

CRS Report for Congress

Federal Budget Process Reform in the 110th Congress: A Brief Overview

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Summary

In 2007, during the first session of the 110th Congress, the House and Senate face a wide array of budget process reform proposals, pertaining to such matters as restoration of the statutory discretionary spending limits and PAYGO requirement; internal PAYGO rules in the House and Senate; earmarking; and modifications to the budget resolution, reconciliation, and appropriations processes.

The House and Senate may pursue budget process reform in various ways, including modifications to each chamber's rules and practices, the enactment of freestanding legislation, or the inclusion of budget process changes in other budgetary legislation, such as an annual appropriations act or a reconciliation or debt-limit measure. This report provides a context for congressional actions in this area and briefly discusses selected actions or proposals to illustrate the diversity of issues involved.

On January 5, 2007, the House completed action on its rules package for the 110th Congress, H.Res. 6. Title IV of the measure included several budget process changes dealing with such matters as earmark reform, restrictions on the reconciliation process, and the establishment of a PAYGO rule for the House.

On January 9, the House adopted H.Res. 35, a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes Members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence. This action represents the House's response to certain recommendations of the 9/11 Commission.

On January 18, 2007, the Senate passed ethics reform legislation, S. 1. Title I of the act, which is referred to separately as the Legislative Transparency and Accountability Act of 2007, includes several provisions dealing with earmark reform. The Senate also has considered a legislative line-item veto proposal, in the form of an amendment offered by Senator Judd Gregg, first to S. 1 (withdrawn) and then to minimum wage legislation, H.R. 2. Action on the proposal has not been completed.

The report will be updated as developments warrant.

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Federal Budget Process Reform in the 110th Congress: A Brief Overview

Congress and the President regularly propose and make changes to the federal budget process in order to achieve certain budgetary, economic, or political objectives. This report briefly discusses the context in which federal budget process changes are made and identifies selected reform proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive; other CRS reports discuss different aspects of budget process reform in more detail.¹

The Context of Budget Process Reform

The main impetus for budget process reform may arise from a variety of sources. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act. State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted. (Citations to laws identified in this report are provided in **Appendix A**.)

Perhaps more than any other factor over the years, concern about the size and persistence of the federal deficit has animated calls for budget process reform. According to the most recent baseline budget projections of the Congressional Budget Office, made in August 2006, the total deficit in the federal budget is expected to rise from \$273 billion for FY2008 to \$328 billion for FY2010 before declining markedly thereafter.² If the CBO baseline budget projections are revised to reflect what many regard as more realistic assumptions (continuance of some or all expiring tax cuts, a "fix" of the Alternative Minimum Tax, and more restrained expectations regarding discretionary spending, including a gradual reduction for costs

¹ For example, see: (1) CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr.; (2) CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr.; and (3) CRS Report RL30550, *Biennial Budgeting: Issues and Options*, by James V. Saturno.

² Congressional Budget Office, *The Budget and Economic Outlook: An Update*, August 2006, Table 1-1, p. 2 and Table 1-8 (for alternative baseline), pp. 18-19, available on the CBO Web site at [<http://www.cbo.gov>].

of the war in Iraq and Afghanistan), then the estimated deficit may persist above \$200 billion for years beyond FY2010. Accordingly, congressional concern about the deficit may be expected to remain strong in 2007.

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.³ Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations). Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

In some years, changes made in the budget process were comprehensive. The Budget and Accounting Act of 1921 established the executive budget process, the Congressional Budget Act of 1974 created the congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act of 1990 imposed additional budget controls on a temporary basis.⁴ In other years, such as 1987, 1993, and 1997, existing budget process statutes were modified in a less comprehensive fashion and extended for limited periods. At other times, Congress and the President enacted statutes changing only selected aspects of the budget process; the Line Item Veto Act (of 1996) is one example. Finally, in every Congress, the House and Senate have modified existing rules and practices affecting the budget process and sometimes instituted new ones.

Like other types of legislation, statutes making changes in the budget process are subject to review by the judiciary. In several major instances, the Supreme Court has declared procedures established by Congress and the President to be invalid on constitutional grounds. The one-House legislative veto (found in many acts, including the Impoundment Act of 1974), for example, was invalidated by *I.N.S. v. Chadha* in 1983, 103 S.Ct. 715, (1983); the triggering of sequestration by the Comptroller General under the Gramm-Rudman-Hollings Act was invalidated by

³ For a comprehensive overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick.

⁴ A comprehensive listing and description of major budget process laws enacted over the past century (and full legal citations to them) is provided in CRS Report RL30795, *General Management Laws: A Compendium*, Clinton T. Brass (coordinator).

