

**that exceeds the reporting committee's section 302 allocation (whenever such breach is discovered) and refer such bill to the Committee on Appropriations for a period not to exceed 15 legislative days.<sup>(2)</sup>**

On Sept. 7, 1977,<sup>(3)</sup> the Speaker sequentially referred a bill establishing a national park (H.R. 3813), reported from the Committee on the Interior, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILL SEQUENTIALLY REFERRED

*[Omitted from the Record of September 7, 1977]*

Under clause 5 of rule X, the bill to amend the act of October 2, 1968, an act to establish a Redwood National Park in the State of California, and for other purposes (H.R. 3813), as reported on August 5, 1977, was referred by the Speaker, as follows:

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93-344.

## § 12. Section 401(a)

Section 401(a)<sup>(1)</sup> prohibits the consideration of legislation that provides new authority to enter into contracts under which the Federal Government is obligated to make outlays, new authority to incur indebtedness, or new credit authority, unless that legislation provides that the new authority be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation acts. The point of order prevents such “back-door” spending that is not constrained by the appropriations process. Mere authorizations do not violate this section of the Congressional Budget Act.<sup>(2)</sup> This section applies to reported bills and joint resolutions (in the House), amendments, motions, or conference reports.<sup>(3)</sup>

Prior to the revisions by Gramm-Rudman-Hollings, the Congressional Budget Act did not contain a mechanism to subject credit authority to the

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2. For examples of other bills discharged from the Union Calendar for a sequential referral pursuant to section 401(b)(2), see, *e.g.*, 124 CONG. REC. 28543, 95th Cong. 2d Sess., Sept. 8, 1978; and 128 CONG. REC. 24317, 97th Cong. 2d Sess., Sept. 20, 1982.
  3. 123 CONG. REC. 28173, 95th Cong. 1st Sess.
  1. 2 USC § 651(a). The Budget Enforcement Act of 1997 collapsed the original section 402 point of order into section 401 and repealed the definition of “new spending authority.”
  2. See § 9.2, *supra*.
  3. See § 12.1, *infra*.

appropriations process. Gramm-Rudman-Hollings created this requirement (with a corresponding point of order against credit authority not subject to appropriations) in former section 402. The Budget Enforcement Act of 1997,<sup>(4)</sup> moved this requirement to section 401(a).

Title V of the Congressional Budget Act, added by the Budget Enforcement Act of 1990<sup>(5)</sup> and known as the Federal Credit Reform Act, provided a separate requirement for new credit authority (direct loan and loan guarantee programs) to be funded in advance by appropriation acts. This statutory requirement makes any credit authority effective only to the extent and in amounts provided in appropriation acts. Thus, unless the provision carrying such credit authority explicitly supersedes the requirements of section 504(b), it will be limited in this manner.<sup>(6)</sup>

Section 401(c)<sup>(7)</sup> provides certain exceptions to the normal operation of both section 401(a) and section 401(b).<sup>(8)</sup> The exception provides that sections 401(a) and 401(b) will not apply to new budget authority if outlays therefrom are derived from certain trust funds (including, specifically, a trust fund established by the Social Security Act).

A point of order raised on the basis of an alleged violation of section 401(a) must be made at the time a motion is made to resolve into the Committee of the Whole.<sup>(9)</sup>

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**§ 12.1 In response to a parliamentary inquiry, the Speaker noted that points of order under sections 302, 303, 311, 401, and 402 of the Congressional Budget Act<sup>(1)</sup> operate with respect to a bill or**

4. Pub. L. No. 105–33.

5. Pub. L. No. 101–508.

6. *Parliamentarian's Note*: The proceedings of Mar. 26, 1992 should be viewed in light of the separate requirement contained in section 504(b). 138 CONG. REC. 7228–31, 102d Cong. 1st Sess. On that occasion, the Chair ruled that an amendment providing new authority to incur primary loan guarantee commitments, but failing to explicitly condition the effectiveness of such commitments to amounts provided in appropriation acts, violated section 402(a) (now section 401(a)). The Chair did not include section 504(b) in the analysis on this particular point of order. Had he done so, the lack of language explicitly superseding section 504(b) would have been sufficient to render the amendment in order under section 402(a) (now section 401(a)). Ultimately, the question was moot as the amendment was out of order under a separate rationale for violating section 303(a) of the Congressional Budget Act.

7. The Budget Enforcement Act of 1997 eliminated the original section 401(c) (defining certain terms) and moved the exceptions contained in section 401(d) to section 401(c).

