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ONE HUNDRED ELEVENTH CONGRESS

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**Committee on Rules**  
**U.S. House of Representatives**  
**H-312 The Capitol**  
**Washington, DC 20515-6269**

**LETTER OF TRANSMITTAL**

February 4, 2009

Hon. Edolphus Towns  
Chair, Committee on Oversight and Government Reform  
House of Representatives,  
Washington, DC.

Hon. Robert A. Brady  
Chair, Committee on House Administration,  
House of Representatives,  
Washington, DC.

Dear Chair Towns and Chair Brady:

On behalf of the Committee on Rules, I hereby transmit the Committee's plan for Oversight activities for the 111th Congress. Pursuant to clause 2(d)(1) of House rule X, the Committee on Rules met in public session on February 3, 2009. A quorum being present, the Committee adopted by a non-record vote the following oversight plan for the 111th Congress for submission to the Committee on House Administration and the Committee on Oversight and Government Reform in accordance with the rule.

The Committee looks forward to working with all Members of the House of Representatives in order to fulfill our responsibilities under the Rules.

Sincerely,

*Louise M. Slaughter*  
Louise M. Slaughter, Chair

111th Congress 1st Session

HOUSE OF REPRESENTATIVES

COMMITTEE ON RULES  
HOUSE OF REPRESENTATIVES

R E P O R T

of

OVERSIGHT PLANS

ONE HUNDRED ELEVENTH CONGRESS

Pursuant to Clause 2(d)(1) of Rule X

WITH MINORITY VIEWS

Approved February 3, 2009

COMMITTEE ON RULES

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JAMES P. McGOVERN, Massachusetts, *Vice Chair*

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VIRGINIA FOXX, North Carolina

MUFTIAH MCCARTIN, *Staff Director*

HUGH NATHANIAL HALPERN, *Minority Staff Director*

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111th Congress  
1st Session

## HOUSE OF REPRESENTATIVES

### REPORT OF OVERSIGHT PLANS OF THE HOUSE COMMITTEE ON RULES

Approved February 3, 2009

Ms. Slaughter of New York, from the Committee on Rules, submitted to the Committee on Oversight and Government Reform and the Committee on House Administration the following:

#### R E P O R T

#### OVERSIGHT PLANS OF THE HOUSE COMMITTEE ON RULES

Clause 2(d)(1) of Rule X of the Rules of the House requires each standing committee of the House to adopt oversight plans at the beginning of each Congress. Specifically, the Rule states in part:

"Rule X, clause (2)(d)(1). Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Government Reform and to the Committee on House Administration."

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#### JURISDICTION OF THE COMMITTEE ON RULES

Rule X of the Rules of the House vests in the Committee on Rules broad responsibility over the House rules in general and the congressional budget process. Specifically the Rule defines the Committee's jurisdiction, as follows:

#### Clause 1(n), Rule X- Committee on Rules.

- (1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.
- (2) Recesses and final adjournments of Congress.

\* \* \* \* \*

Clause 2, Rule X - General Oversight Responsibilities

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in:

(1) its analysis, appraisal, and evaluation of (A) the application, administration, execution, and effectiveness of Federal laws; and (B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of such changes in Federal laws, and of such additional legislation, as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis--

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

\* \* \* \* \*

Clause 3, Rule X - Special Oversight Functions

3. (j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

\* \* \* \* \*

## OVERSIGHT PLAN

The Committee on Rules, first established in 1789 on the second day of the first Congress, has been an integral component of the House of Representatives' committee system. It began as a select committee in the First Congress and was elevated to permanent committee status in 1880. Although the primary role of the Committee is to determine the parameters of debate and the amendment process for legislation headed to the House Floor, it does have a number important oversight responsibilities.

The fundamental portion of the present jurisdiction of the Committee is contained in clause 1(n) of rule X, which gives the Committee jurisdiction over the following:

- (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.

The Committee will continue to monitor compliance with House rules in all these areas as part of its oversight duties. Its oversight will include strict observance of the actual rules as well as the intent and spirit of the rules.

