Points of Order in the Congressional Budget Process

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Points of Order in the Congressional Budget Process

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended) created an annual process that allows Congress to establish and enforce parameters for budgetary legislation. Budgetary decisions are enforced through points of order and the reconciliation process. Points of order are prohibitions against certain congressional actions or consideration of certain types of legislation. These prohibitions are enforced when a Member raises a point of order against actions or legislation that may violate these rules when it is pending in the House or Senate.

This report summarizes the points of order currently in effect under the Congressional Budget Act of 1974, as amended, as well as related points of order in various other measures that have been adopted pursuant to the constitutional authority of each chamber to determine its rules of proceeding that have a direct impact on budget enforcement. These related measures include the budget resolutions adopted by Congress in 2021 (S.Con.Res. 14, 117th Congress); 2017 (H.Con.Res. 71, 115th Congress); 2015 (S.Con.Res. 11, 114th Congress); 2009 (S.Con.Res. 13, 111th Congress); and 2008 (S.Con.Res. 70, 110th Congress), as well as selected provisions in the rules of the House and separate orders adopted at the beginning of the 118th Congress (H.Res. 5, 118th Congress); the Budget Enforcement Act of 1990 (P.L. 101-508); and the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139). In addition, the report describes how points of order are applied and the processes used for their waiver in the House and Senate.

This report does not address provisions in the standing rules of the House and Senate concerning the consideration of general appropriations bills. For a discussion of the appropriations process, see CRS Report R47106, *The Appropriations Process: A Brief Overview*.

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

SUMMARY

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Introduction

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

These overall spending levels are then allocated to the various committees in the House and Senate responsible for spending legislation. The overall levels and allocations may then be enforced through points of order and implementing legislation, such as that enacted through the reconciliation process.[2] Points of order are prohibitions against certain congressional actions or the consideration of certain types of legislation. These prohibitions may be enforced when a Member raises a point of order against an action or legislation that is alleged to violate these rules when it is considered by the House or Senate. Points of order are not self-enforcing, however. A point of order must be raised by a Member on the floor of the chamber before the presiding officer can rule on its application and thus its enforcement.[3]

Although the congressional budget process comprises numerous procedures dealing with spending, revenue, and debt legislation, this report focuses only on that portion of the process that stems from the Budget Act. The report identifies the points of order included in the Budget Act, as amended. It also identifies related points of order established in various other measures that have been adopted pursuant to the constitutional authority of each chamber to determine its rules of proceeding that have a direct impact on budget enforcement. These other measures include the budget resolution adopted by Congress in 2021 (S.Con.Res. 14, 117th Congress); 2017 (H.Con.Res. 71, 115th Congress); 2015 (S.Con.Res. 11, 114th Congress); 2009 (S.Con.Res. 13, 111th Congress); and 2008 (S.Con.Res. 70, 110th Congress). The report also describes selected provisions in the rules of the House and separate orders adopted at the beginning of the 118th Congress (H.Res. 5, 118th Congress); the Budget Enforcement Act of 1990 (P.L. 101-508); and

[1] The Budget Act (Titles I-IX of P.L. 93-344) has been amended on a number of occasions since its enactment. The most salient modifications have been as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177, also known as Gramm-Rudman-Hollings); the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119); the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508); Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66); Title X of the Balanced Budget Act of 1997 (P.L. 105-33); the Budget Control Act of 2011 (P.L. 112-25); and the Bipartisan Budget Act of 2013 (P.L. 113-67). For the text of the Budget Act, as amended, see U.S. Congress, House Committee on the Budget, *A Compendium of Laws and Rules of the Congressional Budget Process*, 114th Cong., 1st sess., August 2015 (Washington: GPO, 2015), pp. 33-142.

[2] The reconciliation process is an optional procedure set forth in Section 310 of the Budget Act. First used in 1980, reconciliation is a two-step process triggered when the budget resolution includes instructions to one or more committees directing them to recommend changes in revenue or spending laws necessary to achieve the overall levels agreed to. The recommendations are then considered in one or more reconciliation measures under expedited procedures. Certain features of the reconciliation process are enforced by points of order that are described in this report. For more on the reconciliation process generally, see CRS Report R44058, *The Budget Reconciliation Process: Stages of Consideration*, by Megan S. Lynch and James V. Saturno.

