[COMMITTEE PRINT]

112TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES

OVERSIGHT PLAN OF THE COMMITTEE ON RULES FOR THE ONE HUNDRED TWELFTH CONGRESS

FEBRUARY 14, 2011. Approved by the Committee on Rules.

Mr. DREIER, from the Committee on Rules, submitted to the Committee on Oversight and Government Reform and the Committee on House Administration the following

REPORT

together with

MINORITY VIEWS

Clause 2(d)(1) of rule X of the Rules of the House of Representatives requires each standing Committee, not later than February 15 of the first session, to adopt an oversight plan for the 112th Congress. The oversight plan must be submitted simultaneously to the Committee on Oversight and Government Reform and the Committee on House Administration.

The following agenda constitutes the oversight plan of the Committee on Rules for the 112th Congress. It includes areas in which the Committee and its subcommittees expect to conduct oversight during this Congress, but does not preclude oversight or investigation of additional matters or programs as they arise. The Committee will consult, as appropriate, with other committees of the House that may share jurisdiction on any of the subjects listed below.

BACKGROUND

The Committee on Rules has existed as part of the House committee structure since the First Congress, when it was established in 1789 as a select committee. The essential portion of the present jurisdiction of the Committee is set forth in clause 1(o) of rule X, which grants the Committee jurisdiction over:

(1) Rules and joint rules (other than those relating to the Code of Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

In addition, clause 3(j) of rule X assigns to the Committee special oversight responsibility over the congressional budget process.

The Committee on Rules has always been at the forefront of efforts to reform the processes and procedures of the House to improve the effectiveness of the institution.

The Committee also continues to play a lead role in providing recommendations for substantive changes to the rules of the House, which are adopted on the opening day of each Congress. Such changes have included streamlining the committee system to be more effective in conducting oversight and other business, ensuring the continuity of Congress in the face of man-made and natural disasters, increasing the transparency of committee and House actions, and modernizing the operations of the House.

Some of the substantive changes to House rules adopted on the opening day of the 112th Congress include:

- Requiring Members to cite the Constitutional authority for proposed legislation prior to its introduction in the House;
- Ensuring the public availability of proposed legislation prior to consideration in committee and the House by recognizing electronic availability for the very first time;
- Increasing the transparency of committee actions, including the public availability of audio and video coverage of hearings and meetings, documents, and the results of record votes;
- Requiring committees to report more frequently to the House regarding the oversight and legislative activities of the committees;
- Adjusting budget enforcement rules to favor spending cuts over tax increases;
- Creating "spending reduction" accounts in appropriations bills to ensure that spending cuts can reduce the costs of appropriations bills rather than be used as offsets for additional spending.
- Repealing the "Gephardt rule" to provide for a separate vote in the House on public debt-limit legislation.
- Providing the Speaker greater latitude in deciding which mobile electronic devices may be used by Members on the floor.

In addition to the items discussed below, the Committee will continuously monitor the implementation and effectiveness of the rules changes adopted at the beginning of this Congress.

MAJOR AREAS FOR OVERSIGHT

Budget Process Reform. The annual budget process continues to present challenges to authorizing committees, appropriations committees, and the House as a whole. In each of the last sixteen fiscal years, Congress has failed to enact some or all of the annual appropriations bills prior to the start of the new fiscal year. In the second session of the 111th Congress, the House and Senate not only failed to adopt a concurrent resolution on the budget, but for the first time the Budget Committee failed to even report a resolution. Congress also failed to enact even a single regular appropriations bill for fiscal year 2011.

To improve the efficiency and effectiveness of the legislative budget process, the Committee will examine alternative budget processes, including the use of biennial budgeting. A two year budget cycle could provide committees and Members much needed flexibility and time for increased scrutiny of government programs and funding requests.

The nation, and by extension the taxpayers, are facing record deficits and record levels of public debt. Congress must ensure that its processes are best structured to allow for comprehensive oversight and informed decision-making.

The Committee will also continue to pursue the establishment of a joint select committee on budget process reform. The Committee recognizes that ultimately a bicameral solution is necessary in order to successfully implement reforms to the congressional budget process.

Dynamic Scoring. The American public and many in Congress continue to highlight the pressing need to reduce Federal government spending. This increased focus on government spending has also led to greater interest in the cost and revenue estimates of proposed legislation. In many cases, these estimates are also used to trigger budget enforcement mechanisms.

