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BRIEFING - BUDGET ENFORCEMENT PROCEDURES IN THE HOUSE

Friday, September 26, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS,
COMMITTEE ON RULES,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m. in Room H–313, The Capitol, Hon. Porter J. Goss [chairman of the subcommittee] presiding.

Present: Representatives Goss, Linder, Pryce, Hastings and Solomon.Also Present: Representative Dreier.

Mr. GOSS. The briefing will come to order.

I thank Members for being here this morning.

This is a continuation of our series on understanding and awareness about our budget process for preparation for further reform. Simplification and accountability, I think, are areas that we are very interested in. Enforcement is another subject that has been suggested recently on the House floor. I know Members have busy schedules, and I am grateful that they have taken the time, the fact that we have this many members of the committee—and I understand others may come in as we go on—shows our commitment to what we are about.

We are very grateful for the folks who are going to be with us this morning. I have to make one administrative announcement, to put Chairman Solomon at ease. The picture of Richard Bolling is safely ensconced in the Chairman's office. It will return. We needed the space.

Mr. DREIER. We just wanted to see the Solomon portrait up there.

The CHAIRMAN. I do not want to get involved in the taking down of portraits.

Mr. GOSS. I know that sometimes it gets to be an issue in this room. So I wanted to be sure that everybody knew exactly what was going on. There was no political agenda involved in this thing at all.

I have a brief statement.

Mr. DREIER. Explain why it was taken down.

Mr. GOSS. Why it was taken down was so that we would have the opportunity for technical display, which I hope we will be able to have.

Mr. DREIER. Which we are not going to have, apparently.

Mr. GOSS. I read in a note that apparently that may not happen, but also that is not a hidden agenda.

Mr. DREIER. So should we go and get Bolling's portrait right now?

Mr. GOSS. Perhaps we should, if anybody is uncomfortable. Otherwise, we will proceed. I am going to read a brief statement for the record.

First of all, I do thank Members and our briefers for being here. I think everybody knows this is unfinished business, the question of the budget process. Going back to the outset of the 104th Congress, the committee under Chairman Solomon's leadership began a comprehensive review of the congressional budget process, particularly the procedures that fall directly within our oversight purview.

In 1995, we held three joint subcommittee hearings with Chairman Dreier, Chairman Solomon, and myself, and throughout 1995 and 1996 we worked long and hard on the line-item veto and the deficit reduction lockbox, two specific budget process measures which we are all familiar with. All the while, we have attempted to work with our colleagues on both sides of the aisle with specific concerns with existing procedures and offered a variety of proposals for some reform.

Our subcommittee is sponsoring today's seminar because I believe we have an obligation to the House to better inform ourselves on the nuts and bolts of the congressional budget process because we have got more work to do, and this would be a good foundation for it.

As Members recall, we recently went through floor consideration of a bipartisan proposal to rewrite the budget process known as the Barton-Stenholm bill. At that time it was clear that many Members of the House do not fully understand the complexities and details of the process. It is also clear that there is strong sentiment about the excessive confusion and lack of accountability offered by current procedures. Frankly, our colleagues look to this committee for guidance, for advancement of responsible reform ideas, and we have had a number of requests to get on with this job.

Chairman Solomon and I have committed to developing a proposal before the end of this Congress, and of course, Chairman Dreier was involved in extensive hearings in the previous Congress on the same subject.

I would like to introduce our briefers for today and point out that Members have already received biographical information on each of them. It is a fairly unique event this morning that involves the best budget process minds of three separate agencies. Each agency has expertise and we expect it will be a case where the whole will be greater than the sum of its parts. In addition, we are going to experiment with bringing the Rules committee into the 20th century and offer Members and staff some basic presentation—however, apparently we are going back to the 19th century, because the 20th century plug didn't work or something. What happened?

The CLERK. We are missing the necessary equipment.

The CHAIRMAN. Back to reality.

Mr. GOSS. Chairman Solomon prevails.

Thank you all for taking the time to be here today. We will begin with Bob Keith of CRS, who will be followed by Jim Saturno of CRS, then Sue Irving of GAO, and then Mr. Horney of CBO.

Obviously, I would like to thank Stan Bach and John Kelley of CRS; Bob Sexton, Chris Bonham, and John Mingus of GAO; and Sandy Davis of CBO for the help of pulling this together, as well as our own staff who has worked extensively and excessively on this.

The agenda I believe Members have shows an overview of 20 minutes that Bob Keith will do, and then we go to Jim Saturno's piece and so forth, and they are all identified by subject matter. And I would also, rather than reading it, I will put in the record the backgrounds on our briefers, the bios. Members who wish to take a look at that during the course of the day, please do.

There is also a memo I think all Members have of how we got where we are. There is a pretty complete package so we are not jumping in totally cold on this thing. We will make sure that the record is provided with all of those materials, and we will begin with Bob Keith.

STATEMENT OF BOB KEITH, CONGRESSIONAL RESEARCH SERVICE

Mr. KEITH. Thank you, Mr. Chairman, Mr. Goss.

On behalf of the panel, let me just express our gratitude in being asked here today to discuss this important issue. The topic of budget enforcement in the House of Representatives is potentially a very broad one. The authorities that underpin enforcement encompass not only rulemaking provisions in statute and other statutory provisions, the standing rules of the House, standing unanimous consent agreements, committee rules, and party conference and caucus guidelines, but also practices, conventions, and norms as well. Enforcement applies to many different types of issues, such as substantive budget policies, the timing of legislative actions, and the separation of distinct budget processes, among others.

For purposes of this briefing, we have been asked to focus on the aspects of budget enforcement that are most important to the activities of this committee. Consequently, we will discuss mainly those procedures that stem from the rules of the House and affect legislative activity, principally rulemaking provisions in the two major budget process statutes.

Further, the discussion will center on the enforcement of substantive budgetary policies and budgetary timing requirements. Other issues, such as the enforcement of the boundaries between the authorization and the appropriation processes under Rule XXI, can be taken up at a later time.

In this instance, substantive budgetary policies may involve fairly broad matters, such as the appropriate level of discretionary spending; more specific matters, such as the appropriate level of spending under the control of a particular committee; and more specific matters still, down to the level of the line item.

Budget enforcement thus deals with such diverse questions as: Are the costs of the pending legislation consistent with the overall spending levels established in the budget resolution? Does the spending recommended in this legislation constitute an unfunded mandate? Is this legislation being considered in a timely manner as prescribed in the budget process timetable?

I will provide a brief overview of these budget enforcement rules and procedures, and my colleagues will explain them, and illustrate their use, in more detail.

As we all painfully are aware, budget enforcement is an exceedingly complex topic and this complexity often leads to confusion. We had prepared a number of visual aids for use in this presentation—you should have hard copies—and I want to thank John Mingus of GAO in preparing these for us. Unfortunately, it appears that our projection equipment is surplus from the MIR space station, so we will have to send it back.

In this overview, I will identify and summarize key budget enforcement procedures, discuss the role of this committee in the enforcement process, and comment on some recent trends.

Budget enforcement occurs principally along a dual track involving procedures under the Congressional Budget Act of 1974, which established a congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985, which established the sequestration process. The latter measure is more commonly known as the Gramm-Rudman-Hollings (GRH) act.

Both acts have been amended substantially several times. Most recently, they were both amended by the Budget Enforcement Act of 1997. That was title X of the first of two reconciliation acts just passed.

Sequestration is an executive rather than a legislative process, and the Rules Committee is not involved in its basic operation. However, its central purpose is to force the President and Congress to reach agreement on budgetary measures through the regular legislative process in order to avoid the automatic, across-the-board cuts of a sequester. Consequently, the House and Senate have shaped their budget enforcement procedures to give themselves every opportunity to avoid a sequester, and the congressional budget process uses some of the same terms and concepts that are used in the sequestration process.

Every time the House and Senate act on a budgetary measure, they must be mindful of the implications down the road for the sequestration process. In some ways, this has complicated the task of keeping the differences between these two enforcement tracks straight. So, although you are generally familiar with the features of both acts, it might be helpful at this point to briefly compare and contrast them from the perspective of budget enforcement.

If you turn to your visual aids, we will look at the first one, labeled "Dual Enforcement Tracks," and you see two columns. The one on the left covers the congressional budget process and the column on the right covers the sequestration process.

As I mentioned, the authority underpinning the congressional budget process is the Congressional Budget Act of 1974, and the sequestration process stems from the Balanced Budget and Emergency Deficit Control Act of 1985.

Both processes apply to all types of measures, but the enforcement level differs. In the case of the congressional budget process, these decisions are enforced for revenues, spending, and the debt limit—full components of the Federal budget. In the case of sequestration, violations are enforced solely on the spending side.

Enforcement under the congressional budget process occurs throughout the session during the consideration of individual measures. It is a legislative enforcement process. The executive enforcement process under sequestration, however, only occurs after a session of Congress has ended. The GRH act requires OMB to issue a sequestration report within 15 days after the session of Congress ends, and the President is required to issue an order in strict conformity with that report and must do so immediately.

There is one situation where a sequester could occur during the session, and that is within the context of action on a supplemental appropriations bill. But generally speaking, we think of a sequester occurring after the end of the session, taking into account legislative action.

Under the congressional budget process, Social Security and the Postal Service are exempt. They are off-budget entities. Although I must say Social Security is such a large program, its effects cannot be ignored, and information about Social Security arises all of the time in the congressional budget process. But it is not included in the overall numbers that both chambers use for enforcement.

To make the matter more complex, the Senate does stick into the budget resolution some numbers relating to Social Security, but that is for purposes of the enforcement of a freestanding provision in the law that the Senate uses, not for enforcement of the budget process generally.

In the sequestration process, Social Security and the Postal Service are exempt, but so are many other programs—relatively few on the discretionary side, but quite a few on the mandatory side.

The congressional budget process relies on points of order based on the budget resolution; sequestration relies on the sequestration order from the President, based on an OMB report.

Finally, the principal enforcement mechanisms that we are concerned with today under the congressional budget process are spending suballocations and reconciliation, and under the sequestration process, the discretionary spending limits and the pay-as-you-go requirement. This deserves fuller discussion.

With regard to the last comments on the slide, it is apparent that the dichotomy between discretionary spending on the one hand, and direct spending and revenues on the other, is very important for budget enforcement. The dichotomy reflects different procedures for fundamentally different components of the budget involving different types of budgetary transactions, committee relationships, programmatic characteristics and so on.

Generally speaking, discretionary spending is provided in annual appropriation acts, except for that portion that covers appropriated entitlements, such as Medicaid. Discretionary spending finances the routine operations of the Federal Government. Legislation providing discretionary spending falls under the jurisdiction of the Appropriations Committees and must be acted on every year.

Direct spending, which sometimes is called mandatory spending, is spending that falls outside the control of the annual appropriations process. For the most part, direct spending funds permanent entitlement programs such as Medicare and Federal employees' retirement. The food stamp program is specifically identified in law as a direct spending program. Laws providing direct spending fall under the jurisdiction of the legislative committees, especially the House Ways and Means and Senate Finance Committees. Usually legislation affecting direct spending programs is acted on only if the committee of jurisdiction chooses to initiate those changes or is complying with a reconciliation instruction.

Under the recent budget agreement, direct spending is expected to grow by about $300 billion from fiscal year 1998 to fiscal year 2002, increasing from $1.6 trillion to $1.9 trillion during that period. This is in contrast to discretionary spending, which holds roughly steady at about $560 billion during this period.

Mr. GOSS. What is the period again?

Mr. KEITH. Fiscal year 1998 through 2002, the standard 5-year interval.

Except for a period of several years in the 1980s when defense spending was increased markedly, direct spending and interest have been the engines of growth in the Federal budget.

In the congressional budget process, there are various mechanisms to control discretionary and direct spending. The chief enforcement tool for discretionary spending is the suballocation of spending in the budget resolution to each of the appropriations subcommittees. For direct spending, as well as revenues, it is the reconciliation process.

In the sequestration process, discretionary spending is controlled by limits on budget authority and outlays for different categories. Direct spending is controlled under the pay–as–you–go, or PAYGO process, which requires that direct spending and revenue legislation enacted for a fiscal year not increase the deficit in the net. In other words, that it be deficit neutral. These procedures, which were first put into place in 1990, superseded the deficit targets originally established in the Gramm-Rudman-Hollings act.

The PAYGO process does not address enforcement of the "base" of direct spending. For example, estimates of entitlement spending can increase during the session due to changing assumptions about the number of beneficiaries and no procedural consequences will ensue. The PAYGO process only deals with the budgetary consequences of legislative action. The reconciliation process, in contrast, enables Congress to affect the direct spending base by reaching in and revising the legislation that established entitlement programs.

The Budget Enforcement Act, or BEA, of 1997, made a number of changes in both the sequestration process and the congressional budget process. The chief purpose of these changes is to ensure that the budgetary savings achieved in the two reconciliation bills is preserved over the next 5 years.

First, the discretionary spending limits and PAYGO process, which were slated to expire at the end of fiscal year 1998, were extended through fiscal year 2002. In the case of the PAYGO process, the procedures remain in effect for another several years after that, through fiscal year 2006, to deal with the long-term consequences of any revenue or direct spending legislation enacted through 2002.

In the case of the discretionary spending limits, new categories were instituted. For the first two of these five years, they distinguish between defense and nondefense spending. Also, for the first three years of this period, spending for violent crime reduction programs is separated out. Toward the end of the process, all discretionary spending is lumped together into one category.

In 1990, some temporary changes in procedure were put into a new Title VI of the 1974 Congressional Budget Act. The BEA of 1997 repealed Title VI. It made some of the temporary changes permanent and it dispersed these new permanent provisions to other sections of the act. Perhaps most importantly, the temporary requirement that the budget resolution cover a minimum of five fiscal years instead of three was made permanent. So we are fixed on a 5-year cycle now.

Expanding the time horizon of the budget resolution is an important element of enforcement because it provides an incentive for more deliberate restructuring of programs to save costs and a disincentive to use budget gimmicks, such as shifting costs to a later fiscal year not covered by the budget resolution.

Title VI also made temporary changes in the process of making and enforcing allocations and suballocations of spending under a budget resolution. The BEA of 1997 made these temporary requirements permanent and restored them back to Title III. Now that everyone has become accustomed to calling them Section 602(b) suballocations, we have to revert back to calling them Section 302(b) suballocations.

As a general matter, the commonalities of budget enforcement between the House and Senate are very strong. The two bodies reach concurrence on a budget plan each year and rely principally on reconciliation and spending allocation procedures to ensure compliance. However, there is also considerable divergence between the two bodies in enforcement procedures.

The Senate has developed its own approach and methods of enforcement in some areas. For example, the Senate has the so-called Byrd Rule, incorporated into the 1974 Budget Act as Section 313, to bar extraneous matter from reconciliation bills, and it also has a special pay-as-you-go point of order that deals with the impact of revenue and direct spending legislation over a 10-year timeframe.

Just like other areas of legislative procedure, the fact that the Senate has a different way of doing things can raise important, even difficult, implications for the House. Although the House may have no comparable rule on a particular matter, it may be compelled at times to enforce a comparable approach to avoid legislative deadlock with the Senate.

Many observers cite the Byrd Rule as the prime example in recent years of a source of procedural friction between the two bodies. The House also has had to wrestle with the problem of extraneous matter in reconciliation bills, and the existence of the Senate's complicated and stringent rule on the matter undoubtedly has had some effect on the House's response. Over the years, the responsibility for dealing with extraneous matter in the House has fallen largely to the Rules Committee, which has had to craft special rules on reconciliation bills making in order amendments to strike such matter or to deal with it in some other fashion.

The BEA of 1997 continues the pattern of diverging House and Senate practices. For example, it incorporates into the 1974 act two Senate procedures, established previously in budget resolutions, sanctioning the use of so-called reserve funds and providing for a point of order against a budget resolution or spending legislation that violates the discretionary spending limits.

Let's focus now on the role of the Rules Committee in enforcement.

The Rules Committee plays a pivotal role in the operation of budget enforcement procedure in the House. It does so chiefly in two ways. First, as mentioned previously, it crafts special rules providing for the consideration of budgetary measures. Second, as a matter of original jurisdiction, it shares responsibility with the Budget Committee (and the Government Reform and Oversight Committee) for oversight and reform of the congressional budget process. We will discuss this in more detail in a moment.

The House Budget Committee, of course, also has a key role in terms of budget enforcement, and it is important to distinguish its role from that of the Rules Committee. The Budget Committee's principal role is to enforce substantive budget policies as reflected in the budget resolution. To a considerable degree, this means that the Budget Committee is the guardian of the numbers. Undoubtedly, the Budget Committee's concerns go far beyond merely enforcing the numbers, but this is a fundamental aspect of its role.

In order to carry out this role, the Budget Committee necessarily has a close relationship with the Congressional Budget Office (CBO)—probably a closer relationship than any other House committee. Two of CBO's main functions, preparing cost estimates on legislation and scorekeeping reports, are vital to enforcing budget numbers.

Additionally, the Budget Committee must have close ties with each committee that reports budgetary legislation. Three–way consulting—between the Budget Committee, CBO, and the other committees—allows potential violations of substantive budget policies to be identified and, in many cases, to be corrected before legislation is reported. Part of the Budget Committee's role in this regard sometimes is to educate committees as to particular procedural requirements and how potential violations may be rectified. How the Budget Committee performs its role, therefore, can have a considerable impact on the nature and extent of the enforcement problems faced by the Rules Committee.

Finally, the Budget Committee must consult closely with the Rules Committee regarding its position on enforcement problems associated with reported legislation and possible amendments. Thus, the Budget Committee serves as an advisor to the Rules Committee, exercising most of its enforcement duties in sequence before the Rules Committee becomes engaged. During floor action on measures, however, the Budget Committee supplies the Chair with any budget estimates that are needed to determine whether legislation violates the Budget Act.

While the Budget Committee is the guardian of the numbers, the Rules Committee's role on budget enforcement is different. In crafting a special rule, the committee shapes the legislative options by recommending which, if any, points of order should be waived against the consideration of a measure, amendments to it, or a conference report on it. Enormous procedural and political complexities may lie under the surface of these seemingly simple choices.

Some waivers may involve substantive enforcement, allowing the House to consider proposals that deviate materially from the budget plan and otherwise could not be considered. Other waivers may involve only technical matters, where substantive enforcement is not an issue. Waivers may be needed to counteract undue rigidity in the rules, to deal with unforeseen situations, or to resolve the unintended consequences of the rules.

While the Budget Committee carries out its enforcement activities primarily with the intent of preserving the budget levels and the major policy assumptions embedded in the resolution, the Rules Committee must address other concerns as well. These may include the impact of enforcement decisions on legislative operations and the flow of legislation; ensuring fair representation in the political process to divergent views; promoting a reasonable balance between budget control and other contending values; moderating jurisdictional conflicts between committees; and preserving the prerogatives of the House.

The two committees also influence enforcement activities by pursuing changes in the congressional budget process, as evidenced most recently by the BEA of 1997. While both committees have been involved in the budget process changes made over the years by rulemaking and other provisions in statute, they pursue other routes of reform as well. The Budget Committee may take advantage of the so–called elastic clause in Section 301 of the Budget Act to modify budget resolution content and associated procedures. The Rules Committee sometimes makes changes in House budget procedures in the rules package adopted at the beginning of each Congress. Section 301(d) of the Budget Act triggers a sequential referral to the Rules Committee if any changes recommended in the resolution by the Budget Committee would have the effect of changing House rules.

What are the recent trends in budget enforcement in the House? This is a very difficult question to answer. Certainly the overall budgetary picture, especially with regard to the deficit, is brighter now than it has been in decades. It seems reasonable to give budget enforcement procedures a share of the credit, along with favorable economic developments and other factors. Congress displays a certain satisfaction with current enforcement procedures, having just extended them for another 5 years in the BEA of 1997.

Yet, concerns about budget enforcement remain in the forefront. Members seem to be especially bothered by continuing difficulties in controlling the base of direct spending. The solution for this problem apparently is not readily at hand in view of the recent rejection by the House of legislation to establish entitlement caps.

An important factor that stymies any evaluation of budget enforcement procedures is that principally they present a deterrent effect, and deterrence is a hard thing to quantify. How many potential violations of the budget were not attempted because of the existence of effective procedures?

One observation that can be made with certainty is that change in budget enforcement procedures is a perennial feature of the legislative process. Some of this drive for change is born of failure; for example the deficit targets did not work in the late 1980s, so new forms of control took their place.

Recent changes, over the past decade or so, reflect new approaches to enforcement, and I will briefly finish by commenting on three.

First, the House and Senate have placed a greater reliance on the President and automatic mechanisms. The establishment of the sequestration process and the recent line-item veto procedures give evidence to this trend. It suggests a growing doubt on the part of Congress in its ability to police its own actions.

Second, the House and Senate have increased the scope and number of congressional rules. This second trend seemingly contradicts the first. As the House and Senate have chosen to shift more authority to the executive or to formulaic approaches, it simultaneously has chosen to strengthen and enlarge its own enforcement efforts. The supermajority requirement for votes on tax rate increases and new procedures for controlling unfunded mandates testify to this trend.

Third, and finally, the House and Senate have taken actions to streamline and simplify many aspects of budget enforcement. This third trend is a natural reaction to the second. As enforcement rules proliferate in scope and number, unwanted complexity and workload grows too.

In 1990, Congress established discretionary spending limits, but made them adjustable for a number of factors so that a sequester, or a threat of one, would not arise unnecessarily. The House and the Senate have applied this type of streamlining to its own rules too. For example, the BEA of 1997 adds Section 314 to the 1974 Budget Act to adjust the appropriate budget resolution levels for certain legislation when similar adjustments are made in the discretionary spending limits. These adjustments would pertain to such things as emergency legislation, continuing disability reviews, the IMF, and international arrearages. There is a small category of them. By determining in advance the set conditions under which particular budgetary constraints will be allowed to flex, the House and Senate sidestep the need to deal with these enforcement issues later on.

In this regard, one of the changes made by the BEA of 1997 is particularly important for the activities of the Rules Committee. It adds a new Section 315 to the 1974 Budget Act, making it unnecessary to waive the act when the source of the violation in the reported bill is removed under the terms of a special rule—an example, if you will, of demand management.

Jim Saturno will now address particular points of order under the 1974 Budget Act.

Mr. GOSS. Thank you very much, Mr. Keith, for what is a good presentation of the landscape and some of the more prominent features in it.

Anybody who wants questions at any time, that is sort of the general wrap-up, and now I think we are going to get a little more specific, if I am not mistaken. Anybody who has a question to ask at any time, please do.

Mr. GOSS. Go ahead Mr. Saturno.

STATEMENT OF JAMES SATURNO, CONGRESSIONAL RESEARCH SERVICE

Mr. SATURNO. Before we move on to really talking about the specific points of order, one of the things that I wanted to address was the volume of points of order, because the number of points of order, the number of prohibitions that appear in the Budget Act, have been one of the things that contribute to the idea that the budget process is overly complex and difficult to understand. And when you look at, I believe, one of the handouts, that seems to be born out. There are, in fact, a lot of points of order that are established by the Budget Act.

Mr. GOSS. That is Pages five and six?

Mr. SATURNO. Yes, I believe so. Let me note that there is a lot of double counting among the various categories I have used because some of the points of order that apply to discretionary spending also apply to mandatory spending, some of the points of order that are directed at the issue of timing of legislation are also counted under discretionary or mandatory spending, and so forth. But no matter how you count them, there are a lot of provisions in the Budget Act that at least potentially give rise to points of order.

One way to sort of get a handle on the process is to look at which provisions are, in fact, applicable in the House, and in that circumstance, the number of potential points of order drops dramatically. In particular, points of order concerning the budget resolution drop from about seven to only one. The rest of these points of order apply to the Senate, and were created to address problems that could arise because of the way the Senate considers the budget resolution versus the way the House considers the budget resolution.

When the House considers amendments to the budget resolution, they typically consider complete substitutes, so problems like making sure there is one set of economic assumptions or making sure that the numbers in the budget resolution remain consistent at the end do not raise difficulties; whereas individual amendments to individual portions of the budget resolution on the Senate side do at least potentially give rise to those problems.

So the number of points of order that actually apply in the House is substantially smaller than the total number of points of order, and I will try to confine my remarks to these.

It should be noted, however, that points of order do not represent the only requirements established by the Budget Act. There are other requirements that are not typically considered to be points of order, such as the prohibition in section 305, against motions to recommit on the budget resolution, or section 308, which requires cost estimates when available.

So points of order do not tell the entire part of the budget process, but the process does become understandable when looking at the points of order and the specific sets of requirements that they establish.

Which points of order are the ones most frequently waived is also, in part, a look at what the most difficult parts of the Budget Act to comply with are. Section 302(f) applies to legislation or amendments which would cause allocations to be exceeded. It has, over the course of a long number of years, been the primary point of order that has been the subject of waivers, frequently for authorizing legislation that includes some direct spending provisions.

In the last Congress, section 308, which concerned the number of reports issued to include cost estimates was waived a number of times. As I mentioned earlier, that previously wasn't typically considered to be a point of order, and so I am not sure whether there is any sort of strong basis of comparison for the increased use of that waiver in the last Congress. Not counting blanket waivers, there has rarely been more than two or three waivers of any single point of order in the past several Congresses.

Deadlines and other requirements also exist in the Budget Act, but these are also not typically subject to points of order. April 15th, as the deadline for completion of action on the budget resolution, is rarely achieved, but there is no sanction against this, no point of order that can be applied or that needs to be waived. Likewise, the target dates and deadlines that are included in section 300 of the Budget Act that apply to the appropriations process reflect the pace of, and practice of, the appropriations process in the House and do not readily admit to having any sort of point of order applied.

I should also mention one change that was made this year regarding how points of order apply in the House. As now provided in Section 315 of the Budget Act, for cases in which a measure is considered pursuant to a special rule, a point of order which would ordinarily lie against a bill ″as reported″ would instead apply to a substitute made in order by the rule. In this way no point of order would apply, and no waiver would be necessary, if the substitute resolved the problem. So with that said, I would like to look at the points of order related to discretionary spending.

Section 302(c) and section 303(a) and section 309 are three provisions which deal with the timing of legislation. In particular, 302(c) prohibits the consideration of measures within the jurisdiction of the Appropriations Committee until they have made the suballocations that are required under 302(b).

Similarly, 303(a) prohibits the consideration of legislation which provides new budget authority, as well as changes in revenues or changes in the public debt until the budget resolution for a fiscal year has been agreed to.

In both of those cases, the rule is put into place specifically to require that a plan be adopted before the individual pieces be allowed to proceed through the legislative process; that Congress be allowed to see how the pieces should fit together before they are required to look at any of the pieces separately.

Section 309, the other provision dealing with timing, prohibits the House from considering an adjournment resolution of more than 3 calendar days during the month of July until the House has approved all regular appropriations bills for the upcoming fiscal year. In that case, it is intended at least to act as an enforcement for the typical calendar that the House appropriations process operates under. That is, for the House to finish appropriations before the August recess.

It has rarely been waived because the House typically does not attempt to take a long recess in July, and so it is a point of order that has not come into play very much since its inception as a part of the Budget Act.

More important for the purposes of understanding how the appropriations process and the Congressional Budget Act work together is to look at the allocation system under 302(a) and 302(b). 302(a) reflects the amounts of money that is allocated to each committee for any spending within their jurisdiction, including the Appropriations Committee; 302(b) reflects the suballocations that essentially tell you how much money has been allocated by the Appropriations Committee to each of the thirteen general appropriations bills.

Both the suballocation and the total committee allocation are enforced through section 302(f).

In past practice, the suballocation ceiling served as a bar against a significant number of amendments to appropriations bills when they were considered on the House floor. The Appropriations Committee typically reports legislation which includes budget authority up to the amount which has been allocated to that subcommittee for that particular spending bill. This is certainly not an unexpected, or necessarily an undesirable, action by the Appropriations Committee. However, points of order under 302(f) would prevent consideration of any amendments to appropriations bills which would cause, even temporarily, the allocation to that bill to be breached. Therefore, any amendment which would add money could only be offered after an amendment, and separate from, an amendment which would reduce money.

As I said, this was a significant bar to amendments, which would add money to appropriations bills. In the last Congress, however, a new provision was added to rule XXI, clause (2)(f), which provides what is essentially an exception for the application of 302(f). This new rule effectively allows for the amendment process on the floor of the House to skirt a lot of problems which could be caused by 302(f). That is, Members are allowed to offer amendments en bloc which are deficit neutral. Therefore when two or more amendments taken together do not add any additional budget authority to an appropriations bill, they can be voted on as though they were a single amendment.

These amendments are in order to be offered when the first effected provision in the bill comes up, whether that is a provision that cuts money or whether that is a provision that adds money. And further, these en bloc amendments are not subject to a demand for division on the floor. That way, the House can not find itself in a situation where it is voting on adding money when it intended to simply make deficit neutral changes in the priorities within the spending bill. This is a significant change in the way in which the House does business, and in part reflects the desire to have Members outside of the committee have influence on the structure of appropriations bills, and have influence on the individual provisions in the appropriations bill.

And it certainly seems to have had that effect as shown by the number of amendments to appropriations bills that were considered during the 104th Congress.

Another requirement established by the Budget Act is that consideration of legislation that would cause budget authority or outlays to exceed the total level set forth in the budget resolution is not allowed. In the House, however, section 311(a) allows the measure to be considered as long as it the would not cause the committee's allocation to be exceeded. Under the exception, the so–called Fazio exception, there is no sanction, the total amount of budget authority being exceeded.

Now, in most circumstances, you would expect that as long as pieces remain within their preestablished limits, that the total would not be exceeded, but because of the way spending is structured, that is not always the case. For example, if the projected cost of entitlement spending in the jurisdiction of a single committee increased above their allocation, every other committee would face a potential point of order against spending legislation in their jurisdiction. Therefore, the House has decided that as long as committees remain true to the requirements placed upon them individually, that they do not, individually, remain responsible for the total level of spending.

Mr. GOSS. The sins of one committee cannot entirely be transmitted to another committee; only partially?

Mr. SATURNO. That is right. In fact, one of the issues which my colleagues may address more fully is that there are scorekeeping conventions that exist outside of the explicit text of the Budget Act that make committees less responsible for the actions of other committees. For example, one scorekeeping convention provides that increases in mandatory spending included in an appropriations bill is counted against the Appropriations Committee's allocation, not the allocation of the committee with jurisdiction over the program.

So, points of order against appropriations bills are directed towards one of two things: making them fit into the calendar, that is making sure appropriations bills fit into the plan and come after the plan; and, more importantly, making them fit in within their allocations so that the budgetary outcomes that are agreed to in the budget resolution are achieved.

And now my colleague from GAO will talk about how points of order apply to mandatory spending.

Mr. GOSS. Hold on just for a second. Apparently, I am advised that the 20th century does exist in this committee and we could get equipment that could work. Do you want to plug it in?

Ms. IRVING. It is certainly up to you.

Mr. GOSS. I am comfortable this way, but if you feel hampered we could pause.

Ms. IRVING. I would have liked it better the other way from the beginning.

Mr. GOSS. Do we have anybody on staff who feels strongly about it? Then we will just go on. I have been able to follow it well so far.

STATEMENT OF SUE IRVING, GENERAL ACCOUNTING OFFICE

Ms. IRVING.I need to make one correction on my hard copy ″slide.″ The first budget section should say 303(a) not 303(c).

Usually we in GAO are here talking more about broader process issues than the rules, but we are pleased to be asked to join the people who live with you in a nitty-gritty, day-to-day world.

As Bob Keith said, the side of the budget that is euphemistically referred to as "mandatories" or archaically referred to as "direct spending" has tended to drive the substantive results. That often leads to people complaining that the process does not work. As I have testified before, it is not that the process does not work; it is that its reach was limited.

As Jim pointed out when he discussed the discretionary arena, fundamentally the rules fall into a couple of categories. There are rules that have to do with timing; these are the rules that seek to require starting with an overall plan, and then moving to the specific bills. That is what 303(a) does.

There is, as you know, what used to be called the after-May-15th-everybody-is-home-free-rule exception. But fundamentally, the idea is that Congress reaches agreement on the plan and then moves to the specific bills.

There remains a prohibition on adjournment in July until you have completed reconciliation, but since any budget resolution containing reconciliation instructions usually specifies a date, that usually supersedes the rule. So this rule is more a default-option rule.

Then, and I have listed these on Page 14, there are a set of rules that seek to enforce the agreed upon plan. These rules say do not erode the fiscal plan. If you have changed your mind on the plan, then change it explicitly. So analogous to the requirement in 302(f) that the allocations on the appropriations side be recognized, there is a similar one on the mandatory side, which is, excuse me, you had a deal here, stick to it.

There is an important exception for PAYGO, which says if you would be neutral overall you are okay. The basics of the PAYGO rule are if you want to change the allocation a little, it is o.k. as long as you are deficit neutral.

Section 310 requires amendments to reconciliation to be deficit–neutral. You can come to the floor with an amendment that says, "I would rather increase this more than that," or "I would rather cut this tax more than that tax," but you cannot come to the floor with an amendment that merely makes the result worse—even if on its own it would be a wonderful idea.

Section 311 says you need to stick to the targets in reconciliation for taxes and spending. In the House, the PAYGO rule, the deficit–neutral rule, applies for one and for five years. Here, however is a case where, as Bob mentioned, the other body's rules are something that you need to pay attention to because the Senate has a second five year window.

Those of you who remember the fight over the GATT, will remember that in this House it was resolved about year one and the first five years and then suddenly there was this little tiny amount of money hanging out there in the second five years. The ratio of effort to try to find that much money may have outweighed the impact of it, but implementing legislation on GATT couldn't have gone through the Senate without it.

Section 401 is almost a remnant. It was an attempt to limit what in the old days we used to call back-door spending. But BEA really has superseded it. It is a section that everyone has a hard time writing and rewriting and everyone has a hard time interpreting.

But if you think about it, credit reform meant that anyone creating or expanding a loan program, has to ask for budget authority for the subsidy amount. So that back door spending is covered. And anything that is going to show up as mandatory is going to get scored on a PAYGO scorecard. So the fact that 401 is almost incomprehensible for people is not practically important. It may clutter up the rules but it doesn't seem to affect your life very much.

There are a group of rules focusing on Social Security: do not back into Social Security reconciliation, and furthermore, even on its own, you cannot change the 75-year solvency.

The House has a rule against considering legislation which would provide for a net increase in Social Security benefits or decrease in taxes in excess of 0.02 percent of the present value of future taxable payroll.

Basically, the rule is if you wish to deal with Social Security, either have a separate Social Security bill or be sure there are reconciliation instructions specifically for it. Social Security has its own set of rules and it cannot be used to solve some other problem.

Finally on the tax side of the ledger, in rule XXI, the House has added a number of specific rules pertaining to the consideration of tax legislation. One protects the jurisdiction of the Ways and Means Committee, one says you need a three-fifths vote for a rate increase, and one prohibits retroactive increases, so you would need a waiver for any of those.

For the most part, rules dealing with the PAYGO side in their own way become something the committees with jurisdiction are very aware of, and they consult constantly with CBO to avoid a point of order problem. They do not always succeed and some of them will come to you.

So to summarize, there are several broad categories of rules. One is get your plan in place before you do the details. That applies to both appropriations and PAYGO. Second is once you get the plan in place, try and make all of the provisions that come in match that plan, stick to your allocations, and don't run in here with amendments to reconciliation that unravel the bottom line. And third, if you want to change anything in Social Security, think about how you structure it and where you bring it in because it is not the same kind of amendment. Finally, there are separate tax rules about free standing tax legislation.

Mr. GOSS. This may not be a place to interject. Thank you very much. The Kerry Commission came up with an interesting report. I presume you all have looked at it. The thing that is most memorable to take away from that for me is that we are on unsustainable trend lines. You mentioned Social Security. That is separate, but some of the other entitlement programs are not.

Ms. IRVING. Yes.

Mr. GOSS. One of the things that we have got to figure out how to do, and one of the problems that this committee is going to be faced with, is how to deal with the inevitability of that. It is sort of like death. It is inevitable and so we have got to deal with it.

The next question that comes to my mind is that we all agree we should have a plan, and we all agree that we should more or less stick to it, but if we are going to make changes and have the deliberative will of the body work its way and whatever the consequences are, in an open and forthright manner in the sunshine in response to our constituency and several other democratic guidelines we all follow very meticulously, the question of how you do that is elusive.

Ms. IRVING. I will go back to what I said at the beginning.

Mr. GOSS. The question is not elusive; the answer is—

Ms. IRVING. I thought that is what you meant. There is too easy tendency to say the process failed to control mandatory spending. The process only tried to control additions and it succeeded very well in that. But it never tried, as Bob mentioned, to go to the base.

We, too, have done a lot of projections, and looking forward, it is clear that the balanced budget agreement improved the situation. It delayed disaster further, but it did not eliminate the problem.

There are really, it seems to me, a couple of ways that you have to think about this. The problem with some mandatory caps proposals is that applying a flat cap is like trying to change the fundamental nature of the program without changing the design of the program. Either someone is magically going to stop all of us from aging or Social Security costs are going to go up. Just saying, ″you cannot spend more than X″ does not get you there.

To impose a rigid cap you have to do one of two things. Either you tell the executive branch to do what used to be the rule in food stamps: when the cap is hit, stop paying benefits. It did not happen then and it is not likely to happen with other programs. Or delegate to the Social Security Administration for example the task of reducing everybody's benefits so the total comes in under the cap. Not a very plausible argument, it seems to me, for an elected body.

One other approach that we and former CBO Director Reischauer have worked on, would be to tighten up the targeting. Reconciliation instructions could direct the committee of jurisdiction to come up with plans that will make a program ten percent less than projected next year—I am making up the numbers—and five percent less in the year after that. Then add a look–back provision. Congress would specify the design of the look–back. Would it be that next year cuts have to be greater or to cut the COLAs? Of course, in a way Social Security is the easy one because it is demographics and dollars. It is not as hard as figuring out the dynamics of health care.

Fundamentally, there are several questions in the budget process confronting us. One is whether we can continue along the path of caps on discretionary spending that in real terms are very tight without a debate over the role of government. These caps make across–the–board cuts problematic. The second big question is what in fact is going to be the design of programs for the elderly.

Mr. GOSS. Well, you have touched on really the big problem. And we are not going to solve it today. One of the reasons we are going through this drill is so that we understand what the tools are to begin to shape some solutions for that. But you already saw in the Senate and a little bit in the House this year that provisions like slipping the dates on Social Security and slipping the copays or premium adjustments and means testing or something, those are the things that the committees of jurisdiction can do to meet their number.

But the question is, A, is that good policy and the right thing to do and/or are we being driven by numbers? Is the world in the United States about whether we are going to make our budget targets or is the world in the United States that government is going to do these things because they are favorable and this is what we are going to do. That is the game that we get into.

Ms. IRVING. For these programs you cannot use the 5-year budget window.

Mr. GOSS. Jim, let's not mess up the order. I almost did that. My fault.

Ms. IRVING. I like to talk about these things.

STATEMENT OF JIM HORNEY, CONGRESSIONAL BUDGET OFFICE

Mr. HORNEY. I was amused when I saw the heading of my part of the talk, which was the application of budget enforcement to real life. I think there are a lot of people who think there is nothing about the budget process that has anything to do with real life.

But what we did want to talk about is how the budget, points of order which Jim and Bob have talked about, do in fact affect the day-to-day legislative process. And one of the really important things to realize is that you cannot judge the effect of the Budget Act enforcement mechanism simply by seeing the number of times there have been waivers of points of order, or points of order have been made on the floor or even the number of times that the bill has come to the Rules Committee that has a budget problem and the Rules Committee has somehow solved that problem.

What is absolutely clear is that proponents of legislation believe that if they have a Budget Act problem in their legislation, that makes it less likely that legislation will be enacted. There are exceptions to that. There are bills that, for whatever reason, everybody knows are going to go through. For the vast majority of legislation, the proponents of that legislation are convinced that they better get rid of the Budget Act problems or they are going to have a hard time. That means they start from the very beginning, before legislation is even introduced. Members who are thinking about legislation, and staff who are working for them, start calling the Congressional Budget Office and start calling the Budget Committee to talk about what they are planning to do, and to talk about ways to avoid budget problems.

Now, as the other people pointed out, there are a whole lot of points of order, but a number of them have to do with timing and with some very specific things, and because CBO doesn't deal with those sorts of issues very much, what we see is really concentrated on: Are we going to get into trouble for violating the 302 allocations? Meaning, the committee that I am on, the committee this bill has got to go through has an allocation. Now I want to know whether this bill is going to exceed that. Or alternatively, if it is a revenue measure, will it cause a problem under the section 311 floor. So that is what we primarily are dealing with.

Those points of order apply equally to appropriation bills—although usually appropriations don't have revenue effects, but sometimes they do and 311 applies—and to authorizing bills, but the kinds of concerns are different so I will split it up and start with appropriations bills.

Appropriations bills in a sense are less complicated in terms of potential Budget Act problems. Again, the question primarily is, are we going to be over our 302 allocation? Or is an amendment offered in the subcommittee or on the floor going to cause us to exceed that authorization? Normally it is relatively easy to judge that.

An appropriation bill in large part is a list of numbers. It says we appropriate $100 million for this purpose, we appropriate a billion for this purpose, and for the most part as far as the restriction on budget authority—the allocation of budget authority—you go through and look at all these appropriations and you add them up and decide when you add them up does the total exceed the allocation.

Outlays are a little more complicated, although in the House technically there is no point of order against exceeding your outlay allocation. Everybody wants to stay within the outlay allocation because they realize they will have a problem on the floor if they do not. The reality is everybody tries to make sure they stay within.

The outlays are a little more complicated. Unlike the budget authority that is actually provided by the Appropriations bill, outlays have to be estimated. If the appropriators appropriate $100 million for the program, the question becomes in the fiscal year coming up, fiscal year 1998, how much of that $100 million will turn into outlays in the first year?

