

POINTS OF ORDER IN THE HOUSE RELATED TO THE BUDGET ACT

A reference guide



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TABLE OF CONTENTS

Timing.....	1
Budget Resolutions	1
Spending and Revenue Levels.....	1
Reconciliation & Mandatory Spending	2
Social Security	2
Committee Jurisdiction.....	2
Unfunded Mandates.....	2
Points of Order Relating to Appropriations	3
Points of Order Relating to Taxes.....	3
Quick reference for Budget Act points of order.....	4

Among the most confusing of all procedural issues are the various points of order related to enforcement of the Budget Act or to otherwise constrain or enable spending or revenues. This document is intended to serve as a reference to those points of order and is divided into sections addressing various categories of points of order. This document is intended as a basic reference, and for more detailed information, please consult the relevant portions of the House Rules & Manual, 111th Congress edition. All references in this document are to the Congressional Budget Act of 1974, as amended, unless otherwise noted.

Points of order generally fall into 3 categories: points of order which (1) *lie against consideration* of the bill or amendment, which prevent its consideration, (2) *lie against provisions in the bill*, which will result in the offending provision being stricken from the bill, and (3) points of order which are *disposed of as a question of consideration*, in which the House votes on whether or not to consider the bill (usually after a brief period of debate). Points of order in the first two categories can be, and usually are, waived by the Rules Committee.

TIMING

Section 302(c): Suballocations before appropriation bills. This point of order prohibits consideration of any legislation within the jurisdiction of the Appropriations Committee that provides new budget authority for a fiscal year until that committee divides the budget authority granted by the budget resolution among the Appropriations subcommittees as required by section 302(b).

Section 303(a): Adoption of Budget before consideration of Budget-related legislation. This point of order prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues or an increase or decrease in the public debt limit for the current fiscal year until a concurrent resolution on the budget for that fiscal year has been agreed to, essentially to maintain the status quo until Congress has acted on a budget resolution. Among the most confusing of the Budget Act points of order, it is important to keep in mind that it—

- Only applies from October 1 of a given fiscal year through adoption of a budget resolution (or the House “deems” spending and revenue levels as if a budget resolution was adopted);
- Does not apply to appropriations bills after May 15th;
- Only looks at budget effects which begin in the current fiscal year prior to adoption of a budget resolution for that year; if the effect begins in a year prior or an out-year, the point of order will not apply; and,
- In the case of an amendment (such as an amendatory motion to recommit) this section measures the aggregate net effect of the provisions in the amendment which begin in the relevant fiscal year as compared to the bill.

Section 308(a): CBO Estimates in committee reports.

This point of order prohibits consideration of a reported bill unless the committee report includes a Congressional Budget Office (CBO) cost estimate on any legislation containing new budget authority or a change in revenues. It also requires a committee to “make available” a CBO estimate on unreported measures.

Section 309: Approval of regular Appropriation bills.

This point of order prohibits consideration of an adjournment resolution during the month of July until the House has approved all regular appropriation bills for the upcoming fiscal year.

Section 310(f): Completion of Reconciliation process.

This point of order prohibits consideration of an adjournment resolution during the month of July unless the House has completed action on any required reconciliation legislation, if the budget resolution requires reconciliation.

BUDGET RESOLUTIONS

Section 305(a)(4): Amendment to Budget Resolution relating to economic goals. This point of order prohibits consideration of amendments to a budget resolution relating to certain economic goals (pursuant to the Full Employment Act of 1946) if the budget resolution does not set forth such goals.

Clause 7 of rule XXI: PAYGO compliant Budget Resolution. This point of order prohibits consideration of a budget resolution or an amendment thereto containing reconciliation instructions proposing changes in law that would reduce the surplus or increase the deficit in violation of the House PAYGO rule (clause 10 of rule XXI).

SPENDING AND REVENUE LEVELS

While the following two points of order below apply only to reported legislation, clause 8 of rule XXI applies all of the points

of order available under title III of the Budget Act to unreported bills as well as those reported by a committee.

