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PAYGO Rules for Budget Enforcement in the House and Senate

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Summary

One of the most contentious issues in budget procedure in recent years has involved proposed changes in the Senate's "pay-as-you-go" (PAYGO) rule and efforts to establish a similar rule in the House. This controversy led to an impasse between the House and Senate over the FY2005 budget resolution and surfaced again during consideration of the FY2006 budget resolution. The issue focuses principally on whether tax-cut legislation, even though it may worsen the deficit, should be exempted from a deficit-neutral PAYGO requirement.

The Senate's PAYGO rule currently prohibits the consideration of revenue or direct spending legislation that would cause (or increase) an on-budget deficit for any one of three applicable time periods: (1) the first fiscal year covered by the budget resolution; (2) the first five fiscal years covered by the budget resolution; and (3) the next five fiscal years after that. Revenue reductions, direct spending increases, or a combination of the two are allowed only so long as they are completely offset by revenue increases, direct spending reductions, or both. The rule does not apply, however, to revenue reductions or direct spending increases assumed in the budget resolution. A point of order raised under the rule may be waived by an affirmative vote of 60 Senators. The rule is scheduled to expire at the end of FY2008.

Neither the Senate's PAYGO rule, nor proposals for such a rule in the House, address increases or decreases in revenues or direct spending that are reflected in the calculations of the budget baseline; the rule applies only to the effects of legislation that is pending. Therefore, revenue decreases or spending increases that stem from existing law are not constrained by the rule.

Following the establishment of the PAYGO rule in 1993, the Senate has modified the rule several times for different reasons, including establishing and extending an expiration date, expanding the rule's application to curtail potential evasion, allowing on-budget surpluses to be "used" to cover revenue reductions and direct spending increases, and providing for exemptions to the rule. Proposals to modify the Senate's PAYGO rule or to establish a PAYGO rule in the House raise several issues, including the appropriate coverage of the rule and the provision for exemptions, and the period for which the rule should be in effect, among others.

In 2005, during consideration of the FY2006 budget resolution, S.Con.Res. 18, the Senate addressed the issue. It rejected a proposed modification to its PAYGO rule (in the form of amendment 186, offered by Senator Russell Feingold) on a 50-50 tie vote. In addition, the House rejected a proposal to establish a PAYGO rule of its own (in the form of an amendment offered by Representative John Spratt) during consideration of the budget resolution, H.Con.Res. 95. Both proposals would have subjected revenue and direct spending legislation to PAYGO requirements, but without exempting any initiatives assumed in the budget resolution, effective through September 30, 2010 (Feingold) or December 31, 2015 (Spratt).

This report will be updated as developments warrant.

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PAYGO Rules for Budget Enforcement in the House and Senate

One of the most contentious issues in budget procedure in recent years has involved proposed changes in the Senate's PAYGO rule, which dates to 1993 and deals with the enforcement of revenue and direct spending legislation, and efforts to establish a similar rule in the House. The controversy over this matter was so great that it led to an impasse between the House and Senate regarding the FY2005 budget resolution. In 2005, during House and Senate consideration of the FY2006 budget resolution, proposals regarding PAYGO rules once again raised controversy in the two chambers.

Background

The Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344; 88 Stat. 297-339) established the congressional budget process, under which the House and Senate develop an overall budgetary plan in the form of an annual budget resolution. The policies established each year in the budget resolution regarding revenues, discretionary spending (controlled in annual appropriations acts), direct spending (controlled in substantive law), and the debt limit are enforced largely through such means as points of order (e.g., against legislation that would cause spending to exceed the total limits established in the budget resolution or applicable committee spending allocations) and reconciliation procedures.[1]

Pursuant to "elastic clause" authority under the 1974 act, the House and Senate sometimes include special procedural features in the budget resolution.[2] The Senate's "pay-as-you-go" (PAYGO) rule was established in 1993 under such authority, on a temporary basis, as part of the FY1994 budget resolution.[3] The rule has been modified and extended several times.[4] In its current form, it is scheduled

[1] For more information on the congressional budget process, see CRS Report 98-721, *An Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick; and CRS Report RL30297, *Congressional Budget Resolutions: Selected Statistics and Information Guide*, by Bill Heniff Jr.

[2] The so-called elastic clause, set forth in Section 301(b)(4) of the act, 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."

[3] See Section 12 of the conference report to accompany H.Con.Res. 64, H.Rept. 103-48, Mar. 31, 1993, pp. 26-27 (legislative text) and p. 47 (joint explanatory statement).

[4] For information on the legislative history and implementation of the rule, see CRS Report RL31943, *Budget Enforcement Procedures: Senate's Pay-As-You-Go (PAYGO) Rule*, by

(continued...)

to expire at the end of FY2008 (i.e., on September 30, 2008). The current text of the Senate's PAYGO rule is provided in **Appendix A**. Several unsuccessful efforts have been made using this authority to establish a PAYGO rule in the House as well.