For the most part the committee doesn't have a huge problem with that because when CBO produces a baseline at the beginning of the year for all existing programs, we say, here was the budget authority that was appropriated last year and we then project that into the future. We also say, what we think the spend–out rate is. If you appropriate $100 million in this year how much of that new budget authority do we think will spend out?

The Appropriations Committee staff knows all of those spend out rates when they are putting together bills, and when they are advising Members, they tell them. They say, well, if you want to add an amendment of $10 million, it has a 50 percent spend-out rate; that will add $5 million to outlays. That is something you have to keep up with. Appropriations staff are experienced with this and usually the Members and everybody understand what the effects of the legislation would be. And they work closely with us if there are any questions.

The problems on appropriation bills for the most part arise when there are last-minute amendments in the committee, on the floor, or in conference. Again, if they are straightforward—here is an additional amount of budget authority—for the most part there is not going to be a huge problem figuring out the outlays, unless it is money for a new program. Then it may take some time to figure it out.

But there are a number of things that you could be doing that are more problematic and harder for the proponents to understand what the effect of this proposal would be. One of them is rescissions. We often get in a regular appropriation bill a rescission of existing funds to use as an offset against some additional spending. There may be monies out there, $100 million, and they say, let's rescind that existing appropriation we did last year—I don't think we need it now, let's rescind that, and I will replace it with $100 million. Ordinarily that is a net zero. You got rid of $100 million and you add $100 million.

Sometimes there is a problem. Sometimes there may have been 100 million of money appropriated last year that has not yet been obligated at the time the President's budget comes out, so somebody looks at the budget and sees there is 100 million there. Well, between that time and, say, March or April or May when the appropriations bill is coming through, some of it may have been obligated. If it is obligated you cannot rescind it. Sometimes people try to rescind stuff—we see the amendment and we see that money has now been obligated and you cannot touch it.

Even more often we run into the case where there is, in fact, money that has been unobligated but you don't get outlay savings from it.

One good example of that that somebody tried earlier this year was to rescind $6 million the Congress and the President appropriated in 1997 the cost of a Presidential transition. Well, that money, obviously, was never obligated. Earlier this year somebody came along and said, I want to rescind that $6 million. They get credit for $6 million in budget authority. It hasn't been obligated, but we said, wait a minute, we don't think this money is going to be spent. There is no Presidential transition. We said the money is not going to be spent, and even though last year we said there would be $6 million in outlays with this, because if there has been a transition it would be spent, we said, you don't get any savings. Again, that is the kind of thing that can add complication, making this not a straightforward calculating process of adding up the numbers.

A second kind of amendment that can be a problem is instead of providing a specific sum of money, a bill may say, provide such sums as may be necessary to carry out the program. In that case, you have to go and say, how much do you think it will cost to do this? And that takes some time. And again that can cause problems when this amendment comes up at the last minute.

Another problem which we just ran into recently, and this one I have to be careful to change the names or obscure the names to protect the guilty, it actually did get fixed but they might be embarrassed if you knew about it.

An appropriation bill was in conference. They sent us all the stuff on the bill. We added it up and everything looked fine on the bill. A couple of days later we actually saw an amendment that they were going to include that had never been sent to us. It had never been sent to us because the staff assumed that it had no budgetary effect because the amendment was intended to deal with a potential legal problem about signing some long-term procurement contracts. It was absolutely clear that the intent of this amendment was simply to make sure that there was no legal bar to using the funds appropriated in the bill to sign these long-term contracts.

However, the way the amendment was written, it said, the Secretary may enter into contracts to do the following. We looked at that and said, that language by itself allows the Secretary to enter into contracts. That is obligating the United States' money. That is a cost. You may not have meant it but you just added a couple of billion dollars to this bill. And they were very unhappy about that. Luckily, they had not filed the conference report, and in fact they went back and added very simple language that said the Secretary may enter into these contracts subject to the availability of appropriations provided in this bill. That affected how you can spend the money in the bill, not all of a sudden you have an extra $2 billion.

It was a perfect example of where very reasonably the staff thought they were just covering a legal technicality. They didn't realize what they had said had a very different effect. Luckily, they did give this to us before they filed the conference report and before it came to the floor. That is an example of the kinds of things that we do run into all the time and an example of how things get fixed. They clearly didn't want to go $2 billion over their allocation. There are also amendments that are done in appropriation bills that affect mandatory programs over and above the appropriation of mandatory appropriations for appropriated entitlements. That doesn't have any direct budgetary effect, but there will actually be a change in the law that affects the mandatory program. Those can raise all sorts of problems because they can be tricky to estimate. And again, sometimes people think this is not going to have an effect, but it does. And as I say, it can be very complicated. We get an amendment, they are getting ready to file the conference report that day. Sometimes it takes us several days to get the information from the administration, from other people, that we need in order to do the estimate.

An example of one issue that has come up several times this year, at least once in the context of an appropriation bill, although it has also been in this authorizing bills, is an effort to save money by limiting mandatory administrative expenses that are paid to the States for administering the food stamp program. It seems easy because you just say reduce the amount that goes to the States by X dollars.

The problem in this area is that we pay mandatory administrative expenses to the States for food stamps, for Medicaid, for the new temporary assistance to needy families block grants and for some other mandatory benefit programs, and essentially the States have a lot of flexibility to decide for any individual which pot of money that comes out of. And so it is absolutely clear that if you restrict the food stamp money, at least some of that is going to pop up over in the Medicaid costs; that the Federal Medicaid costs will go up because we have limited the food stamp costs. And it is not a simple matter trying to figure out how much of that will pop up. It is not one for one.

And so these things come in, and the Members say, I have this amendment; it saves $100 million. And we say, no, it doesn't save 100 million, it may save 25, because 75 of it is going to show up over here the way you have done it.

Those are the kinds of complications that can appear in appropriations bills and delay getting the information, which, of course, makes everybody unhappy. They are trying to get the bill done and get to the floor on a schedule, but if they want to know what the cost of it is, they have to wait, and we need to give it to them.

There also can be problems in appropriation bills when they do things that affect revenues. Every once in a while there is something that affects tax rates or something, but that is extremely rare on appropriations. What is not terribly rare is that they do something that affects user fees. Some user fees, in fact, show up on the spending side of the budget as offsetting receipts or offsetting collections. That is fine. If they do something that changes those, they get credit for savings or for additional spending, which shows up on outlays, and that does, in fact, trade off against their discretionary appropriations under the current scorekeeping rules and the laws.

However, there are some user fees, for instance Securities Exchange Commission fees, some of which are offsetting receipts, but some of which are classified as revenues. If you change the law about those fees, that shows up as either an increase or decrease in revenues.

Well, generally you can not trade them off against spending. You certainly can't for the discretionary caps for the Budget Act enforcement. There is a limit on discretionary spending. And while the appropriators do get credit for changes they make in mandatory programs, that is one scorekeeping rule, they do not get credit for changes in revenues against the discretionary caps. Under some circumstances under the Budget Act they can, but in general it is very difficult.

So again, if they are trying to increase fees to pay for additional discretionary spending, and those fees are revenues, you can run into problems. They can be sailing along and say, we are going to raise the fees, and that allows us to do the extra spending, and all of a sudden you have a problem. That is hard to work out because you cannot automatically change this. Those are the kinds of issues that come up in the context of consideration of appropriation bills.

On the authorizing bills, the kinds of things that come up, and how they get dealt with, depends in large part on whether it is a bill that was intended to have a budgetary effect or one that wasn't. The great majority of authorizing bills are not intended to have any direct budgetary effect. They may deal with things that just don't affect the budget at all. They may be naming a post office, they may be dealing with sentencing guidelines in Federal courts; a whole range of things that Congress does that, in fact, have no direct effect on the budget.

They may appear to be bills that do have a lot to do about money, a regular authorizing bill, a bill that authorizes the Department of Education. But, in fact, that bill may contain nothing but authorization of appropriations. Well, that is budgetary, but it does not get counted as having a direct effect on the budget because all that bill is doing is telling the appropriators that they are authorized to do a future appropriation. The scoring of that spending shows up when the appropriators actually provide the money. So for most authorizing bills, most bills that CBO estimates, there is no budgetary effect. That is exactly what was intended.

Now what happens, of course, is that in many of those bills where there is not intended to be effect, something ends up in there that does have a budgetary effect. And a lot of CBO's time is spent in reading through big massive authorizing bills to find one little sentence, one paragraph, that, in fact, either inadvertently or not, would cause some additional direct spending or have some effect on revenues.

The kinds of things that show up, a bill may be creating a new Federal commission, and in the process of doing that they want to say, how much are these people going to be paid? If they use magic words like ″the Chairman shall be paid at the rate of,″ that means that if you just put that language in, once the Chairman is appointed, the Federal Government has got to pay that Chairman. That is direct spending.

Other things like that may say, ″The Secretary shall pay to a State in order to do the following,″ and again, that would cause that money to be spent. So there are a number of things to be done.

Mr. GOSS. Do you treat that as obligated if it shows up in an authorized bill?

Mr. HORNEY. If the language simply says this person shall be paid, then that person, we believe, would be able to—once they are appointed—

Mr. GOSS. Shall be paid subject to the appropriations? Are those the right words?

Mr. HORNEY. Those are the magic words, ″subject to appropriations.″ That is how these things get fixed. We look at it and say, you forgot those words. Go back. If all they meant was to say if the person is appointed, and if there is appropriations, here is how much they get. But that happens all the time. We run into that.

Mr. GOSS. Bob said that we are talking the next time about the boundaries between the appropriators and the authorizers, which is a very interesting dance form that we haven't quite figured the music and the steps to. But go ahead. We have stuff coming on the floor.

Mr. HORNEY. I will try to go quick. That is easily fixed if, in fact, the intent was to make it subject to appropriation. Every once in a while we catch it and say, you made it a mistake, and you need to add this. And they say, ″Well...,″ and then bells start going off, and we say, well, they knew what they were doing.

There are other things where people want to make a change in policy, but they don't think it is going to have an effect on direct spending, and their intent clearly is not to affect direct spending. An example that is facing us right now that we have been very criticized for by Senator Lautenberg, was a provision that Senator Lautenberg sponsored first a number of years ago, and I think it has been done on a 1-year basis for the last 7 or 8 years, that allows certain residents of the former Soviet Union and some other countries to more easily obtain refugee status on the basis that they are likely to be subject to religious persecution. Clearly the intent of that was not to affect spending, it was to allow these people to escape from possible religious persecution.

The problem is that if you come into the United States under refugee status, you are immediately eligible for food stamps, Medicaid and a variety of other benefits, which now are not available to other people who are coming into the United States without some waiting period. And so, in fact, doing this change, we believe, has an effect on the number of people coming in under refugee status, and that has an effect on the cost to the Federal Government of these programs.

Senator Lautenberg is extremely unhappy about this. Our position is sorry, but we think it is a policy change. Whether you intended it to have any effect on the budget, it does, and if you do this, we will have to estimate a cost of this kind of legislation.

Mr. GOSS. If he came back to you and said, look, the numbers coming in are within the numbers that have already been estimated that will be beneficiaries of these programs, would you be convinced?

Mr. HORNEY. That is a complication. He has, in fact, argued that because the refugee numbers are, in fact, negotiated, there is not in the law a certain set number. We have looked at history of it, and we believe the history shows that the additions of these refugees from the Soviet Union, in fact, caused the numbers that are accepted to come in to be higher. It is a question, it is not straightforward.

Other kinds of policy changes that also have unintended budget effects are things like people who want to put a moratoria on leasing of outer continental shelf oil drilling, or people who want to give away some Federal property. Well, in those cases we estimate there can be effects. If we estimate that leases would have gone out and brought in royalties, then there is a cost to the moratoria. Similarly, if we think that this property would have been sold as surplus property under existing law, then giving it away has a cost.

These are not easy to fix because it is clear in these cases people want these policies to happen. They want them not to be subject to future appropriations, but they do end up as costs to these bills, which may cause some trouble.

Of course, there are other authorizing bills that people intend to have costs, and in some cases it may not be a problem. The committee may have an allocation to spend an extra hundred million, and that is fine. But there are other cases where the committee may not have allocation at all, and the committee decides they want to do something that they know will have a budget effect, but they try to offset it so that there is no net increase in spending. You can run into problems there, however, because sometimes they may, in fact, offset the additional spending over 5 years, but it may be that for the first year they are over their allocation, and a point of order applies to either exceeding the allocation in the first year or the 5-year total.

Other cases can come up where they try to do the offsets by some revenue change, and that revenue change does not in all cases offset the increases in spending. A third example that has happened a number of times is there will be an increase in direct spending in an authorizing bill, and they will try to offset it by reducing the discretionary caps and say, well, there is no net increase in spending.

However, the way that the budget enforcement was set up and the way that the Budget Act is set up, you cannot claim credit against additional direct spending by promising that future appropriations will be lower. It just doesn't offset saying 5 years from now we are going to appropriate less than we thought we were, and therefore that will count as spending reductions.

That pretty much covers the kinds of examples that I wanted to give, kinds of things we see, the kinds of problems, what kinds of ways they can get fixed.

Mr. GOSS. Thank you.

Actually timing has worked out fairly well. I actually thought we would never get to 11 o'clock without a vote. We pretty nearly made it. And we are going to go now.

You have given us exactly what we asked for here, and you have done it very well. I have a zillion questions, and I know that this is going to be a continuing dialogue. I am most grateful for what I will call combined effort here to educate us on the committee and to make this material available for all of us.

Those of us on the subcommittee, and the staff, are spending a lot of time on this, as I think you know. We really are going to have to do something because there are some serious problems out there. I think for the record that the Government Reform and Oversight Committee is no longer in the referral chain on budget process, and we haven't talked about jurisdictional problems here, or the other body—what I will call—how will I say this, misfits is not what I want to say. I want to say they don't connect. We don't have smooth junction points or something. Disconnects is another way to put it sometimes.

And I found out in my own committee, and I am continuously surprised by this process, even as I go through working with the other committees of jurisdiction, and the authorizing side, and then trying to get the appropriators on board, again, I discovered that the comparable Senate committee doesn't have the same portfolio as the comparable House committee. So you have to leave some stuff over here. It is a nightmare. And if I hadn't dreamed of a system that would fail of its own weight, we have come very close to it just in the case of my own committee. And then, of course, we can never talk about that because it is all classified anyway. So it makes it very hard to have a public hearing on it.

The other question that came up from Mr. Dreier, and before I go I wanted to ask—and, Jim, maybe it was you or maybe it was Bob that triggered this—he wanted to know about the tax—when we get to surpluses, assuming that we actually have all of the success that we are talking about and we have surpluses, how are we going to treat the tax question? I think his direct question is: Are we going to still have to have offsets for tax cuts? When we even have surpluses, are we going to have problems with tax cuts?

Mr. HORNEY.The question that is being bandied around is whether the PAYGO rules still apply when there is a surplus. There are some who believe that because the introduction of the pay–as–you–go section talks about reducing the deficit, that it goes away. There are many others, including most people who were involved in trying to put together the PAYGO rules originally and the extensions of it, that believe that that was shorthand, in a way, for reducing the deficit or increasing the surplus, and the law doesn't provide any specific mechanism for turning it off when there is an estimate of a surplus. But that is something that is going to have to be hashed out, although right now ultimately it is up to the Office of Management and Budget to make that decision. They are given authority in the Budget Enforcement Act to do that.

Mr. GOSS. That is obviously the kind of change that we are going to need to be talking about.

Mr. HORNEY. I think the Congress needs to decide what they want to happen.

Ms. IRVING. It looks like there are two provisions of law about which this question arises. One is the line–item veto; clearly the President only has the authority to reduce the deficit. The other is whether the PAYGO prohibition on any increase in the deficit also a;;lies to no reduction in the surplus.

Mr. GOSS. I think this is a problem that is timely for the exercise that we are doing.

I think that we have all experienced a lot of the points of order process up here, and we are certainly familiar. We are never quite sure which one it is, but we have a general idea it is timing or it is problems between the authorizers and the appropriators or whatever.

But the other thing that I am concerned about, and I mentioned the Kerry Commission and unsustainable trends, the other thing I am concerned about on the discretionary side, in my case it would come under defense, but I think it is true with others, is that I don't believe we have a process yet on the follow-on. I don't think people understand sometimes the gigantic amount of follow-on costs. Whether it is obligated or not doesn't matter as much as if you are going to realize your investment. And you can put a ton of money in something, and if it doesn't work, you can stop it and say, we are not going to spend any more. No more good money after bad. But the problem is it never seems to come out that way.

On the outer continental shelf thing, I can talk to you about the reduction in revenues, but I can also talk about the buy-back of the contracts, and it is the follow-on and some of the things that we get into, whether it is innocently or not—and I don't have an understanding of how that happens—and I have seen in some of our technology investments huge amount of money committed to, you know, a good idea, and I don't know whether the good idea is going to justify the costs. And I am not sure whether the people in the cycle that you mentioned, Bob, when we started out, understand that this is a lot more than just this 5 years, we could fit numbers and do all kinds of stuff, but we may be actually obligating ourselves for quite a bit. That is an area I want to pursue.

If I don't pursue the votes, we are going to be in trouble, so I thank you all very much.

I would now like to submit for the record, the accompanying slide presentation as well as nine additional CRS reports and a GAO report.

[The accompanying slide show follows:]

BUDGET ENFORCEMENT PROCEDURES IN THE HOUSE

Seminar for House Rules Committee Members and Staff

Sponsored by The Subcommittee on Legislative and Budget Process

September 26, 1997

Part I: Overview

Bob Keith, CRS

Dual Enforcement Tracks

Cong. Budget Process	Sequestration Process
• Congressional Budget Act of 1974	• Balanced Budget and Emergency Deficit Control Act of 1985
• Enforced against revenues, spending, and the debt limit	• Enforced against spending only
• Occurs during consideration of individual bills	• Occurs after a congressional session ends

Dual Enforcement Tracks (cont)

Cong. Budget Process	Sequestration Process
• Social Security and Postal Service exempt	• Social Security, Postal Service, and many other programs exempt
• Relies on points of order, based on budget resolution	• Relies on a sequestration order, based on OMB rpt.
• 302(b) spending suballocations and reconciliation	• Discretionary spending limits and pay-as-ypu-go requirement

Part II: The Appropriations Process and the Congressional Budget Act

Jim Saturno, CRS

Points of Order in the Cong. Budget Process

- Points of Order Related to Timing (4)
  302(c), 303(a), 309, 310(f)
- Points of Order Related to Budget Resolutions (7)
  301(g), 301(i), 305(a)(4), 305(b)(2), 305(c)(4), 305(d), 312(c)
- Points of Order Related to Discretionary Spending (7)
  302(c), 302(f)(1), 302(f)(2)(B), 309, 311(a)(1), 311(a)(2), 312(b)

Points of Order in the Cong. Budget Process (cont)

- Points of Order Related to Mandatory Spending (18)
  301(i), 302(f)(1),302(f)(2)(A), 303(a),305(b)(2), 305(c)(4), 310(d), 310(e), 310(f), 310(g), 311(a)(1), 311(a)(2), 311(a)(3), 313, 401(a), 401(b) 202(b)/H.Con.Res. 67 13302(a)
  /P.L. 101-508
- Other Points of Order (5)
  306, 313, 425(a)(1), 425(a)(2), 426

Points of Order Which Apply in the House

- Points of Order Related to Timing (4)
  302(c), 303(a), 309, 310(f)
- Points of Order Related to Budget Resolutions (1)
  305(a)(4)
- Points of Order Related to Discretionary Spending (4)
  302(c), 302(f)(1), 309, 311(a)(1)

Points of Order Which Apply in the House (cont)

- Points of Order Related to Mandatory Spending (9)
  302(f)(1), 303(a), 310(d), 310(f), 310(g),311(a)(1), 401(a), 401(b), H.Con.Res. 67 13302(a)
  /P.L. 101-508
- Other Points of Order (4)
  306, 425(a)(1), 425(a)(2), 426

Points of Order Related to Discretionary Spending (7)

- 302(c) - requires the Appropriations Committees to make 302(b) subdivisions before measures within their jurisdiction may be considered
- 302(f)(1) - in the House, enforces allocations of budget authority made pursuant to 302(a) or 302(b)
- 302(f)(2)(B) - in the Senate, enforces allocations of budget authority and outlays made pursuant to 302(b)

Points of Order Related to Discretionary Spending (7) (cont)

- 309 - in the House, prohibits adjournment resolutions longer than 3 days in July until regular appropriations bills are approved
- 311(a)(1) - in the House, enforces allocations of total budget authority or outlays set forth in the budget resolution
- 311(a)(2) - in the Senate, enforces allocations of total budget authority or outlays set forth in the budget resolution

Points of Order Related to Discretionary Spending (7) (cont)

- 312(b) - in the Senate, enforces the discretionary spending limits for FY1998-2002 in section 251(c) of GRH

Part III: The Authorization Process and the Congressional Budget Act

Sue Irving, GAO

Rules Pertaining to Timing

- Budget Resolution first (Section 303(a))
- House Adjournment Restrictions (Section 310(f))

Rules Pertaining to Ceilings and Limits

- Don't Exceed Spending Allocations (Section 302(f))
- Deficit Neutral Reconciliation Amendments (Section 310(d))
- Compliance with Revenue/Spending Targets (Section 311)
- Backdoor Authority (Section 401)

Firewalls Within Mandatory

- Social Security Protection (Section 310(g))

Special Rules Pertaining to Taxes in Rule XXI

- Jurisdiction
- 3/5 Vote for rate increases
- No retroactive rate increases

Part IV: Application of Budget Enforcement to Real Life

Jim Horney, CBO

In General (cont)

- The effect of the Budget Act cannot be measured by the points of order made against bills.
- Proponents of legislation believe Budget Act violations reduce prospects of legislation passing and strive to avoid violations.
- Primary concern is that legislation not violate budget resolution levels of spending and revenues.

Appropriations Bills (cont)

- Appropriation bill are not supposed to be costless. The usual question is:

  "Is the bill within the section 302(b) allocation?"

- The answer generally depends on the amount of budget authority appropriated.
- Members and staff work closely with CBO to stay within allocations.

Appropriations Bills (cont)

- Problems often come from last-minute amendments that:

  Involve a rescission of existing funds;

  Provide for "such sums as may be necessary;"

  Affect the operations of a direct spending program; or,

  Affect revenues

Bills from Authorizing Committees

- Most legislation is not intended to have a direct budgetary effect, but may include:

  Provisions that inadvertently create new direct spending; or

  Lower payments received by the government or increase the cost of a mandatory program.

Bills from Authorizing Committees

- Some legislation is intended to increase spending, but to offset that with savings. But:

  The offsets may not be sufficient or there may be a timing problem;

  The offset may not count because it is in the form of :

  Increased revenues; or,

  A reduction in the caps on discretionary spending.

[CRS report number one is as follows:]

CRS Report for Congress

A Brief Introduction to the Federal Budget Process

Updated October 20, 1997

Robert Keith
Specialist in American National Government
Government Division

CRS

Congressional Research Service • The Library of Congress

A Brief Introduction to the Federal Budget Process

Summary

Each year, the federal government raises and spends more than $1.5 trillion through its budget process. The federal budget process is widely regarded as a complex, time-consuming, and arcane set of activities often suffused with controversy, frustration, and delay. These characteristics of the process are attributable to various factors, including the vast scope and complexity of federal activities and the numerous types of financial transactions needed to fund them, the profusion of participants in the budget process and the wide dispersal of budgetary power, and the far-reaching economic and political consequences of budgetary decision-making.

The federal budget cycle begins each year with the preparation and submission to Congress of the President's budget. The President's budget is only a request to Congress; Congress is not required to adopt his recommendations. Nevertheless, the President's budgetary proposals often guide congressional revenue and spending decisions, though the extent of the influence varies from year to year and depends more on political and fiscal conditions than on the legal status of the budget.

The Congressional Budget and Impoundment Control Act of 1974, as amended, establishes the congressional budget process as the means by which Congress coordinates its various budget-related actions. The process is centered around an annual concurrent resolution on the budget that sets aggregate budget policies and functional priorities for a multiyear period. Because a concurrent resolution is not a law — it cannot be signed or vetoed by the President — the budget resolution does not have statutory effect; no money can be raised or spent pursuant to it. The main purpose of the budget resolution is to establish the framework within which Congress considers separate revenue, spending, and other budget-related legislation. Revenue and spending amounts set in the budget resolution establish the basis for the enforcement of congressional budget policies through points of order. The budget resolution also initiates the reconciliation process for conforming existing revenue and spending laws to congressional budget policies.

Budget resolution policies are implemented by Congress through the enactment of annual appropriation and other spending measures, revenue measures, debt-limit legislation, and reconciliation bills. Each class of budgetary legislation is considered under its own set of rules and procedures.

The President may avail himself of special authority to impound appropriated funds. Under the Impoundment Control Act of 1974, the President may propose the cancellation of spending; special procedures are included in the act to provide for House and Senate action on these proposals. Beginning in January of 1997, the President has had special line-item veto authority to cancel not only discretionary appropriations, but new entitlement spending and targeted tax benefits as well. The line-item veto procedures provide that the President's recommendations go into effect unless disapproved by Congress within a relatively short period of time.

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A Brief Introduction to the Federal Budget Process

Introduction

Each year, the federal government raises and spends more than $1.5 trillion through its budget process. The federal budget process is widely regarded as a complex, time-consuming, and arcane set of activities often suff sed with controversy, frustration, and delay. These characteristics of the process are attributable to various factors, including the vast scope and complexity of federal activities and the numerous types of financial transactions needed to fund them, the profusion of participants in the budget process and the wide dispersal of budgetary power, and the far-reaching economic and political consequences of budgetary decision-making.

This report provides a brief introduction to the federal budget process.[1] Key budget concepts and terminology are defined and explained. The separate procedures that make up the federal budget process are identified and their salient features described. While a complete understanding of federal budgeting probably can be obtained only after much observation and study of the process in operation, broad exposure to its rudiments is a useful first step. Various resources "for additional reading" are identified at the end of this report, which the reader may find helpful in exploring the subject in greater depth.

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[1] Substantial portions of this report are drawn from the Congressional Research Service's *Manual on the Federal Budget Process*, by Allen Schick, Robert Keith, and Edward Davis, CRS Report 91-902 GOV, December 24, 1991, 218 pages. A revised version of the manual will be available in 1998.

Key Budget Concepts and Terms

A thorough understanding of the federal budget process requires familiarity with dozens, if not hundreds, of concepts and terms. Some of the key concepts and terms relating to the elementary units of budgeting, budget coverage and classifications, the timing of budgetary actions, and the budget baseline are discussed below.

Elementary Units of Budgeting

Like any complex process, federal budgeting can be broken down into its fundamental units of activity and measurement.

Spending. The spending process encompasses three distinct phases involving budget authority, obligations, and outlays. *Budget authority* is enacted by Congress and the President in law. It provides the legal basis for federal agencies to make binding financial commitments in the form of *obligations*. Obligations stem from such agency actions such as entering into contracts, employing personnel, and submitting orders for goods and services. When obligations are liquidated, *outlays* ensue. Usually, outlays take the form of checks, electronic fund transfers, or other payments made by the Treasury Department.

Most of the new budget authority made available to agencies each year derives automatically from laws enacted during prior Congresses. The funds become available without the Congress taking any legislation action. For example, the funds necessary to pay Social Security benefits are provided automatically each year under a law enacted in the 1930s providing a *permanent appropriation* for the program. Other forms of budget authority which may bypass annual legislative action include *borrowing authority* and *contract authority*, under which agency heads may borrow funds or enter into contractual arrangements in advance of appropriations action, and the authority to spend *offsetting collections* (see discussion under **Revenues**, below).

The remaining new budget authority made available to agencies each year comes from currently enacted legislation, mostly in the form of measures providing *annual appropriations*. Many agencies have access to additional budget authority enacted in prior years that has carried over as unspent balances.

One of the most important characteristics of budget authority is the period during which it is available for obligation. Most budget authority for the routine operating expenses of the federal government is "one-year" funding, meaning that it may be obligated only during the one fiscal year for which it is made available; after that, the funds lapse and no longer are available to be obligated. Budget authority enacted for procurement, construction, and similar long-term activities, on the other hand, often is "multiyear" or "no-year" funding, which may be obligated during a set number of fiscal years or an indefinite period. For all types of budget authority, outlays usually may be made for several fiscal years after the authority to obligate the funds has expired.

The measurement of the pace at which spending for particular programs occurs is referred to as the *spendout rate*. More precisely, this measures the rate at which budget authority becomes outlays during fiscal year periods. Spendout rates are determined largely by the timing of agency activity. Consequently, it is more difficult for Congress to control outlay levels than it is to control budget authority levels.

In the case of some spending programs, the federal government lends funds directly or guarantees them as a third party. For many years, the federal budget monitored such credit activities by tracking the level of direct loan obligations and loan guarantee commitments. Pursuant to the Federal Credit Reform Act of 1990 (incorporated into the Congressional Budget Act of 1974 as a new Title V by the Budget Enforcement Act of 1990), the federal budget now focuses on the subsidy element, rather than the cash flows, of these two types of programs. Loan subsidies now are recorded as budget authority and outlays.

Revenues. Revenues of the federal government (also referred to as *receipts*) derive from a number of sources. Individual and corporate income taxes account for about half of the receipts of the federal government, but social insurance taxes are an increasingly prominent source of revenues. Additional amounts accrue to the government from various excise taxes, customs fees, gifts, and miscellaneous receipts.

Some income to the federal government, which arises from business-like or market-oriented activities (such as the sale of electricity from federal power administrations), is referred to as *offsetting collections*. These funds are offset or deducted from federal spending instead of being counted as revenues.

Deviations from the "normal" tax code (such as exemptions, deductions, and special rules) are known as *tax expenditures*. These devices provide a means of pursuing policy objectives in a manner analogous to spending programs. For example, the federal government promotes the goal of homeownership by providing a tax deduction for mortgage interest costs; comparable resources could be devoted to this goal through spending programs involving grants or loans.

Deficit and Surplus. The deficit or surplus is determined by the relationship of outlays to revenues. An excess of outlays over revenues is a deficit, while an excess of revenues over outlays is a surplus.

Accounts and Funds. Spending and revenues in the federal budget are recorded on the basis of accounts. In the case of annual appropriations, for example, each account usually corresponds to a separate heading in the legislation. Funds allocated to accounts are further divided by the programs, projects, activities, and objects of expenditure related to the account. In budget presentations, accounts are usually grouped together by the organizational unit (*e.g.*, the department or agency) that manages them. Some types of accounts, such as credit financing accounts, are included in budget presentations but are used only for accounting purposes; they do not reflect budgetary transactions.

Federal spending and revenues also may be characterized by the type of funds involved. The two basic types of funds in the budget are *trust funds*, which are used to carry out specific purposes in accordance with statutory requirements, and *federal funds*, which derive from the federal government's sovereign powers and are spent on the government's general activities.

Budget Coverage and Classifications

On-Budget and Off-Budget Entities. For the past several decades, the federal budget has merged together trust funds and federal funds into a single presentation, with certain exceptions. Entities included in the budget presentation are referred to as *on-budget entities*; those excluded are known as *off-budget entities*. At present, the Social Security trust funds and the postal service fund are the only off-budget entities. Despite their off-budget status, the President's budget includes information on the budgetary impact of these funds.

Operating and Capital Funds. The federal government does not use separate operating and capital budgets, unlike most state governments. Instead, funds for operating expenses and capital programs are merged together. However, the President's annual budget submission includes an analysis of such funds in the budget.

Functional Categories. One of the most long-standing methods of classifying federal spending is by functional category. The functional categories — such as national defense, agriculture, transportation, and health — are used to group together related spending accounts regardless of the agency or other unit that manages them. The functional categories thus represent a broad statement of budget priorities.

Discretionary and Direct (Mandatory) Spending. A more recent method of classifying federal spending, arising from the procedural requirements of the Budget Enforcement Act of 1990, depends on whether the spending is considered to be discretionary or direct. Discretionary spending is provided in annual appropriations acts, which fall under the jurisdiction of the House and Senate Appropriations committees. Direct spending, also called mandatory spending, is provided in substantive legislation, which is within the jurisdiction of the authorizing committees of the House and Senate. Most direct spending involves entitlement programs funded by permanent appropriations. Some entitlement programs, however, are funded in annual appropriations acts, but such spending is considered to be direct spending.

The Fiscal Year Cycle

The Fiscal Year. The federal budget process operates under a fiscal year cycle that is 12 months in length. The federal fiscal year begins on the October 1 preceding the calendar year for which the fiscal year is named (*e.g.*, fiscal year 1999 begins on October 1, 1998, and ends on September 30, 1999). Most state governments use a fiscal year that runs from July 1 through June 30.

The Current Year, the Budget Year, and the Outyears. Federal budgeting uses a multiyear framework. At the time the budget is being considered, the fiscal year in progress is referred to as the current year; the upcoming fiscal year is called the budget year; and fiscal years after the budget year are known as the outyears.

The Budget Baseline

An important first step in the annual budget cycle is the preparation of a budget baseline. The baseline is the projection of revenue, spending, and deficit or surplus levels into future years based upon the *status quo*. Projections rest upon *technical assumptions* (*e.g.*, changes in demographic patterns and program workloads) and *economic assumptions* (*e.g.*, changes in the growth of the economy, inflation rates, and unemployment rates). They assume that policies consistent with existing law will be maintained. Thus, the baseline is an important tool for assessing policy changes inherent in budget proposals.

The executive and legislative branches each develop their own budget baselines. The baseline prepared for the President's budget is known as the *current services estimates*. Congress uses the *baseline budget projections* developed by the Congressional Budget Office.

Executive Budgeting

The President's budget, officially referred to as the *Budget of the United States Government*, is required to be submitted to Congress early in the legislative session, no later than the first Monday in February. The budget consists of estimates of spending, revenues, borrowing, and debt; policy and legislative recommendations; detailed estimates of the financial operations of federal agencies and programs; data on the actual and projected performance of the economy; and other information supporting the President's recommendations.

The President's budget is only a request to Congress; Congress is not required to adopt his recommendations. Nevertheless, the power to formulate and submit the budget is a vital tool in the President's direction of the executive branch and of national policy. The President's proposals often guide congressional revenue and spending decisions, though the extent of the influence varies from year to year and depends more on political and fiscal conditions than on the legal status of the budget.

The Constitution does not provide for a budget, nor does it require the President to make recommendations concerning the revenues and spending of the federal government. Until 1921, the federal government operated without a comprehensive presidential budget process. The Budget and Accounting Act of 1921 (P.L. 67-13; 42 *Stat.* 20-27), as amended, provides for a national budget system. Its basic requirement is that the President should prepare and submit a budget to Congress each year. The 1921 act established the Bureau of the Budget, now named the Office of Management and Budget (OMB), to assist the President in preparing and implementing the executive budget. Although it has been amended many times, this statute provides the legal basis for the presidential budget, prescribes much of its content, and defines the roles of the President and the agencies in the process.

Formulation and Content of the President's Budget

Preparation of the President's budget typically begins in the spring (or earlier) each year, at least nine months before the budget is submitted to Congress, about 17 months before the start of the fiscal year to which it pertains, and about 29 months before the close of that fiscal year. The early stages of budget preparation occur in federal agencies. When they begin work on the budget for a fiscal year, agencies already are implementing the budget for the fiscal year in progress and awaiting final appropriations actions and other legislative decisions for the fiscal year after that. The long lead times and the fact that appropriations have not yet been made for the next year mean that the budget is prepared with a great deal of uncertainty about economic conditions, presidential policies, and congressional actions.

As agencies formulate their budgets, they maintain continuing contact with the OMB examiners assigned to them. These contacts provide agencies with guidance in preparing their budgets and also enable them to alert OMB to any needs or problems that may loom ahead. Agency requests are submitted to OMB in late summer or early fall; these are reviewed by OMB staff in consultation with the President and his aides. The Budget and Accounting Act of 1921 bars agencies from submitting their budget requests directly to Congress. Moreover, OMB regulations provide for confidentiality in all budget requests and recommendations prior to the transmittal of the President's budget to Congress. However, it is quite common for internal budget documents to become public while the budget is still being formulated.

The format and content of the budget are partly determined by law, but the Budget and Accounting Act of 1921 authorizes the President to set forth the budget "in such form and detail" as he may determine. Over the years, there has been an increase in the types of information and explanatory material presented in the budget documents.

In most years, the budget is submitted as a multi-volume set consisting of a main document setting forth the President's message to Congress and an analysis and justification of his major proposals (the *Budget*) and supplementary documents providing account and program level detail, historical information, and special budgetary analyses (the *Budget Appendix*, *Historical Tables*, and *Analytical Perspectives*), among other things.

Much of the budget is an estimate of requirements under existing law rather than a request for congressional action (approximately half of the budget authority in the budget becomes available without congressional action). The President submits a budget update (reflecting changed economic conditions, congressional actions, and other factors), referred to as the *Mid-Session Review*, by July 15 each year. The President may revise his recommendations any time during the year.

Executive Interaction With Congress

The President and his budget office have an important role once the budget is submitted to Congress. OMB officials and other presidential advisors appear before congressional committees to discuss overall policy and economic issues, but they generally leave formal discussions of specific programs to the affected agencies. Agencies thus bear the principal responsibility for defending the President's program recommendations at congressional hearings.

Agencies are supposed to justify the President's recommendations, not their own. OMB maintains an elaborate legislative clearance process to ensure that agency budget justifications, testimony, and other submissions are consistent with presidential policy.

Increasingly in recent years, the President and his chief budgetary aides have engaged in extensive negotiations with Congress over major budgetary legislation. These negotiations sometimes have occurred as formal budget "summits" and at other times as less visible, behind-the-scenes activities.

Congressional Budgeting

The Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344; 88 *Stat.* 297-339), as amended, establishes the congressional budget process as the means by which Congress coordinates the various budget-related actions (such as the consideration of appropriations and revenue measures) taken by it during the course of the year. The process is centered around an annual concurrent resolution on the budget that sets aggregate budget policies and functional priorities for at least the next five fiscal years.

Because a concurrent resolution is not a law — it cannot be signed or vetoed by the President — the budget resolution does not have statutory effect; no money can be raised or spent pursuant to it. The main purpose of the budget resolution is to establish the framework within which Congress considers separate revenue, spending, and other budget-related legislation. Revenue and spending amounts set in the budget resolution establish the basis for the enforcement of congressional budget policies through points of order. The budget resolution also initiates the reconciliation process for conforming existing revenue and spending laws to congressional budget policies.

The Congressional Budget Act of 1974, which includes many provisions that operate as rules of the House and Senate, has been amended many times. Mr or changes to the act occurred in the 1980s and 1990s in conjunction with legislation establishing and extending the Balanced Budget and Emergency Deficit Control Act of 1985 (also known as the Gramm-Rudman-Hollings Act) and the Budget Enforcement Act of 1990. Changes in the 1974 act were made most recently by the Budget Enforcement Act of 1997 (Title X of P.L. 105-33, the Balanced Budget Act of 1997).[2] Additionally, some rules of the congressional budget process have been incorporated into or augmented by the standing rules of the House and Senate.

Formulation and Content of the Budget Resolution

The congressional budget process begins upon the presentation of the President's budget in January or February (see **Table 1**). The timetable set forth in the Congressional Budget Act of 1974 calls for the final adoption of the budget resolution by April 15, well before the beginning of the new fiscal year on October 1. Although the House and Senate often pass the budget resolution separately before April 15, they often do not reach final agreement on it until after the deadline — sometimes months later. The Congressional Budget Act of 1974 bars consideration of revenue, spending, and debt-limit measures for the upcoming fiscal year until the budget

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[2] For a discussion of these changes, see *Budget Enforcement Act of 1997: Summary and Legislative History*, by Robert Keith, CRS Report 97-931, October 8, 1997, 23 pages.

resolution for that year has been adopted, but certain exceptions are provided (such as the exception that allows the House to consider the regular appropriations bills after May 15, even if the budget resolution has not been adopted by then).

Table 1. Congressional Budget Process Timetable

Deadline	Action to be completed
First Monday in February	President submits budget to Congress.
February 15	CBO submits report on economic and budget outlook to Budget committees.
Six weeks after President's budget is submitted	Committees submit reports on views and estimates to respective Budget Committee.
April 1	Senate Budget Committee reports budget resolution.
April 15	Congress completes action on budget resolution.
June 10	House Appropriations Committee reports last regular appropriations bill.
June 30	House completes action on regular appropriations bills and any required reconciliation legislation.
July 15	President submits mid-session review of his budget to Congress.
October 1	Fiscal year begins.

The Congressional Budget Act of 1974 requires the budget resolution, for each fiscal year covered, to set forth budget aggregates and spending levels for each functional category of the budget. The aggregates included in the budget resolution are as follows:

- total revenues (and the amount by which the total is to be changed by legislative action);
- total new budget authority and outlays;
- the deficit or surplus; and
- the debt limit.

With regard to each of the functional categories, the budget resolution must indicate for each fiscal year the amounts of new budget authority and outlays, and they must add up to the corresponding spending or aggregates.

Aggregate amounts in the budget resolution do not reflect the revenues or spending of the Social Security trust funds, although these amounts are set forth separately in the budget resolution for purposes of Senate enforcement procedures.

The budget resolution does not allocate funds among specific programs or accounts, but the major program assumptions underlying the functional amounts are often discussed in the reports accompanying each resolution. Some recent reports have contained detailed information on the program levels assumed in the resolution. These assumptions are not binding on the affected committees. Finally, the Congressional Budget Act of 1974 allows certain additional matters to be included in the budget resolution. Perhaps the most important optional feature of a budget resolution is reconciliation directives (discussed below).

The House and Senate Budget committees are responsible for marking up and reporting the budget resolution. In the course of developing the budget resolution, the Budget committees hold hearings, receive "views and estimates" reports from other committees, and obtain information from the Congressional Budget Office (CBO). In their initial hearings each year, the Budget committees receive testimony from the director of OMB, the secretary of the Treasury, and the chairman of the President's Council of Economic Advisers. The CBO director also testifies. The "views and estimates" reports of House and Senate committees provide the Budget committees with information on the preferences and legislative plans of congressional committees regarding budgetary matters within their jurisdiction.

