

## Chapter 7

### Budget Process

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#### **Research References**

- Deschler Ch 13 § 21
- Manual* §§ 169, 719, 748, 853, 990, 1068c, 1068f, 1129-1130
- Budget and Accounting Act of 1921
- Congressional Budget and Impoundment Control Act of 1974
- Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman)
- Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987

## § 1

## HOUSE PRACTICE

Budget Enforcement Act of 1990  
Omnibus Budget Reconciliation Act of 1993  
Unfunded Mandates Reform Act of 1995  
Budget Enforcement Act of 1997  
Statutory Pay-As-You-Go Act of 2010  
Budget Control Act of 2011  
*Introduction to the Federal Budget Process*, CRS, Dec. 2, 2010  
*Budget Enforcement Act of 1997: Summary and Legislative History*, CRS,  
Oct. 8, 1997

### § 1. In General

There are three stages in the complex process by which the Congress allocates the fiscal resources of the Federal government. First, there is an *authorization* process, under which Federal programs are created in response to national needs. Second, there is an *appropriations* process under which funding is provided for those programs. See APPROPRIATIONS. Finally, there is a congressional *budget* process that annually establishes an overall fiscal policy of spending and revenues and that institutes a complex web of procedures to enforce those budgetary decisions. The overall fiscal policy is established by the annual adoption of a concurrent resolution on the budget. The congressional budget process includes the development and consideration of reconciliation legislation to implement its most significant budget policies. These three stages are not necessarily considered or completed in chronological order.

The enforcement of budgetary decisions encompasses both congressional and executive actions. Such enforcement is rooted principally in three statutes—the Congressional Budget Act of 1974 (the Budget Act), the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman), and the Statutory Pay-As-You-Go Act of 2010 (Stat-Paygo). A recent law, the Budget Control Act of 2011, also provides new enforcement mechanisms for budgetary decisions. See § 24, *infra*. The Budget Act permits enforcement through parliamentary points of order against legislation violating its requirements and procedures. However, the enforcement mechanisms are not automatically applied and timely points of order from the floor are required to bring them into play. Gramm-Rudman made significant revisions to the Budget Act and its budgetary control mechanisms. See § 2, *infra*. Stat-Paygo provides for a scorecard and a procedure that will result in sequestration (automatic spending cuts) if the scorecard shows a debit. The Budget Control Act of 2011 establishes a point of order if discretionary spending caps are violated and provides for sequestration if the product of a joint se-

lect committee on deficit reduction is not enacted into law by December 2011.

## § 2. — Earlier Statutes

### **The Budget and Accounting Act of 1921**

Budget reform began with the passage of the Budget and Accounting Act of 1921. That Act established a new budget system that permitted all items relating to a department to be brought together in the same bill; required the President to submit an annual national budget to Congress in place of the previous uncoordinated agency submissions; created the Office of Management and Budget (OMB) to assist in this respect; and established the General Accounting Office and made it the principal auditing arm of the Federal government. 31 USC § 1101.

### **The Congressional Budget Act of 1974**

Until 1974 Congress lacked a comprehensive uniform mechanism for establishing priorities among its budgetary goals and for determining national economic policy regarding the Federal budget. Responsibility for the budget remained fragmented throughout the Congress. The size of the budget, and the size of the surplus or deficit, were not subject to effective controls. To address these problems, both Houses enacted over President Nixon's veto the Congressional Budget and Impoundment Control Act of 1974. Deschler Ch 13 § 21. The Act (2 USC § 601) consisted of 10 titles that established:

- New committees on the budget in both the House and the Senate, and a Congressional Budget Office (CBO) designed to improve Congress' informational and analytical resources with respect to the budgetary process.
- A timetable and controls for various phases of the congressional budget process centered on a concurrent resolution on the budget to be adopted before legislative consideration of revenue or spending bills.
- Various enforcement procedures and provided for program review and evaluation.
- Standardized budget terminology.
- Procedures for congressional review of Presidential impoundment actions.

Titles I through IX constitute the Congressional Budget Act of 1974 and title X constitutes the Impoundment Control Act. The Unfunded Mandates Reform Act of 1995 added a new part B to title IV of the Budget Act.

The central purpose of the process established by the Budget Act is to coordinate the various revenue and spending decisions that are made in separate tax, appropriations, and legislative measures.

### **The Balanced Budget and Emergency Deficit Control Act of 1985**

The Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman) made further significant changes in the budget process, and in the Budget Act procedures. 2 USC § 900. Conceived as a statutory response to the burgeoning Federal deficit, Gramm-Rudman instituted a single binding budget resolution, binding committee allocations, reconciliation, and enforcement of spending through sequestration. Gramm-Rudman included provisions amending the Budget Act to permit a new point of order against legislation exceeding the appropriate committee allocation (§ 302(f) of the Budget Act), exempting the title II Social Security program from reconciliation (§ 310(g) of the Budget Act), and precluding the breaching of budget authority or outlay ceilings or revenue floors, with certain exceptions (§ 311 of the Budget Act). Pursuant to section 275 of Gramm-Rudman, several provisions of Gramm-Rudman expired on September 30, 2002, including two provisions providing for sequestration to enforce discretionary spending (§ 251) and deficit targets (§ 253).

### **Budget Enforcement Act of 1990; Revisions and Extensions**

The Budget Enforcement Act of 1990 (BEA of 1990) revised the Gramm-Rudman deficit targets, made deficit targets adjustable, and extended the sequestration process. It set limitations on distinct categories of discretionary spending and created a PAYGO process that would trigger a sequestration of funds should increases in direct spending or decreases in revenues cause a net increase in the deficit for a given year. §§ 13-16, *infra*.

### **Budget Enforcement Act of 1997**

The Budget Enforcement Act of 1997 (BEA of 1997) extended the discretionary spending limits and PAYGO process through fiscal year 2002 and further changed the congressional budget process. For a more detailed discussion of its revisions, see *Budget Enforcement Act of 1997: Summary and Legislative History*, CRS, Oct. 8, 1997.

## **§ 3. — The Paygo/Cutgo Rule (Clause 10 of rule XXI)**

### **Generally**

At different times over the past three decades, different procedures in the House have fallen under the label “Pay-As-You-Go” or PAYGO. The term PAYGO was first used in law in section 252 of Gramm-Rudman as part

of a process that required that direct spending and revenue legislation enacted into law be deficit neutral. The original statutory PAYGO process, as noted above, was first instituted in 1990 and, while textually still in law, only applies to legislation enacted prior to the end of the fiscal year 2002. Today the House operates under another statutory PAYGO process (Stat-Paygo), enacted on February 12, 2010 (Pub. L. 111-139). See § 4, *infra*.

The House first adopted a separate PAYGO rule providing a point of order against measures in the 110th Congress (clause 10 of rule XXI). That rule was converted to a procedure known as CUTGO in the 112th Congress. “Cut-As-You-Go” changed the focus of the rule to increases in mandatory spending. As so amended, the rule operates independently of revenue changes and the status of the deficit or surplus. This section will address primarily the parliamentary procedures found in the House rules. For a more detailed description of Stat-Paygo, see *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, CRS, Sept. 13, 2010. For more on the former House PAYGO rule, see *Manual* § 1068e for the 111th Congress (H. Doc. 110-162).

