Order Code RL31943

Report for Congress
Received through the CRS Web

Budget Enforcement Procedures: Senate's Pay-As-You-Go (PAYGO) Rule

June 2, 2003

Bill Heniff Jr.
Analyst in American National Government
Government and Finance Division

Budget Enforcement Procedures: Senate's Pay-As-You-Go (PAYGO) Rule

Summary

The Senate's "pay-as-you-go," or PAYGO, rule generally prohibits the consideration of direct spending and revenue legislation that is projected to increase (or cause) an on-budget deficit in any one of three time periods: the first year, the first 5 years, and the second 5 years, covered by the most recently adopted budget resolution. Any increase in direct spending or reduction in revenues resulting from such legislation must be offset by an equivalent amount of direct spending cuts, tax increases, or a combination of the two. Without an offset, such legislation would require the approval of at least 60 Senators to waive the rule and be considered on the Senate floor.

The Senate's PAYGO rule does not apply to direct spending or revenues generated under existing law; it applies only to legislation considered by the Senate. Consequently, direct spending may increase and revenues may decline in any fiscal year due to factors beyond the control of the PAYGO rule.

The Senate's PAYGO rule differs from the statutory PAYGO requirement, established by the Budget Enforcement Act of 1990, in that it is enforced by a point of order during consideration of legislation instead of by sequestration after legislation is enacted into law. In addition, the Senate's PAYGO rule has a 10-year time frame whereas the statutory PAYGO requirement covers, through FY2006, the effects of legislation enacted before the end of FY2002.

The Senate's PAYGO rule originated in a budget resolution in 1993 and has been modified and extended four times in subsequent budget resolutions over the years. Most recently, the Senate modified and extended the rule through September 30, 2008, by agreeing to the FY2004 budget resolution (H.Con.Res. 95). Under the Senate's PAYGO rule in its current form, the spending and revenue policy changes assumed in the FY2004 budget resolution are exempt from the rule's provisions.

Beginning in 1993, six points of order under the Senate's PAYGO rule have been raised against an entire bill or an amendment. Of these six points of order, four were sustained and two fell upon the adoption of a waiver motion.

This report will be updated as developments warrant.

Contents

List of Tables

Budget Enforcement Procedures: Senate's Pay-As-You-Go (PAYGO) Rule

Introduction

The Senate's "pay-as-you-go," or PAYGO, rule generally prohibits the consideration of direct spending and revenue legislation that is projected to increase (or cause) an on-budget deficit over a 10-year period.[1] Any increase in direct spending or reduction in revenues resulting from such legislation must be offset by an equivalent amount of direct spending cuts, tax increases, or a combination of the two. Without an offset, such legislation would require the approval of at least 60 Senators to waive the rule and be considered on the Senate floor.

Direct spending is provided in substantive law, and funds such mandatory items as Medicare, unemployment compensation, and retirement programs. It is distinguished from *discretionary spending*, which is controlled through the annual appropriations process.

The Senate's PAYGO rule does not apply to direct spending or revenues generated under existing law; it applies only to legislation considered by the Senate. Consequently, direct spending may increase and revenues may decline in any fiscal year due to factors beyond the control of the PAYGO rule.

A statutory PAYGO requirement, as well as limits on discretionary spending, was established by the Budget Enforcement Act of 1990 (BEA, Title XIII of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990) and has been extended twice, in 1993 and 1997.[2] Under the statutory PAYGO requirement, the net effect of new direct spending and revenue legislation enacted for a fiscal year may not cause a positive balance (reflecting an increase in the on-budget deficit or a reduction in the on-budget surplus) on a multiyear PAYGO "scorecard." For each fiscal year, this scorecard maintains the balances of the accumulated budgetary effects of laws enacted during the session and prior years. The statutory PAYGO requirement is

---

[1] The on-budget deficit excludes the Social Security trust fund surpluses and the net cash flow of the U.S. Postal Service.

