



BUDGET BULLETIN



COMMITTEE ON THE BUDGET
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INFORMED BUDGETEER:

RECONCILIATION POST MORTEM

Right before the two-week congressional recess last month, the Senate considered and passed a reconciliation bill (H.R. 4872, the Reconciliation Act of 2010) that made changes to the just-enacted health bill and to the operation of the student loan and Pell grant programs.

Prior to Senate deliberation of that reconciliation bill, there was a question about whether it was even in order for the Senate to consider that bill. Obviously (since the reconciliation bill is now enacted), it was decided that the bill was in order, but few understand why there was a question about it, and even fewer know why it turned out the way it did. This two-part *Bulletin* tells that story.

So, What Was the Issue?

In a nutshell: According to the Congressional Budget Office (CBO), the reconciliation bill reduces Social Security revenues by about \$5 billion (and reduces Social Security outlays slightly) over the 2010-2014 period. Section 310(g) of the Congressional Budget Act (CBA) makes it out of order to consider a reconciliation bill that contains recommendations with respect to Social Security. Proponents of considering the bill under reconciliation procedures argued that the section 310(g) point of order did not apply; opponents of considering the bill under reconciliation procedures argued that it did.

What Does the Congressional Budget Act Say?

Section 310(g) of the Congressional Budget Act (CBA) says:

(g) Limitation on Changes to the Social Security Act.—

Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a joint resolution pursuant to section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance [OASDI] program established under title II of the Social Security Act.

This section was added to the CBA in 1985 by the Gramm-Rudman-Hollings (GRH) law. The joint explanatory statement accompanying the conference agreement on the GRH measure explained Section 310(g) as follows:

(g) Limitations on changes to the Social Security Act.—this subsection provides a point of order against the consideration of a reconciliation bill, amendment thereto, or conference report thereon which contains changes in Social Security benefits.

So, distilled down, what are the relevant nouns and verbs from section 310(g)?

...it shall not be in order in the Senate...to consider any reconciliation bill...that contains recommendations with respect to the old-age, survivors, and disability insurance program (aka – Social Security).

What are “recommendations” in the context of reconciliation? Section 310(c) of the CBA states that reconciled committees must “recommend changes of the type described in paragraphs (1) and (2) of subsection (a).” Those paragraphs say that a budget resolution shall “specify the total amount by which” new budget authority and revenues are “to be changed” and “direct that committee to determine and recommend changes to accomplish a change of such total amount.”

How do we know whether reconciliation legislation produces a change in “such total amount”? By the CBO cost estimate (or more precisely, the determination of the Budget Committee Chairman, who generally relies on CBO).

Therefore, any “change of such total amount” – represented by numerical differences (relative to the current law baseline) provided in a CBO cost estimate of a reconciliation bill – constitutes a “recommendation” for purposes of reconciliation procedures under section 310 of the CBA.

The only interpretation to take away from section 310(g) is that it is not in order to consider a reconciliation bill that results in a change (or effect) on the off-budget Social Security program. An estimate from CBO showing such a change is the signal (for purposes of evaluating the application of points of order under the CBA) that the reconciliation bill contains recommendations with respect to Social Security.

The Congressional budget resolution is **only about the on-budget levels** of the budgetary aggregates – budget authority, outlays, revenues, and the on-budget deficits that flow from those outlays and revenues. When the budget resolution includes reconciliation instructions, it is instructing committees to make changes only to on-budget amounts in order to bring about the on-budget aggregates. Only one interpretation of 310(g) is consistent with this understanding of the budget resolution: off-budget levels should not be changed in either a budget resolution or a reconciliation bill that follows from a budget resolution.

What Does the Reconciliation Bill Do?

First, remember that the reconciliation bill makes changes to the enacted health bill – the Patient Protection and Affordable Care Act (PPACA). PPACA created an excise tax on high-cost health plans (aka “Cadillac” plans) starting in 2013. Primarily as a result of this new tax, CBO says ([in footnote e on p. 4 of March 11, 2010 letter](#)) that PPACA by itself would have off-budget effects that “include changes in Social Security spending and revenues.” Specifically, “CBO estimates that outlays for Social Security benefits would increase by about \$3 billion over the 2010-2019 period” (see footnote f of table 3).