As formulated in the Senate, the PAYGO rule generally has prohibited the consideration of any revenue or direct spending legislation that would cause (or increase) an on-budget deficit for any one of three applicable time periods: (1) the first fiscal year covered by the budget resolution; (2) the first five fiscal years covered by the budget resolution; and (3) the next five fiscal years after that. (The budget resolution encompasses on-budget revenues and spending only; it excludes the budgetary transactions of the off-budget Social Security trust funds and Postal Service Fund.) Revenue reductions, direct spending increases, or a combination of the two are allowed only so long as they are completely offset by revenue increases, direct spending reductions, or both. In its current form, however, the Senate's PAYGO rule does not apply to any revenue reductions or direct spending increases that are assumed in the budget resolution. Any Senator may raise a point of order against legislation violating the rule, but the rule may be waived upon the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

Neither the Senate's PAYGO rule, nor proposals for such a rule in the House, address increases or decreases in revenues or direct spending that are reflected in the calculations of the budget baseline; the rule applies only to the effects of legislation that is pending. Therefore, revenue decreases or spending increases that stem from existing law are not constrained by the rule.

For many years, the Senate's PAYGO rule complemented a statutory PAYGO requirement established by the Budget Enforcement Act of 1990 (as an amendment to underlying law, the Balanced Budget and Emergency Deficit Control Act of 1985), which was first effective for FY1992. Under the statutory PAYGO requirement, the net budgetary impact of revenue and direct spending legislation in current and future fiscal years was recorded on a rolling PAYGO scorecard. If the director of the Office of Management and Budget determined at the end of each congressional session that revenue and direct spending legislation enacted for the immediate fiscal year yielded a net cost (when added to any existing balance already recorded on the PAYGO scorecard), then across-the-board cuts in nonexempt direct spending programs would occur automatically to eliminate the net cost, thereby reducing the balance to zero, under a procedure known as sequestration.[5]

The statutory PAYGO requirement was extended twice, but effectively was terminated at the end of the 2002 session, when the out-year balances on the PAYGO scorecard (through FY2006) were set to zero.[6] No sequester of direct spending

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[4] (...continued)
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[5] For additional information on this topic, see CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

[6] See CRS Report RS21378, *Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.

programs ever occurred while the statutory PAYGO requirement was in effect. This is attributable, in the earlier years, to effective compliance, and in the later years, to statutory intervention in the process using directed scorekeeping provisions and other techniques.[7]

The Senate's PAYGO rule differs from the expired statutory PAYGO requirement in that it applies during the consideration of legislation, rather than after the session has ended. Both mechanisms, however, adopted a long-term approach to enforcement — the PAYGO rule, by virtue of its 10-year time frame, and the statutory PAYGO requirement, by virtue of recording future-year costs on the rolling scorecard.

Different Formulations of the PAYGO Rule in the Senate

Following the establishment of the PAYGO rule in 1993, the Senate has modified it several times. The changes in the rule have occurred for several reasons, including the establishment and extension of an expiration date, expanding the rule's application to annual appropriations acts in an effort to curtail potential evasion, allowing on-budget surpluses to be "used" to cover revenue reductions and direct spending increases, and providing for exemptions to the rule. These different formulations, which are summarized in **Table 1** at the end of this section, have varied in their effects on the stringency of the rule.

The original rule, Section 12(c) of the FY1994 budget resolution (H.Con.Res. 64), was intended to prevent 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.[8] Specifically, it 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 following year, in 1994, the Senate 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: (1) the first fiscal year covered by the most recently adopted budget resolution; (2) the first five fiscal years covered by the budget resolution; and (3) the next five fiscal years after that.[9] In addition, the modification provided that direct spending and revenue legislation would violate the rule only if it increased the deficit individually and also increased the deficit when

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

[8] See the joint explanatory statement in H.Rept. 103-48, 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.

[9] See Section 23 of H.Con.Res. 218 in the conference report to accompany the resolution, H.Rept. 103-490, May 4, 1994, pp. 18-19 (legislative text) and pp. 54-56 (joint explanatory statement).

combined with any legislation enacted since the enactment of the previous year's reconciliation legislation (i.e., the Omnibus Budget Reconciliation Act of 1993). This modification to the rule basically permitted the use of any deficit reduction provided in other legislation to be used as an offset for any subsequent deficit-increasing legislation. The 1994 modification also added an expiration date of September 30, 1998. In 1995, the Senate reaffirmed the existing PAYGO rule and extended its expiration date to September 30, 2002.[10]

After decades of on-budget deficits, the federal government recorded a small on-budget surplus for FY1999. At that time, baseline budget projections showed on-budget surpluses increasing each year well into the future.[11] In 1999, reflecting the change in the federal government's budget outlook, the Senate modified the PAYGO rule to allow on-budget surpluses to be used to offset tax reductions or spending increases.[12] Specifically, the modified rule prohibited the consideration of any direct spending and revenue legislation that would cause (or increase) an on-budget deficit for any one of the three existing applicable time periods. The modification retained the existing expiration date of September 30, 2002.

