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“Fast Track” Procedures to Disapprove Additional Funds Under the Emergency Economic Stabilization Act

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Summary

The Emergency Economic Stabilization Act of 2008 (EESA, Division A of H.R. 1424, P.L. 110-343) empowers the Secretary of the Treasury to act to stabilize the economy. Should the Secretary wish to have more than \$350 billion outstanding under the program, the President must submit a written report to Congress detailing the Secretary's request and his plan to implement it. The receipt of this report triggers a 15-day period during which Congress may reject the Secretary's request by enacting a joint resolution of disapproval. This disapproval resolution would be considered in the House and Senate under "fast track" parliamentary procedures which are intended to ensure an opportunity to consider and vote on the measure. This report examines these procedures and explains how they differ from the regular parliamentary mechanisms of the House and Senate. It also estimates certain deadlines under the act based on the recent submission of the President's report. It will be updated as needed.

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Graduated Authorization to Purchase

The Emergency Economic Stabilization Act of 2008 (EESA)¹ empowers the Secretary of the Treasury to act to restore liquidity and stability to the financial system of the United States, and authorizes funds on a graduated scale that the Secretary may use for this purpose. The act immediately authorizes the Secretary to have up to \$250 billion outstanding at any one time under the program. This authorized maximum will automatically increase to \$350 billion outstanding upon the President's submission to Congress of a certification of need.

Should the Secretary of the Treasury wish to have in excess of \$350 billion outstanding at any one time under the program, the President must submit a written report to Congress detailing the Secretary's plan to exercise this additional authority. The submission of this report triggers a 15-calendar day period during which Congress may enact a joint resolution disapproving the request. The act further establishes special "fast track" parliamentary procedures for congressional consideration of this joint resolution. Should Congress either choose not to, or be unable to successfully, enact a disapproval resolution by the expiration of this 15-day period, the Secretary's authority would automatically increase up to \$700 billion in outstanding purchases at one time.

Expedited Parliamentary Procedures

Section 115(c) of EESA establishes a set of expedited parliamentary procedures by which Congress may consider a joint resolution rejecting the Secretary's plan. Statutes that contain provisions establishing expedited procedures regulating the consideration of particular legislation are frequently called "rulemaking statutes," because their procedures have the same force and effect of standing rules of the House or Senate.² These expedited legislative procedures were created by Congress to ensure that it could promptly consider and act on the Secretary's proposal within the 15-day time frame. The procedures accomplish this goal by exempting the joint resolution of disapproval from many of the ordinary time-consuming steps and legislative obstacles that apply to most other measures Congress considers. In short, the resolution is considered not under the ordinary parliamentary procedures of the House and Senate, which are, by design, slow and uncertain, but on a special parliamentary "fast track." These procedures address:

Reconvening Congress

Should Congress receive a report from the President detailing the Secretary of the Treasury's desire to have more than \$350 billion outstanding under the troubled assets purchase program, EESA directs the Speaker, if the House has adjourned, to notify Members that the chamber will reconvene not later than the second calendar day thereafter. Likewise, if the Senate has adjourned or recessed for more than two days, the Senate majority leader, after consultation with the minority leader, is to notify Senators that the body will reconvene.

Under modern practice, when one or both chambers adjourn for more than three days, the adjournment resolution adopted by the House and Senate grants its leaders discretionary authority

¹ P.L. 110-343. 122 Stat. 3831.

² CRS Report RS20234, *Expedited or "Fast-Track" Legislative Procedures*, by Christopher M. Davis.

to recall the chambers in the event of an emergency or if the public interest warrants.³ Interestingly, EESA seems to make Congress's reconvening mandatory—even if one or both chambers does not wish to disapprove the plan.

Text of the Joint Resolution

Unlike bills, joint resolutions often include a preamble.⁴ The joint resolution of disapproval under EESA, however, may not contain a preamble. The title of the joint resolution is specified by the statute: "*Joint resolution relating to the disapproval of obligations under the Emergency Economic Stabilization Act of 2008.*" Its text is mandated as well: "*That Congress disapproves the obligation of any amount exceeding the amounts obligated as described in paragraphs (1) and (2) of section 115(a) of the Emergency Economic Stabilization Act of 2008.*" It is arguably necessary for the statute to specify the precise text of the joint resolution because, unless it is clear which measure Congress intends to be considered under expedited terms, unrelated measures or provisions might "hitch a ride" on the special parliamentary privilege that is afforded the joint resolution, shortcutting the regular legislative process and the rights of all Members.