[3] For more on points of order generally, see CRS Report 98-306, *Points of Order, Rulings, and Appeals in the Senate*, by Valerie Heitshusen; and CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen.

the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139) that pertain to the consideration, contents, implementation, or enforcement of budgetary decisions.

Points of order are typically in the form of a provision stating that "it shall not be in order" for the House or Senate to take a specified action or consider certain legislation that is inconsistent with the requirements of the Budget Act. Other provisions of the act, formulated differently, establish various requirements or procedures, particularly concerning the contents and consideration of the budget resolution or reconciliation legislation. These provisions, however, are not typically enforced through points of order and are not included here.[4]

Points of order in the Budget Act, as amended, are permanent because none of these provisions is scheduled to expire, although several points of order may have limited applicability or have been rendered moot by the expiration of limits they were intended to enforce.[5] The freestanding point of order protecting the Social Security trust fund in the House established in the Budget Enforcement Act is similarly permanent. Other points of order established under recent budget resolutions, however, have various sunset provisions or limited application.

Application of Points of Order

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

Section 312 of the Budget Act states that for the purposes of enforcing budgetary points of order, levels of spending and revenues "shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable." House Rule XXIX, clause 4, further clarifies that such determinations may be provided by the chair of the House Budget Committee.[6]

Because the House often uses the Committee on Rules to specify the text of a measure to be considered, Section 315 of the Budget Act provides clarification with respect to how the term *as reported* as used in Titles III and IV of the Budget Act should be applied. For cases in which a reported measure is considered pursuant to a special rule, a point of order against a bill "as reported" would apply to the text made in order by the rule as original text for the purpose of amendment or to the text on which the previous question is ordered directly to passage. In this way, no point of order would be considered as applying (and no waiver would be required) if a substitute resolved the problem. In addition, the rules of the House since the 110th Congress have included a provision further specifying that for measures considered pursuant to a special rule, points of order under Title III of the Budget Act apply without regard to whether the measure considered is actually the text that was reported from committee. Under Rule XXI, clause 8, points of order apply to the form of a measure recommended by the reporting committee where the statute uses the term *as reported* (in the case of a measure that has been reported), the form of

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

[5] The expiration of some of the provisions of the Balanced Budget and Emergency Deficit Control Act at the end of FY2002 rendered moot a number of points of order. For example, the point of order in the Budget Act to enforce maximum deficit amounts in the Senate (Section 312(c)) has been rendered moot because no statute currently specifies such an amount.

[6] This provision was first added to House rules by H.Res. 5 (112th Congress).

the measure made in order as an original text for the purpose of amendment, or the form of the measure on which the previous question is ordered directly to passage.

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

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

There are exceptions to the general principle of applying points of order to a measure as a whole. The most salient is probably Section 313, the so-called Byrd rule. This section applies surgically to matter "contained in any title or provision" in a reconciliation bill or resolution (or conference report thereon), as well as any amendment or motion. If a point of order is sustained under this section, only the provision in question is stricken, or the amendment or motion falls.[7] Several of the points of order in the Senate subsequently established under budget resolutions have been written so that they too apply to individual provisions rather than the measure as a whole in the same manner as provided in Section 313(e) of the Budget Act. These include Section 314(e) of the Budget Act and Section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010, both of which concern emergency designations, and Section 314 of S.Con.Res. 70 (110th Congress) prohibiting Changes in Mandatory Programs in appropriations legislation (also known as CHIMPs).

Procedures for Waiving Points of Order

The Budget Act sets forth certain procedures, under Section 904, for waiving points of order under the act. These waiver procedures apply in the Senate only. Under these procedures, a Senator may make a motion to waive a point of order either preemptively before it can be raised or after it is raised but before the presiding officer rules on its merits.[8]

In the Senate, most points of order under the Budget Act may be waived by a vote of at least three-fifths of all Senators duly chosen and sworn (60 votes if there are no vacancies). The three-fifths waiver requirement was first established for some points of order under the Balanced Budget and Emergency Deficit Control Act of 1985. Beginning with the Balanced Budget Act of 1997, this super-majority threshold was applied to several additional points of order on a temporary basis. These points of order are identified in Section 904(c)(2), and the three-fifths

[7] Section 313(d) provides a special procedure for further consideration of a measure should a point of order under this section be sustained against a provision in a conference report.

