor have proposed reining in time spent on measures considered under the suspension of the rules procedure. Options related to these proposals were addressed above. In their statements just before and since the 2010 election, Republican leaders have emphasized committee work, especially oversight.[148]

What, however, are some options that might be available to deal with the length of the workweek and the length of the workday?[149]

The majority leadership works within several parameters. First, Members, especially from Western states, prefer to travel Monday during the day and Thursday nights in order to have the greatest amount of time in their districts. Second, the potential of recorded votes entices Members as a whole to arrive in Washington and stay; committee sessions scheduled before or after recorded votes for a week might be canceled. Third, leaders must try to make time available for committee meetings so that activities on the House floor will not compete for Members' attention. Fourth, daily sessions that go too late interfere with Members' family life, whether their family has moved to the Washington area or there is substantial telephone time to talk to their children back home. Members over the phone help their children with their homework, read stories, exchange news of the day, pray, and discuss other matters.

A schedule that concentrates committee and floor activities on Tuesdays, Wednesdays, and Thursdays best responds to Members' desire to be in their home districts, even if they travel from a Western state. This schedule favors the representational component of a Member's service. It constrains both committee and floor time, however, spreading Members' time over possibly two or more committee and subcommittee meetings and a floor session each day within a very short workweek. It also probably discourages committees and subcommittees from scheduling at least some meetings.

A schedule of a five-day workweek maximizes the time available for legislative work, although one might wonder whether leadership could consistently identify five days of recorded votes each week so that Members would stay in Washington. This schedule favors the legislative component of a Member's service, particularly their committee work. But, it leaves Members with as little as 24 hours in their home district, almost necessitating them to move their families here. Members are also likely to object that they would be disconnected from their constituents.[150]

A schedule of a four-day workweek is a compromise that increases both the amount of committee and floor time available, compared to a schedule with work concentrated on three days, but still allows Members at least two full days in their districts, although the turnaround from Friday night

[148] Rep. John A. Boehner, "Congressional Reform," September 30, 2010; and Rep. Eric Cantor, "Delivering on Our Commitment," November 3, 2010.

[149] Discussion of scheduling is thoroughly and thoughtfully examined in CRS Report RL30825, *House Schedule: Recent Practices and Proposed Options*, by (name redacted).

[150] Television host and former Rep. Joe Scarborough recently recommended that Members move their families to Washington: "Few good things come from being away from your spouse and children 200 nights a year, and, in the end, nothing you accomplish in Congress will be worth the moments you miss at home." Joe Scarborough, "A Survival Guide for the Class of 2010," *Politico*, November 16, 2010, pp. 39, 43.

travel to a Monday morning travel (or Thursday night and Sunday morning) disadvantages Members from Western states more.

A proposal with which there was some experience in the Senate in the late 1980s and early 1990s is that of three weeks of work followed by a one-week home work period. The Senate's experience with five-day workweeks followed by a one-week home-state work period was that there was pressure not to schedule votes on Mondays and, by the early 1990s, workweeks had again shortened. It, too, would probably have necessitated Members moving their families to the Washington, DC, area, and would likely be objectionable to Members for reducing their constituent contact. Nonetheless, such a schedule offers predictability, allows time for a full week of legislative work, lessens the need for evening sessions, and provides longer, uninterrupted, regular periods for home-district work.

These various proposals, and additional variations that could be identified, can be combined in different ways. For example, there could be a repeating pattern of a five-day week, followed by a four-day week, followed by a three-day week, with the days in session manipulated to maximize the number of long weekends. The pattern could keep repeating, or the fourth week could be a home-district work period. There might also be months with longer workweeks and months with shorter workweeks.

The normal pattern could alternatively be four-day weeks, with the days in session shifted to maximize the number of long weekends.

The consideration of legislation by unanimous consent and suspension of the rules could be restricted solely to Mondays, requiring Members to be present during the day only if they wished to speak on a measure or sponsored a measure but then arrive to vote that evening.

