

110th Congress 1st Session  
HOUSE OF REPRESENTATIVES

COMMITTEE ON RULES  
HOUSE OF REPRESENTATIVES

R E P O R T

of

OVERSIGHT PLANS

ONE HUNDRED TENTH CONGRESS

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

WITH MINORITY VIEWS

Approved February 7, 2007

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LETTER OF TRANSMITTAL

February 9, 2007

Hon. Henry A. Waxman,  
Chairman, Committee on Oversight and Government Reform,  
House of Representatives,  
Washington, DC.

Hon. Juanita Millender-McDonald,  
Chairwoman, Committee on House Administration,  
House of Representatives,  
Washington, DC.

Dear Chairman Waxman and Chairwoman Millender-McDonald:

On behalf of the Committee on Rules, I hereby transmit the Committee's plan for Oversight activities for the 110th Congress. Pursuant to clause 2(d)(1) of House rule X, the Committee on Rules met in public session on February 7, 2007. A quorum being present, the Committee adopted by a non-record vote the following oversight plan for the 110th 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, Chairwoman

110th Congress  
1st Session

## HOUSE OF REPRESENTATIVES

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

Approved February 7, 2007

Mrs. 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 Oversight and 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.

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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.

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## OVERSIGHT PLAN

The Committee on Rules has been a vital part of the committee system of the House of Representatives since its establishment in 1789. It began as a select committee in the First Congress and was elevated to permanent committee status in 1880.

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 intends 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 110<sup>th</sup> Congress the following major reforms to the House Rules were made in the opening day rules package contained in House Resolution 5 and House Resolution 6 (all changes that are within the jurisdiction and oversight responsibilities of the Rules Committee). These changes, which were supported by both sides of the aisle, will substantially enhance and improve accountability in the House of Representatives. All these reforms were adopted with substantial bipartisan support as was demonstrated by a series of rollcall votes taken during the two-day opening day agenda of the 110<sup>th</sup> Congress.

### **Major Reforms in House Rules pursuant to H.Res. 5 & 6**

**Banning Gifts from Lobbyists** - Prohibiting Members and employees of the House from accepting gifts from a registered lobbyist, from an agent of a foreign principal, or an entity that employs or retains these lobbyists and agents. **(Rule XXV, clause 5(a))**

**Lobbyist Travel Restrictions** - Prohibiting Members and employees of the House from accepting travel reimbursements from a registered lobbyist, from an agent of a foreign country, or from an entity that employs or retains these lobbyists or agents. **(Rule XXV, clause 5(b))**

**Earmark Reform** -Requiring committees of jurisdiction and conference committees to publish lists of the earmarks, limited tax benefits, and limited tariff benefits contained in all reported bills, unreported bills, manager’s amendments, and conference reports that come to the House floor. These lists will be electronically available to the public either through committee reports or printing in the Congressional Record. A Member may make a point of order against the consideration of any special rule that waives this requirement. **(Rule XXI, new clause 9)**

**Fiscal Responsibility Reform:**

Prohibiting the consideration of any legislation proposing direct spending or revenue changes that would increase the budget deficit within a five-year or a ten-year time frame (“Pay-as-You-Go” point of order). **(Rule XXI, new clause 10)**

Prohibiting the House from considering budget resolutions or amendments to budget resolutions that contain reconciliation instructions increasing the budget deficit. **(Rule XXI, new clause 7)**

Applying Budget Act rules against bills that have not been reported by committees. **(Rule XXI, new clause 8)**

**New Travel Authorization and Public Disclosure Requirements:**

Adding language stating that prior to accepting reimbursed travel, Members and employees will be required to obtain a certification from the entity paying for the trip declaring that, except as permitted for universities and one-day travel, lobbyists did not plan, organize, request, arrange, or finance the travel. Members and employees will be required to submit this certification to the Committee on Standards of Official Conduct and receive approval from the Standards Committee before taking the trip. **(Rule XXV, new clause 5(d))**

Requiring Members and employees to submit their certifications, advance authorizations, and other travel disclosure materials to the Clerk of the House within 15 days after the travel is completed. The Clerk of the House must make this information available to the public as soon as possible.