The Committee is committed to ensuring that the most accurate and comprehensive analysis is available to Members and the public. In the 112th Congress, the Committee will examine current estimating models, including the feasibility of further incorporating macroeconomic impacts of legislation in Congressional estimates in order to determine whether rules changes are necessary to improve the quality and accuracy of budget estimates.

Effective and Efficient Committee Jurisdiction. The Committee on Rules has always played an integral role in modernizing the rules of the House, including its rules on jurisdiction. In the 104th Congress, the House streamlined what was considered to be a bloated and ineffective committee system, abolishing three full committees (Committees on Post Office and Civil Service, the District of Columbia, and Merchant Marine and Fisheries). In the 107th Congress, the trend toward jurisdictional consolidation and efficiency continued with the establishment of a new Committee on Financial Services. In the 108th Congress, the House responded to the changing security environment and the creation of the Department of Homeland Security by creating the Select Committee on Homeland Security, which became a standing committee of the House in the 109th Congress.

During the 112th Congress, the Committee on Rules will continue to review proposals to streamline the committee system and increase effective oversight of the Executive branch and the Federal budget.

Civility and the Congress. In light of the recent tragedy in Tucson, there has been additional focus on the need for increased civility in debate and national dialogue more generally. The Committee is committed to ensuring that the House rules are utilized to make certain that Members adhere to the rules of decorum.

In the 112th Congress, the Committee will examine the House rules relating to debate and decorum to ensure that civility and freedom of speech are equally respected.

Impact of New Information Technologies on the House. In recent years, the House has adapted and upgraded its technological capabilities to improve efficiency, accessibility, and transparency. Members are communicating more effectively with their constituents through the use of websites, blogs, and tele-townhalls, and many Members communicate with their constituents in real-time through social media applications.

Technology is also affecting the way Congress considers legislation. For example, more data and analysis is readily available to Members in the execution of their duties. Bills and committee reports are available and often searchable electronically, and the public can follow Congressional proceedings in real-time through "cybercasts."

Providing real-time information allows the broader public access to the day-to-day proceedings of the House. Technology is helping bridge the gaps of time and distance to bring representative government closer to the people and Members closer to their

constituents. Technology is helping to create a more orderly process and to reduce costs and bureaucracy.

The 112th House rules package took the landmark step of recognizing electronic availability as an alternative to physical printing by the Government Printing Office. Like any major change, this one will require oversight and adjustment as the House gains experience with the new rule and its implementation.

Some of the issues raised during the transition from the 111th to 112th Congress were not yet mature enough to be addressed in this Congress' rules package. One such issue is the availability of "comparative prints" showing both changes to bills at various stages of the legislative process as well as showing changes to current law proposed by legislation before the House. A number of current Members of the House were previously State legislators where the practice of showing proposed changes as part of the text of bills was commonplace.

While clause 3(e) of rule XIII (commonly referred to as the "Ramsayer" rule) requires a comparative print in committee reports, there is wide acknowledgement that this is insufficient to meet the current needs of Members and the public. The Committee will examine the need for changes in rules and procedures to make comparative prints more widely available at various stages of the legislative process.

Health Care Reform Legislation. In March 2010, President Obama signed health care reform legislation into law (P.L. 111-148 & P.L. 111-152). The law created an Independent Medicare Advisory Board and contains rules and procedures for congressional consideration of the Board's proposals. The law also contains expedited procedures for consideration of a joint resolution for the dissolution of the Board.

In the 112th Congress, the Committee will review these expedited procedures to determine their compatibility with the rights of Members and the institution.

Unfunded Mandates Reform Act. As the House focuses its attention on creating jobs and sustaining economic growth, it is critical that Federal government not impose burdensome mandates on our nation's job creators nor on our state and local governments.

In the 104th Congress, the 1996 Unfunded Mandates Reform Act (UMRA) was enacted. Among a number of provisions designed to reduce or eliminate unfunded mandates, the law requires the Congressional Budget Office (CBO) to estimate the cost of unfunded public and private sector mandates. CBO cost estimates are required to be included in committee reports accompanying legislation brought to the House floor for consideration.

In 2010, this framework required CBO to estimate the direct mandate costs of intergovernmental mandates exceeding $70 million and of private sector mandates exceeding $141 million proposed in any measure reported from committee. It also establishes a point of order against consideration of legislation that contains intergovernmental mandates with mandate costs estimated to exceed the threshold amount. In addition, Title II requires Federal administrative agencies to assess the effects on state and local governments and the private sector of proposed and final Federal rules and to prepare a written statement of estimated costs and benefits for any mandate requiring an expenditure exceeding $100 million in any given year.

