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Points of Order in the Congressional Budget Process

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Summary

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

This report summarizes points of order under the Congressional Budget Act of 1974, as amended through the Balanced Budget Act of 1997 (P.L. 105-33), as well as points of order established in the budget resolution adopted by Congress in 1999 (H.Con.Res. 68, 106th Congress). In addition, it describes the process used for waiving these points of order.

This report updates an earlier report: U.S. Library of Congress, Congressional Research Service, *Points of Order in the Congressional Budget Process*, by Edward Davis, CRS Report 94-874 GOV (Washington: Nov. 9, 1994). It will be updated to reflect any additions or further changes to these points of order.

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Points of Order in the Congressional Budget Process

Introduction

The Congressional Budget Act of 1974¹ established the basic framework that is used today for congressional consideration of budget and fiscal policy. The Act provided for the adoption of a concurrent resolution on the budget (budget resolution) as a mechanism for coordinating congressional budgetary decision making. This process supplements other House and Senate procedures for considering spending and revenue legislation by allowing Congress to establish and enforce parameters with which those separate pieces of budgetary legislation must be consistent. The parameters are established each year when Congress adopts the budget resolution, setting forth overall levels for new budget authority, outlays, revenues, deficit, and debt.

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

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

²The reconciliation process is an optional procedure set forth in section 310 of the Congressional Budget Act. First used in 1980, reconciliation is a two-step process triggered when the budget resolution includes instructions to one or more committee(s) directing them to recommend changes in revenue or spending laws necessary to achieve the overall levels agreed to. The recommendations are then considered in one or more reconciliation measures under expedited procedures. Certain features of the reconciliation process are enforced by points of order that are included in this report. For more on the reconciliation process generally see: U.S. Library of Congress, Congressional Research Service, *Manual on the Federal Budget Process*, by Robert Keith and Allen Schick, CRS Report 98-720 GOV (Washington: Aug. 28, 1998).

Although the congressional budget process encompasses myriad procedures dealing with spending, revenue, and debt legislation, this paper focuses only on that portion of the process that stems from the Congressional Budget Act. The tables below list the points of order currently included in the Congressional Budget Act (Table 1), as well as related points of order established in the FY2000 budget resolution (Table 2) and the Budget Enforcement Act of 1990 (Table 3) that pertain to the consideration, contents, or implementation of the budget resolution.

Points of order are typically in the form of a provision stating that “it shall not be in order” for the House or Senate to take a specified action or consider certain legislation that is inconsistent with the requirements of the Budget Act. There are other provisions of the Act, formulated differently, that 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.³

As amended through the Balanced Budget Act of 1997, points of order in the Congressional Budget Act are permanent. None of the provisions listed in Table 1 is scheduled to expire, although the requirement for a three-fifths waiver vote in the Senate will revert to a simple majority requirement for certain provisions after September 30, 2002.⁴ The freestanding point of order protecting the Social Security trust fund in the House established in the Budget Enforcement Act (Table 3) is likewise permanent. However, all three of the points of order established under H.Con.Res. 68 (106th Congress) (Table 2) include sunset provisions. The prohibition against including an on-budget deficit in a budget resolution applies to the FY2000 and FY2001 budget resolutions; the emergency designation point of order expires upon the adoption of the FY2001 budget resolution and the Pay-As-You-Go point of order is scheduled to expire after FY2002.

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.

³For 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.

⁴However, the maximum deficit amounts enforced in the Senate under section 312(c) of the Congressional Budget Act are not currently specified. Discretionary spending limits in section 251(c) of the Balanced Budget and Emergency Deficit Control Act (which are enforced in the Senate under section 312(b) of the Congressional Budget Act) are only specified through FY2002.

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

Similarly, the effect of a point of order in the Senate is clarified under section 312(f) which provides that when a point of order against a measure is sustained, the measure is recommitted to the appropriate committee for any further consideration. This allows the Senate an opportunity to remedy the problem which 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 which would remedy the problem is pending.

