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Representatives: A Look at Reform Efforts and
State Best Practices”**

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Introduction

Chairman Kilmer, Vice-Chairman Graves, Members of the Select Committee: Thank you for the opportunity to appear before you today. I am Christopher Davis. I am an Analyst on Congress and the Legislative Process at the Congressional Research Service (CRS). CRS's role is to provide objective, nonpartisan, research and analysis to Congress. As such, CRS does not take a position on the desirability of any specific procedures, policies, or practices.

As requested, I will: (1) Summarize selected efforts to change the House's procedural rules undertaken during the post-World War II period (1946-Present); (2) Make general observations about the current state of House procedures; and (3) Suggest some possible lessons that lawmakers who are interested in rules revision might draw from prior efforts.

I know the committee has previously heard testimony on various administrative reform proposals as well as on possible revisions in the congressional budget and appropriations process. Accordingly, I intend to limit my testimony to a discussion of chamber procedural rules that are related to the general legislative process in committee and on the floor.

Overview of Select Procedural Reform Efforts in the House

Numerous official and unofficial procedural reviews by Congress have been conducted in the past 70 years. Several joint committees, select committees (including this one), commissions, and party caucuses and conferences have studied aspects of House procedure, both in committee and on the floor. The House has made additional procedural changes in the normal course of adopting its rules at the beginning of a new Congress. While a comprehensive overview of these efforts would be too lengthy to present here, I would like to provide a brief summary of some of the more significant procedural reform efforts since World War II and note some overall trends in the House's recent procedural evolution.¹

Legislative Reorganization Act of 1946, 79th Congress (1945-1946)²

The contemporary congressional system is primarily a product of the Legislative Reorganization Act (LRA) of 1946, which, among other things, streamlined the House and Senate committee system, codified committee jurisdictions, and instituted a professional committee staffing structure.

In the 1940s, there was a growing bipartisan concern inside and outside Congress that Congress was not sufficiently professional, modern, or technically competent to adequately exercise its role as a co-equal branch of government. This view had been exacerbated by an accumulation of power by the Executive Branch in the years during and after the Great Depression and during U.S. involvement in World War II. The drive for institutional reform was bolstered by the election of 83 freshmen Members to the 79th Congress.

During this period, many Members were not only concerned about Congress as an institution, but also about aspects of their own work life inside Congress. Among the problems identified were: a lack of competent professional staff for Members and committees; too few trained legislative drafters; an excess of committee assignments; inadequate pay; no retirement benefits; and a lack of timely information about the floor schedule.

¹ For a fuller discussion of recent procedural reform efforts, see CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by Judy Schneider and Christopher M. Davis.

² P.L. 79-601, August 2, 1946, (79th Congress).

In response, on February 19, 1945, the House concurred in Senate amendments to H.Con.Res. 18 (79th Congress), and established a Joint Committee on the Organization of Congress (JCOC). The concurrent resolution called on the joint committee to “make a full and complete study of the organization and operation of the Congress,” and “recommend improvements in such organization and operation with a view toward strengthening the Congress, simplifying its operations, improving its relationships with the other branches of the United States Government, and enabling it better to meet its responsibilities under the Constitution.”

The JCOC was composed of 12 members, six from each chamber, equally divided by party. The joint committee was chaired by Senator Robert M. LaFollette, Jr., a progressive from Wisconsin who caucused with Republicans. Its vice chair was Representative A.S. “Mike” Monroney, a Democrat from Oklahoma.

From March 13 through June 29, 1945, the joint committee held 39 hearings, receiving testimony from over 100 witnesses. The committee issued its final report on March 4, 1946. The report contained a wide-ranging list of recommendations designed to improve the structure and efficiency of Congress, many of which were ultimately adopted.

Significant House procedural reforms resulting from the work of the 1945-1946 JCOC include the establishment, for the first time, of written jurisdictional statements for the standing committees; a ban on the introduction of certain types of private bills; the requirement that committees establish regular meeting days, keep a record of all committee action, including votes, and that committee Chairs report legislation promptly; a requirement that committees have a numerical majority of the committee present when reporting legislation to the House (a “reporting quorum”) and have witnesses file written testimony in advance of hearings; a requirement that committee hearings be open to the public and the press; and the establishment of a dedicated section of the *Congressional Record*—the Daily Digest—to make it easier for Members and the public to track committee and floor action.