Wednesday has long been the day on which the House plans to meet into the evening. Should that pattern continue? Should the House in any case vote to stay in session past a certain hour, such as 10:00 p.m. or midnight?

The House formerly disallowed most committees from meeting when the House was in session. Does that past concept suggest an idea for today? For example, should the House not generally meet before noon or 1:00 p.m. or 2:00 p.m.? Or should committees be allowed to meet for not more than an hour or some number of hours after the House convenes its daily session? Should chairs be encouraged to begin their meetings by a certain time, such as 9:00 a.m.?

III. 6.3. Orientation for the Presiding Officer

In one of its hearings, the Select Committee to Investigate the Voting Irregularities of August 2, 2007 explored with Parliamentarian Emeritus Charles W. Johnson the role and responsibilities of the chair in presiding over the House and in conducting a vote and the role of the parliamentarian in providing counsel to the chair. The parliamentarian emeritus discussed the required "competence" of a Member in the chair being achieved through experience and other considerations, such as ascertaining whether a chair could act with impartiality in presiding in specific situations. Mr. Johnson responded to a question:

> [Presiding officers] are above the fray. They should be. They are not combatants. They don't participate in debate. They are not supposed to. Regardless of the partisanship of the person

> appointed … regardless of who the Speaker happens to be, the staff requests from all Members asked to preside that they adhere to certain guidelines.
>
> … So that if the Member feels that he or she cannot be nonpartisan or detached going forward, anticipation in this role is absolutely essential. You have to be able to look forward to see what might be happening on the particular issue and whether the person in the Chair can be impartial.
>
> … I have to believe that occupants of the Chair should be advised if they are not inclined to be above the fray.[151]

Private tutoring is available from the parliamentarian for Members who might preside or have presided; but, the structure, duration, use, and other aspects of the tutoring was not discussed.[152] The majority party can enhance its legislative management of the House by having potential presiding officers avail themselves of the parliamentarian's training and by allowing presiding officers to progress from less complex experiences, such as presiding over special orders, to very complex experiences, such as presiding over an amendment process in the Committee of the Whole.

III. 7. Reconciling Differences

The House and Senate must agree to exactly the same legislative measure before it can be presented to the President for his signature or veto. While some measures are passed by one chamber and then passed by the second chamber exactly as they passed the first chamber, clearing such measures for presentation to the President, these measures are usually noncontroversial, such as those naming a post office or federal building. In most instances, the House and Senate pass legislation that differs, whether slightly or in important ways. The chambers then normally reach agreement, and meet the constitutional requirement for the same measure to have passed both chambers before presentation, through amendments between the houses or conference or a combination of both procedures.[153] It has become House practice to consider Senate amendments, and House amendments thereto, and conference reports pursuant to special rules.

Members' concerns over regular order and transparency, including sufficient time to review amendments and conference agreements, might be addressed through rules and practice changes.

[151] U.S. House, Select Committee to Investigate the Voting Irregularities of August 2, 2007, "Voting in the House of Representatives—Rules, Procedures, Precedents, Customs and Practice," hearing, October 25, 2007 (Washington, DC: GPO, 2008), pp. 23-24.

[152] Ibid.

[153] See CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by (name redacted).

III. 7.1. Special Rules in the 111th Congress Governing Consideration of Senate Amendments and Conference Reports

From the convening of the 111th Congress through April 30, 2010, the House adopted 25 special rules that governed procedures for considering Senate amendments to House-passed measures (14 measures) and conference reports (on 11 measures).

III. 7.1.1. Senate Amendments

Of the 14 special rules for considering Senate amendments, 9 authorized a motion to concur in the Senate amendment, and 5 authorized a motion to concur in the Senate amendment with a House amendment.[154] The special rules ordered the previous question on the motion without any intervening motion, but allowed a specified time for debate, normally, but not always, one hour. The majority of these special rules waived points of order, and several prohibited a demand for a division of the question. The House concurred in Senate amendments in these 14 instances an average of 9.5 days after Senate passage; the median number of days between Senate passage and House concurring was 3 days.