Section 302(f)(1): Spending must remain within allocated levels. This point of order prohibits consideration of reported legislation providing new budget authority for any fiscal year that would exceed the applicable allocation of new budget authority made pursuant to section 302(a) or (b).

Section 311(a)(1): Budget-related legislation within appropriate levels. This point of order prohibits consideration of reported legislation that would cause new budget authority or outlays to exceed or revenue to fall below the levels set forth in the budget resolution.

Section 3(a)(4) of H.Res. 5, 111th Congress: Appropriations bill over its allocation. This standing order, carried over from prior congresses, establishes a point of order against a motion to rise and report a general appropriation bill that is over its 302(b) allocation. When raised, this point of order triggers a question of consideration, debatable for 10 minutes equally divided and controlled. After debate, the House votes on whether to report the bill to the House for final passage. If the motion is defeated, the Committee on Appropriations can offer an amendment to rectify the breach.

RECONCILIATION & MANDATORY SPENDING

Section 310(d): Limitation on amendments to reconciliation. This point of order prohibits consideration of amendments to reconciliation bills that have the effect of increasing the deficit or reducing the surplus either by increasing outlays or reducing revenues.

Section 401(a): Controls on budget-related legislation not subject to appropriation. This point of order prohibits consideration of reported legislation providing new contract authority, borrowing authority, or credit authority unless limited to amounts provided in Appropriation acts.

Section 401(b): Legislation providing new entitlement authority. This point of order prohibits consideration of reported legislation providing new entitlement authority which would become effective during the current fiscal year. Since 1999, the House has regularly adopted a standing order in the opening day rules package (e.g. section 3(a)(3) of H. Res. 5) which exempts certain Federal employee compensation from the definition of new entitlement authority for purposes of this rule.

Clause 10 of Rule XXI: PAYGO rule. This point of order prohibits consideration of measures which have the net effect of

increasing the deficit or reducing surpluses within a five or ten year budget period.

SOCIAL SECURITY

Section 310(g): Social Security and reconciliation.

This point of order prohibits consideration of reconciliation legislation that contains recommendations on changes to Social Security.

Section 13302(a) of the Budget Enforcement Act of 1990: Protection of Social Security Trust Funds. This point of order prohibits consideration of reported legislation that provides for a net increase in Social Security benefits or a decrease in Social Security taxes in excess of .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 five-year period after it becomes effective.

COMMITTEE JURISDICTION

Section 306: Budget legislation must be handled by Budget Committee. This point of order prohibits consideration of matters within the jurisdiction of the Budget Committee if the matter has not been reported by that committee or if that committee has not been discharged from consideration of the matter. Since the 107th Congress, the opening day rules package has routinely contained a provision limiting the application of this provision with respect to resolutions only to joint resolutions.

Clause 4 of Rule XXI: Prohibiting committees from reporting appropriations that do not have the jurisdiction to do so. This point of order prohibits consideration of bills, provisions in bills, or amendments which appropriate funds if the bill was not reported by the Committee on Appropriations.

Clause 5(a) of Rule XXI: Prohibiting committees from reporting tax or tariff measures that do not have the jurisdiction to do so. This point of order prohibits consideration of bills, provisions in bills, or amendments which carry a tax or tariff provision if the bill was reported, but not by the Committee on Ways and Means.

UNFUNDED MANDATES

Points of order raised under the Budget Act regarding unfunded mandates are applied differently. When raised, each of the following points of order triggers a question of consideration, debatable for 20 minutes equally divided and controlled, rather than a complete prohibition of further consideration of the pending measure. After the debate, the House then votes on whether to proceed with consideration of the measure.

Section 425(a)(1): CBO statement on unfunded mandates. This point of order arms a question of consideration of a reported measure unless the committee has published a statement on the direct costs of a Federal mandate (with its CBO estimate).