[8] In the case of points of order under Section 313 of the Budget Act (and by extension, other points of order for which this construction applies), a single point of order may be raised against several provisions. The presiding officer may sustain the point of order "as to some or all of the provisions," and a motion to waive the point of order similarly may be made concerning some or all of the provisions against which the point of order was raised.

requirement is currently scheduled to expire September 30, 2025.[9] The three-fifths threshold has also been required for the Senate to waive many of the related points of order established in budget resolutions and other measures, such as the Statutory Pay-As-You-Go Act of 2010. As with other provisions of Senate rules, Budget Act points of order may also be waived by unanimous consent.

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

Points of Order in the Budget Act

Applicable to the Consideration of a Budget Resolution

Section 301(g). In the Senate, prohibits consideration of a budget resolution using more than one set of economic assumptions.

Section 301(i). In the Senate, prohibits consideration of a budget resolution that would decrease the Social Security surplus in any fiscal year covered by the resolution. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 305(b)(2). In the Senate, prohibits consideration of nongermane amendments to a budget resolution.[10] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 305(c)(4). In the Senate, prohibits consideration of nongermane amendments to amendments in disagreement to a budget resolution. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 305(d). In the Senate, prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent.

Section 312(c). In the Senate, prohibits consideration of a budget resolution that provides for a deficit in excess of the maximum deficit amount specified in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, for the first fiscal year set forth in the

[9] As originally provided in Title X of the Balanced Budget Act of 1997, the three-fifths requirement expired on September 30, 2002. The Senate subsequently adopted S.Res. 304 on October 16, 2002, renewing the three-fifths requirement for all of the points of order identified in Section 904(c)(2) (except for Section 302(f)(2)(B)) through April 15, 2003. The three-fifths requirement (including for Section 302(f)(2)(B)) was renewed through September 30, 2008, under Section 503 of H.Con.Res. 95 (108th Congress); extended through September 30, 2010, under Section 403 of H.Con.Res. 95 (109th Congress); extended through September 30, 2017, under Section 205 of S.Con.Res. 21 (110th Congress); and, most recently, extended through September 30, 2025, under Section 3201(a)(1) of S.Con.Res. 11 (114th Congress).

[10] Section 204(g) of H.Con.Res. 290 (106th Congress) provided that for purposes of interpreting Section 305(b)(2) of the Budget Act, an amendment not be considered germane if it contains predominantly precatory language (e.g., Sense of the Senate provisions).

resolution.[11] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Applicable to the Consideration of Reconciliation Legislation

Section 310(d)(1). In the House, prohibits the consideration of amendments to reconciliation legislation that would cause a net increase in the deficit either by increasing outlays above the levels in the bill or reducing revenues below the level in the bill unless fully offset.

Section 310(d)(2). In the Senate, prohibits the consideration of amendments to reconciliation legislation that would cause a net increase in the deficit relative to the applicable reconciliation instructions. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 310(e). In the Senate, prohibits consideration of nongermane amendments to reconciliation legislation or to amendments in disagreement to reconciliation (by reference to Sections 305(b)(2) and 305(c)(4)). This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 310(f). In the House, prohibits consideration of an adjournment resolution of more than three calendar days during July until the House has completed action on any required reconciliation legislation.

Section 310(g). Prohibits the consideration of reconciliation legislation that contains recommendations with respect to Social Security. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 313(b). In the Senate, prohibits consideration of extraneous provisions in reconciliation legislation.[12] This provision is also known as the "Byrd rule" and is intended to limit the content of a reconciliation bill to those changes in law necessary to implement the budgetary policies agreed to in the budget resolution. This point of order may be raised against one or more provisions and, if well taken, would cause only that provision to be stricken. In general, a provision would be considered extraneous if it:

- does not produce a change in outlays or revenues,
- produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions,
- is outside of the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure,
- produces a change in outlays or revenues that is merely incidental to the nonbudgetary components of the provision,
- would increase the deficit for a fiscal year beyond the period covered by the budget resolution, or
- recommends changes to Social Security.

