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Enforcing the 2016 Budget Resolution: Rules to Know Now

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EDITOR'S NOTE: All years are fiscal years unless otherwise stated.

2016 Budget Resolution Enforcement Overview

In May, a Republican-led Congress approved the first 10-year balanced budget conference report since 2001 (S. Con. Res. 11). Now that the 2016 budget resolution is in place, the chairmen of the House and Senate Budget Committees must ensure that legislation considered in their respective chambers does not violate this significant achievement.

Enforcement authority for the budget flows from sections 201(f) and 312(a) of The Congressional Budget Act of 1974, or Budget Act, which confer upon the two chairmen their roles as the official scorekeepers in their respective chambers. As bills, amendments, and conference reports are considered on the floor, the chairmen evaluate the budgetary effects of the pending legislation with respect to the spending and revenue contours in the budget resolution, and determine whether a violation has occurred.

Enforcement of the budget resolution's spending and revenue limits is accomplished through procedural mechanisms known as points of order. Points of order relevant to the budget can be found in Titles III and IV of the Budget Act, as amended, section 4 of the Statutory Pay-As-You-Go Act of 2010 (S-PAYGO), and in the enforcement titles of the current and prior budget resolutions. The Senate Budget Committee's website includes a summary of budget-related points of order enforced in the Senate.

If a provision in a bill, amendment, or conference report does not comply with the budget resolution, a point of order lies against the measure (unless a curative amendment is also pending). For example, section 302(f)(2) of the Budget Act prohibits consideration of authorizing legislation that would increase direct, or mandatory, spending above an authorizing committee's allocation of budget authority (BA) or outlays (OT) enumerated in the current resolution. This violation is also known as the "tax and spend" point of order because it is triggered when a measure attempts to offset increased direct spending with a tax hike—a violation of a budget resolution's strict firewalls between spending and revenue.

Points of order fall into two categories: (1) prohibitions against consideration, which, if sustained, immediately end floor consideration of that measure; and (2) surgical-strike points of order targeting a specific provision in legislation, which, if sustained, strike the offending text but leave the rest of the measure standing.

Section 314(e) of the Budget Act is an example of a surgical strike. It permits any senator to strike an emergency designation in an appropriation bill made pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA). If sustained, the emergency designation is removed from the text, but the rest of the provision and the underlying bill remain before the Senate. At first blush, this point of order may seem inconsequential, but once an emergency designation is struck, the underlying bill usually triggers a second, lethal point of order like the allocation violation in section 302(f). In fact, a common strategy outline is to attack an emergency designation with a surgical-strike point of order, and if successful, follow with a point of order that prohibits consideration, which, if sustained, would immediately end consideration of the entire measure.

When a point of order is raised against a measure, a proponent of the legislation usually will respond with a motion to waive, an option granted under section 904(c) of the Budget Act. If a motion to waive is successful, which in most cases requires the affirmative vote of 60 senators, the measure remains before the Senate, and debate may continue. Senate precedent permits a single motion by a senator to waive more than one point of order—a global motion to waive. If a global motion to waive garners the requisite number of votes, usually 60, then the underlying measure is effectively inoculated against any additional budget-related points of order.

When a point of order that prohibits consideration of a measure is sustained, debate ceases immediately, but the measure does not die. Rather, it is recommitted to the committee of jurisdiction where it can be considered and amended, if desired. It cannot be offered again from the floor, however, without first correcting the original violation.

Senate points of order are not self-enforcing. A member must first be recognized and then raise the point of order. The Senate may consider and pass legislation even if it violates the provisions of a budget resolution if no point of order is made, or an applicable point of order is waived.

Importantly, not all budget-related points of order concern numbers. For example, section 306 of the Budget Act prohibits consideration of legislation containing *any* matter within the jurisdiction of the Budget Committee that the committee has not previously reported or discharged. Examples of text that would trigger this violation include: language that prevents the budgetary effects of legislation from being recorded on the pay-as-you-go scorecards; amendments to the Budget Act; and language modifying the discretionary spending caps in BBEDCA or, similarly, creating a new allocation adjustment to those caps.

