

## Budget Process

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### Research References

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Congressional Budget and Impoundment Control Act of 1974 (Pub. L. No. 93–344)  
Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. No. 99–177), also known as the Gramm-Rudman Act  
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Budget Enforcement Act of 1990 (Pub. L. No. 101–508)  
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*Manual on the Federal Budget Process*, CRS, Dec. 24, 1991

## § 1. In General; Legislative Background

### Generally

There are three stages in the complex process by which the Congress allocates the fiscal resources of the federal government. There is, first, an *authorization* process under which federal programs are created in response to national needs, and second, an *appropriations* process under which funding is provided for those programs. See APPROPRIATIONS. The third stage is the congressional *budget* process, under which Congress annually establishes an overall fiscal policy on how much total spending and revenues ought to be and how total spending should be divided among the major functions of government such as defense, agriculture, and health. These three stages are not necessarily considered or completed in chronological order.

### The Budget and Accounting Act of 1921

The modern era in budget reform began with the passage of the Budget and Accounting Act of 1921, which established a new Presidential budget system, and which permitted all items relating to a department to be brought together in the same bill. This Act (Pub. L. No. 67–13) authorized the President to submit a national budget in place of the previous uncoordinated agency submissions. This Act required him to submit his budget recommendations to Congress each year, and the Office of Management and Budget (OMB) was created to assist him in this respect. The 1921 Act also established the General Accounting Office and made it the principal auditing arm of the federal government. See 31 USC §§ 1101 *et seq.*

### The Congressional Budget Act of 1974

Until 1974, the Congress lacked a comprehensive uniform mechanism for establishing priorities among its budgetary goals and for determining national economic policy regarding the federal budget. Budget responsibility remained fragmented throughout the Congress. Both taxing and spending actions were taken over a period of many months and by way of many different legislative measures. The size of the budget, and whether it should be in surplus or deficit, were not subject to effective controls. To address these problems, both Houses enacted over President Nixon's veto the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. No. 93–

344). Deschler Ch 13 § 21. The Act (see 2 USC §§ 601 *et seq.*) consisted of 10 titles which:

- Established new committees on the budget in both the House and the Senate, and a Congressional Budget Office designed to improve Congress' informational and analytical resources with respect to the budgetary process.
- Set forth a timetable and established controls for various phases of the congressional budget process centered on a concurrent resolution on the budget to be adopted prior to legislative consideration of revenue or spending bills.
- Spelled out various enforcement procedures and provided for program review and evaluation.
- Provided for standardization of budget terminology.
- Established procedures for congressional review of Presidential impoundment actions.

Titles I through IX are known as the “Congressional Budget Act” and title X is known as the “Impoundment Control Act.” The Unfunded Mandates Reform Act of 1995 added a new part B to title IV of the Congressional Budget Act.

The central purpose of the process established by the Act is to coordinate the various revenue and spending decisions that are made in separate tax, appropriations, and legislative measures. (The Act originally provided for the adoption of two budget resolutions each year, but the Act was amended in 1985 to allow an entire fiscal-year cycle to be addressed by a single resolution.)

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

The Balanced Budget and Emergency Deficit Control Act of 1985 (referred to herein as Gramm-Rudman) made further significant changes in the budget process, and in the Congressional Budget Act procedures. (Gramm-Rudman is codified in 2 USC §§ 900 *et seq.*) Conceived as a statutory response to the burgeoning federal deficit problem, Gramm-Rudman instituted a single binding budget resolution, binding committee allocations, and provided for reconciliation and enforcement of fixed deficit targets through sequestration. *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 7. The Act included provisions amending the Congressional Budget Act to permit a new point of order against legislation exceeding the appropriate committee allocation (§ 302(f)), exempting the title II social security program from reconciliation (§ 310(g)), and precluding the breaching of budget authority or outlay ceilings or revenue floors, with certain exceptions (§ 311).

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

The Budget Enforcement Act of 1990 (BEA) revised the Gramm-Rudman deficit targets and made them adjustable, and extended the sequestration process. It set limitations on distinct categories of discretionary spending, and created pay-as-you-go procedures to require that increases in direct spending or decreases in revenues due to legislative action be offset so that there is no net increase in the deficit. §§ 9, 10, *infra*. The Omnibus Budget Reconciliation Act of 1993 (OBRA) extended the discretionary spending limits and pay-as-you-go requirements through fiscal 1998. Pub. L. No. 103-66.

**Enforcement Procedures Generally**

The Congressional Budget Act of 1974 permits enforcement through parliamentary points of order against legislation violating its requirements and procedures. However, the enforcement mechanisms are not automatically applied and timely points of order from the floor are required to bring them into play. *Budget Process Law Annotated*, 1993 Edition, S. Prt 103-49, p 176. But the Congressional Budget Act also is linked to certain automatic enforcement procedures under Gramm-Rudman. The Congressional Budget Act sets forth discretionary spending limits used for purposes of sequestration, the automatic-formula reduction process that is required if triggered under Gramm-Rudman. Sequestration, see § 10, *infra*.

Enforcement through Budget Act points of order may be precluded under § 606(d)(2) if the pending measure is protected by one of the emergency designations permitted under Gramm-Rudman when declared by both the President and Congress (see §§ 251(b)(2)(D) and 252(e)).

**Use of Special Rules**

A concurrent resolution on the budget or a budget reconciliation bill that has been reported as privileged pursuant to clause 4(a) of Rule XI is privileged for consideration under the provisions of § 305 of the Act and clause 8 of Rule XXIII or the provisions of § 310 of the Act, as the case may be. In either case, however, the House may vary the parameters of consideration established in statute or standing rule by unanimous consent, by suspension of the rules, or by adoption of a special rule.