The House rules also grant special oversight responsibility to the Rules Committee in clause 3(j) of rule X over the congressional budget process. The Committee looks forward to working with the Budget Committee on any oversight activities that may be undertaken with regard to the Congressional budget process.

In addition to the jurisdictional areas contained in the Rules of the House of Representatives, the Rules Committee has always played a major role in the changes to the House rules in the beginning of each new Congress pursuant to House Resolution 5. In the beginning of the 111<sup>th</sup> Congress the following reforms to the House Rules were made in the opening day rules package contained in House Resolution 5 (all changes that are within the jurisdiction and oversight responsibilities of the Rules Committee):

### **Section-by-Section of Rule Changes – 111th Congress**

#### **SEC. 2. CHANGES TO THE STANDING RULES.**

##### **(a) INSPECTOR GENERAL AUDITS.—**

In response to the recommendation of the chairman and ranking minority member of the Committee on House Administration, this provision amends clause 6(c)(1) of rule II to clarify the non-traditional audit work that the Inspector General does in the areas of business process improvements, services to enhance the efficiency of House support operations, and risk management assessments. The change also will allow the Inspector

General to implement guidance and standards published in the Government Accountability Office's Government Auditing Standards.

**(b) HOMELAND SECURITY.—**

This provision amends clause 3(g) of rule X to direct the Committee on Homeland Security to review and study on a primary and continuing basis all Government activities, programs, and organizations relating to homeland security within its primary legislative jurisdiction.

Nothing in this rule shall affect the oversight or legislative authority of other committees under the Rules of the House.

The change in clause 3 of rule X clarifies the Committee on Homeland Security's oversight jurisdiction over government activities relating to homeland security within its primary legislative jurisdiction, including the interaction of all departments and agencies with the Department of Homeland Security. Consistent with the designation of the Committee on Homeland Security as the committee of oversight in these vital areas, the House expects that the President and the relevant executive agencies will forward copies of all reports in this area, in addition to those already covered by clause 2(b) of rule XIV, to the Committee on Homeland Security to assist it in carrying out this important responsibility.

This change is meant to clarify that the various agencies have a reporting relationship with the Homeland Security Committee on matters within its jurisdiction in addition to the agencies' reporting relationships with other committees of jurisdiction.

**(c) ADDITIONAL FUNCTIONS OF THE COMMITTEE ON HOUSE ADMINISTRATION.—**

This provision amends clause 4(d) of rule X to give the Committee on House Administration oversight of the management of services provided to the House by the Architect of the Capitol, except those services that lie within the jurisdiction of the Committee on Transportation and Infrastructure under clause 1(r).

**(d) TERMS OF COMMITTEE CHAIRMEN.—**

This provision strikes clause 5(c)(2) of rule X to eliminate term limits for committee and subcommittee chairs and includes a conforming amendment to clause 5(a)(2)(C) of rule X to provide an exception to the Budget Committee tenure limitations for a chair or ranking minority member serving a second consecutive term in the respective position.

**(e) CALENDAR WEDNESDAY.—**

This provision amends clause 6 of rule XV to require the Clerk to read only those committees where the committee chair has given notice to the House on Tuesday that he or she will seek recognition to call up a bill under the Calendar Wednesday rule. This will replace the requirement that the Clerk read the list of all committees, regardless of whether a committee intends to utilize the rule. The provision makes conforming changes to clause 6 of rule XV and clause 6 of rule XIII, including the deletion of the requirement of a two-thirds vote to dispense with the proceedings under Calendar Wednesday.

**(f) POSTPONEMENT AUTHORITY.—**

This provision adds a new paragraph (c) to clause 1 of rule XIX to give permanent authority to the Chair to postpone further consideration of legislation prior to final passage when the previous question is operating to adoption or passage of a measure pursuant to a special order of business. This codifies a practice that has become routine during the 110th Congress.

**(g) INSTRUCTIONS IN THE MOTION TO RECOMMIT.—**

This provision amends clause 2(b) of rule XIX to provide that a motion to recommit a bill or joint resolution may include instructions only in the form of a direction to report a textual amendment or amendments back to the House forthwith. The provision makes no change to the straight motion to recommit.