[2] The BEA amended the Balanced Budget and Emergency Deficit Control Act (Title II of P.L. 99-177), commonly known as the Gramm-Rudman-Hollings Act. The 1993 and 1997 extensions were included in Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and the Budget Enforcement Act of 1997 (Title X of P.L. 105-33), respectively.

enforced by sequestration, which involves automatic, largely across-the-board spending cuts in non-exempt programs.[3]

The Senate's PAYGO rule differs from the statutory PAYGO requirement in that it is enforced by a point of order during consideration of legislation instead of by sequestration after legislation is enacted into law. In addition, the Senate's PAYGO rule has a 10-year time frame whereas the statutory PAYGO requirement covers, through FY2006, the effects of legislation enacted before the end of FY2002.[4]

The Senate's PAYGO rule, like many other budget enforcement procedures, expired on September 30, 2002.[5] On October 16, however, the Senate agreed to restore and extend the PAYGO point of order through April 15, 2003. Subsequently, prior to its expiration, the Senate agreed to extend the rule through September 30, 2008.

This report describes the legislative history of the Senate's PAYGO rule, explains its current features, and reviews Senate actions under the rule.

Legislative History of the Senate's PAYGO Rule

The Senate's PAYGO rule originated in a budget resolution in 1993 and has been modified and extended in subsequent budget resolutions over the years.[6]

---

[3] For further information on the statutory PAYGO requirement, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick; and CRS Report RL31194, *Pay-As-You-Go Requirement for FY2002: A Procedural Assessment*, by Robert Keith.

[4] At the end of the 107th Congress, the House and Senate passed and President Bush signed legislation (P.L. 107-312, 116 Stat. 2456) that removed the positive balances on the PAYGO scorecard through FY2006, thereby preventing any future PAYGO sequestration unless the budget enforcement mechanism is restored. For further information, see CRS Report RS21378, *Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.

[5] The statutory limits on discretionary spending and the statutory PAYGO requirement for direct spending and revenue legislation, first established by the BEA, expired on Sept. 30, 2002, as well. For additional information on the extension of these budget enforcement mechanisms, see the applicable section in CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr. In addition, the three-fifths vote requirements in the Senate to waive certain points of order under the Congressional Budget Act of 1974 (CBA, Titles I-IX of P.L. 93-344), as amended, and to sustain an appeal of a ruling of the chair on a point of order under the CBA, expired on Sept. 30, 2002. These supermajority waiver requirements, however, were restored and extended in 2002 through Apr. 15, 2003, and again in 2003 through Sept. 30, 2008, along with the Senate PAYGO point of order.

[6] Such procedural provisions may be included in a budget resolution under the authority provided by Sec. 301(b)(4), the so-called "elastic clause," of the CBA. This section gives Congress the option to include in a budget resolution other matters and procedures consistent with the purposes of the Budget Act.

In 1993, the Senate created the PAYGO rule as a provision in the FY1994 budget resolution (H.Con.Res. 64) for the purpose of preventing the deficit reduction expected to be achieved in a subsequent reconciliation bill from being used to offset the costs of any new direct spending or revenue legislation.[7] Section 12(c) of H.Con.Res. 64 prohibited the consideration of any direct spending and revenue legislation that would increase the deficit in the FY1994 budget resolution for any fiscal year through FY1998 or would increase the deficit for any other fiscal year through FY2003. In this initial form, the Senate's PAYGO rule had no expiration date.

The Senate has modified and extended its PAYGO rule four times in subsequent budget resolutions. First, Section 23 of H.Con.Res. 218, the FY1995 budget resolution, modified the PAYGO rule to require direct spending and revenue legislation to be deficit neutral for any one of the three time periods contained in the current PAYGO rule (explained below) and added an expiration date of September 30, 1998. Second, Section 202 of H.Con.Res. 67, the FY1996 budget resolution, restated the existing PAYGO rule language and extended its expiration date to September 30, 2002. Third, Section 207 of H.Con.Res. 68, the FY2000 budget resolution, modified the PAYGO rule to allow on-budget surpluses to be used to offset tax reductions or spending increases. After decades of on-budget deficits, the federal government recorded a small on-budget surplus for FY1999 and an on-budget surplus of $87 billion for FY2000. Lastly, Section 505 of H.Con.Res. 95, the FY2004 budget resolution, modified and extended the rule through September 30, 2008, as explained further below.