Introduction

In the regular order of business, a Member of Congress may introduce legislation at any time their chamber is in session during the two-year Congress. EESA, however, establishes a far narrower window in which Members may introduce a qualifying joint resolution of disapproval. In order to qualify for the expedited procedures outlined in the act, a joint disapproval resolution must be introduced not later than three calendar days after the date on which the President's report detailing the Secretary's plan is received by Congress. Although the statute is silent on the question, joint resolutions may conceivably be introduced by any Member in either chamber. Because the mandatory recall provisions described above, however, make it possible that the House or Senate may not reconvene until two calendar days after the report's submission, it is possible (even likely) that Members will have only a single calendar day in which to introduce a qualifying joint resolution of disapproval.

Referral to Committee

EESA is silent on the referral process for a joint resolution of disapproval introduced in the House of Representatives, and the Speaker would presumably refer the measure to committee in keeping with regular practice and her authority under chamber rules. In the Senate, when a joint resolution is introduced, under the terms of EESA, it is not referred to committee at all, but is instead placed directly on the Senate Calendar of Business. Under normal Senate practice, when legislation is introduced, it is referred to committee based on the subject matter that predominates in it. Under Senate Rule XIV, a measure might be placed directly on the Senate Calendar of Business upon introduction via a process of objecting to the first two readings of the measure, which technically must occur on different legislative days. Under EESA, referring the joint resolution to Senate committee, rather than placing it directly on the calendar, would seem to require unanimous consent.

³ William Holmes Brown, Charles W. Johnson, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House*, 108th Cong., 1st sess. (Washington: GPO, 2003), ch.1, §10, pp. 9-10.

⁴ *Ibid.*, ch.6, §5, p. 171.

Committee Action in the House

With certain exceptions—for example, when time limits are placed on the sequential referral of a bill by the Speaker of the House—Congress generally does not mandate that a legislative committee act on legislation referred to it within a specified time frame or at all. The EESA expedited procedure, however, requires a committee of referral to act and creates parliamentary mechanisms to take the resolution away from it should it fail to do so.

Under EESA, if a House committee has not reported the joint resolution of disapproval within five days after Congress's receipt of the President's report, the committee is automatically discharged from its further consideration and the measure is placed directly on the appropriate calendar. These expediting provisions theoretically make it impossible for a joint resolution of disapproval to be long delayed or killed outright by the inaction of a legislative committee. The statute is silent on whether a committee may amend the resolution, but because (as has been noted) the precise text of the joint resolution is specified by the act, any attempt to alter it by amendment would likely be interpreted as destroying the special parliamentary status it enjoys. Additionally, because the procedure precludes the consideration of amendments to the joint resolution on the House floor (discussed below), committee amendments would also be barred. A House committee would presumably still have the option of reporting a measure to the chamber favorably, adversely, or without recommendation.

Calling Up the Joint Resolution on the Floor

As enacted, EESA dictated that after each House committee of referral had reported or been discharged from the further consideration of the joint resolution of disapproval, it would be in order, not later than the sixth day following the submission of the President's report, for any Member to make a non-debatable motion to proceed to its consideration. The House subsequently altered this procedure with the adoption on January 15, 2009 of H.Res. 62 (111th Congress), which stipulated that the motion to proceed under section 115 of the Emergency Economic Stabilization Act of 2008 would only be in order if made by the House Majority Leader or his designee. H.Res. 62 further established that the motion to proceed could be offered even following the sixth day described in the statute, but not later than the legislative day of January 22, 2009. Such a motion cannot be repeated after one has already been disposed of, and the vote on the motion may not be reconsidered.

In the Senate, under most circumstances, a motion to proceed to the consideration of a measure is fully debatable.⁵ The motion to proceed to the consideration of the joint resolution of disapproval under EESA, however, is not debatable or amendable, and it cannot be postponed. The motion is in order in the Senate at any time during the period beginning on the fourth day after the date on which Congress receives the President's report and ending on the sixth day after receipt. In the Senate, the motion to proceed is permitted even if a previous motion to the same effect has been defeated. If a motion to proceed is agreed to, the chamber immediately proceeds to consider the joint resolution without intervening motion, order, or business. Having chosen to take up the disapproval resolution by adopting the motion to proceed, consideration of the measure is, in a sense, "locked in." The joint resolution remains the unfinished business of the chamber until the chamber disposes of it.