This is true because the statutory provisions concerned were enacted as exercises of the rulemaking powers of the House and the Senate, respectively, under the Constitution. See, for example, § 904(a). It is customary for the House to vary the parameters for consideration of a particular budget resolution or reconciliation bill by adopting a special order of business resolution recommended by the Committee on Rules.

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

Under the Budget Act the Speaker must refer a concurrent resolution on the budget reported from the Budget Committee sequentially to the Rules Committee for not more than five legislative days if it includes any procedure or matter having the effect of changing a rule of the House. See § 301(c). After such a referral, an additional one-day layover follows the report of the Committee on Rules. See § 305(a)(1).

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

### **Generally**

To implement the congressional budget process, the Congressional Budget Act created the Senate and House Budget Committees (and the Congressional Budget Office). 2 USC §§ 601 *et seq.* The Budget Committees were given the authority to draft Congress' annual budget plan for the federal government for consideration by the full Senate and House. Unlike the authorizing and appropriating committees, which focus on individual federal programs, the Budget Committees focus on the federal budget as a whole and how it affects the national economy.

The House rules give the House Budget Committee jurisdiction over matters relating to the congressional budget, including concurrent resolutions on the budget. Rule X clause 1(d)(2). *Manual* § 673a. The Committee on Rules has the special oversight function of review of the budget process. Rule X clause 3(i). *Manual* § 693. In the 104th Congress, the limited jurisdiction of the Budget Committee was expanded to consolidate the budget process and the enforcement of budget controls. See *Manual* § 673b.

The Congressional Budget Act (§ 310) provides conditions for the reporting by the Budget Committees of reconciliation measures. The Act (§ 306) prohibits the consideration in either House of any measure dealing with a matter within the jurisdiction of its Budget Committee if not reported from the Budget Committee or discharged therefrom.

### **Committee Reports; Cost Estimates and Scorekeeping**

The Congressional Budget Office (CBO) provides economic and program analyses and cost information on most reported public bills and resolu-

tions. Under the Budget Act, five-year cost estimates are prepared and published in the reports accompanying these bills. § 403(a).

Committee reports on legislation providing new budget authority, new spending or credit authority, or a change in revenues or tax expenditures, are required to contain the estimates and other detailed information mandated by § 308(a). The information mandated by § 308(a) is also required under House Rule XI clause 2(1)(3) except that, under an amendment adopted in 1995, the estimates with respect to new budget authority must include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

If a bill is introduced in a form providing new budget or entitlement authority and is reported without curative amendment and without an estimate of its cost, then a § 308 point of order may be made against consideration of the bill. However, a special order for the consideration of a bill that “self-executes” the adoption of an amendment providing new budget authority into a bill to be subsequently considered does not, itself, provide new budget authority within the meaning of § 308 of the Budget Act. 103–1, Feb. 24, 1993, p \_\_\_\_.

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

Committee allocations, see § 8, *infra*.

### § 3. The Budget Timetable

The Congressional Budget Act (§ 300) includes a timetable for various stages of the congressional budget process:

- On or before first Monday in February—President submits his budget to Congress
  - Note:* Additional time for submission of the President’s budget can be provided for by law. Shortly after its submission, the two Budget Committees begin hearings on the budget, the economic assumptions upon which it is based, the economy in general, and national budget priorities.
- On or before February 15—Congressional Budget Office submits annual report

*Note:* The CBO is required to submit its annual report to the Budget Committees. This report deals primarily with overall economic and fiscal policy and alternative budget levels and national budget priorities.

- On or before February 25—Committees submit views and estimates to Budget Committees

*Note:* This step involves the submission of the views and estimates of all standing committees of the House and Senate. These reports provide the Budget Committees with an early and comprehensive indication of committee legislative planning. These reports include estimates of new budget authority and outlays.

- On or before April 1—Senate Budget Committee reports concurrent resolution
- On or before April 15—Congress completes action on concurrent resolution on the budget

*Note:* Congress may revise its budget resolution before the end of the appropriate fiscal year (see § 304 of the Budget Act); while this may be done at any point, the Congress in some years has followed the practice of revising the budget plan for the current fiscal year as part of the budget resolution for the upcoming fiscal year.

- May 15—Annual appropriation bills considered in the House

*Note:* General appropriation bills may be considered in the House after May 15 even if a budget resolution for the ensuing fiscal year has yet to be agreed to. § 303(b)(1).

- On or before June 10—House Appropriations Committee reports last annual appropriation bill
- June 15—Congress completes action on reconciliation legislation

*Note:* The mandatory June 15 deadline was repealed by BEA. However, the Congress may not adjourn for more than three calendar days during the month of July until the House has completed action on the reconciliation legislation (§ 310(f)) and the 13 general appropriation bills (§ 309).

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

*Note:* The fiscal year begins on October 1, and ends on September 30. In the past, action on appropriation bills has not always been completed by October 1, necessitating the passage of a “continuing resolution” to provide appropriations on a temporary basis until the regular appropriation bills are enacted.

Deadlines for other stages in the budget process, such as notification of adjustment in maximum deficit amounts, the President’s mid-session

budget review, and various CBO and OMB sequestration reports, were provided for in Gramm-Rudman § 254(a).