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

There are exceptions to the general principle of applying points of order to measures as a whole. The most salient is probably section 313, the so-called Byrd Rule. This section applies to matter “contained in any title or provision” in a reconciliation bill or resolution (or conference report thereon), as well as any amendment or motion. If a point of order is sustained under this section, the provision in question is stricken, or the amendment or motion falls.⁵ A second point of order that applies to individual provisions rather than the measure as a whole is the point of order against emergency designations in the Senate under section 206(b) of H.Con.Res. 68 (106th Congress). If sustained, the effect of this point of order is that a provision making an emergency designation shall be stricken and may not be offered as an amendment from the floor.

Procedures for Waiving Points of Order

The Congressional Budget Act sets forth certain procedures, under section 904, for waiving points of order under the Act. These waiver procedures apply in the Senate only. Under these procedures, a Senator may make a motion to waive the

⁵Section 313(c) 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.

application of a point of order either preemptively before it can be raised, or after it is raised, but before the presiding officer rules on its merits.

In the Senate, most points of order under the Budget Act may be waived only by a three-fifths vote of all Senators duly chosen and sworn (60 votes if there are no vacancies). Most of these three-fifths requirements are temporary, and are currently scheduled to expire at the end of FY2002 (see footnote to Table 1). Three-fifths waivers were first established under the Balanced Budget and Emergency Deficit Control Act of 1985 although many have been extended and modified through the further changes in the budget process. Three-fifths votes are also required for the Senate to waive two of the points of order established in the budget resolution for FY2000 (see footnotes to Table 2).

In the House, Budget Act points of order are typically waived by the adoption of “special rules”—simple resolutions reported from the House Rules Committee to provide for consideration of legislation by the House—although other means (such as unanimous consent or suspension of the rules) may also be used.

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

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

| Section | Description | Application | Senate waiver vote ^a |
|--------------|--|--|---------------------------------|
| 302(f)(2)(B) | In the Senate, after a budget resolution has been agreed to, prohibits consideration of legislation from the Appropriations Committee that would cause the applicable suballocation of new budget authority or outlays made pursuant to section 302(b) to be exceeded. | Bill, joint resolution, amendment, motion, or conference report. | Three-fifths.* |
| 303(a) | Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a concurrent resolution for that fiscal year (or, in the Senate, a budget resolution covering that fiscal year) has been agreed to. ^{b, c} | Bill, joint resolution, amendment, motion, or conference report. | Simple majority. |
| 305(a)(4) | In the House, prohibits consideration of amendments to a budget resolution relating to certain economic goals if the budget resolution does not set forth such goals, and requires such amendments, if in order, to be germane. | Amendment to a budget resolution. | n/a |
| 305(b)(2) | In the Senate, prohibits the consideration of nongermane amendments to budget resolutions (section 310(e) applies this prohibition to amendments to reconciliations legislation as well). | Amendment to a budget resolution (or to reconciliation legislation). | Three-fifths. |
| 305(c)(4) | In the Senate, prohibits consideration of nongermane amendments to amendments in disagreement to a budget resolution (section 310(e) applies this prohibition to amendments in disagreement to reconciliation legislation as well). | Amendment in disagreement to a budget resolution (or to reconciliation legislation). | Three-fifths. |

| Section | Description | Application | Senate waiver vote^a |
|----------------|--|--|---------------------------------------|
| 305(d) | In the Senate, prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent. | Budget resolution or conference report. | Simple majority. |
| 306 | Prohibits consideration of matters within the jurisdiction of the House or Senate Budget Committee except when it is a measure reported by the committee, or the committee is discharged from further consideration of the measure, or an amendment to such a measure. | Bill, resolution, amendment, motion, or conference report. | Three-fifths. |
| 309 | In the House, prohibits consideration of an adjournment resolution for more than three calendar days during July until the House has approved all regular appropriations bills for the upcoming fiscal year. | Resolution. | n/a |
| 310(d) | Prohibits the consideration of amendments to reconciliation legislation that would increase the deficit either by increasing outlays or reducing revenues, except that in the Senate a motion to strike a provision shall always be in order. | Amendment. | Three-fifths. |
| 310(e) | In the Senate, prohibits consideration of nongermane amendments to reconciliation legislation or to amendments in disagreement to reconciliation (by reference to sections 305(b)(2) and 305(c)(4)). | Amendment. | Three-fifths. |
| 310(f) | In the House, prohibits consideration of an adjournment resolution of more than three calendar days during July until the House has completed action on any required reconciliation legislation. | Resolution. | n/a |