Legislative Reorganization Act of 1970, 91st Congress (1969-1970)³

Despite the extensive changes that took place in Congress because of the 1946 Legislative Reorganization Act, by the mid-1960s, many Members began to feel that the law had not gone far enough, and that additional procedural reform was desirable. The 1970 Legislative Reorganization Act (LRA) was the product of more than five years of work, spread over three Congresses. It began with the creation of a Joint Committee on the Organization of the Congress (JCOC) in March 1965, and concluded when the House concurred in Senate amendments to H.R. 17654 on October 8, 1970, and sent the measure to the President, who signed it.

During the five years it took for this reorganization effort to wend its way to enactment, from 1965 to 1970, institutional tensions between the legislative branch and the executive branch had escalated. The 1970 Act was, like the 1946 Legislative Reorganization Act effort, part of a broad effort by Congress to reassert its authority over the executive branch.

The Joint Committee on the Organization of the Congress held 40 days of hearings between May 10 and September 23, 1965. It heard from 199 witnesses, including Members of Congress, political scientists, and other government officials. The committee issued its final report on July 28, 1966. It contained some 120 recommended changes to the operation of Congress, ranging from those affecting the committee system to the imposition of fiscal controls to increases in staffing. Legislation was introduced in both chambers in 1966, but was not acted upon. Legislation was reintroduced in the Senate in 1967 as S. 355

³ P.L. 91-510, October 26, 1970 (91st Congress).

(90th Congress). The Senate passed the bill by a vote of 75-9 in March, 1967, but the measure saw no action in the House.

On April 22, 1969, Representative William M. Colmer (D-MS), chairman of the House Rules Committee, appointed a special five-member subcommittee to review congressional reorganization proposals and make recommendations to the House on proposed procedural reforms. The recommendations of the 1965 JCOC formed the backbone of the work of this Rules Committee's special subcommittee. While the specific legislation that was enacted as the 1970 Legislative Reorganization Act, H.R. 17654, was a work product of the House Rules Committee, most of the recommendations in the measure originated several years earlier with the 1965 JCOC. Some of the proposals enacted by the 1970 LRA—for example, the right of the minority to call witnesses at hearings—were codifications of practices already underway in many House committees.

Significant House procedural reforms resulting from the 1970 Legislative Reorganization Act include: a requirement of one-week's public notice of committee hearings and that committees adopt written rules of procedure; the creation of a parliamentary mechanism to allow a majority of the Members of a committee to schedule a hearing or markup over the objection of the Chair; a codification of the right of the minority party to have witnesses of their choosing called to testify on one hearing day and of the ability of all committee Members to include minority, supplemental, or additional views in committee reports; an amendment to House Rules to allow votes to be taken electronically and to authorize funding to build an electronic voting system; authorization for media broadcasts of many committee hearings; a requirement that committee reports be, with some exceptions, available for three days prior to House floor consideration; and a direction to conferees to file a "joint explanatory statement" accompanying a conference report sufficiently detailed and explicit to inform the House as to the contents of the agreement.

House Select Committee on Committees ("Bolling Committee"), 93rd Congress (1973-1974)

The Select Committee on Committees was established in the 93rd Congress (1973-1974) in response to widespread Member dissatisfaction with the existing committee structure. The desire for institutional reform was aided during this period by the election of a large number of younger, more politically liberal, Members of both parties.

The Select Committee was made up of five Democrats and five Republicans, each appointed by Speaker of the House Carl Albert (D-OK). The committee was chaired by Representative Richard Bolling (D-MO) and, as such, is popularly referred to as the "Bolling Committee."

The select committee conducted hearings and panel discussions, and received the testimony of Members of the House. It interviewed a large number of House committee staff and also commissioned a number of specialized studies. Hearings began on May 2, 1973, and concluded October 11, 1973. The select committee issued a working draft report on committee jurisdiction and procedure in the House on December 7, 1973.

The committee realignment plans proposed by the Bolling Committee sought to more evenly distribute committee workloads, limit the number of committee assignments of Members, and consolidate subject matter jurisdictions over healthcare policy into a single committee.

The Bolling Committee committed most of its recommendations to legislation, H.Res. 988, which was given extensive review by the House Democratic Caucus after being introduced in March, 1974. After a period of review, the caucus voted to direct the Rules Committee to issue a rule providing for the consideration of three pieces of reform legislation on the House floor: the Bolling Committee's H.Res. 988, a less sweeping amendment in the nature of a substitute to H.Res. 988 sponsored by Representative

Julia Butler Hansen; and an alternative offered by Bolling Committee Vice Chair David Martin (R-NE), which included provisions of both the Bolling and Hansen proposals. Extensive debate and amendment followed in the House, and the Hansen substitute to H.Res. 988 was eventually agreed to October 8, 1974.