8. See § 13, *infra*.

9. 121 CONG. REC. 28270, 94th Cong. 1st Sess., Sept. 10, 1975.

1. 2 USC §§ 633, 634, 642, 651, 652. While this precedent remains accurate for points of order under title IV of the Budget Act, beginning in the 110th Congress, points of order

**joint resolution in its reported state and thus do not lie against consideration of an unreported measure.**

On Mar. 21, 1995,<sup>(2)</sup> the following occurred:

Mr. [Scott] McINNIS [of Colorado]. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

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PARLIAMENTARY INQUIRY

Mr. [James] McDERMOTT [of Washington]. I have a parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore (Mr. DOOLITTLE).<sup>(3)</sup> The gentleman will state it.

Mr. McDERMOTT. Mr. Speaker, does the rule we have just adopted make in order general debate on H.R. 4 or H.R. 1214?

The SPEAKER pro tempore. The rule makes in order debate on H.R. 4.

Mr. McDERMOTT. As I understand it, Mr. Speaker, the committees of jurisdiction reported out three other bills, none of which is before the House today. Am I correct that H.R. 4 has not been reported out by any committee of jurisdiction?

The SPEAKER pro tempore. The gentleman is correct.

Mr. McDERMOTT. Mr. Speaker, continuing that inquiry, is it true that the Budget Act points of order which are designed to assure that the budget rules we established for ourselves are adhered to apply only to measures that have been reported by the committee of jurisdiction?

The SPEAKER pro tempore. The Chair observes that sections 302, 303, 311, 401, and 402 of the Congressional Budget Act of 1974 all establish points of order against the consideration of bills or joint resolutions as reported. That is, in each case the point of order against consideration operates with respect to the bill or joint resolution in its reported state. Thus, in the case of an unreported bill or joint resolution, such a point of order against consideration is inoperative.

Mr. McDERMOTT. In other words, Mr. Speaker, if we had followed the regular order and reported either H.R. 4 or H.R. 1214 from the committees of jurisdiction, several points of order would have applied. To get around those rules, the majority has instead put before the House an unreported bill making it impossible for those of us who believe the House should be bound by the rules it sets for itself to exercise those rights.

Mr. McINNIS. Regular order.

The SPEAKER pro tempore. The House has just adopted House Resolution 117.

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under title III of the Congressional Budget Act now operate against unreported measures. See Rule XXI clause 8, *House Rules and Manual* § 1068c (2011).

2. 141 CONG. REC. 8491, 104th Cong. 1st Sess. See Deschler-Brown Precedents Ch. 31 § 10.23, *supra*.
3. John Doolittle (CA).

**Ch. 41 § 12** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

Mr. McDERMOTT. It is my understanding that we went around the rules because we did not follow the rules.

The SPEAKER pro tempore. The gentleman has not stated a parliamentary inquiry.

Mr. McINNIS. A point of order, Mr. Speaker, I thought it was a parliamentary inquiry, not a speech.

The SPEAKER pro tempore. The gentleman is correct.

***Provisions Constituting New Spending Authority***

**§ 12.2 Language in a bill authorizing receipts from loans made under prior foreign assistance legislation to be made available for designated purposes was held not to be “new spending authority” within the meaning of section 401 of the Congressional Budget Act<sup>(1)</sup> (requiring the budget authority for contracts and indebtedness to be provided in advance by appropriation acts), where it was shown from the term “authorized” and from the committee report that the amounts of repaid loans were subject to the appropriations process before the funds could be expended.**

On Sept. 10, 1975,<sup>(2)</sup> the following occurred:

PARLIAMENTARY INQUIRY

Mr. [Robert] BAUMAN [of Maryland]. Mr. Speaker, I have a parliamentary inquiry. The SPEAKER.<sup>(3)</sup> The gentleman will state it.

Mr. BAUMAN. If the gentleman from Maryland is disposed to make a point of order against the consideration of this bill because of any provisions it contains contrary to Public Law 93-344, the Budget Control Act, when would that point of order lie?

The SPEAKER. It will depend on when the motion is made to go into the Committee of Whole. It would lie at the time the motion is made.

Mr. BAUMAN. Mr. Speaker, then I would like to make a point of order.

The SPEAKER. As soon as the gentleman from Pennsylvania (Mr. MORGAN), makes his motion, the Chair will recognize the gentleman.