In the five instances where the motion was to concur in the Senate amendment with a House amendment, the House acted an average of 3.8 days after Senate passage; the median number of days between Senate passage and House concurring with an amendment was 2 days. The House amendments were printed in reports accompanying the special rules in four instances and in the special rule itself in one instance. The Rules Committee in these five instances reported each special rule the same day the House voted on it.

In all instances, special rules governing the consideration of Senate amendments were adopted the same day the House considered and concurred in the Senate amendment. The practice of the House has been to consider Senate amendments pursuant to special rules, expediting the more extensive consideration otherwise possibly required by House Rule XIX.[155]

III. 7.1.2. Conference Reports

Of the 11 special rules for considering conference reports, 1 solely waived points of order against the conference report, and 2 solely waived points of order against a conference report and its consideration.[156] Eight of these special rules waived points of order against a conference report and its consideration, ordered the previous question, and allowed a motion to recommit. The House agreed to conference reports an average of 2.1 days after a conference report was filed in the House; the median number of days between filing and agreement was 1 day. Special rules were adopted the same day the House considered and agreed to the conference reports, except in one instance when one day elapsed between adoption of the special rule and agreement to the conference report.

[154] See CRS Report R41003, *Amendments Between the Houses: Procedural Options and Effects*, by (name redacted).

[155] Wm. Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2003), ch. 51, pp. 829 et seq.

[156] See CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by (name redacted).

House Rule XXII, clause 8(a)(1) provides that conference reports and accompanying joint explanatory statements be printed in the *Congressional Record* on the day they are filed and be available for three calendar days, excluding Saturdays, Sundays, and holidays on which the House is not in session. This provision does not apply during the last six days of a session. This clause also requires that a conference report and accompanying joint explanatory statement to be available to Members on the floor for at least two hours before consideration.

The House frequently waives the requirements of clause 8(a)(1) by special rule. The House considered conference reports three days or more after they were filed on only two occasions in the 111th Congress. No conference report was filed in the last six days of the first session of the 111th Congress.

Again, whatever the elapsed time between Senate passage of a measure, the reporting of a House amendment, or the filing of a conference report, on the one hand, and House consideration, on the other, Members might have questioned whether they had sufficient time to review the legislation.

III. 7.2. Discussion

For a variety of reasons, ranging from the time they consume to leadership's desire to influence the outcome and for a host of reasons in between, conferences have become relatively infrequent and the form of actual bargaining sessions seen, for example, in the conference on H.R. 4173, the financial services reform bill, has become even more infrequent. Should conferences be resurrected as a principal form of reconciling differences in legislation passed by the House and Senate? They are inefficient and time-consuming, and decision making is delegated to a relatively small number of Members representing each chamber. On the other hand, amendments between the houses, or conferences that meet largely to endorse decisions made by party and committee leaders, delegate decision making to an even smaller number of Members. The current system is a more efficient system for the membership at large, but it means a less representative group settles differences between the two chambers. A recommendation by Leader Pelosi was: "House-Senate conference committees should hold regular meetings (at least weekly) of all conference committee Members." The recommendation also anticipated all conferees' involvement in conference decision making.[157] Open conferences were a reform of the 1970s[158] advanced by liberal Democrats, but in current practice deliberations over reconciling House-Senate differences on legislation are now largely obscured from public view. If current practice continues, should it be regulated and, if so, how?

To the extent that conferences will be convened to reconcile House-Senate differences in legislation, the selection of conferees is a subject for consideration.[159] While the Speaker in practice must appoint a majority of conferees who support the House position, that does not preclude appointing conferees who broadly represent different perspectives within the majority caucus or conference, as might have been articulated in debate or amendments by different factions or groups. In the 111th Congress, the Speaker appointed junior Members to conference committees, providing them visibility in their roles on legislation. Should additional perspectives, factions, and groups within a party also be represented on conferences? Might there be a way for

[157] "A New Direction for America," June 16, 2006.

