

H. RES. 5
ADOPTING RULES FOR THE 114TH CONGRESS

SECTION-BY-SECTION ANALYSIS

Section 1. Resolved Clause.

This section provides that the Rules of the 113th Congress are the Rules of the 114th Congress, except with the amendments contained in section 2 of the resolution and orders contained in sections 3, 4, and 5.

Section 2. Changes to the Standing Rules.

Disclosure of Foreign Payments to Witnesses. Subsection (a)(1) requires, to the greatest extent practicable, nongovernmental witnesses to disclose payments or contracts to the witness or an organization they represent originating from foreign governments received in the current and preceding two calendar years, to the extent that such information is relevant to the subject matter of, and the witness' representational capacity at, that hearing.

While failure to comply fully with this requirement would not give rise to a point of order against the witness testifying, it could result in an objection to including the witness's written testimony in the hearing record in the absence of such disclosure.

Jurisdictional Changes. Subsection (a)(2) adds language to the Committee on the Judiciary's jurisdictional statement with respect to the criminalization of conduct.

The Committee on the Judiciary's jurisdiction over criminal penalties and criminal law enforcement would remain unchanged. That is, the committee would maintain its existing jurisdiction over measures that create or repeal a crime, and over measures that alter criminal penalties with regard to crimes already existing in law.

The rules change is intended to cover measures that alter the elements of a crime so as to criminalize new conduct and, in so doing, trigger an existing criminal penalty. This rules change is not intended to cover measures that merely supply the regulatory framework or address the regulatory underpinnings of the overall enforcement scheme. Past measures proposing merely to adjust the elements of such a crime – as opposed to adjusting the penalty for commission of the crime – have been out of the jurisdictional reach of the Committee on the Judiciary. Even though such measures have left the criminal penalty unchanged, they have nonetheless subjected new conduct to that criminal penalty. In other words, new conduct was criminalized. If the relatively rare practice of criminalizing new conduct within the framework of existing penalties is left unchecked, it calls into question the efficacy of the Committee on the Judiciary's jurisdictional statement in providing a comprehensive look at criminal penalties and criminal law enforcement. Hence, a rule X statement of "criminalization" is the most appropriate way to address this circumstance.

The jurisdiction of other committees over the elements of a crime – particularly in the context of a regulatory scheme and outside of title 18, United States Code -- would remain the same, except that it potentially would be shared with the Committee on the Judiciary in some instances. In that respect, it is similar to the criminalization of new conduct accompanied by a new criminal penalty; this change is to ensure that it is the act of criminalizing conduct, and not just the penalties themselves, that gives rise to a jurisdictional interest by the Committee on the Judiciary.

This rules change is not intended to alter existing jurisdiction over any enforcement scheme that falls outside of the ambit of criminal law enforcement. Rather, it is to confirm that the creation of a new crime subject to criminal law enforcement is what gives rise to the Committee on the Judiciary's interest, and not merely the establishment or modification of the penalty.

For instance, the change is intended to address a situation analogous to H.R. 2492 of the 112th Congress, which addressed attendance at animal fighting events through amendments to the Animal Welfare Act – compiled in title 7 of the United States Code – and to title 18. That measure was referred to both the Committee on Agriculture and the Committee on the Judiciary. Portions of that measure were later included in H.R. 2642 of the 113th Congress and addressed a type of animal fighting to be covered by the Animal Welfare Act, but did not amend the existing criminal penalty in the Animal Welfare Act and did not touch title 18. As a result, the Committee on the Judiciary did not receive a referral of that measure.

Committees with jurisdiction over a regulatory statute will continue to exercise that jurisdiction, and the interest of the Committee on the Judiciary will extend to the creation of a new crime without a change to an existing penalty only to the same extent it would to creation of a new crime with an accompanying penalty prior to the 114th Congress.

The subsection adds language to the Committee on Appropriations' jurisdictional statement with respect to certain loan obligations and new loan guarantees with a textual reference to section 504(b) of the Congressional Budget Act.

Clarifying the Jurisdiction of the Committee on House Administration. Subsection (a)(3) clarifies the Committee on House Administration's jurisdiction over the Chief Administrative Officer.