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INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1975

Mr. [Thomas] MORGAN [of Pennsylvania]. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 9005) to authorize assistance for disaster relief and rehabilitation,

1. 2 USC § 651. The Budget Enforcement Act of 1997 collapsed the original section 402 point of order into section 401 and repealed the definition of “new spending authority.” Although the types of spending authority covered by this section of the Congressional Budget Act have changed, the principle that a mere authorization remains subject to further appropriation of funds remains applicable.
2. 121 CONG. REC. 28270, 28271, 94th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 31 § 4.2, *supra*.
3. Carl Albert (OK).

to provide for overseas distribution and production of agricultural commodities, to amend the Foreign Assistance Act of 1961, and for other purposes.

## POINT OF ORDER

Mr. BAUMAN. Mr. Speaker, I make a point of order against the present consideration of the bill H.R. 9005 on the grounds that on page 15 of this bill, in section 302(e),<sup>(4)</sup> lines 6 to 17, there is contained a provision which in essence changes the law governing repayments on previous foreign assistance loans making these sums available for certain purposes without reappropriation by Congress. At the present time the proceeds from repayments of these loans are returned to the Treasury for later reappropriation by the Congress.

Apparently this provision allows at least \$200 million in loan reflows, as the report refers to them, to be repaid without either authorization or further appropriation by the Congress each year.

It would be my contention that this provision violates Public Law 93-344, section 401(a), the Congressional Budget Act of 1974, which in effect prohibits the consideration by the House of any bill or resolution which provides any new spending authority. In effect this is backdoor spending without authorization and appropriation each year by the Congress.

The SPEAKER. Does the gentleman from Pennsylvania desire to be heard on the point of order?

Mr. MORGAN. I do, Mr. Speaker.

Mr. Speaker, I rise in opposition to the point of order.

Mr. Speaker, the proposed section 103 of the Foreign Assistance Act of 1961 contained in section 301(a) of House Resolution 905 as reported, which authorizes the repayment on prior year foreign aid loans to be made available for specific purposes, does not in effect appropriate funds and, therefore, is not subject to a point of order under clause 5 of rule XXI. The funds referred to in section 103 will not be available for reuse unless they are appropriated.

The committee does not intend that these funds be exempt from the appropriation process, as can be seen from the following language. The clear language of the bill, Mr. Speaker, proposed in section 103 specifically provides that amounts repaid are authorized to be available for use and authorized for appropriation. It does not provide that they be available for use as an appropriation.

The SPEAKER. The Chair would like to address a question to the gentleman from Maryland.

Is the gentleman raising a point of order under the Budget Act for the purpose of preventing the consideration of the legislation, or is he attempting to make a point of order that this is an appropriation on a legislative bill?

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4. The provision at issue is as follows: "Dollar receipts from loans made pursuant to this part and from loans made under predecessor foreign assistance legislation are authorized to be made available for each of the fiscal years 1976 and 1977 for use, in addition to funds otherwise available for such purposes, for the purposes of supporting the activities of the proposed International Fund for Agricultural Development (a total of \$200,000,000 of such receipts may be used only for such purpose), undertaking agricultural research in accordance with section 103A, and making loans for other activities under this section. Such amounts shall remain available until expended."

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Mr. BAUMAN. Mr. Speaker, I am making the point of order for the express purpose of preventing the consideration of the bill, inasmuch as the public law to which I have referred says that it shall not be in order for either House to consider a bill which contains such a provision.

I would, therefore, in response to the statement of the chairman of the committee, refer to the committee report on page 46 which says:

The third subsection added to section 103 authorizes repayments on prior year aid loans to be made available for specified purposes.

This would remove it from the appropriation process.

The SPEAKER. The Chair is ready to rule. The gentleman from Maryland is making the point of order that the portion of the bill under section 302(e) constitutes new spending authority and violates section 401(a) of the Budget Act, Public Law 93-344.

The Chair has reviewed the language shown in the bill and in the report which shows that it is subject to the appropriation process because the whole intent and thrust is predicated on the words "are authorized to be made available." In other words, the reflow funds are to be appropriated by the Committee on Appropriations and by subsequent legislative actions and not as a result of the passage of this bill.

The Chair, therefore, overrules the point of order.

Mr. BAUMAN. Mr. Speaker, if I may be heard further, my contention was that this particular provision in and of itself authorizes the continuing appropriation each year, as the report indicates that it does, and that section 401(a) of Public Law 93-344 prevents consideration of any bill which permits that.

The SPEAKER. If that is true, this is still not in violation of 401. This is still an "authorization" subject to action each year of the Committee on Appropriations.

The Chair overrules the point of order.