| Section | Description | Application | Senate waiver vote ^a |
|-----------|---|--|---------------------------------|
| 310(g) | Prohibits the consideration of reconciliation legislation that contains recommendations with respect to Social Security. | Bill, joint resolution, amendment, motion, or conference report. | Three-fifths.* |
| 311(a)(1) | In the House, prohibits consideration of legislation that would cause new budget authority or outlays to exceed or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to section 302(a). ^{b, d} | Bill, joint resolution, amendment, motion, or conference report. | n/a |
| 311(a)(2) | In the Senate, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year, or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to section 302(a). | Bill, joint resolution, amendment, motion, or conference report. | Three-fifths.* |
| 311(a)(3) | In the Senate, prohibits consideration of legislation that would cause a decrease in Social Security surpluses or an increase in Social Security deficits relative to the level set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to section 302(a). | Bill, joint resolution, amendment, motion, or conference report. | Three-fifths.* |
| 312(b) | In the Senate, prohibits the consideration of legislation that would cause any of the discretionary spending limits specified in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, to be exceeded. | Bill, joint resolution, amendment, motion, or conference report. | Three-fifths.* |

| Section | Description | Application | Senate waiver vote ^a |
|-----------|--|--|---------------------------------|
| 312(c) | In the Senate, prohibits consideration of a budget resolution that provides for a deficit in excess of the maximum deficit amount specified in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, for the first fiscal year set forth in the resolution. | Budget resolution, amendment, or conference report. | Three-fifths.* |
| 313 | In the Senate prohibits consideration of extraneous provisions in reconciliation legislation. ^e | Reconciliation bill or resolution (any title or provision), amendment, motion, or conference report. | Three-fifths. |
| 401(a) | Prohibits consideration of legislation providing new contract authority, borrowing authority, or credit authority not limited to amounts provided in appropriations acts. ^f | Bill, joint resolution, amendment, motion, or conference report. | Simple majority. |
| 401(b) | Prohibits consideration of legislation providing new entitlement authority that is to become effective during the current fiscal year. ^f | Bill, joint resolution, amendment, motion, or conference report. | Simple majority. |
| 425(a)(1) | Prohibits consideration of legislation reported by a committee unless the committee has published a statement by CBO on the direct costs. | Bill, joint resolution. | Simple majority. |
| 425(a)(2) | Prohibits consideration of legislation that would increase the direct costs of federal intergovernmental mandates by an amount greater than the thresholds specified in section 424(a). | Bill, joint resolution, amendment, motion, or conference report. | Simple majority. |
| 426 | In the House, prohibits consideration of a rule or order that would waive the application of section 425. | Resolution, rule, order. | n/a |

^aThis column indicates the type of Senate vote (provided under section 904 of the Congressional Budget Act) necessary to approve a motion to waive the point of order listed. The term “simple majority” means that the provision may be waived by a majority vote of the Members voting, a quorum being present. The term “three-fifths” means that a motion to waive the provision must be approved by three-fifths of the Members “duly chosen and sworn.” For those provisions, which are marked with an asterisk, the three-fifths requirement is scheduled to expire on September 30, 2002 (under section 904(e)), reverting to simple majority at that time. The same voting requirement (either simple majority or three-fifths) would also apply to a vote to appeal a ruling of the chair connected with a point of order. The term “n/a” is used for those provisions that apply in the House only.