While a set of reforms less comprehensive than those initially proposed by the Bolling Committee ultimately passed the House of Representatives, the recommendations made by the Bolling Committee laid the groundwork for several subsequent congressional committee reform efforts, including by the Joint Committee on the Organization of Congress in 1991-1994, and by the Republican class that assumed majority status in the House in 1995.⁴

While the House ultimately rejected the major consolidation of committee jurisdictions proposed by Bolling, it did agree to significant procedural changes, such as granting the Speaker the power to refer legislation to more than one House committee for consideration (multiple referral) as well as the power to create ad hoc select committees to coordinate the review of legislation falling within the jurisdiction of two or more standing committees.

House Select Committee on Committees (Patterson Committee), 96th Congress (1979-1980)

On March 20, 1979, the House agreed to H.Res. 118 (96th Congress) by a vote of 208-200, establishing another Select Committee on Committees. This select committee, made up 15 Members, 10 from the majority and five from the minority, was chaired by Representative Jerry Patterson (D-CA), and, as such, the committee is popularly known as the “Patterson Committee.” The select committee was charged with studying House committee structure, jurisdiction, staffing, rules and procedures, facilities, and media coverage. Any recommendations made by the select committee were to be reported to the Democratic Caucus and Republican Conference rather than to the House.

The creation of the Patterson Committee was driven in part by Members, among them, the large freshman classes elected in the 94th and 95th Congresses, who were dissatisfied with the level of reform achieved by the 1974 Bolling Committee. Another motivation for the creation of the Patterson Committee was a widespread concern among Members about the proliferation of subcommittees in the House, a development that many felt negatively diffused decision-making and made it more difficult to tackle broad policy challenges. For example, by the late 1970s, “the House found itself with the astonishing total of more than 83 committees and subcommittees claiming some jurisdiction over energy,” a topic that had become a high-profile issue with the oils shocks of the 1970s and the advent of the Carter Administration’s focus on energy conservation.⁵

The Patterson Committee met for more than a year to develop a set of recommended changes to House committee jurisdictions and other topics. Of the recommendations the committee made, one was considered on the House floor, and that suggestion was rejected.⁶

⁴ For more information on House consideration of the Bolling Committee recommendations and competing plans, see Rep. Olin E. Teague, remarks in the House, *Congressional Record*, vol. 120, Sept. 30, 1974, pp. 32959-32963.

⁵ “Inside Congress,” in *Congress and the Nation*, vol. 4, (Washington: Congressional Quarterly, 1981), p. 876.

⁶ The committee recommended that the House create a new Energy Committee, which would take its jurisdiction from the existing Commerce, Interior, and Public Works Committees. The House did not approve this plan. On March 25, 1979, it voted 274-134 to reaffirm the Commerce Committee’s central role in energy policy. The House then agreed to change the name of the Commerce Committee to the Energy and Commerce Committee and to designate the panel as the lead committee on energy policy beginning in the 97th Congress (1981-1982).

Some of the key procedural reforms proposed by the Patterson Committee, however, would be embraced in subsequent House reform efforts. For example, a recommendation of the select committee was that limits be placed on the number of subcommittees each House Member might serve on, and that each House committee (except for Appropriations) be limited in the number of subcommittees it could create. The Patterson Committee further recommended new rules governing the way the Speaker was to refer bills that might be within the jurisdiction of more than one committee. Under the proposal, a primary committee would be designated for all multiple-referred bills. All secondary committees would have a limited and specific time in which to consider the measure. Sequential referrals would also be permitted when a committee added an amendment to a bill during markup that crossed into another committee's jurisdiction.

Joint Committee on the Organization of Congress, 102nd and 103rd Congresses (1991-1994)

Another bipartisan and bicameral Joint Committee on the Organization of Congress (JCOC) was created on August 6, 1992, with the passage of H.Con.Res. 192 (102nd Congress). This JCOC was modeled after the congressional reform committees of the same name established in 1945 and 1965, and was intended to address growing concern both inside and outside of Congress over the effectiveness and public perception of the institution. There was a sense among some Members that the issues facing Congress had changed considerably over a period of years, but the internal structures of the institution had not kept pace. Many Members also expressed increasing frustration with the workings of Congress, and a record number of Members chose to retire in the 102nd Congress (1991-1992), many citing this frustration as a contributing factor in their decision. Additionally, Congress was beset by a string of high-profile scandals that lowered public opinion of Congress, beginning in 1989 with the resignation of House Speaker Jim Wright, followed in 1992 by reports of improprieties in the operations of the House Bank and Post Office.