CBO assists the Budget committees in developing the budget resolution by issuing, early each year, reports on the economic and budget outlook, the President's budgetary proposals, and, in most years, spending and revenue options for reducing the deficit.

The extent to which the Budget committees (and the House and Senate) consider particular programs when they act on the budget resolution varies from year to year. Specific program decisions are supposed to be left to the Appropriations committees and other committees of jurisdiction, but there is a strong likelihood that major issues will be discussed in markup, in the Budget committees' reports, and during floor consideration of the budget resolution. Although any programmatic assumptions generated in this process are not binding on the committees of jurisdiction, they often influence the final outcome.

Floor consideration of the budget resolution is guided by House and Senate rules and practices. In the House, the Rules Committee usually reports a "special rule" (a simple House resolution), which, once approved, establishes the terms and conditions under which the budget resolution is considered. This special rule typically specifies which amendments may be considered and the sequence in which they are to be offered and voted on. It has been the practice in recent years to allow consideration of a few amendments (as substitutes for the entire resolution) that present broad policy choices. In the Senate, the amendment process is less structured, relying on agreements reached by the leadership through a broad consultative process. The amendments offered in the Senate may entail major policy choices or may be focused on a single issue.

Achievement of the policies set forth in the annual budget resolution depends on the legislative actions taken by Congress (and their approval or disapproval by the President), the performance of the economy, and technical considerations. Many of the factors that determine whether budgetary goals will be met are beyond the direct control of Congress. If economic conditions — growth, employment levels, inflation, and so forth — vary significantly from projected levels, so too will actual levels of revenue and spending. Similarly, actual levels may differ substantially if the technical factors upon which estimates are based, such as the rate at which agencies spend their discretionary funds or participants become eligible for entitlement programs, prove faulty.

Budget Resolution Enforcement

Congress' regular tools for enforcing the budget resolution each year are overall spending ceilings and revenue floors and committee allocations and subdivisions of spending. In addition, in recent years the Senate has enforced discretionary spending limits in the budget resolution, which parallel the adjustable limits established in statute and enforced by the sequestration process. In order for the enforcement procedures to work, Congress must have access to complete and up-to-date budgetary information so that it can relate individual measures to overall budget policies and determine whether adoption of a particular measure would be consistent with those policies. Substantive and procedural points of order are designed to obtain congressional compliance with budget rules. A point of order may bar House or Senate consideration of legislation that violates the spending ceilings and revenue floors in the budget resolution, committee subdivisions of spending, or congressional budget procedures.

Budget Resolution Aggregates. In the early years of the Congressional Budget Act of 1974, the principal enforcement mechanism was the ceiling on total budget authority and outlays and the floor under total revenues set forth in the budget resolution. The limitations inherent in this mechanism soon became apparent. For example, the issue of controlling breaches of the spending ceilings usually did not arise until Congress acted on supplemental appropriations acts, when the fiscal year was well underway. The emergency nature of the legislation often made it difficult to uphold the ceilings.

As part of the budget process changes made by the BEA of 1997, the aggregate levels set in the budget resolution, and the associated discretionary spending limits and committee spending allocations, may be adjusted periodically for various factors. The adjustments, as authorized under a new Section 314 of the Congressional Budget Act of 1974, are made pursuant to the consideration of legislation in several different categories and are meant to parallel similar adjustments made automatically in the statutory discretionary spending limits. Adjustments may be triggered by legislation in the following five categories:

(1) measures containing designated emergency amounts of discretionary spending, direct spending, or revenues;
(2) measures funding continuing disability reviews;
(3) measures providing an allowance for the International Monetary Fund;

(4) measures funding arrearages for various international organizations, international peacekeeping, and multilateral development banks (but only for the period covering FY1998-2000 and subject to a limit of $1.884 billion in budget authority); and

(5) measures providing funds for an earned income tax credit compliance initiative, subject to annual limits ranging from $138 million for FY1998 to $146 million for FY2002.

Allocations of Spending to Committees. In view of the inadequacies in the early years of congressional budgeting of relying on enforcement of the budget totals, Congress changed the focus of enforcement in the 1980s to the committee allocations and subdivisions of spending made pursuant to Section 302 of the act. The key to enforcing budget policy is to relate the budgetary impact of individual pieces of legislation to the overall budget policy. Because Congress operates through its committee system, an essential step in linking particular measures to the budget is to allocate the spending amounts set forth in the budget resolution among House and Senate committees.

Section 302(a) provides for allocations to committees to be made in the statement of managers accompanying the conference report on the budget resolution. A Section 302(a) allocation is made to each committee which has jurisdiction over spending, both for the budget year and the full period covered by the budget resolution (at least five fiscal years). Allocations made to the House and Senate Appropriations Committees cover only the budget year and use the discretionary spending categories established for the sequestration process. The committee allocations do not take into account jurisdiction over discretionary authorizations funded in annual appropriations acts. The amounts of new budget authority and outlays allocated to committees in the House or Senate may not exceed the aggregate amounts of budget authority and outlays set forth in the budget resolution. Although these allocations are made by the Budget Committees, they are not the unilateral preferences of these committees. They are based on assumptions and understandings developed in the course of formulating the budget resolution.

After the allocations are made under Section 302(a), the House and Senate Appropriations Committees subdivide the amounts they receive among their 13 subcommittees, as required by Section 302(b). The subcommittees' Section 302(b) subdivisions may not exceed the total amount allocated to the committee. Each Appropriations Committee reports its subdivisions to its respective chamber; the appropriations bills may not be considered until such a report has been filed.

Scorekeeping and Cost Estimates. Scorekeeping is the process of measuring the budgetary effects of pending and enacted legislation and assessing its impact on a budget plan — in this case, the budget resolution. In the congressional budget process, scorekeeping serves several broad purposes. First, scorekeeping informs Members of Congress and the public about the budgetary consequences of their actions. When a budgetary measure is under consideration, scorekeeping information lets Members know whether adopting the amendment or passing the bill at hand would breach the budget. Further, scorekeeping information enables Members to judge what must be done in upcoming legislative action to achieve the year's budgetary goals. Finally, scorekeeping is designed to assist Congress in enforcing its budget plans. In this regard, scorekeeping is used largely to determine whether points of order under the Congressional Budget Act of 1974 may be sustained against legislation violating budget resolution levels.

The principal scorekeepers for Congress are the House and Senate Budget committees, which provide the presiding officers of their respective chambers with the estimates needed to determine if legislation violates the aggregate levels in the budget resolution or the committee subdivisions of spending. The Budget committees make summary scorekeeping reports available to Members on a frequent basis, usually geared to the pace of legislative activity. CBO assists Congress in these activities by preparing cost estimates of legislation, which are included in committee reports, and scorekeeping reports for the Budget committees. The Joint Committee on Taxation supports Congress by preparing estimates of the budgetary impact of revenue legislation.

Points of Order. The Congressional Budget Act of 1974 provides for both substantive and procedural points of order to block violations of budget resolution policies and congressional budget procedures. One element of substantive enforcement is based on Section 311 of the act, which bars Congress from considering legislation that would cause total revenues to fall below the level set in the budget resolution or total new budget authority or total outlays to exceed the budgeted level. In the House (but not the Senate), Section 311 does not apply to spending legislation if the committee reporting the measure has stayed within its allocation of new discretionary budget authority. Accordingly, the House may take up any spending measure that is within the appropriate committee allocations, even if it would cause total spending to be exceeded. Neither chamber bars spending legislation that would cause functional allocations in the budget resolution to be exceeded.

Section 302(f) of the Congressional Budget Act of 1974 bars the House and Senate from considering any spending measure that would cause the relevant committee's spending allocations to be exceeded; in the House, the point of order applies only to violations of allocations of new discretionary budget authority. Further, the point of order also applies to suballocations of spending made by the Appropriations Committees.

The Senate, but not the House, enforces revenue and spending levels for Social Security contained in the budget resolution. Section 311 bars the consideration of any legislation that would cause an increase in Social Security deficits, or a decrease in Social Security surpluses, relative to the levels set forth in the budget resolution, for the budget year or the full period covered by the budget resolution.

In addition to points of order to enforce compliance with the budget resolution and the allocations and subdivisions made pursuant to it, the Congressional Budget Act of 1974 contains points of order to ensure compliance with its procedures. Perhaps the most important of these is Section 303, which bars consideration of any revenue, spending, entitlement, or debt-limit measure prior to adoption of the budget resolution. However, the rules of the House permit it to consider regular appropriations bills after May 15, even if the budget resolution has not yet been adopted.

When the House or Senate considers a revenue or a spending measure, the chairman of the respective Budget Committee usually makes a statement advising the chamber as to whether the measure violates any of these points of order. If no point of order is made, or if the point of order is waived, the House or Senate may consider a measure despite any violations of the Congressional Budget Act of 1974. The House often waives points of order by adopting a special rule. The Senate may waive points of order by unanimous consent or by motion under Section 904 of the act. The Senate requires a three-fifths vote of the membership to waive certain provisions of the act.

The Sequestration Process

Establishment of the Sequestration Process

After a decade of experience with the Congressional Budget Act of 1974, Congress faced persistent high deficits and increasing budgetary deadlock. In 1985, it enacted legislation aimed at bringing the federal budget into balance by the early 1990s. That legislation — the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177; 99 *Stat.* 1038-1101) — sometimes is referred to as the Gramm-Rudman-Hollings Act.

The 1985 Balanced Budget Act established a series of declining annual deficit targets and created an automatic spending-reduction process (known as sequestration) intended to ensure that the deficit targets are adhered to even if Congress and the President fail to reduce the deficit sufficiently through legislative action. Congress made significant changes in the 1985 act in 1987, 1990, and 1997. The Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101-508; 104 *Stat.* 1388-573 through 630) made major changes in conjunction with the enactment of a five-year deficit-reduction accord covering FY1991-1995. In 1993, the BEA procedures were extended through FY1998 as part of another comprehensive budget agreement between the President and Congress. Most recently, the procedures were extended through FY2002, with modifications, by the Budget Enforcement Act (BEA) of 1997 (Title X of P.L. 105-33; 111 *Stat.* 677-712), as part of a plan to balance the budget by that fiscal year.[3]

Sequestration involves the issuance of a presidential order that permanently cancels budgetary resources (except for revolving funds, special funds, trust funds, and certain offsetting collections) for the purpose of achieving a required amount of outlay savings to reduce the deficit. Once sequestration is triggered by an executive determination, spending reductions are made automatically; this process, therefore, is regarded by many as providing a strong incentive for Congress and the President to reach agreement on legislation that would avoid a sequester.

From its inception in 1985 until its revision by the BEA in 1990, the process was tied solely to the enforcement of fixed deficit targets. If a sequester occurred, a

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[3] For a discussion of these changes, see *Budget Enforcement Act of 1997: Summary and Legislative History*, by Robert Keith, CRS Report 97-931, October 8, 1997, 23 pages.

formula set forth in the 1985 Balanced Budget Act required that half the required outlay reductions be made in defense programs and half in nondefense programs. For the most part, sequestration reductions were made uniformly across the range of accounts covered by the process and were applied uniformly to programs, projects, and activities within accounts. Many accounts, involving roughly two-thirds of federal outlays, were exempt from sequestration. For certain entitlement programs, the reductions were made under special rules (for example, Medicare could not be cut more than two percent).

Changes Made by the Budget Enforcement Acts of 1990 and 1997

The BEA of 1990 changed the sequestration process substantially. First, it effectively eliminated the deficit targets as a factor in budget enforcement. Second, the BEA of 1990 established adjustable limits on discretionary spending funded in the annual appropriations process. Third, the BEA of 1990 created pay-as-you-go procedures to require that increases in direct spending (*i.e.*, spending controlled outside of the annual appropriations process) or decreases in revenues due to legislative action are offset so that there is no net increase in the deficit.

The BEA of 1990 established new sequestration procedures to enforce the discretionary spending limits and the pay-as-you-go requirements. To the extent that any sequesters must be made, they will occur on the same day (which must be within 15 calendar days after Congress adjourns to end a session); sequestration of this type is referred to as "end-of-session sequestration." Further, one or more additional sequesters may occur subsequently in the fiscal year to eliminate any breach in the discretionary spending limits; this type of sequestration is referred to as "within-session sequestration."

Previously, the surpluses of the Social Security trust funds were included in the deficit estimates made under the 1985 Balanced Budget Act but Social Security spending (except for administrative expenses) was exempt from sequestration. Under the BEA of 1990, Social Security spending still is exempt from sequestration, but the trust fund surpluses are excluded from the deficit estimates.

The BEA of 1990 established adjustable limits on discretionary spending. For fiscal years 1991-1993, separate limits were set for new budget authority and outlays for three different categories — defense, international, and domestic. For fiscal years 1994-1998, limits on new budget authority and outlays were established for a single category — total discretionary spending. In 1994, the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) established separate but parallel sequestration procedures for violent crime reduction programs through FY2000.

The BEA of 1997 revised the limits for FY1998 and provided new limits through FY2002. The limits are established for the following categories of discretionary spending: defense and nondefense, for FY1998-1999; discretionary (a single category), for FY2000-2002; and violent crime reduction, for FY1998-2000.

Under modifications made by the BEA of 1997, the discretionary spending limits must be adjusted periodically by the President for various factors, including (among others), changes in concepts and definitions, a special outlay allowance (to accommodate estimating differences between OMB and CBO), and the enactment of legislation providing emergency funding and funding for the International Monetary Fund, international arrearages, an earned income tax credit compliance initiative, and other specially-designated purposes.

Enforcement of the spending limits is accomplished through a special sequestration process that is triggered automatically if the applicable spending limit is breached through the enactment of legislation. If the enactment of legislation causing a breach in the spending limits occurs during the last quarter of the fiscal year (*i.e.*, between July 1 and September 30), the appropriate discretionary spending limits for the next fiscal year are reduced by the amount of the breach.

Under the pay-as-you-go (PAYGO) process created by the BEA of 1990, legislation increasing direct spending or decreasing revenues must be offset so that the deficit is not increased. The PAYGO process does not require any offsetting action when the spending increase or revenue decrease is due to the operation of existing law, such as an increase in the number of persons participating in the Medicare program. Direct spending consists largely of spending for entitlement programs. Most direct spending and revenue programs are established under permanent law, so there is not necessarily any need for recurring legislative action on them (and the PAYGO process does not require such action).

Enforcement of the PAYGO process also is accomplished through a special sequestration procedure. The PAYGO process does not preclude Congress from enacting legislation to increase direct spending; it only requires that the increase be offset by reductions in other direct spending programs (which could include increases in offsetting receipts), by increases in revenues, or by a combination of the two in order to avoid a sequester. If a sequester under this process is required, it would have to offset the amount of any net deficit increase for the fiscal year caused by the enactment of legislation in the current and prior sessions of Congress, and would be applied to non-exempt direct spending programs.

Spending for Social Security benefits and current federal deposit insurance commitments, as well as emergency direct spending and revenue legislation (so designated by the President and by Congress in statute) that would cause a deficit increase, is exempted completely from the PAYGO sequestration process. All remaining direct spending programs are covered by the PAYGO process to the extent that legislation affecting their spending levels is counted in determining whether a net increase or decrease in the deficit has occurred for a fiscal year. If a PAYGO sequester occurs, however, many direct spending programs would be exempt from reduction.

The BEA of 1997 extended the coverage of the PAYGO requirement to legislation enacted through FY2002; however, the PAYGO process remains in effect through FY2006 to deal with the outyear effects of such measures. Consequently, a PAYGO sequester could occur in FY2003-2006 based on legislation enacted before the end of FY2002.

As originally framed, the 1985 Balanced Budget Act provided for the automatic issuance of a sequestration order by the President upon the submission of a report by the comptroller general identifying a deficit excess. This feature of the act was invalidated by a Supreme Court ruling (*Bowsher* v. *Synar*, 54 USLW 5064, U.S. July 7, 1986) in 1986 on the ground that the constitutional separation-of-powers doctrine was violated because the comptroller general is a legislative branch official. Congress subsequently revised the process in the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 by placing the triggering function in the hands of the OMB director, an executive branch official.

The Timing of Sequestration Actions

The multiple sequestration procedures established by the BEA of 1990 remain automatic and are triggered by a report from the OMB director. For sequestration purposes generally, there is only one triggering report issued each year (just after the end of the session). Additionally, OMB reports triggering a sequester for discretionary spending may be issued during the following session if legislative developments so warrant (*i.e.*, the enactment of supplemental appropriations). The CBO director must provide advisory sequestration reports, five days before the OMB director's reports are due.

The timetable for the sequestration process is set forth in **Table 2**.

Early in the session, OMB and CBO issue sequestration preview reports. The reports provide estimates of the discretionary spending limits, with the adjustments prescribed by law. Also, the reports provide estimates of any net deficit increase or decrease caused by the enactment of direct spending or revenue legislation subject to the PAYGO process. In August, OMB and CBO issue sequestration update reports to reflect the impact of legislation enacted during the interim. Finally, OMB and CBO issue sequestration reports shortly after Congress adjourns to end the session. The end-of-session reports must reflect any pertinent legislation enacted since the update reports were issued and must indicate the baseline amount of budgetary resources and the amount and percentage of the reduction for each account subject to sequestration.

In preparing its update and final sequestration reports, OMB must use the economic and technical assumptions that were used in the earlier preview report. During the course of the session, OMB must provide Congress with cost estimates of budgetary legislation within five days of its enactment, so that compliance with the discretionary spending limits and PAYGO requirements can be monitored. The cost estimates must be based on the economic and technical assumptions used in the President's most recent budget.

Several other reports are associated with the sequestration process. For example, within-session sequestration reports may be issued by CBO and OMB (no later than July 10 and July 15, respectively) if supplemental appropriations or other discretionary spending is enacted that causes a breach in a discretionary spending limit. Also, the comptroller general must issue a compliance report, if requested by either the House or Senate Budget Committee, evaluating whether the OMB and CBO reports and the presidential order comply with the requirements of the act.

Any sequestration order issued by the President must follow the OMB sequestration report strictly.

Table 2. Sequestration Process Timetable

Deadline	Action to be completed
5 days before the President's budget submission	CBO issues sequestration preview report.
Date of the President's budget submission	OMB issues sequestration preview report (as part of the President's budget).
August 10	President notifies Congress if he intends to exempt military personnel accounts.
August 15	CBO issues sequestration update report.
August 20	OMB issues sequestration update report.
10 days after end of session	CBO issues final sequestration report.
15 days after end of session	OMB issues final sequestration report; President issues any required sequestration order.

Sequestration procedures may be suspended in the event a declaration of war is enacted or if Congress enacts a special joint resolution triggered by the issuance of a CBO report indicating "low growth" in the economy. Also, there are several special procedures under the act by which the final sequestration order for a fiscal year may be modified or the implementation of the order affected.

Spending Legislation

The spending policies of the budget resolution generally are implemented through two different types of spending legislation. Policies involving discretionary spending are implemented in the context of annual appropriations acts, whereas policies affecting direct or mandatory spending (which, for the most part, involves entitlement programs) are carried out in substantive legislation.

All discretionary spending is under the jurisdiction of the House and Senate Appropriations Committees. Direct spending is under the jurisdiction of the various legislative committees of the House and Senate; the House Ways and Means Committee and the Senate Finance Committee have the largest shares of direct spending jurisdiction. (Some entitlement programs, such as Medicaid, are funded in annual appropriations acts, but such spending is not considered to be discretionary.) The enforcement procedures under the congressional budget process, mentioned above, apply equally to discretionary and direct spending.

In recent years, many of the most significant changes in direct spending programs, from a budgetary standpoint, have been made in the reconciliation process (see discussion below). The greatest number of spending decisions in any year occurs in the annual appropriations process.

The Annual Appropriations Process

An appropriations act is a law passed by Congress that provides federal agencies legal authority to incur obligations and the Treasury Department authority to make payments for designated purposes. The power of appropriation derives from the Constitution, which provides that "No money shall be drawn from the Treasury but in consequence of appropriations made by law." The power to appropriate is exclusively a legislative power; it functions as a limitation on the executive branch. An agency may not spend more than the amount appropriated to it, and it may use available funds only for the purposes and according to the conditions provided by Congress.

The Constitution does not require annual appropriations, but since the First Congress the practice has been to make appropriations for a single fiscal year. Appropriations must be used (obligated) in the fiscal year for which they are provided, unless the law provides that they shall be available for a longer period of time. All provisions in an appropriations act, such as limitations on the use of funds, expire at the end of the fiscal year, unless the language of the act extends their period of effectiveness.

In the federal government, an appropriation makes funds available for obligation; it does not usually require that outlays be made in any particular fiscal year. Outlays often ensue years after the appropriations are obligated.

The President requests annual appropriations in his budget submitted in January or February of each year. In support of the President's appropriations requests, agencies submit justification materials to the House and Senate Appropriations committees. These materials provide considerably more detail than is contained in the President's budget and are used in support of agency testimony during Appropriations subcommittee hearings on the President's budget.

Congress passes three main types of appropriations measures. *Regular* appropriations provide budget authority to agencies for the next fiscal year. *Supplemental* appropriations provide additional budget authority during the current fiscal year when the regular appropriation is insufficient or to finance activities not provided for in the regular appropriation. *Continuing* appropriations provide stop-gap (or full-year) funding for agencies that have not received a regular appropriation by the start of the fiscal year.

In a typical session, Congress acts on more than 16 appropriations measures, including 13 regular appropriations bills and at least two supplemental appropriations measures. Because of recurring delays in the appropriations process, Congress typically passes one or more continuing appropriations each year. The scope and duration of these measures depend on the status of the regular appropriations bills and the degree of budgetary conflict between the President and Congress. In some years, a continuing appropriations measure has been turned into an omnibus measure for enactment of regular appropriations bills.

By precedent, appropriations originate in the House of Representatives. In the House, appropriations measures are originated by the Appropriations Committee (when it marks up or reports the measure) rather than being introduced by a Member beforehand. Before the full Committee acts on the bill, it is considered in the relevant appropriations subcommittee (the House and Senate Appropriations committees have 13 parallel subcommittees). The House subcommittees typically hold extensive hearings on appropriations requests shortly after the President's budget is submitted. In marking up their appropriations bills, the various subcommittees are guided by the discretionary spending limits and the allocations made to them under Section 302 of the Congressional Budget Act of 1974.

The Senate usually considers appropriations measures after they have been passed by the House. Hearings in the Senate Appropriations subcommittees generally are not as extensive as those held by counterpart subcommittees in the House. When the Senate (either in committee or on the floor) changes a House-passed appropriations measure, it does so by inserting consecutively-numbered amendments. The conference to resolve differences in the measures passed by the two chambers considers each of the numbered amendments. Congressional action on a measure is not complete until both the House and Senate have successfully disposed of all numbered amendments.

The basic unit of an appropriation is an account. A single unnumbered paragraph in an appropriations act comprises one account and all provisions of that paragraph pertain to that account and to no other, unless the text expressly gives them broader scope. Any provision limiting the use of funds enacted in that paragraph is a restriction on that account alone.

Over the years, appropriations have been consolidated into a relatively small number of accounts. It is typical for a federal agency to have a single account for all its expenses of operation and additional accounts for other purposes such as construction. Accordingly, most appropriation accounts encompass a number of activities or projects. The appropriation sometimes earmarks specific amounts to particular activities within the account, but the more common practice is to provide detailed information on the amounts intended for each activity in other sources (principally, the committee reports accompanying the measures).

In addition to the substantive limitations (and other provisions) associated with each account, each appropriations act has "general provisions" that apply to all of the accounts in a title or in the whole act. These general provisions appear as numbered sections, usually at the end of the title or the act.

The standard appropriation is for a single fiscal year — the funds have to be obligated during the fiscal year for which they are provided; they lapse if not obligated by the end of that year. An appropriation that does not mention the period during which the funds are to be available is a one-year appropriation. Congress also makes no-year appropriations by specifying that the funds shall remain available until expended. No-year funds are carried over to future years, even if they have not been obligated. Congress sometimes makes multiyear appropriations, which provide for funds to be available for two or more fiscal years.

Appropriations measures also contain other types of provisions that serve specialized purposes. These include provisions that liquidate (pay off) obligations made pursuant to certain contract authority; reappropriate funds provided in previous years; transfer funds from one account to another; rescind funds (or release deferred funds); or set ceilings on the amount of obligations that can be made under permanent appropriations, on the amount of direct or guaranteed loans that can be made, or on the amount of administrative expenses that can be incurred during the fiscal year. In addition to providing funds, appropriations acts often contain substantive limitations on government agencies.

Although appropriations accounts often span many activities, each agency supplements account-level data with detailed budget justifications. While agencies have discretion to vary their actual expenditures from the detailed supporting schedules, the Appropriations committees expect them to adhere to their justifications to the extent practicable. When an agency shifts funds from one program to another in the same account, it must go through reprogramming procedures. Less significant changes are handled informally, or by the agency unilaterally, but there has been a pronounced trend for Congress to hold agencies more closely to the spending patterns set forth in their budget justifications.

Detailed information on how funds are to be spent, along with other directives or guidance, is provided in the reports accompanying the various appropriations measures. Agencies ordinarily abide by report language in spending the funds appropriated by Congress. The appropriations reports do not comment on every item of expenditure. Report language is most likely when the Appropriations Committee prefers to spend more or less on a particular item than the President has requested or when the committee wants to earmark funds for a particular project or activity. When a particular item is mentioned by the committee, there is a strong expectation that the agency will adhere to the instructions. In recent years, these instructions have tended to become more numerous and specific.

Revenue and Debt-Limit Legislation

Revenue Legislation

Article I, Section 8 of the U.S. Constitution gives Congress the power to levy "taxes, duties, imposts, and excises." Section 7 of this Article requires that all revenue measures originate in the House of Representatives.

In the House, revenue legislation is under the jurisdiction of the Ways and Means Committee; in the Senate, jurisdiction is held by the Finance Committee. While House rules bar other committees from reporting revenue legislation, sometimes another committee will report legislation levying user fees on a class that benefits from a particular service or program or that is being regulated by a federal agency. In many of these cases, the user fee legislation is referred subsequently to the Ways and Means Committee.

Most revenues derive from existing provisions of the tax code or Social Security law, which continue in effect from year to year unless changed by Congress. This tax structure can be expected to produce increasing amounts of revenue in future years as the economy expands and incomes rise. Nevertheless, Congress usually makes some changes in the tax laws each year, either to raise or lower revenues or to redistribute the tax burden.

Congress typically acts on revenue legislation pursuant to proposals in the President's budget. An early step in congressional work on revenue legislation is publication by CBO of its own estimates (developed in consultation with the Joint Committee on Taxation) of the revenue impact of the President's budget proposals. The congressional estimates often differ significantly from those presented in the President's budget.

The revenue totals in the budget resolution establish the framework for subsequent action on revenue measures. Congress generally may not consider legislation increasing or decreasing revenues for the next fiscal year until it has adopted the budget resolution for that year. Congress sometimes waives this requirement — in the House, usually by means of a special rule reported by the Rules Committee; in the Senate, usually by unanimous consent or by a waiver motion authorized by the Congressional Budget Act of 1974.

The budget resolution contains only revenue totals and total recommended changes; it does not allocate these totals among revenue sources (although it does set out Medicare receipts separately), nor does it specify which provisions of the tax code are to be changed. These specific decisions are made in the revenue legislation reported by the House and Senate committees with jurisdiction over such matters.

The House and Senate periodically consider major revenue measures, such as the Tax Reform Act of 1986, under their regular legislative procedures. However, as has been the case with direct spending programs, many of the most significant changes in revenue policy in recent years have been made in the context of the reconciliation process. Although revenue changes usually are incorporated into omnibus budget reconciliation measures, along with spending changes (and sometimes debt-limit increases), such revenue legislation may be considered on a separate legislative track (*e.g.*, the Tax Equity and Fiscal Responsibility Act of 1982).

Occasionally, congressional leaders may decide that the Senate should take the initiative on particular revenue matters. Congress can accommodate this strategy, without violating the constitutional requirement that revenue matters originate in the House, by attaching the Senate's revenue initiatives to a minor House-passed revenue bill. As a general matter, however, the House carefully guards its constitutional prerogative.

In enacting revenue legislation, Congress often establishes or alters tax expenditures. The term "tax expenditures" is defined in the Congressional Budget Act of 1974 to include revenue losses due to deductions, exemptions, credits, and other exceptions to the basic tax structure. Tax expenditures, as discussed previously, are a means by which the federal government pursues public objectives and can be regarded as alternatives to other policy instruments such as grants or loans. Tax expenditures are classified by budget function to facilitate the comparison of spending programs and tax expenditures. The Joint Committee on Taxation estimates the revenue effects of legislation changing tax expenditures, and it also publishes five-year projections of these provisions as an annual committee print.

Debt-Limit Legislation

When the revenues collected by the federal government are not sufficient to cover its expenditures, it must finance the shortfall through borrowing. Federal borrowing is subject to a public debt limit established by statute. As long as the federal government continues to operate with a budget deficit, the public debt limit must be increased periodically. Failure to increase the debt limit in a timely manner could lead to inefficient, stop-gap financing practices by the Treasury Department and eventually to default. The frequency of congressional action to raise the debt limit has ranged in the past from several times in one year to once in several years.

Legislation to raise the public debt limit falls under the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee. Although consideration of such measures in the House usually is constrained through the use of special rules, Senate action sometimes is far-ranging with regard to the issues covered. In the past, the Senate has added many non-germane provisions to debt-limit measures, such as the Balanced Budget and Emergency Deficit Control Act of 1985.

In 1979, the House amended its rules to provide for the automatic engrossment of a measure increasing the debt limit upon final adoption of the conference report on the budget resolution. The rule, House Rule XLIX (commonly referred to as the Gephardt rule, after its sponsor, Representative Richard Gephardt), was intended to facilitate quick action on debt increases. However, the Senate has no comparable rule and often considers such legislation thoroughly, if not at length. The House and Senate may enact debt-limit legislation originating under the Gephardt rule or arising under conventional legislative procedures. In some instances, Congress has enacted debt-limit increases as part of omnibus budget reconciliation legislation.

Reconciliation Legislation

Beginning in 1980, Congress has used reconciliation legislation to implement many of its most significant budget policies. Section 310 of the Congressional Budget Act of 1974 sets forth a special procedure for the development and consideration of reconciliation legislation. Reconciliation legislation is used by Congress to bring existing revenue and spending law into conformity with the policies in the budget resolution. Reconciliation is an optional process, but Congress has used it more years than not; during the 18 calendar years covering 1980 through 1997, 14 omnibus reconciliation measures were enacted into law.

The reconciliation process has two stages: (1) the adoption of reconciliation instructions in the budget resolution; and (2) the enactment of reconciliation legislation that implements changes in revenue or spending laws. Although reconciliation has been used since 1980, specific procedures tend to vary from year to year.

Reconciliation is used to change the amount of revenues, budget authority, or outlays generated by existing law. In a few instances, reconciliation has been used to adjust the public debt limit. On the spending side, the process focuses on entitlement laws; it may not be used, however, to impel changes in Social Security law. Reconciliation sometimes has been applied to discretionary authorizations (which are funded in annual appropriations acts), but this is not the usual practice.

Reconciliation Directives

Reconciliation begins with a directive in a budget resolution instructing designated committees to report legislation changing existing law (or pending legislation). These instructions have three components: (1) they name the committee (or committees) that are directed to report legislation; (2) they specify the amounts by which existing laws are to be changed (but do not identify how these changes are to be made, which laws are to be altered, or the programs to be affected); and (3) they usually set a deadline by which the designated committees are to recommend the changes in law. The instructions typically cover the same fiscal years covered by the budget resolution, with separate dollar amounts specified for each of the years.

The dollar amounts are computed with reference to the CBO baseline. Thus, a change represents the amount by which revenues or spending would increase or decrease from baseline levels as a result of changes made in existing law. This computation is itself based on assumptions about the future level of revenues or spending under current law (or policy) and about the dollar changes that would ensue from new legislation. Hence, the savings associated with the reconciliation process are assumed savings. The actual changes in revenues or spending may differ from those estimated when the reconciliation instructions are formulated.

Although the instructions do not mention the programs to be changed, they are based on assumptions as to the savings or deficit reduction that would result from particular changes in revenue provisions or spending programs. These program assumptions are sometimes printed in the reports on the budget resolution. Even when the assumptions are not published, committees and Members usually have a good idea of the specific program changes contemplated by the reconciliation instructions.

A committee has discretion to decide on the legislative changes to be recommended. It is not bound by the program changes recommended or assumed by the Budget committees in the reports accompanying the budget resolution. Further, a committee has to recommend legislation estimated to produce dollar changes for each category delineated in the instructions to it. Thus, it has to satisfy separately the instruction for budget authority and outlays for each fiscal year covered by the instructions.

When a budget resolution containing a reconciliation instruction has been approved by Congress, the instruction has the status of an order by the House and Senate to designated committees to recommend legislation, usually by a date certain. It is expected that committees will carry out the instructions of their parent chamber, but the Congressional Budget Act of 1974 does not provide any sanctions against committees that fail to do so.

Development and Consideration of Reconciliation Measures

When more than one committee in the House and Senate is subject to reconciliation directives, the proposed legislative changes usually are consolidated by the Budget committees into an omnibus bill. The Congressional Budget Act of 1974 does not permit the Budget committees to revise substantively the legislation recommended by the committees of jurisdiction. This restriction pertains even when the Budget committees estimate that the proposed legislation will fall short of the dollar changes called for in the instructions. Sometimes, the Budget committees, working with the leadership, develop alternatives to the committee recommendations, to be offered as floor amendments, so as to achieve greater compliance with the reconciliation directives.

The Congressional Budget Act of 1974 requires that amendments offered to reconciliation legislation in either the House or the Senate be deficit neutral. To meet this requirement, an amendment reducing revenues or increasing spending must offset these deficit increases by equivalent revenue increases or spending cuts. Additionally, non-germane amendments may not be offered in either chamber.

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of reducing the deficit. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues, or that violated another committee's jurisdiction.

In 1985, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) on a temporary basis as a means of curbing these practices. The Byrd rule has been extended and modified several times over the years. In 1990, the Byrd rule was incorporated into the Congressional Budget Act of 1974 as Section 313 and made permanent (2 *U.S.C.* 644).

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation has two principal options for dealing with the problem. First, the Senator may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation. Second, under the Byrd rule, the Senator may raise a point of order against extraneous matter. In general, a point of order authorized under the Byrd rule may be raised to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

Although the House has no rule comparable to the Senate's Byrd rule, it may use other devices to control the inclusion of extraneous matter in reconciliation legislation. In particular, the House has used special rules to make in order amendments that strike such matter.

Impoundment and Line-Item Veto

Impoundment

Although an appropriation limits the amounts that can be spent, it also establishes the expectation that the available funds will be used to carry out authorized activities. Hence, when an agency fails to use all or part of an appropriation, it deviates from the intentions of Congress. The Impoundment Control Act of 1974 (Title X of the Congressional Budget and Impoundment Control Act of 1974, as amended) prescribes rules and procedures for instances in which available funds are impounded.

An impoundment is an action or inaction by the President or a federal agency that delays or withholds the obligation or expenditure of budget authority provided in law. The Impoundment Control Act of 1974 divides impoundments into two categories and establishes distinct procedures for each. A *deferral* delays the use of funds; a *rescission* is a presidential request that Congress rescind (cancel) an appropriation or other form of budget authority. Deferral and rescission are exclusive and comprehensive categories; an impoundment is either a rescission or a deferral — it cannot be both or something else.

Although impoundments are defined broadly by the Impoundment Control Act of 1974, in practice they are limited to major actions that affect the level or rate of expenditure. If every "action or inaction" — the phrase used in the Impoundment Control Act of 1974 — that slowed the rate of expenditure were deemed to be an impoundment, there probably would be many thousands of impoundments each year. In fact, at most only a few hundred are reported. As a general practice, only deliberate curtailments of expenditure are reported as impoundments; actions having other purposes that incidently affect the rate of spending are not recorded as impoundments. For example, if an agency were to delay the award of a contract because of a dispute with a vendor, the delay would not be an impoundment; if the delay were for the purpose of reducing an expenditure, it would be an impoundment. The line between routine administrative actions and impoundments is not clear and controversy occasionally arises as to whether a particular action constitutes an impoundment.

A particularly difficult-to-identify impoundment occurs when the rate or level of spending is deliberately slowed through indirect administrative means. For example, if an agency cuts the size of the staff processing grant applications it might spend less on grants than the amount provided by Congress, even if it does not expressly impound the funds. These actions have come to be known as "de facto" impoundments.

Rescissions. To propose a rescission, the President must submit a message to Congress specifying the amount to be rescinded, the accounts and programs involved, the estimated fiscal and program effects, and the reasons for the rescission. Multiple rescissions can be grouped in a single message. After the message has been submitted to it, Congress has 45 days of "continuous session" (usually a larger number of calendar days) during which it can pass a rescission bill. Congress may rescind all, part, or none of the amount proposed by the President.

If Congress does not approve a rescission in legislation by the expiration of this period, the President must make the funds available for obligation and expenditure. If the President fails to release funds at the expiration of the 45-day period for proposed rescissions, the comptroller general may bring suit to compel their release. This has been a rare occurrence, however.

Deferrals. To defer funds, the President submits a message to Congress setting forth the amount, the affected account and program, the reasons for the deferral, the estimated fiscal and program effects, and the period of time during which the funds are to be deferred. The President may not propose a deferral for a period of time beyond the end of the fiscal year, nor may he propose a deferral that would cause the funds to lapse or otherwise prevent an agency from spending appropriated funds prudently. In accounts where unobligated funds remain available beyond the fiscal year, the President may defer the funds again in the next fiscal year.

At present, the President may defer only for the reasons set forth in the Antideficiency Act, including to provide for contingencies, to achieve savings made possible by or through changes in requirements or greater efficiency of operations, and as specifically provided by law. He may not defer funds for policy reasons (for example, to curtail overall federal spending or because he is opposed to a particular program).

The comptroller general reviews all proposed rescissions and deferrals and advises Congress of their legality and possible budgetary and program effects. The comptroller general also notifies Congress of any rescission or deferral not reported by the President and may reclassify an improperly classified impoundment. In all cases, a notification to Congress by the comptroller general has the same legal effect as an impoundment message of the President.

The Impoundment Control Act of 1974 provides for special types of legislation — rescission bills and deferral resolutions — for Congress to use in exercising its impoundment control powers. However, pursuant to court decisions that held the legislative veto to be unconstitutional, Congress may not use deferral resolutions to disapprove a deferral. Further, Congress has been reluctant to use rescission bills regularly. Congress, instead, usually acts on impoundment matters within the framework of the annual appropriations measures.

Line-Item Veto

During the 104th Congress, the Line Item Veto Act (P.L. 104-130; 110 *Stat.* 1200-1212) was enacted as an amendment to the Impoundment Control Act of 1974. Initially, proponents of the legislation had sought to empower the President to veto individual items of appropriation, largely as an antidote to what was perceived as unnecessary, wasteful, and unjustified spending added to appropriations bills by the House and Senate. This authority was widely described as comparable to that possessed by the governors of most states.

The authority granted to the President under the Line Item Veto Act differs markedly from the veto authority available to most chief executives at the state level. First, the President may not veto individual parts of legislation. Under normal constitutional procedures, the President must approve or veto any measure in its entirety. His authority to use the line-item veto comes into play only after a measure has been signed into law. Second, this authority applies not only to annual appropriations, but extends to new entitlement spending and targeted tax benefits as well. The line-item veto authority is in effect for 8 years, from the beginning of 1997 through the end of of 2004.

The Line Item Veto Act reverses the presumption underlying the process for the consideration of rescissions under the Impoundment Control Act of 1974. Under the Line Item Veto Act, presidential proposals take effect unless overturned by legislative action. The act authorizes the President to identify at enactment individual items in legislation that he may propose not go into effect. The identification is based not just upon the statutory language, but on the entire legislative history and documentation. The President must notify Congress promptly of his proposals and provide supporting information. Congress must respond within a limited period of time by enacting a law if it wants to disapprove the President's proposals; otherwise, they take effect permanently.

President Clinton exercised line-item veto authority for the first time on August 11, 1997, in cancelling an item of direct spending in the Balanced Budget Act of 1997 and two limited tax benefits in the Taxpayer Relief Act of 1997. Later that session, he used the line-item veto to cancel dozens of discretionary spending projects in several of the regular appropriations acts for FY1998.[4]

[4] These actions are discussed in *Congressional Budget Actions in 1997*, by Robert Keith, CRS Issue Brief 97008, updated regularly.

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For Additional Reading

Glossaries

The General Accounting Office is required by statute to develop, maintain, and publish periodically a budget glossary for the federal government. (This requirement, found in 31 U.S.C. 1112, was added to the Legislative Reorganization Act of 1970 by Section 801(a) of the Congressional Budget Act of 1974 (88 Stat. 327-328).) The most recent glossary, *A Glossary of Terms Used in the Federal Budget Process* (GAO/AFMD-2.1.1), was issued in January 1993.

In addition to the GAO glossary, the Office of Management and Budget includes a glossary in its *Analytical Perspectives* volume of the annual budget submission, the Congressional Budget Office appends a glossary to its annual report on *The Economic and Budget Outlook*, and the Congressional Research Service's manual on the federal budget process (cited below) provides a glossary in Appendix D.

Finally, many private publications contain budget glossaries. For example, terms associated with the legislative process, including many budgetary terms, are defined in Congressional Quarterly's *American Congressional Dictionary* (second edition), prepared originally by Walter Kravitz in 1993 and revised in 1997.

Congressional Research Service Products

The most extensive explanation of the federal budget process prepared by the Congressional Research Service is provided in the following reports:

- *Manual on the Federal Budget Process*, by Allen Schick, Robert Keith, and Edward Davis. CRS Report 91-902 GOV, December 24, 1991, 218 pages; and

- *Budget Process Changes Made in the 102nd-103rd Congresses (1991-1994)*, by Robert Keith and Edward Davis. CRS Report 95-457 GOV, March 31, 1995, 14 pages.