In 2002, the rule was allowed to expire on September 30.[13] Two weeks later, however, on October 16, 2002, the Senate restored and extended the PAYGO rule through April 15, 2003.[14] The basic formulation of the rule was retained with one addition. It was expanded to cover any direct spending or revenues included in appropriations acts, effectively curtailing the use of such measures potentially to evade the rule (due to expired discretionary spending limits and the absence of a budget resolution for FY2003).

Finally, in 2003, with the adoption of the FY2004 budget resolution, the Senate modified and extended the rule through September 30, 2008.[15]

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[10] See Section 202 of H.Con.Res. 67 in the conference report to accompany the resolution, H.Rept. 104-159, June 26, 1995, pp. 26-27 (legislative text) and p. 91 (joint explanatory statement).

[11] Congressional Budget Office, *The Economic and Budget Outlook: Fiscal Years 2000-2009*, January 1999, Summary Table 1, p. xiv.

[12] See Section 207 of H.Con.Res. 68 in the conference report to accompany the resolution, H.Rept. 106-91, Apr. 14, 1999, pp. 20-21 (legislative text) and pp. 72-73 (joint explanatory statement).

[13] Congress did not complete action on an FY2003 budget resolution. The Senate Budget Committee reported a FY2003 budget resolution (S.Con.Res. 100), but the Senate did not consider it.

[14] The Senate agreed by unanimous consent to S.Res. 304, as amended by the modified amendment offered by Senators Kent Conrad, Pete Domenici, Judd Gregg, and Russell Feingold (amendment 4886). See *Congressional Record* (daily ed.), Oct. 16, 2002, pp. S10527-S10531 and S10553. The legislation also restored and extended through Apr. 15, 2003, the three-fifths vote requirement for certain waivers of the Congressional Budget Act of 1974.

[15] See Section 505 of H.Con.Res. 95 in the conference report to accompany the resolution,

(continued...)

Table 1. Different Formulations in the Senate's PAYGO Rule

Effective Date	Legislation	Expiration Date	Nature of Change
04-01-1993	FY1994 budget resolution	None.	Rule established.
05-12-1994	FY1995 budget resolution	09-30-1998 date added.	Deficit neutrality required for 3 time periods: first year; total of first 5 years; and total of years 6-10.
06-29-1995	FY1996 budget resolution	Extended to 09-30-2002.	—
04-15-1999	FY2000 budget resolution	—	Deficit neutrality requirement modified so that any on-budget surplus could be used to cover revenue reductions or direct spending increases.
10-16-2002	S.Res. 304	Extended to 04-15-2003.	Coverage of rule expanded to include revenue or direct spending changes in annual appropriations acts (due to expired discretionary spending limits and absence of a budget resolution for FY2003).
04-11-2003	FY2004 budget resolution	Extended to 09-30-2008.	Exemption provided for revenue reductions and direct spending increases assumed in the budget resolution. Application of rule to annual appropriations acts terminated.

The modified rule retains the ban on the consideration of direct spending or revenue legislation that would cause (or increase) an on-budget deficit in any one of three time periods mentioned above. Under the rule in this current form, however, legislation implementing the direct spending or revenue policy changes assumed in the most recently adopted budget resolution is exempt from a point of order, even though it might be projected to cause or increase an on-budget deficit.[16] The modification also eliminated the application of the rule to annual appropriations acts (which were subject to limits established in the budget resolution for FY2004).

[15] (...continued)
H.Rpt. 108-71, Apr. 10, 2003, pp. 29-30 (legislative text) and pp. 122-123 (joint explanatory statement).

[16] The joint explanatory statement in the conference report to accompany the FY2004 budget resolution indicated that the budget resolution assumed direct spending increases and revenue reductions totaling $1,755.957 billion over the period FY2003-FY2013. See H.Rept. 108-71, Apr. 10, 2003, pp. 122-123.

Reconciliation legislation considered later in 2003 (S. 1054 and H.R. 2), for example, although projected at the time to increase the deficit, did not violate the rule because it was consistent with the reconciliation instructions contained in Title II of the budget resolution, H.Con.Res. 95 (108th Congress).

Selected Issues Regarding PAYGO Rules

Proposals to modify the Senate's PAYGO rule or to establish a PAYGO rule in the House raise several issues, including the appropriate coverage of the rule and the provision for exemptions, and the period for which the rule should be in effect, among others. Several selected issues are discussed briefly below.

Coverage and Exemptions. With regard to the appropriate coverage of the PAYGO rule and exemptions to it, attention has focused on whether it should apply to direct spending legislation, but not revenue legislation, and whether the exemption for initiatives assumed in the budget resolution should be retained.

Those who advocate the broadest coverage of the rule point to the need to reduce the deficit, which has climbed to record levels in nominal terms ($412 billion in FY2004, and possibly higher for FY2005 as the year unfolds) and is expected to persist above the $200 billion threshold at least through FY2010. In order to grapple effectively with deficit-reduction challenges, they argue, the House and Senate must ensure that their budget enforcement tools encompass the entire budget and that no portion of it escapes discipline.

