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Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years

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Summary

Under the "pay-as-you-go" (PAYGO) requirement established by the Budget Enforcement Act of 1990, legislation proposing new direct spending or decreasing revenues for a fiscal year must not result in a net cost for that year. Balances on the PAYGO "scorecard" were set for FY2002-2006 based on legislation enacted through the close of September 30, 2002. The PAYGO requirement is enforced after the close of a congressional session by sequestration, which involves automatic, largely across-the-board cuts in nonexempt programs. (There has never been a PAYGO sequester.)

In order to prevent a sequester for FY2003 due to net costs on the PAYGO scorecard of more than $127 billion (including $2 billion for FY2002), the House and Senate passed H.R. 5708 in November 2002. President Bush signed the bill into law on December 2 as P.L. 107-312. The act instructed the director of the Office of Management and Budget to set the balances for all years on the PAYGO scorecard to zero, thereby preventing a PAYGO sequester for FY2003 and each year thereafter through FY2006. A total of $560 billion was removed from the PAYGO scorecard for FY2002-2006. This report will not be updated.

The Statutory PAYGO Requirement

The Budget Enforcement Act (BEA) of 1990 established a "pay-as-you-go" (PAYGO) requirement for direct spending and revenue legislation as part of an underlying law, the Balanced Budget and Emergency Deficit Control Act of 1985.[1] The BEA of 1990 also established statutory limits on discretionary spending. Both mechanisms rely

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[1] The BEA of 1990 is Title XIII of P.L. 101-508 (November 5, 1990), the Omnibus Budget Reconciliation Act of 1990; see 104 *Stat*. 1388-573 through 628. The 1985 act is Title II of P.L. 99-177 (December 12, 1985), a measure increasing the public debt limit; see 99 *Stat*. 1037-1101. The PAYGO requirement, and its operation during the first session of the 107th Congress, is discussed in more detail in CRS Report RL31194, *Pay-As-You-Go Requirement for FY2002: A Procedural Assessment*, by Robert Keith.

upon sequestration, which involves automatic, largely across-the-board spending cuts in nonexempt programs, for enforcement. The Senate established a separate PAYGO rule, as an exercise in congressional rulemaking rather than on a statutory basis, to augment the PAYGO requirement under the BEA (see discussion below).

Under the statutory PAYGO requirement, legislation proposing new direct spending or decreasing revenues for a fiscal year must not result in a net cost for that year. The PAYGO requirement generally is intended to keep an on-budget deficit from being increased or an on-budget surplus from being reduced.

Direct spending, which is expected to amount to about $1.2 trillion in FY2003 (excluding net interest), is controlled by the legislative committees of the House and Senate through substantive law, and funds entitlement and other mandatory programs, such as Medicare, federal military and civilian retirement, and unemployment compensation. This amount includes about $475 billion in spending for Social Security, which is not subject to the PAYGO requirement. *Revenues*, which are expected to amount to about $2.0 trillion in FY2003 (including about $540 billion for Social Security), are under the jurisdiction of the House Ways and Means and Senate Finance Committees.

The PAYGO requirement, as originally set forth in the BEA of 1990, covered FY1991-1995. It was extended by the Omnibus Budget Reconciliation Act (OBRA) of 1993, through FY1998, and the Budget Enforcement Act (BEA) of 1997, through FY2002.[2] As extended by the BEA of 1997, the PAYGO requirement applied to legislation enacted through the end of FY2002 (i.e., September 30, 2002), but it covers the effects of such legislation through FY2006.

With regard to direct spending, the PAYGO requirement applies to outlay levels rather than levels of budget authority. *Budget authority* represents the legal authority for agencies to incur obligations; annual appropriations are perhaps the most well known form of budget authority. *Outlays* represent the liquidation of the obligation, usually in the form of an electronic funds transfer or the issuance of a check by the Treasury Department. Outlays, rather than budget authority, are compared to revenue levels to determine the amount of the surplus or deficit.

The PAYGO balances for each fiscal year are maintained on a rolling PAYGO "scorecard" that accumulates the budgetary effects of laws enacted during the session and in prior years (beginning with FY1992). The threshold test for a PAYGO sequester deals with how legislation affects the net cost for a fiscal year on the PAYGO scorecard, not how it changes the surplus or deficit for that fiscal year in the federal budget.

The sequestration process, established by the 1985 Balanced Budget Act and initially used to enforce the act's annual deficit targets, was retained by the BEA of 1990 and 1997 as the means of enforcing the PAYGO requirement (as well as the discretionary spending

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[2] OBRA of 1993 is P.L. 103-66 (August 10, 1993); see Title XIV at 107 *Stat*. 683-685. The BEA of 1997 is Title X of P.L. 105-33 (August 5, 1997); see 111 *Stat*. 677-712.

limits).[3] Under current sequestration procedures, the director of the Office of Management and Budget (OMB) issues a sequestration report at the time the President's budget is submitted to Congress (the preview report), midway through the congressional session (the update report), and within 15 days after the end of the session (the final report). The Congressional Budget Office (CBO) issues sequestration reports in advance of the OMB reports, but they are advisory only.