- *Budget Process Changes Made in the 104th Congress (1995-1996)*, by Robert Keith. CRS Report 97-44, December 27, 1996, 19 pages.

As mentioned above, the 1991 CRS manual includes a budget glossary. The other two CRS reports update the explanation of the budget process through the 104th Congress. A fully revised and updated version of the manual will be issued in 1998. Many other CRS products and services, including reports and issues briefs, videotapes, and seminars, are available on different facets of the federal budget process.

[CRS report number two is as follows:]

CRS Report for Congress

Budget Enforcement Act of 1997: Summary and Legislative History

October 8, 1997

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CRS

Congressional Research Service • The Library of Congress

Budget Enforcement Act of 1997: Summary and Legislative History

Summary

In July 1997, Congress completed action on two reconciliation bills: (1) the Balanced Budget Act of 1997, which reduced mandatory spending; and (2) the Taxpayer Relief Act of 1997, which reduced revenues, but included partially offsetting revenue increases. President Clinton signed the measures into law on August 5, as P.L. 105-33 and P.L. 105-34, respectively. Together, the two reconciliation bills implemented most of the deficit reduction and tax relief policies underlying the bipartisan budget agreement between President Clinton and congressional leaders, reached in May, and the FY1998 budget resolution, adopted in June. (The remainder of the spending reductions necessary to achieve a balanced budget are expected to occur in the annual appropriations process each year under revised budget procedures, discussed below.)

An important element of the reconciliation measures is changes in the federal budget process. The changes are intended mainly to ensure compliance in the coming years with the multi-year budget policies set in the legislation, thus preserving the deficit reduction achieved by the two bills and maintaining the path to a balanced budget. They are included in a separate title on budget enforcement, which is referred to as the Budget Enforcement Act (BEA) of 1997. The House initially included the budget process changes in the Balanced Budget Act of 1997, and the Senate initially included comparable changes in the other reconciliation bill. During conference action on the two measures, the House and Senate decided to include the budget process changes in the Balanced Budget Act.

The budget process changes called for in the bipartisan budget agreement and the FY1998 budget resolution primarily involve an extension of current budget enforcement procedures established under the Budget Enforcement Act (BEA) of 1990. These procedures include discretionary spending limits, covering annual appropriations acts, and a pay-as-you-go requirement, covering legislation affecting mandatory spending or revenues. Both sets of procedures are enforced by sequestration and were scheduled to expire at the end of FY1998.

The BEA of 1997 extends the discretionary spending limits and pay-as-you-go requirement for legislation enacted through FY2002. In addition, it makes permanent several changes in the congressional budget process made on a temporary basis by the BEA of 1990, including the requirement that budget resolutions cover five, rather than three, fiscal years. Further, the BEA of 1997 makes many technical and conforming changes, correcting certain drafting errors in the BEA of 1990 and bringing the law up to date for various changes enacted during the interim. Finally, it makes other changes in the sequestration and congressional budget processes, mostly minor ones that ratify recent changes in practice.

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Budget Enforcement Act of 1997: Summary and Legislative History

In late July 1997, the House and Senate completed action on two bills implementing reconciliation directives contained in the FY1998 budget resolution.[1] One bill, the Balanced Budget Act of 1997, H.R. 2015, reduced mandatory spending and increased the statutory limit on the public debt. The other bill, the Taxpayer Relief Act of 1997, H.R. 2014, reduced revenues, but the reductions were offset partially by significant revenue increases. President Clinton signed the measures into law on August 5, as P.L. 105-33 and P.L. 105-34, respectively.[2]

Together, the two reconciliation bills implemented most of the deficit reduction and tax relief policies underlying the bipartisan budget agreement between President Clinton and congressional leaders, reached on May 2, 1997, and the budget resolution, adopted by the House and Senate on June 5. These policies are expected to lead to a balanced budget by FY2002. (The remainder of the spending reductions necessary to achieve a balanced budget are expected to occur in the annual appropriations process each year under revised budget procedures, discussed below.)

An important element of the reconciliation measures is changes in the federal budget process. The changes are intended mainly to ensure compliance in the coming years with the multi-year budget policies set in the legislation, thus preserving the deficit reduction achieved by the two bills and maintaining the path to a balanced budget. They are included in a separate title on budget enforcement, which is referred to as the Budget Enforcement Act (BEA) of 1997.

The House initially included the budget process changes in the Balanced Budget Act of 1997, and the Senate initially included comparable changes in the other reconciliation bill, the Taxpayer Relief Act of 1997. During conference action on the two measures, the House and Senate decided to include the budget process changes in the Balanced Budget Act.

This report provides a legislative history of the BEA of 1997 and summarizes its features.

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[1] The directives were included in Section 104 (Reconciliation in the Senate) and Section 105 (Reconciliation in the House of Representatives) of H.Con.Res. 84, the budget resolution for FY1998 (see pages 15-20 of the conference report and pages 103-106 of the accompanying joint explanatory statement, H.Rept. 105-116, June 4, 1997).

[2] For more information regarding congressional and presidential action on these measures, see: *Congressional Budget Actions in 1997*, by Robert Keith, CRS Issue Brief 97008, updated periodically.

Legislative History

Development of the BEA of 1997 began many months before the legislation was considered by the House and the Senate. In anticipation of the need to extend existing procedures under the Budget Enforcement Act of 1990, scheduled to expire at the end of FY1998, and to make technical and conforming changes to budget laws, staff of the House and Senate Budget Committees began working on the same basic draft legislation. The two committees also involved the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) in the development of the legislation. Before the House and Senate considered the BEA of 1997 as part of the reconciliation process, a commitment to budget process change was made in the bipartisan budget agreement and reaffirmed during action on the budget resolution.

Bipartisan Budget Agreement and Budget Resolution

House and Senate action on the budget resolution was preceded by budget negotiations between congressional leaders and the President. Some informal discussions took place earlier in the session, but negotiations began in earnest on March 31. On Friday, May 2, President Clinton and congressional leaders announced that they had reached agreement on a plan to balance the budget by FY2002. An extensive written summary of the agreement was finalized on May 16.[3]

The agreement consisted of 10 general items, separately enumerated, as well as budgetary tables and explanations of policy assumptions in specific program areas. Under the agreement, the House and Senate were charged with developing a budget resolution, and subsequent spending and revenue legislation, consistent with the assumptions laid out in the agreement. The fifth general item addressed the treatment of the budget process included in the agreement:

> 5. Agreed budget process items will be included in the budget resolution (as appropriate) and reconciliation, and are set forth in the budget process description included in the Agreement.

The budget process description appended to the agreement is provided verbatim in **Figure 1**.

For the most part, the agreement called for the extension through FY2002 of existing enforcement procedures under the Budget Enforcement Act (BEA) of 1990. These procedures, involving discretionary spending limits and the pay-as-you-go (PAYGO) requirement, otherwise would have expired at the end of FY1998. Procedures associated with the discretionary spending limits were to be modified, mainly to establish defense and nondefense categories of discretionary spending for FY1998 and FY1999. The balances on the PAYGO scorecard were to be reset to

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[3] The text of the agreement was included on pages 75-92 of a print of the Senate Budget Committee (issued in lieu of a committee report on the budget resolution): *Concurrent Resolution on the Budget: FY 1998*, S.Prt. 105-27, May 1997. This document is available on the Internet at *http://www.access.gpo.gov/congress/senate/senate06.html*.

zero, so that the deficit reduction achieved through reconciliation (and the enactment of other measures) could not be used to offset future increases in direct spending.

Figure 1. Budget Process Changes in the Bipartisan Budget Agreement

Extend discretionary caps to 2002.

- Extend and revise discretionary caps for 1998-2002 at agreed levels shown in tables included in this agreement, and extend current law sequester enforcement mechanism.
- Within discretionary caps, establish separate categories (firewalls) for Defense and Non-Defense Discretionary (NDD) at agreed levels shown in agreement tables for each year 1998-1999 with associated sequester firewall enforcement as provided in BEA for 1990-93.
- Retain current law on separate crime caps (VCRTF) at levels shown in agreement tables.
- Extend and update special allowance for outlays; extend existing adjustment for emergencies.
- Cap adjustment for exchanges of monetary assets, such as New Arrangements to Borrow, and for international organization arrears.

Extend PAYGO to 2002.

Revise the asset sales rule, which prohibits scoring the proceeds of asset sales, to score if net present value of all associated cash flows would not increase the deficit; scoring, if allowed, based on cash effect, not NPV.

The Superfund tax shall not be used as a revenue offset.

Reduce paygo balances to zero, including those derived from budget agreement.

Provide for debt limit increase sufficient to extend limit to December 15, 1999.

The House and Senate quickly acted on a budget resolution in accord with the budget agreement. The House Budget Committee reported its version of the budget resolution, H.Con.Res. 84 on May 18 (H.Rept. 105-100). The Senate Budget Committee reported its version, S.Con.Res. 27, on May 19 (the measure was accompanied by a 206-page committee print — *Concurrent Resolution on the Budget: FY1998*, S.Prt. 105-27, May 1997 — rather than a report).

Early in the morning of May 21, the House adopted the budget resolution (H.Con.Res. 84) by a 333-99 vote. The Senate began consideration of the budget resolution on May 20, adopting it by a 78-22 vote on May 23. Conferees quickly resolved the largely technical differences between the two versions (dealing mainly with nonbinding sense-of-the-Senate statements), reporting the budget resolution back to their chambers on June 4 (H.Rept. 105-116). The House and Senate agreed to the conference report the next day, by votes of 327-97 and 76-22, respectively.

As finally adopted by the House and Senate, the budget resolution contained several budget process provisions in Title II (Budgetary Restraints and Rulemaking). First, Section 201 set forth discretionary spending limits for FY1998-2002, consistent with the limits recommended in the bipartisan budget agreement, to be used for enforcement only in the Senate. The section also established a point of order in the Senate against the consideration of any budget resolution or spending bill that would violate the limits. The budget resolution did not contain any House procedures regarding discretionary spending limits.

Second, Section 211 revised the asset scoring rule in a manner consistent with the recommendation in the bipartisan budget agreement.

Finally, several other sections provided "reserve funds" in the House, Senate, or both bodies, under which enforcement procedures would be adjusted automatically to allow the consideration of particular spending measures as long as they were deficit neutral. Several of the reserve funds for the Senate provided for adjustment of the discretionary spending limits in the budget resolution for legislation affecting the International Monetary Fund and arrearages of international organizations; the bipartisan budget agreement contemplated similar adjustments in the statutory discretionary spending limits.

House Action on the BEA of 1997

On June 25, 1997, the House took up the first of the two reconciliation bills it would consider that week, the Balanced Budget Act of 1997. Under the terms of the rule providing for the consideration of the two reconciliation bills, H.Res. 174, an amendment to the Balanced Budget Act of 1997 developed by Representative John Kasich, chairman of the House Budget Committee, was considered as adopted when the House agreed to the rule.[4] The Kasich amendment made changes in various titles of H.R. 2015, as reported, and also added a new title, Title XI—Budget Enforcement, referred to as the Budget Enforcement Act (BEA) of 1997.[5] Later that day, the House passed the bill as amended by a vote of 270-162. No changes were made in the bill other than those made by the Kasich amendment. (The House passed the

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[4] Section 1 of H.Res. 174 provided for the automatic adoption of the Kasich amendment; it was referred to as amendment numbered 1 (as printed in the *Congressional Record* of June 24, 1997, at pages H4364-H4375). No other amendments were made in order under the rule. One motion to recommit with instructions was rejected and another was ruled out of order. H.R. 2015, as amended by the Kasich amendment, is printed in the *Congressional Record* of June 25 at pages H4416-4454.

[5] Pursuant to Section 310 of the Congressional Budget Act of 1974, the Budget Committees receive reconciliation submissions from instructed committees and report them in an omnibus bill "without substantive revision." Consequently, if the House Budget Committee wishes to include budget process changes in a reconciliation bill, it must do so through a floor amendment.

other reconciliation bill, H.R. 2014, the Taxpayer Relief Act of 1997, on June 26; budget process changes were not included in the bill.)

The BEA of 1997 first was developed as a free-standing bill, H.R. 2037, which was introduced by Representative Nick Smith (for himself and Representative Kasich) on June 25. A brief explanation of the BEA of 1997 was included in the Rules Committee's report on H.Res. 174.[6] The same explanation was inserted into the *Congressional Record* by Representative Smith.[7]

During consideration of the rule on H.R. 2015, several Members expressed their concern that the enforcement procedures added by the Kasich amendment were inadequate.[8] A bipartisan group of Members voiced their support for an alternative, an amendment developed by Representatives Joe Barton and David Minge. The Barton-Minge amendment was based on a free-standing measure, H.R. 2003 (also entitled the Budget Enforcement Act of 1997), that they had introduced with others on June 20.[9] The amendment had not been made in order under the rule, but Representative Joe Moakley (ranking minority member of the House Rules Committee) indicated that he would seek to have the amendment made in order, as one of a series of amendments, if the rule were amended.[10] However, the previous question on the rule was ordered by a vote of 222-204, thereby precluding Representative Moakley from amending the rule and obtaining consideration of other amendments.

Advocates of the amendment also were unsuccessful in a second attempt to add it to the bill. A motion to recommit H.R. 2015 with instructions, offered by Representative Sherrod Brown (of Ohio), included the Barton-Minge amendment, as well as various other provisions.[11] The motion was ruled out of order on the ground that it contained nongermane matter.

During consideration of H.Res. 174, Representative Gerald Solomon, chairman of the House Rules Committee, discussed with Representative Barton an "ad hoc agreement" with the House Republican leadership that might lead to consideration of

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[6] See H.Rept. 105-152, June 25, 1997, page 6.

[7] See the remarks of Representative Smith in the *Congressional Record* of June 25, 1997, at page H4576.

[8] See the remarks of Representatives Barton, Wamp, Visclosky, Stenholm, and others in the *Congressional Record* of June 25, 1997, at pages H4389-H4394.

[9] For a summary of the bill, see *The Proposed Budget Enforcement Act of 1997 (H.R. 2003)*, by James V. Saturno, CRS Report 97-713 GOV, July 18, 1997, 5 pages.

[10] The Barton-Minge amendment was printed in the *Congressional Record* of June 25, 1997, at pages H4402-H4408, as one of the series of amendments that Representative Moakley proposed to make in order if the previous question on the rule was defeated.

[11] The motion to recommit, and the raising and disposition of the point of order against it, occurs in the *Congressional Record* of June 25, 1997, at pages H4593-H4602.

budget enforcement legislation on the House floor later in July.[12] In fulfillment of this agreement, the House on July 23 considered H.R. 2003, rejecting it by a vote of 81-347.

Senate Action on the BEA of 1997

As mentioned previously, the Senate decided at first to include budget process changes in the revenue reconciliation bill rather than the Balanced Budget Act of 1997. In the Senate, that bill, S. 949, initially was entitled the Revenue Reconciliation Act of 1997; the title was changed to the Taxpayer Relief Act of 1997 in conference.

The Senate began consideration of S. 949 on June 25. On the third day of consideration, June 27, the Senate took up several amendments dealing with budget process changes. By a vote of 98-2, the Senate adopted the Domenici/Lautenberg amendment (number 537), offered by Senators Pete Domenici and Frank Lautenberg, the chairman and ranking minority member of the Senate Budget Committee, respectively. The amendment added a new Title XVI (Budget Enforcement) to the bill.[13] Although the new title effectively constituted the Senate Budget Committee's version of the BEA of 1997, it did not contain a short title. The Domenici/Lautenberg amendment was modified by unanimous consent to incorporate a Biden/Gramm amendment (number 539) involving the extension of certain procedures related to the Violent Crime Reduction Trust Fund.

On June 27, the Senate also adopted, by a vote of 92-8, an amendment by Senator Robert C. Byrd (number 572) adjusting the time limits and other procedures applicable in the Senate during the consideration of reconciliation measures. In addition, the Senate rejected separate motions to waive the 1974 Congressional Budget Act, preventing action on the following amendments that proposed budget process changes:

(1) the Gramm amendment (number 566), to restore deficit targets (declining to zero for FY2002 and thereafter) enforceable by sequestration and to allow revenue reductions to be offset by discretionary spending reductions;

(2) the Bumpers amendment (number 568), to prohibit the scoring of revenues or spending from the sale of certain federal lands;

(3) the Craig amendment (number 569), to modify the Senate's pay-as-you-go point of order to prohibit the use of revenue increases to pay for direct spending increases;

(4) the Brownback/Kohl amendment (number 570), to establish direct spending targets and associated enforcement procedures;

(5) the Frist amendment (number 571), to establish a 60-vote point of order against any legislation that increases the deficit after FY2002 and to require the President to submit balanced budgets; and

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[12] See the remarks of Representatives Solomon and Barton in the *Congressional Record* of June 25, 1997, at pages H4389-H4390.

[13] The text of the Domenici/Lautenberg amendment is provided in the *Congressional Record* of June 26, 1997, at pages S6533-6541.

(6) the Abraham amendment (number 538), to ensure that revenue windfalls to the federal Treasury are reserved for tax or deficit reduction.

Finally, the Senate passed the Revenue Reconciliation Act of 1997 later on June 27, by a vote of 80-18. (The Senate passed the other reconciliation bill, S. 947, the Balanced Budget Act of 1997, two days earlier, on June 25; budget process changes were not included in the bill.)

Conference Action and Presidential Approval

Conferences on the two reconciliation bills began on July 10 and 11, with the Republican leadership announcing its intent to complete action on the two bills before the beginning of the August recess. On July 30, the House agreed to the conference report (H.Rept. 105-217) on the Balanced Budget Act of 1997 by a vote of 346-85; the Senate agreed to the conference report on the measure on July 31 by a vote of 85-15. On July 31, both the House and Senate agreed to the conference report (H.Rept. 105-220) on the Taxpayer Relief Act of 1997, by votes of 389-43 and 92-8, respectively.

On August 5, President Clinton signed the two bills into law. The Balanced Budget Act of 1997 is P.L. 105-33 (111 *Stat.* 251) and the Taxpayer Relief Act of 1997 is P.L. 105-34 (111 *Stat.* 788).

The conferees incorporated the budget process changes into Title X (Budget Enforcement and Process Provisions) of the Balanced Budget Act of 1997 (111 *Stat.* 677-712). Section 10001(a) of the act provided the short title for Title X, the "Budget Enforcement Act of 1997."

According to CBO estimates, the combined impact of the Balanced Budget Act and the Taxpayer Relief Act is an increase in the deficit of $21 billion for FY1998, followed by deficit decreases in subsequent years amounting to $95 billion in FY2002.[14] The two acts reduce the deficit in the net by $118 billion over this five-year period ($198 billion in outlay savings partially offset by $80 billion in revenue decreases). The net deficit reduction escalates markedly in later years.

Overview of the Act

The bipartisan budget agreement of May 2, as reflected in the FY1998 budget resolution, called for an extension of current budget enforcement procedures to ensure compliance through FY2002 with the recommended deficit-reduction policies. These procedures, principally involving statutory discretionary spending limits and the

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[14] See the CBO report, *The Economic and Budget Outlook: An Update*, September 1997 (available on the Internet at *http://www.cbo.gov*). The major policy changes in the two acts are discussed in the following CRS reports: *Budget Reconciliation in the 105th Congress: Achieving a Balanced Budget by 2002*, CRS Report 97-620 EPW, updated August 25, 1997; and *The Taxpayer Relief Act of 1997: An Overview*, CRS Report 97-854 E, September 11, 1997.

PAYGO requirement for legislation affecting mandatory spending or revenues, were scheduled under current law to expire.

The discretionary spending limits and PAYGO requirement were established by the BEA of 1990, as an amendment to the Balanced Budget and Emergency Deficit Control Act of 1985. These mechanisms were intended to guarantee compliance with the five-year (FY1991-1995) deficit-reduction policies contained in the Omnibus Budget Reconciliation Act (OBRA) of 1990 (P.L. 101-508).[15] The BEA of 1990 relies upon sequestration for enforcement. Sequestration is a process involving automatic, uniform spending reductions in "nonexempt programs,"[16] triggered generally after the close of a congressional session by a report issued by the OMB director.

The BEA of 1990 also made extensive modifications in the congressional budget process under the Congressional Budget Act (CBA) of 1974. In particular, the BEA established a new Title VI—Budget Agreement Enforcement Provisions. The title made temporary changes in the congressional budget process also aimed at ensuring compliance with the deficit-reduction policies of OBRA of 1990. Some of the changes in Title VI included: (1) a requirement that budget resolutions cover five, rather than three, fiscal years; (2) a requirement that budget resolution levels be enforced for the full five-year period; and (3) modifications in the procedures for allocating and suballocating funds in the budget resolution to committees.

Many of the changes made by the BEA of 1990 were set to expire at the end of FY1995, but they were extended by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) through FY1998.

The BEA of 1997 extends the discretionary spending limits and PAYGO requirement, enforced by sequestration, through FY2002. In addition, it makes permanent many of the temporary changes in Title VI of the CBA of 1974 (by repealing Title VI, but incorporating its components into other sections of the 1974 act or the BBA of 1985). Further, the BEA of 1997 makes many technical and conforming changes, correcting certain drafting errors in the BEA of 1990 and bringing the law up to date for various changes enacted during the interim. Finally, it makes other changes in the sequestration and congressional budget processes; these changes are mostly minor ones that ratify recent changes in practice.

Section-by-Section Summary of the Act

The BEA of 1997 is divided into two subtitles. Subtitle A groups together various amendments to the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), as amended. The first nine titles of the act, which are referred

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[15] The BEA of 1990 is Title XIII of OBRA of 1990.

[16] Many accounts, programs, and activities are exempt from reduction under a sequester pursuant to Section 255 of the BBA of 1985. Section 11207 of the BEA of 1997 amends the listing of exempted programs.

to as the Congressional Budget Act (CBA) of 1974, establish the congressional budget process. The last title of the act, Title X, is referred to as the Impoundment Control Act (ICA) of 1974; it establishes impoundment control procedures, now including the line-item veto.

Subtitle B consists of changes to the part of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177), as amended, that establishes the sequestration process (Part C, Sections 250-258). The Balanced Budget Act (BBA) of 1985 established deficit targets, which were replaced under the BEA of 1990 by discretionary spending limits and a pay-as-you-go requirement. The two sets of procedures under the BEA of 1990, like the earlier deficit targets, are enforced by sequestration.

Section 10001. Short Title; Table of Contents. The section provides a short title, the "Budget Enforcement Act of 1997," and a table of contents.

Subtitle A—Amendments to the Congressional Budget and Impoundment Control Act of 1974

Section 10101. Amendments to Section 3. Section 3 of the CBA of 1974 defines various terms used in the congressional budget process. Section 10101 of the act revises the definition of "entitlement authority" in Section 3 and adds the food stamp program to the definition. The revised definition makes clear that entitlement authority is to be treated for purposes of budget enforcement as another form of budget authority.

Section 10102. Amendments to Section 201. Title II of the CBA pertains to the Congressional Budget Office (CBO). Section 201 of the CBA establishes CBO. Section 10102 of the act makes two technical changes to Section 201. First, Section 201(a)(3) which sets the term of the CBO director at four years, is rephrased without substantive change to remove an obsolete date reference. Second, obsolete references to the Office of Technology Assessment and the Technology Assessment Board are removed. Finally, the first of two different subsections designated as Section 201(g) is redesignated as Section 201(f), thereby correcting a designation error made by Section 13202 of the BEA of 1990. The newly-redesignated Section 201(f) deals with revenue estimates.

Section 10103. Amendments to Section 202. Section 202 of the CBA sets forth the duties and functions of CBO. Section 10103 of the act amends Section 202(a) to provide that it shall be the "primary duty," rather than the "duty," of CBO to furnish certain budgetary information to the House and Senate Budget Committees. The change was meant to clarify the priority of CBO's duties, which also involve the other standing committees of the House and Senate and have been expanded recently by the Unfunded Mandates Reform Act of 1995 (P.L. 104-4).

Also, Section 202(e), an obsolete provision that transferred the functions and personnel of the Joint Committee on Reduction of Federal Expenditures to CBO, is stricken and the following subsections are redesignated accordingly.

Section 202(e), as newly redesignated, is modified to require that CBO include in its annual report on the economic and budget outlook a statement of the budgetary impact in the baseline of: (1) the extension of mandatory programs that exceed $50 million; and (2) excise taxes dedicated to trust funds.

Section 10104. Amendment to Section 300. The timetable of actions required by the congressional budget process is set forth briefly in Section 300 of the CBA, and the timing of particular actions also is addressed in subsequent sections. Section 13112(a)(5) of the BEA of 1990 amended Section 301(d) of the CBA to change the deadline for submission by House and Senate committees of their annual "views and estimates" reports to the Budget Committees from February 25 to within six weeks after the President submits his budget. The timetable in Section 300 was not modified in 1990 to reflect this change. Accordingly, Section 10104 changes the reporting deadline in the timetable to make it consistent with the requirement in Section 301(d). Also, conforming changes are made in House Rules X and XLVIII. (See the discussion of Section 301(d) of the act, below.)

Section 10105. Amendments to Section 301. Section 301 of the CBA provides for the annual adoption of the budget resolution, specifying required and optional contents of the resolution and establishing procedures regarding its development.

Section 10105 of the act changes Section 301 in several ways. First, the permanent requirement that budget resolutions cover three fiscal years is changed to a minimum of five years. The BEA of 1990 had put in place a temporary requirement (set to expire at the end of FY1998) that budget resolutions cover five fiscal years; this change effectively makes that requirement permanent. The Budget Committees, however, may recommend that the budget resolution cover a period longer than five fiscal years.

Second, Section 10105 makes optional rather than mandatory the inclusion of total direct loan obligation and total primary loan guarantee commitment levels in the budget resolution and the accompanying report. These elements of the budget process effectively were made obsolete by the enactment of the Federal Credit Reform Act of 1990, which was incorporated into the CBA of 1974, as a new Title V, by the BEA of 1990. Under the Federal Credit Reform Act, credit activity is controlled primarily by the appropriation of budget authority for credit subsidies. Decisions regarding the levels of such budget authority are enforced in the same manner as for other spending programs under the congressional budget process. However, credit subsidy levels are influenced greatly by executive branch estimates of interest rates and default risk. Consequently, this section retains the option for Congress of setting credit levels in the budget resolution should these interest and default estimates become subject to significant error in the future.

Third, Section 10105 further modifies the optional contents of the budget resolution to include special "pay-as-you-go" procedures in the Senate pertaining to the use of "reserve funds," effectively ratifying recent Senate practice. Reserve funds enable committees to pursue increased funding for specified programs within their jurisdiction when such increases are not assumed in the budget resolution; adjustments are made in committee allocations and other levels, so that points of order under the

CBA of 1974 may not be raised, as long as the committee's legislation is deficit neutral.

Fourth, Section 10105 modifies the deadline for committees to submit their "views and estimates" reports in Section 301(d) of the act, allowing the Budget Committees to set an alternative to the usual deadline of within six weeks after submission of the President's budget. (See the discussion of Section 300 of the act, above.)

Fifth, Section 10105 revises the listing, set forth in Section 301(e) of the act, of elements in the report accompanying a budget resolution. The revision distinguishes between required and optional elements.

Finally, Section 10105 amends Section 301(i) of the act, which establishes a point of order in the Senate against a budget resolution recommending a decrease in the projected surplus in the Social Security trust funds. As originally framed, the point of order applied only to a reported budget resolution; the amendment broadens the point of order to apply to the budget resolution at all legislative stages. The change is consistent with the practice of the Senate during the past several years, which effectively expanded the application of the point of order by means of provisions incorporated into the annual budget resolution. A header for the subsection also is inserted. Additionally, Section 22 of the FY1995 budget resolution (H.Con.Res. 218 of the 103rd Congress), which initially established the Senate practice, is repealed.

Section 10106. Amendments to Section 302. Section 302 of the CBA sets forth procedures for the allocation and suballocation of spending levels in the budget resolution to committees and for the enforcement of these levels. The BEA of 1990 added a new Title VI to the CBA of 1974 which, in part, established new allocation and enforcement procedures that temporarily superseded those in Section 302. The temporary procedures in Title VI were scheduled to expire at the end of FY1998. (See the discussion of the repeal of Title VI of the act, below.)

Section 10106 of the act, for the most part, replaces the old allocation and enforcement procedures under Section 302 with the newer procedures under Title VI and makes them permanent. Allocations must be made for the period covered by the budget resolution, except that allocations of appropriations are made for one year. The allocations and suballocations of appropriations must conform to the categories used for the discretionary spending limits (including defense, nondefense, and violent crime reduction spending, as appropriate). In addition, various technical modifications are made, such as deleting references to the allocation of "entitlement authority" due to the fact that the term is subsumed under the revised definition of budget authority (see the discussion of Section 3 of the act, above).

Further, Section 10106 changes the procedure for contingent allocations to the House Appropriations Committee. When a budget resolution is not adopted by the April 15 deadline, any contingent allocations are based on the discretionary spending limits (for the applicable fiscal year) in the prior year's budget resolution rather than those in the President's most recent budget.

Section 10107. Amendments to Section 303. Section 303 of the CBA generally bars the consideration of spending, revenue, and debt-limit legislation for a fiscal year prior to the adoption of the budget resolution for that year. Section 10107 of the bill makes technical and conforming changes in Section 303(a) and (b). Also, Section 303(c) is deleted; the subsection set forth a procedure by which the Senate could waive Section 303 by adopting a special waiver resolution. (After the first several years under the CBA, the Senate began the practice of waiving Section 303 by motion or by unanimous consent rather than by waiver resolution.)

Section 10108. Amendment to Section 304. Section 304 of the CBA provides for revised budget resolutions. Section 10108 repeals Section 304(b), regarding the use of economic assumptions in a revised budget resolution, in order to remove ambiguities regarding the procedures applicable to such resolutions. The conferees stated their intent that all provisions of the CBA of 1974 apply to revised budget resolutions unless specific exception is made.

Section 10109. Amendment to Section 305. Section 305(a)(1) of the CBA provides for the offering of a highly privileged, non-debatable, and non-amendable motion to consider a budget resolution five days after it has been reported by the Budget Committee, excluding Saturdays, Sundays, and legal holidays. Clause 2(l)(6) of House Rule XI, as amended in the 104th Congress, requires that reported bills and resolutions lay over for five days before they may be considered on the floor, but includes Saturdays, Sundays, and legal holidays in the count when the House is in session. Section 10109 of the act amends Section 305(a)(1) and House Rule XI to count Saturdays, Sundays, and legals holidays (if the House is in session) toward the five-day layover requirement for budget resolutions.

Section 10110. Amendments to Section 308. Section 308 of the CBA deals with budgetary reports, particularly CBO cost estimates, scorekeeping tabulations, and budget projections. Section 10110 of the act eliminates the requirements that information on credit authority be included in these reports, which effectively were made obsolete by the enactment of the Federal Credit Reform Act of 1990, and makes other technical changes.

Section 10111. Amendments to Section 310. Section 310 of the CBA establishes the budget reconciliation process. Section 310(c) establishes a "fungibility rule," which effectively allows committees (essentially the House Ways and Means and Senate Finance Committees) to alter the mix of spending and revenue changes in its reconciliation submission, so long as the total amount of required changes the committees were directed to make is achieved and neither the spending nor the revenue components are altered by more than 20 percent of the directed levels.

Section 10111 of the act amends Section 310(a) to clarify, in the case of House committees, that the 20-percent standard applies to the sum of the "absolute value" of the directed changes in revenue and the directed changes in spending. The change makes clear that the fungibility rule may be used when a committee includes revenue reductions in a measure, and that such revenue reductions do not cancel out spending reductions also contained in the measure.

Section 10112. Amendments to Section 311. Section 311 of the CBA provides for a point of order against the consideration of any budgetary legislation that would cause the aggregate spending and revenue levels in the budget resolution to be violated. An exception, known as the "Fazio exception," is provided in the House for spending legislation in instances in which the committee reporting the legislation has stayed within its total spending allocation under Section 302(a). Also, Section 311 establishes a mechanism for enforcement in the Senate of the Social Security "firewall," which seeks to ensure that the long-term balances of the trust funds are not eroded.

Section 10112 of the act makes the point of order apply to spending for the first year of the budget resolution (as is current practice), but makes it apply to revenues for both the first year and the sum of all years covered by the budget resolution. Additionally, the section retains the Fazio exception and makes various technical and conforming changes.

Section 10113. Amendment to Section 312. Section 312 of the CBA pertains to the effects of certain points of order in the Senate. The section states that each point of order in the Senate against an amendment also lies against an amendment between the two Houses. Further, the section provides that when a point of order under the CBA is sustained against a bill, it shall be sent back to the committee of jurisdiction.

Section 10113 of the act amends Section 312 for several different purposes. First, a general statement is made in Section 312(a) that the Budget Committees shall determine spending and revenue levels for purposes of enforcing Titles III and IV of the act. (Similar statements made in other sections of Titles III and IV are deleted by the bill and replaced by this single statement.)

Points of order formerly in Sections 601(b) and 605(b) of the CBA, involving the enforcement of discretionary spending limits and maximum deficit amounts in the Senate, are retained as new Section 312(b) and (c).[17] New Section 312(d) states that a point of order under the act may not be raised while an amendment or motion that would remedy the violation is pending before the Senate; this change effectively incorporates the current Senate practice.

The two original provisions in Section 312, dealing with the effects of certain points of order in the Senate, are retained as Section 312(e) and (f).

Section 10114. Adjustments and Budget Committee Determinations. Section 10114 adds a new Section 314 to the CBA establishing a procedure for the adjustment by the chairmen of the Budget Committees of various budgetary levels, generally for FY1998-2002. The adjustments are made pursuant to the consideration

[17] "Maximum deficit amounts" were added to the CBA of 1974 by the BBA of 1985 and expired at the end of FY1995. The bill deletes the old maximum deficit amounts from the CBA (by virtue of repealing Title VI) and does not provide new ones. Nonetheless, the point-of-order mechanism is retained (in a form that would apply automatically if maximum deficit amounts were incorporated into the BBA of 1985 in the future).

of legislation in several different categories and are meant to parallel similar adjustments made automatically in the statutory discretionary spending limits.

The budgetary levels subject to adjustment are the discretionary spending limits and budgetary aggregates set forth in the most recent budget resolution, and the spending allocations to committees made thereunder. Adjustments may be triggered by legislation in the following five categories:

(1) measures containing designated emergency amounts of discretionary spending, direct spending, or revenues;

(2) measures funding continuing disability reviews;

(3) measures providing an allowance for the International Monetary Fund;

(4) measures funding arrearages for international organizations, international peacekeeping, and multilateral development banks (but only for the period covering FY1998-2000 and subject to a limit of $1.884 billion in budget authority); and

(5) measures providing funds for an earned income tax credit compliance initiative, subject to annual limits ranging from $138 million for FY1998 to $146 million for FY2002.

The adjustments made under this section apply while the legislation is being considered, but only take effect permanently when the legislation is enacted. The Appropriations Committees are authorized to report revised suballocations conforming to any adjustments that are made.

Section 10114 of the act in part replaces authority for certain adjustments that had been authorized in Section 606(d) and (e) of the CBA.

Section 10115. Effect of Adoption of a Special Order of Business in the House of Representatives. Section 10115 of the act adds a new Section 315 to the CBA effectively providing that in the House a point of order under Titles III and IV will not lie against a reported bill if it is considered under a rule (a "special order of business"), reported by the House Rules Committee, that eliminates the violation. The change eliminates the need to waive the CBA under circumstances where the violation would have been cured under the usual legislative practice.

Section 10116. Amendment of Section 401 and Repeal of Section 402. Sections 401 and 402 of the CBA established controls over "backdoor spending." Specifically, the sections prohibit the consideration of legislation providing new spending authority or new credit authority unless such authority is made effective only to the extent or in such amounts as are provided in annual appropriations acts. Section 10116 of the act updates and consolidates these controls. It merges the two sections together into a new Section 401; Section 402 is repealed and subsequent sections are renumbered accordingly. Section 10116 also deletes a provision in Section 401 that provided for the referral of certain entitlement measures to the Appropriations Committee for limited review, and makes other technical and conforming changes in the section and in House Rules X, XI, and XIII.

Section 10117. Amendments to Title V. Title V of the CBA, known as the Federal Credit Reform Act of 1990, was added by the BEA of 1990. Title V established a system for controlling the subsidized costs of loans, requiring that budget authority and outlays be budgeted for the estimated subsidy cost of direct and guaranteed loans. This cost is defined as the estimated long-term cost to the federal government of a direct loan or a loan guarantee, calculated on a net present value basis, excluding administrative costs.

Section 10117 of the act amends Sections 502, 504, and 505 of the CBA, essentially to incorporate technical and conforming changes recommended over the years by OMB. In particular, Section 10117 clarifies the definition of "cost" and other terms. The conferees indicated their intent that OMB and CBO report recommendations on certain technical aspects of the credit process by March 30, 1998.

Section 10118. Repeal of Title VI. Title VI was added to the CBA by the BEA of 1990. On a temporary basis (initially through FY1995 and later through FY1998), it extended the coverage of budget resolutions from three years to five years, established certain enforcement mechanisms in the Senate, altered the process for allocating and suballocating spending under Section 302, and established various other procedures intended to enforce the deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993. Section 10118 of the act repeals Title VI; various elements of the title are incorporated into other sections of the CBA or the BBA of 1985 by the act (and are discussed elsewhere in this report).

Section 10119. Amendments to Section 904. Section 904 of the act in part requires the affirmative vote of three-fifths of the Senate (60 Senators if no seats are vacant) to waive specified points of order in the act or to sustain an appeal of the chair's ruling on those points of order. In seven instances, the requirement is permanent.[18] In the remaining instances, which generally involve the enforcement of various types of budgetary levels, the requirement is temporary.

Section 10119 of the bill reorganizes Section 904 to more easily distinguish between the provisions subject to the requirement temporarily and permanently. Also, a new subsection 904(e) extends the effectiveness of the temporary requirements through the end of FY2002 (*i.e.*, until September 30, 2002). In the past few years, the temporary requirements had been extended by a provision included in the budget resolution.

Section 10120. Repeal of Sections 905 and 906. Sections 905 and 906 of the act provide the original effective dates for the initial implementation of the congressional budget process and certain changes in the President's budget submission. Section 10120 of the act repeals these two obsolete sections.

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[18] These seven cases involve a germaneness requirement for amendments to budget resolutions and amendments in disagreement on the conference report; protection of the Budget Committee's jurisdiction; a deficit neutrality requirement for amendments to reconciliation measures; the "Byrd Rule" against extraneous matter in reconciliation measures; and the three-fifths voting requirements on waivers and appeals.

Section 10121. Amendments to Sections 1022 and 1024. Part C of the ICA of 1974 (Sections 1021-1027) establishes the line-item veto process pursuant to the Line Item Veto Act (P.L. 104-130). Two sections, 1022(b)(1)(F) and 1024(a)(1)(B), refer to the discretionary spending limits set forth in Section 601 of the CBA of 1974. Section 10121 of the act makes conforming changes to these references to reflect the transfer of the discretionary spending limits to Section 251(c) of the BBA of 1985.

Section 10122. Amendment to Section 1026. Section 1026(7)(A) of the ICA provides five definitions of the term "dollar amount of discretionary budget authority." Section 10122 of the act corrects a drafting error in the section, replacing "and" with "or" before the fifth definition, thereby clarifying that the definitions apply separately and independently, not collectively.

Section 10123. Senate Task Force on Consideration of Budget Measures. Section 10123 of the act provides for the appointment of a six-member bipartisan task force to study floor procedures for the consideration of budget resolutions and reconciliation bills in the Senate under applicable sections of the CBA. The task force must submit its report to the Senate by October 8, 1997.

During consideration of the Revenue Reconciliation Act of 1997 on June 27, the Senate adopted the Byrd amendment (number 572) by a vote of 92-8. The amendment proposed adjustments in the time limits and other procedures applicable in the Senate during the consideration of reconciliation measures. Although this provision was not retained in the BEA of 1997, the task force established by Section 10123 is expected to address issues raised by the amendment.

Subtitle B—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985

Section 10201. Purpose. Section 10201 states that the purpose of Subtitle B "is to extend discretionary spending limits and pay-as-you-go requirements."

Section 10202. General Statement and Definitions. Section 250(b) of the BBA of 1985 states that the act provides for the enforcement of deficit reduction assumed in the FY1991 budget resolution (H.Con.Res. 310, 101st Congress, 2nd session) through sequestration under discretionary spending limits, a pay-as-you-go requirement, and deficit targets. Section 250(c) of the act sets forth the definitions of various terms used in the sequestration process.

Section 10202(a) of the act amends Section 250(b) of the BBA to update the general statement as follows: "This part provides for budget enforcement as called for in House Concurrent Resolution 84 (105th Congress, 1st session)." The measure cited is the FY1998 budget resolution.

Section 10202(b) of the act amends Section 250(c) of the BBA by adding, deleting, and modifying various definitions. Among other things, the section deletes two obsolete provisions, including a definition of "composite outlay rate;" modifies "category" to mean defense, nondefense, and violent crime reduction for certain years and total discretionary for others; and modifies "outyear" to mean any of the four fiscal years following the budget year.

Section 10203. Enforcing Discretionary Spending Limits. Section 251 of the BBA provides for the enforcement of "general purpose" discretionary spending limits (as set forth in Section 601 of the CBA) for the eight-year period covering FY1991-1998. The section stipulates the rules and procedures to be followed in implementing a sequester under the discretionary spending limits, including the timing of action, elimination of a breach of a limit, the exemption of military personnel, the application of a sequester to a part-year continuing resolution, "within-session sequestration" prior to July 1 and "look-back" procedures after June 30, and OMB cost estimates for discretionary spending measures enacted into law.