#### **The Cutgo Rule (clause 10 of rule XXI)**

The House CUTGO rule establishes a point of order against measures that cause an increase in mandatory spending over a six- or eleven-year time period. The effect of the measure is determined on the basis of estimates made by the Committee on the Budget. 112-1, Jan. 26, 2011, p \_\_\_\_\_. The rule also provides special procedures when evaluating measures that (1) are considered under a rule that directs the Clerk to add the text of one measure to another after passage, or (2) contain provisions designated as an emergency.

#### **Definitions and Time Periods**

The CUTGO rule only addresses measures that affect mandatory spending. The rule equates “mandatory spending” with “direct spending” and uses the definition of direct spending found in section 250 of Gramm-Rudman with an exception for certain provisions in appropriation Acts. The rule also uses the definitions of “budget year” and “current year” found in section 250 of Gramm-Rudman.

The rule provides both a six- and eleven-year time period in which a measure may not increase mandatory spending. Specifically, the measure may not increase mandatory spending for the period comprising either: (1) the current year, the budget year, and the four years following that budget year; or (2) the current year, the budget year, and the nine years following that budget year.

**Estimates**

The effect of the measure on mandatory spending is based on estimates provided by the Committee on the Budget. This is similar to the authority vested in the Committee on the Budget by section 312 of the Budget Act over estimates of levels of new budget authority, outlays, direct spending, new entitlement authority, and revenues for purposes of titles III and IV of the Budget Act. The Chair is authoritatively guided by estimates from the Committee on the Budget as to the net effect of a measure as compared to the proposition to which it was offered. 112-1, Jan. 26, 2011, p \_\_\_\_.

**Linking Measures**

The rule provides for a special evaluation when a measure is being considered under a special order of business that directs the Clerk to add the text of one measure to another measure following passage. Specifically, the rule provides that if a bill, joint resolution, or amendment is considered pursuant to a special order of the House directing the Clerk to add as new matter at the end of such measure the entire text of a separate measure or measures as passed by the House, the new matter shall be included in the evaluation of the bill, joint resolution, or amendment. Clause 10(b) of rule XXI. See SPECIAL ORDERS OF BUSINESS.

**Emergency Designations**

The rule excludes provisions designated as emergencies in certain measures from the CUTGO evaluation. The rule specifically excludes a provision designated as an emergency under Stat-Paygo in the case of a point of order against: (1) a bill or joint resolution; (2) an amendment made in order as original text by a special order of business; (3) a conference report; or (4) an amendment between the Houses. Clause 10(c)(1) of rule XXI. The rule also provides that in the case of an amendment (other than an amendment in the nature of a substitute made in order as original text or an amendment between the Houses) the evaluation of the Committee on the Budget shall give no cognizance to any designation of emergency. Clause 10(c)(2) of rule XXI. This provision creates a level playing field for amendments by requiring the Committee on the Budget to evaluate amendments offered from the floor (including those proposed in a motion to recommit) to the underlying text as if both the amendment and the underlying text did not include such emergency designations. For a discussion of the treatment of emergency designations under the Budget Control Act of 2011, see § 24, *infra*.

**Reconciliation Directives**

Clause 7 of rule XXI also provides a point of order against concurrent resolutions on the budget that contain reconciliation directives that are not CUTGO-compliant. Specifically, it is not in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon, that contains reconciliation directives under section 310 of the Congressional Budget Act of 1974 that specify changes in law that would cause an increase in net direct spending for the period of the concurrent resolution on the budget.

**§ 4. — The Statutory Pay-As-You-Go Act of 2010 (Stat-Paygo)****Generally**

The Statutory Pay-As-You-Go Act of 2010 (Pub. L. 111-139) was enacted on February 12, 2010. That Act established a new budget enforcement mechanism to require that new direct spending and revenue legislation enacted into law not increase the deficit. Under this procedure, the budgetary effects of direct spending and revenue legislation are carried on PAYGO scorecards covering five- and ten-year periods. If at the end of a congressional session a scorecard shows a net debit, the President issues an order known as a “sequestration order” that results in a largely across-the-board cut in certain programs equal to the amount of the debit.

Section 4 of the Act establishes a procedure whereby budgetary effects of certain measures for purposes of maintaining a PAYGO scorecard are determined by Congress. This procedure permits the House and Senate to include language in bill text to direct that the scoring of a measure be determined by reference to an estimate submitted in the *Record* by the chair of either the House or Senate Budget Committee or both acting together in the case of a conference report. If such language is not included, the budgetary effects are determined by the Office of Management and Budget.

Section 4 of the Act provides that the provisions that are designated as emergency requirements under the Act are not counted as budgetary effects. The Act further provides that the Chair must put the question of consideration with regard to each measure carrying an emergency designation. See QUESTION OF CONSIDERATION.

**Budgetary Effects Procedure**

Stat-Paygo establishes a procedure where the budgetary effects of legislation are determined by either the Congress or by the Office of Management and Budget. The Act provides for congressional scoring to be used if (1) specified legislative language is contained in the measure and (2) a state-

ment issued by the relevant chair of the Committee on the Budget (or jointly by both chairs in the case of amendments between the Houses and conference reports) has been printed in the *Record* prior to the final vote on the measure. The language required to be included in the measure is as follows:

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, submitted for printing in the *Congressional Record* by the chair of the (House and/or Senate) Budget Committee, provided that such statement has been submitted prior to the vote on passage (or in the House acting first on this conference report or amendments between the Houses).

For examples of *Congressional Record* submissions to accompany the textual reference, see 111-2, Feb. 25, 2010, p \_\_\_\_ (submission with respect to a bill); 111-2, May 28, 2010, p \_\_\_\_ (submission with respect to a House amendment to a Senate amendment), and 111-2, Nov. 15, 2010, p \_\_\_\_ (joint submission with respect to a conference report). Any deviation from the statutory formula in terms of content or timing could result in the budgetary effects being measured by the Office of Management and Budget rather than Congress.

### **Emergency Designations**

Section 4 of the Act provides that a provision of direct spending or revenue legislation may be designated as an emergency for purposes of the Act. The budgetary effects of such a provision are not included in the estimate provided under the Act by CBO or OMB, as applicable. § 4(g). The Act also provides that if an emergency designation under the Act is included in a measure in the House, the Chair must put the question of consideration on such measure. § 4(g)(2). The Budget Control Act of 2011 provides a separate treatment for emergency designations and motions to strike such designations. See § 24, *infra*.

## **§ 5. Committee Jurisdiction; Reports and Estimates**

### **Committee on the Budget Jurisdiction**

To implement the congressional budget process, the Budget Act created the Senate and House Budget Committees and CBO. 2 USC § 601. The Budget Committees were authorized to draft the concurrent resolution on the budget. Unlike the authorizing and appropriating committees, which focus on individual Federal programs, the Budget Committees focus on the Federal budget as a whole and on how it affects the national economy.

Clause 1(d) of rule X gives the Committee on the Budget jurisdiction over matters relating to the congressional budget, including concurrent resolutions on the budget and measures on budget process and on the enforcement of budget controls. *Manual* § 719. Section 310 of the Budget Act provides conditions for the reporting by the Budget Committees of reconciliation measures.

Section 306 of the Budget Act prohibits the consideration in either House of a bill or resolution dealing with a matter within the jurisdiction of its Committee on the Budget if not reported from that committee or discharged therefrom. The following were held to violate this section:

- An amendment directing that certain lease-purchase agreements be scored on an annual basis for budget purposes. 106-1, July 19, 1999, pp 16615, 16616.
- An amendment designating an appropriation as “emergency spending” within the meaning of the budget-enforcement laws. 106-1, Sept. 8, 1999, pp 20928-30.