Bowsher v. Synar in 1986, 478 U.S. 714, (1986); and the Line Item Veto Act was invalidated by *Clinton v. City of New York* in 1998, 118 S.Ct. 2091 (1998).

The first action in the 110th Congress to change budget procedures occurred on the second day, January 5, 2007. The House, which unlike the Senate is not a continuous body, must adopt its rules anew at the beginning of each Congress. Traditionally, the House adopts its rules from the previous Congress, with modifications (that may include changes in the budget process), in the form of a simple resolution.⁵ The rules package for the 110th Congress, H.Res. 6, contained several changes in the budget process, including a “pay-as-you-go” (PAYGO) rule for the House (discussed below).

A second opportunity for budget process changes early in the 110th Congress will occur when the two chambers consider the budget resolution for FY2008. Under authority referred to as the “elastic clause” (in Section 301 of the 1974 Congressional Budget Act), either chamber may include procedural provisions in the annual budget resolution that are consistent with the purposes of the 1974 act. The Senate’s current PAYGO rule, for example, stems from a provision in the FY2004 budget resolution.

Given that nearly every committee of the House and Senate has jurisdiction over legislation with a budgetary impact, interest in the budget process and proposals to change it radiates throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, Government Reform, and Rules Committees in the House, and with the Budget, Homeland Security and Governmental Affairs, and Rules and Administration Committees in the Senate, other House and Senate committees, particularly the appropriations and tax committees, may exert influence over budget process changes affecting their legislative interests.

Selected Budget Process Reform Proposals

Among the various budget process reform proposals under discussion, many pertain to categories such as restoration of the statutory discretionary spending limits and PAYGO requirement; internal PAYGO rules in the House and Senate; earmarking; and modifications to budget resolution, reconciliation, and appropriations processes. In order to illustrate the diversity of proposals, these and other categories of reform are discussed briefly below.

PAYGO Rules and Discretionary Spending Limits. For FY1991 through FY2002, federal budget legislation was constrained by statutory limits on discretionary spending and a PAYGO requirement for direct spending (sometimes referred to as mandatory spending) and revenue legislation. Both these budget constraints were established by the Budget Enforcement Act of 1990, which amended the Balanced Budget and Emergency Deficit Control Act of 1985. The discretionary spending limits and the PAYGO requirement were enforced by sequestration, a process by which violations were remedied by automatic, across-the-board spending

⁵ See, for example, CRS Report RS22021, *House Rules Changes Affecting the Congressional Budget Process in the 109th Congress (H.Res. 5)*, by Bill Heniff Jr.

cuts. These statutory budget constraints were extended in 1993 and 1997, but the discretionary spending limits expired at the end of FY2002 and the PAYGO requirement effectively was terminated in December 2002.

In recent years, there has been considerable interest in restoring and possibly making significant modification to the statutory enforcement procedures. Some observers have argued that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a total budget surplus in FY1998 — the first in almost 30 years — and the following three fiscal years.

With the return of deficits, some have argued for restoring such statutory mechanisms for fiscal discipline. A principal point of contention with regard to the PAYGO requirement is whether it should apply to revenue legislation. While some maintain that revenue reductions should not face the hurdle of a statutory PAYGO requirement because they are needed to continue the economic growth that fuels growing revenues, others assert that accommodating further revenue reductions in a PAYGO requirement (i.e., by applying it only to direct spending) likely would undermine efforts to achieve significant deficit reduction, in part by encouraging some spending initiatives to be reformulated as revenue-loss provisions.

In the case of the statutory limits on discretionary spending, one issue has been the period of time for which they should be established. Advocates of two- or three-year limits argue that the five-year framework employed earlier leads to limits that are too unrealistic in the later years (due to changing circumstances). Limits that are unrealistically high fail to impose discipline, while limits that are unrealistically low encourage evasions through gimmickry and other means.

As a supplement to the statutory PAYGO requirement, the Senate established its own PAYGO rule in 1993 as a provision in the FY1994 budget resolution. The rule, which operates differently than the statutory requirement, has been modified several times over the years. In its current form, the Senate's PAYGO rule 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.

Over the years, several unsuccessful efforts were made to establish a PAYGO rule in the House. As indicated previously, a PAYGO rule was contained in Title IV (Section 405) of the House's rules package for the 110th Congress, H.Res. 6. Title IV was considered separately and adopted by the House on January 5, 2007, by a vote of 280-152 (all five titles of H.Res. 6 were adopted by the House and took effect by that day). The House's PAYGO rule differs from the Senate's PAYGO rule largely in that it imposes a bar against revenue and direct spending legislation that increases

a deficit (or reduces a surplus) over different time periods (i.e., the six-year and 11-year periods beginning with the current fiscal year) and makes no exception for revenue or direct spending proposals assumed in the budget resolution.