H.Con.Res. 192 directed the joint committee, before December 31, 1993, to “make a full and complete study of the organization and operation of the Congress and to recommend improvements which would strengthen the effectiveness of the Congress, simplify its operations, improve its relationships with and oversight of other branches of the United States Government, and improve the orderly consideration of legislation.” This broad mandate echoed that of the 1946 and 1965 joint reform committees.

The JCOC consisted of 28 members, 14 from each chamber equally divided between Democrats and Republicans. That number included the majority and minority leaders of the House and Senate, who served as *ex officio* and voting members of the joint committee. The joint committee was made up of two subcommittees, one on the Senate and one on the House. Membership on the joint committee was determined by each chamber's party leaders.

The Joint Committee on the Organization of Congress conducted an extensive information-gathering and policy-analysis process. It held 6 months of hearings (from January to July 1993) and organized four symposiums on specific organizational topics (the committee system, staffing, the budget process, and legislative-executive relations) of interest to panel members. The committee held 36 hearings, taking testimony from 243 witnesses—133 House Members, 37 Senators, 14 former Members, 15 current and former staff members, and 44 outside experts. In addition, the JCOC conducted a two-day retreat in June 1993 at the U.S. Naval Academy to discuss reform options.

House and Senate Members introduced separate legislation on February 3, 1994, embodying the recommendations of the JCOC. These packages became known as the Legislative Reorganization Act of 1994 (H.R. 3801 and S. 1824, respectively). These measures were never considered by the House or Senate. Some observers point to a resistance by majority party leadership as the primary reason for this. In the end, one recommendation of the JCOC, relating to the application of laws to Congress, was adopted, in a scaled-back form, by the House.

While few of the recommendations of the JCOC were adopted at the time, its list of suggested reforms reads like a description of the structure and workings of the contemporary House of Representatives. Large portions of the JCOC recommendations, including provisions relating to the application of laws to Congress, increased reporting for purposes of oversight, committee jurisdictional consolidation, scheduling changes, a recodification of House Rules, and information technology reforms were subsequently adopted when Republicans assumed the majority in the House of Representatives in 1995.

Republican Majority, 104th Congress (1995-1996)

In 1995, Republicans gained the majority in both chambers for the first time in 40 years, bolstered by the election of 73 Republican Freshmen Members.⁷ In many respects, the procedural changes adopted by the 104th Congress (1995-1996) grew out of previous Republican and congressional efforts to enact committee system and other rules changes. Many of the reform items had been included in substitute amendments offered by the Republicans to successive new Congress's rules packages drafted by Democratic majorities. As noted, procedural reforms previously proposed by the 1993-1994 JCOC and even older reform entities formed a significant part of the rules changes proposed by Republicans in the 104th Congress. Procedural rules changes adopted during this time include:

- the imposition of a three-term limit on committee and subcommittee chairs and a four-term limit on the Speaker;⁸
- joint referrals of legislation were abolished; the Speaker was authorized to designate a “primary” committee of referral when referring measures to more than one panel;
- proxy voting in committee was abolished;
- Members were limited to service on two standing committees and four subcommittees;
- committee reports were required to include the votes cast for and against (and the names of Members voting for and against) amendments in markup and the motion to report;
- committees were limited in the number of subcommittees they could create;
- committee and subcommittee chairs could designate a vice chair without consideration of a Member's committee or subcommittee seniority;
- committees were required to prepare oversight agendas and an end-of-Congress report summarizing actions taken; and
- Committee staff was reduced by one-third.

Additional amendments to House procedural rules adopted by the 104th Congress, include:

- Protecting the right of the minority to offer a motion to recommit a bill or joint resolution to committee on first House consideration, with instructions that the committee report the bill back to the House with an amendment incorporated in the motion. House rules had previously provided for such a recommittal motion, but had not explicitly stated that the motion could include instructions containing an amendment.

⁷ An additional 13 first-term Democrats were elected in the 104th Congress.

⁸ The Speaker's term limit was abolished in the 108th Congress. Various changes have occurred in committee leadership term limits over the intervening years, but House rules no longer contain these limits.