In addition, Section 251 of the BBA provides for periodic adjustments of the limits by the President according to specified criteria, including:

(1) changes in concepts and definitions;
(2) changes in inflation;
(3) credit reestimates;
(4) the enactment of legislation providing compliance initiative funding for the Internal Revenue Service (IRS), debt forgiveness for Egypt and Poland, funding for the International Monetary Fund (IMF), and emergency appropriations;
(5) special allowances of budget authority and outlays, in part to accommodate estimating differences between OMB and CBO;
(6) the net costs associated with certain loan guarantees for Israel; and
(7) continuing disability reviews.

Some of the criteria for adjustments were tied to the enactment of legislation meeting specified requirements and were in effect only for a portion of the eight-year period.

Section 251A of the BBA sets forth separate discretionary spending limits for programs under the Violent Crime Reduction Trust Fund (see discussion in the next section, below).

Section 10203 of the act extends the discretionary spending limits, creates different categories of discretionary spending, and modifies associated procedures.

Section 10203(a) extends the limits through FY2002, when the budget agreement anticipates that the budget will be balanced, and makes conforming changes throughout the section. While various criteria for adjusting the limits are retained, others (including some which are obsolete) are deleted, including changes in inflation, credit reestimates, IRS funding, debt forgiveness, past IMF funding, special budget authority allowances, and certain loan guarantees for Israel. The special outlay allowance is modified, and new adjustments are added for IMF funding, international arrearages, and an earned income tax credit compliance initiative.

Section 10203(b) sets forth the revised and extended discretionary spending limits. As indicated previously, new categories are used under the limits: defense and nondefense, for FY1998 and FY1999; violent crime reduction, for FY1998-FY2000, and discretionary, for FY2000-2002. The new limits are shown in **Table 1**.

Table 1. Revised Discretionary Spending Limits
(amounts in billions of dollars)

Fiscal year	Category	Budget authority	Outlays
1998	Defense Nondefense Violent crime reduction	269.000 252.357 5.500	266.823 282.853 3.592
1999	Defense Nondefense Violent crime reduction	271.500 255.699 5.800	266.518 287.850 4.953
2000	Discretionary Violent crime reduction	532.693 4.500	558.711 5.554
2001	Discretionary	542.032	564.396
2002	Discretionary	551.074	560.799

Note: The amounts of budget authority and outlays shown in the table are taken from the text of the BEA of 1997 and do not reflect any subsequent automatic adjustments, as provided for under law.

Section 10204. Violent Crime Reduction Trust Fund. Section 310001 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L 103-322) established the Violent Crime Reduction Trust Fund, provided for the transfer of specified amounts for each of FY1995-2000 from the general fund into the trust fund, and authorized the appropriation of funds from the trust fund for particular anti-crime purposes. The amounts transferred into the trust fund are equal to the expected savings from implementation of Section 5 of the Federal Workforce Restructuring Act of 1994 (P.L. 103-226), which contemplated significant reductions in federal personnel levels over ensuing years.

Section 310001(g) of the act added a new Section 251A to the BBA, establishing a special sequestration process that enforces annual outlay limits for appropriations from the trust fund. Section 310002 of the act reduced the general purpose discretionary spending limits for the appropriate years by the amounts of spending transferred into the trust fund. In essence, the act recognized the savings from federal personnel reductions and reduced the discretionary spending limits accordingly. A procedure for enacting equivalent amounts of spending for the specified anti-crime purposes was set up, subject to the discipline of a separate but parallel sequestration procedure to the one established in the BBA for general purpose discretionary spending.

Section 10204 of the act repeals Section 251A of the BBA and Section 310002 of the Violent Crime Control and Law Enforcement Act of 1994. As discussed in the section above, spending for violent crime reduction programs is made subject to the discretionary spending limits in Section 251 as a separate category. Accordingly, the separate limits and procedures no longer are needed.

Section 10205. Enforcing Pay-As-You-Go. Section 252 of the act provides for the enforcement of a PAYGO requirement for the eight-year period covering FY 1991-1998. Under this requirement, the enactment of direct (mandatory) spending and revenue legislation that causes a net increase in the deficit would trigger a sequester to eliminate the increase. The section stipulates the rules and procedures to be followed in implementing a PAYGO sequester, including the timing of action, a "look-back" procedure, elimination of a deficit increase, OMB cost estimates for PAYGO legislation, and the treatment of emergency requirements. Legislation changing direct spending or revenues for emergency requirements, or providing funding to fulfill existing deposit insurance commitments, is not counted in the PAYGO process.

Section 11205 of the act amends Section 252 of the BBA to extend the PAYGO requirement. The requirement itself applies to legislation enacted through FY2002. The procedures used to enforce the requirement do not expire until the end of FY2006 (*i.e.*, September 30, 2006). Consequently, any legislation enacted through FY2002 will be subject to enforcement of its five-year effects under the PAYGO process.

Additionally, Section 11205 modifies the procedures for calculating a net change in the deficit, so as to avoid "double counting" the effects of certain legislation, and makes other clarifying and conforming changes.

Section 10206. Reports and Orders. Section 254 of the BBA provides for the issuance of preview, update, and final sequestration reports by OMB and CBO during the course of a session; certain other reports may be required under these procedures as well. Section 10206 of the act amends Section 254 to eliminate an obsolete reporting requirement, pertaining to the optional adjustment of maximum deficit amounts (which expired at the end of FY1995), and to reflect the extension of sequestration procedures.

Section 10207. Exempt Programs and Activities. Section 255 of the BBA lists various accounts, programs, and activities that are exempt, entirely or in part, from reduction under a sequester, including such items as Social Security benefits, veterans' programs, net interest, and low-income programs. The section provides the President with authority to exempt military personnel accounts from a sequester at his option. Section 10207 of the act makes various technical and conforming changes in Section 255, including changes that continue the exemption for the program formerly known as Aid to Families With Dependent Children (AFDC).

Section 10208. General and Special Sequestration Rules. Section 256 of the BBA sets forth exceptions, limitations, and special rules regarding the implementation of a sequester for specified programs, including, among others, guaranteed student loan programs, foster care and adoption assistance programs, Medicare, federal pay and administrative expenses, and the Commodity Credit Corporation. Section 256(k) provides in part that budgetary resources sequestered from any account other than a trust or special fund account shall be permanently canceled.

Section 10208 of the bill makes various technical and conforming changes to Section 256 of the act, including changes affecting the student loan program and the Commodity Credit Corporation. In addition, Section 10208(g) amends Section 256(k) to add revolving funds and offsetting collections in appropriation accounts to the types of budgetary resources not permanently canceled under a sequester. Such resources, barred from obligation during the fiscal year in which a sequester applied, would be available in later fiscal years, to the extent otherwise provided in law.

Section 10209. The Baseline. Section 257 of the BBA establishes rules and procedures for the construction of the baseline used in the sequestration process. Among the various features of the baseline methodology, no direct spending program with estimated current outlays greater than $50 million is assumed to expire; the inflator used to adjust non-personnel budgetary resources is the gross national product fixed-weight price index; and savings from asset sales generally are not counted.

Sect'on 10209 of the act amends Section 257 of the BBA to provide that only those direct spending programs with current-year outlays in excess of $50 million, in existence on or before enactment of the Balanced Budget Act of 1997, are assumed to continue for purposes of the baseline; OMB and the Budget Committees will consult on the treatment of new programs.

In addition, Section 10209 changes the inflator used to adjust non-personnel budgetary resources to the domestic product chain-type price index, allows the counting of non-loan asset sales only if the sale does not result in a financial cost to the federal government, and makes other technical changes.

Section 10210. Technical Correction. Section 258 (Modification of Presidential Order) of the BBA establishes procedures for the modification by Congress of a presidential sequestration order through the enactment of a joint resolution.[19] Section 13101(f) of the BEA of 1990 added a new Section 258, intending to replace the old Section 258 with comparable, but updated, provisions in Section 258A. In an apparent drafting error, however, Section 13101(f) failed to repeal the old Section 258. Section 10210 of the act repeals that section.

Section 10211. Judicial Review. Section 274 of the BBA provides for expedited judicial review of any court actions brought by a Member of Congress (or other persons) on the grounds that the issuance of a sequestration order by the President is unconstitutional or not in compliance with the terms of the act. Section 10211 of the act makes technical and conforming changes in Section 274.

Section 10212. Effective Date. Section 275 of the BBA establishes effective dates and expiration dates for different sections. The expiration date in Section 275, the last day of FY1995, effectively was extended by Section 14002(c)(3)(A) of the Omnibus Budget Reconciliation Act (OBRA) of 1993. Section 10212 of the bill provides that the sections of the act dealing with discretionary spending limits,

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[19] This is the first of two sections designated 258; the second such section is headed "Suspension in the Event of War or Low Growth."

maximum deficit amounts, and flexibility in the implementation of a sequester of defense spending shall expire at the end of FY2002; the remaining sections of the act, dealing with the PAYGO process, among other matters, shall expire at the end of FY2006. Also, Section 10212 of the act repeals Section 14002(c)(3)(A) of OBRA of 1993.

Section 10213. Reduction of Preexisting Balances and Exclusion of Effects of This Act From Paygo Scorecard. Section 10213 of the act reduces existing PAYGO balances to zero (for all fiscal years covered by the BBA, as amended) and bars the inclusion of savings stemming from the Balanced Budget Act of 1997 and the Revenue Reconciliation Act of 1997 in any PAYGO calculations. The effect of the provision is to ensure that deficit reduction from the two reconciliation acts cannot be used under these procedures to offset any future legislation increasing direct spending or reducing revenues. This action is comparable to actions taken in past years following the enactment of major deficit-reduction legislation.[20]

Table 2 provides cross references between sections of the BEA of 1997 and the sections of the CBA of 1974 and the BBA of 1985 that were amended.

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[20] For example, Section 4001 of Title IV in Division A (110 *Stat*. 3009, page 1449) of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) reset a negative PAYGO balance for FY1997 to zero; the negative balance was attributable largely to savings from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and the Federal Agricultural Improvement and Reform Act of 1996 (P.L. 104-127).

Table 2. Cross References to Amendments Made by the BEA of 1997

Section of the BEA of 1997[1]	Heading	Page no. (111 *Stat.*)	Section of the act amended
10001	Short Title; Table of Contents	677	
Subtitle A—Amendments to the Congressional Budget and Impoundment Control Act of 1974			
10101	Amendments to Section 3	678	3
10102	Amendments to Section 201	678	201
10103	Amendments to Section 202	678	202
10104	Amendment to Section 300	679	300 (and House Rules X and XLVIII)
10105	Amendments to Section 301	679	301
10106	Amendments to Section 302	680	302
10107	Amendments to Section 303	683	303
10108	Amendments to Section 304	684	304
10109	Amendment to Section 305	684	305
10110	Amendments to Section 308	685	308
10111	Amendments to Section 310	685	310
10112	Amendments to Section 311	686	311
10113	Amendment to Section 312	687	312
10114	Adjustments	688	314 (new)
10115	Effect of Adoption of a Special Order of Business in the House of Representatives	690	315 (new)
10116	Amendment to Section 401 and Repeal of Section 402	690	401, 402 (and House Rules X and XI)
10117	Amendments to Title V	692	502, 504, 505, 506
10118	Repeal of Title VI	695	601-607
10119	Amendments to Section 904	695	904
10120	Repeal of Sections 905 and 906	696	905, 906

Section of the BEA of 1997 [1]	Heading	Page no. (111 *Stat.*)	Section of the act amended
10121	Amendments to Sections 1022 and 1024	696	1022, 1024
10122	Amendment to Section 1026	697	1026
10123	Senate Task Force on Consideration of Budget Measures	697	-----
Subtitle B—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985			
10201	Purpose	697	
10202	General Statement and Definitions	697	250
10203	Enforcing Discretionary Spending Limits	698	251
10204	Violent Crime Reduction Spending	702	251A (and 310002 of P.L. 103-322)
10205	Enforcing Pay-As-You-Go	702	252
10206	Reports and Orders	704	254
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10208	General and Special Sequestration Rules	708	256
10209	The Baseline	710	257
10210	Technical Correction	711	258
10211	Judicial Review	711	274
10212	Effective Date	712	275 (and 14002 of P.L. 103-66)
10213	Reduction of Preexisting Balances and Exclusion of Effects of This Act From Paygo Scorecard	712	-----

[1] "BEA" refers to the Budget Enforcement Act of 1997 (Title X of P.L. 105-33), as enacted into law on August 5, 1997; "page no." refers to the page number in the slip law (volume 111 of the *Statutes-at-Large*).

[CRS report number three is as follows:]

CRS Report for Congress

Points of Order in the Congressional Budget Process

Updated October 1, 1997

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Points of Order in the Congressional Budget Process

Summary

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended) created a process that Congress uses each year to establish and enforce the parameters for budgetary legislation. Enforcement is accomplished through the use of points of order, and through the reconciliation process. Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point or order against legislation that may violate these rules when it is considered by the House or Senate.

This report summarizes points of order under the Congressional Budget Act of 1974, as amended through the Balanced Budget Act of 1997 (P.L. 105-33), as well as points of order established in the budget resolutions adopted by Congress in 1995 (H.Con.Res. 67, 104th Congress) and 1997 (H.Con.Res. 8 , 105th Congress). In addition, it describes the process used for waiving these points of order.

This report updates an earlier report: U.S. Library of Congress, Congressional Research Service, *Points of Order in the Congressional Budget Process*, by Edward Davis, CRS report 94-874 GOV (Washington, 1994).

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Points of Order in the Congressional Budget Process

Introduction

The Congressional Budget Act of 1974[1] established the basic framework that is used today for congressional consideration of budget and fiscal policy. The Act provided for the adoption of a concurrent resolution on the budget (budget resolution) as a mechanism for coordinating congressional budgetary decision making. This process supplements other House and Senate procedures for considering spending and revenue legislation by allowing Congress to establish and enforce parameters with which those separate pieces of budgetary legislation must be consistent. The parameters are established each year when Congress adopts the budget resolution, setting forth overall levels for new budget authority, outlays, revenues, deficit, and debt.

These overall levels are then allocated to the various committees in the House and Senate responsible for spending or revenue legislation. These overall levels and allocations are then enforced through the use of points of order, and through the reconciliation process.[2] Points of order are prohibitions against certain types of legislation or congressional actions. These prohibitions are enforced when a Member raises a point or order against legislation that is alleged to violate these rules when it is considered by the House or Senate. Points of order are not self-enforcing. A point of order must be raised by a Member on the floor of the chamber before the presiding officer can rule on its application, and thus for its enforcement.

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[1]The Congressional Budget Act (Titles I-IX of P.L. 93-344) has been amended on a number of occasions since its enactment. The most salient of the modifications has been as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177, also known as Gramm-Rudman-Hollings or GRH); The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119); The Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508); Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66); and Title X of the Balanced Budget Act of 1997 (P.L. 105-33).

[2]The reconciliation process is an optional procedure set forth in section 310 of the Congressional Budget Act. First used in 1980, reconciliation is a two-step process triggered when the budget resolution includes instructions to one or more committee(s) directing them to recommend changes in revenue or spending laws necessary to achieve the overall levels agreed to. The recommendations are then considered in one or more reconciliation measures under expedited procedures. Certain features of the reconciliation process are enforced by points of order that are included in this report. For more on the reconciliation process generally see: U.S. Library of Congress, Congressional Research Service, *Manual on the Federal Budget Process*, by Allen Schick, Robert Keith, and Edward Davis, CRS report 91-902 GOV (Washington, 1991).

Although the congressional budget process encompasses myriad procedures dealing with spending, revenue, and debt legislation, this paper focuses only on that portion of the process that stems from the Congressional Budget Act. The tables below list the points of order currently included in the Congressional Budget Act (Table 1), as well as related points of order established in the FY1996 budget resolution (Table 2) and the Budget Enforcement Act of 1990 (Table 3) that pertain to the consideration, contents, or implementation of the budget resolution.

Points of order are typically in the form of a provision stating that "it shall not be in order" for the House or Senate to take a specified action or consider certain legislation that is inconsistent with the requirements of the Budget Act. There are other provisions of the Act, formulated differently, that establish various requirements or procedures, particularly concerning the contents and consideration of the budget resolution or reconciliation legislation. These provisions, however, are not typically enforced through points of order, and are not included here.[3]

As amended through the Balanced Budget Act of 1997, points of order in the Congressional Budget Act are permanent. None of the provisions listed in Table 1 is scheduled to expire, although the requirement for a three-fifths waiver vote in the Senate will revert to a simple majority requirement for certain provisions after September 30, 2002.[4] The freestanding point of order protecting the Social Security trust fund in the House established in the Budget Enforcement Act (Table 3) is likewise permanent. However, the provision for enforcing Pay-As-You-Go in the Senate (Table 2) is scheduled to expire after FY2002.

Application of Points of Order

Most points of order in the Budget Act apply to measures as a whole, as well as to motions, amendments, or conference reports to those measures. When a point of order is sustained against consideration of some matter, the effect is that the matter in question falls.

The application of points of order in the House is clarified in section 315 of the Budget Act. This provision states that for cases in which a measure is considered pursuant to a special rule, a point of order which would ordinarily lie against a bill "as reported" would instead be considered to apply to the text made in order by the rule as original text for purposes of amendment. In this way, no point of order would be

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[3]For example, the prohibition against motions to recommit concurrent resolutions on the budget in the House under section 305(a)(2) of the Act is typically not counted as a separate point of order. Likewise, the requirement under section 308(a) of the Act for reports on legislation to include cost estimates is not formulated as a point of order, although the House has deemed it necessary to formally waive the provision on occasion.

[4]However, the maximum deficit amounts enforced in the Senate under section 312(c) of the Congressional Budget Act are not currently specified. Discretionary spending limits in section 251(c) of the Balanced Budget and Emergency Deficit Control Act (which are enforced in the Senate under section 312(b) of the Congressional Budget Act) are only specified through FY2002.

considered as applying (and no waiver would be required) if a substitute resolved the problem.

Similarly, the effect of a point of order in the Senate is clarified under section 312(f) which provides that when a point of order against a measure is sustained, the measure is recommitted to the appropriate committee for any further consideration. This allows the Senate an opportunity to remedy the problem which caused the point of order. Section 312(d) is also designed to provide the Senate with the opportunity to remedy a problem that would provoke a point of order. This provision states that a point of order may not be raised against a measure, amendment, motion, or conference report while an amendment or motion which would remedy the problem is pending.

Section 312(e) clarifies that any point of order which would apply in the Senate against an amendment also applies against amendments between the Houses. Further, this section also states that the effect would "be the same as if the Senate had disagreed to the amendment." This would allow the Senate to keep the underlying measure pending, and thus retain the ability to resolve their differences with the House. This provision therefore means that any resolution of the differences between the House and Senate passed versions of a measure, whether it is in the form of a conference report or not, must adhere to the provisions of the Budget Act.

One major exception to the application of points of order to measures as a whole is section 313, the so-called Byrd Rule. This section applies to matter "contained in any title or provision" in a reconciliation bill or resolution (or conference report thereon), as well as any amendment or motion. If a point of order is sustained under this section, the provision in question is stricken, or the amendment or motion falls.[5]

Procedures for Waiving Points of Order

The Congressional Budget Act sets forth certain procedures, under section 904, for waiving points of order under the Act. These waiver procedures apply in the Senate only. Under these procedures, a Senator may make a motion to waive the application of a point of order either preemptively before it can be raised, or after it is raised, but before the presiding officer rules on its merits.

In the Senate, most points of order under the Budget Act may be waived only by a three-fifths vote of all Senators duly chosen and sworn (60 votes if there are no vacancies). Most of these three-fifths requirements are temporary, and are currently scheduled to expire at the end of FY2002 (see footnote to Table 1). Three-fifths waivers were first established under the Balanced Budget and Emergency Deficit Control Act of 1985 although many have been extended and modified through the further changes in the budget process. Three-fifths votes are also required for the

[5]Section 313(c) provides a special procedure for further consideration of a measure should a point of order under this section be sustained against a provision in a conference report.

Senate to waive the point of order established in the budget resolution for FY1996 (Table 2).

In the House, Budget Act points of order are typically waived by the adoption of "special rules"—simple resolutions reported from the House Rules Committee to provide for consideration of legislation by the House—although other means (such as unanimous consent or suspension of the rules) may also be used.

Table 1. Points of Order Under the Congressional Budget Act of 1974

Section	Description	Application	Senate waiver vote[a]
301(g)	In the Senate, prohibits consideration of a budget resolution using more than one set of economic assumptions.	Budget resolution, amendment, or conference report.	Simple majority.
301(i)	In the Senate, prohibits consideration of a budget resolution that would decrease the Social Security surplus in any fiscal year covered by the resolution.	Budget resolution, amendment, motion, or conference report.	Three-fifths.*
302(c)	Prohibits the consideration of any measure within the jurisdiction of the House or Senate Appropriations Committees that provides new budget authority for a fiscal year until the committee makes the suballocation required by section 302(b).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.*
302(f)(1)	In the House, after action on a budget resolution is completed, prohibits consideration of legislation providing new budget authority for any fiscal year that would cause the applicable allocation of new budget authority made pursuant to section 302(a) or (b) for the first fiscal year or for the total of all fiscal years to be exceeded.[b]	Bill, joint resolution, amendment, or conference report.	n/a
302(f)(2)(A)	In the Senate, after a budget resolution is agreed to, prohibits consideration of legislation (from any committee other than the Appropriations Committee) that would cause the applicable allocation of new budget authority or outlays made pursuant to section 302(a) for the first fiscal year or for the total of all fiscal years to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.*

Section	Description	Application	Senate waiver vote[a]
302(f)(2)(B)	In the Senate, after a budget resolution has been agreed to, prohibits consideration of legislation from the Appropriations Committee that would cause the applicable suballocation of new budget authority or outlays made pursuant to section 302(b) to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.[e]
303(a)	Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues, an increase or decrease in the public debt limit, new entitlement authority (in the Senate only), or an increase or decrease in outlays (in the Senate only) for a fiscal year until a concurrent resolution for that fiscal year (or, in the Senate, a budget resolution covering that fiscal year) has been agreed to.[b, c]	Bill, joint resolution, amendment, motion, or conference report.	Simple majority.
305(a)(4)	In the House, prohibits consideration of amendments to a budget resolution relating to certain economic goals if the budget resolution does not set forth such goals, and requires such amendments, if in order, to be germane.	Amendment to a budget resolution.	n/a
305(b)(2)	In the Senate, prohibits the consideration of nongermane amendments to budget resolutions (section 310(e) applies this prohibition to amendments to reconciliations legislation as well).	Amendment to a budget resolution (or to reconciliation legislation).	Three-fifths.
305(c)(4)-	In the Senate, prohibits consideration of nongermane amendments to amendments in disagreement to a budget resolution (section 310(e) applies this prohibition to amendments in disagreement to reconciliation legislation as well).	Amendment in disagreement to a budget resolution (or to reconciliation legislation).	Three-fifths.

Section	Description	Application	Senate waiver vote[a]
305(d)	In the Senate, prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent.	Budget resolution or conference report.	Simple majority.
306	Prohibits consideration of matters within the jurisdiction of the House or Senate Budget Committee except when it is a measure reported by the committee, or the committee is discharged from further consideration of the measure, or an amendment to such a measure.	Bill, resolution, amendment, motion, or conference report.	Three-fifths.
309	In the House, prohibits consideration of an adjournment resolution for more than three calendar days during July until the House has approved all regular appropriations bills for the upcoming fiscal year.	Resolution.	n/a
310(d)	Prohibits the consideration of amendments to reconciliation legislation that would increase the deficit either by increasing outlays or reducing revenues, except that in the Senate a motion to strike a provision shall always be in order.	Amendment.	Three-fifths.
310(e)	In the Senate, prohibits consideration of nongermane amendments to reconciliation legislation or to amendments in disagreement to reconciliation (by reference to sections 305(b)(2) and 305(c)(4)).	Amendment.	Three-fifths.
310(f)	In the House, prohibits consideration of an adjournment resolution of more than three calendar days during July until the House has completed action on any required reconciliation legislation.	Resolution.	n/a

Section	Description	Application	Senate waiver vote[a]
310(g)	Prohibits the consideration of reconciliation legislation that contains recommendations with respect to Social Security.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.[e]
311(a)(1)	In the House, prohibits consideration of legislation that would cause new budget authority or outlays to exceed or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to section 302(a).[b, d]	Bill, joint resolution, amendment, motion, or conference report.	n/a
311(a)(2)	In the Senate, prohibits consideration of legislation that would cause new budget authority or outlays to exceed the levels set forth in the budget resolution for the first fiscal year, or revenues to fall below the levels set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to section 302(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.[e]
311(a)(3)	In the Senate, prohibits consideration of legislation that would cause a decrease in Social Security surpluses or an increase in Social Security deficits relative to the level set forth in the budget resolution for the first fiscal year or for the total of all fiscal years for which allocations are made pursuant to section 302(a).	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.[e]
312(b)	In the Senate, prohibits the consideration of legislation that would cause any of the discretionary spending limits specified in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, to be exceeded.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.[e]

Section	Description	Application	Senate waiver vote[a]
312(c)	In the Senate, prohibits consideration of a budget resolution that provides for a deficit in excess of the maximum deficit amount specified in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, for the first fiscal year set forth in the resolution.	Budget resolution, amendment, or conference report.	Three-fifths.[e]
313	In the Senate prohibits consideration of extraneous provisions in reconciliation legislation.[e]	Reconciliation bill or resolution (any title or provision), amendment, motion, or conference report.	Three-fifths.
401(a)	Prohibits consideration of legislation providing new contract authority, borrowing authority, or credit authority not limited to amounts provided in appropriations acts.[f]	Bill, joint resolution, amendment, motion, or conference report.	Simple majority.
401(b)	Prohibits consideration of legislation providing new entitlement authority that is to become effective during the current fiscal year.[f]	Bill, joint resolution, amendment, motion, or conference report.	Simple majority.
425(a)(1)	Prohibits consideration of legislation reported by a committee unless the committee has published a statement by CBO on the direct costs.	Bill, joint resolution.	Simple majority.
425(a)(2)	Prohibits consideration of legislation that would increase the direct costs of federal intergovernmental mandates by an amount greater than the thresholds specified in section 424(a).	Bill, joint resolution, amendment, motion, or conference report.	Simple majority.
426	In the House, prohibits consideration of a rule or order that would waive the application of section 425.	Resolution, rule, order.	n/a

[a]This column indicates the type of Senate vote (provided under section 904 of the Congressional Budget Act) necessary to approve a motion to waive the point of order listed. The term "simple majority" means that the provision may be waived by a majority vote of the Members voting, a quorum being present. The term "three-fifths" means that a motion to waive the provision must be approved by three-fifths of the Members "duly chosen and sworn." For those provisions, which are marked with an asterisk, the three-fifths requirement is scheduled to expire on September 30, 2002 (under section 904(e)), reverting to simple majority at that time. The same voting requirement (either simple majority or three-fifths) would also apply to a vote to appeal a ruling of the chair connected with a point of order. The term "n/a" is used for those provisions that apply in the House only.

[b]Section 302(g) of the Congressional Budget Act (known as the Pay-As-You-Go exception) provides that sections 301(f)(1), 303(a) (after April 15), and 311(a) shall not apply in the House to legislation (bill, joint resolution, amendment, or conference report) if for each fiscal year covered by the most recently agreed to budget resolution such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under section 301(b)(8).

[c]Section 303(b) sets forth exceptions to the prohibitions under 303(a). In the House, the point of order does not apply to: 1) advance discretionary new budget authority that first become available for the first or second fiscal year after the first fiscal year covered in a budget resolution; 2) revenue legislation that is to first become effective after the first fiscal year covered in a budget resolution; 3) general appropriations bills after May 15; or 4) any bill or joint resolution unless it is reported by a committee (see also table note [b] above for an additional exception to 303(a) provided under section 302(g)). In the Senate, the point of order does not apply to advance appropriations for the first or second fiscal year after the first fiscal year covered in a budget resolution. The application of this point of order to appropriations bills in the Senate is clarified under section 303(c) to prohibit their consideration until after a budget resolution for that fiscal year is agreed to and an allocation made pursuant to section 302(a).

[d]Section 311(c) provides that 311(a) shall not apply in the House to legislation that would not cause a committee's spending allocation under 302(a) to be exceeded.

[e]For more information on this provision (known as the "Byrd Rule") see: U.S. Library of Congress, Congressional Research Service, *The Senate's Byrd Rule Against Extraneous Matter in Reconciliation Measures*, by Robert Keith, CRS report 97-688 GOV (Washington, 1997).

[f]Section 401(d) provides that sections 401(a) and 401(b) shall not apply to new spending authority described in those sections that flow from: 1) a trust fund established under the Social Security Act or any other trust fund for which 90 percent or more of its expenditures are supported by dedicated revenues; 2) certain wholly owned or mixed ownership government corporations; or 3) gifts or bequests made to the United States for a specific purpose.

Table 2. Point of Order Under H.Con.Res. 67 (104th Congress) (Budget Resolution for FY1996)

Section	Description	Application	Senate waiver vote[a]
202(b)	In the Senate, prohibits consideration of any direct spending or revenue legislation that would increase the deficit for the first fiscal year covered by the most recently adopted budget resolution, the period of the first five fiscal years covered by the most recently adopted budget resolution, or the five fiscal years following the first five fiscal years covered by the most recently adopted budget resolution.	Bill, joint resolution, amendment, motion, or conference report.	Three-fifths.*

[a]This column indicates the type of Senate vote necessary to approve a motion to waive the point of order listed. The term "three-fifths" means that a motion to waive the provision must be approved by three-fifths of the Members "duly chosen and sworn." This provision is scheduled to expire on September 30, 2002 (under section 202(g) of this budget resolution). The same voting requirement would also apply to a vote to appeal a ruling of the chair connected with a point of order.

Table 3. Point of Order Under P.L. 101-508 (Budget Enforcement Act of 1990)[a]

Section	Description	Application	Senate waiver vote
13302(a)	In the House, prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of 0.02 percent of the present value of future taxable payroll for a 75-year period, or in excess of $250,000,000 for the first 5-year period after it becomes effective.[b]	Bill, joint resolution, amendment, or conference report.	n/a

[a]This provision is a freestanding provision of subtitle C of the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990).

[b]Section 13302(b) provides that the point of order would not apply to legislation that reduces Social Security taxes in excess of the threshold amounts if these reductions are offset by equivalent increases in medicare taxes.

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CRS Report for Congress

The Appropriations Process and the Congressional Budget Act

October 17, 1997

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The Appropriations Process and the Congressional Budget Act

Summary

Each year Congress considers a series of appropriations measures that provide funding for various federal programs. These measures consist of regular appropriations, supplemental appropriations, and continuing resolutions. The House and Senate have established procedures that make consideration of these measures distinct from other legislative matters. In particular, the Congressional Budget Act of 1974 (titles I-IX of P.L. 93-344) provides a timetable for the consideration of appropriations, and allows Congress to establish limitations on the level of funding they supply.

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Introduction

The Constitution provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[2] However, it does not establish any specific procedures for consideration of spending legislation. Instead, the House and Senate have developed rules and practices that govern consideration of appropriations and other budgetary legislation pursuant to the constitutional authority of each chamber to "determine the Rules of its Proceedings."[3] It is under this authority that the procedures outlined in the Congressional Budget Act of 1974 were established.

The Congressional Budget Act created the basic framework that is used today for congressional consideration of budget and fiscal policy. The Budget Act provided for the adoption of a concurrent resolution on the budget as a mechanism for coordinating congressional budgetary decision making. This process supplements other House and Senate procedures for considering spending, revenue, and debt legislation by allowing Congress to establish and enforce parameters with which those separate pieces of budgetary legislation must be consistent. For discretionary spending,[4] which is provided in appropriations acts, these parameters are enforced, in part, through procedures contained in Title III of the Budget Act. These procedures consist of 1) a timetable for budgetary action; 2) a requirement that the overall totals agreed to in the budget resolution be allocated in each chamber among

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[1] For more on the appropriations process generally, see U.S. Library of Congress, Congressional Research Service, *Appropriations Procedures in Congress*, by Stanley Bach, CRS Report 94-1009 S (Washington: 1994), and *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter, CRS Report 97-684 GOV (Washington: 1997). For more on the budget process generally see: U.S. Library of Congress, Congressional Research Service, *A Brief Introduction to the Federal Budget Process*, by Robert Keith, CRS Report 96-912 GOV (Washington: 1996), and *Budget Enforcement Act of 1997: Summary and Legislative History*, by Robert Keith, CRS Report 97-931 GOV (Washington: 1997).

[2] U.S. Constitution, Article I, Section 9.

[3] U.S. Constitution, Article I, Section 5.

[4] Discretionary spending is controlled through the appropriations process, which is used both to provide funds and to determine their level. It is distinguished from direct spending (e.g., entitlement authority or Food Stamps), for which the level is controlled by laws other than appropriations acts, although the budgetary resources for some direct spending programs may be provided in appropriations acts.

committees with jurisdiction over spending; and 3) points of order to prohibit consideration of measures that would violate these parameters.

Timing of Appropriations Consideration and the Congressional Budget Act

The Congressional Budget Act establishes a timetable for the consideration of budgetary legislation. This timetable (in Section 300) provides various deadlines; the following ones pertain to the appropriations process:

May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June :0	House completes action on annual appropriation bills.
October 1	Fiscal year begins. [all appropriations actions to be completed]

These deadlines reflect the pace at which the appropriations process typically occurs. Because the conventional pattern for consideration of appropriations is for the House to originate the measures, the deadlines focus on the House in order to promote timely consideration, and allow sufficient time for Senate and conference consideration.

June 10 and June 30 serve as target dates, and are not enforced by points of order. However, Section 309 does prohibit consideration of an adjournment resolution of longer than three calendar days during July until the House has approved all regular appropriations bills. By prohibiting any extended adjournment period, this point of order is clearly intended to reinforce the target dates indirectly.

The May 15 date is likewise not a formal deadline. Rather, it is an enabling date for House appropriations actions, and serves as a spur for the completion of congressional action on the budget resolution. Section 303(a) of the Budget Act prohibits consideration of legislation providing new budget authority prior to agreement on the budget resolution. However, under an exception provided in Section 303(b), this prohibition does not apply to regular appropriations bills considered in the House after May 15. There is no similar exception that applies to Senate consideration.

More general timing issues are enforced directly through points of order. The intent of Section 303(a) is to prohibit the consideration of legislation that would implement budget priorities, until those priorities are established in the form of the budget resolution. Similarly, Section 302(c) prohibits the consideration of appropriations measures by the House or Senate until the Appropriations Committee of that chamber has made the suballocations required under Section 302(b). The intent is to prohibit consideration of measures implementing part of discretionary spending priorities until the House or Senate has had a chance to see how the various parts are expected to fit together.

The start of the fiscal year is also part of the timetable established in Section 300 of the Budget Act, and serves as a deadline for completion of appropriations actions.[5] Enforcement of this date is provided not through a point of order, but rather through the threat of a government shutdown if there is a funding lapse. Because appropriations measures typically provide funding for the period of a single fiscal year, all appropriations measures must be enacted prior to October 1, or funding must be provided on an interim basis in the form of a continuing resolution.

Previously, the Congressional Budget Act provided a deadline for reporting authorizing legislation. This deadline was intended to supplement the requirements in House and Senate Rules that assume the enactment of authorizing legislation prior to the consideration of appropriations. The result, however, was that rather than promote the timely consideration of authorizations, the deadline tended to create a bottleneck of legislation, making it difficult to complete floor action on authorizing measures prior to consideration of appropriations bills. The deadline was repealed in 1985 as part of the Balanced Budget and Emergency Deficit Control Act of 1985.

Allocations and Enforcement

Allocations Under Section 302(a)

One of the features of the process established under the Congressional Budget Act is that the budget resolution is not intended to implement the details of spending or revenue policy. Instead, it is left to the committees with jurisdiction over various spending and revenue laws to report the legislation necessary for implementation. They are expected to report this legislation in accordance with the priorities agreed to in the budget resolution. The budget resolution establishes spending priorities in terms of functional categories rather than in terms of spending for specific agencies or programs. The amounts for these functional categories are not binding, but they do provide a guide for how spending should be allocated to each committee, based on its jurisdictions. The amounts are then allocated, or "crosswalked," and become binding and enforceable.[6] These allocations of new budget authority (ba) and outlays (o)[7] are made under Section 302(a) of the Budget Act, and appear in the conference report on the budget resolution. The allocations to the Appropriations Committees reflect their jurisdiction over all discretionary spending programs. Section 302(f)(1) prohibits the House from considering legislation that would cause a committee's allocation of budget authority under 302(a) to be exceeded. The Senate operates under a slightly different limitation. Section 302(f)(2)(A) prohibits the Senate from

[5] The fiscal year was changed to October 1 to September 30 under Section 501 of the Congressional Budget Act, as it was originally enacted. This Section was later replaced by provisions of the Federal Credit Reform Act of 1990, but is now codified at 31 *U.S.C.* 1102.

[6] Amounts provided through the appropriations process for direct spending programs generally are not enforceable at this stage.

[7] Budget authority represents the level of new budgetary resources provided in spending legislation, whereas outlays represent the projected level of expenditures due to either current or previous action.

considering legislation that would cause a committee's allocation of either budget authority or outlays under 302(a) to be exceeded.

Because Section 303(a) allows for the consideration of appropriations bills in the House even when Congress has not agreed to a budget resolution, Section 302(a)(5) provides guidelines for making allocations in those cases. As amended by the Budget Enforcement Act of 1997, this section provides that if a budget resolution is not adopted by April 15, an allocation for the House Appropriations Committee shall be submitted that is consistent with the discretionary spending levels in the previous year's budget resolution. Previously, such allocations in the absence of an agreement on a budget resolution were based on the President's budget submission.

Appropriations and Discretionary Spending Limits

The allocations made under Section 302(a) must be consistent with the discretionary spending limits established in Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (Table 1).[8] Allocations under 302(a) may not provide for spending that would exceed the statutory limits on discretionary spending.

Enforcement of these discretionary spending limits occurs on two levels. First, Section 312(b) of the Budget Act prohibits the Senate from considering legislation that would cause any of the spending limits to be exceeded.[9] The House has no equivalent point of order. This prohibition, however, is not necessarily absolute. Points of order are not self-enforcing, and they may be waived.[10] Therefore, the spending limits are also enforced through the sequestration process.

Section 251(a) of the Balanced Budget and Emergency Deficit Control Act provides that any time one of the spending limits is breached, the President must order an across-the-board cut of all non-exempt programs within that category.

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[8] Discretionary spending limits for FY1990-1995 were established by the Budget Enforcement Act of 1990, and appeared in Title VI of the Congressional Budget Act. These limits were extended to cover FY1996-1998 by Title XIV of the Omnibus Budget Reconciliation Act of 1993. The Budget Enforcement Act of 1997 extended the discretionary spending limits through FY2002, repealed Title VI of the Congressional Budget Act, and shifted the discretionary spending limits to Section 251(c) of the Balanced Budget and Emergency Deficit Control Act.

[9] Previously, the Senate had used points of order established as part of the budget resolutions in 1995, 1996, and 1997, to enforce discretionary spending amounts as specified in those budget resolutions through FY2002.

[10] For more on points of order, including the waiver process, see: U.S. Library of Congress, Congressional Research Service, *Points of Order in the Congressional Budget Process*, by James V. Saturno, CRS report 97-865 GOV (Washington, 1997).

Table 1. Discretionary Spending Limits, FY1998-2002
(Budget Authority and Outlays)[11]

Fiscal Year	Defense Spending	Nondefense Spending	Total Discretionary Spending	Violent Crime Reduction Spending
1998	ba $269,000,000,000 o $266,823,000,000	ba $252,357,000,000 o $282,853,000,000		ba $5,500,000,000 o $3,592,000,000
1999	ba $271,500,000,000 o $266,518,000,000	ba $255,699,000,000 o $287,850,000,000		ba $5,800,000,000 o $4,953,000,000
2000			ba $532,693,000,000 o $558,711,000,000	ba $4,500,000,000 o $5,554,000,000
2001			ba $542,032,000,000 o $564,396,000,000	
2002			ba $551,074,000,000 o $560,799,000,000	

Source: Section 251(c) of the Balanced Budget and Emergency Deficit Control Act, as amended by Section 10203(b) of the Budget Enforcement Act of 1997 (P.L. 105-33).

Enforcement of Total Spending

The Congressional Budget Act also provides that the total level of spending for a fiscal year as provided for in a budget resolution may be enforced by a point of order. Section 311(a) in the House, and 311(b) in the Senate, prohibit the consideration of legislation that would cause the total amount of new budget authority or outlays set forth in the budget resolution from being exceeded. However, this point of order does not apply in the House if the legislation in question does not also cause a committee's allocation under 302(a) to be exceeded. This exception under Section 311(c) (known as the "Fazio exception") means that it is necessary for committees to control the level of spending that will result from legislation they report, but not require them to offset increases in spending due to factors outside of their direct control, such as the economy.

Appropriations Bills and Suballocations Under Section 302(b)

Section 302(b) of the Budget Act requires the House and Senate Appropriations Committees to subdivide their allocations of budget authority and outlays under Section 302(a) among their subcommittees. These suballocations are to be made "as soon as practicable after a concurrent resolution on the budget is agreed to." This requirement is reinforced by Section 302(c), which prohibits the consideration of appropriations measures in the House or Senate until the suballocations are made.

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[11] These amounts are to be periodically adjusted in accordance with the parameters established in Section 251(b) of the Balanced Budget and Emergency Deficit Control Act, as amended by Section 10203(a) of the Budget Enforcement Act of 1997 (P.L. 105-33).

Because each subcommittee of the Appropriations Committees is responsible for reporting a single general appropriations bill, the process of making suballocations effectively determines the spending level for each of the 13 regular appropriations bills.

One of the changes made to the Congressional Budget Act by the Balanced Budget and Emergency Deficit Control Act of 1985 was to establish the enforceability of suballocations by points of order. Under Section 302(f)(1) in the House, and Section 302(f)(2)(B) in the Senate, legislation that would cause the suballocations made under 302(b) to be exceeded is prohibited. As with total allocations to committee under Section 302(a), the House enforces the level of budget authority, while the Senate enforces both the levels of budget authority and outlays.