Further, advocates of a broadened approach cite the effectiveness of the Senate's PAYGO rule, as well as the statutory PAYGO requirement, during the early and mid-1990s, before budget surpluses emerged. During this period, these two enforcement mechanisms applied to both revenue and direct spending legislation.

An amendment offered by Senator Russell Feingold to the FY2006 budget resolution in March 2005 embodied this approach. His amendment would have restored the Senate's PAYGO rule to its earlier form, under which it applied equally to revenue legislation and direct spending legislation and did not exempt legislation assumed in the budget resolution.

Senator Lincoln Chafee, speaking in support of the Feingold amendment, stated:

> Pay-go is not perfect. Congress has found, and will continue to find if it is included in this budget, ways to get around it. But, despite its flaws, it does have a proven track record. It tests policies of both parties in the same way — pay for your priorities, or find 60 Senators willing to override the rule. This is the way it should be. At a time when our budget is awash in red ink it only makes sense to bring discipline and accountability back to the budget process. If new tax cuts or entitlement spending is so important, shouldn't we be able to find a way to address the costs? Including pay-go in the budget made sense in the 1990's,

> when the stock market was at historic highs and unemployment at historic lows, and it makes sense today.[17]

Those who point to a need for a more narrow application of the PAYGO rule argue mainly that it should not apply to revenue legislation, either by restricting its application solely to direct spending legislation, or, as the current rule provides, by exempting legislation assumed in the budget resolution. A key element in sustaining economic growth and achieving longer-term budgetary goals, they assert, is extending the various tax cuts enacted in 2001 and 2003 that are scheduled to expire over the next several years, and possibly reducing revenues further in other ways. A PAYGO rule applicable to revenue legislation generally, and that does not automatically exempt tax-cut legislation assumed in the budget resolution, could significantly impede this effort, especially in light of the rule's 60-vote threshold for waiver.

During consideration of the FY2006 budget resolution, Senator Charles Grassley, chairman of the Senate Finance Committee, spoke in opposition to the Feingold amendment. He expressed his view that returning to a broadened application of the PAYGO rule would work to the disadvantage of those favoring continued "tax relief" compared to those favoring continued entitlement growth, because most of the tax relief requires legislative action to be extended whereas most entitlement spending increases automatically under existing law.

Further, chairman Grassley discounted the need to broaden the application of the rule because of the Finance Committee's current practice of requiring "revenue neutrality," except for bipartisan tax relief:

> ...Two kinds of tax relief bills have come out of the Finance Committee in the last 4 years. One set of bills contained widely applicable tax relief. Those bills, if you take them together, and they were done under reconciliation, were bipartisan....Those bills enacted in 2001 and 2003 did not contain offsets.
>
> The second category of bills our committee works on would cover all other bills coming as part of our committee business. Those bills dealt with specific categories of tax relief. I will give some examples: A charitable giving tax bill, the bill to deal with exports in manufacturing, a bill to deal with the Armed Forces tax relief for our folks in Iraq putting their lives on the line — there are many other examples of tax relief fully offset by our committee.
>
> In a few rare cases, such as the energy tax relief, for example, bills were partially offset.
>
> ...By and large, then, the Senate Finance Committee, when dealing with tax policy, has produced revenue-neutral bills. The exceptions occurred when there was bipartisan support for widely applicable tax relief.[18]

Duration. The points of order set forth in 1974 in the Congressional Budget Act were established on a permanent basis. Many of the budget enforcement mechanisms established in the ensuing decades, either on a statutory basis (such as

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[17] See the remarks of Senator Lincoln Chafee in the *Congressional Record* (daily ed.), Mar. 16, 2005, pp. S2803-S2804.

[18] See the remarks of Senator Charles Grassley in the *Congressional Record* (daily ed.), Mar. 16, 2005, pp. S2798-S2799.

deficit targets, discretionary spending limits, the PAYGO requirement, and the President's line item veto authority) or as rulemaking provisions of the House and Senate (such as changes in the House rules pursuant to the Republicans' *Contract with America* and various "elastic clause" procedures included in annual budget resolutions), were made effective on a temporary basis.

The trend toward adopting temporary rather than permanent budget enforcement procedures is attributable to many different factors, but is explained mainly by a changing budget policy and political environment in which future outcomes are difficult to predict. Periods of economic growth may be brief or sustained, but they inevitably are followed by periods of economic downturn, which may be shallow or deep. Shaped by swings in the economic pendulum, changing demographic trends, and other factors, recent budgets have presented policymakers with drastically varying issues, ranging from large deficits at times to large surpluses at other times. Periods of divided government are followed by periods in which one party dominates the leadership of the federal government; at times party leadership is strongly united, and at other times it is marked by factional strife.