This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

[11] There is currently no maximum deficit amount to which this point of order would apply.

[12] This point of order was first adopted in 1986 as Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and subsequently incorporated into the Budget Act in the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508). For more on the Byrd rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*, by Bill Heniff Jr.

Applicable to All Legislation

Section 302(c). Prohibits the consideration of any measure within the jurisdiction of the House or Senate Appropriations Committees that provides new budget authority for a fiscal year until the committee makes the suballocation required by Section 302(b). This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 302(f)(1). In the House, after action on a budget resolution is completed, prohibits consideration of legislation providing new budget authority for any fiscal year that would cause the applicable allocation of new budget authority made pursuant to Section 302(a) or (b) for the first fiscal year or for the total of all fiscal years to be exceeded.

Section 302(f)(2)(A). In the Senate, after a budget resolution is agreed to, prohibits consideration of legislation (from any committee other than the Appropriations Committee) that would cause the applicable allocation of new budget authority or outlays made pursuant to Section 302(a) for the first fiscal year or for the total of all fiscal years to be exceeded. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 302(f)(2)(B). In the Senate, after a budget resolution has been agreed to, prohibits consideration of legislation from the Appropriations Committee that would cause the applicable suballocation of new budget authority or outlays made pursuant to Section 302(b) to be exceeded. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 303(a). Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a budget resolution for that fiscal year has been agreed to.[13]

Section 303(c). In the Senate, prohibits consideration of any appropriations measure until a concurrent resolution for that fiscal year has been agreed to and an allocation has been made to the Committee on Appropriations under Section 302(a).[14]

Section 306(a). In the Senate, prohibits consideration of matters within the jurisdiction of the Budget Committee except when it is a measure reported by the committee or the committee is

[13] Section 302(g) of the Budget Act (known as the Pay-As-You-Go exception) provides that after April 15, Section 303(a) shall not apply in the House to legislation (bill, joint resolution, amendment, or conference report) if, for each fiscal year covered by the most recently agreed to budget resolution, such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under Section 301(b)(8). In addition, Section 303(b) sets forth exceptions to the prohibitions under 303(a). In the House, the point of order does not apply to (1) advance discretionary new budget authority that first becomes available for the first or second fiscal year after the first fiscal year covered in a budget resolution, (2) revenue legislation that is to first become effective after the first fiscal year covered in a budget resolution, (3) general appropriations bills after May 15, or (4) any bill or joint resolution unless it is reported by a committee. In the Senate, the point of order does not apply to advance appropriations for the first or second fiscal year after the first fiscal year covered in a budget resolution. See also Section 303(c) for the application of this point of order to appropriations bills in the Senate. This point of order was previously made subject to a three-fifths waiver threshold under Section 403(b) of H.Con.Res. 95 (109th Congress), but Section 205 of S.Con.Res. 21 (110th Congress) provided that Section 403 no longer apply in the Senate.

[14] This point of order was previously made subject to a three-fifths waiver threshold under Section 403(b) of H.Con.Res. 95 (109th Congress), but Section 205 of S.Con.Res. 21 (110th Congress) provided that Section 403 no longer apply in the Senate.

discharged from further consideration of the measure or an amendment to such a measure.[15] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 306(b). In the House, prohibits consideration of matters within the jurisdiction of the Budget Committee except when it is a measure reported by the committee or the committee is discharged from further consideration of the measure or an amendment to such a measure.[16]

Section 309. In the House, prohibits consideration of an adjournment resolution for more than three calendar days during July until the House has approved all regular appropriations bills for the upcoming fiscal year.