Separate orders contained in opening-day rules packages have confined the point of order under section 306 to bills and joint resolutions only. See, *e.g.*, 107-1, H. Res. 5, Jan. 3, 2001, p 26; 108-1, H. Res. 5, Jan. 7, 2003, p 10; 109-1, H. Res. 5, Jan. 4, 2005, p 44; 110-1, H. Res. 6, Jan. 4, 2007, p 23; 111-1, H. Res. 5, Jan. 6, 2009, p \_\_\_\_; 112-1, H. Res. 5, Jan. 5, 2011, p \_\_\_\_.

### **Committee on Rules Jurisdiction**

The Committee on Rules has the special oversight function of review of the budget process. Clause 3(j) of rule X. Under section 301(c) of the Budget Act, the Speaker must refer a concurrent resolution on the budget reported from the Committee on the Budget sequentially to the Committee on Rules for not more than five legislative days if it includes any procedure or matter having the effect of changing a rule of the House. After such a referral, an additional one-day layover follows the report of the Committee on Rules. § 305(a)(1) of the Budget Act. In modern practice, this sequential referral is obviated in favor of the review by the Committee on Rules when reporting a special order of business governing consideration of the budget resolution. This process allows the Committee on Rules to review suggested rules changes. In the 108th Congress, composition of the Committee on the Budget was changed to include one member of the Committee on Rules. Clause 5(a)(2) of rule X.

**Committee Reports; Cost Estimates and Scorekeeping**

CBO provides economic and programmatic analyses and cost information on most reported public bills and resolutions. Under the Budget Act, five-year cost estimates are prepared and published in the reports accompanying these bills. §§ 308(a)(1)(B), 402 of the Budget Act. A committee cost estimate identifying certain spending authority as recurring annually and indefinitely was held necessarily to address the five-year period required by this section. *Manual* § 844.

Committee reports on legislation providing new budget authority or a change in revenues or tax expenditures are required to contain the estimates and other detailed information mandated by section 308(a) of the Budget Act. The information mandated by section 308(a) also is required under clause 3(c) of rule XIII, except that the estimates with respect to new budget authority must include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under current law. *Manual* § 840.

If a bill providing new budget authority is reported without an estimate of its cost, a point of order under clauses 3(c)(2) and 3(c)(3) of rule XIII (requiring that an estimate under sections 308 and 402 of the Budget Act be included in the report) may be made against consideration of the bill. However, a special order of business for the consideration of a bill that “self-executes” the adoption of an amendment providing new budget authority into a bill to be subsequently considered does not, itself, provide new budget authority within the meaning of section 308 of the Budget Act (so as to require a report by the Committee on Rules to include such a cost estimate). *Manual* § 1127. The Committee on the Budget has certain scorekeeping responsibilities under section 312 of the Budget Act, the House CUTGO rule, and Stat-Paygo.

The Director of CBO is required to issue to the committees of the House and the Senate monthly reports detailing and tabulating the progress of congressional action on specified bills and resolutions. § 308(b)(1) of the Budget Act. The Budget Committees of each House are required to prepare budget “scorekeeping” reports and to make them available frequently enough to provide Members of each House with an accurate representation of the current status of congressional consideration of the budget. § 308(b)(2) of the Budget Act.

For a discussion of committee allocations, see § 12, *infra*.

## § 6. The Budget Timetable

Section 300 of the Budget Act includes a nonmandatory timetable for various stages of the congressional budget process:

- On or before first Monday in February—President submits a budget to Congress
  - Note:* Additional time for submission of the President's budget can be provided by law. Shortly after its submission, the two Budget Committees begin hearings on the budget, the economic assumptions upon which it is based, the economy in general, and national budget priorities.
- On or before February 15—CBO submits annual report to the Budget Committees
  - Note:* This report deals primarily with overall economic and fiscal policy and alternative budget levels and national budget priorities.
- Not later than six weeks after President submits a budget—committees submit views and estimates to Budget Committees
  - Note:* These reports provide the Budget Committees with an early and comprehensive indication of committee legislative planning. These reports include estimates of new budget authority and outlays.
- On or before April 1—Senate Budget Committee reports concurrent resolution
- On or before April 15—Congress completes action on concurrent resolution on the budget
  - Note:* Congress may revise its budget resolution before the end of the appropriate fiscal year (§ 304 of the Budget Act); although this may be done at any point, the Congress in some years has followed the practice of revising the budget plan for the current fiscal year as part of the budget resolution for the ensuing fiscal year.
- May 15—Annual appropriation bills may be considered in the House
  - Note:* General appropriation bills, and amendments thereto, may be considered in the House after May 15 even if a budget resolution for the ensuing fiscal year has yet to be agreed to. § 303(b)(2) of the Budget Act.
- On or before June 10—House Committee on Appropriations reports last annual appropriation bill
- June 15—Congress completes action on reconciliation legislation
  - Note:* The mandatory June 15 deadline was repealed by the BEA of 1990. However, the Congress may not adjourn for more than three calendar days during the month of July until the House has completed action on the rec-

conciliation legislation (§ 310(f) of the Budget Act) and the annual appropriation bills (§ 309 of the Budget Act).

- On or before June 30—House completes action on annual appropriation bills
- October 1—Fiscal year begins

*Note:* The fiscal year begins on October 1 and ends on September 30. If action on appropriation bills has not been completed by October 1, Congress may pass a “continuing resolution” to provide appropriations on a temporary basis until the regular appropriation bills are enacted.

Deadlines for other stages in the budget process, such as notification of adjustment in maximum deficit amounts, the President’s mid-session budget review, and various CBO and OMB sequestration reports, were provided for in section 254(a) of Gramm-Rudman. Other than October 1 (beginning of new fiscal year), the dates established in section 300 are targets to be met each year. Failure to meet the targets does not inhibit consideration of measures beyond those dates.

Under clause 2(d) of rule X, each standing committee must submit its oversight plan for the Congress to the Committees on Oversight and Government Reform and House Administration by February 15 of the first session. These plans must be reported to the House by the Committee on Oversight and Government Reform by March 31 of the session. Clause 2(d) of rule X.

## § 7. Budget Resolutions; Consideration and Debate

### Generally

The budget resolution is a concurrent resolution; as such it is not a law. It serves as an internal framework for Congress in its action on separate revenue, spending, and other budget-related measures. The content of budget resolutions and accompanying reports is governed by section 301 of the Budget Act. Budget resolutions set forth budgetary levels for the upcoming fiscal year and for at least the four succeeding fiscal years, including amounts for total spending and total revenues. The budget resolution gives the Congress a mechanism for establishing Federal spending priorities. The budget resolution accomplishes this by dividing up Federal spending among various “major functional categories,” such as national defense, agriculture, and health. *Manual* § 1127.

Section 301(b)(4) of the Budget Act permits a concurrent resolution on the budget to “set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the pur-

poses of [the] Act.” This provision is sometimes referred to as the “elastic clause.” Textually, the “other matters” and “procedures” admitted by this section must: (1) relate to the budget; and (2) be appropriate to carry out the purposes of the Budget Act.

*Note:* Matter included under the “elastic clause” must not include matter that would destroy the privilege of the concurrent resolution on the budget, such as by effecting a special order of business. The only matter in the nature of a special order of business that may be included in a privileged concurrent resolution on the budget is a reconciliation directive. See § 11, *infra*.