Because the 302(b) subdivisions are within the purview of the Appropriations Committees, the committees can (and do) issue revised subdivisions over the course of appropriations actions to reflect changes in spending priorities effected during floor consideration or in conference. Each revision then supplants all previous suballocations and becomes enforceable through points of order.

One way in which making 302(b) suballocations enforceable has had an impact has been to reduce the number of floor amendments to appropriations measures. Because the Appropriations Committees typically report measures that spend at the level of the appropriate suballocation, any amendment that would increase spending would be likely to cause that suballocation to be breached, and thus subject to a point of order.[12]

This rule, in combination with other rules of procedure, frequently makes it difficult to rearrange spending priorities within an appropriations bill through amendments on the floor. A separate amendment (or amendments) to reduce spending would need to be agreed to prior to consideration of one that would increase spending for an agency or program in order to offset that increase. The spending reduction needed to be agreed to first in order to insure that agreeing to the increase would not cause the 302(b) suballocation to be exceeded, but, because the amendments had to be offered separately, there was no certainty as to what spending (if any) the reduction would be used to offset. In order to alleviate this perceived difficulty, the House adopted a new provision to Rule XXI at the beginning of the 104th Congress.[13] House Rule XXI, clause 2(f) provides that:

> ... it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc pursuant to this

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[12] For a discussion of this effect, see Richard G. Forgette and James V. Saturno, "302(b) or Not 302(b): Congressional Floor Procedures and House Appropriators," *Legislative Studies Quarterly*, vol. 19, no. 3 (Aug. 1994), p. 385-396.

[13] Title II of H.Res. 6 (104th Congress), agreed to in the House January 4, 1995. *Congressional Record*, daily edition, vol. 141, no. 1, Jan. 4, 1995, and no. 2, Jan. 5, 1995 (continuation of proceedings of Jan. 4, 1995), p. H89.

> paragraph, such amendments may amend portions of the bill not yet read for amendment ... and shall not be subject to a demand for division of the question ....

This provision allows greater latitude in amending appropriations bills in the House, while preserving the Section 302(f) point of order as a method for enforcing the level of appropriations suballocations.

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The Line Item Veto Act

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Summary

The Line Item Veto Act of 1996 (Public Law 104-130, 110 Stat. 1200), gives the President expanded rescission authority by changing the burden of action and coverage. Under the Impoundment Control Act of 1974 (88 Stat. 332), the President must obtain the support of both Houses within a specified time period for a rescission to become permanent, while the new law puts the burden on Congress to disapprove presidential rescission proposals within a 30-day period. Along with rescission of discretionary appropriations, the new law subjects any new item of direct spending (entitlement) and certain limited tax benefits to cancellation as well.

Background on Impoundment

At various times, Congress has given the President statutory authority not to spend appropriated funds.[1] That authority was elaborated and made more systematic with the Impoundment Control Act of 1974 (Title X of the Congressional Budget and Impoundment Control Act, or ICA), which provided a statutory framework for congressional review of impoundment actions by the President. The ICA permitted the President to delay the expenditure of funds (deferral authority) and to cancel funds (rescission authority). A rescission action by the President required approval by both the House and Senate within 45 days of continuous session or the funds had to be made available again for obligation.

Over the years, experiences under the ICA led some to question whether the 1974 framework unduly diminished the President's authority to rescind funds. Support grew in Congress to modify the arrangement and grant the President some form of expanded rescission authority.[2] In time, consideration of impoundment

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[1] For a review of presidential impoundment authority before 1974, see: Louis Fisher. *Presidential Spending Power*. Princeton, NJ: Princeton University Press, 1975. pp. 147-197.

[2] For a more detailed history of efforts to change the 1974 framework for rescissions by the President, see: *Item Veto and Expanded Impoundment Proposals*, by Virginia A. McMurtry. CRS Issue Brief 89148, regularly updated, 15 p.

reform became increasingly joined with that of an item veto for the President. The Constitution provides that the President may sign a bill into law or veto the measure in its entirety. However, constitutions in 43 states allow the governors to eliminate individual provisions or reduce amounts in legislation presented for their signature. Many initially favoring an item veto constitutional amendment at the federal level turned to expanded rescission authority for the President as a similar mechanism accessible by statutory change.

Changes in the Framework for Impoundment

Action on an expanded rescission measure commenced early in the 104th Congress. On February 6, 1995, the House passed H.R. 2, as amended, an enhanced rescission measure, providing that funds requested for rescission remain permanently canceled unless Congress acts to disapprove the request within a prescribed period. The following month, the Senate passed S. 4, as amended, to provide for the separate enrollment of items of appropriations and items of new direct spending and certain targeted tax benefits. The conference substitute, as reported on March 21, 1996, and subsequently enacted into law, reflected compromise between the two versions, incorporating the enhanced rescission approach of the House version and the broader coverage of the Senate measure.

The Line Item Veto Act of 1996 augments the rescission authority in the 1974 law by changing the burden. Instead of requiring the President to obtain the support of both Houses within a specified time period, the Line Item Veto Act puts the burden on Congress to disapprove presidential proposals within a 30-day period. Any bill or joint resolution of disapproval is subject to a presidential veto, requiring a two-thirds majority in each House for the override. Moreover, the Line Item Veto Act expands the subject matter of rescission authority. The President may cancel not only discretionary budget authority, but also any item of new direct spending (entitlement) and certain limited tax benefits.

Major Provisions

The Impoundment Control Act (Title X of the Congressional Budget and Impoundment Control Act of 1974) is amended by adding at the end a new part on "line item veto." Whenever the President signs a bill or joint resolution, the President may cancel in whole (1) any dollar amount of discretionary budget authority, (2) any item of new direct spending, and (3) certain limited tax benefits. In exercising this authority, the President must determine that such cancellation will (1) reduce the federal budget deficit, (2) not impair any essential government functions, and (3) not harm the national interest.

The President must notify Congress within five calendar days (Sundays excluded) after the enactment of the law. The special message to Congress shall specify the items to be canceled, the reasons for the cancellation, and other consequences and facts bearing upon the cancellation. The Act requires the President, in identifying cancellations, to consider legislative histories and information referenced in law.

The cancellations take effect upon receipt of the special message in the House and the Senate. "Cancellation" in this context means to prevent from having legal force; in other words, provisions canceled never become effective unless Congress reverses the action of the President by enacting a "disapproval bill." If a disapproval bill for the special message is enacted into law, all cancellations disapproved in that law become null and void and the items shall be effective as of the original date provided in the law to which the cancellation applied.

Each special message is referred to the House and Senate Budget Committees and other appropriate committees and a disapproval bill must be introduced no later than five days after the special message is received. Any House committee receiving a disapproval bill must report it without amendment within seven calendar days. If the committee fails to report, a motion is in order to discharge the committee from further consideration of the bill. During floor action, no amendment is in order except that any Member, if supported by 49 other Members, may offer an amendment striking one or more cancellations from the bill. Senate committees are also subject to the reporting deadline of seven days, or automatic discharge occurs, and the bill is placed directly on the Calendar. When the Senate receives a disapproval bill from the House, it is not referred to committee, but is placed on the Calendar. Senate amendments are in order when they strike or insert the number or numbers of a cancellation.

In the case of disagreement between the two Houses with respect to a disapproval bill, conferees shall be promptly appointed and a conference promptly convened. If Congress fails to complete action on the disapproval bill within the 30-day period allowed, the items designated by the President in the special message remain canceled.

The Line Item Veto Act contains a "lockbox" procedure to help insure that any savings from cancellations go toward deficit reduction. This is accomplished by binding the new procedures to existing requirements relating to discretionary spending limits and the pay-as-you-go requirements established in the Budget Enforcement Act of 1990 (104 Stat. 1388-573).

For appropriations, the Act requires the Office of Management and Budget to (1) estimate the reduction in federal budget authority and outlays that result from such a cancellation, including reductions to discretionary spending limits for each fiscal year; (2) estimate the deficit decrease that will result from such cancellation; and (3) reduce the federal spending caps by the amount of such estimated budgetary savings (after the expiration of the time period for congressional consideration of a disapproval bill, plus 10 days).

For new entitlement or other mandatory spending or limited tax benefits, the lockbox procedure is a little different. In general, the savings resulting from the cancellation of direct spending items or tax breaks would not be available to use as offsets elsewhere. Although OMB must provide an estimate of the deficit decrease resulting from such cancellations, the amount is not incorporated into the pay-as-you-go ledger.

The Director of the Congressional Budget Office is also required to estimate savings resulting from each cancellation and then submit an estimate of the reduction in budget authority and outlays resulting from a cancellation for each outyear to the House and Senate Budget Committees.

The Line Item Veto Act provides for expedited judicial review to test the constitutionality of the statute. Any Member of Congress or any individual adversely affected by this statute may bring an action in the U.S. District Court for the District of Columbia for declaratory judgment and injunctive relief on the ground that any provision of the statute violates the Constitution. Any order of the district court may be appealed directly to the Supreme Court. It is the duty of the district court and the Supreme Court to advance on the docket and expedite the disposition of a legal challenge.

The Line Item Veto Act takes effect on January 1, 1997. The statute expires at the end of calendar 2004 (pursuant to a sunset provision).

Discussion

It is a misnomer to call this presidential power an "item veto." When any bill or joint resolution passes Congress, the President is limited to the same procedure available to every Chief Executive since George Washington. The President must sign or veto the entire measure. The President has no authority to veto individual parts or items. The cancellation authority comes into force only *after* the President signs a bill or joint resolution. Unlike the procedure available to 43 state governors, it is not part of the bill-signing process.

As noted, this procedure is available only when the President signs a bill or joint resolution. It is not available when the President allows a bill or joint resolution to become law without the President's signature or when the President exercises the veto power.

It is not clear from the public law and the conference report what procedure is to be followed when Congress votes to override the President's veto of a bill or joint resolution of disapproval. Under ordinary circumstances, Congress can schedule an override vote at any time during the two years of a Congress. Given the purpose of the Line Item Veto Act, it would seem that Congress would schedule an override vote immediately following the President's veto in order to release funds for obligation by agencies.

The Line Item Veto Act defines the subject matter that can be canceled. The term "appropriation law" includes any general or special appropriation statute or any statute making supplemental, deficiency, or continuing appropriations. The term "direct spending" means budget authority (other than an appropriation law), entitlement authority, and the food stamp program. The Act defines a "limited tax benefit" as any revenue-losing provision that provides a federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries; and any federal tax provision change that provides temporary or permanent transitional relief for ten or fewer beneficiaries.

However, several exceptions designated in the law have the effect of removing many targeted tax breaks from the group of "limited tax benefits" subject to the new cancellation authority. The Act directs the Joint Committee on Taxation (JCT) to review any revenue or reconciliation bill or joint resolution that includes any amendment to the Internal Revenue Code (IRC) that is being prepared by a conference committee. The JCT must identify any provision that constitutes a "limited tax benefit" as defined in the Line Item Veto Act and provide the conference committee with a listing of such provisions or formally certify that the measure contains none. The information provided by the JCT may be included as a separate section of a bill or joint resolution. When the JCT list is included in the bill, the President's cancellation authority is confined to those limited tax benefits. If a revenue or reconciliation bill does not list the limited tax benefits, the President may use the authority granted in the statute to cancel any limited tax benefit that meets the statutory definition. Judicial review of the identification of a limited tax benefit in a conference report is prohibited.

The President is not limited to dollar amounts identified in a bill or joint resolution. The term "dollar amount of discretionary budget authority" means (1) the amount specified in an appropriation law, (2) the entire dollar amount required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included, (3) any dollar amount represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompany such law, (4) any dollar amount in a law (other than an appropriation law) that mandates the expenditure of funds, and (5) certain procurement items, either in appropriations or in authorizations that mandate the expenditure of funds. Thus, the President can cancel items that are located not only in law but in nonstatutory sources such as committee reports.

The scope of the President's discretion, therefore, depends on the level of detail that Congress chooses to place in committee reports. Because of the potential power in the item-veto statute, these reports may be written to limit or expand presidential choices. Perhaps an item that the President wants will be combined with one he opposes. Details (tables, charts, etc.) might be removed from the report and placed on plain paper, with the understanding that agencies will comply with this nonstatutory control at the risk of sanctions being imposed in subsequent legislation. Other types of legislative strategies could be employed in drafting committee reports and public laws, all done as a conscious effort to direct presidential action.

The statute limits the President to canceling "dollar amounts," not the restrictions, conditions, or limitations that Congress places in an appropriation law. In exercising their cancellation authority, Presidents cannot convert a conditional appropriation to an unconditional appropriation. The cancellation authority applies only to the dollar amount.

On the same day that President Clinton signed the Line Item Veto Act, the National Treasury Employees Union filed a complaint for declaratory and injunctive relief, challenging the constitutionality of the new law in federal district court. The union offered three legal challenges to the statute: (1) it violates the Presentation Clause of the Constitution by establishing a procedure at odds with the carefully structured veto requirements of that provision; (2) it represents an abdication of legislative control over the fisc and unconstitutionally shifts lawmaking power to the executive branch; and (3) it violates Article I, Section 5 (granting each chamber the right to determine its own procedural rules). On July 3, 1996, a federal judge dismissed the case, ruling that the union's claims were "too speculative and remote" to confer standing on the plaintiffs. NTEU v. United States, 929 F.Supp. 484, 488 (D.D.C. 1996).

Other legal challenges are expected in 1997. Some of the issues likely to be raised in court include whether (1) the statute unconstitutionally delegates legislative power to the President; (2) it surrenders a legislative power (power of the purse) that is central and fundamental to congressional prerogatives; (3) it violates the Presentation Clause; (4) it violates the constitutional right of each chamber to determine its own procedural rules; (5) presidential cancellations of judicial items threaten the independence of the courts; (6) the act allows the President to "make" and "unmake" law without adhering to the full legislative process; and (7) the procedure, by allowing the President access to provisions in committee reports, constitutes a type of legislative veto struck down by the Supreme Court in INS v. *Chadha* (1983). In other words, can Congress by means of something short of a public law (a committee report) exercise control over the executive branch?

Sources for Legislative History in the 104th Congress

Floor debate on the House and Senate bills and then the conference compromise is found in *Congressional Record*, Vol. 141: H1078-1142 (February 2, 1995), H1168-1264 (February 3, 1995), S4187-96 (March 20, 1995), S4210-60 (March 21, 1995), S4301-58 (March 22, 1995), and S4409-86 (March 23, 1995); and Vol. 142: S2929-95 (March 27, 1996), S3114-23, S3125 (March 28, 1996, and H2972-3028 (March 28, 1996). The conference report to accompany S. 4 was dated March 21, 1996. There were six other committee reports: one each from the House Committees on Rules and on Government Reform and Oversight; and two each from the Senate Budget and Governmental Affairs Committees.[3] The House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs held a joint hearing on January 12, 1995, and Senate Governmental Affairs held a separate hearing on February 23, 1995, as did the Senate Budget Committee, on January 18, 1995.[4]

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[3] See: Conference Committees. *Line Item Veto Act; Conference Report To Accompany S. 4*. House Report No. 104-491. 1996.

House. Committee on Government Reform and Oversight. *Line Item Veto Act; Report Together with Minority and Additional Views to Accompany H.R. 2*. House Report 104-11, part 2. 1995.

House. Committee on Rules. *Line Item Veto Act; Report Together with Additional and Dissenting Views to Accompany H.R. 2*. House Report 104-11, part 1. 1995.

Senate. Committee on Budget. *Legislative Line Item Veto Act of 1995; Report Together with Additional and Minority Views to Accompany S. 4*. Senate Report 104-9; and *Legislative Line Item Veto Act; Report Together with Additional and Minority Views to Accompany S. 14*. Senate Report 104-10. 1995.

Senate. Committee on Governmental Affairs. *Legislative Line Item Veto Act of 1995; Report Together with Additional Views to Accompany S. 4*. Senate Report 104-13; and *Legislative Line Item Veto Act; Report Together with Additional Views to Accompany S. 14*. Senate Report 104-14. 1995.

[4] See: Senate Committee on Governmental Affairs. *S. 4 and S. 14, Line Item Veto*. Senate Hearing 104-391. Feb. 23, 1995; House Government Reform and Oversight Committee. *Line Item Veto*. Joint hearing with Senate Committee on Governmental Affairs. Jan. 12, 1995; and Senate Budget Committee. Hearing on Line-Item Rescission Authority, Jan. 18, 1995. Printed in *Concurrent Resolution on the Budget for Fiscal Year 1996*. S. Hrg. 104-162, vol.II.

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**The Line Item Veto Act:
Procedural Issues**

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Summary

At various times, Congress has given the President statutory authority not to spend appropriated funds. That authority was elaborated and made more systematic with the Impoundment Control Act of 1974, which permitted the President to delay the expenditure of funds (deferral authority) and to cancel funds (rescission authority). To rescind funds, the President needed the support of both houses within 45 days.

The Line Item Veto Act of 1996 (Public Law 104-130, 110 Stat. 1200) supplements the rescission authority. Instead of requiring the President to obtain the support of both houses within a specified time period, the Line Item Veto Act puts the burden on Congress to disapprove presidential proposals, acting under expedited procedures, within a 30-day period. Any bill or joint resolution of disapproval is subject to a presidential veto, ultimately requiring a two-thirds majority in each chamber for override. These procedures delegate important new powers to the President, affect the balance between the legislative and executive branches, and change the budget process.

Presidential Action

The Impoundment Control Act (ICA, Title X of the Congressional Budget and Impoundment Control Act) is amended by adding at the end a new part on "line item veto." These new sections become effective on January 1, 1997, and terminate on December 31, 2004 (due to inclusion of a sunset provision). The original provisions for rescissions under the ICA (2 U.S.C. 681ff) remain in effect.

New Authority. The Line Item Veto Act provides expanded rescission authority for the President. After signing a bill or joint resolution, the President may cancel in whole (1) any dollar amount of discretionary budget authority, (2) any item of new direct spending, and (3) certain limited tax benefits. This authority is available only when the President *signs* a bill or joint resolution. It is not available when the President allows a bill or joint resolution to become law without the

President's signature or when the President exercises the veto power. In exercising authority under the Line Item Veto Act, the President must determine that such cancellation will (1) reduce the federal budget deficit, (2) not impair any essential government functions, and (3) not harm the national interest. The act requires the President, in identifying cancellations, to consider legislative histories and sources of information referenced in the law.

Special Messages. The President must notify Congress within five calendar days (Sundays excluded) after the enactment of the law from which the cancellations come. For each law from which the President has canceled items, the President shall transmit a single special message to Congress. Each of these special messages from the President are to be referred to the House and Senate Budget Committees and other appropriate committees. Such special message to Congress shall specify the items to be canceled, the reasons for the cancellation, and other consequences and facts bearing upon the cancellation. Several of these requirements are similar to those in section 1012 of the Impoundment Control Act of 1974. The new law also requires that, where applicable, the special message identify the specific states and congressional districts affected by the cancellation, and the total number of cancellations imposed during the current session on these states and districts. Each special message must be printed in the first issue of the *Federal Register* published after transmittal; the special messages are also printed as House documents.

Impact. The cancellations take effect upon receipt of the special message in the House and the Senate. "Cancellation" in this context means to prevent from having legal force; in other words, provisions canceled never become effective unless Congress reverses the action of the President by enacting a "disapproval bill." If a disapproval bill for the special message is enacted into law, all cancellations disapproved in that law become null and void and the items shall be effective as of the original date provided in the law to which the cancellation applied.

Coverage of the Item Veto Authority

The Line Item Veto Act not only reverses the burden of action for rescissions, but also expands the scope of the President's authority to include three types of cancellations. In addition to authorizing the President to cancel in whole any dollar amount of discretionary budget authority (appropriations), the new authority also covers any item of new direct spending (entitlement), or any limited tax benefit displaying certain characteristics.

What Can Be Canceled. The act defines the subject matter that can be canceled. The term "appropriation law" includes any general or special appropriation statute or any statute making supplemental, deficiency, or continuing appropriations. The term "dollar amount of discretionary budget authority" does not include (1) direct spending (existing entitlements), (2) budget authority in an appropriation law that funds direct spending provided for in other law (some entitlements are funded in regular appropriations bills), (3) any existing budget authority rescinded or canceled in an appropriation law, or (4) any restriction, condition, or limitation in an appropriation law or the accompanying statement of managers or committee reports on the expenditure of budget authority. The statute limits the President to canceling *dollar amounts*, not the restrictions, conditions, or limitations that Congress places in an appropriation law. In exercising their cancellation authority, Presidents cannot convert a conditional appropriation to an unconditional appropriation. The cancellation authority applies only to the dollar amount.

The term "direct spending" means budget authority (other than an appropriation law), entitlement authority, and the food stamp program. The term "item of new direct spending" means any specific provision of law that is estimated to result in an increase in budget authority or outlays for direct spending relative to the most recent levels calculated by the Office of Management and Budget (OMB) pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985, as revised.

Canceling Items in Committee Reports. The President is not limited to dollar amounts identified in a bill or joint resolution. The term "dollar amount of discretionary budget authority" means (1) the amount specified in an appropriation law; (2) the entire dollar amount required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included; (3) any dollar amount represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompany such law; (4) any dollar amount in a law (other than an appropriation law) that mandates the expenditure of funds; and (5) certain procurement items, whether in appropriations or in authorizations, that mandate the expenditure of funds. Thus, the President can cancel items that are located not only in law, but in nonstatutory sources such as committee reports.

The scope of the President's discretion, therefore, depends on the level of detail that Congress chooses to place in committee reports. Because of the potential power in the item veto statute, these reports may be written to limit or expand presidential choices, for example, combining an item that the President with one he opposes. Details (tables, charts, etc.) might be removed from a report and placed on plain paper, with the understanding that agencies would comply with this nonstatutory control at the risk of sanctions being imposed in subsequent legislation. Other types of legislative strategies could be employed in drafting committee reports and public laws, done as a conscious effort to direct presidential action.

Limited Tax Benefits. The act defines a "limited tax benefit" as any revenue-losing provision that provides a federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries; and any federal tax provision change that provides temporary or permanent transitional relief for 10 or fewer beneficiaries. The definition of limited tax benefit does not apply in a number of cases spelled out by the Line Item Veto Act (110 Stat. 1209).

The statute directs the Joint Committee on Taxation (JCT) to review any revenue or reconciliation bill or joint resolution that includes any amendment to the Internal Revenue Code (IRC) that is being prepared by a conference committee. The JCT must identify any provision that constitutes a "limited tax benefit" as defined in the Line Item Veto Act and provide the conference committee with a listing of such provisions or formally certify that the measure contains none. The information provided by the JCT may be included as a separate section of a bill or joint resolution. When the JCT list is included in the bill, the President's cancellation authority is confined to those limited tax benefits. If a revenue or reconciliation bill does not list the limited tax benefits, the President may use the authority granted in the statute to cancel any limited tax benefit that meets the definition in section 1026. There shall be no judicial review of the congressional identification of a limited tax benefit in a conference report.

The statute does not appear to give the President any authority to modify or rewrite limited tax benefit provisions. Such provisions must be canceled in whole. As explained by the Joint Committee on Taxation (JCT) in its draft report of November 12, 1996, the committee staff "will not consider an item a 'provision' unless it consists of language that can be separately stricken without otherwise having substantive effect." According to the JCT report, the President could not strike language if the remaining language would require modification in order to be comprehensible.

The President's opportunity to cancel limited tax benefits can be broadened or narrowed by legislative drafting techniques. It was pointed out during debate that "any tax lawyer worth his salt can find a few extra people to qualify for the targeted tax benefits, thereby bringing the number of beneficiaries above 100 and out of range of rescission authority." (142 *Congressional Record* S2961, daily ed. March 27, 1996; remarks of Senator Byrd). Because of questions about how the statutory language will be interpreted, concerning limited tax benefits, the JCT is preparing an analysis of the appropriate procedures to be followed.

"Locking In" Deficit Reduction

The Line Item Veto Act contains a "lockbox" procedure to help insure that any savings from cancellations go toward deficit reduction. This is accomplished by binding the new procedures to existing requirements relating to discretionary spending limits and the pay-as-you-go requirements established in the Budget Enforcement Act of 1990.

For appropriations, the act requires OMB to (1) estimate the reduction in federal budget authority and outlays that result from such a cancellation, including reductions to discretionary spending limits for each fiscal year; (2) estimate the deficit decrease that will result from such cancellation; and (3) reduce the federal spending caps by the amount of such estimated budgetary savings (after the expiration of the time period for congressional consideration of a disapproval bill, plus 10 days).

For new entitlement or other mandatory spending or limited tax benefits, the lockbox procedure is slightly different. In general, the savings resulting from the cancellation of direct spending items or tax breaks would not be available to use as offsets elsewhere. Although OMB must provide an estimate of the deficit decrease resulting from such cancellations, the amount is not incorporated into the pay-as-you-go ledger.

The Director of the Congressional Budget Office is also required to estimate savings resulting from each cancellation and then submit an estimate of the reduction in budget authority and outlays resulting from a cancellation for each outyear to the House and Senate Budget Committees.

Expedited Procedures

Congress has 30 calendar days of session (only days when both the House and Senate are in session count), after receipt of a special message, to consider a disapproval bill under expedited procedures. A disapproval bill (or joint resolution) must be introduced no later than five days after the special message is received. In the Senate, even after the 30-day review period, a disapproval bill which began consideration under the expedited procedures may continue under these procedures, whereas in the House the expedited procedures no longer will apply after the expiration of the 30-day period. Generally, only one bill for each special message may be acted upon using the expedited floor procedures in the House and Senate. However, it may be in order in the House to consider a Senate bill covering a special message, even if the House previously has considered a similar disapproval bill, provided the House has not already rejected a disapproval bill for the same special message.

If Congress adjourned sine die at the end of a Congress prior to the expiration of the 30-day period and a disapproval bill was then pending in either chamber or a committee thereof (including conference committee), or was pending before the President, a disapproval bill for the same special message may be introduced within the first five calendar days of session of the next Congress and the 30-day period begins on the day the disapproval bill is introduced.

Committee Action. All disapproval bills are to be referred to the appropriate committee or committees in the House and Senate. Any disapproval bill introduced in the House must disapprove all the cancellations in the special message to which it relates. Any House committee receiving a disapproval bill must report it without amendment, and with or without recommendation, not later than the seventh calendar day after introduction. If the committee fails to report, a motion is in order to discharge the committee from further consideration of the bill. This motion to discharge is highly privileged, and debate on it is limited to one hour.

In the Senate, a disapproval bill may contain any number of the cancellations included in a single special message from the President. Unlike the House, a Senate committee may report a disapproval bill with amendments that can delete cancellations or insert other cancellations contained in the President's special message. However, Senate committees are also subject to the reporting deadline of seven days or automatic discharge occurs, with the bill being placed directly on the Calendar. When the Senate receives a disapproval bill from the House, it is not referred to committee, but is placed on the Calendar.

House Floor Action. Various procedural restrictions apply to expedited action. General debate on a disapproval bill is limited to one hour. No amendment is in order during floor consideration, except that any Member, if supported by 49 other Members, may offer an amendment striking one or more cancellations from the bill. Excluding time for recorded votes and quorum calls, the time for consideration of amendments shall not exceed one hour. The House may consider a Senate-originated bill unless it has already rejected a disapproval bill for the same special message.

Senate Floor Action. Only one disapproval bill relating to a given special message is to be considered under expedited procedures in the Senate, but the Senate may choose a Senate-originated bill over a House-passed one. The act stipulates a basic 10-hour overall limit for Senate floor consideration of a disapproval bill. A single motion to extend debate for no more than five additional hours is in order. Senate consideration of a message from the House on a disapproval bill is limited to four hours. Senate amendments, whether offered in committee or on the floor, must either strike or insert a cancellation that is included in the President's special message. A point of order would lie against any amendment offered in the Senate relating to any other matters, unless waived by a three-fifths vote. Debate on any Senate floor amendment is limited to one hour.

Conference Action. In the case of disagreement between the two houses with respect to a disapproval bill, conferees are to be promptly appointed and a conference promptly convened. Any conference report on a disapproval bill must include all cancellations in agreement and may include any or all of the cancellations in disagreement, but may not add any cancellations not committed to the conference. Debate in the House on the conference report and any amendments in disagreement is limited to one hour for each. Consideration of the conference report and any amendments in disagreement in the Senate is limited to four hours. If Congress fails to complete action on the disapproval bill within the 30-day period allowed, the items designated by the President in the special message remain canceled. Ten days after that period the lock-box mechanism goes into effect.

Override Vote. The House-amended version of S. 4 (the line item veto bill ultimately signed into law), required any veto override vote for a disapproval measure to occur within five days. However, the public law and the conference report are silent regarding the procedure to be followed when Congress votes to override the President's veto of a bill or joint resolution of disapproval. Under ordinary circumstances, Congress can schedule an override vote at any time during the two years of a Congress. Given the purpose of the Line Item Veto Act, it would seem that Congress would schedule an override vote immediately following the President's veto in order to release funds for obligation by agencies.

Judicial Review

The Line Item Veto Act provides for expedited judicial review to test the constitutionality of the statute. Any Member of Congress or any individual adversely affected by this statute may bring an action in the U.S. District Court for the District of Columbia for declaratory judgment and injunctive relief on the ground that any provision of the statute violates the Constitution. Any order of the district court may be appealed directly to the Supreme Court. It is the duty of the district court and the Supreme Court to advance on the docket and expedite the disposition of a legal challenge. A case brought by the National Treasury Employees Union, challenging the constitutionality of the statute, was dismissed on July 3, 1996, by a federal judge because the union's claims were "too speculative and remote" to confer standing on the plaintiffs. *NTEU v. United States*, 929 F.Supp. 484, 488 (D.D.C. 1996). Other legal challenges are expected in 1997.

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CRS Report for Congress

Deficit-Reduction Lockbox Proposals: Summary and Legislative History

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Deficit-Reduction Lockbox Proposals: Summary and Legislative History

Summary

Deficit-reduction *lockbox* proposals refer generally to procedures under which general spending levels used for budget enforcement are reduced to reflect cuts as they are made in individual appropriations and other spending bills. The various lockbox proposals range from simple to complex, involving modifications to Appropriations Committee spending allocations and suballocations, discretionary spending limits, or a combination of the two. The common aim of these proposals is to ensure that any deficit reduction achieved in the legislative process, beyond that already assumed in the budget resolution, is preserved and that the resources "cut" are not used instead for other purposes that negate the deficit reduction.

Advocates of lockbox proposals believe that the House and Senate should have the opportunity to make additional cuts in spending levels beyond those assumed in the budget resolution and that such cuts should be guaranteed to reduce the deficit. By failing to ensure that spending cuts directly result in reduction of the deficit, lockbox advocates argue that existing procedures thwart majority will, undermine the already difficult task of developing coalitions to eliminate unnecessary spending, and breed public cynicism regarding the efficacy of legislative actions.

Opponents of lockbox legislation argue that existing enforcement procedures are sufficient to ensure that appropriations spending is constrained in line with budget resolution policies, particularly the goal of a balanced budget in FY2002 and beyond. Further, lockbox opponents claim that the procedures may pose an unnecessary complication of the annual appropriations process, which already is beset with many delays and attendant problems, such as an excessive reliance on continuing resolutions and the occurrence of government shutdowns and employee furloughs.

House and Senate consideration of lockbox proposals began in the 103rd Congress and has continued through the present. In the 103rd Congress, lockbox legislation was introduced in the House and Senate and was considered in hearings by a House subcommittee. In the 104th Congress, several different lockbox proposals were considered on the House and Senate floor and two were enacted into law (as part of a supplemental appropriations act for FY1995 and the Line Item Veto Act). So far during the 105th Congress, one lockbox proposal has been passed by the House (as an amendment to the Interior Appropriations Act for FY1997).

The Deficit Reduction Lockbox Act of 1997, H.R. 126, a leading lockbox proposal, would amend the 1974 Congressional Budget Act to establish a lockbox mechanism for discretionary spending. Its features are typical of proposals to establish an ongoing, broad-based lockbox mechanism. It relies on existing procedures under the budget resolution process and the sequester process for enforcement. The main features of the lockbox mechanism proposed by H.R. 126 are a "deficit reduction lockbox ledger," maintained by the director of the Congressional Budget Office, and, as cuts are made, the revision of allocations and suballocations of appropriations spending under the budget resolution and discretionary spending limits used in the sequestration process.

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Deficit-Reduction Lockbox Proposals: Summary and Legislative History

Background

Each year, the House and Senate make decisions regarding the appropriate levels of discretionary and mandatory spending. Discretionary spending, which largely funds the routine, ongoing operations of federal agencies, is provided in annual appropriations acts under the jurisdiction of the House and Senate Appropriations Committees. Mandatory spending, which principally funds entitlement programs such as Medicare, federal employee retirement, and unemployment compensation, generally stems from permanent, substantive law under the jurisdiction of the legislative committees. Most mandatory spending is made available automatically each year, but the House and Senate periodically enact legislation to make changes in such spending levels.

Existing Budget Enforcement Procedures

Congressional decisions about appropriate spending levels are enforced under two different sets of enforcement procedures. The Congressional Budget Act of 1974 (P.L. 93-344, as amended) provides for the annual adoption of a budget resolution, which serves as a blueprint for House and Senate action on budgetary legislation. After Congress has settled on its overall budget policies by adopting a budget resolution, it implements them by action on individual spending and revenue measures.

Aggregate spending amounts set forth in the budget resolution are allocated to the various House and Senate committees with jurisdiction over annual appropriations and other spending. The Appropriations Committees are required to suballocate their spending by subcommittee; each of the 13 subcommittees reports one of the regular appropriations bills. A point of order may be raised under the 1974 Congressional Budget Act against the consideration of any measure that would cause spending to exceed a subcommittee's suballocation.

The Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101-508), as amended most recently by the Budget Enforcement Act of 1997 (Title X of P.L. 105-33), establishes a second set of enforcement procedures, known as sequestration. Under the BEA of 1990, sequestration is used to enforce discretionary spending limits and a "pay-as-you-go" (PAYGO) requirement. Sequestration involves automatic, across-the-board reductions in spending if certain budgetary goals are not met. A sequester involving the discretionary spending limits, the PAYGO requirement, or both, generally would occur within 15 days after the end of a congressional session.

In the case of discretionary spending, the total amount of annual appropriations enacted for a fiscal year may not exceed the applicable limit; the yearly limits are adjusted periodically by the director of the Office of Management and Budget (OMB) as prescribed by law. The PAYGO process requires that legislation enacted during a session affecting mandatory spending or revenues not result in a net increase in the deficit for a fiscal year. The current and future-year effects of PAYGO legislation are maintained on a "PAYGO scorecard" and are taken into account when it is determined whether a PAYGO sequester is required.

Arguments For and Against Lockbox Procedures

Deficit-reduction *lockbox* proposals refer to procedures under which general spending levels used for budget enforcement are reduced to reflect cuts as they are made in individual appropriations and other spending bills. The various lockbox proposals range from fairly simple to extremely complex, involving modifications to Appropriations Committee spending allocations and suballocations, the discretionary spending limits, or a combination of the two. (In some cases, lockbox proposals also require monitoring of the balances on the PAYGO scorecard.) The common aim of these proposals is to ensure that any deficit reduction achieved in the legislative process, beyond that already assumed in the budget resolution, is preserved, or "locked in," and that the resources "cut" are not used instead for other purposes that negate the deficit reduction.

Advocates of lockbox proposals believe that the House and Senate should have the opportunity to make additional cuts in spending levels beyond those assumed in the budget resolution and that such cuts should be used to reduce the deficit.[1] They express concern that successful efforts to eliminate funding for specific programs in spending measures during initial floor consideration may not be maintained in conference. Even maintaining program terminations in conference, they assert, does not necessarily mean that the deficit is reduced by the corresponding amount because the "savings" often are reallocated elsewhere as additional spending.

By failing to ensure that spending cuts directly result in reduction of the deficit, lockbox advocates argue that existing procedures thwart majority will, undermine the already difficult task of developing coalitions to eliminate unnecessary or low-priority spending, and breed public cynicism regarding the efficacy of legislative actions.

Opponents of lockbox legislation argue that existing enforcement procedures are sufficient to ensure that appropriations spending is constrained in line with budget resolution policies, particularly the goal of a balanced budget in FY2002 and beyond. Flexibility should be maintained to reorder priorities among competing programs so long as the overall budgetary restraints are met. If spending for a particular program is cut during consideration of a spending bill, they assert, the House and Senate

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[1] Arguments for and against lockbox proposals are presented in a joint hearing, *Lockbox Deficit Reduction Proposals*, held by subcommittees of the House Government Reform and Oversight Committee and the House Rules Committee on July 11, 1995 (104th Cong., first session).

should be able to reallocate those funds to other deserving programs that would have been funded at higher levels had the overall restraints allowed.

Further, lockbox opponents claim that the procedures may pose an unnecessary complication of the annual appropriations process, which already is beset with many delays. A lockbox procedure may contribute to deadlock in the annual appropriations process, resulting in the tardy enactment of the regular appropriations bills, excessive reliance on continuing resolutions, and the attendant problems of government shutdowns and employee furloughs.

Action on Lockbox Proposals: 103rd-105th Congresses

House and Senate consideration of lockbox proposals began in the 103rd Congress and has continued through the present. In the 103rd Congress, lockbox legislation was introduced in the House and Senate and was considered in hearings by a House subcommittee. In the 104th Congress, several different lockbox proposals were considered on the House and Senate floor and two were enacted into law. So far during the 105th Congress, one lockbox proposal has been passed by the House. Action on particular lockbox measures is discussed below for each Congress. **Figure 1** summarizes House and Senate action on lockbox measures through September 1, 1997.

Figure 1. Congressional Action on Lockbox Proposals: 103rd-105th Congresses

Enacted into Law

- **P.L. 104-19, Emergency Supplemental Appropriations and Rescissions Act for FY1995, Sections 2003 and 2004 (109 *Stat.* 247).**
- **P.L. 104-130, Line Item Veto Act, Section 1024 (110 *Stat.* 1202-1203).**

Passed by the House Only

- **H.R. 1162 (104th Congress), Deficit Reduction Lockbox Act of 1995 (September 13, 1995).**
- **H.R. 2127 (104th Congress), Labor-HHS-Education Appropriations Act for FY1996, Title VII (August 4, 1995).**
- **H.R. 3019 (104th Congress), Omnibus Consolidated Rescissions and Appropriations Act for FY1996 (March 7, 1996).**
- **H.R. 2107 (105th Congress), Department of Interior Appropriations Act for FY1998, Title IV (July 15, 1997).**

103rd Congress

In the 103rd Congress, concern about appropriations savings came to a head during consideration in 1993 of some of the regular appropriations acts for FY1994. In particular, some House Members were concerned that their successful effort to reduce funding for the Advanced Solid Rocket Motor (ASRM) program during initial floor action on the VA-HUD Appropriations Act for FY1994 (H.R. 2491) seemed to be thwarted in conference.[2] On October 6, 1993, House opponents of the ASRM program forced rejection of the first rule providing for consideration of the conference report (H.Res. 268), thereby winning important concessions but, in the view of some, not complete victory.

The final version of the conference report, which was agreed to overwhelmingly by the House on October 19, reduced termination costs for the ASRM program from $157 million to $100 million, but the $57 million in ASRM savings was used to provide more funds for research on the national aerospace plane and programs in the National Science Foundation and the Environmental Protection Agency.[3] Thus, the ASRM opponents in the House had succeeded in reducing spending for the program but not in preventing the savings from being used for other purposes.

During this period, the Senate also encountered some contentious debate regarding the proposed termination of a program. During consideration of the same bill, Senator Bumpers offered an amendment (no. 905) to reduce funding for the Space Station in a manner that provided for its eventual elimination. As part of his amendment, Senator Bumpers also proposed to reduce the discretionary spending limits for FY1994-1998 and the allocations to the House and Senate Appropriations Committees for FY1994 by the amount of savings reflected in his amendment. Because it included changes in procedural requirements under the jurisdiction of the Senate Budget Committee, the Bumpers amendment potentially was in violation of Section 306 of the 1974 Congressional Budget Act (and a waiver would have required the affirmative vote of three-fifths of the Senators). The jurisdictional issue was avoided as the Senate tabled the Bumpers amendment by a vote of 59-40.[4]

During the fall of 1993, several different lockbox proposals were introduced to deal with the problems that the House and Senate had experienced during debates on the VA-HUD Appropriations Act and other annual appropriations acts for FY1994. In the House, Representative Crapo (with dozens of co-sponsors) introduced H.R.

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[2] See House consideration of the Klug en bloc amendments in the *Congressional Record* of June 28, 1993, at pages H4158-4161; Senate consideration of the Bumpers amendment no. 910 in the *Congressional Record* of September 21 and 22, 1993, at pages S12114-12127 and S12166-12172, respectively; House rejection of the rule on the conference report in the *Congressional Record* of October 6, 1993, at pages H7462-7468; and House agreement to the conference report in the *Congressional Record* of October 19, 1993, at pages H8126-8151.

[3] See the remarks of Representative Sensenbrenner in the *Congressional Record* of October 19, 1993, at pages H8134-8135.

[4] See discussion in the *Congressional Record* of September 20 and 21, 1993, at pages S 12004-12027 and S 12071-12101, respectively.

3145 on September 28, which was referred to as the "Make Our Cuts Count" proposal. In the Senate, Senators Coverdell, Kempthorne, and Hutchison introduced S. 1514 (the Guaranteed Deficit Reduction Act of 1993) on October 4, and Senators Shelby and Craig introduced S. 1594 (the Deficit Reduction Assurance Act of 1993) on October 27.[5]

Throughout 1994, additional lockbox proposals were introduced. Some represented refinements of the proposals introduced in 1993, and in some cases lockbox proposals were incorporated into broader budget process reform proposals. The lockbox concept was raised during at least one committee hearing in 1994. On February 24, the Subcommittee on the Legislative Process of the House Rules Committee received testimony from Representative Crapo, among others.[6]

In July and August 1994, the House considered a series of budget process reform measures under a plan developed by the leadership. It passed measures dealing with expedited rescission procedures, caps on mandatory spending, the treatment of emergency spending, and baseline budgeting procedures.