Section 311(a)(1). In the House, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a).[17]

Section 311(a)(2). In the Senate, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a). This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 311(a)(3). In the Senate, prohibits consideration of legislation that would cause a decrease in Social Security surpluses or an increase in Social Security deficits relative to the level set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to Section 302(a). This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 312(b). In the Senate, prohibits the consideration of legislation that would cause any of the discretionary spending limits specified in Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, to be exceeded.[18] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 314(e). Prohibits the use of emergency designations. Note that this point of order applies to the emergency designation rather than against the spending or revenue itself. If the point of order is raised, the emergency designation is stricken and the spending or revenue is no longer insulated from other budgetary enforcement procedures.[19] This section also requires committees

[15] Prior to the Bipartisan Budget Act of 2013 (P.L. 113-67), Section 306 provided a single point of order applicable in both chambers. For the jurisdiction of the Senate Budget Committee, see S.Res. 445 (108th Congress).

[16] Prior to the Bipartisan Budget Act of 2013 (P.L. 113-67), Section 306 provided a single point of order applicable in both chambers. For the jurisdiction of the House Budget Committee, see House Rule X, clause 1(d).

[17] Section 302(g) of the Budget Act (known as the Pay-As-You-Go exception) provides that Section 311(a), as it applies to revenues, shall not apply in the House to legislation (bill, joint resolution, amendment, or conference report) if, for each fiscal year covered by the most recently agreed to budget resolution, such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under Section 301(b)(8). In addition, Section 311(c) provides that Section 311(a) shall not apply in the House to legislation that would not also cause a committee's spending allocation under 302(a) to be exceeded.

[18] There are currently no statutory spending limits to which this point of order would apply.

[19] As provided in Section 4001 of S.Con.Res. 14 (117th Congress), the use of an emergency designation exempts resulting new budget authority, outlays, or receipts for purposes of enforcing Sections 302 and 311 of the Budget Act, Section 404(a) of S.Con.Res. 13 (111th Congress), Section 3101 of S.Con.Res. 11 (114th Congress), and Section 4106 of H.Con.Res. 71 (115th Congress). Similar points of order were previously established under H.Con.Res. 68 and H.Con.Res. 290 (both 106th Congress), H.Con.Res. 95 (108th Congress), Section 14007(b)(2) of P.L. 108-287,

reporting legislation that include provisions designated as emergency to include in any accompanying written report a justification for the designation. This point of order may be waived in the Senate (and the emergency designation retained) by a vote of three-fifths of all Senators.

Section 314(f). Prohibits consideration in the House or Senate of legislation that would cause the discretionary spending limits set forth in Section 251 of the Balanced Budget and Emergency Deficit Control Act, as amended by the Budget Control Act of 2011, to be exceeded.[20] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Section 401(a). Prohibits consideration of legislation providing new contract authority, borrowing authority, or credit authority not limited to amounts provided in appropriations acts.[21]

Section 401(b)(1). Prohibits consideration of legislation providing new entitlement authority that is to become effective during the current fiscal year.[22]

Unfunded Mandates

Title IV, Part B of the Budget Act (Sections 421-427) was added as a consequence of the Unfunded Mandates Reform Act of 1995.[23]

Section 425(a)(1). Prohibits consideration of legislation reported by a committee unless the committee has published a statement by the Congressional Budget Office (CBO) on the direct costs of federal mandates. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.[24]

Section 425(a)(2). Prohibits consideration of legislation that would increase the direct costs of federal intergovernmental mandates by an amount greater than the thresholds specified in Section 424(a). This point of order may be waived in the Senate by a vote of three-fifths of all Senators.[25]

H.Con.Res. 95 (109th Congress), S.Con.Res. 21 (110th Congress), and S.Con.Res. 13 (111th Congress). See also the similar point of order under Section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139) as well as Section 4001 of S.Con.Res. 14 (117th Congress) concerning the application of emergency designations.

[20] This point of order was added to apply specifically to the spending limits for FY2012-FY2021 included in Section 251(c) as amended by the Budget Control Act of 2011 (P.L. 112-25). There are currently no statutory spending limits to which this point of order would apply.

[21] Section 401(d) provides that Section 401(a) shall not apply to new spending authority that flows from (1) a trust fund established under the Social Security Act or any other trust fund for which 90% or more of its expenditures are supported by dedicated revenues, (2) certain wholly owned or mixed ownership government corporations, or (3) gifts or bequests made to the United States for a specific purpose.