As a consequence, at any given time in recent decades, it has been difficult for congressional leaders to determine what budgetary challenges it will face a few years hence, and how much in the way of political resources it will have to marshal against them. Legislative compromises in this type of environment tend to favor shorter-term deals. Budget enforcement procedures, as an integral component of shorter-term compromises on budget policy matters, therefore, often include expiration dates. Just as budget policies can be revisited in the future, the procedural mechanisms needed to enforce them can be renegotiated at that later time.

The Senate's PAYGO rule has fit squarely into this pattern, being revised and extended over the years through a changing policy and political environment. The current PAYGO rule remains in effect for the next three budget cycles, through the end of FY2008.

Proposals to extend the Senate's PAYGO rule have assumed the need to retain an expiration date, rather than to extend it on a permanent basis. As to the appropriate length of an extension, a range of options is available. First, any modification to the rule could be made without changing the current expiration date (which is the end of FY2008). If the PAYGO rule is regarded as a companion enforcement procedure to the Senate's discretionary spending limits included in the FY2006 budget resolution, then comparable expiration dates might be appropriate.[19] Section 404 of the budget resolution sets forth discretionary spending limits for the Senate for three years, through FY2008.

Second, as proposed in the Feingold amendment to the FY2006 budget resolution, the expiration date could be made consistent with the five-year time frame

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[19] The Senate's discretionary spending limits are included in Section 404 of the FY2006 budget resolution as finally agreed to by the House and Senate on April 28, 2005. In the conference report to accompany H.Con.Res. 95, H.Rept. 109-62, Apr. 28, 2005, see pp. 22-23 (legislative text) and pp. 80-83 (joint explanatory statement).

of the budget resolution itself, through the end of FY2010. Another provision of the budget resolution (Section 403) extends many current requirements pertaining to supermajority enforcement through FY2010.

Third, a much longer time frame could be incorporated into any revision of the Senate's PAYGO rule, consistent with any other longer-term procedures that are finally adopted. For example, the FY2006 budget resolution includes (in Section 407) a new point of order to constrain legislation increasing direct spending over the long term, from FY2016 through FY2055.

Other Issues. Some of the other issues raised by proposals to modify the Senate PAYGO rule or to establish a PAYGO rule in the House pertain to the relationship to other budget enforcement procedures and whether the rule may lead to distortions in budget policy.

Various budget enforcement procedures, each established to deal with a particular concern, could unnecessarily complicate the legislative process and the formulation of legislation if they are not well integrated. Consider, for example, some of the major budget enforcement procedures that would might apply during Senate consideration of a legislative proposal to increase direct spending: (1) spending increases above the ceilings established in the current budget resolution for the current fiscal year, the upcoming fiscal year, and a five-year period (or longer) might be subject to a point of order under Section 311 of the Congressional Budget Act of 1974; (2) spending increases in excess of the committee of jurisdiction's spending allocations made under the current budget resolution for the same time periods might be subject to a point of order under Section 302 of the 1974 act; (3) if considered as part of a reconciliation bill, spending increases for years beyond the time frame of the reconciliation instructions might be subject to a point of order as "extraneous matter" under Section 313 (the "Byrd rule") of the 1974 act; and (4) if not assumed in the current budget resolution, spending increases not fully offset over the first fiscal year, the first five fiscal years, and the next five fiscal years after that might be subject to a point of order under the current PAYGO rule. Finally, under Section 407 of the FY2006 budget resolution, legislation containing net spending increases that exceed $5 billion during any of four 10-year periods beginning with FY2016 might be subject to a point of order under that section.

Each of the different procedures identified above serves a distinct purpose judged to be necessary and valid by the Senate. The cumulative effect of the various procedures, however, might be to require a proposal increasing direct spending to adhere to a mix of deficit-neutrality and fixed-limit requirements over eight different time periods involving the current fiscal year, the upcoming fiscal year, the first five fiscal years, the next five fiscal years, and four 10-year periods beginning with FY2016. In view of the complexity in the interaction of the procedural requirements, and the potential complication of legislation as a result, modifications to the PAYGO rule and other existing budget enforcement procedures, and the addition of new enforcement procedures, must be carefully evaluated in order to ensure that the complexity and complications are warranted.

Another concern commonly expressed when budget enforcement procedures are proposed or modified is whether the change will promote distortions in policy in order to evade control. In the case of the PAYGO rule, some argue that excluding revenue legislation, but not direct spending legislation, from its discipline will encourage Members to pursue policy initiatives and expansions through the tax side rather than the spending side of the budget. Many policies that can be advanced through the spending of federal funds may also be advanced by granting credits, deductions, exemptions, and the like under tax laws. For example, home ownership is promoted by the federal government through various means, including both spending for loan subsidies and the individual income tax deduction for home mortgage interest.