Section 425(a)(2): Intergovernmental unfunded mandates. This point of order arms a question of consideration of a measure that would increase the direct costs of Federal intergovernmental mandates by an amount greater than the thresholds set forth in section 424 of the Budget Act (\$70 million in 2010).

Section 426: Special rule waiving unfunded mandates point of order. This point of order triggers a question of consideration on a rule or order that would waive the point of order against unfunded mandates contained in section 425, including a waiver of all points of order.

POINTS OF ORDER RELATING TO APPROPRIATIONS

Clause 2(a)(1) of Rule XXI: Prohibiting unauthorized appropriations in a general appropriation bill.

This point of order prohibits appropriations for unauthorized programs in a general appropriations bill. The burden is on the Committee on Appropriations (in the case of a provision in a bill) or the proponent of an amendment to demonstrate that the program is authorized.

Clause 2(a)(2) of Rule XXI: Prohibiting reappropriations in a general appropriations bill. This point of order prohibits the Appropriations Committee from reporting a general appropriations bill reappropriating unexpended balances, other than for public works and other objects already in progress. This prohibition does not apply to certain transfers of unexpended balanced reported by the Appropriations Committee.

Clause 2(b) of Rule XXI: Prohibiting legislative provisions in a general appropriations bill. This point of order prohibits inclusion of language which changes existing law in a general appropriations bill with the exception of certain retrenchments and rescissions.

Clause 2(c) of Rule XXI: Prohibiting legislative amendments from being offered to a general appropriation bill. This point of order prohibits amendments to a general appropriations bill proposing to change existing law, with the exception of certain funding limitations..

With respect to clauses 2(b) and (c), the term “change in existing law” has been interpreted as including, among others, provisions which (1) change the text of an existing law, (2) propose new law where none existed previously, (3) repeal an existing law, and (4) waive a provision of existing law. For more information on the

application of these points of order, see part III of chapter 4 of *House Practice* (108th Congress ed.).

Further, under clause 2(c) and (d) of rule XXI, an amendment in the form of a limitation may not be offered in a motion to recommit unless earlier offered in the Committee of the Whole.

Clause 2(e) of Rule XXI: Prohibiting non-emergency designated amendments to be offered to an appropriations bill containing an emergency designation. This point of order prohibits amendments proposing to add matter lacking an emergency designation to an appropriations bill carrying such a designation.

Clause 3 of Rule XXI: Prohibiting a reduction in the obligation limitations below the level set forth in section 8003 of SAFETEA-LU. This point of order prohibits consideration of any bill, amendment, or conference report which proposes to reduce certain highway or mass transit funding made available under the current highway authorization bill.

POINTS OF ORDER RELATING TO TAXES

Clause 5(b) of Rule XXI: Requiring a three-fifths vote on an income tax rate increase. This point of order requires a $\frac{3}{5}$ vote on any bill, amendment or conference report raising the Federal income tax.

Clause 5(c) of Rule XXI: Prohibits consideration of a “retroactive” tax rate increase. This point of order prohibits consideration of any bill, amendment, or conference report which applies a Federal income tax rate increase prior to the effective date of the provision.

It is important to note that with respect to the two provisions described previously, the rule defines “Federal income tax increase” narrowly, as an amendment to subsection (a), (b), (c), (d) or (e) of section 1 or to section 11(b) or 55(b), of the Internal Revenue Code, that imposes a new “percentage” as a rate of tax.