The House and Senate have similar, but not identical, budget-related points of order. Points of order that lie in one chamber may not trigger a violation in the other. For example, the pay-as-you-go point of order in section 201(a) of the 2008 budget resolution (S. Con. Res 21) applies only in the Senate, while the House cut-as-you-go (CUTGO) rule in clause 10 of House Rule XXI does not apply in the Senate. Furthermore, the Senate enforces points of order both on BA and OT, whereas the House in general enforces limits on BA only.

Three New Points of Order

One hallmark of the 2016 budget resolution is the collaborative effort between the Senate and House Budget Committees to address enforcement loopholes that in the past have led to overspending. S. Con. Res. 11 established three new points of order concerning these gaps:

Section 3103: Point of Order against Certain Changes in Mandatory Programs (CHIMPS)
Under long-standing scoring rules, the amount of spending authorized in an appropriation bill is calculated as the sum of *all* provisions contained in the bill, including any provision that would be considered a CHIMP if offered as a standalone bill. Accordingly, a provision that reduces mandatory spending in an appropriation bill is counted as discretionary savings for purposes of budget enforcement during the bill's consideration.

For example, language in an appropriation bill that delays $10 billion in mandatory spending for just one year is scored as saving $10 billion in discretionary budget authority. That $10 billion in CHIMP BA savings can be used to increase regular discretionary spending elsewhere in the appropriation bill by $10 billion without affecting the bill's net score. Over a 10-year period, however, that same $10 billion CHIMP can be delayed each year, one year at a time in each subsequent appropriation bill, generating the appearance of $100 billion in savings over 10 years. In reality though, the same $10 billion simply has been deferred each year.

The 2016 budget resolution restricts the use of CHIMPS. Specifically, section 3103 of S. Con. Res. 11 creates a new point of order prohibiting consideration of any measure providing full-year appropriations which includes a CHIMP that, if enacted, would cause the total of all CHIMPS enacted to date in a fiscal year to exceed a certain limit. Those limits are: $19.1 billion in 2016,

$19.1 billion in 2017, $17.0 billion in 2018, and $15.0 billion in 2019. This violation does not apply to continuing resolutions. Sixty votes are required to waive this point of order, if raised. If the point of order is raised and not waived, the measure is recommitted, as discussed previously.

Section 3104: Point of Order against Provisions that Constitute CHIMPS Affecting the Crime Victims Fund

In addition to limiting the total amount of CHIMPS, the 2016 budget resolution limits the use of the largest—the Crime Victims Fund CHIMP. Section 3104 permits any senator to raise a point of order against a provision in a measure providing full-year appropriations containing a CHIMP affecting the Crime Victims Fund that, if enacted, would cause the total BA of all such CHIMPS in 2016 to exceed $10.8 billion.

Unlike the general CHIMP point of order, in the Senate this prohibition is a surgical strike. If this point of order is raised against an appropriation bill, amendment or conference report, the offending CHIMP is struck from the measure, but the rest of the legislative text remains before the Senate for consideration. This point of order is effective for 2016 appropriations only, does not apply to continuing resolutions, and requires 60 votes to waive, if raised.

Section 3205: Prohibition on Agreeing to Legislation without a Score

In the Senate, members have taken votes on must-pass legislation without a timely cost analysis from the Congressional Budget Office (CBO). Section 3205 begins to address this problem by prohibiting a vote on final passage on all matters that require a cost estimate under section 402 of the Budget Act unless that score is available at least 28 hours in advance of the vote. The prohibition is enforced with a point of order that, if raised, would require 60 votes to waive.

In addition to these new points of order, section 3203 of the budget resolution increases the vote threshold needed to waive the existing points of order in section 425 of the Budget Act (unfunded mandates) from a simple majority to 60 votes:

- Section 425(a)(1) prohibits consideration of any committee-reported legislation unless a CBO estimate of any intergovernmental or private sector mandates has been printed in the committee report or *Congressional Record*.

- Section 425(a)(2) prohibits consideration of any legislation that contains an unfunded intergovernmental mandate in excess of the statutory limit ($77 million in 2015 and $78 million in 2016) for the five consecutive fiscal years following the mandate’s effective date (inclusive).