Under rules adopted in 1995, each standing committee has the deadline of February 15 of the first session for the submission of its oversight plans for the Congress to the Committees on Government Reform and Oversight and House Oversight. These plans must be reported to the House by the Committee on Government Reform and Oversight by March 31 of the session. Rule X clause 2(d).

#### **§ 4. Budget Resolutions; Consideration and Debate**

##### **Generally**

The budget resolution is a concurrent resolution; as such it is not a law, but serves as an internal framework for Congress in its action on separate revenue, spending, and other budget-related measures. The content of budget resolutions is governed by the Congressional Budget Act (see particularly §§ 301, 606). Budget resolutions set forth budgetary levels for the upcoming fiscal year and for the four succeeding fiscal years. The budget totals set forth what the Congress considers to be the appropriate amounts, including amounts for total spending and total revenues. The budget resolution gives the Congress a mechanism for establishing federal spending priorities. The budget resolution accomplishes this by dividing up federal spending among various classifications such as national defense, agriculture, and health. These classifications, known as “budget functions,” provide the Congress with a means of allocating federal resources among broad categories of spending. *The Congressional Budget Process, An Explanation*, Committee on the Budget, U.S. Senate, Mar. 1988, p 4.

Section 301(b)(4) of the Budget Act permits a concurrent resolution on the budget to “set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of [the] Act.” (This provision is sometimes referred to as the “elastic clause.”) Textually, the “other matters” and “procedures” admitted by this section must: (1) relate to the budget; and (2) be appropriate to carry out the purposes of the Budget Act.

*Note:* They must not include matter that would destroy the privilege of the concurrent resolution on the budget, such as by effecting a special order of business. The only matter in the nature of a special order of business that may be included in a privileged concurrent resolution on the budget is a reconciliation directive. Reconciliation, see § 7, *infra*.

### Floor Consideration

The Congressional Budget Act provides special procedures for House consideration of a concurrent resolution on the budget reported by the Committee on the Budget. Floor consideration may begin after a five-day layover period that starts when the report on the resolution first becomes available to the Members. See § 305(a)(1).

The Act provides for consideration in the Committee of the Whole. Ten hours are allowed for general debate, with an additional four hours permitted on economic goals and policies. Amendments are considered under the five-minute rule (§ 5, *infra*). After the Committee rises and reports the resolution back to the House, the previous question is considered as ordered on the resolution and any amendments thereto to final passage without intervening motion. A motion to recommit the resolution is not in order, nor is a motion to reconsider. § 305(a)(2)–(5). The question having been put on final passage, the yeas and nays are considered as ordered. Rule XV clause 7.

A budget resolution being considered in Committee of the Whole has been held subject to a motion to rise and report the resolution back to the House with the recommendation that the resolving clause be stricken. 103–1, Mar. 18, 1993, p \_\_\_\_.

The Budget Act procedures for floor consideration of a budget resolution are applicable only to privileged budget resolutions which have been reported from committee, and not to unreported budget resolutions. 98–2, Apr. 5, 1984, pp 7992, 7993.

The Rules Committee may report a special rule to be applied during the consideration of a particular budget resolution or conference report. The committee may report a special rule permitting only certain designated amendments to be offered to the resolution. See § 1, *supra*. In recent Congresses, only designated amendments in the nature of substitutes have been permitted, and perfecting amendments have been precluded. H. Res. 384, 103–2, Mar. 10, 1994, p \_\_\_\_.

A budget resolution may under some circumstances be divided so as to permit a separate vote on particular sections therein. 102–2, Mar. 5, 1992, p \_\_\_\_\_. In one instance, where a pending budget resolution contained one section revising the congressional budget for the fiscal year, preceded by sections setting forth budget targets for ensuing fiscal years as well as reconciliation instructions, and followed by a final section on reporting of certain fiscal information, the question of its adoption was divided on the demand of a Member for two separate votes (1) on the first and final portions of the resolution and then (2) on the separable section in between. 96–2, May 7, 1980, pp 10185–87.

**Budget Resolution to Precede Consideration of Related Legislation**

The Congressional Budget Act precludes certain budget-related legislation for a fiscal year until the budget resolution for that year has been adopted by both Houses. § 303(a). The essence of section 303(a) of the Budget Act is timing. It reflects a judgment that legislative decisions on expenditures and revenues for the coming fiscal year should await the adoption of the budget resolution for that year. 101–2, July 25, 1990, p \_\_\_\_\_. Legislation ruled out under this provision has included:

- A conference report containing new spending authority in the form of entitlements to become effective in fiscal years 1978 through 1980, where the concurrent resolution on the budget for those fiscal years had not yet been adopted. 94–2, Sept. 30, 1976, pp 34074, 34075.
- An amendment providing new entitlement authority to become effective in a fiscal year before adoption of the budget resolution for that year. 94–2, Oct. 1, 1976, pp 34554–57; 102–2, Mar. 26, 1992, p \_\_\_\_ (six rulings).
- An amendment providing new budget authority for a fiscal year, before adoption of a budget resolution for that year. 99–1, July 17, 1985, pp 19435, 19436.

Under § 303 of the Act, the Chair is guided by his own judgment of the text and of the arguments presented from the floor as to whether an amendment involves spending or revenues. The statutory requirements that the Chair determine certain levels of spending or revenues on the basis of estimates made by the Committee on the Budget apply only to questions arising under § 302 (allocation breaches) or § 311 (breaches of totals). Nevertheless, the Chair may treat Budget Committee estimates as persuasive on questions arising under § 303 (timing breaches), whether to maintain consistency in determinations under title III of the Act or simply for their analytical merit. 102–2, Mar. 26, 1992, p \_\_\_\_\_.