Why would an excise tax on high-cost health plans cause Social Security outlays to increase? Previously, while the wages part of employee compensation has been subject to income and payroll taxes, all compensation provided as employer-sponsored health insurance has been exempt from taxation. By subjecting certain employer-sponsored health insurance to an excise tax, PPACA would, according to CBO, result in less compensation provided as employer-sponsored health insurance and more compensation provided as wages. Increased wages means increased Social Security payroll taxes (and increased Social Security benefits).

Following enactment of PPACA, along comes the reconciliation bill, which includes a provision to delay the effective date of the new tax on high-cost health plans from 2013 to 2018.

This will have the result of decreasing, or changing, Social Security benefits by \$1 billion over the 2010-2019 period. CBO’s March 18, 2010 letter ([see footnote f of Table 2](#)) on the effect of the PPACA and the reconciliation bill combined says: “CBO estimates that outlays for Social Security benefits would increase by about [only] \$2 billion over the 2010-2019 period.” The reconciliation bill also will reduce Social Security revenues by about \$5 billion over 2010-2014. Why? Because the higher wages and higher Social Security revenues and outlays that would have resulted from PPACA’s tax on high-cost health plans would shrink somewhat by the reconciliation bill delaying the incentives to switch forms of compensation.

So Why Might One Think That the Reconciliation Bill Violates Section 310(g)?

So far, we know that 1) section 310(g) prohibits a reconciliation bill from making changes to Social Security outlays and revenues and 2) the 2010 reconciliation bill made changes in both outlays and revenues of the Social Security program. It seems pretty clear that the reconciliation bill violated section 310(g).

Such a conclusion is supported by related legislative history. In 1997, Congress enacted the Balanced Budget Act of 1997. In the bipartisan committee print that accompanied the Senate-reported version of that reconciliation bill (page 5 from Senate Budget Committee, [Balanced Budget Act of 1997, S. Prt. 105-30](#), June 1997), the Budget Committee made the following observation about section 310(g):

This language generally has been interpreted to prohibit the consideration of any legislation in the reconciliation process which affects the receipts (taxes paid) into or the outlays (benefits paid) from the OASDI trust fund.

Despite the unambiguousness of this bipartisan declaration, some now dispute that this interpretation always applies. Instead, they argue that there is a distinction between direct and indirect ways that a reconciliation bill can “affect” Social Security outlays and revenues, and claim that the budgetary effect of the 2010 reconciliation bill on Social Security is indirect.

But there is nothing in section 310 of the CBA that provides for making a distinction between direct and indirect budgetary effects of legislation. Any attempt to view budgetary effects through the lens of such a distinction is pure invention. Yet proponents of the 2010 reconciliation bill argued that it is not the first purpose of the reconciliation bill to affect Social Security; changes to Social Security, they claim, are just a by-product of behavioral response to the provisions in the bill.

But “indirect effect” is not a synonym for “behavioral response.” Every cost estimate includes behavioral components (even if the estimate is that behavior would be unchanged by the legislation). Moreover, the Senate does not parse out the behavioral components of budgetary impacts before evaluating the legislation for budget enforcement (points of order).

For example, when the federal government imposes a fee or tax, the budgetary result is a function of the rate and the universe against which the rate is applied. Most of the time, when the government changes one thing (the rate), the other thing (the universe) moves (behavioral change) in response to the rate change. Sometimes legislation simply redefines the universe. Only after estimating how much the universe moves can we estimate the net budgetary impact from a change in rate.

INCORPORATING BEHAVIOR IN THE COST ESTIMATE: GAS TAX EXAMPLE

If the federal government increased the gas tax from 18 cents to 30 cents a gallon, CBO/JCT would first estimate the change in behavior that would occur (how much less driving and gasoline purchases that would occur). Then they would estimate how much revenue would come in from applying a rate of 30 cents per gallon against the new universe of gasoline that would be purchased.

When CBO/JCT provides Congress with the estimate of how much more revenue the increased gas tax would produce (which would not be as much as a blind application of the increased rate against the previous universe of gasoline purchases when the gas tax was 18 cents), the estimate is not broken down into the part that results from the rate change and the part that results from the behavioral change so that the Congress can use one part of the estimate and ignore the other. The estimate is the estimate, and the Congress uses the whole estimate.