Committee Activity Reports. Subsection (a)(4) reduces the frequency of committee activity reports from two times per Congress to one time per Congress.

Dissenting Views. Subsection (a)(5) codifies current practice by updating the rule regarding supplemental, minority, or additional views to include "dissenting" views.

Consolidating Requirements for Written Rules. Subsection (a)(6) requires committees to include in their written rules pursuant to clause 2(a)(1) of rule XI

certain audio and visual coverage rules described in clause 4(f) of rule XI and formerly required by such clause.

Conforming Committee and House Broadcasting Standards. Subsection (a)(7) conforms the language in clause 4(b) of rule XI with clause 2(c) of rule V to ensure consistent application of broadcasting standards.

Eliminating the Point of Order Against Considering Appropriations Measures without Printed Hearings. Subsection (a)(8) eliminates the point of order against the consideration of appropriations measures without printed hearings. This information is largely available through archived broadcasts, testimony, and other documents available on the Appropriations Committee's website and the public hearings themselves.

Permanent Select Committee on Intelligence. Subsection (a)(9) increases the size of the committee to 22 members, with not more than 13 from the same party.

Committee on Ethics. Subsection (a)(10) prohibits the Committee on Ethics from taking action that would deny a person any rights or protections provided under the Constitution of the United States of America.

Bipartisan Legal Advisory Group. Subsection (b) updates the authorization for the Bipartisan Legal Advisory Group to conform to current practice and codifies a separate order of the 113th Congress.

Cost Estimates for Major Legislation to Incorporate Macroeconomic Scoring. Subsection (c) requires the Congressional Budget Office and Joint Committee on Taxation, to the extent practicable, to incorporate the macroeconomic effects of "major legislation" into the official cost estimates used for enforcing the budget resolution and other rules of the House. The subsection requires, to the extent practicable, a qualitative assessment of the long-term budgetary and macroeconomic effects of "major legislation", which is defined to cover legislation that causes a gross budgetary effect in any fiscal year covered by the budget resolution that is equal to or greater than 0.25 percent of the projected GDP for that year. This subsection also allows the chair of the Committee on the Budget, or in the case of revenue legislation the House member serving as the Chair or Vice Chair of the Joint Committee on Taxation, to designate "major legislation" for purposes of this rule.

This subsection also repeals the existing provision in clause 3(h)(2) of rule XIII that requires a macroeconomic impact analysis of revenue legislation, which is superseded by the new rule.

Providing for Reconvening Authority for the House of Representatives. Subsection (d) allows the Speaker, after consultation with the Minority Leader, to reconvene the House during an adjournment of three days or less, at a time other

than previously appointed. This codifies separate orders from the 112th and 113th Congresses.

Providing Conference Committees with Time to Reach Agreement. Subsection (e) modifies clause 7(c)(1) of rule XXII by providing conference committees 45 calendar days and 25 legislative days after the formation of a conference to reach agreements before additional motions to instruct managers may be offered.

Contents of Committee Reports Showing Changes to Existing Law. Subsection (f) requires that a Ramseyer print to show the entire text of amended or repealed sections of a statute along with the proposed changes.

Mandatory Ethics Training for New Members. Subsection (g) requires that new Members of the House, in addition to employees, complete ethics training.

Technical and Conforming Changes. Subsection (h)(1) conforms the standing rules to reflect the name in statute of the Joint Committee on Taxation (JCT). Subsection (h)(2) updates an outdated statutory citation and removes a reference inadvertently left in place at the start of the 113th Congress, which is no longer necessary due to the enactment of the STOCK Act.

Section 3. Separate Orders.

Independent Payment Advisory Board. Subsection (a) eliminates provisions contained in the Affordable Care Act that limit the ability of the House to determine the method of consideration for a recommendation from the Independent Payment Advisory Board or to repeal the provision in its entirety.

Staff Deposition Authority for Certain Committees. Subsection (b) provides the Committees on Energy and Commerce, Financial Services, Science, Space, and Technology, and Ways and Means deposition authority to be conducted by a member or committee counsel during the first session of the 114th Congress. Depositions taken under this authority shall be subject to regulations issued by the chair of the Committee on Rules and printed in the Congressional Record.