^bSection 302(g) of the Congressional Budget Act (known as the Pay-As-You-Go exception) provides that sections 301(f)(1), 303(a) (after April 15), and 311(a) shall not apply in the House to legislation (bill, joint resolution, amendment, or conference report) if for each fiscal year covered by the most recently agreed to budget resolution such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under section 301(b)(8).

^cSection 303(b) sets forth exceptions to the prohibitions under 303(a). In the House, the point of order does not apply to: 1) advance discretionary new budget authority that first become available for the first or second fiscal year after the first fiscal year covered in a budget resolution; 2) revenue legislation that is to first become effective after the first fiscal year covered in a budget resolution; 3) general appropriations bills after May 15; or 4) any bill or joint resolution unless it is reported by a committee (see also table note ^b above for an additional exception to 303(a) provided under section 302(g)). In the Senate, the point of order does not apply to advance appropriations for the first or second fiscal year after the first fiscal year covered in a budget resolution. The application of this point of order to appropriations bills in the Senate is clarified under section 303(c) to prohibit their consideration until after a budget resolution for that fiscal year is agreed to and an allocation made pursuant to section 302(a).

^dSection 311(c) provides that 311(a) shall not apply in the House to legislation that would not cause a committee's spending allocation under 302(a) to be exceeded.

^eFor more information on this provision (known as the “Byrd Rule”) see: U.S. Library of Congress, Congressional Research Service, *The Senate’s Byrd Rule Against Extraneous Matter in Reconciliation Measures*, by Robert Keith, CRS Report 97-688 GOV (Washington: September 9, 1998).

^fSection 401(d) provides that sections 401(a) and 401(b) shall not apply to new spending authority described in those sections that flow from: 1) a trust fund established under the Social Security Act or any other trust fund for which 90 percent or more of its expenditures are supported by dedicated revenues; 2) certain wholly owned or mixed ownership government corporations; or 3) gifts or bequests made to the United States for a specific purpose.

**Table 2. Points of Order Under H.Con.Res. 68 (106th Congress)
(Budget Resolution for FY2000)**

| Section | Description | Application | Senate waiver vote^a |
|----------------|--|--|---------------------------------------|
| 201(b) | Prohibits consideration of a budget resolution that sets forth an on-budget deficit (<i>i.e.</i> , that excludes any surplus generated by Social Security). ^b | Budget resolution (including any revision), amendment, or conference report. | n/a |
| 206(b) | In the Senate, prohibits consideration of provisions that include an emergency designation under sections 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (except for discretionary appropriations for defense). ^c | Bill, resolution, amendment, motion, or conference report. | Three-fifths. |
| 207(b) | In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase or cause an on-budget deficit for the first fiscal year covered by the most recently adopted budget resolution, the period of the first five fiscal years covered by the most recently adopted budget resolution, or the five fiscal years following the first five fiscal years covered by the most recently adopted budget resolution. ^d | Bill, joint resolution, amendment, motion, or conference report. | Three-fifths. |

^aThis column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term “three-fifths” means that a motion to waive the provision must be approved by three-fifths of the Members “duly chosen and sworn.” The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with the point of order. The term “n/a” means that there is no explicit waiver provision for this section, although the rule could be waived or changed under the regular rulemaking authority of either chamber.

^bThis provision applies to any fiscal year covered in the budget resolutions for FY2000 and FY2002.

^cThis provision applies only to the emergency designation, and not to the spending itself. It is scheduled to expire upon the adoption of the budget resolution for FY2001 (under section 206(h) of this budget resolution).

^dThis provision is scheduled to expire on September 30, 2002 (under section 207(g) of this budget resolution).

**Table 3. Point of Order Under P.L. 101-508
(Budget Enforcement Act of 1990)^a**

| Section | Description | Application | Senate waiver vote |
|----------|---|--|--------------------|
| 13302(a) | In the House, prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of 0.02 percent of the present value of future taxable payroll for a 75-year period, or in excess of \$250,000,000 for the first 5-year period after it becomes effective. ^b | Bill, joint resolution, amendment, or conference report. | n/a |

^aThis provision is a freestanding provision of subtitle C of the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990).

^bSection 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.