

H. RES. 5
ADOPTING THE RULES FOR THE 115TH CONGRESS

SECTION-BY-SECTION ANALYSIS

Section 1. Resolved Clause.

This section provides that the Rules of the 114th Congress are the Rules of the 115th Congress, except for 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.

Decorum. Subsection (a) authorizes the Sergeant-at-Arms to impose a fine against a Member, Delegate, or the Resident Commissioner for the use of an electronic device for photography, audio or visual recording, or broadcasting on the House floor in contravention of clause 5 of rule XVII and any applicable Speaker's announced policy on electronic devices. A fine for a first offense will be \$500 and \$2,500 for subsequent offenses. Any subsequent offense will be assessed at the higher amount, regardless of whether it is connected to any other offense by time or proximity.

The subsection provides that any Member, Delegate, or Resident Commissioner that has been assessed a fine may appeal the fine in writing to the Committee on Ethics not later than 30 calendar days or five legislative days, whichever is later, after notification. Upon receipt of an appeal, the Committee on Ethics is provided 30 calendar days or five legislative days, whichever is later, to either dismiss the fine or allow it to proceed. Upon a determination regarding the appeal or if no appeal has been filed at the expiration of the period, the chair of the Committee on Ethics shall promptly notify the Member, Delegate, or the Resident Commissioner, the Speaker and the Chief Administrative Officer. The Speaker is required to promptly lay such notification before the House.

The Sergeant-at-Arms, Committee on Ethics, and Chief Administrative officer are authorized to establish policies and procedures to implement this subsection. Upon notification from the chair of the Committee on Ethics, the Chief Administrative Officer is shall deduct the amount of any fine from the net salary of the Member, Delegate, or Resident Commissioner.

The subsection also modifies rule XVII to clarify conduct considered disorderly or disruptive during legislative proceedings to ensure that a Member may be referred to the Committee on Ethics for behavior impeding in the rights of another Member, Delegate, or the Resident Commissioner to participate in floor proceedings, including blocking access to legislative instruments such as microphones and blocking access the well of the House.

Authorization and Oversight Plans. Subsection (b) amends the current oversight plan requirements. The subsection requires each standing committee (except the Committees on Appropriations, Ethics, and Rules) to adopt an authorization and oversight plan, which must be submitted to the Committees

on Oversight and Government Reform, House Administration, and Appropriations no later than February 15 of the first session of Congress. The plan must include a list of unauthorized programs and agencies within their jurisdiction that have received funding in the prior fiscal year, or in the case of a permanent authorization, has not received a comprehensive review by the committee in the prior three Congresses. The subsection requires committees to describe each program or agency that is intended to be authorized in the current Congress or next Congress, and a description of oversight to support reauthorization in the current Congress. The subsection also requires recommendations, if any, for moving such programs or agencies from mandatory to discretionary funding.

The subsection also provides that committees may make recommendations to consolidate or terminate duplicative programs or agencies, or those that are inconsistent with the appropriate role of the Federal government. Committees may make recommendations for changes to existing law to address Federal rules, regulations, statutes, and court decisions related to these programs that are inconsistent with Congress' Article I authorities. The subsection requires the Committee on Oversight and Government Reform, after consultation with the Speaker, Majority Leader, and the Minority Leader, report the oversight and authorization plans to the House by March 31 of the first session of Congress.

Amendments to Appropriation Bills. Subsection (c) codifies the standing order from the 112th, 113th, and 114th Congresses prohibiting an amendment to a general appropriation bill proposing a net increase in budget authority in the bill.

Duplication of Federal Programs. Subsection (d) codifies the standing order from the 113th and 114th Congresses that 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. The subsection also eliminates unnecessary language regarding 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, and makes technical changes.

Recognition of Members. Subsection (e) eliminates from the rules outdated references to physical mobility. This is a clarification to address the needs of Members who are physically unable to stand.

Convening Outside the Hall of the House. Subsection (f) conforms the standing rules with current practice regarding convening outside the Hall of the House.

Temporary Presiding Authority Clarification. Subsection (g) clarifies that the authority of a Speaker pro tempore appointed under clause 8(b)(3)(A) of rule I takes priority over the Clerk's authority to preserve order and decorum pending the election of a new Speaker.