### **Consideration of Budget Resolutions**

A concurrent resolution on the budget that has been reported as privileged pursuant to clause 5(a) of rule XIII is privileged for consideration under procedures set forth in section 305 of the Budget Act, but those procedures do not apply to unreported budget resolutions. 98-2, Apr. 5, 1984, pp 7992, 7993. The House may vary the parameters of consideration by unanimous consent, by suspension of the rules, or by adoption of a special order of business, because the statutory provisions concerned were enacted as exercises of the rulemaking powers of the House under the Constitution. § 904(a) of the Budget Act. It is customary for the House to vary the parameters for consideration of a budget resolution by adopting a special order of business recommended by the Committee on Rules. In recent Congresses such rules have permitted only designated amendments in the nature of substitutes, and perfecting amendments have been precluded. See, *e.g.*, 103-2, H. Res. 384, Mar. 10, 1994, p 4346; 107-1, H. Res. 100, Mar. 28, 2001, p 4758; 111-1, H. Res. 305, Apr. 1, 2009, p \_\_\_\_.

Section 305(a)(1) of the Budget Act requires a three-day layover period that starts when the report on the resolution first becomes available. Clause 4(a) of rule XIII. Section 305(a) of the Budget Act also provides for consideration in the Committee of the Whole; limits general debate to not more than ten hours, with up to an additional four hours permitted on economic goals and policies; and provides for consideration of amendments under the five-minute rule. § 8, *infra*. After the Committee of the Whole rises and reports the resolution back to the House, the previous question is considered as ordered on the resolution and any amendments thereto to final passage without intervening motion. Neither a motion to recommit the resolution nor a motion to reconsider is in order. § 305(a)(2)-(5) of the Budget Act. The yeas and nays are required to be put on the question of final adoption of a concurrent resolution on the budget. Clause 10 of rule XX.

A budget resolution being considered in Committee of the Whole has been held subject to a motion to rise and report the resolution back to the House with the recommendation that the resolving clause be stricken. 103-1, Mar. 18, 1993, p 5658. However, a motion to recommit pending House adoption of the concurrent resolution is not in order under section 305(a) of the Budget Act.

A budget resolution may under some circumstances be divided so as to permit a separate vote on particular sections therein. *Manual* §921. The question of adoption of a budget resolution containing one section revising the congressional budget for the fiscal year, preceded by sections setting forth budget targets for ensuing fiscal years as well as reconciliation instructions, and followed by a final section on reporting of certain fiscal information, was divided on the demand of a Member for two separate votes (1) on the first and final portions of the resolution and then (2) on the separable section in between. 96-2, May 7, 1980, pp 10185-87. The rule providing for the consideration of a budget resolution normally precludes a demand for a division on the question of its adoption. See, *e.g.*, 107-1, H. Res. 100, Mar. 28, 2001, p 4758.

## § 8. — Amendments to Resolutions

### Generally

Under section 305(a)(5) of the Budget Act, amendments to budget resolutions are considered in the Committee of the Whole under the five-minute rule in accordance with rule XVIII. Under clause 10 of rule XVIII, the resolution is open to amendment at any point, so that the Committee of the Whole may amend the functional categories section before consideration of the total budget allocations. *Manual* § 1127. As stated above, a special order of business resolution from the Committee on Rules typically structures the amendment process.

### Amendments to Achieve Mathematical Consistency

Clause 10 of rule XVIII requires, with certain exceptions, that amendments to concurrent resolutions on the budget be mathematically consistent. Under this rule, amendments making changes in budget authority and outlay aggregate totals must be accompanied by comparable changes in functional categories. A point of order will lie against an amendment to the resolution increasing the aggregates and a functional category for budget authority and outlays but not changing the amount of the deficit. However, an amendment that only transfers an amount of budget authority from one functional category to another—that is, reduces one category by a certain amount and

adds the same amount to another category—need make no changes in the aggregates to achieve mathematical consistency. 96-1, May 8, 1979, p 10271.

An amendment to achieve mathematical consistency throughout the resolution may either change the functional categories to conform with the aggregates, or vice versa, and if such an amendment is offered and rejected, another amendment in different form to achieve mathematical consistency may be offered. 96-1, May 14, 1979, pp 10967-75. Under section 305(a)(5) of the Budget Act, an amendment or amendments to achieve mathematical consistency can be offered at any time up to adoption.

A change in the public debt limit from that figure reported by the Committee on the Budget is not in order, except as part of an amendment offered at the direction of the Committee on the Budget to achieve mathematical consistency. Clause 10 of rule XVIII. For more on the public debt limit, see § 18, *infra*.

### **Germaneness**

Unless protected by a special order of business, an amendment to a concurrent resolution on the budget must be germane to the text of the resolution. An amendment expressing the sense of Congress that the Impoundment Control Act be repealed for a fiscal year and calling for a review of the Budget Act and the budget process has been conceded to be not germane. 96-2, Nov. 18, 1980, p 30026.

### **§ 9. — Debate on Conference Reports**

Unless limited by a special order of business, there can be up to five hours of debate in the House on a conference report on a concurrent resolution on the budget under section 305(a)(6) of the Budget Act, to be equally divided between the majority and minority parties. Where the conferees report in total disagreement, debate on the motion to dispose of the amendment in disagreement is not governed by the statute and is instead considered under the general “hour” rule in the House. See, *e.g.*, 95-2, May 17, 1978, p 14117. Under section 305(a)(6) of the Budget Act, neither a motion to recommit nor a motion to reconsider is available on a conference report.

### **§ 10. — Budget Resolution to Precede Consideration of Related Legislation**

Section 303 of the Budget Act precludes consideration of certain budget-related legislation for a fiscal year until the budget resolution for that year has been adopted by both Houses. The essence of this section is timing. It

reflects a judgment that legislative decisions on expenditures and revenues for the coming fiscal year should await the adoption of the budget resolution for that year. 101-2, July 25, 1990, p 19161. Legislation ruled out under section 303 has included:

- A conference report containing new spending authority in the form of entitlements to become effective in fiscal years 1978 through 1980, where the concurrent resolution on the budget for those fiscal years had not yet been adopted. *Manual* § 1127.
- An amendment providing new entitlement authority to become effective in a fiscal year before adoption of the budget resolution for that year. *Manual* § 1127.
- An amendment providing new budget authority for a fiscal year, before adoption of a budget resolution for that year. *Manual* § 1127.
- A motion to recommit proposing an amendment providing an increase in revenues for a fiscal year before adoption of a budget resolution for that year. 105-2, July 24, 1998, pp 17198, 17276.

While section 303 provides that a point of order lies only against a bill or joint resolution that has been reported (§ 303(b)(3) of the Budget Act), clause 8 of rule XXI provides that title III of the Budget Act operates without regard to whether the measure concerned has been reported.

Waivers of section 303 of the Budget Act have been provided pursuant to a special order of business from the Committee on Rules. See § 4, *supra*. Section 303 does not apply after April 15 if the measure would not increase the deficit or lower revenues below the aggregate level of Federal revenues set forth in the concurrent resolution on the budget. § 302(g) of the Budget Act.