Waivers of § 303(a) have been provided pursuant to a special rule from the Committee on Rules. See § 1, *supra*.

**§ 5. — Amendments to Resolutions****Generally**

Under the Congressional Budget Act (§ 305(a)(5)), amendments to budget resolutions are considered in the Committee of the Whole under the five-minute rule in accordance with House Rule XXIII. Under clause 8 of that rule, the resolution is open to amendment at any point, so that the Committee of the Whole may amend the functional categories section prior to consideration of the total budget allocations. 95–2, May 2, 1978, p 12094.

**Amendments to Achieve Mathematical Consistency**

The 96th Congress adopted provisions amending Rule XXIII clause 8 to require, with certain exceptions, that amendments to concurrent resolutions on the budget be mathematically consistent. 96-1, Jan. 15, 1979, p 8. Under this rule, amendments making changes in budget authority and outlay aggregate totals must be accompanied by comparable changes in functional categories. A point of order will lie against an amendment to the resolution increasing the aggregates and a functional category for budget authority and outlays but not changing the amount of the deficit. However, an amendment which only transfers an amount of budget authority from one functional category to another—that is, reduces one category by a certain amount and adds the same amount to another category—need make no changes in the aggregates to achieve mathematical consistency. 96-1, May 8, 1979, p 10271.

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

A change in the public debt limit from that figure reported by the Committee on the Budget is not in order, except as part of an amendment offered at the direction of the Budget Committee to achieve mathematical consistency. Rule XXIII clause 3. Public debt limit, see § 14, *infra*.

**Germaneness**

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

**§ 6. — Debate on Conference Reports**

Under § 305(a)(6) of the Congressional Budget Act there can be up to five hours of debate in the House on a conference report on a concurrent resolution on the budget, such debate to be equally divided between the majority and minority parties. Where the conferees report in total disagreement, debate on the motion to dispose of the amendment in disagreement is not

governed by the statute and is instead considered under the general “hour” rule in the House. 94–2, May 13, 1976, p 13756; 95–1, May 17, 1977, p 15126; and 95–2, May 17, 1978, p 14117.

### § 7. Reconciliation Procedures

The Congressional Budget Act (§ 301(b)(2)) provides for the inclusion of reconciliation instructions in a budget resolution and for the reporting and consideration of reconciliation legislation. The purpose of the reconciliation process is to require committees to implement the spending and tax policy decisions agreed to in the budget resolution. If the reconciliation directive involves more than one committee in each House, then all committees affected by the directive are to submit their recommendations to their respective Budget Committees. The Budget Committees then assemble, without substantive revision, all the recommendations into one package for action by the House or Senate. (§ 310). *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 15. In the 104th Congress, the Senate took the position that reconciliation instructions might contemplate several reconciliation bills. 104–2, May 21, 1996, p \_\_\_\_ (decision of Chair sustained on appeal); 104–2, May 23, 1996, p \_\_\_\_.

Reconciliation instructions are directives to committees to recommend changes in existing law to achieve the goals in spending or revenues contemplated by the budget resolution. Reconciliation provides Congress with a mechanism to achieve reduced spending by changing the law applicable to certain entitlement programs as part of its budget plan. Merely lowering entitlement spending levels in the budget resolution may not suffice, because entitlement laws require the government to pay specified benefits to qualifying individuals unless Congress changes those entitlement laws.

The Congressional Budget Act (see § 310(d)) requires that amendments offered to reconciliation legislation in either the House or the Senate must not increase the level of deficit (if any) in the resolution. In order to meet this requirement, an amendment reducing revenues or increasing spending must offset deficit increases by equivalent revenue increases or spending cuts. *Manual on the Federal Budget Process*, CRS, Dec. 24, 1991, p 55. Section 313 of the Budget Act addresses the subject of “extraneous” material in a reconciliation bill—the so-called “Byrd Rule.” The enforcement of this section applies only in the Senate, but can be directed against matter originating with the House.

## § 8. Adherence to Spending and Revenue Levels

### Generally

With certain exceptions, the Congressional Budget Act (§ 311(a)) precludes specified measures—including amendments and conference reports—that would cause total budget authority or total outlays to exceed, or total revenues to be below, the level set forth in the budget resolution after the Congress has completed action thereon. The provision is enforced by raising points of order against the consideration of measures which would breach the “appropriate levels” of total new budget authority or total outlays or total revenues in the budget resolution. The revenue and spending estimates of the Budget Committees are used to determine revenue and spending levels. § 311(c). These budget levels represent a congressional determination of appropriate fiscal policy and national budget priorities. *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 12. Section 311 of the Act has been interpreted to prohibit consideration of an amendment striking out a rescission of existing budget authority where its effect would be to increase the net new budget authority in the bill in breach of the applicable total. 97–1, May 12, 1981, p 9314. A point of order will lie against an amendment that has the effect of reducing revenues for the fiscal year below the total level of revenues contained in the concurrent resolution on the budget for that year. See 94–2, Oct. 1, 1976, pp 34554–57.

### Waivers

The House may agree to a special rule reported from the Committee on Rules waiving points of order against consideration of a bill or resolution in violation of § 311 of the Congressional Budget Act. 96–2, Jan. 24, 1980, p 581. Thus, in 1980, a special rule waived points of order against consideration of a bill containing new budget authority for the current fiscal year in excess of the ceiling on total budget authority established in the concurrent resolution on the budget. 96–2, May 13, 1980, p 10999. See § 1, *supra*.