During the 107th Congress, several attempts were made on the Senate floor to extend the PAYGO rule before it was scheduled to expire on September 30, 2002. On June 5, 2002, Senators Judd Gregg and Russell Feingold offered an amendment (S.Amdt. 3687) that would have extended expiring budget enforcement procedures, including the Senate's PAYGO rule, to H.R. 4775, the Supplemental Appropriations Act, 2002. The amendment fell on a point of order.[8] The next day, June 6, Senate Majority Leader Tom Daschle offered an amendment (S.Amdt. 3764) that would have extended the Senate's PAYGO rule, among other budget enforcement procedures, through FY2007 to H.R. 4775, but that amendment also fell on a point

---

[7] See U.S. Congress, Conference Committee, *FY1994 Budget Resolution*, conference report to accompany H.Con.Res. 64, 103rd Cong., 1st sess., (Washington: GPO, 1993), p. 47. The reconciliation bill enacted later that session, P.L. 103-66 (the Omnibus Budget Reconciliation Act of 1993), was estimated at the time as reducing the deficit by about $500 billion over FY1994-FY1998.

[8] The amendment was subject to a point of order under Sec. 306 of the CBA, which prohibits consideration of any measure within the jurisdiction of the Budget Committee unless it is reported by the Budget Committee, is discharged from the committee, or is an amendment to such a measure. A motion to waive the point of order requires a three-fifths vote in the Senate. A motion to waive the point of order raised against the amendment was rejected by a 49-49 vote. See *Congressional Record*, daily edition, vol. 148 (June 5, 2002), pp. S5004-S5015.

of order.[9] Another attempt was made on June 20, 2002, during consideration of S. 2514, the Defense Authorization Act for FY2003. Senator Feingold offered an amendment (S.Amdt. 3915), which was modified by an amendment (S.Amdt. 3916) offered by Senators Harry Reid and Kent Conrad, that also would have extended the expiration date of the Senate's PAYGO rule, among other things, through FY2007. This amendment also fell on a point of order.[10]

On October 16, 2002, the Senate restored and extended the PAYGO point of order through April 15, 2003.[11] The Senate agreed by unanimous consent to S.Res. 304, as amended by the modified amendment offered by Senators Conrad, Pete Domenici, Gregg, and Feingold (S.Amdt. 4886).[12]

During the 108th Congress and prior to the expiration of the PAYGO point of order on April 15, the Senate extended the rule through September 30, 2008, by agreeing to the conference report on the FY2004 budget resolution (H.Con.Res. 95, H.Rept. 108-71).[13] On April 11, 2003, the Senate agreed to the conference report on H.Con.Res. 95 by a 51-50 vote. Section 505 of the FY2004 budget resolution contains the current language of the Senate's PAYGO point of order, which is explained in the next section.

Current Features of the Senate's PAYGO Rule

The Senate's PAYGO rule prohibits the consideration of direct spending or revenue legislation that would increase or cause an on-budget deficit in any one of three time periods: the first year, the first 5 years, and the second 5 years, covered by the most recently adopted budget resolution. However, under the rule in its current form, legislation implementing the direct spending or revenue policy changes assumed in the FY2004 budget resolution is exempt from the rule, even though it

---

[9] On June 6, 2002, cloture was invoked on H.R. 4775. Under cloture, a point of order may be raised against nongermane amendments. The chair ruled that Senator Daschle's amendment was not germane to the FY2002 supplemental appropriations act, and the amendment fell. See *Congressional Record*, daily edition, vol. 148 (June 5, 2002), pp. S5015-S5018; and *Congressional Record*, daily edition, vol. 148 (June 6, 2002), pp. S5114-S5120.