If the OMB director's final sequestration report indicates that enacted direct spending and revenue levels have incurred a net cost for the fiscal year on the PAYGO scorecard, then the President must immediately issue a sequestration order to remedy the violation through automatic, across-the-board spending reductions. If a sequester under this process is required, it must occur within 15 calendar days after Congress adjourns at the end of a session and on the same day as any sequestration tied to enforcement of the discretionary spending limits. The sequester would eliminate any net positive balance on the PAYGO scorecard, for that fiscal year and the prior fiscal year combined, caused by the enactment of legislation during the session and in prior years.

Any required reductions would be made in non-exempt direct spending programs. Emergency direct spending and revenue legislation, so designated by the President and in statute, is not covered by the PAYGO sequestration process. As mentioned previously, spending for the Social Security program, except for administrative expenses, is exempt from sequestration, as are many other direct spending programs. Any reductions in Medicare spending are limited to 4%.

The Senate PAYGO Rule

The congressional budget process, established by the Congressional Budget Act of 1974 (P.L. 93-344, as amended), contains several mechanisms to enforce decisions regarding the recommended levels of direct spending and revenues. These mechanisms include, among other things, binding ceilings on aggregate spending (under Section 311 of the act), binding spending allocations to committees (under Section 302 of the act), and reconciliation procedures (under Sections 310 and 313 of the act). In addition, the so-called elastic clause in Section 301(b)(4) authorizes the budget resolution 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 this Act." Pursuant to the elastic clause authority, the House and Senate sometimes include special procedural features in the budget resolution.

The Senate, using the act's elastic clause, established a "pay-as-you-go" (PAYGO) rule in 1993 as a means of augmenting the statutory PAYGO requirement.[4] This provision, most recently set forth in Section 207 of the FY2000 budget resolution (H.Con.Res. 68), establishes a point of order against the consideration of any legislation that would increase or cause an on-budget deficit for any one of three applicable time periods: (1) the first year covered by the budget resolution; (2) the first five years covered

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[3] For a more detailed discussion of the sequestration process, see: CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

[4] The history and operation of the Senate PAYGO rule is discussed in CRS Report RS21316, *Budget Enforcement Procedures: Senate Pay-As-You-Go Rule*, by Bill Heniff Jr.

by the budget resolution; and (3) the five years following the first five years covered by the budget resolution. Although the Senate PAYGO rule is comparable in purpose to the statutory PAYGO requirement, it differs in that it takes effect during the consideration of legislation rather than after the session ends and it applies to a much longer time frame (i.e., 10 fiscal years).

Section 207(g) of the FY2000 budget resolution set forth a "sunset date" for the Senate PAYGO rule, providing for its expiration on September 30, 2002 (the same expiration date applicable to the statutory PAYGO requirement). On October 16, 2002, in the waning days of the 107th Congress, the Senate adopted S.Res. 304, as amended by a substitute amendment offered by Senator Kent Conrad, the chairman of the Senate Budget Committee. The amended resolution extended through April 15, 2003, the Senate's PAYGO rule, as well as the three-fifths vote requirement for certain waivers of the 1974 Congressional Budget Act.[5]

PAYGO Actions for FY2003

Shortly after the second session of the 107th Congress began on January 23, 2002, OMB indicated in the preview sequestration report for FY2003 that the balance for that fiscal year on the PAYGO scorecard was $110.694 billion.[6] The balance for FY2002, which was to be combined with the FY2003 balance to determine whether a sequester for FY2003 would be required, previously had been reduced to zero.[7] The balances for the remaining years on the scorecard, FY2004-2006, were $130 billion, $131 billion, and $135 billion, respectively.

Although the House and Senate did not reach agreement in 2002 on a budget resolution for FY2003, it was clear that neither house intended to pursue policies that would eliminate the FY2003 balance on the PAYGO scorecard through revenue increases and direct spending reductions. Rather, it was expected that Congress and the President would agree to use procedural means for preventing a PAYGO sequester from occurring, as had been done in recent years.[8]

As the session unfolded, Congress and the President enacted legislation that added net costs to the PAYGO scorecard for FY2002 and increased the existing net costs for FY2003. In the update sequestration report for FY2003, OMB indicated that the

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[5] See the consideration of S.Res. 304 in the *Congressional Record* of October 16, 2002, at pages S10527-31 and page S10553. Also, see "In Late Deal, Senate Approves by Voice Vote Renewing Expiring Budget Enforcement Rules," by Bud Newman in BNA's *Daily Report for Executives*, Thursday, October 17, 2002. The Senate's actions also are discussed in CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith.