### Committee Allocations; “Crosswalking”

Under the Congressional Budget Act, provision is made for the allocation—to each committee with jurisdiction—of “appropriate levels” of spending authority. See §§ 302(a); 602(a). The joint statement accompanying a conference report on the budget resolution makes an allocation of total budget authority, outlays, and entitlement authority contained in the resolution among the appropriate committees of the House and Senate. For example, if the conference report allocates \$7 billion in budget authority and \$6

billion in outlays for the functional category “Community and Regional Development,” the statement of managers must divide those amounts among the appropriate committees of the House and Senate with jurisdiction over programs and authorities covered by that functional category. See Deschler Ch 13 § 21. *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 13.

The allocation of the budget plan’s spending levels among the spending committees is known informally as “crosswalking.” Committee crosswalks for both the House and Senate are set out initially in the report of each House accompanying the budget resolution, and finally in the joint explanatory statement of the conference committee on the budget resolution. Each committee is allocated an overall level for discretionary spending within its jurisdiction that is consistent with the congressional budget plan. Under § 602(b) Appropriation Committees then subdivide their allocations among their subcommittees for programs within their jurisdiction.

Any Member may raise a timely point of order against a reported bill, amendment or conference report that would exceed the relevant committee allocation. See § 302(f). Thus, where a general appropriation bill provided new budget authority to the limit of the pertinent allocation pursuant to § 602 of the Budget Act, an amendment scored by the Budget Committee as providing further new budget authority was ruled out as violating § 302(f) of the Budget Act by causing that allocation to be exceeded. 102–1, June 26, 1991, p \_\_\_\_\_. Even an amendment delaying the imposition of a certain monetary penalty has been held to violate § 302(f), the rationale being that, by foregoing offsetting receipts, it provided new budget authority in excess of the pertinent committee allocation. 102–1, July 18, 1991, p \_\_\_\_\_. On the other hand, an amendment that provides no new budget authority or outlays but instead results in outlay savings is not subject to a point of order under these provisions. 100–1, June 30, 1987, p 18308.

Pursuant to section 302(g) of the Budget Act, the Chair relies on estimates provided by the Committee on the Budget in determining levels of spending authority for purposes of deciding questions of order under section 302(f) of the Budget Act. 102–1, June 26, 1991, p \_\_\_\_\_.

#### **The § 311(b) Exception**

As noted above, § 311(a) precludes Congress from considering legislation that would cause total revenues to fall below, or total new budget authority or total outlays to exceed, the appropriate level set forth in the budget resolution. But § 311(a) does not apply in the House to spending legislation if the committee reporting the measure has stayed within its allocation of new discretionary budget authority and new entitlement authority. See

§ 311(b). Accordingly, the House may take up any spending measure that is within the appropriate committee allocations, even if (solely due to excessive spending within another committee's jurisdiction) it would cause total spending to be exceeded.

### **Emergency Spending**

Budget Act points of order against a bill under either § 311 (breach of the appropriate total) or under § 302 (breach of appropriate allocation) do not lie if the spending is protected by an emergency designation authorized by Gramm-Rudman. Such exemptions are specifically permitted by new § 606(d)(2) of the Budget Act. Under Gramm-Rudman, the emergency designation must be identified as such by both the President and Congress. See §§ 251(b)(2)(D) and 252(e).

### **§ 9. Deficit Targets**

Section 601(a)(1) of the Budget Act specified maximum deficit amounts (MDA) for fiscal years through 1995. Congressional budget resolutions had to be within the maximum deficit amount for the applicable fiscal year, a requirement that was enforced by MDA points of order under the Congressional Budget Act. See § 606(b). While these statutory deficit amounts were not in effect beyond fiscal year 1995, deficit limits were specified in the budget resolution for fiscal year 1994 through fiscal year 1998. See H. Con. Res. 64 (conference report agreed to Mar. 31, 1993, p \_\_\_\_).

Under current Gramm-Rudman provisions, the Office of Management and Budget (OMB) provides certain estimates as to fiscal year deficits. § 252(b). Under the original Gramm-Rudman law, the Comptroller General was a participant in the deficit amelioration process. However, in July 1986, the Supreme Court declared the sequestration procedure set forth in Gramm-Rudman to be unconstitutional because it delegated executive powers to the Comptroller General, an officer subject to removal by the Congress. The Supreme Court in upholding the ruling of the District Court invoked the separation of powers doctrine. The court concluded that "Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment. To permit the execution of the laws to be vested in an officer answerable only to Congress would, in practical terms, reserve in Congress control over the execution of the laws." See *Synar v U.S.*, 106 S.Ct. 3181, 478 US 714.

**§ 10. Sequestration**

Sequestration involves the issuance of a Presidential order that permanently cancels budgetary resources (except for special funds and trust funds) for the purpose of achieving a required amount of outlay savings. Sequestration orders are automatically triggered by OMB reports mandated under Gramm-Rudman. Gramm-Rudman, as amended, provides multiple sequestration procedures. The sequestration process is used to enforce the deficit targets (§ 253), to enforce the discretionary spending limits (§ 251), and to enforce the pay-as-you-go requirements (§ 252). These provisions require that such sequesters occur on the same day—15 calendar days after Congress adjourns to end a session. Additional sequesters may occur subsequently in the fiscal year to eliminate any breach in the discretionary spending limits; this is referred to as “within-session” sequestration. § 251(a)(6).