⁵ The motion to proceed to consider conference reports, nominations, treaties, and legislation under certain rulemaking statutes is not debatable. The motion is also not debatable when made during the Morning Hour.

Floor Debate

In the absence of a special rule dictating otherwise, the House of Representatives ordinarily debates measures under the one hour rule or under other procedures which establish specific periods for debate, such as the suspension of the rules procedure. In keeping with its expediting nature, EESA limits the amount of time for House floor consideration of the joint resolution of disapproval. Debate in the House on the joint resolution, and all debatable motions and appeals connected with it, is limited to not more than two hours, equally divided between a proponent and an opponent.

In the Senate, debate is ordinarily unlimited unless it has been structured by unanimous consent or limited by the invocation of cloture under Senate Rule XXII. Under EESA, however, Senate debate on the joint disapproval resolution, and on all debatable motions and appeals in connection therewith, is limited to not more than 10 hours, divided equally between the majority and minority leaders or their designees. A non-debatable motion to further limit debate is in order. Using this device, the Senate could, by majority vote, reduce debate time below 10 hours.

Motions, Amendments, Voting

EESA includes provisions which make it difficult to delay or set the joint resolution aside without a vote, for example, by returning it to legislative committee or the calendar. Amendments to the joint resolution of disapproval are not in order in either chamber. In the House, all points of order against the joint resolution and its consideration are waived, and the previous question is considered to be ordered to its final passage without any intervening motion, including a motion to recommit. Thus, at the conclusion of debate, the House would automatically vote on adoption of the measure.

In the Senate, the joint resolution is not subject to a motion to postpone, to recommit, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is also not in order. After the conclusion of debate and a single quorum call (if requested), the chamber immediately would vote on final passage of the joint resolution. Appeals from the decision of the chair relating to consideration of the joint resolution are to be decided without debate.

Automatic Legislative "Hookup"

The EESA also includes provisions to facilitate the exchange of legislation between the House and Senate. If, before voting upon its own joint resolution, a chamber receives a joint resolution passed by the other chamber, that engrossed joint resolution is not referred to committee. The second chamber will proceed to consider its own joint resolution in the fashion laid out in the statute, until the point of final disposition, when the vote taken will be on the engrossed resolution passed by the first chamber. The purpose of this provision is to avoid the need to expend time choosing whether ultimately to act upon the House or Senate vehicle.

Additional Expedited Provisions

EESA includes a number of additional provisions intended to expedite consideration of the joint resolution of disapproval. For example, if one chamber fails to introduce or consider a joint resolution under EESA, the resolution of the other House is entitled to "fast track" consideration in the other chamber. If, following passage of the joint resolution in the Senate, it then receives a companion measure from the House, that companion measure is not debatable.

EESA includes provisions stating that if Congress passes a joint resolution, the period beginning on the date the President is presented with the enrolled joint resolution, and ending on the date he takes action on it, is disregarded in computing the 15-calendar day period before an increase in the Secretary's authorization automatically goes into effect. Likewise, if the President vetoes the measure, the period beginning on the date of the veto, and ending on the date Congress receives the veto message, is not calculated. These provisions are included to ensure that the President cannot simply "run out" the 15-day time clock once the joint resolution is presented to him for signature.

Finally, in the event of a Presidential veto, debate on a veto message in the Senate is limited to one hour equally divided between the majority and minority leaders or their designees. Under ordinary circumstances, such a veto message would be fully debatable. The act is silent on House consideration of a veto message.

Implications of Resolutions of Disapproval

Under the terms of EESA, a joint resolution must be enacted in order to disapprove the Treasury Secretary's plan. This means that not only would it have to pass both chambers, but it must also be signed by the President, or enacted over his veto by supermajority vote, to take effect. For this reason, some Members have argued that resolutions of disapproval of this type generally put Congress at an institutional disadvantage relative to the Executive, in that a President is almost certain to veto the resolution and Congress would have to muster significant super majorities for a successful override. During debate over the enactment of a different rulemaking statute which included a joint disapproval resolution, one Member voiced this view of the power relationship between the branches, stating,

A veto would, of course, be likely since the resolution would be disapproving what the executive has proposed. Then it would take two-thirds majorities in both Houses of Congress to effectuate the Congress' expression of disapproval. In other words, a resolution of disapproval would allow as few as 34 Senators, working with one Chief Executive, to block the will of ... Members of Congress.⁶

Conversely, others have argued that resolutions of disapproval give the President necessary flexibility to act, while still reserving the prerogative of Congress to overrule him and influence important policy questions.