Continuing Litigation Authorities. Subsection (h) authorizes the House, the Speaker, a committee or chair of a committee to carry forward litigation from the previous Congress as the successor in interest in any continuing litigation matter in which the House, the Speaker, the committee or chair of a committee, respectively, was previously authorized to be involved. This subsection automatically continues previously authorized litigation authority and fully empowers the successor in interest to take all steps necessary to carry such litigation forward during the new Congress, thereby eliminating the need for a separate resolution authorizing the continuation of such litigation as in the past.

Clarifying Staff Access to the House Floor. Subsection (i) conforms the standing rules to the current practice that staff accompanying Members on the floor are not required to remain at the desk.

Member Records. Subsection (j) adds language to the definition of “Records of the House” to clarify the ownership of congressional office records of a Member, Delegate, or Resident Commissioner, and to codify the longstanding custom and practice of the House under which such records have been recognized to be the personal property of the Member, Delegate, or Resident Commissioner, in keeping with the common law. Prior rules of the House drew a distinction between the records of House committees and officers, on the one hand, and congressional office records of Members, Delegates, or the Resident Commissioner, on the other. The latter do not belong to the House, because the Rule expressly defined House “records” to exclude them. See, e.g., Rule VII.6, Rules of the U.S. House of Representatives, 114th Cong. (2015); Rule XXXVI, Rules of the U.S. House of Representatives, 105th Cong. (1997). This subsection adds language confirming that congressional office records are the personal property of the Member, Delegate, or Resident Commissioner who creates, generates, or receives them, in accordance with longstanding House custom and prior pronouncements. See, e.g., H. Con. Res. 307, 110th Cong. (2008) (“[B]y custom [congressional papers of Members, Delegates, and Resident Commissioners] are considered the personal property of the Member who receives and creates them, and it is therefore the Member who is responsible to decide on their ultimate disposition”); H. Rep. No. 99-994, 99th Cong. (1986), at 5 (“[I]t is relatively clear that Members’ papers have been regarded as their personal property. . . .”).

Response to Subpoenas. Subsection (k) clarifies and streamlines procedures governing notification of, and response to, properly served judicial subpoenas and judicial orders directing appearance as a witness relating to the official functions of the House or compelling the production or disclosure of any document relating to the official functions of the House.

The subsection continues the practice of granting authority to respond to subpoenas without the necessity of a House vote, and streamlines the notification process to eliminate inefficiencies. The recipient of a properly served judicial subpoena or order compelling testimony or production of documents relating to the official functions of the House must promptly notify the Speaker in writing of

the receipt of that judicial order or subpoena and must determine whether the subpoena or order is a proper exercise of the jurisdiction of the court and is consistent with the rights and privileges of the House. In keeping with current practice, the notification to the Speaker must either set forth those determinations (if they have already been made at the time of the notification) or state that the recipient intends to make those determinations. The prior rule's additional reference to determining whether the subpoena or order "is material and relevant" has been omitted as redundant and superfluous, because it is subsumed within the requirement to determine whether the subpoena or order is consistent with the privileges and rights of the House; it would not be consistent with the privileges and rights of the House for a Member, Delegate, Resident Commissioner, officer, or employee to be compelled to respond to a judicial subpoena or order seeking information that is not material and relevant to the underlying cause. Accordingly, no substantive change is made by the deletion of the "is material and relevant" determination.

The subsection omits the obsolete requirements for the Clerk of the House to provide a copy of rule VIII to the court and for recipients of judicial subpoenas or orders to submit "certified" copies of documents when production of documents in response to a properly served judicial subpoena or order has been determined to be appropriate. References to administrative subpoenas relating to the official functions of the House have also been deleted, because the rule should not be interpreted to suggest that compliance with such subpoenas may be mandatory. The subsection deletes the truism that notifications received when the House is adjourned will be laid before the House upon its reconvening.

Requirements for Subcommittees. Subsection (l) codifies the exceptions carried in previous rules packages to clause 5(d) of rule X to allow the Committee on Appropriations up to thirteen subcommittees, the Committees on Armed Services, Foreign Affairs, and Oversight and Government Reform up to seven subcommittees, and the Committee on Transportation and Infrastructure up to six subcommittees.

Committee Hearings. Subsection (m) provides the Committee on Homeland Security with authority to close hearings for an additional 5 consecutive days when considering sensitive matters that require an executive session.