[158] See parliamentarian's notes in *House Rules and Manual,* § 1093, pp. 916-917.

[159] See CRS Report RS20227, *House Conferees: Selection*, by (name redacted).

the House to object to a specific conferee or to add a conferee? It might also be made clear what is the role of limited conferees—consideration of only those provisions for which they were appointed to conference, consideration of all provisions, debate, final approval, or some other role.

The layover rule applicable to conference reports was put in place when even major measures were normally relatively short compared to major legislation today. Yet, even the three-day layover is often waived, and the median time elapsed in this Congress between the filing of a conference report and the vote to adopt it has only been one day. There is not a layover rule applicable to Senate amendments to a House bill, and the median time elapsed between Senate passage of a measure previously passed by the House and House consideration of the Senate action has been three days. While the flexibility available to leadership to move a conference report or Senate amendments allows it to bring the measure to the floor when Members are ready to vote, is deliberation harmed and are Member and public interests served by this flexibility? The current flexible system can continue, or the layover requirements could be honored, or new layover requirements could be applied both to conference agreements and Senate amendments. Change, if desired, could be accomplished through a rules change, party rules or guidelines, or leadership commitments.

Blanket waivers of points of order against conference reports might be examined, a point made in "Broken Promises" in 2005.[160] Such waivers can protect provisions included in a conference that did not appear in either the House- or Senate-passed measure. They also prevent House Members from voting on Senate amendments that they would be able to vote on under procedures contained in House rules. Special rules waiving consideration of Senate amendments to certain House-passed measures in Committee of the Whole, as House procedures allow, might also be examined. Circumventing the Committee of the Whole also prevents House Members from voting on Senate amendments that they would otherwise be able to vote on. However, the House, at least, might want to ensure that its practice is to send its engrossed measure or amendments to a Senate amendment promptly to the Senate.

Yet another approach taken on conference reports is a special rule that self-executes a conference report's adoption. Are Member interests served by this kind of special rule?

Consideration might also be given to putting a conference report and joint explanatory statement online, separate from its appearance in the *Congressional Record*, expeditiously. Consideration might also be given to online publishing of the signature sheets on a conference report and its joint explanatory statement.

[160] "Broken Promises," March 8, 2005.

III. 8. Enrolled Bills and Joint Resolutions

III. 8.1. Examination of Enrolled Measures

In the rules package for the 107th Congress (2001-2002), the House Administration Committee's oversight of the engrossment and enrollment of measures and their presentation to the President was transferred to the clerk of the House.[161] There have been two incidents since then that called into question congressional management of the enrollment process. The first involved the Deficit Reduction Act of 2005,[162] which included a provision passed in a different form by the House and Senate. The provision was apparently changed in the Senate enrollment. A case challenging the law on constitutional grounds based on this discrepancy was ultimately dismissed.[163]

In the second incident, the enrolled version of H.R. 2419, the Food, Conservation, and Energy Act of 2008, was sent to the President with title III not included. President George W. Bush vetoed the measure, and Congress overrode the veto (P.L. 110-234). Congress then passed H.R. 6124, which contained all of the titles that should have been included in H.R. 2419, and in addition repealed P.L. 110-234. President Bush vetoed the new bill, and Congress again overrode the veto (P.L. 110-246).

The House could consider returning authority for the engrossment and enrollment of measures to the House Administration Committee or could strengthen oversight over the clerk's management of this activity or, since no additional problems have come to light, leave existing relationships in place. The House, its leadership, or the House Administration Committee could also require additional reporting from the clerk on the engrossment and enrollment of measures, or, since no additional problems have come to light, leave existing reporting in place.