[22] Section 401(d) provides that Section 401(b) shall not apply to new spending authority that flows from (1) a trust fund established under the Social Security Act or any other trust fund for which 90% or more of its expenditures are supported by dedicated revenues, (2) certain wholly owned or mixed ownership government corporations, or (3) gifts or bequests made to the United States for a specific purpose.

[23] For more on the Unfunded Mandates Reform Act, see CRS Report R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*, by Natalie Keegan.

[24] This point of order was previously subject to the three-fifths threshold in the Senate in the 109th Congress under Section 403(b) of H.Con.Res. 95 (109th Congress). Section 205 of S.Con.Res. 21 (110th Congress), however, provided that Section 403 no longer apply in the Senate. The three-fifths threshold was subsequently reestablished under Section 3203 of S.Con.Res. 11 (114th Congress).

[25] This point of order was previously subject to the three-fifths threshold in the Senate in the 109th Congress under Section 403(b) of H.Con.Res. 95 (109th Congress). Section 205 of S.Con.Res. 21 (110th Congress), however, provided that Section 403 no longer apply in the Senate. The three-fifths threshold was subsequently reestablished under Section 3203 of S.Con.Res. 11 (114th Congress).

Section 426. In the House, prohibits consideration of a rule or order that would waive the application of Section 425.

Budget Points of Order Adopted in Other Measures

H.Res. 5, 118th Congress

At the beginning of each Congress, the House of Representatives adopts rules to govern its proceedings in the form of its standing rules as well as a series of separate orders. On January 9, 2023, the House considered and adopted H.Res. 5, providing for the rules of the House for the 118th Congress by a vote of 220-213. Among the rules adopted are several that concern the budget process and budget enforcement:[26]

- ***Section 2(a).*** This section reinstates the "cut-as-you-go" (CUTGO) rule, as Rule XXI, clause 10. The CUTGO rule prohibits the consideration of any legislation that would have the net effect of increasing direct spending over either of two time periods: (1) the six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years following the budget year or (2) the 11-year period consisting of the current year, the budget year, and the nine ensuing fiscal years following the budget year.[27]
- ***Section 2(a)(4).*** This section reinstates a restriction on reconciliation directives as Rule XXI, clause 7. The rule states that it is not in order in the House to consider a budget resolution that contains directives triggering the reconciliation process if such reconciliation legislation would cause an increase in net direct spending for the period covered by the resolution.[28]
- ***Section 3(f)(2).*** This section adopts as a separate order a requirement that the CBO estimate whether certain legislation would cause a net increase in spending in excess of $2.5 billion in any of the four 10-year periods beginning with the fiscal year 10 years after the current fiscal year. In addition, the order prohibits the House from considering legislation that would cause such an increase.[29]

S.Con.Res. 14, 117th Congress

Section 4002(a). In the Senate, prohibits consideration of legislation that would provide advance appropriations for a fiscal year other than the current fiscal year or budget year.[30] Section 4002(b) provides for exceptions, which are limited to appropriations for FY2023 and FY2024 programs that are identified in the joint explanatory statement of managers accompanying the resolution as

[26] For more on the rules of the House concerning the budget process adopted for the 118th Congress, see CRS Report R47384, *Changes to House Rules Affecting the Congressional Budget Process Included in H.Res. 5 (118th Congress)*, by James V. Saturno and Megan S. Lynch.

[27] The House previously adopted the CUTGO rule for the 112th-115th Congresses. The House has also previously adopted a Pay-As-You-Go (PAYGO) rule, which prohibited the consideration of any direct spending or revenue legislation that would have the net effect of increasing the deficit over the same two time periods noted in the text. The PAYGO rule was in effect during the 110th, 111th, 116th, and 117th Congresses.

[28] Similar restrictions were included in House rules from the 110th-116th Congresses.

[29] Similar rules have been adopted previously, twice as part of the House rules package (112th and 115th Congresses) and twice as part of the budget resolution (H.Con.Res. 96 [113th Congress] and S.Con.Res. 11 [114th Congress]).