**(h) CONDUCT OF VOTES.—**

In response to the bipartisan recommendation of the Select Committee to Investigate the Voting Irregularities of August 2, 2007, this provision deletes the following sentence in clause 2(a) of rule XX: "A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote."

**(i) GENERAL APPROPRIATION CONFERENCE REPORTS.—**

This provision codifies House Resolution 491, 110th Congress, which was adopted by unanimous consent. The provision provides a point of order against any general appropriations conference report containing earmarks that are included in conference reports but not committed to conference by either House and not in a House or Senate committee report on the legislation. A point of order under the provision would be disposed of by the question of consideration, which would be debatable for 20 minutes equally divided.

**(j) PAYGO.—**

This provision amends clause 10 of rule XXI to make the following changes:

- (1) A technical amendment to align the PAYGO rules of the House with those of the Senate so that both houses use the same CBO baselines;
- (2) The changes would also allow one House-passed measure to pay for spending in a separate House-passed measure if the two are linked at the engrossment stage; and
- (3) The changes would also allow for emergency exceptions to PAYGO for provisions designated as emergency spending in a bill, joint resolution, amendment made in order as original text, conference report, or amendment between the Houses (but not other amendments).

The new clause 10(c)(3) of rule XXI provides that the Chair will put the question of consideration on a bill, joint resolution, an amendment made in order as original text by a special order of business, a conference report, or an amendment between the Houses that includes an emergency PAYGO designation. The Chair will put the question of consideration on such a measure without regard to a waiver of points of order under clause 10 of rule XXI or language providing for immediate consideration of such a measure.

The intent of this exception to pay-as-you-go principles is to allow for consideration of measures that respond to emergency situations. Provisions of legislation may receive an emergency designation if such provisions are necessary to respond to an act of war, an act of terrorism, a natural disaster, or a period of sustained low economic growth. A measure that includes any provision designated as emergency shall be accompanied by a report or a joint statement of managers, as the case may be, or include an applicable "Findings" section in the legislation, stating the reasons why such provision meets the emergency requirement according to the following criteria.

In general, the criteria to be considered in determining whether a proposed expenditure or tax change meets an emergency designation include: (1) necessary, essential, or vital (not merely useful or beneficial); (2) sudden, quickly coming into being, and not building up over time; (3) an urgent, pressing, and compelling need requiring immediate action; (4) unforeseen, unpredictable, and unanticipated; and (5) not permanent, but rather temporary in nature. With respect to the fourth criterion above, an emergency that is part of an aggregate level of anticipated emergencies, particularly when normally estimated in advance, is not "unforeseen."

**(k) DISCLOSURE BY MEMBERS OF EMPLOYMENT NEGOTIATIONS.—**

This provisions amends clause 1 of rule XXVII to close the loophole in the rule that allowed lame-duck Members, Delegates, and the Resident Commissioner to directly negotiate future employment or compensation without public disclosure. The rule will now apply to all current Members, Delegates, and the Resident Commissioner requiring

them, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, to file with the Committee on Standards of Official Conduct a statement regarding such negotiations or agreement.

(1) GENDER NEUTRALITY.—

This provision amends the Rules of the House to render them neutral with respect to gender. These changes are not intended to effect any substantive changes.

The Committee intends to exercise its oversight responsibilities to ensure full compliance with these new rules and the House rules generally.

Throughout the duration of the 111<sup>th</sup> Congress, the Rules Committee intends to take its oversight responsibility seriously and will vigorously monitor those areas within its jurisdiction as well as those for which the Committee maintains oversight responsibility. When appropriate, the Committee plans to utilize the Committee's two subcommittees (the Subcommittee on Legislative and Budget Process and the Subcommittee on Rules and Organization of the House) to conduct a portion of its oversight activities on those areas which fall into the specific jurisdiction of each.

In addition to the oversight areas described in this plan for the 111<sup>th</sup> Congress, the Committee is fully prepared to undertake additional oversight activities whenever situation or circumstances dictate.