[10] The amendment was subject to a point of order under Section 306 of the CBA. A motion to waive the point of order raised against the amendment was rejected by a 59-40 vote. See *Congressional Record*, daily edition, vol. 148 (June 19, 2002), pp. S5762-S5767; and *Congressional Record*, daily edition, vol. 148 (June 20, 2002), pp. S5808-S5821.

[11] Under the Congressional Budget Act, Apr. 15 is the target date for Congress to complete action on the annual budget resolution.

[12] See *Congressional Record*, daily edition, vol. 148 (Oct. 16, 2002), pp. S10527-S10531 and S10553. The legislation also restored and extended through April 15, 2003, the three-fifths vote requirement for certain waivers of the Congressional Budget Act of 1974.

[13] Like the temporary extension agreed to in 2002, the FY2004 budget resolution also contained an extension through Sept. 30, 2008, of the three-fifths vote requirement for certain waivers of the Congressional Budget Act of 1974.

might be projected to increase or cause an on-budget deficit.[14] For example, legislation consistent with the reconciliation instructions contained in Title II of H.Con.Res. 95 would not violate the rule.

A motion to waive the PAYGO rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the rule, requires an affirmative vote of three-fifths of the membership, duly chosen and sworn (i.e., 60 Senators if no seats are vacant).

The full text of the Senate's PAYGO rule in its current form is provided in **Appendix A**. As noted above, under the recent extension, the current rule is scheduled to expire on September 30, 2008.

Points of Order and Waiver Motions Under the Senate's PAYGO Rule

Beginning in 1993, six points of order have been raised under the Senate's PAYGO rule (see **Table 1**). Of these six points of order, two were raised against entire bills and the remaining four were raised against amendments. The two points of order against entire bills fell upon the adoption of a waiver motion, thus allowing consideration of the bills to proceed. All four points of order against amendments were sustained and thus the amendments fell.

A total of seven waiver motions under the PAYGO rule have been made in relation to the six points of order. Two waiver motions were successful, while five were rejected. Two separate waiver motions were made relating to the point of order raised against H.R. 3167 (103rd Congress). As indicated in **Table 1**, the first waiver was rejected on a 59-38 vote on October 26, 1993. The next day, however, the Senate agreed to a motion to reconsider the vote on this waiver motion by voice vote. The Senate, subsequently, approved the waiver motion by a 61-39 vote, and the point of order against H.R. 3167 fell.

Like any other Senate rule, the Senate's PAYGO rule is not self-enforcing. A Senator must raise a point of order under the rule in order to prevent the consideration of legislation that violates the rule. During the period the rule has been in effect, the Senate has at times considered legislation significantly increasing direct spending or decreasing revenues without interference from the Senate's PAYGO rule, either because a point of order was not raised or, following the change in the FY2002 budget resolution, because the legislation fit within the available on-budget surpluses. In the past 2 years especially, such legislation has incurred sizeable

---

[14] The joint explanatory statement of the committee of conference on the FY2004 budget resolution indicates that the budget resolution assumes direct spending increases and revenue reductions totaling $1,755.957 billion over the period FY2003-FY2013. See U.S. Congress, Committee on Conference, *Concurrent Resolution on the Budget–Fiscal Year 2004*, conference report to accompany H.Con.Res. 95, 108th Cong., 1st sess., H.Rept. 108-71 (Washington: GPO, 2003), pp. 122-123.

balances on the statutory PAYGO scorecard, but PAYGO sequesters have been averted by directed scoring.[15]

[15] See CRS Report RL31155, *Techniques for Preventing a Budget Sequester*, by Robert Keith.