In the case of PPACA’s excise tax on high-cost plans, the rate was increased from zero to something, with the purposeful intent of directly changing behavior so that the mix of employees’ total compensation shifts away from (previously tax-free) health benefits to taxable wages. The excise tax provision in PPACA raises \$20 billion in total revenue over five years and \$149 billion in total revenue over 10 years. More than 20 percent of the revenue raised from the excise tax provision in PPACA is from increased Social Security payroll taxes (\$4 billion over five years and \$31 billion over 10 years).

By delaying the date of the excise tax until 2018, the reconciliation bill partially undoes this change, thereby reducing revenue over five years by \$20 billion and by \$117 billion over ten years. More than 20% of the total revenue reduction from the excise tax provision in HR 4872 is due to reduced SS payroll taxes (\$4 billion over five years and \$24 billion over 10 years).

When 20 percent of the revenue effect of the reconciliation bill is due to changes in Social Security taxes, it is not an accident of the bill. It is predictable and measurable. The bill’s authors knew that delaying the effective date of the excise tax until 2018 would produce that budgetary result; they meant to do that (see box below). And CBO/JCT has provided Congress with an estimate of the direct effects of the combination of the tax rate change (tax going from something to zero) and the behavioral response. There is no such thing as an estimate of the reconciliation bill that is separated into direct and indirect components.

The following quotes from the Senate debate on PPACA indicate that the effect of the excise tax on Social Security revenues is entirely purposeful. Partially undoing that excise tax in the reconciliation bill was just as purposeful.

Senator Reid (*Congressional Record*, Nov. 30, 2009, pg. S11985) – “In developing this bill with the Finance and HELP Committees, we were determined to ensure that the legislation not only would reduce our deficit and our debt but that it would do so without relying on additional surpluses in the Social Security trust fund. This legislation would increase revenues in the trust fund as workers' wages rise.”

Senator Baucus (*Congressional Record*, Dec. 9, 2009: pg. S12746) – “As a result, CBO says premiums will decrease and wages will increase as employers offer more money in workers' pockets instead of inflated health benefits. In fact, the bulk of the revenue raised by this provision--more than 83 percent--comes not from the tax itself but from increased wages, increased wages on account of this provision.”

Senator Baucus (*Congressional Record*, Dec. 9, 2009: pg. S12751) – “Some say for some it will be a tax increase. Let me indicate why that is somewhat true. They are getting more wages. Of course, their taxes go up if they get more wages. Why are they getting more wages? Because these tend to be people affected by so-called Cadillac plans. The Joint Committee on Tax and the Congressional Budget Office say in that category, premiums go down and wages go up. Obviously, taxes are going to go up when wages go up.”

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A WEEKLY BULLETIN
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RECONCILIATION POST MORTEM... (CONTINUED)

Has This Happened Before?

Part I of this *Bulletin's* analysis of the Congressional Budget Act (CBA) and the cost estimate of the reconciliation bill make it pretty clear that the bill violated section 310(g) of the CBA. But those who disagreed with this view had one trump card – only once has a senator ever raised the 310(g) point of order, and that point of order was not well taken by the presiding officer.

In October 1995, the Senate was debating an amendment (SA 3038) offered by Senator Roth to S. 1357, a reconciliation bill that ultimately was vetoed by the President. Among other things, the amendment would have increased the federal Medicaid payments to states. Senator Roth argued that section 7482 of his amendment provided an offset for the spending increases. Let's go to the videotape (from the Congressional Record, October 27, 1995), with the *Bulletin's* context-lending translation (in italics).

Debate on the Roth amendment begins on page [S 16038](#) and picks up the following exchanges on [S 16046](#).

The PRESIDING OFFICER [*who happens to be Senator Stevens*]. The Senator will state the inquiry.

Mr. GRAHAM. Are outlay reductions to Social Security used to offset the spending of this amendment?

The PRESIDING OFFICER. The Chair is not in a position to answer that question. *The Chair does not evaluate the budgetary effect of legislation before the Senate.*

Mr. GRAHAM. Would the Chair like to be informed on that matter so that he might be in a position to answer that question?

The PRESIDING OFFICER. The Chair would be happy to listen....

Mr. GRAHAM. Mr. President, I send to the desk for the review of the Chair as well as for inclusion in the **Record** the 1996 COLA versus conference resolution baseline assumptions data, October 16, 1995.

I would like to ask that these be compared with the projections which are utilized to produce the revenue for purposes of supporting the funding contained in this amendment. [TABLE APPEARS IN RECORD HERE]

The PRESIDING OFFICER. The Senator's time is running.