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## MINORITY VIEWS

The commencement of a new year and a new congress share more than proximity in date. Often the majority party will offer its own version of a "new Congress resolution" to be more open, fairer and more transparent. That was clearly the case at the beginning of the 110th Congress, when the Democrats regained the majority after a 12-year hiatus.

But rather than having the most open Congress in history as the majority promised, it instead ended up being the most closed and least open Congress in history. Comparing the record of the Democrats' first 2 years in the majority to the 109th Congress, the last time Republicans ran the House, we found that there were —

- 24 percent more bills considered under closed rules;
- 55 percent fewer bills considered under truly open rules;
- 23 percent fewer minority substitutes made in order;
- On average, 17 percent fewer amendments made in order per bill; and,
- 40 percent less time to review legislation and draft amendments.

The promises of a new day in the House for the 111th Congress have been compounded by the vision articulated by our recently inaugurated President. He has laid out a vision that replaces bitterness with bipartisanship, and cynicism with a sincere commitment to a brighter future.

Of course, there is a great divergence of opinion on the details of exactly how we reach that brighter future. But we wholeheartedly agree with President Obama that the way forward is through open, inclusive debate, a strong spirit of bipartisanship and the sincere pursuit of common ground.

However, even at this early date, the record of the 111th Congress stands in stark contrast to the high-minded rhetoric of the Presidential campaign and highlights the pure cynicism of the rules changes outlined in the majority's oversight plan. The Democratic leadership, as its very first legislative act of the 111th Congress, put forward a rules package that shredded the Obama vision of unity and bipartisanship and simply continued the record of the Democrats in the 110th Congress by adding even more restrictions on debate and deliberation in this Congress.

We believe that if the majority is committed to real oversight over the operation of the legislative processes of the House and an honest examination of the effects of the rules changes put in place so far, they will likely have to backtrack on many of these changes in the months to come.

The majority found themselves in that situation on a number of occasions during the last congress: first, they had to modify the provisions prohibiting Member use of private aircraft, since their provision as drafted prohibited Members from using their own aircraft or leasing aircraft for official or campaign use; second, the bipartisan recommendations of the Select Committee to Investigate the Voting Irregularities of August 2, 2007 that the new sentence of clause 2(a) of rule XX (relating to holding a vote open for the sole purpose of reversing the outcome) be eliminated because that "sentence is unworkable in practice" (H.Rept. 110-885, p. 20). It is worth noting that the Select Committee — not the Rules Committee — was the only body which conducted real oversight on the rules changes in the last Congress.

With that in mind, it is useful to review some of the changes made during this congress which we believe will require oversight in the months to come.

#### LIMITING THE MINORITY'S ABILITY TO FIGHT FOR ITS ALTERNATIVES

The 111th rules package systematically limited the ability of the Republican minority to offer its alternatives as we debate the pressing issues facing our Nation.

#### *Limiting the motion to recommit to "forthwith."*

First, the package limits the motion to recommit — often the minority's only opportunity for an alternative — to "forthwith" motions, meaning that the bill cannot be returned to committee for further work. Those motions permitted under the rule are subject to all existing House rules and provisions of the Budget Act, even when those provisions are waived against the bill itself.

The effect of this change has made it nearly impossible for the minority to offer a motion to strike a tax increase from a bill. Under the Democrats' formulation, Republicans' only choice is to substitute one tax increase for another; Republicans no longer have the option of just striking a tax increase because we are opposed to that tax increase.

This runs counter to the history of the Republican majority which guaranteed the motion to recommit for the 12 years which the Democrats were in the minority. The same guarantee was not afforded Republicans when they were routinely denied the motion to recommit during their previous 40 years in the minority. The best of many examples of the necessary utilization of a "promptly" motion to recommit was Minority Leader Gephardt's motion to recommit the Medicare Prescription Drug bill. That motion could not have been drafted as a "forthwith" motion because it violated the budget caps. However, he

was still allowed to offer his alternative as a "promptly" motion in order to get a vote on the Democrats' philosophical position.

