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INSIGHT

A Potential Sequester Under Statutory PAYGO at the End of the 117th Congress

October 20, 2022

The most recent statutory PAYGO scorecards, posted by OMB in September 2022, show a "potential PAYGO" sequester at the end of the current session of Congress that would require across-the-board cuts to offset a debit of approximately $742 billion. This Insight provides a brief overview of statutory PAYGO and an explanation of legislative considerations.

In February 2010, the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139) was enacted establishing a budget enforcement mechanism commonly referred to as "Statutory PAYGO." According to Section 2 of the act, it is generally intended to "enforce a rule of budget neutrality on new revenue and direct spending legislation" based on the net effect of all such legislation on the deficit over five- and ten-year periods. To enforce Statutory PAYGO, the Office of Management and Budget (OMB) is required to record the budgetary effects of newly enacted revenue and direct spending legislation on two separate scorecards: one that covers a five-year period and one that covers a ten-year period. The budgetary effect of PAYGO measures is determined by statements inserted into the *Congressional Record* by the chairmen of the House and Senate Budget Committees and referenced in the text of the measures. If this procedure is not followed, the budgetary effect of the measure is determined by OMB. Each year, OMB is required to issue an annual PAYGO report not later than 14 days (excluding weekends and holidays) after Congress adjourns to end a session. If the net effect of all PAYGO legislation is an increase in the deficit, the President must issue a sequestration order, which automatically implements across-the-board cuts to non-exempt direct spending programs to compensate for the amount of the debit. Section 11 of the act exempts some direct spending programs and activities from sequestration, such as Social Security and Medicaid. Medicare is limited to a 4% cut. (To see a list of non-exempt direct spending programs that would likely be affected by sequestration under Statutory PAYGO, see the OMB report to Congress on the Joint Committee sequester for FY2023.)

When legislation is enacted that is projected to increase the deficit, the text will often include a provision exempting the legislation's budgetary effects from OMB's PAYGO scorecard. For example, Section 201(a) of P.L. 117-180, stated that "The budgetary effects of this division and each succeeding division shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010."

When Congress considers legislation pursuant to the reconciliation process, however, such a provision could be considered extraneous under Section 313(b) of the Congressional Budget Act because it would not produce a change in outlays or revenues. Therefore, such a provision would potentially be subject to a point of order that would require the support of 60 Senators for a waiver. A provision concerning the application of PAYGO to a reconciliation measure could, however, be included in a separate non-reconciliation legislative vehicle. This was the case, for example, for the 2017 reconciliation bill, often referred to as the Tax Cuts and Jobs Act (TCJA), which, when enacted was projected to increase the deficit by $1.46 trillion over the 2018-2027 period. The legislation did not include a PAYGO waiver within its text, but a provision was included in separate legislation, that was enacted into law on the same day.

In March 2021, a reconciliation bill, the American Rescue Plan Act, was enacted that was projected to increase the deficit by approximately $1.856 trillion over the period FY2021-FY2030. In December of 2021, legislation was enacted that removed its budgetary effects from the 2022 PAYGO scorecards, and added them to the scorecards for 2023. As a consequence, there is currently a debit of $742 billion that could result in across-the-board cuts due to "Potential PAYGO Sequestration" after the end of the current session. This potential sequester could be cancelled, postponed, or modified through the enactment of legislation. This could be done prior to the end of this session or at the beginning of the 118th Congress.

Author Information

Megan S. Lynch
Specialist on Congress and the Legislative Process

James V. Saturno
Specialist on Congress and the Legislative Process

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