In the 112th Congress, the Committee will continue to examine the application of the procedures and enforcement mechanisms associated with UMRA, as well as proposals for expanding the application of the law to capture indirect costs.

The Congressional Review Act of 1996. Job creation and economic growth is the number one priority for the House in the 112th Congress. Part of this agenda includes a systematic review of existing Executive branch regulations that could hinder economic growth and job creation. While the House undertakes a review of existing regulations and their potential impacts on job creation and the economy, it is essential that Congress also be prepared to respond to future regulatory proposals.

The Congressional Review Act (CRA) provides Congress with an opportunity to review—and stop—regulations before their final implementation. Under the expedited procedures established by P.L. 104-121, if a majority of the House and Senate vote to approve a joint resolution of disapproval and the president signs it into law within 60 legislative days of the regulation's publication in The Federal Register, the proposed regulation cannot go into effect.

In the 112th Congress, the Rules Committee may examine the CRA, and its procedures, in order to determine if the CRA can be better utilized to ensure burdensome regulations do not impede job creation and economic growth.

COMMITTEE CONSIDERATION

The Committee on Rules met in open session on February 14, 2011 and ordered the measure reported by a voice vote, a quorum being present.

Minority Views

On the opening day of the 112th Congress, the new Republican Majority offered a set of reform proposals designed to bring greater openness, transparency, and fiscal responsibility to the House. The new Majority also indicated that creating jobs would be their number-one priority. While we had serious concerns with several portions of the opening day rules package, we were encouraged by many of the goals and promises laid out that day. Democrats stood ready to work with the new Majority, particularly in terms of creating jobs and reducing the deficit. Unfortunately, rather than living up to their promises and building on the reforms put in place by the previous Democratic Majority, the Rules Committee's actions to this point have been directly counter to the opening day rhetoric of the new Majority.

Over the past six weeks, Democrats have made several attempts to work with the Majority to put the promises of openness, transparency, fiscal responsibility, and job creation into effect. In the Rules Committee, we offered amendments to Committee rules in order to promote and protect transparency and to ensure greater fiscal responsibility. With the same goals in mind, we have offered amendments to Special Rules for individual pieces of legislation. In each case, the Republican majority has rejected Minority proposals to put their own promises into practice. Instead, they have responded with completely closed rules, making decisions behind closed doors, and displaying breathtaking fiscal irresponsibility that will add trillions of dollars to the deficit.

On top of that, not a single measure has been brought up by the Republican Majority to create a single job. Even worse, the new Majority has actually blocked Democratic attempts to focus on jobs.

As we submit our Oversight Plan for the 112th Congress, it is important to note our serious concerns with the process that has been used so far. It is our sincere hope that in doing so, the Majority will be encouraged to take the Rules Committee in a different direction.

Openness

In stark contrast to the promises made over the past several months, the tone of the 112th Congress was set when the Rules Committee reported its first rule of the year. H. Res. 26 was the antithesis of an open and fair process. This first rule of the new Republican controlled committee:

- provided for three measures to be considered without any of them going through the regular committee process;

- blocked all but one Democratic amendment;
- "deemed" passage of an amendment by the Republican Leader;
- provided for only four minutes for consideration of a Constitutional resolution (the text of which was not even available); and
- waived every rule, new and old, in place to protect a transparent and an open process.

The 112th Congress has yet to consider a single measure under an open rule – while five measures have been considered under completely closed rules, allowing no amendments. In contrast to the thirty amendments that were blocked by the Rules Committee, only two have been debated on the House floor.

Equally as troubling as a closed amendment process on the House floor is the lack of regular order for legislation in committees. Not a single bill considered by the Rules Committee has gone through the regular order, which calls for public hearings, expert testimony, committee markups and sufficient time for scrutiny by the American people. Instead of the regular order, the new majority has simply written proposals behind closed doors and taken them directly to the House floor, shutting out nearly every Member of the House.

The Majority has even attempted to portray their actions as open. At one point, a Member of the Majority went so far as to call a completely closed rule an "open process" since Members would have plenty of debate time for their ideas on the House floor. Apparently, the new Majority believes that being allowed to talk about an amendment is just as good as being allowed to offer it. When given the opportunity, all Republican Members of the Committee opposed allowing Members to actually offer their ideas as amendments.

