Understanding the New House Rules
January 5, 2011

Today, the House of Representatives adopted a new rules package which will bring a new focus on controlling spending in the 112th Congress—a vital component of any plan to gain control of our huge federal deficit and soaring debt. While the Committee for a Responsible Federal Budget applauds the House for this new focus, we also have some serious concerns.

The new rules reflect the priority of the new Republican majority to reduce spending and, in general, shift the focus of budget rules from controlling the deficit to controlling spending. Among the rule changes include new "cut as you go" (CUTGO) spending rules in place of the "pay as you go" (PAYGO) approach, new authorities for the Budget Committee chairman, changes to budget reconciliation rules, and a new point of order against legislation which increases long-term spending, to name a few.

Though we appreciate and support this new emphasis on spending controls, such rules must *complement* rather than *replace* existing deficit rules. Because many of these new rules would apply to only the spending side of the budget (replacing rules that applied to both the tax and spending side), this new rules package could actually weaken, rather than strengthen, our ability to deal with the debt.

The practical effect of these rules will be somewhat limited since they apply only to the House and not the (Democratically controlled) Senate, but will nonetheless play a significant role in shaping the consideration of fiscal policy in the next two years.

Moreover, these rules have the potential for creating serious conflict between the House and Senate, who appear to have quite different fiscal policy priorities. This could increase the risk of gridlock at a time when bipartisan cooperation is needed more than ever to deal with our mounting debt.

The New House Rules

The major budget-related changes in the rules package include:

1. **Replacing PAYGO with CUTGO.** Whereas previous House rules required new tax cuts or mandatory spending increases to be offset with tax increases and/or mandatory spending cuts under PAYGO, CUTGO requires that any new mandatory spending be offset by mandatory spending cuts alone, and exempts tax cuts from needing to be offset under House Rules.
2. **Statutory PAYGO Exemptions.** The Chairman of the Budget Committee will be given the authority to exclude the costs of several specified policies from estimates used in enforcement of statutory PAYGO.
3. **Spending Reduction Accounts.** Appropriations bills will now be able to create a "lockbox" in which discretionary spending cuts can be set aside for deficit reduction, rather than simply freeing up room within budget limits to allow higher spending elsewhere.
4. **Long-Term Spending Point of Order.** Any legislation which would increase mandatory spending by more than $5 billion in any of the subsequent four decades will be subject to a point of order.
5. **Prohibition against Increasing Spending in Reconciliation.** Previously, reconciliation instructions were required to reduce the deficit; this provision instead prohibits reconciliation instructions that would result in a net increase in mandatory spending and allows reconciliation to be used for deficit-increasing tax cuts.
6. **Elimination of the Gephardt Rule**. The Gephardt rule allowed the House to automatically pass a debt ceiling increase upon adoption of a conference report on the budget. Now, in order to increase the debt limit, the House will have to vote for it explicitly.
7. **Elimination of Highway Spending Guarantee.** The Appropriations Committee will now be allowed to set limits on highway trust fund spending below the levels authorized in the highway bill.
8. **Giving the Budget Chairman Authority to Set Budget Levels.** The Chairman of the Budget Committee now has the authority to set budget levels for FY 2011, most significantly the discretionary spending allocation for the Appropriations Committee to govern completion of the FY 2011 appropriations process.

In assessing these rule changes, it is important to think both about the potential deficit implications and whether the new rules will help Congress make better choices about how resources are to be raised and used. Measured against these standards, the rules package is a mixed bag, to say the least. Certainly, the additional focus on both short- and long-term spending is a plus, but in many cases these rules focus on spending reductions at the expense of deficit reduction.

Steps in the Wrong Direction

One major concern relates to the changes in PAYGO budget rules. Replacing the two-sided PAYGO rule with a one-sided CUTGO rule will not only make it harder to offset legislation, but also exempt potentially budget-busting tax cuts from any discipline. The one-sided focus on spending also could result in the further proliferation of tax expenditures. As the Bowles-Simpson commission has highlighted, tax expenditures are simply spending by another name and should not be exempt from scrutiny.

We have a similar concern with the new budget reconciliation rules, which will no longer allow budget reconciliation to increase spending but will permit it to be used for tax cuts which increase the deficit. This is a step backward that would allow for a return to the process that was used to enact the tax cuts in 2001 and 2003 that continue to contribute to our fiscal problems. The special procedures for budget reconciliation legislation are intended to make it easier for Congress to enact the tough choices necessary to reduce the deficit, and should not be used for politically easy and fiscally irresponsible legislation.