Mr. GRAHAM. Mr. President, it was my understanding that time for points of order and parliamentary inquiry is not charged against the time. Is that correct?

The PRESIDING OFFICER. Respectfully, the Senator has been answered as far as the parliamentary inquiry is concerned. The Chair is not capable of making the comparisons the Senator wishes. *Even though you submitted a table, the Chair still does not evaluate the budgetary effect of legislation before the Senate.*

Mr. GRAHAM. I wonder if the Senator from New Mexico or the Senator from Delaware as chairs of the respective committees would like to comment whether they believe there are outlay reductions to Social Security used to offset the spending in this amendment.

Mr. DOMENICI. I am satisfied with the ruling of the Chair. I have no comment on that. *While the Chair did not really make a "ruling" in response to the parliamentary inquiry about how the amendment was offset – he simply said he could not answer the inquiry because it is not his job – I am satisfied with the Chair's response.....*

Mr. GRAHAM. Mr. President, I am directing my attention to section 7482 of the legislation, which begins on page 45 and states:

Cost-of-Living Adjustments During Fiscal Year 1996. Notwithstanding any other provision of law, in the case of any program within the jurisdiction of the Committee on Finance of the United States Senate which is adjusted for any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) for the United States city average of all items, any such adjustment which takes effect during fiscal year 1996 shall be equal to 2.6 percent.

It is to that section, Mr. President, that I direct the point of order. I raise the point of order under **section 310(d) of the Congressional Budget Act of 1974** against the pending amendment because it counts \$12 billion in cuts to Social Security which is off budget to offset spending in the amendment.

Note that the debate starts with a section 310(d) point of order, not 310(g) – but it includes a discussion that may shed light on the issue of 310(g). Section 310(d) says an amendment to a reconciliation bill is not in order if it would increase the deficit relative to the reconciliation instruction. Sen. Graham was arguing that since the "offset" in the amendment is from reducing Social Security outlays, and Social Security outlays are off-budget, then they cannot provide an offset to the increased spending of the amendment, so the net effect of the amendment, for purposes of enforcing the Budget Act, is just the spending increase, which takes the Finance Committee out of compliance with its reconciliation instruction.

The PRESIDING OFFICER. Does the Senator from New Mexico wish to be heard on this point of order? *Hmmm, this still sure seems like a budget scoring question. The Budget Act gives the Chairman of the Budget Committee (in this case, Senator Domenici) the power to tell the Senate the budgetary impact of legislation for purposes of evaluating points of order....let's ask him.*

Mr. DOMENICI. I want to say the dollar numbers being referred to are actual. That is all I want to say. *I am pretty sure I don't want to say very much here since the Presiding Officer is turning to me to decide whether the scoring allows 310(d) to come in to play. I will only say something about the dollar numbers that Sen. Graham is referring to ("because it counts \$12 billion in cuts to Social Security which is off budget to offset spending") being "actual."*

Mr. GRAHAM. Mr. President, could I respond to the--do you wish further debate on the point of order? *Huh? I don't get what Senator Domenici is saying. Could you say a little more so I can figure out what you are talking about enough to mount a rebuttal?*

The PRESIDING OFFICER. It is not debatable. I note the Senator from New Mexico wishes not to make a statement. The scoring of this bill under the Budget Act is under the control of the chairman of the Budget Committee, and the precedents of the Senate do not go beyond that. **The point of order is not well taken. This is not my decision. It is up to Chairman Domenici, and I think he's telling me that the scoring does not support the case for a 310(d) point of order.**

Mr. HARKIN addressed the Chair.

Mr. DOMENICI. I ask for the yeas and nays. *Since Sen. Graham's attempt to derail the amendment failed, I will seek a vote on the amendment itself before someone else can cause trouble.*

Mr. HARKIN. I raise a point of order under **section 310(g) of the Budget Act** because the pending amendment achieves its savings by changing the cost-of-living provisions of section 215 of the Social Security Act, and changing title II of that act violates section 310(g) of the Congressional Budget Act....