**Modification or Suspension of Sequestration**

The OMB having issued a final sequestration report for a fiscal year, the Majority Leader of either House of Congress may under Gramm-Rudman introduce a timely joint resolution directing the President to modify his most recent sequestration order or to provide an alternative to reduce the deficit for such fiscal year. § 258A(a). The issuance of a “low growth” report by the CBO may also trigger a joint resolution suspending the relevant enforcement provisions of titles III and IV of the Budget Act. § 258(a). For an example of such a resolution, see S.J. Res. 44, 102–1, Jan. 23, 1991, p \_\_\_\_.

A sequestration ordered by the President for fiscal year 1990 was rescinded by the Congress when it adopted a deficit-reducing reconciliation bill for that year. In this instance, initial sequestration reports for fiscal year 1990 were issued by the Directors of both CBO and OMB. Accordingly, the President issued an initial sequestration order directing that the reductions specified in the OMB report be made on a provisional basis; a final sequestration order was then issued by the President. The reconciliation bill included provisions to rescind the orders and restore the sequestered funds, and reduced the deficit by achieving certain other savings. Pub. L. No. 101–239.

**§ 11. Spending Controls****Discretionary Spending**

The Budget Enforcement Act of 1990 (BEA) established discretionary spending limits for fiscal years 1991 through 1995 in § 601 of the Congressional Budget Act. The limits on discretionary budget authority and discre-

tionary outlays are enforceable by the sequestration process under § 251 of Gramm-Rudman. For fiscal years 1994 and 1995, the limits applied to total discretionary budget authority and total discretionary outlays (rather than being distributed among defense, domestic, and international categories). See § 601(a)(2).

The Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. No. 103-66, § 14002, further extended the discretionary spending limits of § 601. OBRA continues the use of adjustable discretionary spending limits through fiscal year 1998. As was the case for fiscal years 1994 and 1995, OBRA established separate limits each year for total discretionary budget authority and total discretionary outlays. See H. Conf. Rept. No. 103-213, 103d Cong. 1st Sess. See also 103-1, Aug. 4, 1993, p \_\_\_\_.

Gramm-Rudman sets forth a detailed procedure for the periodic, automatic adjustment of the discretionary spending limits. Adjustments are made for various factors, including changes in accounting concepts and inflation. See § 251(b)(1).

### **Direct Spending**

Direct spending is spending controlled outside of the annual appropriations process. It is composed of entitlement and other mandatory spending programs, including, under Gramm-Rudman, the food stamp program. § 250(c)(8). Such programs are generally funded by provisions of the permanent laws that created them. For these reasons Congress relies on reconciliation procedures to enforce budget policies with respect to existing spending laws. Reconciliation, see § 7, *supra*.

Direct spending is not capped, but operates under Gramm-Rudman's so-called paygo process, which requires that direct spending and revenue legislation enacted for a fiscal year be deficit neutral. See § 252.

### **§ 12. New Spending Authority**

A conventional authorization establishes or continues a government agency or program, and while it may place a limit on the amount of budget authority that may be appropriated for that purpose (Deschler Ch 25 § 2.13), the authorized funds are available only to the extent provided for in appropriation acts originated by the Appropriations Committee (see APPROPRIATIONS). Spending legislation which circumvents the appropriations process is called "backdoor spending." Restrictions against such legislation are found in the Congressional Budget Act. With certain exceptions, new "spending authority" is to be "effective" only as provided in appropriation acts. § 401(a). "Spending authority" is defined by the Act to include contract authority and borrowing authority. § 401(c)(2). The Act has been con-

strued to prohibit the consideration of a measure containing new spending authority to incur indebtedness, if the budget authority therefor is not provided in advance by appropriation acts. See 94–2, Sept. 27, 1976, p 32655.

The “spending authority” referred to in § 401(a) does not apply to bills that provide legislative authorizations that are subject to the appropriations process. For example, a point of order that a section of a bill providing that certain loan receipts were “authorized to be made available” was in violation of the Budget Act was overruled on the ground that the funds were subject to the appropriation process and thus no new spending authority was involved. 94–1, Sept. 10, 1975, pp 28270, 28271. On the other hand a conference report authorizing the Secretary of Health, Education, and Welfare to borrow funds by issuing government notes as a public debt transaction, not subject to amounts specified in advance in appropriation acts, was conceded to violate § 401(a) of the Budget Act and was ruled out on a point of order. 94–2, Sept. 27, 1976, p 32655.

Whether or not an amendment to a pending measure provides new spending authority for a program is determined by its marginal effect on the pending measure (rather than current law). See 102–2, Mar. 26, 1992, p \_\_\_\_.

The House may adopt a resolution reported from the Committee on Rules waiving points of order against the consideration of a conference report containing an amendment providing new spending authority not subject to amounts provided in advance by appropriation acts in violation of § 401(a) of the Budget Act. 95–1, Dec. 15, 1977, pp 38949, 38950 [H. Res. 935, providing for consideration of the Clean Water Act of 1977]. In this instance, the Budget Committee supported the waiver for the Clean Water Act with the understanding that a concurrent resolution would be offered after adoption of the report to correct the enrollment of the bill to make the contract authority subject to the appropriation process. A similar procedure was followed with respect to a waiver of points of order against a reclamation projects bill in 1976. 94–2, Aug. 25, 1976, p 27747.