- Banning the introduction and consideration of commemoratives, defined as measures or amendments providing for “any remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.”⁹
- Incorporating the Pledge of Allegiance into the daily order of business, to follow the approval of the *Journal*. This amendment to the rules codified a practice that the House had followed since 1988.
- Expanding the authority of the Speaker to postpone votes on ordering the previous question and to reduce to five minutes the time for votes that immediately followed votes on ordering the previous question.
- Establishing a three-fifths vote to pass a bill or joint resolution or agree to an amendment or conference report “carrying a Federal income tax rate increase.”⁹

House Opening-Day Rules Packages

Dedicated rules reform entities, such as Joint Committees on the Organization of Congress and sweeping rules reform, such as that undertaken in the 104th Congress, are not the only mechanisms the House has used to effect procedural change in the post-war era. Numerous, more incremental changes have been instituted by the House over the post-war period in the normal course of adopting its standing rules each new Congress.

In 2013, Charles W. Johnson III, J.D., who served as House Parliamentarian from 1994 to 2004, and who has been associated with the Office of the Parliamentarian for over half a century, authored an appendix to volume 18 of *Deschler’s Precedents of the House of Representatives* in which he summarized and reflected on the changes in House procedures that occurred over the course of his career.¹⁰ This appendix provides a detailed overview of the House’s modern procedural evolution and may serve as a valuable resource for the Select Committee as it examines this subject.

Broad trends in House procedure and practice over the period discussed by Mr. Johnson in this work include a significant expansion in the use of the Suspension of the Rules procedure; a routinization of the use of special orders of business (“special rules”) to structure the amendment process, including on the regular appropriations bills; the increased use of rulemaking statutes that establish privileged procedures for the consideration of legislation; an increase in the availability of dedicated periods of non-legislative debate; and a general shift from parliamentary spontaneity to procedural predictability on the House floor.

Finally, when considering rules revision, interested lawmakers may not just look to successful prior efforts, but also perhaps to proposals that have been put forward that the House has not chosen to adopt.¹¹

⁹ This provision, which was adopted in the 104th Congress, was amended in the 105th Congress to clarify the reach of the rule. These provisions were struck from House Rule XXI in the 116th Congress (2019-2020). Critics of the provision had, at times, pointed out the House’s frequent waiving of the rule and described the concept embodied in the rule as “unworkable” in practice. See, for example, U.S. Congress, House, Committee on the Judiciary, *Proposing an Amendment to the Constitution of the United States With Respect to Tax Limitations*, report to accompany H.J.Res. 62, 105th Cong., 1st sess. (Washington, GPO: 1997).

¹⁰ *Deschler-Brown-Johnson-Sullivan Precedents of the United States House of Representatives*, H.Doc. 94-661, 94th Cong., 2nd sess., vol. 18 (Washington, GPO: 2013), Appendix, pp. 481-717. Mr. Johnson further addresses the recent evolution of House procedures in William McKay and Charles W. Johnson, *Parliament & Congress, Representation & Scrutiny in the Twenty-First Century* (Oxford: Oxford University Press, 2013).

¹¹ For example, proposals have been forwarded in several Congresses, but not adopted, that would propose a single subject

General Observations about Current House Procedures

House rules and precedents have evolved over 230 years of practice. House procedures rest on certain fundamental concepts, including majority rule; a deferral to the judgement and expertise of committees; the presence of strict limits on debate; a germaneness requirement for amendments; and an emphasis on timely action over lengthy floor deliberation.

Here are a few general observations about the way procedures have been used in the House in recent Congresses. This narrative is intended to highlight current procedural practice for the information of the select committee, not to imply that any changes to these procedures or practices should necessarily be undertaken.

The Deliberative Process Occurs Mostly in Committee

Today, most of the detailed deliberation on legislation occurs in the standing committees of the House, rather than on the floor. While this has been the case for much of House history, the gradual shift from open special rules and a free-flowing amendment process on the chamber floor to a more structured floor consideration of legislation has further elevated the power of committees. Committees are the forum in which Members have the most freedom to legislate, and as such, committee procedures are arguably important to any proposed rules revision.

While party leadership closely coordinates with committees on their agendas, under House rules, committees have significant autonomy, and their work is generally decentralized.

Committees are largely free to decide the subject and order of hearings they will hold and the witnesses who will testify at those hearings.¹² The oversight functions of the House reside mostly in its committees, and committees are free to establish priorities for the use of the oversight powers granted to them by the chamber, largely as they think appropriate.¹³ House rules do not generally require committees to keep the House concurrently apprised of all of their oversight actions.¹⁴

requirement for legislation; create an oversight committee of the House chaired by a minority party member; and require a minimum number of in-session days; to name a few examples. A selected list of rules reform proposals submitted in prior Congresses is available from CRS upon request.