Mr. DOMENICI. CPI was not changed as referred in that act. *The Roth amendment does not include any legislative language that changes the cost-of-living provisions [aka CPI – consumer price index] in section 215 of the Social Security Act.*

The PRESIDING OFFICER. The Chair is informed that the provisions in the act cited are not applicable to this instance and that **the point of order is not well taken. This issue is still not my job. It is the job of the Budget Committee chairman to inform the Senate whether the Roth amendment has a budgetary impact that is prohibited.**

Mr. HARKIN. Section 7482 on page 45 of the pending amendment, line 22, states: 'Notwithstanding any other provision of law . . .' Parliamentary inquiry. Is this not referencing title II of Social Security? *Such a blanket wiping away of every other provision of law surely changes title II of the Social Security Act even if the Roth amendment has found a way to not explicitly reference that Act?*

The PRESIDING OFFICER. The Chair is informed that that would not be interpreted as referencing anything. That is to indicate that without regard to any other provision of law, this provision of this bill would become law.

Mr. HARKIN. Further parliamentary inquiry. Is the Chair then ruling that by that very sentence, 'Notwithstanding any other provision of law,' that that would, in fact, cover title II of Social Security since it is law? And that, 'Notwithstanding any other provision of law,' therefore, that overcomes title II of Social Security?

The PRESIDING OFFICER. The Chair would state that that interpretation--I must yield to the Senator's inquiry. The Senator is asking this Chair to act as a court and make a determination of law and the conflicts of law, and that is not within the proper prerogative of this Chair.

Mr. HARKIN. Is the Chair ruling, as pertains to the ruling on Senator **Graham's** point of order, is the Chair ruling that the Social Security Act, title II, may be changed within the reconciliation process by drafting a provision to read, 'notwithstanding any other provision of law'?

The PRESIDING OFFICER. The Chair's ruling with regard to the point of order of the Senator from Florida was on the basis of the issues he stated. The Chair is not ruling--the Chair is not ruling--as the Senator indicated, that there is any indication here before the Chair of a provision to change the Social Security Act....*I am not going to provide you with any rationale for my ruling on the 310(d) point of order, and I am not going to agree with any characterization you are attempting to ascribe to my ruling.*

Mr. HARKIN. If that is the ruling of the Chair, the Social Security law must be naked to attack under reconciliation. Would not section 310(g) of the Budget Act be now rendered meaningless by the precedent the Chair is now setting? *There are many ways to change Social Security benefits without ever citing "title II of the Social Security Act," so by ruling this way, the Chair is saying section 310(g) is essentially meaningless as it affords none of the protection for Social Security from the fast track reconciliation process that the plain meaning of section 310(g) suggests.*

The PRESIDING OFFICER. The Chair has no intention of rendering meaningless any provision of the Budget Act. We are attempting to comply with the Budget Act. The Chair is informing that the chairman of the Budget Committee has the authority, as did the previous chairman, to make the determination that has been made with regard to this aspect of this bill. *The topic of this whole conversation is simply not my job. My only role is to ask the Chairman of the Senate Budget Committee whether the amendment has provisions or budgetary effects that run afoul of the prohibitions in the two points of order that were raised.*

So what was really going on with all this? The 1996 budget resolution (the source of the reconciliation instructions that the reconciliation bill was fulfilling) was built on CBO's March 1995

baseline, which assumed that the cost-of-living allowance (COLA) for Social Security and other programs would be 3.1 percent in January 1996, based on CBO's economic forecast of what the consumer price index (CPI) would be.

By the end of October 1995, when the Senate was debating its reconciliation bill, actual data had come in on the CPI. Based on that data, the executive branch agencies had already announced what the COLA would be on January 1, 1996 – 2.6 percent. Then the Roth amendment comes along and, among other things, tells the executive branch to set the COLA for 1996 at 2.6 percent, claiming that would produce savings relative to the baseline (which assumed a higher COLA of 3.1 percent).

There was no CBO cost estimate of the Roth amendment. However, at one point in the debate Senator Graham cited a memo from a CBO staffer to a Budget Committee staffer that said that CBO and OMB “do not score savings for legislating [the same] COLA that would happen anyway under current law.”

While Chairman Domenici pooh-poohed the memo, he did not argue with the result that two mutually exclusive things had to be true at the same time: 1) the COLA part of the Roth amendment *does cut* Social Security and uses the savings to pay for the spending increases in the amendment, so it does not violate section 310(d), AND 2) the COLA part of the Roth amendment *does not cut* the Social Security COLA by 0.5 percentage points because the lower COLA is already actually happening, so 310(g) also does not apply.