QUICK REFERENCE FOR BUDGET ACT POINTS OF ORDER

	Available Points of Order	AGAINST A BILL	AGAINST AMENDMENTS	AGAINST CONFERENCE REPORT	AGAINST MTR	WAIVER CARRYOVER TO MTR
Timing	§ 302(c) Suballocations before appropriation bills	✓	✓	✓	✓	✗
	§ 303(a) Adoption of Budget before consideration of Budget-related legislation	✓	✓	✓	✓	✓*
	§ 308(a) CBO estimate in committee report	✓	N/A	✓	N/A	N/A
	§ 309 Approval of regular Appropriation bills	Adjournment Resolutions in July	N/A	N/A	N/A	N/A
	§ 310(f) Completion of reconciliation process	Adjournment Resolutions in July	N/A	N/A	N/A	N/A
Budget Resolution	§ 305(a)(4) Amendment to Budget Resolution relating to economic goals	N/A	✓	N/A	N/A	N/A
	Clause 7 of rule XXI Paygo compliant Budget Resolution	✓	✓	✓	N/A	N/A
	§ 3(a)(4) of H.Res. 5, 111th Congress Appropriations bills over allocation	Applies to bills amended on the floor (in Committee of the Whole)		N/A	N/A	N/A
Spending & Revenue Levels	§ 302(f)(1) Spending must remain within allocated levels	✓	✓	✓	✓	✓*
	§ 311(a)(1) Budget-related legislation within appropriate levels	✓	✓	✓	✓	✓*
Reconciliation & Mandatory Spending	§ 310(d) Limitation on amendments to Reconciliation	N/A	✓	N/A	✓	✗
	§ 401(a) Controls on budget-related legislation not subject to appropriation	✓ †	✓	✓	✓	✗
	§ 401(b) Legislation providing new entitlement authority	✓ †	✓	✓	✓	✗
	Clause 10 of rule XXI PAYGO Rule	✓	✓	✓	✓	✗
Social Security	§ 310(g) Social Security and reconciliation	✓ †	✓	✓	✓	✗
	§ 13302(a) Budget Enforcement Act Protection of Social Security Trust Funds	✓ †	✓ †	✓ †	✓ †	✗

	Available Points of Order	AGAINST A BILL	AGAINST AMENDMENTS	AGAINST CONFERENCE REPORT	AGAINST MTR	WAIVER CARRYOVER TO MTR
Committee Jurisdiction	§ 306 Budget legislation must be handled by Budget Committee	✓	✓	✓	✓	✗
	Clause 4 of rule XXI Appropriations only from Appropriations Committee	✓ ^o	✓	N/A	✓	✗
	Clause 5(a) of rule XXI Taxes or tariffs only from Ways & Means Committee	✓ ^o	✓	N/A	✓	✗
Unfunded Mandates	§ 425(a)(1) CBO statement on unfunded mandates	✓ [*]	N/A	N/A	N/A	N/A
	§ 425(a)(2) Intergovernmental unfunded mandate	✓	✓	✓	✓	✗
	§ 426 No special rule waiving unfunded mandates point of order	Special Rules	N/A	N/A	N/A	N/A
Appropriations	Clause 2(a)(1) of rule XXI Unauthorized appropriations	✓ ^o	✓	N/A	✓	✗
	Clause 2(a)(2) of rule XXI Reappropriations	✓ ^o	✓	N/A	✓	✗
	Clause 2(b) of rule XXI Legislating on an appropriations bill	✓ ^o	N/A	N/A	N/A	N/A
	Clause 2(c) of rule XXI Legislative amendments on an appropriations bill	N/A	✓	N/A	✓	✗
	Clause 2(e) of rule XXI Emergency designations	✓ ^o	✓	N/A	✓	✗
	Clause 3 of rule XXI Highway bill obligation limits	✓	✓	✓	✓	✗
Taxes	Clause 5(b) of rule XXI 3/5 vote for income tax increase	✓	✓	✓	✓	✗
	Clause 5(c) of rule XXI Retroactive tax increases	✓	✓	✓	✓	✗

Items listed as section numbers refer to section of the Congressional Budget Act of 1974, as amended, unless otherwise noted. References to rules are references to the Rules of the House of Representatives for the 111th Congress.

* A waiver allows the MTR to breach the spending or revenue level up to the amount of the underlying bill. This waiver also applies to amendments.

[†] Applicable only to reported bills.

[‡] Unless the bill was unreported.

[°] Also lies against provisions in the bill.