Requiring the Committee on Standards of Official Conduct to develop new standards determining what constitutes a reasonable expense by a private group for Member travel. The Standards Committee must also develop a new standard for determining that the travel has a valid connection to Members' official duties. In addition, it requires the Standards Committee to develop a process for the submission and approval of the prior authorization requirements created in new clause 5(d). **(Rule XXV, new clause 5(i))**

**Mandatory Ethics Training** - Requiring the Committee on Standards of Official Conduct to offer annual ethics training to Members and appropriate employees. New employees must receive this training within 60 days of beginning work in the House and other employees must certify they take the course each year. **(Rule XI, clause 3)**

**Restriction on Holding Open Record Votes** - Prohibiting the Speaker from holding votes open for longer than the scheduled time for the sole purpose of changing the outcome of the vote. **(Rule XX, clause 2)**

**Conference Procedures reform:**

Requiring House conferees to insist that conference committees operate in an open and fair manner and that House conferees sign the final conference papers at one time and in one place. **(Rule XXII, new clause 12)**

Prohibiting the consideration of a conference report that has been altered after the time it was signed by conferees. **(Rule XXII, new clause 13)**

**Miscellaneous changes in House Rules pursuant to H.Res. 5 & 6**



Providing authority to the Committee on Oversight and Government Reform to adopt a rule allowing Committee Members and staff to conduct depositions in the course of Committee investigations. (**clause 4, Rule X**)

Allowing the Speaker to suspend the business of the House and declare an emergency recess when notified of an imminent threat to its safety. (**clause 12(b), Rule I**)

Removing a point of order against Rules Committee reports for clerical or administrative errors with regard to the listing of record votes taken during the consideration of a special rule. (**clause 3, Rule XIII**)

Clarifying the practice that during the consideration of a rule the Speaker may entertain only one motion to adjourn (**clause 6(b), Rule XIII**)

Renewing the standing order approved during the 109<sup>th</sup> Congress that prohibits registered lobbyists from using the Members' exercise facilities.

Provided for the renaming of the following five House Committees:

Education & Labor (formerly Education & the Workforce)  
Foreign Affairs (formerly International Relations)  
Natural Resources (formerly Resources)  
Oversight & Government Reform (formerly Government Reform)  
Science & Technology (formerly Science) (**Rule X**)

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The Committee intends to exercise its oversight responsibilities to ensure full compliance with these new rules. Additionally, the Committee will seek to determine the effectiveness of these changes with regard to mitigation of the problems that led to their enactment.

Throughout the 110<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. 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 their specific jurisdiction. While the oversight plan describes the foreseeable areas in

which the Committee expects to conduct oversight during the 110<sup>th</sup> Congress, the Committee and its subcommittees are fully prepared to undertake additional oversight activities whenever the need arises.

## MINORITY VIEWS

The beginning of each new Congress always brings with it the opportunity to grow, to change, and to improve. Never is this opportunity greater than when there is a shift in control of the House of Representatives. Unfortunately, the 110th Congress has begun with missed opportunities to fulfill the commitments made by the new Majority during the 109th.

The Majority's oversight plan emphasizes the rules changes made during the opening days of the 110th Congress as parts of H.Res. 6. We concur that these provisions need to be the subject of vigorous oversight in no small measure because they were crafted without the benefit of public scrutiny or any input from the Minority Members, and were drafted to provide sound bites rather than clear directives to Members and employees of the House. Further, those provisions which purport to provide Minority Members with additional rights lack any tangible mechanism for enforcement, meaning that without vigorous oversight, there is nothing to prevent the Majority from ignoring these provisions when they believe that it suits their needs.

The following addresses specific concerns with the rules adopted during the 110th Congress, as well as the actions of the Committee on Rules Majority thus far.

### CHANGES TO ETHICS, GIFTS AND TRAVEL

The Majority plans to conduct vigorous oversight over the implementation of the changes to the gift and travel rules; however, it is important to note that the Committee on Rules, as a matter of the black letter Rules of the House, has no authority regarding the interpretation or enforcement of those rules. As provided by clause 5(h) of Rule XXV, "All the provisions of this clause shall be interpreted and enforced solely by the Committee on Standards of Official Conduct." The Minority believes that the non-partisan Committee on Standards of Official Conduct is in the best position to oversee these rules, not the highly partisan Committee on Rules.

That said, we are concerned that the rules put in place are so complicated that the Committee on Standards cannot issue guidance quickly enough to prevent Members, staff, and employees from unwittingly violating the rules. For instance, the Committee on Standards issued a "pink sheet" memorandum on February 6, 2007 to provide Members, officers, and employees with guidance on the amendments to the gift rule. While the memorandum addressed some of the more obvious implications of the new rules, they failed to address any of the more subtle, but equally problematic elements of the new rule.

By way of example, the new rule prohibits the acceptance of gifts from "a private entity that retains or employs registered lobbyists." Suppose an attorney had 10 clients, only 1 of which retains the attorney for work which requires her to register as a lobbyist. The other 9 clients retain the attorney for routine legal work. Does the attorney count as a "registered lobbyist" in the application of the test to the other 9 clients? Clearly they retain her, although not in her capacity as a registered lobbyist. How is the Member, officer, or employee to know who they may accept gifts from and who they may not? How are the other 9 clients supposed to know that the attorney performs lobbying work for a different client?