In the Senate, several efforts to revise the Senate's PAYGO rule, so as to eliminate the exception for proposals assumed in the budget resolution, have been defeated by narrow margins in recent years. A further effort in this regard is expected to be made in the 110th Congress.

Earmarking. Reform of congressional earmarking practices in appropriations, direct spending, and tax legislation (and accompanying reports) was considered in 2006 by the House and Senate, but the two chambers did not come to a resolution of the issue. The issue was addressed successfully, however, at the start of the 110th Congress.

While definitions of earmarking vary, an earmark generally is considered to be an allocation of resources to specifically-targeted beneficiaries. Earmarks may be proposed by the President or may be originated by Congress. Concern about existing earmarking practices arose because some of them were inserted into legislation or accompanying reports without any identification of the sponsor, and the belief that many earmarks were not subject to proper scrutiny and diverted resources to lesser-priority items or items without sufficient justification, thereby contributing to wasteful spending or revenue loss.

The essential feature of earmark reform proposals is a bar against the consideration of legislation that does not identify individual earmarks and the Members who sponsored them and the distribution of such information in a way that makes it readily available.

An earmark reform provision, requiring the identification of earmarks and their sponsors before legislation may be considered, was contained in Title IV (Section 404) of the House's rules package for the 110th Congress, H.Res. 6, adopted on January 5. The requirement applies to all spending legislation, as well as to legislation providing tax or tariff benefits limited to 10 or fewer beneficiaries or entities.

On January 18, the Senate adopted S. 1, ethics reform legislation. Title I of the act, referred to separately as the Legislative Transparency and Accountability Act of 2007, includes earmark reform provisions requiring the prior identification of earmarks, and their sponsors, in all spending and revenue legislation, and various other constraints on earmarking practices.

Congressional Budget Resolution and Reconciliation. The Congressional Budget Act of 1974 requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least five fiscal years. The budget resolution, which is a concurrent resolution and therefore does not become law, provides an overall budget plan that guides congressional action on individual spending, revenue, and debt-limit measures. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of

revenue, spending, and debt-limit legislation to carry out budget resolution policies; enforcement of budget resolution policies also occurs by means of various points of order that may be raised on the floor. Budget resolutions and reconciliation measures are considered under expedited procedures in both chambers.

Some Members of Congress, as well as the President, have argued that the budget resolution would be more effective in enforcing budget policy by making it a joint resolution requiring the President's approval. A joint budget resolution would directly involve the President in congressional actions on the budget early in the process. If the President and Congress reach an impasse on a joint budget resolution, however, some are concerned that action on spending and revenue bills might be significantly delayed.

During the 1980s and much of the 1990s, reconciliation was used principally as a means of reducing the deficit. While some reconciliation measures included spending increases or revenue reductions, the net impact of the legislation was to reduce the deficit. In recent years, the reconciliation process has been used mainly to expedite the passage of legislation that increases the deficit, primarily through revenue reduction.

Some Members in the House and Senate have argued that the reconciliation process should be altered so that it may be used only to reduce the deficit. As part of the changes in the budget process included in the rules package for the 110th Congress, H.Res. 6, the House included a ban (in Section 402) against the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus over the six-year or 11-year periods beginning with the current fiscal year.

Annual Appropriations Process. Discretionary spending, which amounts to more than one-third of federal spending, is provided each year in regular, supplemental, and continuing appropriations acts. Discretionary spending funds most of the routine operations of federal agencies.

At the beginning of the 109th Congress, the House and Senate Appropriations Committees consolidated and realigned their subcommittees in order to streamline the appropriations process, facilitate the timely enactment of appropriations bills, and minimize the likelihood of using consolidated appropriations acts.⁶ Both committees disbanded their VA-HUD Subcommittee, and the House Appropriations Committee disbanded two others (District of Columbia and Legislative Branch), leaving 12 Senate and 10 House appropriations subcommittees.

At the start of the 110th Congress, further adjustments in subcommittee alignments of the House and Senate Appropriations Committees were made, leaving each committee with 12 subcommittees. Among the changes made, each committee

⁶ For a further discussion on reorganization of the appropriations subcommittees, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2005*, by James V. Saturno.

established a Financial Services and General Government Subcommittee and the House Appropriations Committee reestablished a Legislative Branch Subcommittee.

On January 9, the House adopted H.Res. 35, a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes Members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence. This action represents the House's response to one of the recommendations of the 9/11 Commission.