¹² In the 111th Congress (2009-2010), provisions were added to House Rule XI, clause 2(n) that require each standing committee or a subcommittee thereof to hold at least one hearing (during each 120-day period following the establishment of the committee) on waste, fraud, abuse, or mismanagement in programs the committee authorizes; at least one hearing in a session in which the committee has received disclaimers of agency financial statements from auditors of a federal agency the committee authorizes; and at least one hearing on issues raised by reports issued by the Comptroller General on programs considered to be at “high-risk” for waste, fraud, and mismanagement. In the 116th Congress (2019-2020) a separate order was agreed to by the House requiring each standing committee (except the Ethics Committee) to hold a “Member Day” hearing at which Members might testify about legislation within its jurisdiction.

¹³ With the goal of promoting conscious and coordinated oversight, House Rule X, clause 2, requires the Chair of each standing committee (except the Committees on Appropriations, Ethics, and Rules), in consultation with the Ranking Minority Member, to prepare and submit an oversight plan to the Committees on House Administration and on Oversight and Reform, by March 1 of the first session of a Congress, laying out their oversight agenda for the upcoming Congress. While committees must outline their plans for oversight, there is no enforcement mechanism in House rules attached to the implementation of the plan.

¹⁴ For example, most House committees have delegated the power to authorize and issue subpoenas to their Chair, and no requirements exist in House rules requiring committees to even inform the House when a subpoena has been issued. See CRS

Likewise, committee Chairs are generally free to decide what legislation a committee will consider in markup, and in what order, and committees are given wide latitude by the chamber to regulate the deliberative process that takes place in markup.¹⁵

The House Establishes its Order of Business in an Ad Hoc Way

Clause 1, of House Rule XIV, “Order and Priority of Business,” establishes a non-binding daily agenda of business to be followed by the House; the rule explicitly recognizes, however, that this order of business can be varied by the application of other House rules and the consideration of business of higher precedence.¹⁶ Of the nine items contained on this daily agenda, the House regularly adheres each workday to the first three—the opening prayer by the Chaplain; the reading and approval of the *Journal*; and the recitation of the Pledge of Allegiance. The House routinely departs from the remainder of the daily order or business listed in Rule XIV and instead chooses to schedule floor business using other parliamentary mechanisms that allow it to consider legislation in the order and under the terms that meet its immediate needs.

In recent decades, the House has regularly scheduled periods of “non-legislative debate,” both before and after its legislative business, whereby specific periods of floor time are set aside for Members to speak on subjects of their choosing—so-called Morning Hour Debate, One-minute speeches, and Special Order speeches.¹⁷ These periods are not established by the Standing Rules; they operate as a function of the Speaker’s power of recognition or are established by standing orders agreed to each session.¹⁸

The House Relies Almost Exclusively on Three Floor Procedures

The House has several parliamentary mechanisms in its rules through which it can bring legislation to the floor for consideration. Which of these will be used in a given situation depends on many factors, including the type of measure being considered, its cost, the amount of political or policy controversy surrounding it, and the degree to which Members want to debate it and propose amendments.

House Rule XV establishes parliamentary floor mechanisms which might be used to: (1) consider motions to discharge committees from the further consideration of measures referred to them; (2) process

Report R44247, *A Survey of House and Senate Committee Rules on Subpoenas*, by Michael L. Koempel.

¹⁵ House Rule XI lays out broad parameters for the conduct of markup, but within these rules, committees largely function in such meetings without the direct supervision of the House. For example, there is no representative of the Office of the Parliamentarian present in committee markups, advising the Chair on the germaneness of amendments or other House rules, as is the case on the chamber floor.

¹⁶ The explicit statement that the daily order of business can be superseded by the operation of other rules was added to the text of the rule by the adoption of H.Res. 5, January 6, 1999. The basic form of this clause has been in place since 1890.

¹⁷ Such dedicated periods have been established because House Rule XVII and chamber precedents require Members to confine themselves “to the question under debate.” This rule of relevancy in debate means that, absent such dedicated periods, Members may not be easily able to discuss all of the subjects they want to on the House floor.