The presiding officer had ceded all responsibility for evaluating these points of order over to the Chairman of the Budget Committee, whose authority in this area (once the presiding officer decides it is the Chairman's decision to make) cannot be challenged, except rhetorically.

If there had been a CBO cost estimate, it would have been harder or even impossible for the Budget Committee Chairman to argue that the COLA provision in the amendment provided an offset. But absent such an estimate, the Senate had little choice under the Budget Act but to rely on the Chairman's say-so. If there had been a CBO estimate, there would have been no savings scored for the “offset,” and the amendment certainly would have violated 310(d).

The ruling was that the amendment did not violate 310(d), in which case the amendment would have had to violate 310(g) because, by the previous ruling (those “reductions” were counted so that 310(d) would not apply), the amendment did reduce Social Security benefits payable under title II of the Social Security Act.

Is the 1995 Debate a Precedent for 2010?

When the staffs of the Budget and Finance Committees went to talk to the Senate Parliamentarians just as debate on the 2010 reconciliation bill was about to begin, the majority staff argued that the Chairman of the Budget Committee makes all determinations related to scoring and budgetary effects of legislation. As in 1995, that remains true. The majority also stated that a determination of whether a point of order under 310(g) applies to the reconciliation bill **was not a question for the Chairman of the Budget Committee**, and that was why there was meeting with the Parliamentarians.

But that is trying to have it both ways, just as in 1995.

If one wanted to view the 1995 event as the relevant precedent for whether 310(g) applied against the 2010 reconciliation bill, then this was not an issue that was in the purview of the Parliamentarians to decide in March 2010. If a senator had raised

the 310(g) point of order on the floor, then, based on the precedent, the presiding officer would have had to turn Budget Committee Chairman Conrad, and the onus would have been on the Chairman to provide an explanation why the point of order lies or not. The CBO cost estimate, which was available (unlike in 1995), indicates the reconciliation bill includes recommendations with respect to Social Security, leading one to conclude that 310(g) applies.

But if the determination of the applicability of 310(g) to the 2010 reconciliation bill is not a question for the Chairman of the Budget Committee, then the October 27, 1995 debate was irrelevant to the 2010 bill.

After the meeting in March, the Parliamentarians sent an email to the meeting participants saying only that the 310(g) point of order, if raised, would not be well taken by the chair. By that action, the Parliamentarians were saying the decision about 310(g) is for the Parliamentarian (or presiding officer) to make, not for the Budget Chairman. As a result, no senator attempted to raise the 310(g) point of order against consideration of the reconciliation bill. But at the end of debate on the bill, Senator Grassley submitted for the Congressional Record a list of possible points of order against the bill (including 310(g)) and asked the presiding officer (this time it was Vice President Biden) to confirm that if a Senator had raised any of those points of order, they **would not have been well taken** by the Chair. The Chair confirmed that understanding.

In the court system, a precedent is a judicial ruling regarding a particular fact set that is supported by a written decision that outlines the rationale and explanation for the decision, so that comparable fact sets in the future would lead subsequent courts to making similar decisions based on that precedent. But in the Senate, the 2010 decision that the 310(g) point of order did not lie against the reconciliation bill was even less “explained” than the decision in 1995, so while both will be called Senate precedents, they are precedents of nothing since they have no rationale.

Postscript. During the March 2010 meeting on the application of 310(g), the majority cited other “precedents” from previous reconciliation bills over the last two decades, which changed the tax treatment of employer-provided education benefits. Proponents of these “precedents” are under the impression that such provisions changed Social Security outlays and revenues, yet no one raised a 310(g) point of order against those bills.

The fact that no one raised a 310(g) point of order against these bills is evidence of nothing.

There are many times that a point of order does lie against a provision of a bill, or an amendment, but no member desires to use the budget enforcement tools available to them, so no one raises a point of order (especially if the bill is bipartisan). What if the 2010 reconciliation bill (or an amendment to it) had included language that violated section 306 of the Budget Act (Budget Committee jurisdiction)? Past reconciliation bills have included language that violated section 306, but no one raised the point of order. Does that mean that the 306 point of order would never apply to similar language in a future reconciliation bill?

The CBO cost estimates for recent reconciliation bills that included employer-provided education benefits did not show any budgetary effect on Social Security revenues or outlays, so there was no indication from the cost estimates that 310(g) might be in play.