*Legislative "sleight of hand" with the PAYGO rule.*

Another provision tucked into the majority's rewrite of the PAYGO rule allows the Rules Committee to provide for two separate bills to be considered together for purposes of PAYGO evaluation. Under this scenario, one will have new spending, and the other will have new tax increases. While the Democrats get the benefit of having the two bills considered together for purposes of PAYGO, they didn't have the risk of a difficult motion to recommit because the germaneness rule limits the scope of our amendments — one for spending, the other for tax increases.

Taken together, the limitation of the motion to recommit and the PAYGO restrictions interact to significantly restrict the ability of the Republican minority to offer alternatives generally and specifically limits our ability to present alternatives on proposals such as tax or entitlement bills which Republicans traditionally and philosophically differ from Democrats.

*Avoiding the tough decisions on PAYGO.*

Another provision contained in their rewrite of the PAYGO rule allows for "emergency designations" to be contained in tax and entitlement bills. That means virtually any tax bill or bill with direct spending can be designated as an "emergency" item, even by the bill's author, and avoid having to waive PAYGO. The first use of this authority was during consideration of the \$816 billion so-called stimulus bill (H.R. 1). No longer will the Democratic majority have to struggle with finding the votes to waive PAYGO when fixing the alternative minimum tax or bailing out another failing company. They now can simply declare an emergency, and PAYGO doesn't apply.

*Indefinite postponement authority.*

Three of the defining attributes of the House of Representatives as a legislative body have always been as follows: (1) the Rules Committee, (2) an effective germaneness rule, and (3) the operation of the previous question. Unfortunately, one of the rules changes made at the beginning of this congress undermines one of those fundamental attributes.

The majority codified a practice that it employed on a rule-by-rule basis in the 110th Congress which allowed the Speaker to postpone consideration of a measure indefinitely should the majority be presented with a motion to recommit that was politically unsettling. Now,

whenever a bill is being considered pursuant to a special rule, the Speaker has the authority at her sole discretion to postpone consideration of the measure indefinitely, irrespective of the House's prior action to pass a special rule that provides specific parameters for debate, including the ordering of the previous question *without postponement*. This presents a situation where 434 members may have voted to complete consideration on a measure (through the adoption of a special order of business which provides that the previous question is ordered through final passage), but one member — the occupant of the chair — may postpone consideration of that measure indefinitely.

In no other postponement authority granted to the Speaker in the rules on a measure or question before the House is this postponement authority indefinite. The Speaker has ultimately been given the authority to filibuster a bill that a Majority of the House had just agreed to consider and ultimately vote on.

*The case of the missing earmark reform.*

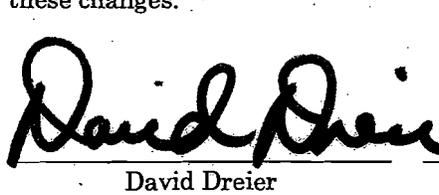
In addition to the problems highlighted by the Select Committee in the operation of clause 2(a) of rule XX, we raised concerns about loopholes in the majority's new earmark rules throughout the 110th Congress. However, changes to address the obvious flaws in the operation of clause 9 of rule XXI were curiously missing from this Congress' rules package. The rule still does not apply to amendments between the Houses and to amendments "self-executed" by the Rules Committee, two parliamentary mechanisms used at far higher rates in the last congress than before. Aside from not addressing the most obvious disclosure loopholes, the Majority failed to address the lack of enforceability, a major concern of the Minority given the record of several committee chairs in giving incorrect information concerning the status of earmarks in the 110th Congress. Members should have the ability to question the validity of earmark statements and lists presented by chairmen in some form or fashion.

#### CONCLUSIONS

The Republican Members of the 111th Congress collectively represent more than 100 million constituents. Taken in isolation, any one of these changes could be viewed as an affront to those Members and the people they represent. When they are superimposed on the Democratic majority's record of closed debate and exclusion, they have reached new lows in denying those Americans the right to be represented.

President Obama promised an end to partisan politics as usual. From all appearances, the House Democratic leadership missed the memo.

We hope that the majority will actually conduct the oversight promised in this plan, and in so doing, will realize the error of many of these changes.

  
David Dreier

  
Lincoln Diaz-Balart

  
Pete Sessions

  
Virginia Foxx