### § 11. Reconciliation Procedures

Section 301(b)(2) of the Budget Act provides for the inclusion of reconciliation instructions in a budget resolution and for the reporting and consideration of reconciliation legislation. Reconciliation instructions direct committees to recommend changes in existing law to achieve the goals in spending or revenues contemplated by the budget resolution. If reconciliation instructs more than one committee in each House, then all committees instructed are to submit their recommendations to their respective Budget Committees. The Budget Committees then assemble, without substantive revision, all the recommendations into one bill for action by the House or Senate. § 310 of the Budget Act. Reconciliation instructions may contemplate several reconciliation bills, including a bill that reduces revenues. See, *e.g.*, 104-2, May 21, 1996, p 11939-41 (decision of Chair sustained on appeal in the Senate); 106-1, H. Con. Res. 68, Mar. 25, 1999, pp 5754, 5755

(House adoption of budget resolution). Section 310 provides expedited consideration in both Houses of reconciliation legislation, provided the reconciliation bill has been reported as privileged pursuant to clause 5(a) of rule XIII. However, it is customary for the House to vary the parameters for consideration of a reconciliation bill by adopting a special order of business resolution recommended by the Committee on Rules. See, *e.g.*, 107-1, H. Res. 142, May 16, 2001, p 8191. Clause 7 of rule XXI provides a point of order against reconciliation instructions that are not CUTGO-compliant.

Section 310(c)(1)(A) of the Budget Act permits committees, in meeting their reconciliation targets, to alternatively substitute revenue and spending changes by up to 20 percent of the sum of the absolute value of reconciled changes as long as the result does not increase the deficit relative to the reconciliation instructions. Section 310(d) of the Budget Act requires that amendments offered to reconciliation legislation in either the House or the Senate must not increase the level of deficit (if any) in the resolution. Section 313 of the Budget Act addresses the subject of “extraneous” material in a reconciliation bill—the so-called “Byrd Rule.” The enforcement of this section applies only in the Senate but can be directed against matter originating in the House.

## **§ 12. Adherence to Budget Resolution Spending and Revenue Levels**

The various parliamentary enforcement mechanisms established in the Budget Act—those sections establishing points of order against consideration of certain propositions—constitute rules of the House and, as such, are liable to waiver by unanimous consent, by suspension of the rules, or by adoption of a special order of business. It is not unusual for the House to waive such a point of order by adopting a special order of business resolution recommended by the Committee on Rules.

### **Adherence to Total Spending and Revenue Levels (§ 311(a) of the Budget Act)**

With certain exceptions, section 311(a) of the Budget Act precludes specified measures—including amendments and conference reports—that would cause total budget authority or total outlays to exceed, or total revenues to be below, the level set forth in the budget resolution. The provision is enforced by points of order against the consideration of reported measures that would breach the “appropriate levels” of total new budget authority or total outlays or total revenues in the budget resolution.

The Chair has sustained points of order under section 311(a) of the Budget Act in the following instances:

- An amendment striking a rescission of existing budget authority where its effect would be to increase the net new budget authority in the bill in breach of the applicable total. 97-1, May 12, 1981, p 9314.
- An amendment reducing revenues for the fiscal year below the total level of revenues contained in the concurrent resolution on the budget for that year. See 94-2, Oct. 1, 1976, pp 34554-57.
- A motion to amend a Senate amendment providing new budget authority for official mail costs to be available immediately where the applicable total of new budget authority contained in the budget resolution had already been exceeded and where the Committee on Appropriations had exceeded its section 302(a) allocation (thereby rendering the section 311(b) exception inapplicable). 101-1, Sept. 28, 1989, p 22267.

#### “Deemers”

The House has adopted resolutions to “deem” budget parameters to be in place for temporary enforcement. These “deemers” have typically been carried in either a special order of business reported from the Committee on Rules or as a separate order in an opening-day resolution adopting the standing rules for a Congress. See, *e.g.*, 105-2, H. Res. 477, June 19, 1998, pp 12991, 12998; 106-1, H. Res. 5, Jan. 6, 1999, p 76; 107-2, H. Res. 428, May 22, 2002, p 8675; 108-1, H. Res. 5, Jan. 7, 2003, p 13. These resolutions often empower the chair of the Committee on the Budget to place allocations in the *Record* that are “deemed” in place for purposes of enforcing the Budget Act.

#### Committee Allocations (§ 302 of the Budget Act)

Section 302(a) of the Budget Act provides for an allocation to each committee of “appropriate levels” of new budget authority and outlays, which are published in the joint statement of managers accompanying a conference report on the budget resolution.

Each committee is allocated an overall level for discretionary spending that is consistent with the congressional budget plan. Under section 302(b) of the Budget Act, the Committee on Appropriations of each House then subdivides its allocations among its subcommittees. Section 302(c) of the Budget Act precludes consideration of an appropriation measure until that committee has made its suballocation under section 302(b). Points of order under section 302(c) apply separately to the consideration of bills and amendments. Thus, a waiver of points of order against consideration of an appropriation bill before filing of a report from the Committee on Appropriations allocating new budget authority among its subcommittees does not

extend to an amendment providing new budget authority in addition to the amounts contained in the bill. 100-1, July 13, 1987, p 19514; 108-1, Jan. 8, 2003, p 194.

Any Member may raise a point of order under section 302(f) of the Budget Act against a bill, amendment, or conference report that would exceed the relevant committee allocation. An amendment that provides no new budget authority or outlays but instead results in outlay savings is not subject to a point of order under these provisions. 100-1, June 30, 1987, p 18308. The Chair has sustained points of order under section 302(f) of the Budget Act in the following instances:

- An amendment to a general appropriation bill increasing the level of new discretionary budget authority in excess of the relevant allocation under 302(b) of the Budget Act. 108-1, July 25, 2003, p 19722-24; 109-2, June 27, 2006, p 12802.
- An amendment to a general appropriation bill proposing to strike a provision scored as negative budget authority and thus providing new budget authority in excess of the relevant allocation under section 302(b) of the Budget Act. 106-2, June 13, 2000, p 10505.
- An amendment to a general appropriation bill offsetting an increase in the level of discretionary budget authority with a decrease in an account designated as “emergency spending,” such designation rendering that account invisible under the Budget Act and thus unavailable for an offsetting transfer. 109-1, Mar. 15, 2005, p 4696.
- An amendment to a general appropriation bill proposing to strike a provision stating that a specified increment of new discretionary budget authority provided by the bill would “become available for obligation only upon the enactment of future appropriations legislation,” thus causing the bill to provide additional new discretionary budget authority in that incremental amount in excess of the relevant 302(b) allocation. 104-2, June 26, 1996, p 15563.
- A motion to commit a bill with instructions proposing to provide new budget authority in excess of the relevant 302(a) allocation. 108-1, Jan. 8, 2003, p 193, 194.
- A motion to recommit a bill with instructions proposing to provide new budget authority in excess of the relevant 302(a) allocation. 106-2, June 28, 2000, p 12750; 108-2, Apr. 2, 2004, p 6374; 108-2, July 22, 2004, p 17321.

### **The Section 311(c) Exception**

As noted above, section 311(a) of the Budget Act precludes Congress from considering legislation that would cause total revenues to fall below, or total new budget authority or total outlays to exceed, the appropriate level set forth in the budget resolution. However, section 311(a) does not apply in the House to spending legislation if the committee reporting the measure

has stayed within its section 302(a) allocation of new budget authority. See § 311(c) of the Budget Act. Accordingly, for the purposes of section 311, the House may take up any spending measure that is within the appropriate committee allocations, even if (solely due to excessive spending within another committee's jurisdiction) it would cause total spending to be exceeded.