[30] For more on advance appropriations, see CRS Report R43482, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations*, by Jessica Tollestrup and Kate P. McClanahan.

"Accounts Identified for Advance Appropriations" and do not exceed $28.852 billion in each fiscal year. Section 4002(b) further identifies exceptions to the prohibition for:

- the Corporation for Public Broadcasting;
- the Department of Veterans Affairs for the Medical Services, Medical Community Care, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration;
- legislation implementing a bipartisan infrastructure agreement as determined by the chairman of the Committee on the Budget of the Senate; and
- the Department of Health and Human Services for the Indian Health Services and Indian Health Facilities accounts.

This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

H.Con.Res. 71, 115th Congress

Section 4106. In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the period of the current fiscal year and the five ensuing fiscal years or the period of the current fiscal year and the 10 ensuing fiscal years.[31] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

S.Con.Res. 11, 114th Congress

Section 3101(b)(1). In the Senate, prohibits the consideration of a measure that would cause a net increase in on-budget deficits in excess of $5 billion in any of the four consecutive 10-year periods beginning with the first fiscal year that is 10 years after the budget year in the most recently agreed to budget resolution. This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

S.Con.Res. 13, 111th Congress

Section 404(a). In the Senate, prohibits the consideration of direct spending or revenue legislation that would cause a net increase in the deficit in excess of $10 billion in any fiscal year provided for in the most recently adopted budget resolution unless it is fully offset over the period of all fiscal years provided for in the most recently adopted budget resolution.[32] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

[31] This point of order supersedes earlier, similar points of order provided in H.Con.Res. 67 (104th Congress), H.Con.Res. 68 (106th Congress), H.Con.Res. 95 (108th Congress), and S.Con.Res. 201 (110th Congress). This section does not include a sunset provision. Paragraph 6 of this section provides that the point of order would not apply in cases in which direct spending and revenue legislation, when taken together with other direct spending and revenue legislation enacted since the beginning of the calendar year (and not accounted for in the baseline), result in a net decrease in the deficit (or increase in the surplus), although deficit reduction legislation enacted pursuant to reconciliation instructions may not be used in such calculations. For more on the Senate's PAYGO point of order, see CRS Report RL31943, *Budget Enforcement Procedures: The Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

[32] Section 404(f) repealed a similar prior point of order adopted in Section 315 of S.Con.Res. 70 (110th Congress). This section was scheduled to expire on September 30, 2018, but the sunset provision in Section 404(e) was repealed by Section 3201(b)(2) of S.Con.Res. 11 (114th Congress).

S.Con.Res. 70, 110th Congress

Section 314. In the Senate, prohibits provisions in an appropriations bill that constitute a change in CHIMPs and produce a net cost. This point of order could be raised against one or more provisions that would (1) increase budget authority in at least one of the nine years after the budget year and over a 10-year budget window, (2) increase net outlays over the nine years following the budget year, and (3) the sum of all such CHIMPs in the measure would increase net outlays over the nine years after the budget year.[33] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

Budget Enforcement Act of 1990 (P.L. 101-508)

Section 13302(a). In the House, prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of 0.02% of the present value of future taxable payroll for a 75-year period, or in excess of $250,000,000 for the first five-year period after it becomes effective.[34]

Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139)

Section 4(g)(3). In the Senate, if a point of order is raised during consideration of direct spending or revenue legislation subject to PAYGO against an emergency designation in that measure, the provision making the designation shall be stricken.[35] This point of order may be waived in the Senate by a vote of three-fifths of all Senators.

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[33] This point of order was supplanted by a similar point of order in Section 3103(b) of S.Con.Res. 11 (114th Congress) but reinstated in Section 4102(e)(2) of H.Con.Res. 71 (115th Congress) with no sunset.

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

[35] Section 4(g)(4) provides that estimates made by CBO or Office of Management and Budget with respect to PAYGO legislation shall not include the budgetary effects of spending in that legislation designated as emergency. For more information on the Statutory Pay-As-You-Go Act of 2010, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr. See also provisions concerning emergency spending in the Senate that appear in Section 314(e) of the Budget Act and Section 4001 of S.Con.Res. 14 (117th Congress).

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