Recent trends in the use of advance appropriations may be cited as an example by those who express this concern. As stricter controls were exerted on increases in discretionary spending in annual appropriations acts, the use of advance appropriations (which effectively bypass the annual limits) escalated sharply. To curb this practice, the House and Senate responded by including limits on advance appropriations in budget resolutions, enforceable by a point of order in each chamber. The increased use of staggered effective dates and sunset dates in recent years in tax legislation, which has increased its complexity, also may be cited as an undesired consequence of the need to fashion legislation to meet budget enforcement requirements.

Action in the 108th Congress

During the first session of the 108th Congress, the Senate accepted a modification of its PAYGO rule recommended by the Senate Budget Committee in the FY2004 budget resolution, changing it to what is now its current form. In the second session, the Senate adopted a floor amendment to restore the PAYGO rule to its earlier form, but the effort ultimately failed as the two chambers failed to reach final agreement on the FY2005 budget resolution. Efforts to establish a PAYGO rule in the House during action on the budget resolution failed in each session.

First Session. In 2003, as the first session began, the Senate faced the prospect of considering the FY2004 budget resolution and adopting it by the statutory deadline of April 15. The Senate's PAYGO rule, which was slated to expire on the same day, April 15, was expected to become an the issue in the context of consideration of the budget resolution.

On March 14, the Senate Budget Committee reported S.Con.Res. 23, the budget resolution, without written report.[20] The budget resolution, as reported, included revenue levels for FY2003-FY2013 that assumed revenue reductions to accommodate certain tax proposals, such as President George W. Bush's tax relief proposals and the permanent extension of certain tax provisions enacted in 2001. In addition, it included spending levels that assumed direct spending increases, including a new Medicare prescription drug benefit, for the same period. The reported budget resolution also modified and extended the Senate's PAYGO rule (to

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[20] The Senate Budget Committee issued a committee print to accompany S.Con.Res. 23, *Concurrent Resolution on the Budget: FY2004*, S.Prt. 108-19, March 2003. See the discussion of the PAYGO rule on pp. 60-61.

what is now its current form), exempting from the rule legislation implementing those revenue and direct spending assumptions.

After six days of consideration, the Senate agreed to S.Con.Res. 23, as amended, on March 26, by a vote of 56-44. While the Senate considered and agreed to several amendments to S.Con.Res. 23, none were related to the PAYGO provision.

On March 17, the House Budget Committee reported a budget resolution for FY2004, H.Con.Res. 95, containing revenue and spending levels that assumed tax cuts and a mix of direct spending increases and reductions. The reported budget resolution did not include a PAYGO provision. The House agreed to H.Con.Res. 95 on March 21, by a vote of 215-212, after rejecting several amendments. One of the rejected amendments, offered by Representative Baron Hill, would have, among other things, established a PAYGO rule in the House applicable to both direct spending and revenue legislation.[21] The amendment was rejected by a vote of 174-254.

The conference report on the FY2004 budget resolution, H.Con.Res. 95, retained without change the Senate language relating to the PAYGO rule.[22] It also assumed revenue reductions and direct spending increases, as reflected on a "PAYGO scorecard," that would increase the deficit by $1.691 trillion over FY2004-FY2013. The House and Senate agreed to the conference report by votes of 216-211 and 51-50, respectively, on April 11.

Second Session. Modification of the Senate's PAYGO rule was a recurring issue in 2004, during the second session, as the House and Senate considered the FY2005 budget resolution. Ultimately, the inability of the two chambers to reconcile their differences over the scope of PAYGO procedures led to an impasse; the House agreed to the conference report on the FY2005 budget resolution, but the Senate did not.

On March 5, the Senate Budget Committee reported S.Con.Res. 95, without a written report. The budget resolution reflected revenue assumptions, such as the extension of expiring personal tax relief provisions, that would reduce revenues by tens of billions of dollars over FY2005-FY2009. Further, it reflected assumptions that certain direct spending programs would be increased and others reduced over this period, yielding a modest net reduction overall. A print issued by the Budget Committee indicated that the PAYGO rule adopted in the previous session remained in effect.[23] Accordingly, under the budget resolution as reported, the revenue reductions and direct spending increases assumed in the budget resolution would not have been subject to the PAYGO rule.

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[21] The proposed House PAYGO rule was set forth in Section 315 of the Hill amendment.

[22] See *Concurrent Resolution on the Budget for Fiscal Year 2004*, H.Rept. 108-71, Apr. 10, 2003, pp. 29-30 (Section 505, legislative text of the PAYGO rule) and pp. 118 and 122-123 (excerpts of the joint explanatory statement pertaining to Section 505).

[23] The Senate Budget Committee issued a committee print to accompany S.Con.Res. 95, *Concurrent Resolution on the Budget: FY2005*, S.Prt. 108-365, Mar. 2004. See the discussion of the PAYGO rule and other procedures on pp. 56-59.

On March 10, during the third day of Senate consideration of the budget resolution, Senator Russell Feingold offered amendment 2748. The amendment would have restored the Senate's PAYGO rule to its earlier form, under which it applied equally to revenue legislation and direct spending legislation and did not exempt legislation assumed in the budget resolution. The Senate adopted the Feingold amendment later that day by a vote of 51-48. On March 12, the Senate adopted S.Con.Res. 95, as amended by the Feingold amendment, among others.