Table 1. Actions Under the Senate's PAYGO Rule, Calendar Years 1993-2002

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
10/26/1993	**Emergency Unemployment Compensation (H.R. 3167)**– To extend the emergency unemployment compensation program, and to establish a system of worker profiling.	Rejected, 59-38	Fell on reconsidered vote on waiver motion (see next item)
10/27/1993	**Emergency Unemployment Compensation (H.R. 3167)**– To extend the emergency unemployment compensation program, and to establish a system of worker profiling.	Approved, 61-39	Fell
10/27/1993	**Emergency Unemployment Compensation (H.R. 3167)**– Bumpers modified amendment no. 1084, to repeal the retroactive income, estate, and gift tax increase and compensate for the lost revenue by terminating the Space Station program.	Rejected, 36-61	Sustained
12/01/1994	**GATT (H.R. 5110)**– To approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations.	Approved, 68-32	Fell
09/11/1996	**Treasury/Postal Service Appropriations, 1997 (H.R. 3756)**– Wyden-Kennedy amendment no. 5206 (to committee amendment beginning on page 16, line 16, through page 17, line 2), to prohibit the restriction of certain types of medical communications between a health care provider and a patient.	Rejected, 51-48	Sustained
05/07/1998	**IRS Reform (H.R. 2676)**– Coverdell amendment no. 2353, to prohibit the use of random audits.	Rejected, 37-60	Sustained
07/28/1998	**Treasury/Postal Service Appropriations, 1999 (S. 2312)**– Hutchinson amendment no. 3249, to terminate the Internal Revenue Code of 1986.	Rejected, 49-49	Sustained

Source: *Congressional Record*, especially the Daily Digest section, various years, searched through the Legislative Information System [http://www.congress.gov].

Appendix A. Text of the Senate's Pay-As-You-Go (PAYGO) Rule

(Section 505 of H.Con.Res. 95, Budget Resolution for FY2004)

SEC. 505. PAY-AS-YOU-GO POINT OF ORDER IN THE SENATE.

(a) POINT OF ORDER.—

(1) IN GENERAL.—It shall not be in order in the Senate to consider any direct spending or revenue legislation that would increase the on-budget deficit or cause an on-budget deficit for any one of the three applicable time periods as measured in paragraphs (5) and (6).

(2) APPLICABLE TIME PERIODS.—For purposes of this subsection, the term "applicable time period" means any 1 of the 3 following periods:

(A) The first year covered by the most recently adopted concurrent resolution on the budget.

(B) The period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget.

(C) The period of the 5 fiscal years following the first 5 fiscal years covered in the most recently adopted concurrent resolution on the budget.

(3) DIRECT-SPENDING LEGISLATION.—For purposes of this subsection and except as provided in paragraph (4), the term "direct-spending legislation" means any bill, joint resolution, amendment, motion, or conference report that affects direct spending as that term is defined by, and interpreted for purposes of, the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) EXCLUSION.—For purposes of this subsection, the terms "direct-spending legislation" and "revenue legislation" do not include—

(A) any concurrent resolution on the budget; or

(B) any provision of legislation that affects the full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990.

(5) BASELINE.—Estimates prepared pursuant to this section shall—

(A) use the baseline surplus or deficit used for the most recently adopted concurrent resolution on the budget as adjusted for any changes in revenues or direct spending assumed by such resolution; and

(B) be calculated under the requirements of subsections (b) through (d) of section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 for fiscal years beyond those covered by that concurrent resolution on the budget.

(6) PRIOR SURPLUS.—If direct spending or revenue legislation increases the on-budget deficit or causes an on-budget deficit when taken individually, it must also increase the on-budget deficit or cause an on-budget deficit when taken together with all direct spending and revenue legislation enacted since the beginning of the calendar year not accounted for in the baseline under paragraph (5)(A), except that direct spending or revenue effects resulting in net deficit reduction enacted pursuant to reconciliation instructions since the beginning of that same calendar year shall not be available.

(b) WAIVER.—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(c) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(d) DETERMINATION OF BUDGET LEVELS.—For purposes of this section, the levels of new budget authority, outlays, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(e) SUNSET.—This section shall expire on September 30, 2008.