### **New Credit Authority**

The Congressional Budget Act contains restrictions against the consideration of new credit authority in reported measures unless such authority is limited to the extent or in amounts provided in appropriation acts. § 402(a). Legislation carrying new credit authority is also subject to § 504(b) of the Budget Act. Section 504(b) constitutes a standing requirement, notwithstanding any other provision of law, that new credit authority be effective only to the extent that subsidy costs are capped and appropriated in advance.

**Entitlement Authority**

New spending in the form of an entitlement may be subject to points of order under the Congressional Budget Act. A measure containing a new entitlement is subject to a point of order (see § 401(b)(1)) unless the entitlement (as defined by the Act) is to take effect after the start of the appropriate fiscal year. See, for example 99–2, June 26, 1986, p 15729. In addition, a point of order lies under § 303(a) against an amendment providing new entitlement authority for a coming fiscal year before the adoption of a concurrent resolution on the budget for that fiscal year. 102–2, Mar. 26, 1992, p \_\_\_\_.

An amendment enlarging the class of persons eligible for a government subsidy has been held to provide new entitlement authority within the meaning of the Budget Act. 102–2, Mar. 26, 1992, p \_\_\_\_.

**§ 13. Social Security Funds**

Receipts and disbursements of the Social Security trust funds are not to be counted as new budget authority, outlays, receipts, or as deficit or surplus. Under the Budget Enforcement Act of 1990 (BEA), the off-budget status of these programs applies for purposes of the President’s budget, the congressional budget, and under Gramm-Rudman. See § 13301.

Transactions of the Social Security trust funds—the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (OASDI)—are excluded from the spending and revenue totals under the BEA. The trust funds were included in the deficit calculations made under Gramm-Rudman for deficit reduction purposes, but were exempt from sequestration. The BEA (in §§ 13301–13306) reaffirms the off-budget status of Social Security trust funds, excludes them from the deficit and PAYGO calculations made under Gramm-Rudman, and continues their exemption from sequestration. The BEA creates a “fire wall” point of order in the House to prohibit the consideration of legislation that would change certain balances of the Social Security trust funds over specified periods under § 13302. H. Conf. Rept. No. 101–964, 101st Cong. 2d Sess.

The Congressional Budget Act of 1974 prohibits the consideration of certain reconciliation legislation that contains recommendations with respect to the title II program under the Social Security Act. § 310(g).

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

A limit on the public debt is fixed by law. 31 USC § 3101. Increases in the debt limit are frequently needed because of increases in federal debt. Changes in the public debt limit may be effected through procedures set

forth in House Rule XLIX. *Manual* § 945. The budget resolution plays a key role in this process. Reconciliation directives relative to changes in the public debt may be included in the concurrent resolution on the budget under § 310(a)(3) of the Budget Act. Reconciliation, see § 7, *supra*.

If the budget resolution as adopted sets forth an amount for the public debt which is different from the amount of the statutory limit, the procedure specified by Rule XLIX operates. *Manual* § 945. After the budget resolution is adopted by the Congress, a joint resolution changing the debt limit is prepared by the Clerk and sent to the Senate for its approval. This resolution is “deemed,” under the conditions of House Rule XLIX, to have passed the House. The date of final House action in adopting the conference report on the concurrent resolution on the budget, rather than the date of final Senate action (when the Senate acts later) or the date of receipt of a message from the Senate informing the House of final Senate action, is the appropriate date under Rule XLIX for deeming the House to have engrossed and passed a joint resolution increasing the statutory limit on the public debt. 103–1, Apr. 1, 1993, p \_\_\_\_.

In some years, instead of a joint resolution, Congress has enacted a separate bill raising the debt limit. See, for example, H.R. 5350, Aug. 4, 1990. The debt limit may also be increased by a provision attached to other legislation, such as a reconciliation bill. See the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103–66). By adoption of a special order, Rule XLIX may be made inapplicable to a specific budget resolution. See H. Res. 149, May 17, 1995, p \_\_\_\_.

## § 15. Impoundments Generally

### Executive Branch Authority; Types of Impoundments

The executive branch has no inherent power to impound appropriated funds. In the absence of express congressional authorization to withhold funds appropriated for implementation of a legislative program, the executive branch must spend all the funds. *Kennedy v Mathews*, 413 F Supp 1240 (1976). See also *Train v City of New York*, 420 U.S. 35, 95 S.Ct. 839, 43 L.Ed.2d 1 (1975). Accordingly, if the controlling statute gives the officials in question no discretion to withhold the funds, a court may grant injunctive relief directing that they be made available. *Kennedy*, at p 1245.

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

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

### § 16. — Rescissions; Line Item Veto

#### Under Impoundment Control Act

Under the Impoundment Control Act, the President may propose to rescind all or part of the budget authority Congress has appropriated for a particular program. To propose a rescission the President must send a special message to Congress detailing the amount of the proposed rescission, the reasons for it, and a summary of the effects the rescission would have on the programs involved. § 1012(a). Under the Act, Congress then has 45 days within which to approve the proposed rescission by a “rescission bill” that must be passed by both Houses. § 1012(b). If it fails of approval, the President must allow the full amount appropriated to be spent. *City of New Haven, Conn. v U.S.*, 634 F Supp 1449 (D.D.C. 1986), 1452.

The 45-day period prescribed by the Act applies only to the initial consideration of the bill in the House; the consideration of a conference report on such a bill is subject only to the general rules of the House relating to conference reports and is not prevented by the expiration of the 45-day period following the initial consideration of the bill. 94–1, Mar. 25, 1975, pp 8484, 8485.