Providing for Transparency with Respect to Memorials Submitted Pursuant to Article V of the Constitution of the United States. Subsection (c) clarifies the procedures of the House upon receipt of Article V memorials from the States by directing the Clerk to make each memorial, designated by the chair of the Committee on the Judiciary, electronically available and organized by State of origin and year of receipt.

In carrying out section 3(c) of House Resolution 5, it is expected that the chair of the Committee on the Judiciary will be solely charged with determining whether a memorial purports to be an application of the legislature of a state

calling for a constitutional convention. The Clerk's role will be entirely administrative. The chair of the Committee on the Judiciary will only designate memorials from state legislatures (and not petitions from individuals or other parties) as it is only state legislatures that are contemplated under Article V of the Constitution.

In submitting the memorials to the Clerk, the chair of the Committee on the Judiciary will include a transmission letter with each memorial indicating it has been designated under section 3(c) of House Resolution 5. The Clerk will make publicly available the memorial and the transmission letter from the chair. Ancillary documentation from the state or other parties is not expected to be publicized.

The chair of the Committee on the Judiciary is also permitted to designate memorials from earlier Congresses to be made publicly available under the same procedure.

Spending Reduction Amendments in Appropriations Bills. Subsection (d) carries forward the prohibition from the 112th and 113th Congresses against consideration of a general appropriation bill that does not include a "spending reduction" account, the contents of which is a recitation of the amount by which, through the amendment process, the House has reduced spending in other portions of the bill and indicated that such savings should be counted towards spending reduction. It provides that other amendments that propose to increase spending in accounts in a general appropriations bill must include an offset of equal or greater value.

Budget Matters. Subsection (e)(1) provides that titles III, IV, and VI, of House Concurrent Resolution 25 (113th Congress), as well as the allocations, aggregates, and appropriate levels contained in the chair of the Committee on the Budget's statement submitted in the Congressional Record on April 29, 2014, as adjusted, will continue to have force and effect until a budget resolution for fiscal year 2015 is adopted. This subsection also provides that the chair of the Committee on the Budget may revise allocations, aggregates, and appropriate levels for measures maintaining the Highway Trust Fund, provided such a measure does not increase the deficit over the 11-year window and revise allocations, aggregates, and appropriate levels to take into account updated CBO baselines.

Subsection (e)(2) carries forward from the 113th Congress the requirement that prevents the Committee of the Whole from rising to report a bill to the House that exceeds an applicable allocation of new budget authority under section 302 (b) (Appropriations subcommittee allocations) as estimated by the Budget Committee and creates a point of order.

Continuing Litigation Authorities. Subsection (f) addresses continuing litigation in which the House is a party. Paragraph (1) authorizes the Committee on Oversight and Government Reform, through the House Office of General Counsel, to continue litigation to enforce a subpoena against the Attorney General related to the "Fast and Furious" investigation. This lawsuit was

authorized by H. Res. 706 (112th Congress). It also authorizes the chair of the Committee on Oversight and Government Reform (when elected) to take certain actions necessary to continue the litigation. Paragraph (2) authorizes the House to act as the successor in interest with respect to ongoing civil actions regarding the implementation of the Patient Protection and Affordable Care Act. The lawsuit was authorized by H. Res. 676 (113th Congress). The subsection also carries forward the authorities provided by H. Res. 676 (113th Congress) to remain in effect in the 114th Congress. Paragraph (3) authorizes Michael W. Sheehy to provide testimony in an ongoing criminal action in accordance with authorizations from the Permanent Select Committee on Intelligence in the 112th and 113th Congresses.

Duplication of Federal Programs. Subsection (g) carries forward from the 113th Congress the authorization of a committee chair to request that the Government Accountability Office perform a duplication analysis of any bill or joint resolution referred to that committee. The subsection also requires committee reports to include a statement on whether any provision of the measure establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program. This order has been modified to allow for a statement that no program is being established or reauthorized for purposes of complying with the order.