Similarly, other questions arise:

- If an employee of a firm which employs lobbyists—but who is not himself a registered lobbyist (whether Bill Gates or John Q. Public)—wishes to invite a Member or staffer to dinner using personal funds, may the meal be accepted?
- Why are Members and staff prohibited from aiding worthy charitable causes by accepting invitations to events hosted by charities that employ or retain lobbying firms, but permitted to accept invitations from charities that do not?
- Why are Members and staff permitted to sit between two lobbyists all evening at an expensive dinner which qualifies as a widely attended event – at a table paid for, in whole or in part, by the lobbyists -- but prohibited to accept the same lobbyists' invitation to lunch the following day at a fast food restaurant of their choice?

We would argue that this is the natural result of a rule which singles out a particular class of citizens for unequal treatment. It is precisely why Republicans believed that the Committee on Standards was the best judge of improvements to the gift rule, and not the Committee on Rules.

#### NEW RIGHTS FOR THE MINORITY

The new Democratic Majority campaigned in large part on a more open process in the House, and introduced numerous proposals to ensure that the Minority had specific, enforceable rights. For instance, in the 109th Congress, the current Chairwoman of the Committee introduced H.Res. 686, which—

- Required that a rule for the consideration of a conference report contain an itemized list of any provisions in violation of the scope rule;
- Made it out of order to consider a rule: (1) waiving the three-day layover availability requirement before consideration of a conference report; or (2) containing a serious violation of the scope rule, or additions or deletions made after final agreement. It also required that Minority party managers of the House be allowed to fully participate in a conference;
- Permitted consideration of a conference report only if a roll call vote, in open meeting, was held on its final version and the result included in the accompanying joint explanatory statement of managers;
- Prohibited the House from considering a report by the Committee on Rules within 24 hours of presentation to the House (currently, on the same day);
- Required the Speaker of the House to publish in the Congressional Record a log of all voting activity occurring after the first 30 minutes of any recorded vote whose maximum time for voting exceeds 30 minutes;
- Prohibited a Member from negotiating for future employment with any person who has a direct interest in legislation referred to any committee during this or the preceding Congress while that Member serves on that committee;
- Prohibited consideration under suspension of any bill or joint resolution authorizing or appropriating more than \$100 million;
- Required the Speaker of the House to endeavor to allow an equal number of bills and resolutions sponsored by Majority and Minority party members under suspension during any session of Congress;
- Repealed rule XXVII (Statutory Limit on Public Debt);

- Prohibited the Committee on Rules from reporting a rule or order of business unless at least one Minority party member of the committee is allowed to offer an amendment to it; and,
- Provided that, following adoption of an order of business, the Speaker of the House may not entertain a unanimous consent request to modify such order unless its text has been available to Members for at least 24 hours.

None of Mrs. Slaughter's proposed rules changes were contained in the rules package for the 110th Congress.

Title III of H.Res. 6 made minor changes to the conduct of votes requiring that, "A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote." While we understand the intention of the Democratic Majority, this rule pales in comparison to Speaker Pelosi's previous proposal contained in H.R. 4682 of the 109th Congress, the Honest Leadership and Open Government Act of 2006, which provided that, "The maximum time for a record vote by electronic device shall be 20 minutes, except that the time may be extended with the consent of both the Majority and Minority floor managers of the legislation involved or both the Majority Leader and the Minority Leader."

It is interesting to note that when in the Minority Democrats thought it imperative to attain bipartisan consensus to extend the time for voting, but now that Democrats are in the Majority, they are less compelled to offer the same bipartisan approach.

The worst part of these so-called "civility" provisions is that they are largely unenforceable. How is a Member supposed to be able to determine why the Speaker has held a vote open longer than the allotted time? Even if a member believes that the vote was held open for the purpose of reversing the outcome, how is a member able to assert that it was the sole purpose? In the end this rule change allowed for very colorful rhetoric, but in practice the rule change is ineffective and does nothing to impart civility in the House.

Title III of H.Res. 6 also provided for "full and open debate in conference", by establishing a rule instructing managers on the part of the House to "endeavor to ensure" that conference meetings only occur when every manager has "a reasonable opportunity to attend." Again, this rules change is hortatory and unenforceable.

The only enforceable portion of title III is a point of order against any conference report which has been modified (other than technically) between the time that conferees sign the conference report and the time the conference report is filed; however the point of order may be waived by the Rules Committee, unlike the previous proposal by Speaker Pelosi contained in H.R. 4682 of the 109th Congress.

We are enthusiastic about the Majority's vigorous commitment "to ensure full compliance with these new rules" as Members have no other recourse to ensure their fair application.

#### BUDGET PROCESS CHANGES

Title IV of the rules package contained modifications to the House rules pertaining to "earmark" reform and "Pay-as-you-Go". Earmark reform was one of the major topics of the previous Congress and the provisions contained in H.Res. 6 pertaining to earmark reform were a natural progression of the reforms instituted by Republicans during the

109th Congress. We understand the challenges involved in taking on such reform and look forward to the Committee holding extensive hearings as to the progress of the new rules implementation and effects.