### **Emergency Spending**

In prior years, Congress used a variety of mechanisms to exempt spending designated as emergency spending from constraints imposed by the Budget Act. For example, an amount designated as an emergency might be rendered “invisible” and not taken into account for certain Budget Act purposes, as under section 606(d) (now repealed). Under other procedures, automatic adjustments in budget levels and committee allocations would be triggered to account for amounts designated as emergencies, as under section 314 (now revised).

The Budget Control Act of 2011 provided for new treatment in the House for provisions containing amounts designated as an emergency and made substantial changes to the operation of section 314 of the Budget Act. See § 24, *infra*. In addition, emergency spending is sometimes governed by provisions in the concurrent resolution on the budget. Finally, emergency designations are also accorded special treatment under clause 10 of rule XXI and Stat-Paygo. See §§ 3, 4, *supra*.

### **Chair Guided by Committee on the Budget Estimates**

When the Chair decides questions of order under titles III and IV of the Budget Act, section 312(a) of the Budget Act requires the reliance on estimates provided by the Committee on the Budget in determining levels of new budget authority, outlays, direct spending, new entitlement authority, and revenues for a fiscal year. See, *e.g.*, 106-2, June 8, 2000, pp 9940-3. A similar authority is provided in the House CUTGO rule and Stat-Paygo.

## **§ 13. Other Spending Controls**

### **Generally**

For a detailed explanation of deficit targets, discretionary spending limits, and PAYGO processes, see *Introduction to the Federal Budget Process*, CRS, Dec. 2, 2010.

## **§ 14. — Sequestration**

Sequestration (an automatic spending reduction process) involves the issuance of a Presidential order that permanently cancels budgetary authority

(except for special funds and trust funds) for the purpose of achieving a required amount of outlay savings. Currently, sequestration authority is provided by Stat-Paygo and the Budget Control Act of 2011. Pursuant to Stat-Paygo, the budgetary effects of direct spending and revenue legislation are carried on scorecards covering five and ten year periods. The President is required to issue a sequestration order (prepared by OMB) if, at the end of a congressional session, either scorecard shows a net debit. The sequestration order results in a largely across-the-board cut equal to the amount of the debit, the specifics of which can be found in section 6 of Stat-Paygo.

The Budget Control Act of 2011 established annual discretionary spending limits for security and non-security spending for a ten-year period. The Act also mandated sequestration procedures to eliminate a breach in either category. The Act also established a point of order in section 314 of the Congressional Budget Act against any bill, joint resolution, amendment, motion, or conference report that would cause the discretionary spending caps to be exceeded.

### **Direct Spending**

A conventional authorization establishes or continues a government agency or program. Although it may limit the amount of budget authority that may be appropriated for that purpose, the authorized funds are available only to the extent provided for in appropriation Acts originated by the Committee on Appropriations. Deschler Ch 25 §2.13; see APPROPRIATIONS. Spending legislation that circumvents the appropriations process is called “direct spending” (sometimes referred to as “mandatory spending”). Under clause 10 of rule XXI, direct spending includes spending described in section 250(c)(8) of Gramm-Rudman (budget authority provided by law other than appropriation Acts, entitlement authority, and the Supplemental Nutrition Assistance Program) and, additionally, provisions in appropriation Acts that make outyear modifications to substantive law as described in section 3(4)(C) of Stat-Paygo.

### **§ 15. — New Contract Authority; New Borrowing Authority**

New budget authority provided by law other than appropriation Acts may take the form of new contract authority or new authority to incur indebtedness (often referred to as “borrowing authority”).

With certain exceptions, section 401(a) of the Budget Act requires new contract authority and new authority to incur indebtedness to be effective only as provided in appropriation Acts. The various authorities referred to in section 401(a) of the Budget Act do not apply to bills that provide legislative authorizations that are subject to the appropriations process. A con-

ference report authorizing the Secretary of Health, Education, and Welfare to borrow funds by issuing government notes as a public debt transaction, not subject to amounts specified in advance in appropriation Acts, was conceded to violate section 401(a) of the Budget Act and was ruled out on a point of order. 94-2, Sept. 27, 1976, p 32655. Whether or not an amendment to a pending measure violates section 401(a) of the Budget Act is determined by its marginal effect on the pending measure (rather than current law). See 102-2, Mar. 26, 1992, p 7183.

### § 16. — Entitlement Authority

Section 401(b) of the Budget Act precludes “new entitlement authority” that becomes effective during the current fiscal year. Entitlement authority is the authority to make payments to a person or government under a provision of law that obligates the United States to make such payments to those who meet the requirements established by that law, including the food stamp program. § 3(9) of the Budget Act; *Manual* § 1127. The Chair contemplates immediate enactment to determine when an entitlement takes effect. *Manual* § 1127.

The following examples have been held to provide new entitlement authority within the meaning of the Budget Act:

- A conference report requiring the Secretary of Agriculture to pay a cost of transporting agricultural commodities to major disaster areas.
- A Senate amendment requiring the Secretary of Labor to certify a new group of workers as eligible for adjustment assistance under the Trade Act of 1974.
- An amendment enlarging the class of persons eligible for a government subsidy.

*Manual* § 1127.

The following examples have been held not to provide new entitlement authority within the meaning of the Budget Act:

- A provision requiring payments to individuals meeting certain qualifications but also requiring such payments to be ratably reduced to the amounts of appropriations actually made if sums appropriated pursuant thereto are insufficient.
- An amendment establishing a new executive position at a specified compensation level but subjecting its salary to the appropriation process.

*Manual* § 1127.

In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.*, 112-1, H. Res. 5, Jan. 5, 2011, p \_\_\_\_.

**Points of Order under Section 401 of the Budget Act**

A point of order under section 401 lies against a reported bill or joint resolution and not against an unreported measure. *Manual* § 1127. The spending authorities subject to constraints under section 401, as forms of direct spending, are also subject to the spending constraints on new budget authority under sections 302(f), 303, and 311(a) of the Budget Act.

**§ 17. Social Security Funds**

Receipts and disbursements of the Social Security trust funds are not to be counted as new budget authority, outlays, receipts, or as deficit or surplus. Under section 13301 of the BEA of 1990, the off-budget status of these programs applies for purposes of the President's budget, the congressional budget, and under Gramm-Rudman. *Manual* § 1129. Section 13302 of the BEA of 1990 creates a “fire wall” point of order in the House to prohibit the consideration of legislation that would change certain balances of the Social Security trust funds over specified periods. *Manual* § 1129.

Section 310(g) of the Budget Act prohibits the consideration of reconciliation legislation that contains recommendations with respect to the title II program under the Social Security Act (OASDI).

**§ 18. The Budget Process and the Public Debt Limit**

A limit on the public debt is fixed by law. 31 USC § 3101. The public debt limit may be changed by enactment of a bill or joint resolution. See, e.g., 101-2, H.R. 5350, Aug. 4, 1990; the Omnibus Budget Reconciliation Act of 1993. A former rule of the House generated and deemed passed a joint resolution automatically upon adoption by Congress of a concurrent resolution on the budget that sets forth a level of the public debt that is different from the statutory limit. Rule XXVIII was first adopted in the 96th Congress. It was rendered inoperative on occasion. See, e.g., 104-1, H. Res. 149, May 17, 1995, pp 13275, 13276; 105-1, H. Res. 152, May 20, 1997, p 8904. It was repealed in the 107th Congress, reinstated in the 108th Congress, and repealed again in the 112th Congress. *Manual* § 1104.