The House Budget Committee, on March 19, reported a budget resolution for FY2005 (H.Con.Res. 393) also reflecting assumptions that significant reductions in revenue would be made, coupled with a mix of increases and decreases in direct spending.[24] Also on March 19, the House Budget Committee signaled its interest in not establishing procedural barriers to the extension of expiring tax cuts and other policies involving revenue reduction when it reported H.R. 3973, the Spending Control Act of 2004.[25] Among other things, the bill proposed to restore the statutory PAYGO requirement, but applicable only to direct spending legislation and not revenue legislation. The House considered the bill in revised form, as H.R. 4663, on June 24, 2004, defeating it by a vote of 146-268. Two amendments and one motion to recommit the bill with instructions, all of which would have restored the statutory PAYGO requirement and extended it to both direct spending and revenue legislation, were defeated.[26]

On March 25, the House considered and adopted the FY2005 budget resolution, by a vote of 215-212, after rejecting several amendments. Two of the rejected amendments would have, among other things, established a PAYGO rule in the House applicable to both direct spending and revenue legislation. The first amendment, offered by Representatives Baron Hill and Charles Stenholm, was rejected by a vote of 183-243, and the second amendment, offered by Representative John Spratt, ranking member of the Budget Committee, was rejected by a vote of 194-232.[27]

While conference deliberations were underway, the House considered three motions to instruct House conferees to accept the Senate-passed language modifying the Senate's PAYGO rule.[28] On March 30, a motion to instruct made by Representative Mike Thompson was rejected by a tie vote of 209-209. On May 5 and

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[24] House Budget Committee, *Concurrent Resolution on the Budget — Fiscal Year 2005*, H.Rept. 108-441, Mar. 19, 2004.

[25] House Budget Committee, *Spending Control Act of 2004*, H.Rept. 108-442, Mar. 19, 2004.

[26] See the amendment offered by Representative John Spratt (Section 5), rejected by a vote of 179-233; the amendment offered by Representative Mark Steven Kirk (Section 501), rejected by a vote of 120-296; and the motion to recommit offered by Representative Charles Stenholm, rejected by a vote of 196-218.

[27] The proposed House PAYGO rule was set forth in Section 315 of the Hill/Stenholm amendment and Section 401 of the Spratt amendment.

[28] See CRS Report RL31840, *Congressional Budget Resolutions: Motions to Instruct Conferees*, by Robert Keith.

May 12, motions to instruct for the same purpose were made by Representatives Dennis Moore and Earl Pomeroy, respectively; the motions were rejected by votes of 208-215 and 207-211. Finally, Representative David Price announced on May 18 his intention to offer a motion to instruct for the same purpose. On the next day, however, the Speaker announced that the motion, which the House had not considered, was vitiated (because the conferees had reported the budget resolution).

The conference report on S.Con.Res. 95 included language pertaining to the Senate's PAYGO rule, as Section 407, but with two further modifications.[29] First, Section 407 exempted from the rule reconciliation legislation considered pursuant to Title II of the budget resolution. The title set forth reconciliation directives to the Senate Finance Committee and House Ways and Means Committee to report legislation reducing revenues by $22.9 billion over FY2005-FY2009 (and, in changes related to tax policy, increasing outlays by $4.6 billion). Second, Section 407 advanced the expiration date for the PAYGO rule from September 30, 2009, to April 15, 2005, a little less than a year hence.

On May 19, the House agreed to the conference report by a vote of 216-213. The Senate did not consider the conference report. In the wake of the failure to finalize action on the FY2005 budget resolution, each chamber passed a "deeming resolution" to activate enforcement procedures for the consideration of the FY2005 appropriations acts.[30] Because the Senate did not agree to the conference report, and the "deeming resolution" adopted by the Senate did not address the PAYGO provision, no changes in the PAYGO rule were made in 2004.

Action in the 109th Congress

In 2005, during action on the FY2006 budget resolution, the Senate considered and rejected a proposed modification to its PAYGO rule. In addition, the House rejected a proposal to establish a PAYGO rule of its own. The FY2006 budget resolution, as finally agreed to by the House and Senate, did not include any provisions dealing with PAYGO rules.

Senate Action. The Senate Budget Committee considered the FY2006 budget resolution, S.Con.Res. 18, on March 9 and March 10, 2005. The "mark" presented by chairman Judd Gregg included several budget enforcement procedures, generally made effective through the end of FY2010. With regard to the Senate's PAYGO rule, the mark assumed retention of the current rule without change:

> The Mark leaves unchanged the Pay-as-you-go rule in the FY04 Budget Resolution, the last budget agreed to by the full Congress. The rule establishes

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[29] See *Concurrent Resolution on the Budget for Fiscal Year 2005*, H.Rept. 108-498, May 19. With regard to Section 407, see pp. 15-16 (legislative text) and pp. 103 and 108 (joint explanatory statement).