Either Chamber May Alter the Expedited Procedure

The fact that an expedited procedure like that of EESA is contained in a rulemaking statute does not mean that another law must be passed in order to alter it. It is sufficient that a majority of Members of either chamber agree to ignore or alter the expedited procedure in order to change the way in which its features apply in that chamber at a given time. Because Article I, Section 5 of the Constitution gives each chamber of Congress the power to determine the rules of its proceedings, expedited procedure statutes like those contained in EESA can (like all rules of the House or Senate) be set aside, altered, or amended by either chamber at any time.⁷ These changes can be accomplished by the House through the adoption of a special rule reported by Committee on Rules, by suspension of the rules, or by unanimous consent. In fact, prior practice suggests that the House of Representatives routinely supplants the terms of rulemaking statutes by adopting

⁶ Rep. Jack B. Brooks, remarks in the House, *Congressional Record*, vol. 134, July 7, 1988, p. 17080.

⁷ William Holmes Brown and Charles W. Johnson, *House Practice*, ch.50, §4, p. 826.

special rules by majority vote. As is discussed above, the House chose to alter some features of the expedited procedure as it relates to the motion to proceed with the adoption on January 15, 2009, of H.Res. 62 (111th Congress).

Although the same Constitutional authority to determine its own rules resides equally in both houses of Congress, expedited procedures are, in a sense, more binding on the Senate than they are on the House. The Senate operates largely under terms achieved by the unanimous consent of all Senators. If that consent can not be achieved, altering an established rulemaking statute would, in all likelihood, require either the 3/5ths of Senators chosen and sworn (60 if there are no vacancies)⁸ necessary to invoke cloture or the concurrence of two-thirds present and voting (67 if all Senators vote) necessary to suspend the rules. Motions to suspend the rules also require written notice one calendar day in advance, and are fully debatable.

Estimated Deadlines Under EESA Disapproval Process

On January 12, 2009, the President transmitted to Congress a report detailing a plan to exercise the authority under 115(a)(3) of the Emergency Economic Stabilization Act of 2008 to access additional EESA funds.⁹

Based on a submission date of January 12, 2009, and the deadlines in the statute, the table below estimates deadlines relating to the introduction and consideration under expedited parliamentary procedures of a joint resolution of disapproval under the EESA. It is important to note that the dates included below are only estimates calculated by CRS. The House and Senate Parliamentarians are the sole definitive authorities on questions relating to the rules of the respective chambers (including statutory rules such as those in the EESA), and should be consulted for a formal opinion on any specific question about deadlines under the act.

Table I. Estimated Deadlines Under the EESA Disapproval Procedure

Statutory Milestone	Day Count	Estimated Deadline
Report received by Congress	Day 0	Monday, January 12, 2009
Introduction of disapproval resolution	Not later than 3 calendar days after receipt of report	Thursday, January 15, 2009
House committee must report or be discharged	Not later than 5 calendar days after receipt of report	Saturday, January 17, 2009
House motion to proceed to consider measure	Not later the legislative day of January 22, 2009	Legislative day of Thursday, January 22, 2009

⁸ Under Senate precedents, amending a statutory rule does not trigger the prior notice or higher threshold to invoke cloture required for amendments to the chamber's standing rules. See *Congressional Record*, vol. 131, July 25, 1985, pp. 20447-20448.

⁹ *Congressional Record*, daily edition, vol. 155, Jan. 13, 2009, p. H170.

Senate motion to proceed in order	Period beginning on 4 th [calendar] day after receipt and ending on 6 th [calendar] day after receipt	Friday, January 16 - Sunday, January 18, 2009
Disapproval resolution must be enacted	15 th calendar day after receipt of report (The period between presentation and Presidential action, inclusive, as well as the period beginning on the day the President vetoes the resolution and its receipt in Congress stops the 15-day clock.)	Tuesday, January 27, 2009

Source: Sec. 115, P.L. 110-343. H.Res. 62 (111th Congress)

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