Referrals to the Court of Claims. Subsection (n) conforms the standing rules with the current practice that measures making a referral to the Court of Claims are referred to the private calendar.

Contents of Committee Reports Showing Changes to Existing Law. Subsection (o) modifies language adopted in the 114th Congress to address an unintended consequence that required a committee report or accompanying document to portray duplicative prints. This subsection continues to require that a Ramseyer print show the entire text of each section of statute that is proposed to be repealed and a comparative print of each amendment to the entire text of a section of statute the bill or joint resolution proposes to make. The subsection also

clarifies existing practice that appropriate typographical devices be used for both repealed text and comparative prints.

Authority to Postpone Record Votes on Certain Motions.

Subsection (p) adds motions to recommit and motions to concur to the list of postponable questions under clause 8 of rule XX.

Conforming Guidelines for Five-Minute Voting. Subsection (q) clarifies that the Speaker's ability to reduce the time for a vote pursuant to clause 9(b) or 9(c) of rule XX is subject to the same guidelines as the reduction of the time for a vote pursuant to clause 8(c)(2) of rule XX.

Electronic Availability. Subsection (r) modifies and codifies a standing order from the 112th, 113th, and 114th Congresses by designating the electronic document repository operated by the Clerk of the House for the purposes of electronic availability rules.

Comparative Prints for Bills or Joint Resolution Considered on Floor. Subsection (s) provides that by December 31, 2017, each bill, joint resolution, or amendment in the nature of a substitute shall have an easily searchable electronic comparative print that shows how the proposed legislation will change current law, showing by appropriate typographical devices the omissions and insertions proposed. The subsection also seeks to enhance transparency on changes made to a measure after it has been reported by a committee.

Appointments of Chair. Subsection (t) allows delegates and the Resident Commissioner to serve as chair of the Committee of the Whole.

Section 3. Separate Orders.

Holman Rule. Subsection (a) provides a new standing order for the first session of the 115th Congress based on the "Holman Rule," most of which was removed from the standing rules in 1983. This standing order functions as an exception to clause 2 of rule XXI to allow provisions changing law in certain limited circumstances. Under this order, a provision in a general appropriation bill or an amendment thereto may contain legislation to retrench expenditures by (1) reducing amounts of money in the bill, (2) reducing the number or salaries of Federal employees, or (3) reducing the compensation of any person paid by the Treasury. To qualify for treatment under this order, an amendment must be offered after the reading of the bill and must comply with all applicable rules of the House, such as the germaneness rule. The purpose of this provision is to see if the reinstatement of the Holman rule will provide Members with additional tools to reduce spending during consideration of the regular general appropriation bill.

Staff Deposition Authority. Subsection (b) carries forward and modifies provisions from the 114th Congress to provide the Permanent Select Committee on Intelligence and each standing committee of the 115th Congress (except for the Committees on Rules and House Administration) the authority to order the taking of a deposition by a member or committee counsel of such committee. The authority provided under this subsection extends for the entirety of the 115th Congress. Depositions taken under this authority are subject to regulations issued by the chair of the Committee on Rules and printed in the *Congressional Record*.

The subsection modifies the member attendance requirement, which applies unless (1) the witness waives the requirement or (2) the committee authorizes the taking of a specified deposition without the presence of a member during a specified period and the deposition occurs on a day that the House is not in session. The latter authority enables a committee to authorize the taking of one or more such depositions of one or more specified witnesses at any point over the course of a specified period of days, such as a district work period.

Independent Payment Advisory Board. Subsection (c) carries forward a provision from the 113th and 114th Congresses that turns off a provision contained in the Affordable Care Act, which limits 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.

Providing for Transparency with Respect to Memorials Submitted Pursuant to Article V of the Constitution of the United States. Subsection (d) carries forward and modifies provisions from the 114th Congress that clarify the procedures of the House regarding the 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, organized by State of origin and year of receipt, and indicate whether the memorial was designated as an application or recession.

In carrying out this subsection, 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 or recession of prior applications. 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 each memorial to the Clerk, the chair of the Committee on the Judiciary will include a transmission letter that indicates it has been designated under this subsection 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 Congresses prior to the 114th Congress to be made publicly available under the same procedure.

Spending Reduction Amendments in Appropriations Bills.