[30] See CRS Report RL31443, *The "Deeming Resolution": A Budget Enforcement Tool*, by Robert Keith. The Senate's "deeming resolution" took the form of Section 14007 of the Defense Appropriations Act for FY2005 (P.L. 108-287) and only pertained to enforcement of discretionary spending levels.

> a 60-vote point of order against legislation that would increase the deficit beyond the level assumed in the FY06 Budget Resolution in FY06, the five-year period from FY06-2010 or the 5-year period from FY11-2016.[31]

A new enforcement procedure included in the chairman's mark proposed additional controls in the Senate, beyond those already provided by the PAYGO rule and other procedures under the Congressional Budget Act of 1974, to control direct spending over the long term. Under the procedure, a point of order would lie against legislation increasing direct spending in the net by more than $5 billion in any of four consecutive 10-year periods beginning with FY2016 and continuing through FY2055. The point of order would be subject to waiver by a three-fifths vote. (This long-term enforcement mechanism was included in the FY2006 budget resolution, as finally agreed to by the House and Senate on April 28, 2005, as Section 407.)

During committee action on March 10, Senator Russell Feingold offered an amendment to extend the current PAYGO rule through FY2010 and to remove the exemption for revenue and direct spending changes assumed in the budget resolution. Senator Feingold's amendment was defeated by a vote of 10-12.[32]

On March 11, the Senate Budget Committee reported S.Con.Res. 18, without a written report.[33] The reported budget resolution did not include any new language regarding the Senate's PAYGO rule; the new rule pertaining to control of direct spending over the long term was included as Section 407 (Limitation on Long-Term Spending Proposals).

The Senate began consideration of S.Con.Res. 18 on March 14. On March 16, Senator Russell Feingold offered amendment 186, which was identical to the modification to the Senate's PAYGO rule that he had offered during committee markup of the budget resolution.[34] The amendment was rejected by a tie vote of 50-50.

On March 17, the Senate adopted S.Con.Res. 18, as modified by various amendments, by a vote of 51-49.

House Action. The House Budget Committee considered and adopted the FY2006 budget resolution, H.Con.Res. 95, on March 9, 2005. The "mark" presented by chairman Jim Nussle included several budget enforcement procedures, but none of them pertained to a PAYGO rule for the House. During committee markup of the

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[31] Senate Budget Committee, *Chairman's Mark: 2006 Budget*, Mar. 9, 2005, p. 23.

[32] CQ Today, *Feingold's Pay-As-You-Go Amendment Again Tempts Moderate Republicans*, by Joseph J. Schatz, Mar. 10, 2005; and BNA's Daily Report for Executives, *Senate Budget Kills Democratic Amendments; Democrats Attack Tax-Cutting Preferences*, by Kurt Ritterpusch, Mar. 11, 2005.

[33] The Senate Budget Committee issued a print to accompany S.Con.Res. 18, *Concurrent Resolution on the Budget: FY2006*, S.Prt. 109-18, Mar. 2005.

[34] See the *Congressional Record* (daily ed.), Mar. 16, 2005, pp. S2795-S2806, for the text of the Feingold amendment and its consideration by the Senate.

budget resolution, two amendments that would have established a PAYGO rule in the House were rejected.[35]

On March 16 and March 17, the House considered H.Con.Res. 95 under the terms of a special rule reported by the House Rules Committee, H.Res. 154.[36] One of the four amendments made in order under the rule was a substitute amendment offered by Representative John Spratt, the ranking member of the House Budget Committee. Among other things, the amendment proposed (in Section 301) that a PAYGO rule be established in the House.[37] Under the proposed rule, a point of order could be raised against direct spending or revenue legislation that would cause (or increase) an on-budget deficit during any of the same three periods defined in the Senate's PAYGO rule. The rule would not exempt direct spending increases or revenue reductions assumed in the budget resolution. Section 301(d) of the proposed rule provides for its termination on December 31, 2015. On March 17, the Spratt amendment was defeated by a vote of 165-264.

The House adopted the budget resolution without amendment on March 17, by a vote of 218-214.

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[35] See vote 2 (pp. 91-92), pertaining to the amendment offered by Representative Dennis Moore, and vote 15 (p. 104), pertaining to the amendment offered by Representative Jim Cooper, in the report of the House Budget Committee on H.Con.Res. 95, the FY2006 budget resolution (H.Rept. 109-17, Mar. 11, 2005).

[36] The House Rules Committee issued a report to accompany H.Res. 154; see H.Rept. 109-19, Mar. 15, 2005.

[37] The text of the Spratt substitute amendment is set forth on pp. 40-60 of the Rules Committee report, ibid. Section 301 of the amendment, dealing with the House PAYGO rule, is set forth on p. 57. Section 402 of the amendment expressed the sense of the House that the statutory PAYGO requirement be reinstated in its original form.

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

Sec. 505 of the FY2004 Budget Resolution (H.Con.Res. 95, 108th Congress)

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