There are obvious and well documented philosophical disagreements between the Majority and the Minority concerning “Pay-as-You-Go” and its application to tax cuts. Obviously, those need not be rehashed here, however the Republican members of the Committee would hope that the Democratic Majority would endeavor to ensure that “Pay-as-You-Go” be made applicable in both House and Senate as the original drafters of “Pay-as-You-Go” intended. In order for the rule to have any effect, our colleagues in the Senate must adhere to the same fiscally responsible restraints. The only way to ensure bicameral equity is through concurrent resolution or through statute and we would hope that whatever the Majority’s concept of “Pay-as-You-Go” is, they at minimum ensure that they are not disadvantaging the House as an institution.

#### SO-CALLED “MISCELLANEOUS” ITEMS

While title V of H.Res. 6 was entitled “Miscellaneous,” its title belies the nefarious changes contained therein. Along with technical and conforming changes, this title included a host of changes which undermine the sunshine and disclosure rules implemented by the 104th Congress.

In order to ensure the disclosure and the proper and accurate record of committee votes, all standing committees had been required to include in their report an accurate record of votes taken in committee on a measure or matter since the 104th Congress. The Democratic Majority in the opening day rules package saw fit to relieve the Rules Committee from this obligation. The reason given for the change was that the new Majority didn’t want a clerical error to derail consideration of a rule. During the 12 years of the Republican Majority, the Rules Committee conducted more than 1300 votes. To the best of anyone’s recollection this was a problem in a single case early in the 104th Congress. The change to the rule ignored the fact that there is a ready remedy already contained in the Rules of the House to correct errors in votes through the filing of a supplemental report. While we appreciate the commitment of the Majority to include accurate record votes in committee reports as was required in previous congresses, this is yet another example of the Majority removing the enforceability of the rules to avoid responsibility for violations.

Title V of the rules package also included an unprecedented five closed rules for consideration of separate measures. In one case, section 506 provided for an unintroduced and unnumbered resolution establishing a select panel of the Appropriations Committee. This was historically tragic and has set an absolutely deplorable precedent not seen in the previous 218 years of this institution. The House voted on an order of the House providing for a phantom resolution. Not one Member of the House was able to see the resolution before voting on the special order and there was no way for the body to distinguish which resolution the special order provided for, other than by vague reference.

In order to emphasize the egregiousness of this action, Mr. Dreier of California introduced a resolution (H.Res. 38) with the exact title as Mr. Obey of Wisconsin (H.Res. 35). The House agreed to consider any resolution with that exact title without any

cognizance of the contents. The Republican Members of the Committee would also like to point out that H.Res. 35 received no consideration in the Rules Committee, which has sole jurisdiction over the resolution.

Part and parcel of the Majority's commitment to "take its oversight responsibility seriously", is to consider additional changes to the Rules of the House via regular order. Despite the consideration of several matters that fall within the original jurisdiction of the Committee on Rules (H.Res. 35, A resolution to enhance intelligence oversight authority, and H.Res. 78, A resolution amending the Rules of the House of Representatives to permit Delegates and the Resident Commissioner to the Congress to cast votes in the Committee of the Whole House on the State of the Union), the Committee has held no original jurisdiction hearings, nor reported out the measures on their own.

There are numerous press reports that the Majority is considering establishing certain select committees. We would like to remind the Majority that the establishment of select committees falls solely within the jurisdiction of the Rules Committee pursuant to rule X and we hope that the majority will seriously and vigorously assert its oversight jurisdiction over such matters.

Finally, we feel compelled to point out that one of the matters contained in the Majority's oversight plan, regarding the prohibition against former Members who are registered lobbyists from using the Member exercise facility, is a matter within the rule X jurisdiction of the Committee on House Administration, rather than the Committee on Rules, as evidenced by the exchange of letters on this provision contained on page 3 of H.Rept. 109-369. We hope that the Majority will leave the oversight of this provision to the Committee on House Administration where it rightly belongs.

#### CONCLUSION

We look forward to the Committee's plan to vigorously oversee the changes made in the Rules of the House and can only hope that this commitment manifests itself more tangibly than it has thus far. The rules changes of the 110th Congress have created what could only be unintentional pitfalls for Members, officers, and employees. Further, those provisions billed as "rights of the Minority" lack any method of concrete enforcement as proposed by Democrats during the 109th Congress, leaving Members' only recourse the vagaries of the Rules Committee schedule.

We sincerely hope that the actions we have seen thus far, both in the consideration of special orders of business and the administration of the Committee, represent the learning curve of a new Majority and not a signal of things to come.

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DAVID DREIER

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LINCOLN DIAZ-BALART

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DOC HASTINGS

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PETE SESSIONS