[6] *Budget of the United States Government, Fiscal Year 2003, Analytical Perspectives*, February 4, 2002,Table 14-4, page 291.

[7] A combined balance of $130.279 billion ($75.271 billion for FY2001 and $55.008 billion for FY2002) was removed from the PAYGO scorecard pursuant to a scorekeeping directive in P.L. 107-117 (115 Stat. 2342).

[8] For more information on this topic, see CRS Report RL31155, *Techniques for Preventing a Budget Sequester*, by Robert Keith.

combined balance had increased to $125.6 billion ($2.2 billion for FY2002 and $123.4 billion for FY2003).[9] According to OMB estimates, only $31.1 billion could be cut under a PAYGO sequester because most direct spending is exempt from sequestration; consequently, a violation of more than $90 billion would remain even if a full PAYGO sequester were to occur.

The PAYGO measure with the largest budgetary impact enacted during the 2002 session was an economic stimulus measure, the Job Creation and Worker Assistance Act (P.L. 107-147; March 9, 2002).[10] OMB estimated the net cost of the act as $46.538 billion for FY2002, $36.878 billion for FY2003, and $88.723 billion over the five-year period covering FY2002-2006. Section 502 of the act (116 *Stat*. 58), however, designated these amounts as emergency requirements, effectively removing them from the scorecard.

Three other PAYGO measures with combined balances for FY2002-2003 in excess of $1 billion were enacted during the session: (1) P.L. 107-171, the Farm Security and Rural Investment Act of 2002 ($12.579 billion); (2) P.L. 107-195, the Spectrum Auction Reform Act ($2.150 billion); and (3) P.L. 107-210, the Trade Act ($1.635 billion). None of these amounts were designated as emergency requirements.

In order to prevent a PAYGO for FY2003 sequester from occurring after the end of the session, the House and Senate passed H.R. 5708, which President George W. Bush signed into law on December 2, 2002, as P.L. 107-312 (116 *Stat*. 2456). In addition to eliminating the threat of a sequester for FY2003 by reducing the PAYGO balances for FY2002 and FY2003 to zero, it also eliminated the sequester threat for FY2004-2006 by setting those balances at zero as well.

The House passed the bill on November 14 by a vote of 366-19 (roll no. 482).[11] During House consideration of the bill, the PAYGO balance reductions for FY2004-2006 engendered some controversy. A motion to recommit with instructions that would have made reductions in the PAYGO balances for FY2004-2006 contingent upon the submission of a balanced budget (on an on-budget basis) by the President, offered by Representative Dennis Moore, a Democratic member of the House Budget Committee, was rejected by a vote of 187-201 (roll no. 481). The Senate passed H.R. 5708 the next day without amendment by unanimous consent.[12]

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[9] *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2003,* August 19, 2002, page 13.

[10] *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2003,* December 6, 2002, Table 2, pages 6 and 7.

[11] See the House consideration of the bill in the *Congressional Record* of November 14, 2002, at pages H8785-8794. On November 13, the House adopted H.Res. 602, a special rule providing for the consideration of H.R. 5708 as well as a continuing resolution (H.J.Res. 124), by a vote of 215-189 (roll no. 472); see the *Congressional Record* of that date at pages H8549-8554.

[12] See Senate consideration of the bill in the *Congressional Record* of November 15, 2002, at page S11223.

Public Law 107-312 reads in its entirety as follows:

> Upon the enactment of this Act, the Director of the Office of Management and Budget shall reduce any balances of direct spending and receipts legislation for all fiscal years under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 to zero.

In his final sequestration report for FY2003, issued on December 6, 2002, the OMB director indicated that the combined balance for legislation enacted through September 30, 2002, was $127.386 billion, reflecting a $2.320 billion balance for FY2002 and a $125.066 billion balance for FY2003.[13] Balances over the full period, covering FY2002-2006, amounted to $559.694 billion (see **Table 1**). As required by P.L. 107-312, the OMB director set the final balances for all fiscal years on the PAYGO scorecard to zero.

Table 1. OMB Estimate of PAYGO Balances
(amounts in $ billions)

FY2002	FY2003	FY2004	FY2005	FY2006	FY2002-2006
Balances for legislation enacted through September 30, 2002:					
2.320	125.066	146.940	141.628	143.739	559.694
Balances after adjustments required by P.L. 107-312:					
0.0	0.0	0.0	0.0	0.0	0.0

Source: *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2003*, December 6, 2002, Table 2, page 7.

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[13] *OMB Final Sequestration Report*, ibid., Table 2, page 7.