**§ 12.3 While the former definition of new spending authority in section 401(c)(2) of the Congressional Budget Act,<sup>(1)</sup> providing that certain spending made subject to budget authority in advance in appropriation acts, did not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government, the authority to make payments in connection with defaults which have already occurred was conceded to constitute a primary liability of the United States to incur indebtedness and to require budget authority in advance in appropriation acts.**

On Sept. 27, 1976,<sup>(2)</sup> the following occurred:

CONFERENCE REPORT ON H.R. 5546, HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT OF 1976

Mr. [Harley] STAGGERS [of West Virginia]. Mr. Speaker, I call up the conference report on the bill (H.R. 5546), to amend the Public Health Service Act to revise and extend

1. The Budget Enforcement Act of 1997 repealed this definition of new spending authority.
2. 122 CONG. REC. 32655, 94th Cong. 2d Sess. See Deschler-Brown Precedents Ch. 31 § 1.27, *supra*.

the programs of assistance under title VII for training in the health and allied health professions, to revise the National Health Service Corps program, and the National Health Service Corps scholarship training program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

## POINT OF ORDER

Mr. [Brock] ADAMS [of Washington]. Mr. Speaker, I make a point of order on the conference report.

The SPEAKER pro tempore.<sup>(3)</sup> The gentleman from Washington will state his point of order.

Mr. ADAMS. Mr. Speaker, the conference agreement on H.R. 5546, the Health Professions Assistance Act of 1976, contains a provision which appears to provide borrowing authority which is not subject to advance appropriations. Consequently, it would be subject to a point of order under section 401(a) of the Congressional Budget Act.

Section 401(a) provides:

It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts.

Section 401(c)(2)(B) of the Budget Act defines spending authority as authority “to incur indebtedness—other than indebtedness incurred under the second Liberty Bond Act—for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation acts.” This form of spending authority is commonly known as borrowing authority.

The conference report accompanying H.R. 5546 contains a provision creating a student loan insurance fund under section 734 of the Public Health Service Act.

Clearly, the requirement that the Secretary of the Treasury purchase these obligations constitutes borrowing authority.

And since the provision contains no requirement that the authority be limited to amounts provided in advance in appropriation acts, it appears to give rise to a section 401(A) point of order.

The fact that the provision relates to default payments which might arise pursuant to a loan guarantee program does not bring the provision within the “loan guarantee” exception to section 401 of the Budget Act. Although the loan guarantee itself may not be subject to advance appropriation, the default payment made pursuant to the provision in question does not constitute a loan guarantee and it is fully subject to the requirements of section 401.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I yield to the gentleman from West Virginia, the chairman of the committee.

Mr. STAGGERS. Mr. Speaker, I concede the point of order.

Mr. Speaker, I have a motion.

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3. John McFall (CA).

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The SPEAKER pro tempore. The gentleman from West Virginia (Mr. STAGGERS) concedes the point of order.

Therefore, the point of order is sustained.

### § 13. Section 401(b)

Section 401(b) of the Congressional Budget Act<sup>(1)</sup> precludes the consideration of “new entitlement authority”<sup>(2)</sup> that becomes effective during the current fiscal year (*i.e.*, before the start of the next fiscal year). This “timing” point of order is applicable to bills or joint resolutions (in the House, as reported), amendments, motions,<sup>(3)</sup> or conference reports.<sup>(4)</sup>

Prior to the Budget Enforcement Act of 1997, section 401(b) used a different terminology when referring to the fiscal year covered by its prohibition. The previous formulation of section 401(b) prohibited the consideration of measures containing new entitlement authority that became effective “before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.”<sup>(5)</sup> The Budget Enforcement Act of 1997 clarified the definition by referring simply to the “current” fiscal year in which such measure is considered.

As noted earlier,<sup>(6)</sup> section 401(c) provides an exception to section 401(b) points of order for new budget authority the outlays of which are derived from certain trust funds, including the Social Security Trust Fund.

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#### § 13.1 An amendment providing a rule of eligibility for certain Federal employee retirement benefits was held to constitute new entitlement authority under section 401(b) of the Congressional Budget Act,<sup>(1)</sup> which could become effective during the current fiscal year.

1. 2 USC § 651(b).
  2. In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.*, 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(3)).
  3. For example, motions to concur in Senate amendments containing new entitlement authority. See § 13.2, *infra*.
  4. See § 13.3, *infra*.
  5. See *Parliamentarian’s Note* at § 13.3, *infra*.
  6. See § 12, *supra*.
1. 2 USC § 651(b). In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.*,