The Budget Control Act of 2011 provided for incremental increases in the debt limit by the President and expedited procedures for the Congress to disapprove of those increases. For a description of the procedures for increasing the debt limit under the Budget Control Act of 2011, see § 24, *infra*.

Section 301(a)(5) of the Budget Act requires the budget resolution to set forth the appropriate level for the public debt. Under clause 10(c)(1) of rule XVIII, it is not in order to consider an amendment to the budget resolu-

tion that proposes to change the appropriate level for the public debt. Reconciliation directives relative to changes in the public debt may be included in the concurrent resolution on the budget under section 310(a)(3) of the Budget Act.

## § 19. Impoundments Generally

### Executive Branch Authority; Types of Impoundments

The executive branch has no inherent power to impound appropriated funds. In the absence of express congressional authorization to withhold funds appropriated for implementation of a legislative program, the executive branch must spend all the funds. *Kennedy v. Mathews*, 413 F. Supp. 1240 (D.D.C. 1976); see also *Train v. City of New York*, 420 U.S. 35 (1975). Accordingly, if the controlling statute gives the officials in question no discretion to withhold the funds, a court may grant injunctive relief directing that they be made available. *Kennedy*, 413 F. Supp. 1245.

The impoundment of appropriated funds may be proposed by the President pursuant to the Impoundment Control Act of 1974. *Manual* § 1130(6A). Two types of impoundments are referred to by this statute: (1) rescissions, which are the permanent cancellation of spending, and (2) deferrals, which impose a temporary delay in spending. §§ 1012, 1013 of the Impoundment Control Act; 2 USC § 681.

The Impoundment Control Act was enacted by Congress in an effort to control the budgetary impoundment powers asserted by the President. As the court noted in *City of New Haven, Conn. v. United States*, 634 F. Supp. 1449 (D.D.C. 1986), in the early 1970's the President began to use impoundments as a means of shaping domestic policy, withholding funds from various programs he did not favor. The legality of these impoundments was repeatedly litigated, and by 1974, impoundments had been vitiated in many cases. See, e.g., *National Council of Community Mental Health Centers, Inc. v. Weinberger*, 361 F. Supp. 897 (D.D.C. 1973) (public health funds).

### § 20. — Rescissions

Under the Impoundment Control Act, the President may propose to rescind all or part of the budget authority Congress has appropriated for a particular program. To propose a rescission, the President must send a special message to Congress detailing the amount of the proposed rescission, the reasons for it, and a summary of the effects the rescission would have on the programs involved. § 1012(a) of the Impoundment Control Act. Under the Act, Congress then has 45 days within which to approve the proposed rescission by a "rescission bill" that must be passed by both Houses.

§ 1012(b) of the Impoundment Control Act. If the rescission bill is not approved, the President must allow the full amount appropriated to be spent. *City of New Haven, Conn. v. United States*, 634 F. Supp. 1449, 1452 (D.D.C. 1986).

The 45-day period prescribed by the Act applies only to the initial consideration of the bill; the consideration of a conference report on such a bill is subject only to the general rules of the House relating to conference reports and is not prevented by the expiration of the 45-day period following the initial consideration of the bill. *Manual* § 1130(6A).

The Impoundment Control Act sets forth detailed procedures expediting and governing the consideration of a rescission bill introduced under its provisions. § 1017(a)-(c) of the Impoundment Control Act. These procedures are rarely invoked in the modern practice, and the “rescission bill” referred to in the Act is not the only means by which the House may take action on such a matter. The House may address the question through other legislation without following the procedures set forth in section 1017 of the Impoundment Control Act. 94-1, Mar. 25, 1975, p 8484.

Rescissions of prior appropriations are more often reported in general appropriation bills, and the inclusion of rescission language by the Committee on Appropriations is excepted from the prohibition against provisions “changing existing law” under clause 2(b) of rule XXI. See *Manual* §§ 1038, 1043, 1052. However, this exception does not extend to amendments or to the rescission of contract authority provided by a law other than an appropriations Act. *Manual* § 1052.

## § 21. — Deferrals

Under section 1013(a) of the Impoundment Control Act of 1974, the President must notify Congress of the proposed deferral of any budget authority, the reasons for the deferral, the impact the deferral will have on the programs involved, and “any legal authority invoked to justify the proposed deferral.” 2 USC § 684(a).

Until 1986 the Act was used frequently as the basis for Presidential deferral proposals and for their consideration by the Congress. Section 1013 of the Impoundment Control Act allows a deferral to be overridden by a resolution of disapproval passed by either House. Congress could reject the proposal by one-House veto or in subsequent legislation. Today, the Congress may disapprove a deferral only through the enactment of a law (often an appropriation Act). It may not do so through a resolution of disapproval only by one House under court rulings. *Manual* § 1130.

In 1986 a suit was brought to contest the validity of certain deferrals proposed by the President under section 1013 of the Impoundment Control Act. In November 1985, the President had signed the fiscal year 1986 appropriations bill for the Department of Housing and Urban Development, which appropriated funds for certain community development programs. In February 1986, the President sent impoundment notices to Congress pursuant to the Act announcing his deferrals of the expenditure of funds for the programs at issue. The plaintiffs in the suit included various cities, community groups, and Members of Congress. The plaintiffs challenged as unconstitutional the provision allowing a so-called one-House legislative veto of impoundments proposed by the President, such vetoes having been declared unconstitutional under the Supreme Court decision in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 103 (1983). The plaintiffs argued that the unconstitutional legislative veto provision contained in section 1013 rendered the *entire* section invalid, leaving the President without statutory authority on which to base the deferrals in question. After analyzing the intent of Congress in enacting section 1013, the District Court for the District of Columbia held that the section's unconstitutional legislative veto provision was inseverable from the remainder of the section. *City of New Haven, Conn. v. United States*, 634 F. Supp. 1449 (D.D.C. 1986). Accordingly, the court declared section 1013 void in its entirety and ordered the defendants to make the deferred funds available for obligation. *City of New Haven*, 634 F. Supp. 1460. The judgment of the District Court in striking down section 1013 in its entirety was affirmed by the U.S. Court of Appeals. *City of New Haven, Conn. v. United States*, 809 F.2d 900 (D.C. Cir. 1987).

In 1987, after section 1013 of the Impoundment Control Act was declared unconstitutional, the Act was amended to exclude the one-House legislative veto procedure, and limitations were placed on the purposes for which deferrals could be made. Section 1013 of the Impoundment Control Act now permits deferrals only in three specified situations: "to provide for contingencies," "to achieve savings made possible by or through changes in requirements or greater efficiency of operations," or "as specifically provided by law." The same language is used in the Anti-Deficiency Act. 31 USC § 1512(c)(1). The purpose of such language was to preclude the President from invoking section 1013 as authority for implementing "policy" impoundments, while preserving the President's authority to implement routine "programmatic" impoundments. *City of New Haven, Conn. v. United States*, 809 F.2d 906 (note).

### Unreported Deferrals

Section 1015(a) of the Impoundment Control Act (2 USC § 686(a)) requires the Comptroller General to report to the Congress whenever it is found that any officer or employee of the United States has ordered, permitted, or approved a reserve or deferral of budget authority, and the President has not transmitted a special impoundment message with respect to such reserve or deferral.