Transparency

The Republican Oversight Plan trumpets the new level of transparency they have brought to the House, requiring waiting periods and availability requirements for legislative measures. Unfortunately, all of these new requirements share one thing in common: they don't apply to the Rules Committee, the place where they would actually make the most difference.

When the Rules Committee considered its standing rules for the 112th Congress, Democrats offered a simple proposal – make the Rules Committee live by the same standards as all other Committees in the House. Under our amendment, any bill, substitute amendment, or self-executing amendment before the Committee would have to be available for at least 24

hours. Closing this enormous loophole would have given Members a full day to review legislation before it is considered. The Democratic amendment was defeated on a party-line vote, with all Rules Committee Republicans opposing the very transparency standards required of all other Committees of the House. At that point we offered to change our amendment to allow just 12 hours for Members to read the bill – this too was unacceptable to the Majority.

Fiscal Responsibility

The new Republican majority continues to present itself as the party of fiscal discipline – notwithstanding their history of turning record surpluses into record deficits the last time they controlled the House, Senate, and White House. Yet the first thing Republicans did after taking control of the House was to amend the rules to protect tax breaks for special interests and the wealthy.

The Republicans repealed the Democratic principle of 'pay-as-you-go' and replaced it with so-called "cutgo," which relies on the fantasy that tax loopholes and giveaways do not increase the deficit.

In addition to new rules that dramatically favor special tax breaks for special interests, the Republicans also took specific steps to shield certain types of deficit spending from any scrutiny. For example, the Republican rules package instructed the House to entirely ignore the cost of the repeal of the health care law – literally to pretend the repeal cost nothing. In one stroke, more than a trillion-dollar increase in the deficit over the next 20 years was simply assumed away. When Republicans try to permanently extend the Bush-era tax breaks for the wealthy in 2012, the new Republican rules will assume away those costs as well.

But none of the budget process changes are as mystifying as the Republicans' approach to measuring the the cost of their proposals. The Congressional Budget Office (CBO) is staffed by non-partisan professionals whose objective, non-political cost estimates of legislation have long been considered the gold standard. And yet Republicans have treated the analysis of CBO as if it were optional, to be used when it supports their views and ignored when it does not.

According to the Republicans' Oversight Plan, "the Committee is committed to ensuring that the most accurate and comprehensive analysis is available to Members and the public."

Yet when they brought up the bill to repeal the health care law, they scheduled the meeting without a CBO estimate. When a preliminary CBO estimate finally arrived – the

very day the Rules Committee was meeting – it showed that the bill would increase the deficit by *$230 billion* over ten years and *more than a trillion* over twenty years.

On the previous day, during our Organizational Meeting, Democrats offered an amendment to require a CBO analysis before Rules Committee consideration of any measure. Our amendment would have simply required that any bill reported by the Rules Committee be accompanied by a cost estimate from objective professionals at the Congressional Budget Office.

The Republican leadership of the committee conceded that a cost estimate might be valuable in some instances, but they concluded that the absence of an estimate should not be allowed to stand in the way of rushing legislation straight to the floor when necessary. Our proposal to require a cost estimate *before* the vote was rejected on another party-line vote.

Creating Jobs

We were pleased when the Republican majority indicated that they would place a high priority on the creation of jobs. In fact the Republican Leader said that "job number one is to focus on more jobs for more Americans."

With this in mind, we find it astonishing that the Rules Committee *has yet to consider a single piece of legislation that will create a single job*. Once again, Rules Committee Republicans went a step further than simple inaction. By a party-line vote, the Majority blocked a proposal to instruct committees to make job creation their highest priority and to report – under an open process – legislation that would actually help to create jobs.

Conclusion

It is ironic that the committee charged with the oversight of the rules of the House and the budget process is itself the very committee responsible for the lack of openness, the lack of transparency, and the fiscal recklessness that has marked the first six weeks of the 112th Congress. We sincerely hope the Republican majority will change their approach and give us the open, transparent, fiscally responsible Rules Committee and House they promised.

We remain ready to work with the Republican majority on the deficit, on job creation, and all other critical issues facing our nation. It is our sincere hope that the Majority will reverse these troubling steps in the wrong direction as the 112th Congress progresses.

Louise M. Slaughter

James P. McGovern

Alcee L. Hastings

Jared Polis