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

Rescissions of prior appropriations can be reported in a general appropriation bill and the inclusion of rescission language by the Committee on Appropriations is excepted from the prohibition against provisions “changing existing law” under Rule XXI clause 2(b). See *Manual* §§ 834b, 834f.

**Under Line Item Veto Act**

Enhanced rescission authority was given to the President on Apr. 9, 1996, with the adoption of the Line Item Veto Act (Pub. L. No. 104–130). This new authority first becomes effective in the 105th Congress. This Act added new part C to title X of the Congressional Budget and Impoundment Control Act of 1974 (2 USC §§ 631 *et seq.*). If he acts within a limited time frame after the enactment, and if certain presidential determinations are made, the President is authorized to cancel:

- Any dollar amount of discretionary budget authority.
- Any item of new direct spending.
- Any limited tax benefit.

The President must determine that such cancellation will reduce the federal budget deficit, not impair any essential government functions, and not harm the national interest. He must notify the Congress of such cancellation by transmitting a special message within five calendar days (excluding Sundays) after the enactment of the law. § 1021(a).

Provision is made for a 30-day congressional review period, and for expedited consideration of disapproval bills. A disapproval bill must be reported not later than seven calendar days after introduction or be subject to a highly privileged motion to discharge. After being reported or discharged, a disapproval bill may be considered in the Committee of the Whole with consideration of the bill not to exceed one hour and with no amendment in order except that any Member, if supported by 49 other Members, may offer an amendment striking a cancellation or cancellations from the bill. Any conference with the Senate would also be expedited. § 1025(f).

The cancellation takes effect upon receipt in the House and the Senate of the special message notifying the congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law become null and void. § 1023.

**§ 17. — Deferrals**

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

Until 1986, the Act was used frequently as the basis for Presidential deferral proposals and for their consideration by the Congress. The statute as originally written allowed a deferral to be overridden by a resolution of

disapproval passed by either House. Pub. L. No. 93-344, title X, § 1013. Congress could reject the proposal by one-House veto or in subsequent legislation. Today, the Congress may disapprove a deferral through the enactment of ordinary legislation or through appropriation acts; but it may not do so through a resolution of disapproval by one House only under recent court rulings. See CONGRESSIONAL DISAPPROVAL ACTIONS.

In 1986, a suit was brought to contest the validity of certain deferrals proposed by the President under § 1013 of the Act. In November 1985, the President had signed the fiscal year 1986 appropriations bill for the Department of Housing and Urban Development (Pub. L. No. 99-160, 99 Stat. 909), which appropriated funds for certain community development programs. In February 1986, the President sent impoundment notices to Congress pursuant to the Act announcing his deferrals of the expenditure of funds for the programs at issue. The plaintiffs in the suit included various cities, community groups, and Members of Congress. The plaintiffs challenged as unconstitutional the provision allowing a so-called one-House legislative veto of impoundments proposed by the President, such vetoes having been declared unconstitutional under the Supreme Court decision in *Immigration and Naturalization Service v Chadha*, 462 U.S. 919, 103, S.Ct. 2764, 77 L.Ed.2d 317 (1983). The plaintiffs argued that the unconstitutional legislative veto provision contained in § 1013 rendered the *entire* section invalid, leaving the President without statutory authority on which to base the deferrals in question. After analyzing the intent of Congress in enacting § 1013, the District Court of the District of Columbia held that the section's unconstitutional legislative veto provision was inseverable from the remainder of the section. *City of New Haven, Conn. v U.S.*, 634 F Supp 1449 (D.D.C. 1986). Accordingly, it declared § 1013 void in its entirety and ordered the defendants to make the deferred funds available for obligation. *City of New Haven*, at 1460. The judgment of the District Court in striking down § 1013 in its entirety was affirmed by the U.S. Court of Appeals. *City of New Haven, Conn. v U.S.*, 809 F2d 900 (D.C. Cir. 1987).

In 1987, after § 1013 of the Act was declared unconstitutional, the Act was amended to exclude the one-House legislative veto procedure, and limitations were placed on the purposes for which deferrals could be made. See Pub. L. No. 100-119. The Act now permits deferrals only in three specified situations: "to provide for contingencies," "to achieve savings made possible by or through changes in requirements or greater efficiency of operations," or "as specifically provided by law." § 1013. The same language is used in the Anti-Deficiency Act. 31 USC § 1512(c)(1). The purpose of such language was to preclude the President from invoking § 1013 as authority for implementing "policy" impoundments, while preserving the

President's authority to implement routine "programmatic" impoundments. *City of New Haven, Conn. v U.S.*, 809 F2d 900 at p 906 (note).

### **Unreported Deferrals**

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

### **§ 18. Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4; 109 Stat. 48 *et seq.*) added a new part B to title IV of the Congressional Budget Act of 1974 (2 USC §§ 658-658g) that imposes several requirements on committees with respect to "federal mandates," establishes points of order to enforce those requirements, and precludes the consideration of a rule or order waiving such points of order in the House. Section 425 of the Congressional Budget Act establishes a point of order against consideration of a bill, joint resolution, amendment, motion, or conference report containing unfunded mandates. Section 426(a) of the Act establishes a point of order against consideration of any rule or order that waives the application of § 425. Points of order under §§ 425 and 426(a) of the Budget Act are disposed of via the question of consideration. Section 426(b)(2) establishes as a threshold premise for cognizability of a point of order under §§ 425 or 426(a) the specification of precise legislative language that is alleged to constitute a federal mandate. On May 23, 1996, the House voted to consider an amendment notwithstanding a point of order raised under § 425. 104-2, p \_\_\_\_.