Some expected the House to consider a measure dealing with the lockbox mechanism following its return from the August recess. A member of the Democratic leadership who had spearheaded the development of the four reform proposals that the House considered, Representative Spratt, developed his own lockbox proposal (H.R. 5282, no short title, introduced on October 7, 1994), but the House did not consider the issue before final adjournment.

Two other leading proposals in the House were H.R 4057 (the Deficit Reduction Lock Box Act of 1994), introduced by Representative Schumer and others on March 16, and H.R. 4434 (the Common Cents Budget Reform Act of 1994), introduced by Representative Stenholm and others on May 17 (Title II dealt with the lockbox issue).

In 1994, other proposals introduced in the Senate included S. 1940 (the Spending Reduction and Budget Control Act of 1994), introduced by Senator Bradley on March 16; S. 2202 (no short title), introduced by Senator Gramm on June 16; and S. 2458 (the Common Cents Budget Reform Act of 1994), introduced by Senator Craig and others on September 23. S. 2458 was patterned closely after H.R. 4434, but included some modifications. Title II of S. 2458 dealt with the lockbox issue and was referred to as the Guaranteed Spending Cut Act of 1994.

The 103rd Congress concluded without any committee markup or floor consideration of a lockbox proposal.

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[5] This listing of legislation containing lockbox proposals is not comprehensive.

[6] See the hearing of the Subcommittee on the Legislative Process, entitled *Legislative Reorganization Act of 1994 (H.R. 3801)*, pages 35-46

104th Congress

In the 104th Congress, several different types of lockbox proposals were acted on by the House and Senate, either during consideration of annual appropriations measures or of proposals to reform the budget process. Two of these proposals were enacted into law; three others were passed by the House but were not acted on by the Senate.

Annual Appropriations Measures. Lockbox proposals were offered to a supplemental appropriations bill for FY1995 and to two regular appropriations bills for FY1996. The lockbox proposal included in the supplemental appropriations bill was enacted into law.

Section 2003 of H.R. 1944, the Emergency Supplemental Appropriations and Rescissions Act for FY1995 (P.L. 104-19, July 27, 1995; 109 *Stat.* 247), required the OMB director to make downward adjustments in the applicable discretionary spending limits by the aggregate amount of savings resulting from the act (other than emergency appropriations).[7] A related provision, Section 2004, prohibited any savings from the act from being taken into account for purposes of the PAYGO scorecard under the BEA of 1990, effectively preventing these savings from being used to "pay for," or offset, a tax cut.

On August 4, 1995, the House passed a lockbox proposal as part of H.R. 2127, the Labor-HHS-Education Appropriations Act for FY1996 (see Title VII). The proposal, offered by Representative Crapo as an amendment on August 2, was agreed to by a vote of 373-52. Representative Crapo based his amendment on a measure he had introduced several months earlier, the Deficit Reduction Lockbox Act of 1995 (see discussion below). The Senate Appropriations Committee reported H.R. 2127 on September 15 (S.Rept. 104-145) without the lockbox title. The Senate did not act on H.R. 2127; instead, appropriations for these agencies were considered as part of an omnibus appropriations measure, H.R. 3019.

The Omnibus Consolidated Rescissions and Appropriations Act for FY1996, H.R. 3019, provided full-year funding for five of the regular appropriations bills, including H.R. 2127. The House-passed version of H.R. 3019 included a lockbox procedure similar to the one the House added to H.R. 2127. The proposal originated as an amendment offered by Representative Crapo. The House agreed to the amendment by a vote of 329-80 on March 7, 1996. During Senate consideration of H.R. 3019 on March 14, Senator Grams offered an amendment containing a lockbox procedure similar to the one proposed by Representative Crapo. However, the amendment fell on a point of order after a motion to waive section 306 of the 1974

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[7] Pursuant to this requirement, the OMB director reduced the limit on discretionary budget authority for FY1995 by $15 billion; smaller adjustments in other budget authority and outlay limits also were made. See Table 12-1 in the Sequestration Preview Report, *Budget of the United States Government, Fiscal Year 1997. Analytical Perspectives*, March 1996, page 202.

Congressional Budget Act failed to receive the required three-fifths vote.[8] Subsequently, the conference agreement deleted this provision.

Budget Process Reform Measures. A temporary lockbox mechanism was enacted into law as part of a measure providing the President with "line-item veto" authority. In addition, the House passed a free-standing lockbox measure.

On April 9, 1996, President Clinton signed the Line Item Veto Act into law as P.L. 104-130 (110 *Stat.* 1200-1212). The act, which was incorporated into the Congressional Budget and Impoundment Control Act of 1974 as a new Part C of Title X, expanded the President's authority to cancel certain budgetary elements of legislation passed by Congress, including dollar amounts of discretionary spending, items of direct spending, and limited tax benefits.

Both chambers had included lockbox features in the initial item veto legislation. H.R. 2, the Line Item Veto Act, passed the House on February 6, 1995, by a vote of 294-134. Under the act, the President could propose in a special message to Congress the rescission of discretionary appropriations or the repeal of targeted tax benefits. His proposals would become law unless overturned by Congress within a certain period. Section 2(b) of the act authorized the President to propose reductions in the appropriate discretionary spending limits by amounts that did not exceed his total rescission proposals.

S. 4, the Separate Enrollment and Line Item Veto Act of 1995, passed the Senate on March 23, 1995, by a vote of 69-29. The act provided for the separate enrollment of individual items in annual appropriations acts, and new direct spending provisions and new targeted tax benefits in authorization acts, prior to being sent to the President. Each separately enrolled item would be constituted as an individual measure that the President could approve or veto under existing authority. Section 8 of the act required the President, in instances in which an annual appropriations act or an authorization act had been vetoed (and the veto had not been overridden), to reduce the discretionary spending limits or the PAYGO balance as appropriate. The appropriate amount of reduction would be the amount by which the measure would have increased the deficit in each respective year.

As enacted, Section 1024 of the Line Item Veto Act contains a lockbox mechanism intended to ensure that any savings resulting from the exercise of the item veto authority are maintained and are not used to offset other spending. With regard to discretionary spending, the OMB director must add together any such cancellations and reduce the discretionary spending limits by these amounts. Aggregate deficit reduction in the PAYGO process, resulting from the cancellation of direct spending or limited tax benefits, is monitored in PAYGO reports but is not reflected in the PAYGO scorecard. Consequently, any deficit reduction achieved under the line item veto process cannot be used to offset PAYGO legislation that increases the deficit. Procedures under the Line Item Veto Act, including the lockbox mechanism, expire at the end of 2004.

[8] See the *Congressional Record* of March 14, 1996, at pages S2081-S2084.

A stand-alone lockbox proposal, H.R. 1162 (no short title), was introduced by Representative Crapo and others on March 8, 1995, and referred to the Budget, Government Reform and Oversight, and Rules Committees. Subcommittees of the House Rules Committee and the House Government Reform and Oversight Committee held a joint hearing on lockbox proposals on July 11. The House Rules Committee marked up H.R. 1162 on July 20, ordering it favorably reported with amendments by voice vote (H.Rept. 104-205, Part 1, *Deficit Reduction Lockbox Act of 1995*, July 25, 1995). A short title, the Deficit Reduction Lockbox Act of 1995, was added by one of the amendments. The House passed H.R. 1162 with further amendments on September 13, by a 364-59 vote. The Senate took no action on the measure.

105th Congress

On January 7, 1997, Representative Crapo and others introduced H.R. 126, the Deficit Reduction Lockbox Act of 1997. The bill establishes lockbox procedures similar to those proposed in H.R. 1162 in the 104th Congress. The bill was referred to the Rules and Budget Committees on January 7, and to the Legislative and Budget Process Subcommittee of the Rules Committee on February 24.

On July 15, Representative Crapo offered the proposal embodied in H.R. 126 as an amendment to H.R. 2107, the Department of the Interior and Related Agencies Appropriations Act for FY1998 (see Title IV).. The amendment was agreed to by a vote of 314-109 and the House subsequently passed the bill as amended. The Senate Appropriations Committee reported H.R. 2107 on July 22 (S.Rept. 105-56) without the lockbox title; the Senate has not yet considered the bill.

In addition, the Budget Process Reform Act (H.R. 1372), introduced by Representative Cox and others, includes, among other budget process reforms, a lockbox procedure to ensure that savings from spending cut amendments are used to reduce the deficit. The bill was referred to the Rules, Budget, and Appropriations Committees on April 17.

While the preceding procedures are intended to apply to spending cut amendments, lockbox provisions that would apply to specific spending reduction legislation have been introduced as well. H.R. 1340, the Corporate Responsibility Act of 1997, includes a provision (Section 301) which prevents any changes in revenues or direct spending resulting from the act to be counted for PAYGO purposes. This bill was referred to several committees, including the Budget Committee on April 15. Also, S. 821, which eliminates the automatic cost-of-living pay increases for Members of Congress, requires that the discretionary spending limits be reduced by the amount of savings resulting from this act. The bill was referred to the Governmental Affairs Committee on June 3.

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Features of the Deficit Reduction Lockbox Act of 1997

The Deficit Reduction Lockbox Act of 1997, H.R. 126, a leading lockbox proposal, would amend the 1974 Congressional Budget Act to establish a lockbox mechanism for discretionary spending. Its features are typical of proposals to establish an ongoing, broad-based lockbox mechanism. It relies on existing procedures under the budget resolution process and the sequester process for enforcement.

There are three main features of the lockbox mechanism proposed by H.R. 126.

First, a "deficit reduction lockbox ledger" is maintained by the director of the Congressional Budget Office (CBO). The ledger is divided into entries corresponding to each of the Appropriations subcommittees and each entry consists of separate parts for the House balance (reflecting House passage), the Senate balance (reflecting Senate passage), and the joint House-Senate balance (reflecting the average of the other two balances). The CBO director credits amounts equal to the net reductions in new budget authority and outlays resulting from floor amendments —excluding Appropriations Committee amendments—to each balance, as appropriate.

Second, the spending allocations to the Appropriations Committees, and the suballocations made by each committee to its subcommittees, made annually under the 1974 Congressional Budget Act (following adoption of the budget resolution) are adjusted downward automatically upon the crediting of amounts to the joint House-Senate balance (*i.e.*, before conference action).

Third, the final appropriations measure for a fiscal year, either a regular appropriations act or a full-year continuing resolution, must set forth the amounts, equal to the sums of the joint House-Senate lockbox balances, by which the discretionary spending limits used in the sequester process shall be reduced. The reductions are made automatically by the OMB director upon enactment of the final appropriations measure.

In addition to these main elements, the bill requires that a running tally be maintained during House consideration of appropriations bills, showing the increases and decreases in budget authority resulting from amendments, and that lockbox information be included in periodic CBO scorekeeping reports.

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CRS Report for Congress

Congressional Research Service • The Library of Congress

Proposals for an Automatic Continuing Resolution

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Summary

Over the past several decades, the tardy enactment of regular appropriation bills has been a persistent problem in the annual appropriations process. When action on the regular appropriation bills is delayed, Congress turns to one or more *continuing resolutions* (CRs) to provide interim funding. The interval during the fiscal year when agency appropriations are not enacted into law, either in the form of a regular appropriation act or a CR, is referred to as a *funding gap*. When a funding gap occurs, the federal government begins a *shutdown* of the affected agencies, as required by the Antideficiency Act, which entails the furlough of "non-emergency" employees.

During the 21 fiscal years from FY1977 through FY1997, there were 17 funding gaps. Two of the lengthiest and most disruptive occurred in late 1995 and early 1996. In order to avoid the occurrence of funding gaps and government shutdowns, proposals have been made to establish an *automatic continuing resolution* (ACR) that would provide a fallback source of funding for activities, at a restricted level, in the event the timely enactment of appropriations is disrupted. The funding would become available automatically and remain available as long as needed so that a funding gap would not occur and the furlough of federal employees would be avoided (or at least severely limited).

So far during the 105th Congress, an ACR proposal has been considered as an amendment to a supplemental appropriations bill (H.R. 1469). The proposal would have provided automatic continuing appropriations for activities, during FY1998 only, at 100 percent of the FY1997 level. President Clinton vetoed H.R. 1469 on June 9, 1997, in part because he objected to the inclusion of the ACR provision. A subsequent supplemental appropriations measure, which did not contain an ACR provision, was enacted into law (P.L. 105-18).

Background

The routine activities of most federal agencies are funded by means of annual appropriations provided in one or more of the 13 regular appropriation bills. Funds are provided on a fiscal year cycle that runs from October 1 through September 30. (For example, FY1998 begins on October 1, 1997, and ends on September 30, 1998.)

Over the past several decades, the timing patterns for congressional action on regular appropriation bills have varied considerably, but tardy enactment has been a persistent problem. During the period running from FY1952 through FY1997 (covering 46 fiscal years), there have been only four instances in which all of the regular appropriation acts were enacted on time (FY1977, 1989, 1995, and 1997).[1] In 17 cases, none of the regular appropriation bills was enacted by the start of the fiscal year.

When action on the regular appropriation bills is delayed, Congress turns to a *continuing resolution* (CR) to provide interim funding.[2] The CR is so named because it provides continuing appropriations in the form of a joint resolution. (Occasionally, however, continuing appropriations are provided in bill form.) CRs usually fund activities under a formula-type approach which provides spending at a restricted level, such as the lesser of the amount passed by the House or the Senate in appropriation bills not ready for transmittal to the President. In many instances, the amount of funding available for particular activities is increased when the regular appropriation bill is subsequently enacted. Congress is not bound by these conventions in determining funding levels, however, and there have been many variations in practice in recent CRs. Further, CRs usually do not allow new activities to be initiated — funding is available only for activities conducted during the past year — and existing conditions and limitations on program activity are retained.

During the 46-year period cited above, CRs have been enacted for all but four fiscal years (FY1953, 1989, 1995, and 1997).[3] In most years, more than one CR was needed as Congress worked to complete action on the regular appropriation bills. The number of CRs enacted during the period ranged from zero to six, except for FY1996, when 14 separate measures providing continuing appropriations were enacted.[4] In some years, especially during the 1980s, the final CR provided funding for one or more of the regular appropriation bills for the remainder of the fiscal year.

The Antideficiency Act (31 *U.S.C.* 1341-1342, 1511-1519) generally bars agencies from continued operation in the absence of appropriations. Exceptions are made under

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[1] Funding for several unauthorized programs was dropped from regular appropriations acts for FY1977, necessitating the enactment of continuing appropriations that year.

[2] For general information, see the Congressional Research Service report: *Continuing Appropriations Acts: Brief Overview of Recent Practices*, by Edward Davis, CRS Report 95-992 GOV, September 22, 1995, 6 pages.

[3] Although regular appropriations measures for FY1953 were enacted into law after the start of the fiscal year on July 1, 1952, no continuing appropriations were provided. Section 1414 of P.L. 82-547 (July 15, 1952), a supplemental appropriations measure for FY1953, resolved technical legalities arising from the tardy enactment of appropriations for that year.

[4] See the following two reports of the Congressional Research Service: (1) *Continuing Appropriations Acts: Summary Data for Fiscal Years 1977-1995*, by Edward Davis and Robert Keith, CRS Report 95-78 GOV, December 30, 1994, 5 pages; and (2) *FY1996 Continuing Resolutions: List of Measures, Chronology, Citations*, by Sandy Streeter, CRS Report 96-652 GOV, July 25, 1996, 5 pages.

the act for activities involving "the safety of human life or the protection of property." The interval during the fiscal year when agency appropriations are not enacted into law, either in the form of a regular appropriation act or a CR, is referred to as a *funding gap*. Although funding gaps may occur on October 1, at the beginning of the fiscal year, they may occur any time a CR expires and another CR (or the regular appropriation bill) is not enacted immediately thereafter. Also, more than one funding gap may occur for a fiscal year.

In 1980 and 1981, Attorney General Benjamin Civiletti issued opinions clarifying the need for federal agencies to begin terminating regular activities immediately upon the occurrence of a funding gap. Consequently, when a funding gap occurs, the federal government begins a *shutdown* of the affected agencies. A shutdown entails the prompt furlough of non-emergency personnel[5] and curtailment of agency activities, including the provision of most services to the public.[6] The general practice of the federal government over the years has been to pay furloughed employees, after the shutdown has ended, for time missed, even when no work was performed.

During the 21 fiscal years from FY1977 through FY1997, there were 17 funding gaps.[7] The gaps ranged in duration from one day to three weeks. Six of the seven lengthiest funding gaps, lasting between 8 and 17 days, occurred between FY1977 and FY1980, before the Civiletti opinions were issued. After the issuance of these opinions, the duration of funding gaps shortened considerably (ranging from one to three days, with the longer gaps occurring over the weekend). However, a six-day and a three-week funding gap for FY1996 occurred between mid-November of 1995 and early January of 1996, due to unusually difficult and protracted negotiations between the President and Congress over appropriations issues.

Automatic Continuing Resolution

Extensive reliance on CRs, and the occurrence of funding gaps and federal government shutdowns, have been persistent features of the annual appropriations process. Proposals have been made from time to time over the years to alleviate these problems by establishing an *automatic continuing resolution* (ACR).[8] The common feature of these

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[5] Until recently, such personnel were usually referred to as "non-essential," but this term has come to be regarded as demeaning.

[6] See the Congressional Research Service report: *Shutdown of the Federal Government: Effects on the Federal Workforce and Other Sectors*, by James P. McGrath, CRS Report 95-906 GOV, updated August 15, 1997, 35 pages.

[7] For information on these occurrences, see the following Congressional Research Service report: *Continuing Resolutions and Funding Gaps: Selected Data for Fiscal Years 1977-1995*, by Robert Keith and Edward Davis, CRS Report 95-995 GOV, September 25, 1995, 9 pages. Also, see the *1995 Congressional Quarterly Almanac*, "Government Shuts Down Twice Due to Lack of Funding," pages 11-3 through 11-6.

[8] See, for example, the report of the General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations* (PAD-81-31), March 3, 1981; the print of the House Government Operations Committee, *Reform of the Federal Budget Process: An Analysis of Major Proposals*,

(continued...)

proposals is the establishment of a mechanism to ensure a fallback source of funding for activities, at a restricted level, in the event the timely enactment of appropriations is disrupted. The funding would become available automatically and remain available as needed so that a funding gap would not occur and the furlough of federal employees would be avoided (or at least severely limited).

The two major variables in the design of an automatic continuing resolution are funding level and duration. With regard to funding level, most ACR proposals would set funding for the new fiscal year at a level consistent with the rate of operations for the prior fiscal year or some percentage of that rate. This would allow agencies to continue operating at close to the "status quo," without prejudging which programs should be increased or scaled back. On the issue of duration, ACR proposals range from providing continuing appropriations for a short interval, like a month, to the full fiscal year, or even indefinitely (so that continuing appropriations would become available automatically year after year as needed).

Proponents of ACR proposals identify several categories of problems that could, they assert, be avoided if funding gaps and the ensuing federal government shutdowns were not allowed to occur. First, shutdowns may incur significant costs to the federal government for various reasons, including program inefficiencies that arise from the disruption and from making payments to federal employees, after the shutdown has ended, for a period when work was not performed. If the shutdown is fairly large in scale, as occurred in late 1995 and early 1996, the cost to the federal government runs into hundreds of millions of dollars. In addition, federal employees themselves may have to contend with delayed or reduced paychecks, the interruption of official travel, and similar problems.

Second, shutdowns may incur significant costs to private sector entities that have business arrangements with the federal government or otherwise are closely aligned with federal activities. A lengthy shutdown may impede the timely payment of federal contractors, for example. Less directly, businesses dependent on federally-sponsored activities, such as hotels and restaurants that service visitors to national parks and monuments, may suffer economic losses when these facilities shut down.

Third, shutdowns may disrupt the provision of services to program beneficiaries and the general public. Certain benefit payments, involving such programs as veterans' assistance and Medicare payments to health maintenance organizations, may not be paid when a shutdown lasts for any significant period. Citizens intending to travel overseas may not be able to obtain passport services; tourists making long-planned vacations may be barred from entry at many public sites.

Fourth, many ACR proponents believe that shutdowns create a strong, negative perception regarding the ability of elected officials to govern effectively and that the onus falls principally on Congress rather than the President.

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[4](...continued)
June 1987 (pages 4-7); and the print of the Senate Governmental Affairs Committee, *Proposed Budget Reforms: A Critical Analysis*, *April 1988* (pages 32-35).

Finally, an ACR, in the view of some, may promote an atmosphere at the end of the session more conducive to the constructive resolution of negotiations over legislation. Too often, they assert, the crisis atmosphere surrounding funding gaps late in the year pressures Members into accepting less-than-desirable solutions to break legislative impasses.

The major concern of opponents of ACR proposals is that they could serve as a disincentive to enact the regular appropriation bills in a timely manner, or even at all. By knowing that a "fail-safe" funding mechanism in the form of an ACR exists, which would prevent the disruption from a government shutdown, negotiations over annual appropriations could slow down considerably as different sides see an advantage in taking more time to pursue their goals. If negotiations extended weeks past the beginning of the fiscal year without clear signs of impending agreement, an acceptance of the status quo, or something near to it, and adjournment might be the most appealing option to many at that time. In this view, an ACR, therefore, could offer Congress a convenient "escape hatch" from a difficult situation when time has run out.

Further, ACR critics maintain that supporters of reduced funding levels for annual appropriations might very well see thwarting action on the regular appropriation bills (at least those that would increase spending) as an important means of achieving their goal. A funding formula set much lower than 100 percent of the prior year's level probably would encourage a congressional majority to seek enactment of the regular bills; but the 98-percent or 100-percent formula may be seen by many as an adequate funding level given the commitment to balance the budget. Reliance upon an ACR could allow Congress to achieve this goal without actually taking any "tough votes" to cut discretionary spending significantly.

Finally, the chief drawback to a formula-based approach, opponents of an ACR assert, is that it may engender inequities and undermine accountability. Many would argue that the notions of congressional accountability and responsibility in exercising the "power of the purse" entail the exercise of deliberate choice. The development of annual appropriation bills through the regular legislative process entails making thousands of separate decisions. The effects of increasing funding or decreasing funding for each account, and the programs, projects, and activities within those accounts, are carefully weighed according to various criteria. All Members have an opportunity to take part in this process at some level. Resort to a formula-based approach, however, treats all items the same. Programs in need of significant increases are treated in the same manner as programs that can be cut significantly, if not eliminated altogether. From this perspective, when Members are denied the opportunity to influence outcomes for particular programs, they may not be held as clearly accountable for them.

Current Proposals

So far during the 105th Congress, the House and Senate have acted on an ACR proposal included in legislation providing supplemental appropriations for FY1997. The legislation was vetoed by President Clinton on June 9, 1997. A subsequent supplemental appropriations measure, which did not contain an ACR provision, was enacted into law (P.L. 105-18).

The Senate initiated consideration of the supplemental appropriation bill, S. 672. An ACR provision, pegged at 98-percent of the prior year's funding level and effective for the duration of FY1998, was included in the bill as developed in the Senate Appropriations Committee.[9] The provision was sponsored by Senators John McCain and Kay Bailey Hutchison and was based upon a free-standing ACR proposal they had introduced earlier, S. 547. Pursuant to the provision, the 98-percent funding level could remain in effect for as long as the entire fiscal year, but would have no effect beyond FY1998. Several provisions, dealing with such matters as the terms and conditions, coverage, and charging of expenditures under continuing appropriations also were included in the proposal; these provisions essentially were "boilerplate" from recent continuing resolutions. According to Senators McCain and Hutchison, the funding formula—98 percent of the prior year's level—was consistent with past budget resolution policy aimed at balancing the budget by FY2002. Accordingly, if circumstances dictated that the funding formula remain in effect for all programs during the entire fiscal year, that action would not undermine balanced-budget efforts.

An unsuccessful motion to strike the provision was made in committee by Senator Robert Byrd. On May 5, during Senate consideration of S. 672, Senator Byrd again offered an amendment (#59) to strike the provision from the bill. During discussion of the proposal, Senator McCain obtained unanimous consent to modify the provision, raising the funding formula from 98 percent to 100 percent. He explained that the recent budget summit agreement, which provided for modest increases in discretionary spending, made the adjustment reasonable. The Byrd amendment was tabled the next day by a vote of 55-45 and the modified provision was retained in the bill.

The House considered its version of the supplemental appropriations measure, H.R. 1469, on May 15. Representative George Gekas offered an amendment (#7) proposing an ACR that was identical to the Senate provision. The Gekas amendment was adopted by the House by a vote of 227-197.

The ACR proposal, as passed by both the House and Senate, was included in the final version of H.R. 1469 (as Title IX), which passed both chambers on June 5.[10] President Clinton vetoed the measure on June 9, citing several objections to the measure, the first being the inclusion of the ACR proposal. He indicated that the ACR, if it funded all appropriations for the entire fiscal year, would result in funding levels $18 billion below the levels contained in the budget agreement he had reached earlier with Congress.[11]

In the House, measures dealing with the issue of an ACR include: H.R. 638 and H.R. 1916 (Gekas), H.R. 987 (J. Peterson), H.R. 1372 (Cox), H.R. 1785 (Kleczka), and H.R. 1912 (T. Davis). ACR proposals in the Senate include S. 228 and S. 547 (McCain) and S. 396 (Mikulski).

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[9] See Title VII, the *Government Shutdown Prevention Act*, on pages 81-85 of S. 672 as reported on April 30, 1997 (S.Rept. 105-16).

[10] See the conference report on H.R. 1469 (H.Rept. 105-119, June 4, 1997), pages 67-69 (legislative text) and 125 (brief explanation).

[11] For the text of the President's veto message, see the *Congressional Record* of June 10, 1997, at pages H3633-34; also, see the "White House Briefing Room" link on the White House Homepage (http:/www.whitehouse.gov).

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CRS Report for Congress

The Senate's Byrd Rule Against Extraneous Matter in Reconciliation Measures

July 8, 1997

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The Senate's Byrd Rule Against Extraneous Matter in Reconciliation Measures

Summary

Reconciliation is a procedure under the Congressional Budget Act of 1974 by which Congress implements budget resolution policies affecting mainly permanent spending and revenue programs. The principal focus in the reconciliation process has been deficit reduction, but in recent years reconciliation has encompassed revenue reduction. Although reconciliation is an optional procedure, it has been used most years since its first use in 1980.

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of implementing budget resolution policies. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues when the reconciliation instructions called for reduced spending or increased revenues, or that violated another committee's jurisdiction.

In 1985, the Senate adopted the Byrd Rule (named after its principal sponsor, Senator Robert C. Byrd) on a temporary basis as a means of curbing these practices. The Byrd Rule has been extended and modified several times over the years. In 1990, the Byrd Rule was incorporated into the Congressional Budget Act of 1974 as Section 313 and made permanent (2 *U.S.C.* 644).

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation, or, under the Byrd Rule, a Senator may raise a point of order against such matter. In general, a point of order authorized under the Byrd Rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A motion to waive the Byrd Rule, or to sustain an appeal of the ruling of the Chair on a point of order raised under the Byrd Rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).

The Byrd Rule provides six definitions of what constitutes extraneous matter for purposes of the rule (and several exceptions thereto), but the term is generally described as covering provisions unrelated to the deficit reduction goals of the reconciliation process.

The Byrd Rule has applied to 10 reconciliation measures considered by the Senate from 1985 through 1997. In 36 of the 46 actions involving the Byrd Rule, opponents were able to strike extraneous matter from legislation (17 cases) or bar the consideration of extraneous amendments (19 cases) by raising points of order. Seven of 33 motions to waive the Byrd Rule, in order to retain or add extraneous matter, were successful. The Byrd Rule has been used only three times (twice in 1993 and once in 1995) during consideration of a conference report on a reconciliation measure.

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Introduction

Reconciliation is a process established under Section 310 of the Congressional Budget Act of 1974 (P.L. 93-344), as amended. The purpose of reconciliation is to change substantive law so that revenue and mandatory spending levels are brought into line with budget resolution policies. Reconciliation generally has been used to reduce the deficit through spending reductions or revenue increases, or a combination of the two. In recent years, however, the reconciliation process also has encompassed revenue reductions as an element in overall deficit-reduction plans.

Reconciliation is a two-step process. Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision, into a single, omnibus budget reconciliation measure. With one exception,[1] reconciliation always has been applied to multiple committees and involved omnibus legislation.

Under the second step, the omnibus budget reconciliation measure is considered in the House and Senate under expedited procedures (for example, debate time in the Senate on a reconciliation measure is limited to 20 hours and amendments must be germane). The process culminates with enactment of the measure, thus putting the policies of the budget resolution into effect.

Reconciliation, which was first used by Congress in 1980, is an optional procedure, but it has been used in most years. During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of reducing the deficit. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues, or that violated another committee's jurisdiction.

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[1] See the discussion of Senate action on H.R. 5559 in footnote 10 on page 9.

In 1985, the Senate adopted the Byrd Rule (named after its principal sponsor, Senator Robert C. Byrd) as a means of curbing these practices. The Byrd Rule has been modified several times over the years.

The purpose of this report is to briefly recount the legislative history of the Byrd Rule, summarize its current features, and describe its implementation from its inception through the present.

Legislative History of the Byrd Rule

During the first five years that the Byrd Rule was in effect, from late 1985 until late 1990, it consisted of two separate components — (1) a provision in statute applying to initial Senate consideration of reconciliation measures, and (2) a Senate resolution extending application of portions of the statutory provision to conference reports and amendments between the two Houses. Several modifications were made to the Byrd Rule in 1986 and 1987, including extending its expiration date from January 2, 1987, to January 2, 1988, and then to September 30, 1992, but the two separate components of the rule were preserved. In 1990, these components were merged together and made permanent when they were incorporated into the Congressional Budget Act (CBA) of 1974 as Section 313. There have been no further changes in the Byrd Rule since 1990.

The Byrd Rule originated on October 24, 1985, when Senator Robert C. Byrd, on behalf of himself and others, offered Amendment No. 878 (as modified) to S. 1730, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.[2] The Senate adopted the amendment by a vote of 96-0.[3] In this form, the Byrd Rule applied to initial Senate consideration of reconciliation measures.

Senator Byrd explained that the basic purposes of the amendment were to protect the effectiveness of the reconciliation process (by excluding extraneous matter that often provoked controversy without aiding deficit reduction efforts) and to preserve the deliberative character of the Senate (by excluding from consideration under expedited procedures legislative matters not central to deficit reduction that should be debated under regular procedures). He opened his remarks by stating:

> . . . we are in the process now of seeing . . . the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never mean to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.
>
> It was never foreseen that the Budget Reform Act would be used in that way.
>
> So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate

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[2] For a detailed legislative history of the Byrd Rule, see the following print of the Senate Budget Committee: *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, 103rd Congress, 1st Session, S. Prt. 103-49, October 1993, notes on pages 229-246.

[3] The Senate's consideration of and vote on the amendment occurred on pages S14032-S14038 of the *Congressional Record* of October 24, 1985.

— which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.[4]

The Byrd amendment was included in modified form in COBRA of 1985 (P.L. 99-272), which was not enacted into law until April 7, 1986, as Section 20001 (100 *Stat.* 390-391). The Byrd Rule, in this form, thus became effective on April 7. As originally framed, the Byrd Rule was set to expire on January 2, 1987.

Over the years, the Senate has expanded and revised the Byrd Rule through the adoption of two resolutions and the inclusion of provisions in three laws. **Figure 1** lists the laws and resolutions that have established and amended the Byrd Rule.

Figure 1. Laws and Resolutions Establishing and Amending the Byrd Rule

P.L. 99-272, Consolidated Omnibus Budget Reconciliation Act of 1985, Section 2001 (100 Stat. 390-391), April 7, 1986.

S.Res. 286 (99th Congress, 1st Session), December 19, 1985.

S.Res. 509 (99th Congress, 2nd Session), October 16, 1986.

P.L. 99-509, Omnibus Budget Reconciliation Act of 1986, Section 7006 (100 Stat. 1949-1950), October 21, 1986.

P.L. 100-119, Increasing the Statutory Limit on the Public Debt, Section 205 (101 Stat. 784-785), September 29, 1987.

P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, Section 13214 (104 Stat. 1388-621 through 1388-623), November 5, 1990.

On December 19, 1985, the Senate adopted by voice vote a resolution (S.Res. 286), sponsored by Senator Alan Simpson and others, that extended the application of portions of the statutory provision to conference reports and amendments between the two Houses. Because the enactment of COBRA of 1985 was delayed until early 1986, the portion of the Byrd Rule dealing with conference reports became effective first. The provisions of S.Res. 286 were set to expire on the same date as the provision in COBRA of 1985 (January 2, 1987).

In the following year, the Senate was involved in two actions affecting the Byrd Rule. First, the Senate adopted S.Res. 509 by voice vote on October 16, 1986. The measure, offered by Senator Alan Simpson and others, modified S.Res. 286 in a technical fashion. Second, the Omnibus Budget Reconciliation Act of 1986 was enacted into law, as P.L. 99-509, on October 21, 1986. Section 7006 of the law made several minor changes in the Byrd Rule and extended its expiration date by one year — until January 2, 1988.

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[4] See the remarks of Senator Robert C. Byrd on page S14032 of the *Congressional Record* of October 24, 1985.

Further changes in the Byrd Rule were made in 1987. These changes were included in a measure increasing the statutory limit on the public debt, modifying procedures under the Gramm-Rudman-Hollings Act, and making other budget process changes (P.L. 100-119, signed into law on September 29; see Title II (Budget Process Reform)). Section 205 of the law added an item to the list of definitions of extraneous matter in the Byrd Rule and extended its expiration until September 30, 1992.

Finally, Congress and the President agreed to further modifications of the budget process by enacting the Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990). Section 13214 of the law made significant revisions to the Byrd Rule and incorporated it (as permanent law) into the CBA of 1974 as Section 313 (2 *U.S.C.* 644).

Current Features of the Byrd Rule

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation has two principal options for dealing with the problem. First, a Senator may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation. Second, under the Byrd Rule, a Senator may raise a point of order against extraneous matter.

The Byrd Rule is a relatively complex rule[5] that applies to two types of reconciliation measures considered pursuant to Section 310 of the CBA of 1974 — reconciliation bills and reconciliation resolutions.[6] (The practice of the House and Senate has been to consider only reconciliation bills.) Further, it establishes a point of order in two subsections ((a) and (d)) and sets forth procedures to be implemented in the event of a successful point of order in three subsections ((a), (c), and (d)).[7]

In general, a point of order authorized under the Byrd Rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A point of order may be raised against a single provision or two or more provisions (as designated by title or section number, or by page and line number), and may be raised against a single amendment or two or more amendments. The Chair may sustain a point of order as to all of the provisions (or amendments) or only some of them.

Once material has been stricken from reconciliation legislation under the Byrd Rule, it may not be offered again as an amendment.

A motion to waive the Byrd Rule, or to sustain an appeal of the ruling of the Chair on a point of order raised under the Byrd Rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).[8] A single waiver

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[5] Some of the complexities of the Byrd Rule are examined in: (1) *Riddick's Senate Procedure* (S.Doc. 101-28, 101st Congress, 2nd Session, 1992), by Floyd M. Riddick and Alan S. Frumin, on pages 624-626; and (2) *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, op. cit., beginning on page 198.

[6] Part of the Byrd Rule, Section 313(a), also applies to reconciliation measures considered pursuant to Section 258C of the GRH Act. This section, which so far has never been invoked, provides for the consideration of reconciliation legislation in the fall in order to achieve deficit reductions that would obviate the need for an expected sequester under the pay-as-you-go requirement or the deficit targets. All of the reconciliation measures considered by the Senate thus far have originated pursuant to Section 310 of the CBA of 1974.

[7] Due to a drafting error, the Byrd Rule contains two subsections (c). The first deals with a list of extraneous matters that must be submitted for the record by the Senate Budget Committee when a reconciliation measure (or conference report thereon) is considered. The second deals with Senate action on a conference report or amendment between the Houses.

[8] In the Senate, most points of order under the Congressional Budget Act require a three-

(continued...)

motion can: (1) apply to the Byrd Rule as well as other provisions of the Congressional Budget Act; (2) involve multiple as well as single provisions or amendments; (3) extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and (4) be made prior to the raising of a point of order, thus making the point of order moot.

When a reconciliation measure, or a conference report thereon, is considered, the Senate Budget Committee must submit for the record a list of potentially extraneous matter included therein. This list is advisory, however, and does not bind the Chair in ruling on points of order.

Determinations of budgetary levels for purposes of enforcing the Byrd Rule are made by the Senate Budget Committee.

Definitions of Extraneous Matter

Subsection (b)(1) of the Byrd Rule provides definitions of what constitutes extraneous matter for purposes of the rule. The Senate Budget Committee, in its report on the budget resolution for fiscal year 1994, noted:

> 'Extraneous' is a term of art. Broadly speaking, the rule prohibits inclusion in reconciliation of matter unrelated to the deficit reduction goals of the reconciliation process.[9]

A provision is considered to be extraneous if it falls under one or more of the following six definitions:

(1) it does not produce a change in outlays or revenues;

(2) it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;

(3) it is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;

(4) it produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;

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[8](...continued)
fifths vote of the membership to waive. Most of these three-fifths waivers, including waivers of the Byrd Rule, are temporary and scheduled to expire at the end of fiscal year 1998. Title XVI (Budget Enforcement) of H.R. 2014, the Revenue Reconciliation Act of 1997, as passed by the Senate, would extend these provisions through fiscal year 2002.

[9] See the report of the Senate Budget Committee to accompany S.Con.Res. 18, Concurrent Resolution on the Budget, FY 1994 (S.Rept. 103-19, March 12, 1993), at page 49.

(5) it would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; and

(6) it recommends changes in Social Security.

The last definition complements a ban in Section 310(g) of the CBA of 1974 against considering any reconciliation legislation that contains recommendations pertaining to the Social Security. For purposes of these provisions, Social Security is considered to include the Old-Age, Survivors, and Disability Insurance (OASDI) program established under Title II of the Social Security Act; it does not include Medicare or other programs established as part of that act.

Exceptions to the Definition of Extraneous Matter

Subsection (b)(2) of the Byrd Rule provides that a Senate-originated provision that does not produce a change in outlays or revenues shall not be considered extraneous if the Chairman and Ranking Minority Members of the Budget Committee and the committee reporting the provision certify that —

- the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; or

- the provision will (or is likely to) reduce outlays or increase revenues: (1) in one or more fiscal years beyond those covered by the reconciliation measure; (2) on the basis of new regulations, court rulings on pending legislation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision; or (3) but reliable estimates cannot be made due to insufficient data.

Additionally, under subsection (b)(1)(A), a provision that does not change outlays or revenues in the net, but which includes outlay decreases or revenue increases that exactly offset outlay increases or revenue decreases, is not considered to be extraneous.

The full text of the Byrd Rule in its current form is provided in Appendix A.

Implementation of the Byrd Rule

Congress and the President have considered 15 omnibus reconciliation measures (as shown in **Table 1**) between calendar year 1980, when the reconciliation process was first used, and the present.[10] Twelve of these measures were enacted into law, one (the Balanced Budget Act of 1995) was vetoed by President Clinton, and two presently are being considered by the House and Senate. The Byrd Rule was fully in effect during the consideration of 9 of these 15 measures, beginning with the Omnibus Budget Reconciliation Act of 1986. In late 1985 and early 1986, the portion of the Byrd Rule dealing with conference reports and amendments between the two Houses was in effect during the consideration of a tenth reconciliation measure (the Consolidated Omnibus Budget Reconciliation Act of 1985), but no actions were taken under the rule. The Byrd Rule had not been established when the first five reconciliation bills were considered.

In total, there have been 46 actions involving points of order or waiver motions (or both) under the Byrd Rule.[11] (A point of order can be raised under the Byrd Rule without a waiver motion being offered; conversely, a waiver motion can be offered without a point of order having been raised.) Forty-five points of order were raised and 33 waiver motions were offered in these 46 cases. In one instance, a point of order was not raised because a waiver motion previously had been offered and approved, thus making the point of order moot.

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[10] The Senate also considered two measures linked to the reconciliation process. On December 15, 1975, the Senate considered, amended, and passed H.R. 5559, the Revenue Adjustment Act of 1975, which reduced revenues by about $6.4 billion pursuant to a budget resolution instruction. The measure was not regarded as a reconciliation bill when it was considered by the House; the President vetoed the measure later in the year and the House sustained his veto. See the remarks of Senator Russell Long and the Presiding Officer on page 40540 and the remarks of Senator Edmund Muskie and others on pages 40544-40550 in the *Congressional Record* of December 15, 1975, regarding the status of H.R. 5559 as a reconciliation bill.

The Deficit Reduction Act of 1984 (P.L. 98-369) was regarded as a reconciliation bill when it was considered in the House, but was stripped of that classification when it was considered in the Senate (in April and May of 1984).

[11] The Byrd Rule is only one of many point-of-order provisions in Titles III and IV of the Congressional Budget Act of 1974, as amended (2 *U.S.C.* 644). In some instances, points of order or waiver motions are made under the Act by general reference only (such as a Senator raising a point of order "under Title III of the Act") rather than by specific reference to the provision(s) involved. When only general references are made, it usually is impossible to determine (by reference to debate in the *Congressional Record* alone) which provision of the Act is involved. Consequently, this report reflects only those instances when specific reference was made to Section 313 of the Act or to the Byrd Rule and may undercount somewhat the actual number of actions involving the rule.