When a regular appropriations act or a continuing resolution is not in place after the start of the fiscal year on October 1, an agency does not have the legal authority to incur obligations in order to function and must shut down, resulting in the furlough of federal employees and disruptions in service. In order to prevent a government shutdown (or the threat of one) due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution. An automatic continuing resolution would provide an uninterrupted source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. While such a device could eliminate or reduce employee furloughs and service disruptions, some view an automatic continuing resolution as substituting a formulaic response for deliberate and informed decision-making.

Item Veto/Expanded Rescission Authority. When a spending or revenue act is sent to the President for his consideration, he must approve or veto the measure in its entirety. After a spending measure has become law, the President may impound funds through rescission, which cancels the funding, or deferral, which delays the expenditure of funds. Congress exercises its responsibilities in this area through procedures established under the Congressional Budget and Impoundment Control Act of 1974 and the regular legislative process.

Advocates of greater budget discipline proposed the Line Item Veto Act, which became law in 1996 (P.L. 104-130) but was struck down by the Supreme Court on June 25, 1998, in *Clinton v. City of New York*, 118 S.Ct. 2091 (1998). Under this act, the President was authorized to strike individual items of discretionary spending, direct spending, and certain limited tax benefits in any law.

In the years following the Supreme Court decision, various proposals have been made in Congress to grant item veto authority to the President in a manner that passes constitutional muster or to otherwise expand his rescission powers. President Bush, in 2006, proposed a "legislative line-item veto," under which Congress would have to consider proposed rescissions in an expedited manner. The House passed H.R. 4890, the Legislative Line Item Veto Act of 2006, on June 22, 2006, by a vote of 247-172. In the Senate, the Budget Committee reported S. 3521, the Stop Over Spending Act of 2006, on July 14, 2006 (S.Rept. 109-283), but the Senate did not consider the bill. Title I of the bill contained the Legislative Line Item Veto Act of 2006.

While advocates of the item veto or expanded rescission powers for the President contend that such tools will enhance budgetary discipline, critics suggest that their usefulness for budgetary discipline is overstated and that they may adversely affect the balance of power between Congress and the President over budget decisions.

The Senate is considering a legislative line-item veto proposal as an amendment (Gregg amendment numbered 101) to minimum wage legislation, H.R. 2. Action on the proposal has not yet been completed. The amendment had been offered previously during consideration of ethics reform legislation, S. 1, but was withdrawn.

Biennial Budgeting. While most authorizations are enacted on a multiyear cycle, Congress acts on budget resolutions and appropriations acts annually. Biennial budgeting proposals would change the cycle under which Congress acts on budget resolutions and appropriations acts (and annual authorization acts) to two years.

Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to allow more time for congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision-making. In the view of some, however, a biennial approach could impair Congress's ability to respond to changing economic and budgetary circumstances.

Appendix A. Citations to Selected Budget Process Laws

Budget and Accounting Act of 1921

P.L. 67-13; June 10, 1921; 42 Stat. 20-27.

Congressional Budget and Impoundment Control Act of 1974

P.L. 93-344; July 12, 1974; 88 Stat. 297-339.

Balanced Budget and Emergency Deficit Control Act of 1985

Title II of P.L. 99-177 (Increasing the Statutory Limit on the Public Debt); December 12, 1985; 99 Stat. 1038-1101.

Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987

Title I of P.L. 100-119 (Increasing the Statutory Limit on the Public Debt); September 29, 1987; 101 Stat. 754-784.

Budget Enforcement Act of 1990

Title XIII of P.L. 101-508 (Omnibus Budget Reconciliation Act of 1990); November 5, 1990; 104 Stat. 1388-573 through 630.

Omnibus Budget Reconciliation Act of 1993

P.L. 103-66; August 10, 1993; 107 Stat. 683-685 (Title XIV).

Unfunded Mandates Reform Act of 1995

P.L. 104-4; March 22, 1995; 109 Stat. 48-71.

Line Item Veto Act

P.L. 104-130; April 9, 1996; 110 Stat. 1200-1212.

Budget Enforcement Act of 1997

Title X of P.L. 105-33 (Balanced Budget Act of 1997); August 5, 1997; 111 Stat. 677-712.

Note: Major portions of selected budget process laws are codified as follows —

2 U.S.C. 621, et seq. (Congressional Budget and Impoundment Control Act of 1974, as amended);

2 U.S.C. 900, et seq. (Balanced Budget and Emergency Deficit Control Act of 1985, as amended); and

31 U.S.C. 1101, et seq. (Budget and Accounting Act of 1921, as amended)