III. 8.2. Time for Public Review

As a presidential candidate, Barack Obama stated: "When there's a bill that ends up on my desk as President, you the public will have five days to look online and find out what's in it before I sign it, so that you know what your government's doing."[164] There has been commentary about the President honoring his campaign promise, about what the promise has meant or how it has been implemented, about the contribution this action could make to transparency in the legislative process, and about the efficacy of posting measures after congressional action has been completed. Once a measure has been presented to the President, he has 10 days, Sundays excluded, in which to sign or veto the measure, and he may pocket veto a measure under certain circumstances when Congress is not in session. Congress can almost assuredly not place any

[161] Sec. 2(b) of H.Res. 5, agreed to in the House January 3, 2001. The clerk's duties appear at House Rule II, cl. 2(d)(2). See CRS Report 98-826, *Engrossment, Enrollment, and Presentation of Legislation*, by (name redacted).

[162] P.L. 109-171.

[163] *One Simple Loan v. U.S. Secretary of Education*, 06-Civ. 2979 (S.D.N.Y., 2006); 2006 U.S. Dist. LEXIS 38714 (S.D.N.Y., June 9, 2006); 2006 WL 1596768 (S.D.N.Y.). (This decision was not reported in F.Supp.2d.)

[164] Videos and transcripts of then-candidate Barack Obama's speech on September 22, 2008, in Green Bay, WI, are available on various websites. For a transcript, see, for example, John T. Woolley and Gerhard Peters, *The American Presidency Project* [online] (Santa Barbara, CA: University of California (hosted), Gerhard Peters (database)), at http://www.presidency.ucsb.edu/ws/index.php?pid=84331.

controls on the President's exercise of his constitutional authority related to waiting to act on a measure until a certain number of days after presentation.

Congress can, however, control the amount of time after it clears legislation (completes action) and before it presents a measure to the President. In some instances, it presents measures the same day that congressional action is completed, for example, presenting a new continuing resolution when an existing one is about to expire. On other occasions, it can delay presentation for days or weeks. Presentation on a rapid or slower schedule might be dictated in part by considerations of public sentiment, either preempting further public debate with a quick presentation or allowing public pressure for signature to build with a slower presentation.

From President Obama's inauguration on January 20, 2009, through April 30, 2010, he was presented 162 bills and joint resolutions. From the time Congress cleared legislation until the President's signature or one veto, the President acted, on average, after 13.3 days. If relatively minor bills are excluded—those naming post offices and other federal buildings, commemorating or honoring people or events, conveying or exchanging federal land, or approving nominations to the Smithsonian Board of Regents—the President was presented 102 bills and joint resolutions, and acted, on average, 9.0 days after a measure was cleared by Congress.

Excluding relatively minor bills, the time that elapsed from congressional clearance to presentation was 4.1 days, and the time that elapsed from presentation to presidential action was 4.9 days. Some major bills that were signed more rapidly, however, included H.R. 3590, Patient Protection and Affordable Care Act; H.R. 3548, Worker, Homeownership, and Business Assistance Act of 2009; H.R. 627, Credit Card Accountability Responsibility and Disclosure Act of 2009; and H.R. 2, Children's Health Insurance Program Reauthorization Act of 2009.

If Congress wished to ensure a specific period for public review of legislation that it has cleared, it could require that an enrolled measure be posted online for a minimum number of days before it is presented to the President. If both chambers chose to establish a minimum number of days after clearance that an enrolled measure would be available online for public review, there could be consistency. If the House but not the Senate chose to act, the House could ensure that a minimum number of days of public review would be available for House-numbered measures. The House could establish a minimum number of days of public review by amending its rules, adopting a standing order, or including a provision in the Speaker's policies.

Author Contact Information

(name redacted)
Specialist on the Congress
[redacted]@crs.loc.gov, 7-....

(name redacted)
Senior Specialist in American National Government
[redacted]@crs.loc.gov, 7-....

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