### § 22. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 added a new part B to title IV of the Budget Act that imposes several requirements on committees with respect to “Federal mandates,” establishes points of order to enforce those requirements, and precludes the consideration of a rule or order waiving such points of order in the House. 2 USC §§ 658-658g. Section 425 of the Budget Act establishes a point of order against consideration of a bill, joint resolution, amendment, motion, or conference report containing unfunded intergovernmental mandates. Section 426(a) of the Budget Act establishes a point of order against consideration of any rule or order that waives the application of section 425. Points of order under sections 425 and 426(a) of the Budget Act are disposed of by the House voting on the question of consideration. *Manual* § 1127.

Section 426(b) of the Budget Act requires a Member raising a point of order under section 425 to specify the precise language upon which the point of order is based. 104-2, May 23, 1996, p 12283. Debate on the point of order is on the question of consideration of the underlying text that is the subject of the point of order. The Members controlling debate on the point of order may reserve their time, and a manager of a measure who controls time for debate against the point of order has the right to close debate. A point of order under section 426 against consideration of a resolution providing a special order of business that waives section 425 or self-executes the adoption of an amendment must be made when the special order of business is called up and comes too late after the resolution has been adopted. 104-2, July 18, 1996, p 17668. A point of order under section 425 against consideration of a bill is properly raised pending the Speaker’s declaration that the House resolve into the Committee of the Whole for such consideration. 105-1, Oct. 29, 1997, p 23712.

### § 23. Earmarks

While only indirectly related to the congressional budget process, the subject of earmarks has engendered special scrutiny in the House in recent

years. The House rules define a congressional earmark as “a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.” Clause 9(e) of rule XXI. This clause also defines “limited tax benefit” and “limited tariff benefit” which are treated in the same fashion as earmarks.

The House attempts to limit or restrict the use of earmarks through the mechanism of a disclosure requirement. Clause 9(a) of rule XXI provides for a point of order against consideration of bills and joint resolutions (whether or not reported from committee), “manager’s” amendments to bills or joint resolutions (offered at the outset of consideration), or conference reports that do not comply with the disclosure requirement. Clause 9(b) provides a similar point of order for conference reports accompanying general appropriation bills.

In each case, the disclosure required to be made is a list of all congressional earmarks, limited tax benefits, and limited tariff benefits contained in the measure, or, alternatively, a statement that the measure contains no such earmarks, or tax or tariff benefits. Depending on the measure at issue, such disclosure is required to be made in the committee report (for reported bills or resolutions), printed in the *Congressional Record* prior to consideration (for unreported bills or joint resolutions), or contained in the joint explanatory statement of managers (for conference reports).

Clause 9(c) of rule XXI provides a point of order against a special order of business reported from the Committee on Rules that waives the application of either clause 9(a) or 9(b) of rule XXI. Disposition of this point of order is decided by the question of consideration, which the Chair puts to the House when the point of order is made. Such question of consideration is debatable for 20 minutes, with 10 minutes controlled by the Member raising the point of order and 10 minutes controlled by a Member opposed. The question of consideration is decided without intervening motion, except for one motion that the House adjourn. This same procedure is followed with respect to points of order made under clause 9(b) regarding conference reports accompanying regular general appropriation bills. For a further discussion of questions of consideration, see QUESTION OF CONSIDERATION.

It is important to note that the disclosure requirement is fulfilled by the mere presence of the disclosure statement in the required document, whether that be a committee report, the *Congressional Record*, or a joint statement

accompanying a conference report. When ascertaining the validity of a point of order under clause 9(a), the Chair consults the pertinent document and notes the presence or absence of the required statement. The Chair does not assess the accuracy or sufficiency of the required earmark statement. See 110-1, May 10, 2007, pp 12190, 12191.

For additional precedents regarding the timing and application of this rule, see *Manual* § 1068d.

## **§ 24. Recent Developments: The Budget Control Act of 2011**

### **Generally**

The Budget Control Act of 2011 was enacted on August 2, 2011. The Act combined a series of budget control mechanisms with a proposal to increase the limit of the public debt. The procedural aspects of the Act included (1) the establishment of annual discretionary spending caps over a ten-year period enforceable by a point of order and sequestration; (2) altering the treatment for funding designated as emergencies including protections for a motion to strike such a designation; (3) requiring a vote in each body on a joint resolution proposing a balanced budget amendment to the Constitution by a time certain and providing expedited treatment of such a joint resolution in the other body; (4) allowing for staged increases in the limit of the public debt by the President with expedited procedures for joint resolutions disapproving each increase; and (5) creation of a joint select committee required to produce a measure by a date certain that would achieve a specified amount of deficit reduction and which would then be considered by each House on an expedited basis (with failure to enact such legislation by such date resulting in automatic sequestration).

### **Discretionary Spending Caps**

The Budget Control Act of 2011 established annual discretionary spending limits for security and non-security spending for a ten-year period. The Act also mandated sequestration procedures to eliminate a breach in either category. The Act also established a point of order in section 314 of the Budget Act against any bill, joint resolution, amendment, motion, or conference report that would cause the discretionary spending caps to be exceeded.

### **Emergencies**

The Budget Control Act of 2011 provided for new treatment in the House for provisions containing amounts designated as an emergency. Under the law, a provision contained in a reported bill or joint resolution, or amendment thereto, or conference report thereon providing new budget

authority or outlays or reducing revenue and designated as an emergency under Gramm-Rudman would be entitled to special scoring by the chair of the House Committee on the Budget. Specifically, the chair of the Committee on the Budget does not count the budgetary effects of the provision under titles III and IV of the Congressional Budget Act and the rules of the House. The Act also removes procedural hurdles for a motion to strike an emergency designation under Gramm-Rudman and attach thereto an accompanying across-the-board cut to achieve budget neutrality. Specifically, a motion to strike an emergency designation under Gramm-Rudman is not counted by the chair of the Committee of the Budget for purposes of titles III and IV of the Congressional Budget Act and the rules of the House. Such a proposal to strike an emergency designation may also contain an across-the-board cut that may be offered at any point in the reading of a measure. These two steps obviate a point of order that striking an emergency designation would increase the budget authority or reduce revenues above or below enforceable levels and allow for an across-the-board cut to address each account in the pending measure regardless of how far the reading has progressed.

#### **Balanced Budget Amendment**

The Budget Control Act of 2011 provided for a vote in each body on a joint resolution proposing a balanced budget amendment to the Constitution by a date certain. The law required that each body vote after September 30, 2011 and before December 31, 2011, on final passage of a joint resolution with the title: “Joint resolution proposing a balanced budget amendment to the Constitution of the United States.” The Act also prescribed expedited procedures for consideration of a qualifying joint resolution passed by the other body.

#### **Debt Limit Increases**

The Budget Control Act of 2011 provided for incremental increases in the debt limit by the President and expedited procedures for the Congress to disapprove of those increases. The congressional disapproval procedures for the debt limit increases were modeled on those found in the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343). Those procedures included an overall calendar day cap on congressional consideration (including tolling in the event of a veto), referral to the Committee on Ways and Means, a privileged motion to discharge the committee after six calendar days, unamendability in the committee and the full House, and a vote on passage following two hours of debate.

**Joint Select Committee on Deficit Reduction**

The Budget Control Act of 2011 provided for a Joint Select Committee on Deficit Reduction composed of six Senators and six Members of the House equally divided by party. The goal of the joint committee was “to reduce the deficit by at least \$1.5 trillion over the period of fiscal years 2012 to 2021.” The joint committee was required to report recommendations back to Congress and such product of the committee would then be subject to expedited procedures in both Houses. The Act provided that the joint committee terminate on January 31, 2012.