¹⁸ See, for example, “Making in Order Morning-Hour Debate,” *Congressional Record*, daily edition, vol. 165, Jan. 3, 2019, p. H198.

legislation dealing with the business of the District of Columbia; (3) consider private legislation;¹⁹ and (4) conduct the call of committees on “Calendar Wednesday.”²⁰

In modern practice, these four parliamentary mechanisms are infrequently used to call up legislation on the chamber floor, with the “Calendar Wednesday” and “District of Columbia Business” mechanisms being in particular disuse.²¹ In recent Congresses, the House has almost exclusively relied on three specific procedures to consider policy legislation on the chamber floor:²²

Suspension of the Rules

For the last several Congresses, most legislation has been brought up on the House floor by Suspension of the Rules, a parliamentary device authorized by clause 1 of House Rule XV that waives the chamber’s rules to enable the House to act quickly on legislation that enjoys widespread (even if not necessarily unanimous) support. The main features of the Suspension of the Rules procedure include (1) a 40-minute limit on debate, (2) a prohibition against floor amendments and points of order, and (3) a two-thirds vote of Members present and voting for passage. The suspension procedure is in order in the House on the calendar days of Monday, Tuesday, and Wednesday; during the final six days of a congressional session; and at other times by unanimous consent or special order.²³

In the 115th Congress (2017-2018), 63 percent of all of the legislation the House considered was considered on its initial House consideration under the Suspension of the Rules procedure. While suspension is the most common mode of consideration in the House, it holds particular relevance for minority party Members in that it is by far the most common way that minority party Members can obtain floor consideration of a freestanding bill or resolution they have authored.

Special Rules Reported by the Committee on Rules

A special rule is a simple resolution that regulates the House’s consideration of legislation identified in the resolution. Such resolutions are sometimes called “order of business resolutions” or “special orders,” although most Members and staff simply refer to them as “rules.” Special rules enable the House to consider a specified measure and establish the terms for its consideration—for example, how long the

¹⁹ Private legislation provides relief to specified individuals or entities, including corporate bodies. Individuals sometimes request such relief from Congress when their administrative or legal remedies are exhausted. Most private legislative deals with immigration or individuals who have monetary claims against the government. See CRS Report R45287, *Private Bills: Procedure in the House*, by Christopher M. Davis.

²⁰ Under the Calendar Wednesday mechanism, standing committees might, under certain circumstances, be recognized to call up non-privileged bills they have reported for consideration.

²¹ In the 116th Congress, the House amended Rule XV to provide more flexibility as to the timing of considering motions to discharge House committees and to call up measures pending on the Private Calendar.

²² A significant percentage of legislation considered in the House (14 percent of all legislation considered in the 115th Congress) is called up on the floor by virtue of its privileged status in chamber rules. These items of “privileged business,” however, are not generally policy bills and resolutions, but non-lawmaking forms of legislation that deal with internal “housekeeping” questions, such as assigning Members to committees, funding committees, authorizing adjournments and joint sessions of Congress, and special rules providing for House consideration of other measures. This type of privileged business is generally outside the scope of these remarks.

²³ For more information on Suspension of the Rules, see CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by Elizabeth Rybicki.

legislation will be debated, what (if any) amendments may be offered to it, and whether points of order against the measure or any amendments to it are waived. Under clause 1(m) of House Rule X, the Committee on Rules has jurisdiction over the “order of business” of the House, and it reports such privileged procedural resolutions to the chamber for consideration.

In current practice, although a relatively small percentage of legislation comes before the House via special rule—12 percent of all legislation considered in the 115th Congress—most measures that might be characterized as significant, complicated, or controversial are brought up in this way. Generally speaking, few or no freestanding measures introduced by minority party members are considered under the terms of a special rule from the Rules Committee.

Unanimous Consent

In current practice, legislation is sometimes brought before the House of Representatives for consideration by the unanimous consent of its Members. Long-standing policies announced by Speakers of both parties regulate unanimous consent requests for this purpose. Among other things, the Speaker will recognize a Member to propound a unanimous consent request to call up an unreported bill or resolution only if that request has been cleared in advance with both party floor leaders and with the bipartisan leadership of the committee of jurisdiction.²⁴

In the 115th Congress, 11 percent of all legislation was considered on the floor by unanimous consent, an increase over previous Congresses (7% in both the 114th (2015-2016) and 113th (2013-2014) Congresses).

Many Statutory Procedures are Infrequently Used

Expedited parliamentary procedures, also known as “fast-track” procedures, are enacted into law to increase the likelihood that one or both houses of Congress will vote in a timely way on a certain measure or kind of measure.²⁵ These procedures are enacted into law as what are sometimes called *rule-making provisions* of law. They are given this designation because Congress enacts them pursuant to the constitutional authority of each house to write its own rules. Even though expedited procedures are included in law, they have the same force and effect as the standing rules that the House adopts by simple resolution. Such procedures are listed in a dedicated section, Sec. 1130, of the *House Manual*.²⁶

While some expedited procedure statutes are commonly used—for example, the Congressional Budget Act,²⁷ The Trade Act of 1974,²⁸ and the Congressional Review Act,²⁹—others are rarely employed and

²⁴ Charles W. Johnson, John V. Sullivan, Thomas J. Wickham, Jr., *House Practice, A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2017), pp. 908-909.