Changes to *statutory PAYGO* (which differs from *PAYGO rules* both in substance and legal authority) also are disappointing. Although internal budget rules cannot change the PAYGO law directly, they are able to indirectly weaken the implementation of the law by allowing the Chairman of the Budget Committee to exclude the costs of certain policies from the cost estimates for statutory PAYGO.[1] In particular, the rules allow the Chairman to exempt the extension of all the 2001 and 2003 tax cuts (including those for taxpayers with incomes above $250,000), the more generous estate tax relief enacted in the tax cut deal at the end of 2010, repeal of the health care legislation enacted last year, legislation providing small business tax relief, and trade agreements from having to be offset. CRFB was critical of the exemptions for extension of certain policies when statutory PAYGO was enacted, and strongly opposes any changes to further weaken PAYGO.[2]

[1] The Statutory PAYGO law established a process in which the Chairs of the House and Senate Budget Committees insert cost estimates prepared by the Congressional Budget Office for legislation affecting mandatory spending or revenues into the Congressional Record, and those estimates are used in entering the costs of the legislation on the PAYGO scorecard. If legislation were enacted with costs that were excluded from the cost estimate filed when the bill was finally approved by Congress, those costs would not count for purposes of Statutory PAYGO.

[2] Note that this provision is unlikely to have much practical impact because the estimates must be done jointly between the House and Senate Budget Committees, or else determined by OMB; and the Senate rules do not permit similar exclusions. Nonetheless, expanding the amount of legislation that could be exempted under statutory PAYGO sends exactly the wrong message.

Steps in the Right Direction

On the positive side, the focus on the long-term is a welcome addition to the budget process. The rules include a new long-term spending point of order on legislation which increases mandatory spending in any of the next four decades. It is a time-honored budget gimmick to pass legislation that is deficit neutral over the budget window but has significant long-term costs, and this rule would help to prevent such a gimmick. To be sure, we are disappointed that this point of order looks only at spending, rather than deficits, since this opens the door to unsustainable new tax cuts. We also oppose the explicit exemption for the repeal of the health reform legislation; if CBO estimates that repeal of health care reform will increase spending or deficits, either in the short- or long-term, those costs should be offset.[3] Still, this long-term point of order is an improvement over the status quo and a positive step forward.

The new spending reduction accounts are another positive reform which will give lawmakers the opportunity to actually spend less, rather than just reallocate spending. Abiding by the same principles, the package would repeal a rule created in 1998 which prohibits appropriations bills from setting obligation limits on highway trust fund spending below the levels authorized in the highway bill. This is another positive step which establishes the principal that highway trust fund spending is on the table and not exempt from cuts.

There also are advantages to eliminating the Gephardt Rule, which would force an on-the-record vote on increasing the debt limit, rather than allowing it to happen automatically. Hopefully, this will motivate lawmakers to agree on a fiscal plan in advance of that point in order to make the vote more palatable.

Complicating the Process

In addition to the changes above, the rules package also gives the Chairman of the Budget Committee the authority to set budget aggregates and levels that will be used for enforcement as if they were in the budget resolution. Though this authority is not unprecedented (for example, similar authority was included in the rules package adopted by the new Democratic majority in 2007), it is unusual that the package gives the Budget Committee Chairman complete flexibility in *setting* actual budgetary levels – rather than requiring the levels be based on a previously-approved budget resolution.

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[3] The one exception that is justified is the costs of repealing the CLASS Act, the new long term care insurance program which reduces the deficit in the near term as premiums are collected but increases long term deficits as benefits are paid out. The near term savings from creation of this program were excluded in the Statutory PAYGO Act, and excluding the near term costs of repealing the program is justified.

Technically, the package gives House Budget Chairman Paul Ryan (R-WI) unlimited flexibility to set levels wherever he decides. He has indicated that he will set discretionary spending levels consistent with the Republican pledge to reduce non-security discretionary spending to 2008 levels (although it remains unclear how that will be implemented given press reports that House Republicans intend to reduce non-security discretionary spending levels to 2008 levels only for the remainder of the fiscal year instead of over the entire fiscal year and Republican leaders have not been as explicit about the level they intend to set for security spending).

In general, this new authority may be warranted given Congress's failure to pass a budget and complete the FY 2011 appropriations process last year. Absent a provision in the rules package giving the Chairman authority to set levels or adoption of a separate resolution setting levels, the House would be considering the FY 2011 appropriations bills without the structure and budget enforcement provisions set out in the budget act.

However, this provision is likely to intensify the inevitable conflict between the House and Senate on FY 2011 appropriations because the dramatically lower spending levels set forth in the House Republican Pledge will no longer simply be the initial House position, but a binding level enforced by points of order. Any compromise – even one which still cuts spending dramatically – would be subject to a budget act point of order in the House. Although there are a number of ways around this, it could nonetheless complicate the budget process going forward.

Conclusion

In general, the focus on promoting fiscal discipline in House rules is welcome – though the backward step from PAYGO to CUTGO and allowing budget reconciliation to be used for tax cuts that are not offset are very problematic. However, no rule will be effective if not enforced. Above all, the rules that the House and Senate use to implement the congressional budget process should be followed and enforced consistently – not only when it is convenient but when it is hard. A rule that is waived whenever it conflicts with the short-term desires of the majority is not a rule.

And while Congress is considering changes to how it does business, reforming the dysfunctional budget and appropriations process must be at the top of the list. The drama over stopgap funding measures and the complete lack of a budget or any spending bills this year underscores the need for fundamental change. CRFB urges a complete reform of the system and hopes that all policymakers consider the recommendations in the Peterson-Pew Commission on Budget Reform's most recent report, Getting Back in the Black.