Table 1. Omnibus Budget Reconciliation Acts (Calendar Years 1980-1997)

Omnibus budget reconciliation act	Public law number	*Statutes-at-Large* citation	Date approved (*or vetoed*)
Omnibus Reconciliation Act of 1980	96-499	94 *Stat.* 2599-2695	December 5, 1980
Omnibus Budget Reconciliation Act of 1981	97-35	95 *Stat.* 357-933	August 13, 1981
Tax Equity and Fiscal Responsibility Act of 1982	97-248	96 *Stat.* 324-707	September 3, 1982
Omnibus Budget Reconciliation Act of 1982	97-253	96 *Stat.* 763-807	September 8, 1982
Omnibus Budget Reconciliation Act of 1983	98-270	98 *Stat.* 157-162	April 18, 1984
Consolidated Omnibus Budget Reconciliation Act of 1985	99-272	100 *Stat.* 82-391	April 7, 1986
Omnibus Budget Reconciliation Act of 1986	99-509	100 *Stat.* 1874-2078	October 21, 1986
Omnibus Budget Reconciliation Act of 1987	100-203	101 *Stat.* 1330, 1-472	December 22, 1987
Omnibus Budget Reconciliation Act of 1989	101-239	103 *Stat.* 2106-2491	December 19, 1989
Omnibus Budget Reconciliation Act of 1990	101-508	104 *Stat.* 1388, 1-630	November 5, 1990
Omnibus Budget Reconciliation Act of 1993	103-66	107 *Stat.* 312-685	August 10, 1993
Balanced Budget Act of 1995	(H.R. 2491)	—	*December 6, 1995 (vetoed by President Clinton)*
Personal Responsibility and Budget Reconciliation Act of 1996	104-193	110 *Stat.* 2105-2355	August 22, 1996

Omnibus budget reconciliation act	Public law number	*Statutes-at-Large* citation	Date approved (*or vetoed*)
Balanced Budget Act of 1997	(H.R. 2015)	——	(presently under consideration by the House and Senate)
Tax Relief Act of 1997 / Revenue Reconciliation Act of 1997	(H.R. 2014)	——	(presently under consideration by the House and Senate)

On the whole, actions under the Byrd Rule have occurred more frequently in recent years and opponents of extraneous matter in reconciliation legislation have used the Byrd Rule successfully.[12] **Table 2** shows that a total of 9 actions occurred during the first five years in which reconciliation legislation was considered (1985, 1986, 1987, 1989, and 1990), compared to 37 actions for the last four years (1993, 1995, 1996, and 1997). Further, of the 46 total actions pertaining to the Byrd Rule, 36 involved actions that resulted in extraneous matter being stricken or barred while 10 involved actions that resulted in such matter being retained or added. (In the 36 actions in which points of order were invoked successfully, the opponents were able to strike extraneous matter from the legislation in 17 cases and bar the consideration of extraneous amendments in 19 cases.)

Table 2. Summary of Actions Under the Byrd Rule

Year	Actions to strike or bar extraneous matter	Actions to retain or add extraneous matter	Total actions
1985	0	0	0
1986	1	1	2
1987	0	1	1
1989	0	0	0
1990	5	1	6
1993	5	2	7
1995	8	0	8
1996	5	1	6
1997	12	4	16
Total	36	10	46

Table 3, at the end of this section, provides more detailed information on actions involving points of order and waiver motions made under the Byrd Rule from 1985 through 1997 (for 1997, the table does not yet include Senate action on the conference reports on the two reconciliation bills).

Only 7 of the 33 motions to waive the Byrd Rule to permit the inclusion of extraneous matter were successful. Six of these motions were used to protect committee-reported language in the bill; only one of 19 motions to protect a floor amendment was successful.

[12] It is difficult, if not impossible, to accurately determine the deterrent effect of the Byrd Rule, so this aspect is not addressed in this report.

The 7 successful waivers exceeded the required 60-vote threshold by an average margin of 17 votes, while the 26 unsuccessful motions to waive the Byrd Rule fell short of the threshold by an average of 13 votes. Eleven of the 26 unsuccessful motions garnered more than a majority of 51 votes, but less than the required 60.

The Byrd Rule has been used primarily during initial consideration of a reconciliation measure. It was invoked only three times — twice in 1993 and once in 1995 — during consideration of a conference report. In 1993, two points of order against matter characterized as extraneous in a conference report were rejected by the Chair. In both instances, the Chair's ruling was upheld upon appeal. The two motions to appeal the Chair's rulings were defeated by identical votes, 43-57. In 1995, two sections were stricken from a conference report and the two chambers had to resolve the final differences with a further amendment between them.

In many instances, a point of order was raised against multiple provisions, sections, or titles of the bill, sometimes covering a variety of different topics. In a few cases, the Chair ruled that most, but not all, of the provisions violated the Byrd Rule.

Five of the six definitions of extraneousness (the exception being recommending changes in Social Security) have been cited as bases for invoking the Byrd Rule. The most common basis for a point of order has been that the provision or amendment did not change outlays or revenues.

No actions involving the Byrd Rule occurred in 1989, in large part because the Senate leadership chose to use an amendment rather than the Byrd Rule to deal with extraneous matter in the bill. On October 13, 1989, during consideration of the Omnibus Budget Reconciliation of 1989, the Senate adopted Mitchell Amendment No. 1004 by voice vote. The amendment struck extraneous matter from the bill; its stated purpose was "to strike all matter from the bill that does not reduce the deficit."[13]

In 1993, the stringent application of the Byrd Rule by the Senate significantly influenced the final shape of the reconciliation act. Although the Byrd Rule has many advocates in the House and Senate, its use that year also engendered much controversy between the two Houses.

The House considered its version of the Omnibus Budget Reconciliation Act of 1993, H.R. 2264, on May 27. The Senate considered its version, S. 1134, on June 23 and June 24 (after completing consideration of S. 1134, the Senate amended and passed H.R. 2264 for purposes of conference with the House). Senator Pete Domenici, Ranking Minority Member of the Senate Budget Committee, inserted a list of potentially extraneous matters included in S. 1134 in the *Congressional Record* of June 24 (at page S 7984).[14] The list identified more than a dozen sections in five titles

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[13] See the *Congressional Record* of October 13, 1989, at page S13349. The Senate leadership used an amendment for similar purposes during consideration of the Omnibus Budget Reconciliation Act of 1981.

[14] This requirement was added by Section 13214 of the Omnibus Budget Reconciliation (continued...)

of the bill as possibly being in violation of the Byrd Rule, specifically Section 313(b)(1)(A) (*i.e.*, producing no change in outlays or revenues).

At the House-Senate conference stage, the Senate leadership directed the Parliamentarian and Senate Budget Committee staff to thoroughly review the legislation to identify any provisions originating in the House or Senate that might violate the Byrd Rule.[15] As a result of this review, many provisions were deleted from the legislation in conference.

During Senate consideration of the conference report, Senator James Sasser, Chairman of the Senate Budget Committee, discussed this process:

> . . . with regard to the Byrd Rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.
>
> As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule . . .
>
> I might say some of our House colleagues could not understand, and I do not blame them because there were a number of things that were pulled out of this budget reconciliation that had been voted on and passed by large majorities in both houses. But simply because they violated the Byrd rule, we had to go to the chairmen of the appropriate House committees and tell them they had to come out. They simply did not understand it. I think it made them perhaps have a little less high esteem for some of us here in the Senate . . . In the final analysis, their leadership had to demand that some of these provisions subject to the Byrd rule come out.[16]

During House consideration of the conference report, several Democratic Members criticized the Byrd Rule and discussed its impact on the legislation. For example, Representative Dan Rostenkowski, Chairman of the House Ways and Means Committee, stated:

> . . . I also have to express my grave concerns regarding the other body's so-called Byrd rule. As a result of this procedural rule, policies that would have

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[14](...continued)
Act of 1990. Consequently, its first application was to consideration of the Omnibus Budget Reconciliation Act of 1993.

[15] See the discussion of "Preemptive Editing of the Conference Report" in *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, op. cit., at pages 245-246. Also, see: (1) Richard E. Cohen, Running Up Against the "Byrd Rule," *National Journal*, September 4, 1993, page 2151; (2) George Hager, The Byrd Rule: Not an Easy Call, *Congressional Quarterly Weekly Report*, July 31, 1993, page 2027; and (3) Mary Jacoby, Senate Parliamentarian Purges Budget Bill of Measures That Could Violate Byrd Rule, *Roll Call*, August 5, 1993, page 9.

[16] See the remarks of Senator Sasser in the *Congressional Record* of August 6, 1993 at page S10662.

significantly improved the Medicare Program could not even be considered. Over 80 pages of statutory language were stripped out of the Medicare title. Staff wasted countless hours, scrutinizing every line to ensure that there is nothing that would upset our friends at the other end of the Capitol. Even more absurd is the fact that most of the items stripped were minor and technical provisions that received bipartisan support when they passed both the House and the Senate last year.

I hope that Members on both sides of the aisle share my grave concerns about how this rule has been used, and its impact on reconciliation. I sincerely hope that this rule will be reconsidered before we ever return to the reconciliation process again.[17]

Controversy over the Byrd Rule persisted during late 1993 and into 1994. The Joint Committee on the Organization of Congress, co-chaired by Representative Lee Hamilton and Senator David Boren, was slated to make recommendations on congressional reform, including changes in the budget process, in December of 1993. Representative Martin Olav Sabo, Chairman of the House Budget Committee, wrote to Co-Chair Hamilton in October, telling him that "widespread use [of the Byrd Rule] this year was extremely destructive and bodes ill for the reconciliation process in the future." Further, he stated that "the use of mechanisms like the Byrd Rule greatly distorts the balance of power between the two bodies" and that strict enforcement of the Byrd Rule "requires that too much power be delegated to unelected employees of the Congress."[18]

Chairman Sabo attached two Budget Committee staff documents to his letter: (1) a 29-page listing of reconciliation provisions "dropped or modified" in conference in order to comply with the Byrd Rule, and (2) a 3-page statement identifying specific problems caused by the rule (including a bar against including authorizations savings in reconciliation, the forcing of piecemeal legislation, incentives to use counterproductive drafting techniques to mitigate effects, and a bar against provisions achieving savings or promoting efficiency when the Congressional Budget Office was unable to assign particular savings to them).

The Senate Members of the Joint Committee on the Organization of Congress recommended in their final report that a provision clarifying "that the 'Byrd Rule' is permanent, applies to conference reports, requires sixty votes to waive, and applies to extraneous matters" be included in a broad reform bill.[19] Legislation embodying

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[17] See the remarks of Representative Rostenkowski in the *Congressional Record* of August 5, 1993 at page H6126. He discusses specific programs dropped from the conference report because of the Byrd Rule at page H6124. Also, see the remarks that same day of Representatives de la Garza (at page H6143), Vento (at page H6235), and Stenholm (at page H6257).

[18] Letter from Representative Martin Olav Sabo to Representative Lee H. Hamilton, October 26, 1993, 2 pages.

[19] See Organization of the Congress: *Final Report of the Senate Members of the Joint Committee on the Organization of Congress*, Sen. Rept. 103-215, Vol. I, December 1993, pages 14 and 15.

the Senate recommendations (S. 1824) was introduced on February 3, 1994 (the recommendation pertaining to the Byrd Rule was set forth in Section 312 of the bill). The House Members of the Joint Committee did not include any recommendations regarding the Byrd Rule in their report or legislation (H.R. 3801, also introduced on February 3, 1994).

The day after the two reform bills were introduced, the chairmen of 15 House committees wrote to Speaker Tom Foley. They urged him to meet with Senate Majority Leader George Mitchell in order to get Section 312 of S. 1824, dealing with the Byrd Rule, removed from the reform package.[20]

On July 19, 1994, Chairman Sabo introduced H.R. 4780. The bill would have amended the Congressional Budget Act of 1974 to make the Byrd Rule "applicable to the Senate only," chiefly by removing references to conference reports in Section 313 of the Act.[21]

None of the three bills cited above were acted upon before the 103rd Congress adjourned.

[20] The letter is discussed in: Karen Foerstel, Byrd Rule War Erupts Once Again, *Roll Call*, February 24, 1994, pages 1 and 13.

[21] See the following article for a discussion of the Sabo bill: Mary Jacoby, Sabo Bill Would Kill Byrd Rule For Good, *Roll Call*, July 25, 1994, page 12.

Table 3. Listing of Actions Under the Senate's Byrd Rule (Covering Calendar Years 1985 Through 1997)[1]

Object of point of order[2]	Basis of point of order[3]	Subject matter	Waiver motion[4]	Disposition of point of order
1. Consolidated Omnibus Budget Reconciliation Act of 1985[5]				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
[not applicable]				
2. Omnibus Budget Reconciliation Act of 1986				
To Strike Provision(s) From Bill or Conference Report				
Section 403	Outlay increase when committee not in compliance	Conservation programs	Rejected, 32-61	Sustained; section stricken (September 19, 1986)
Page 139, line 1-p. 161, line 17; and p. 162, lines 1-24	Outside committee's jurisdiction	Program fraud civil remedies	Approved, 79-15	Fell (September 19, 1986)
To Bar Consideration of Amendment(s)				
[none]				

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
3. Omnibus Budget Reconciliation Act of 1987				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
Byrd-Dole Amendment No. 1254; Kassebaum Amendment No. 1259; and Gramm Amendment No. 1260	[specific basis not cited]	[various topics]	Approved, 81-13	[none raised]
4. Omnibus Budget Reconciliation Act of 1989 [6]				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
[none]				

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
5. Omnibus Budget Reconciliation Act of 1990				
To Strike Provision(s) From Bill or Conference Report				
Section 7405(j)	Outside committee's jurisdiction	Apportionment of highway funds between states	None	Sustained, subsection stricken (October 17, 1990)
Page 1017, line 5-p. 1018, line 19; and p. 1018, line 22-p. 1019, line 18	Budgetary changes merely incidental to non-budgetary components	Occupational Safety and Health Administration (OSHA) penalties	None	Sustained, provisions stricken (October 18, 1990)
Sections 4003-4016	No change in outlays or revenues	Harvesting of timber in the Tongass National Forest in Alaska	None	Sustained, sections stricken (October 18, 1990)
Title III, Subtitle B (as modified)	No change in outlays or revenues	National aviation noise policy, limitations on airport improvement program revenues, high density traffic airport rules, and related matters	Approved, 69-31	Fell (October 18, 1990)
To Bar Consideration of Amendment(s)				
Graham Amendment No. 3025	No change in outlays or revenues	Authorize Federal Deposit Insurance Corporation (FDIC) to develop risk-based insurance system	Rejected, voice vote	Sustained; amendment fell (October 18, 1990)
Symms Amendment No. 3039	No change in outlays or revenues	Deposit of all increased motor fuel taxes (other than taxes on railroads) into Highway Trust Fund	Rejected, 48-52	Sustained, amendment fell (October 18, 1990)

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
6. Omnibus Budget Reconciliation Act of 1993				
To Strike Provision(s) From Bill or Conference Report				
Section 1105(c)	No change in outlays or revenues	Commercial use of bovine growth hormone in other countries	Rejected, 38-60	Sustained; subsection stricken (June 24, 1993)
Section 7801; Section 7803(a) (proposing in part new sections 2106 and 2108(b)(2) of the Social Security Act); and Section 8252(a)(2), (b), and (c)	No change in outlays or revenues	Childhood immunizations and t[illegible] return preparer standards	None	Sustained; most provisions stricken (June 24, 1993)
Section 13631(b) (proposing in part a new Section 1928 of the Social Security Act)	No change in outlays or revenues; budgetary changes merely incidental to non-budgetary components	Childhood immunizations	None	Fell. Motion to appeal Chair's ruling rejected, 43-57 (August 6, 1993)
Section 1106(a)	Budgetary changes merely incidental to non-budgetary components	Imposition of domestic content requirements on U.S. cigarette manufacturers	None	Fell. Motion to appeal Chair's ruling rejected, 43-57 (August 6, 1993)

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
6. Omnibus Budget Reconciliation Act of 1993 — continued				
To Bar Consideration of Amendment(s)				
Domenici/Nunn Amendment No. 544	No change in outlays or revenues	Extend discretionary caps on defense, international, and domestic spending through FY 1995	Rejected, 53-45	Sustained; amendment fell (June 24, 1993)
Bradley Amendment No. 542	No change in outlays or revenues	Separate enrollment requirement for appropriations and tax expenditures	Rejected, 53-45	Sustained; amendment fell (June 24, 1993)
Gramm Amendment No. 557	No change in outlays or revenues	Restoration of maximum deficit amounts	Rejected, 43-55	Sustained; amendment fell (June 24, 1993)
7. Balanced Budget Act of 1995				
To Strike Provision(s) From Bill or Conference Report				
Section 7171	No change in outlays or revenues	Raising the age of Medicare eligibility	None	Sustained; section stricken (October 27, 1995)
Section 7191(a)	No change in outlays or revenues	Bar against the use of federal funding of abortions under Medicaid	Rejected, 55-45	Sustained; subsection stricken (October 27, 1995)
49 provisions in various titles of the bill	[various bases cited]	[various topics, dealing primarily with welfare reform]	Rejected, 53-46	Sustained against 46 provisions, which were stricken; not sustained against 3 provisions, which remained in bill (October 27, 1995)

Object of point of order [3]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
7. Balanced Budget Act of 1995 — continued				
Section 8001 (proposing in part a new Section 1853(f) to the Social Security Act) and Section 13301	No change in outlays or revenues; budgetary changes merely incidental to non-budgetary components	Application of antitrust rule to provider-sponsored organizations (MedicarePlus) and exemption of physician office laboratories.	Rejected, 54-45	Sustained, provisions stricken from conference report (November 17, 1995)
To Bar Consideration of Amendment(s)				
Dorgan Amendment No. 2977	[specific basis not cited]	Ending deferral for U.S. shareholders on income of controlled foreign corporations attributable to imported property	Rejected, 47-52	Sustained; amendment fell (October 26, 1995)
Specter Modified Amendment No. 2986	No change in outlays or revenues	Expressing sense of the Senate regarding a flat tax	Rejected, 17-82	Sustained, amendment fell (October 27, 1995)
Bumpers Amendment No. 3028	No change in outlays or revenues	Prohibition against the scoring of assets sales as budget savings	Rejected, 49-50	Sustained; amendment fell (October 27, 1995)
Byrd/Dorgan Amendment No. 2942	No change in outlays or revenues	Increase time limit on debate in Senate on reconciliation legislation	Rejected, 47-52	Sustained; amendment fell (October 27, 1995)

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
8. Personal Responsibility and Work Opportunity Reconciliation Act of 1996				
To Strike Provision(s) From Bill or Conference Report				
Section 2923 (proposing a new Section 1511 of the Social Security Act), page 772, line 13-p. 785, line 22	Outlay increase when committee not in compliance	Medicaid supplemental umbrella fund	None	Sustained; provision stricken (July 18, 1996)
Section 408(a)(2)	No change in outlays or revenues	Family cap (no additional cash assistance for children born to families receiving assistance)	Rejected, 42-57	Sustained; provision stricken (July 23, 1996)
Section 2104	No change in outlays or revenues	Social services provided by charitable or private organizations	Approved, 67-32	Fell (July 23, 1996)
Section 2909	No change in outlays or revenues	Abstinence education programs	Rejected, 52-46	Sustained, provision stricken (July 23, 1996)
22 provisions in various titles of the bill	[various bases cited]	Various topics involving the Food Stamp, School Lunch, and Child Nutrition programs and welfare reform	None	Sustained against 21 provisions, which were stricken from the bill; not sustained against 1 provision, which remained in the bill (July 23, 1996)

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
8. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 — continued				
To Bar Consideration of Amendment(s)				
Frist Modified Amendment No. 4914	No change in outlays or revenues	Expressing the sense of Congress that the President should ensure approval of state welfare reform waiver requests	Rejected, 55-43	Sustained; amendment fell (July 19, 1996)
9. Balanced Budget Act of 1997				
To Strike Provision(s) From Bill or Conference Report				
Section 5611	No change in outlays or revenues	Raising the age of Medicare eligibility	Approved, 62-38	Fell (June 24, 1997)
Section 5822	Budgetary changes merely incidental to non-budgetary components	Enrollment eligibility (Welfare-to-Work Grant Program)	[waiver motion withdrawn]	Sustained; provision stricken (June 25, 1997)
Section 1949(a)(2)	No change in outlays or revenues	Bar against the use of federal funding of abortions under Medicaid	None	[point of order withdrawn]
Sections 5713, 5833, and 5987	Outside committee's jurisdiction	[various topics]	None	Sustained; sections stricken (June 25, 1997)
Section 5001	No change in outlays or revenues	Establishment of a Medicare Choice program (balanced billing protection)	Approved, 62-37	Fell (June 25, 1997)

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
9. Balanced Budget Act of 1997 — continued				
To Bar Consideration of Amendment(s)				
Levin Amendment No. 482	No change in outlays or revenues	Allowing vocational educational training to be counted as a work activity under the Temporary Assistance for Needy Families program	Rejected, 55-45	Sustained; amendment fell (June 25, 1997)
Kennedy Amendment No. 490	Increase in deficit in fiscal year beyond those covered by instructions	Student loan programs	Rejected, 43-57	Sustained; amendment fell (June 25, 1997)
Kennedy Amendment No. 504	[no basis cited]	Immediate transfer to Medicare Part B of certain home health benefits	Rejected, 38-62	Sustained; amendment fell (June 25, 1997)
10. Revenue Reconciliation Act of 1997				
To Strike Provision(s) From Bill or Conference Report				
Section 602	No change in outlays or revenues	District of Columbia Government reform	[waiver motion withdrawn]	Sustained; section stricken (June 26, 1997)
Section 702(d)	No change in outlays or revenues	Intercity passenger rail funding	Approved, 77-21	Fell (June 27, 1997)

Object of point of order [2]	Basis of point of order [3]	Subject matter	Waiver motion [4]	Disposition of point of order
10. Revenue Reconciliation Act of 1997 — continued				
To Bar Consideration of Amendment(s)				
Gramm Amendment No. 566	No change in outlays or revenues	Balanced budget enforcement procedures	Rejected, 37-63	Sustained; amendment fell (June 27, 1997)
Bumpers Amendment No. 568	[no basis cited]	Prohibition against scoring, for budget purposes, revenues from sale of certain federal lands	Rejected, 48-52	Sustained; amendment fell (June 27, 1997)
Craig Amendment No. 569	No change in outlays or revenues	Prohibition in PAYGO budget process against using tax increases to pay for mandatory spending increases	Rejected, 42-58	Sustained; amendment fell (June 27, 1997)
Brownback/Kohl Amendment No. 570	No change in outlays or revenues	Balanced budget enforcement procedures	Rejected, 57-43	Sustained, amendment fell (June 27, 1997)
Frist Amendment No. 571	No change in outlays or revenues	Balanced budget enforcement procedures	Rejected, 59-41	Sustained; amendment fell (June 27, 1997)
Abraham Amendment No. 538	No change in outlays or revenues	Reservation of future revenue windfalls for tax or deficit reduction	Rejected, 53-47	Sustained; amendment fell (June 27, 1997

1 The Byrd Rule is Section 313 of the Congressional Budget Act of 1974, as amended (2 *U.S.C.* 644). There are many point-of-order provisions in Titles III and IV of the Act. In some instances, points of order or waiver motions are made under the Act by general reference only (such as a Senator raising a point of order "under Title III of the Act") rather than by specific reference to the provision(s) involved. When only general references are made, it usually is impossible to determine (by reference to debate in the *Congressional Record* alone) which provision of the Act is involved. Consequently, this table reflects only those instances when specific reference was made to Section 313 of the Act or to the Byrd Rule.

2

The object of a point of order under the Byrd Rule may be to strike one or more provisions (as designated by title or section number, or by page and line number) in a reconciliation measure or a conference report thereon, or to bar consideration of one or more amendments thereto.

3

A provision is regarded as extraneous under the Byrd Rule if it:

(1) does not produce a change in outlays or revenues;
(2) produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
(3) is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
(4) produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
(5) would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; or
(6) recommends changes in Social Security.

The Byrd Rule sets forth specific exceptions to the criteria to determine extraneousness.

4

Under the Byrd Rule, a successful waiver motion requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant). A single waiver motion can (1) apply to the Byrd Rule as well as other provisions of the Congressional Budget Act; (2) involve multiple as well as single provisions or amendments; (3) extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and (4) be made prior to the raising of a point of order, thus making the point of order moot.

5

On October 24, 1985, Senator Robert C. Byrd offered an amendment containing the Byrd Rule to the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, which the Senate adopted. In this form, the Byrd Rule applied to initial Senate consideration of reconciliation measures. On December 19, 1985, the Senate adopted S.Res. 286, which extended the application of portions of the provision in COBRA of 1985 to conference reports and amendments between the two Houses. Because the enactment of COBRA of 1985 was delayed until early 1986, the portion of the Byrd Rule dealing with conference reports became effective first. Senate consideration of the conference report on COBRA of 1985, and amendments between the two Houses thereon, occurred beginning on December 19, 1985. Therefore, only the portion of the Byrd Rule dealing with conference reports and amendments between the two Houses applied during the consideration of COBRA of 1985. No actions were taken under the rule.

6

On October 13, 1989, during consideration of the Omnibus Budget Reconciliation Act of 1989, the Senate adopted Mitchell Amendment No. 1004 by voice vote. The amendment struck extraneous matter from the bill; its stated purpose was "to strike all matter from the bill that does not reduce the deficit" (see the *Congressional Record* of October 13, 1989, at page S 13349).

7

The point of order was not sustained against that part of Section 7803(a) proposing a new Section 2106 of the Social Security Act.

APPENDIX A. Text of the Byrd Rule (Section 313 of the Congressional Budget Act of 1974)

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION

Sec. 313 (a) **In General.** — When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to section 310, (whether that bill or resolution originated in the Senate or the House) or Section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985 upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

(b) **Extraneous Provisions.** — (1)

(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 310 shall be considered extraneous if such provision does not produce a change in outlays or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph);

(B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions;

(C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous;

(D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision;

(E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year; and

(F) a provision shall be considered extraneous if it violates section 310(g).

APPENDIX A. Text of the Byrd Rule
(Section 313 of the Congressional Budget Act of 1974)
— continued

(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:

(A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit;

(B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years aft :r the fiscal years covered by the reconciliation bill or reconciliation resolution;

(C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or

(D) such provisions will be likely to produce a significant reduction in outlays or increases in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if

(A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or

(B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

APPENDIX A. Text of the Byrd Rule
(Section 313 of the Congressional Budget Act of 1974)
— continued

(c)[1] **Extraneous Materials**. — Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

(c)[1] When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution pursuant to section 310, upon —

(1) a point of order being made by an Senator against extraneous material meeting the definition of subsections (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F), and

(2) such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

[1] Due to a drafting error in Section 13214 of the Omnibus Budget Reconciliation Act of 1990, the Byrd Rule contains two subsections (c).

APPENDIX A. Text of the Byrd Rule (Section 313 of the Congressional Budget Act of 1974) — continued

(d) **General Point of Order**. — Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point or order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(e) **Determination of Levels**. — For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenue for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

[The GAO report is as follows:]

United States General Accounting Office

GAO

Report to the Honorable
Richard K. Armey, Majority Leader,
House of Representatives

May 1997

BUDGET ISSUES

Fiscal Year 1996 Agency Spending by Budget Function

GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-276984

May 13, 1997

The Honorable Richard K. Armey
Majority Leader
House of Representatives

Dear Mr. Armey:

This report responds to your office's request for information on federal spending by budget function and subfunction for fiscal year 1996. In the following appendixes, we display agency spending in terms of gross obligations[1] reported against the broad federal mission areas described by budget function classifications. As we have suggested in previous products and testimony,[2] examining patterns of spending according to budget functions provides a starting point for discussions of government restructuring and can be useful in identifying possible program overlap by focusing on which federal agencies are associated with which federal mission areas.

Appendix I provides a brief description of each budget function and subfunction. Appendix II provides a series of tables that classify department and agency spending by subdepartment[3] and by subfunction; appendix III summarizes spending for each budget function and subfunction by federal departments and subdepartments. We compiled the information presented in appendixes II and III from automated information collected and maintained by the Office of Management and Budget as part of its process to develop the President's fiscal year 1998 budget. We did not independently verify reported data, although we did

[1] Obligations reflect orders placed, contracts awarded, services received, and other similar transactions during a fiscal year. As an expression of an agency's total financial commitments for a given period, gross obligations portray the relative size of an organization, without regard to the type of underlying budgetary resource or when resulting outlays may occur. When aggregated, however, gross obligations may overstate both department and governmentwide totals. For example, an agency's obligations may include commitments made to another agency, which may then be reobligated by the receiving agency in the same fiscal year.

[2] This report updates a series of products we prepared for the Chairman, Senate Committee on Governmental Affairs, in 1996. See Government Restructuring: Identifying Potential Duplication in Federal Missions and Approaches (GAO/T-AIMD-95-161, June 7, 1995); Budget Function Classification: Agency Spending by Subfunction and Object Category, Fiscal Year 1994 (GAO/AIMD-95-116FS, May 10, 1995); and Budget Function Classification: Agency Spending and Personnel Levels for Fiscal Years 1994 and 1995 (GAO/AIMD-96-115FS, April 11, 1996).

[3] In this report, the term "subdepartment" generally refers to second-tier organizational structures, such as bureaus, administrations and services, and to individual independent agencies, such as the U.S. Postal Service or the Federal Maritime Commission.

reconcile total obligations for departments and agencies to published sources.

Appendixes II and III provide first-level observations on who does what within the enormous complexity of federal missions and organizations. This perspective can be augmented by linking these department and subdepartment summaries to the account-level detail provided in our recent product, Compendium of Budget Accounts: Fiscal Year 1998 (GAO/AIMD-97-66, April 1997). And, for additional detail, the budget account summaries in the compendium can be further linked to the Budget of the United States Government, Fiscal Year 1998 - Appendix and to agency budget justifications provided to the Congress. In this manner, a reader can "drill down" as needed to inquire into any particular spending pattern within any function, subfunction, or agency.

The budget function classification system provides a comprehensive and consistent means to capture federal spending according to area of national need. Because of this, budget functions are the categories used by the Congress in its concurrent resolution on the budget and will likely be the classification system used to summarize federal spending in governmentwide financial statements, which are required by the Chief Financial Officers Act of 1990 (as expanded by the Government Management Reform Act of 1994), and in the February 1998 governmentwide performance plan, which is required by the Government Performance and Results Act of 1993. Some of the patterns disclosed by arraying spending by function include the following.

- Most federal departments and agencies address more than one mission area; in fact, most made obligations in 1996 to three or more budget functions. If the analysis is continued to subdepartments and subfunctions, the picture is often more complex. For example, the Department of Health and Human Services has about a dozen subdepartments addressing eight missions ranging from Health Care Services to Training and Employment. The Department of the Interior has over a dozen subdepartments addressing 11 missions ranging from Recreational Resources to General Purpose Fiscal Assistance to Elementary, Secondary and Vocational Education.
- Focusing on the missions of government, rather than federal organizations, produces a similarly intricate picture. Excluding Social Security, Medicare, and Net Interest, 6 of the remaining 15 budget functions are addressed by six or more executive branch departments and major agencies. For example, seven major federal organizations made

obligations in 1996 to the Natural Resources and Environment mission area and seven to Community and Regional Development.

- Lastly, in nominal dollar terms, the significance of a department to a mission area, or of a mission area to a department, varies considerably. Spending for the Transportation mission area, for example, is almost entirely within the Department of Transportation, which is also associated with that mission area almost exclusively. However, the Department of Agriculture, with nearly two dozen subdepartments addressing 16 different subfunctions, presents a different picture. The Department is responsible for almost all spending in the Agriculture function, but half of the Department's obligations are associated with a different function and subfunction (Food and Nutrition Assistance within Income Security).

Care must be exercised in drawing specific conclusions from the information contained in the enclosed tables. All of these data are reported as part of the annual executive budget formulation process; none of the data are audited. Additional limitations to note include the following.

- The function classifications can in some cases aggregate very different activities. For example, the Income Security function involves 15 federal organizations, but these organizations are not all dealing with the same type of "Income Security." Income Security actually involves three broad subfunctions: (1) retirement and disability, addressed by nine different federal entities, many of which administer separate employee pension programs; (2) cash assistance, provided by five federal organizations; and (3) housing, food, and nutrition assistance programs, concentrated in two major departments spread across seven components with some small participation by two independent agencies.
- A specific function or subfunction may not fully encompass a set of logically related activities. For example, the Commerce and Housing Credit function does not include the Housing Assistance subfunction, which is in Income Security. Similarly, the Income Security function does not include, for example, Social Security or Income Security for Veterans.
- Subfunctions are based on a variety of organizing themes. Some are based on divisible segments of broad mission areas (e.g., Water Transportation), some on a set of related activities (e.g., Health Care Services), and some on common functions (e.g., Central Fiscal Operations).
- Although each federal activity is placed in a function that best defines its most important purpose, there is discretion when coding an individual budget account against the function categories. If the account finances activities in two or more subfunctions within a single function, the general

function code is used; if the account is associated with two or more functions, a general multi-function code is used.[4]

We are sending copies of this report to the Chairmen and Ranking Minority Members of the Senate Committee on Appropriations; Senate Committee on the Budget; Senate Committee on Governmental Affairs; House Committee on Appropriations; House Committee on the Budget; House Committee on Government Reform and Oversight; and other interested parties. We will also make copies available to others on request.

We will continue to work with your office to provide timely information and assistance as you analyze these data. If you have any questions, please call me at (202) 512-9573. The major authors of this correspondence were Michael J. Curro, Assistant Director, who can be reached at (202) 512-2991; Laura Hamilton; and John Mingus.

Sincerely yours,

Paul L. Posner

Paul L. Posner
Director, Budget Issues

[4]Where an account's obligations were reported to more than one function, we allocated the obligations on the same percentage basis as reported for the account's gross budget authority; for accounts lacking gross budget authority, we allocated the obligations on the same percentage basis as reported for the account's gross outlays.

Contents

Abbreviations

DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
DOT	Department of Transportation
EOP	Executive Office of the President
EPA	Environmental Protection Agency
FAP	Funds Appropriated to the President
GSA	General Services Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
NASA	National Aeronautics and Space Administration
OPM	Office of Personnel Management
SBA	Small Business Administration
USDA	Department of Agriculture
VA	Department of Veterans Affairs

Description of Budget Functions

Function	Description	Subfunction
National Defense (050)	Common defense and security of the United States, including raising, equipping, and maintaining of armed forces; development and utilization of weapons systems; direct compensation and benefits paid to active military and civilian personnel; defense research, development, testing, and evaluation; and procurement, construction, stockpiling, and other activities undertaken to directly foster national security.	Department of Defense—Military (051) Atomic Energy Defense Activities (053) Defense-related Activities (054)
International Affairs (150)	Maintaining peaceful relations, commerce, and travel between the United States and the rest of the world and promoting international security and economic development abroad.	International Development and Humanitarian Assistance (151) International Security Assistance (152) Conduct of Foreign Affairs (153) Foreign Information and Exchange Activities (154) International Financial Programs (155)
General Science, Space and Technology (250)	Resources allocated to science and research activities of the federal government that are not an integral part of the programs conducted under any other function.	General Science and Basic Research (251) Space Flight, Research, and Supporting Activities (252)
Energy (270)	Promoting an adequate supply and appropriate use of energy to serve the needs of the economy.	Energy Supply (271) Energy Conservation (272) Emergency Energy Preparedness (274) Energy Information, Policy, and Regulation (276)
Natural Resources and Environment (300)	Developing, managing, and maintaining the nation's natural resources and environment.	Water Resources (301) Conservation and Land Management (302) Recreational Resources (303) Pollution Control and Abatement (304) Other Natural Resources (306)
Agriculture (350)	Promoting the economic stability of agriculture and the nation's capability to maintain and increase agricultural production.	Farm Income Stabilization (351) Agricultural Research and Services (352)

(continued)

Function	Description	Subfunction
Commerce and Housing Credit (370)	Promotion and regulation of commerce and the housing credit and deposit insurance industries, which pertain to collection and dissemination of social and economic data (unless they are an integral part of another function, such as health); general purpose subsidies to business, including credit subsidies to the housing industry; and the postal service fund and general fund subsidies of that fund.	Mortgage Credit (371) Postal Service (372) Deposit Insurance (373) Other Advancement of Commerce (376)
Transportation (400)	Providing for the transportation of the general public and/or its property, whether local or national and regardless of the particular mode of transportation. Included are construction of facilities; purchase of equipment; research, testing, and evaluation; provision of communications related to transportation; operating subsidies for transportation facilities and industries; and regulatory activities directed specifically toward the transportation industry rather than toward business.	Ground Transportation (401) Air Transportation (402) Water Transportation (403) Other Transportation (407)
Community and Regional Development (450)	Development of physical facilities or financial infrastructures designed to promote viable community economies.	Community Development (451) Area and Regional Development (452) Disaster Relief and Insurance (453)
Education, Training, Employment, and Social Services (500)	Promoting the extension of knowledge and skills, enhancing employment and employment opportunities, protecting workplace standards, and providing services to the needy.	Elementary, Secondary, and Vocational Education (501) Higher Education (502) Research and General Education Aids (503) Training and Employment (504) Other Labor Services (505) Social Services (506)
Health (550)	Programs other than Medicare whose basic purpose is to promote physical and mental health, including the prevention of illness and accidents.	Health Care Services (551) Health Research and Training (552) Consumer and Occupational Health and Safety (554)
Medicare (570)	Federal hospital insurance and federal supplementary medical insurance, along with general fund subsidies of these funds and associated offsetting receipts.	Medicare (571)

(continued)

Function	Description	Subfunction
Income Security (600)	Support payments (including associated administrative expenses) to persons for whom no current service is rendered. Included are retirement, disability, unemployment, welfare, and similar programs, except for social security and income security for veterans, which are in other functions.	General Retirement and Disability Insurance (excluding Social Security) (601) Federal Employee Retirement and Disability (602) Unemployment Compensation (603) Housing Assistance (604) Food and Nutrition Assistance (605) Other Income Security (609)
Social Security (650)	Federal old age and survivors and disability insurance trust funds, along with general fund subsidies of these funds and associated offsetting collections.	Social Security (651)
Veterans Benefits and Services (700)	Programs providing benefits and services, the eligibility for which is related to prior military service, but the financing of which is not an integral part of the costs of national defense.	Income Security for Veterans (701) Veterans Education, Training, and Rehabilitation (702) Hospital and Medical Care for Veterans (703) Veterans Housing (704) Other Veterans Benefits and Services (705)
Administration of Justice (750)	Programs to provide judicial services, police protection, law enforcement (including civil rights), rehabilitation and incarceration of criminals, and the general maintenance of domestic order.	Federal Law Enforcement Activities (751) Federal Litigative and Judicial Activities (752) Federal Correctional Activities (753) Criminal Justice Assistance (754)
General Government (800)	General overhead cost of the federal government, including legislative and executive activities; provision of central fiscal, personnel, and property activities; and provision of services that cannot reasonably be classified in any other major function.	Legislative Functions (801) Executive Direction and Management (802) Central Fiscal Operations (803) General Property and Records Management (804) Central Personnel Management (805) General Purpose Fiscal Assistance (806) Other General Government (808) Deductions for Offsetting Receipts (809)

(continued)

Function	Description	Subfunction
Net Interest (900)	Transactions which directly give rise to interest payments or income (lending) and the general shortfall or excess of outgo over income arising out of fiscal, monetary, and other policy considerations and leading to the creation of interest-bearing debt instruments (normally the public debt).	Interest on the Public Debt (901) Interest Received by On-Budget Trust Funds (902) Interest Received by Off-Budget Trust Funds (903) Other Interest (908)
Undistributed Offsetting Receipts (950)	Offsetting receipts that are not included as deductions from outlays in the applicable function or subfunction, above, and are thus "undistributed."	Employer Share, Employee Retirement (on Budget) (951) Employer Share, Employee Retirement (off Budget) (952) Rents and Royalties on the Outer Continental Shelf (953) Sales of Major Assets (954) Other Undistributed Offsetting Receipts (959)

Note: Subfunction code 999 is assigned to those budget accounts whose activities are associated with two or more functions.

Budget Process Seminar
September 26, 1997
Subcommittee on Legislative & Budget Process
Biographies of Briefers

Robert Keith, CRS

Bob Keith, who has been with CRS since 1974, is a Specialist in American National Government in the Government Division. He specializes in the area of Congressional budgeting and legislative procedure. Bob was detailed twice to the House Rules Committee in the late 1970's and early 1980's and once to the Congressional Budget Office in 1988.

James V. Saturno, CRS

Jim Saturno is a Specialist on the Congress in the Congress Section of the Government Division of the Congressional Research Service. His area of expertise is legislative procedure, especially the federal budget process and budget process reform. His work has appeared in Legislative Studies Quarterly, and the Encyclopedia of the United States Congress. Prior to coming to CRS in 1986 he received his BA at SUNY University at Albany and his MA at the University of Rochester where he also as an instructor. In 1987 he served as a consultant to the Center for Responsive Politics for the preparation of Congress Speaks -- A Survey of the 100th Congress. In 1993 he was detailed to the Joint Committee on the Organization of Congress as a consultant on the budget process.

Sue Irving, GAO

Sue Irving is Associate Director for Federal Budget Issues at the GAO. As such she co-directs the agency's work on budget structure, budget process, long-term issues in the budget, and interaction of the Results Act and the budget process. Among the issues on which the group has worked are the implementation of credit reform, the linkage of budget and accounting, how to increase recognition of long-term commitments in the budget process, and the design of a budget structure to increase recognition of important choices. Sue has worked in the U.S. Senate, at the Council of Economic Advisers, and in the nonprofit sector. She has testified on budget process before the House Rules Committee, the Senate Governmental Affairs Committee, and the House Budget Committee.

James Reid Horney, CBO

Jim Horney is Chief of the Projections Unit in the Budget Analysis Division of the Congressional Budget Office. He received an A.B. in History from Harvard College and a Ph.D. in Government and Politics from the University of Maryland. After two years as an assistant professor in the J.L. Kellogg Graduate School of Management and the Political Science Department at Northwestern University, he spent a year as an American Political Science Association Congressional Fellow and eight years working in various positions for the Committee on the Budget and Committee on Rules of the U.S. House of Representatives. Just prior to coming to CBO in March 1992, he was an Assistant Director for Budget Issues at the General Accounting Office.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned.]