²⁵ For more information, see CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted into Law*, by Christopher M. Davis.

²⁶ U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, H.Doc. 115-177, 115th Cong., 2nd sess. (Washington: GPO, 2019), §1130, pp. 1147-1336.

²⁷ Titles I-IX of P.L. 93-344, 2 U.S.C. 601-688.

²⁸ P.L. 93-618, 19 U.S.C. 2191-2194.

²⁹ Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, Title II of the Contract with America Advancement Act of 1996, P.L. 104-121, 101 Stat. 847 at 868-874, codified at Title 5 U.S.C. Sections 801-808.

some remain in law (and in the *House Manual*) despite the legal authority to use the procedures having lapsed or policy circumstances having substantially changed.³⁰

Possible Lessons from Prior Reform Efforts

There are doubtless many lessons that lawmakers might take from prior rules revision efforts and consider when deciding whether to suggest changes to House procedural rules. These lessons might include the following:

- There appear to be specific times when procedural reform is “ripe” in the House. These include periods in which large numbers of Representatives believe that Congress as an institution is at a power disadvantage vis-à-vis the Executive Branch and/or when rank-and-file Members are dissatisfied with aspects of their work life or work/life balance.
- Such periods of procedural reform have often coincided with the election of large classes of freshman Members that may not yet be invested in the existing institutional status quo.
- Leadership support appears to be critical to achieving significant reform, particularly in cases where substantial rules changes or committee jurisdictional alignment may be proposed.
- History suggests that realigning committee jurisdictions is potentially contentious and complicated and may require the expenditure of significant political capital.
- In general, past successful procedural reform efforts often were guided by a clear identification of problems, as well as a focus on achievable goals. For example, the approach to developing specific procedural changes would likely differ, depending on the goal—which could include, for example, simplifying and clarifying House rules, eliminating defunct procedures from the rulebook, de-centralizing decision-making, increasing minority party rights, or promoting more transparency of committee oversight activity. A reform effort—and identification of promising solutions—likely also depends on the extent to which the problem being addressed actually stems from the existing procedures themselves, rather than from other factors, such as deeply-held policy positions, political factors, or the conscious choices of lawmakers.
- Procedural change may be sweeping or more incremental. Some past procedural reform efforts have focused not on the development of new ideas, but on identifying existing innovations in practice and promoting their widespread use or codifying them in the rules.³¹

³⁰ For example, while “fast track” parliamentary procedures for considering legislation to reorganize certain federal agencies remains in the law (5 U.S.C. 902-912) and in the *House Manual* (Sec. 1130(1)) the legal authority to use the executive reorganization mechanism is currently dormant. In another example, Sec. 7 of the War Powers Resolution (50 U.S.C. 1544-1546) establishes privileged procedures for House consideration of a concurrent resolution which would remove U.S. Armed Forces from hostilities abroad in the absence of a declaration of war or specific statutory authorization. These “fast track” procedures remain in force in the House despite the fact that court decisions subsequent to the enactment of the War Powers Resolution call into question the constitutionality of disapproving executive actions by simple or concurrent resolution.

³¹ For example, some House committees have embraced the digital pre-filing of amendments for availability on laptops or tablets for some or all markups as a way to reduce time spent producing and distributing paper copies. At least one House committee has, in this Congress, adopted an electronic voting system in committee as a way to conduct roll call votes in markups more quickly. It has also become common in recent Congresses for some special orders of business reported by the

- Reform proposals are sometimes not adopted by the House until long after they have first been proposed.
- Close consultation with the House Parliamentarian and the majority and minority professional staff of the Committee on Rules is critical throughout the process of considering rules revision. The non-partisan experts in the Office of the Parliamentarian, in particular, can provide expert counsel to help ensure that any proposed procedural change is constructed in a manner that achieves lawmakers' policy goals; functions in practice, not just in theory; and is in harmony with the larger body of House rules and precedents.

Conclusion

This concludes my prepared remarks. If additional research and analysis related to this issue would be helpful, I and my colleagues at CRS stand ready to assist the committee. Thank you for the opportunity to testify, and I look forward to answering any questions you may have.

Committee on Rules to grant the majority bill manager standing “en bloc” authority, that is, the power to combine multiple non-controversial amendments into large packages, thus facilitating the ability of the House to quickly process a high volume of amendments. Members might evaluate these and other procedural innovations already underway in the House, to determine whether they merit more widespread use.