Estimates of Direct Spending. Subsection (h) carries forward from the 113th Congress the prohibition of consideration of a concurrent resolution on the budget, or any proposed amendment to or conference report thereon, unless it includes specified information and estimates related to direct spending, including means-tested direct spending and nonmeans-tested direct spending. The subsection also requires the chair of the Committee on the Budget to publish a description in the Congressional Record of covered programs.

Disclosure of Directed Rulemakings. Subsection (i) carries forward from the 113th Congress the requirement that committee reports on bills or joint resolutions are to include an estimate of the number of directed rule makings required by the measure. The subsection defines “directed rule making” to include those rule makings specifically directed to be completed by a provision in the legislation, but does not include a grant of discretionary rule making authority.

Subcommittees. Subsection (j) waives clause 5(d) of rule X to allow the Committees on Armed Services and Foreign Affairs up to seven subcommittees and the Committees on Transportation and Infrastructure and Agriculture up to six subcommittees. Other than the inclusion of the Committee on Agriculture, this is similar to provisions carried in the rules package during the last several Congresses.

Exercise Facilities for Former Members. Subsection (k) continues the prohibition on access to any exercise facility that is made available exclusively to

Members, former Members, officers, and former officers of the House and their spouses to any former member, former officer, or spouse who is a lobbyist registered under the Lobbying Disclosure Act of 1995.

Numbering of Bills. Subsection (l) reserves the first 10 numbers for bills (H.R. 1 through H.R. 10) for assignment by the Speaker and the second 10 numbers (H.R. 11 through H.R. 20) for assignment by the Minority Leader.

Inclusion of U.S. Code Citations. Subsection (m) adds, to the maximum extent practicable, a requirement for parallel citations for amendatory instructions to Public Laws and Statutes at Large that are not classified in the U.S. Code.

Broadening Availability of Legislative Documents in Machine Readable Formats. Subsection (n) instructs the appropriate officers and committees to continue to advance government transparency by taking further steps to publish documents of the House in machine-readable formats.

Temporary Designation. Subsection (o) designates a temporary location for documents to be made publicly available pending the official designation by the Committee on House Administration under clause 3 of rule XXIX.

Congressional Member Organization Transparency Reform. Subsection (p) allows participating Members to enter into agreements with eligible Congressional Member Organizations for the purpose of payment of salaries and expenses. The subsection requires the Committee on House Administration to promulgate regulations, consistent with current law, to carry out this subsection.

Social Security Solvency. Subsection (q) creates a point of order against legislation that would reduce the actuarial balance of the Federal Old-Age and Survivors Insurance Trust Fund, but provides an exemption to the point of order if a measure improves the overall financial health of the combined Social Security Trust Funds. This subsection would protect the Old-Age and Survivors Insurance (OASI) Trust Fund from diversion of its funds to finance a broken Disability Insurance system.

Section 4. Committees, Commissions, and House Offices.

Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi. Subsection (a) carries forward the select committee as authorized by H. Res. 567 (113th Congress) as it existed at the end of the 113th Congress. Additionally, the subsection provides the select committee authority to adopt a rule or motion allowing for a ten-minute rule for the questioning of witnesses.

House Democracy Partnership. Subsection (b) reauthorizes the House Democracy Assistance Commission, now known as the House Democracy Partnership.

Tom Lantos Human Rights Commission. Subsection (c) reauthorizes the Tom Lantos Human Rights Commission.

Office of Congressional Ethics. Subsection (d) reauthorizes the Office of Congressional Ethics (OCE) for the 114th Congress and clarifies that term limits do not apply to members of the OCE. The subsection reaffirms that a person subject to a review by the Office of Congressional Ethics has a right to be represented by counsel, and establishes that invoking such right is not to be held as a presumption of guilt. The subsection also prohibits the Office of Congressional Ethics from taking action that would deny a person any rights or protections provided under the Constitution of the United States of America.

Section 5. Additional Order of Business.

Reading of the Constitution. This section allows the Speaker to recognize Members for the reading of the Constitution on any legislative day through January 16, 2015.