Subsection (e) modifies and carries forward the prohibition from the 112th, 113th, and 114th Congresses against consideration of a general appropriation bill that does not include a “spending reduction account.” The subsection updates the definition of a spending reduction account to state a recitation of the amount by which an applicable allocation of new budget authority under section 302(b) (Appropriations subcommittee allocations) of the Congressional Budget Act of 1974 exceeds the amount of new budget authority proposed by the bill, or if no such allocation is in effect, \$0.

Point of Order Against Motion to Rise and Report. Subsection (f) carries forward from the 113th and 114th Congresses 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) as estimated by the Committee on the Budget and continues a point of order.

Limitation on Advance Appropriations. Subsection (g) provides limits against a fiscal year 2017 general appropriation bill or measure continuing appropriations from making advanced appropriations in fiscal year 2018. The subsection provides a limited number of standard exceptions which provide advanced appropriations only for fiscal year 2018.

Point of Order Against Increasing Direct Spending. Subsection (h) establishes a point of order against consideration of a bill or joint resolution reported by a committee (other than the Committee on Appropriations) or an amendment thereto, or a conference report thereon, which has the net effect of increasing direct spending in excess of \$5 billion for any of the four consecutive ten fiscal year periods beginning with the first fiscal year that is 10 fiscal years after the current fiscal year. The subsection also provides exemptions for measures repealing or reforming the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010, and measures where the chair of the Committee on the Budget made an adjustment to the allocation levels or limits contained in the most recently adopted budget resolution.

Disclosure of Directed Rule Makings. Subsection (i) carries forward and modifies the requirement that committee reports on bills or joint resolutions include a list of directed rule makings required by the measure or a statement that the measure contains no directed rule makings. The subsection carries forward the definition of “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. The prior standing order only required an estimate of the number of direct rule makings.

Exercise Facilities for Former Members. Subsection (j) 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 (k) 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 for Proposed Repeals and Amendments. Subsection (l) continues to add, 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 (m) continues to instruct 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.

Congressional Member Organization Transparency Reform. Subsection (n) carries forward the provisions from the 114th Congress to allow participating Members to enter into agreements with eligible Congressional Member Organizations for the purpose of payment of salaries and expenses. The Committee on House Administration is required to promulgate regulations, consistent with current law, to carry out this subsection.

Social Security Solvency. Subsection (o) carries forward from the 114th Congress 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.

Subcommittees. Subsection (p) waives clause 5(d) of rule X to allow the Committee on Agriculture up to six subcommittees, which is consistent with authorities in the 114th Congress.

Treatment of Conveyances of Federal Land. Subsection (q) provides that any provision in a bill, joint resolution, amendment, or conference report requiring or authorizing a conveyance of federal land to a State, local government, or tribal entity, shall not be considered as providing new budget authority, decreasing revenues, increasing mandatory spending, or increasing outlays.

Section 4. Committees, Commissions, and House Offices.

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

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

Office of Congressional Ethics. Subsection (c) reauthorizes the Office of Congressional Ethics (OCE) and clarifies that term limits do not apply to members of the OCE. The subsection modifies the language to require consultation prior to the appointment of members rather than concurrence. The subsection renames the “Office of Congressional Ethics” the “Office of Congressional Complaint Review,” and places the Office under the oversight of the Committee on Ethics. This change will permit the Committee on Ethics to review the operations of the Office, much in the way a congressional committee conducts oversight through reviews of the operations of an executive branch agency. The subsection provides protections against disclosures to the public or other government entities, unless authorized by the Committee on Ethics, and requires that any matter that may involve a violation of criminal law must be referred to the Committee on Ethics. The subsection provides greater certainty as to the commencement and termination of any review, including timely notice to the subject and Committee on Ethics. The subsection bars the consideration of anonymous complaints and requires rules changes to better safeguard the exercise of due process rights of both subject and witness. The subsection limits the jurisdiction of the Office to the last three Congresses to conform to the statute of limitations for the Committee on Ethics.

Section 5. Additional Orders of Business.

Reading of the Constitution. Subsection (a) allows the Speaker to recognize Members for the reading of the Constitution on any legislative day through January 13, 2017.

Consideration of Midnight Rules Relief Act of 2017. Subsection (b) provides for the consideration of the Midnight Rules Relief Act of 2017 under a closed rule.