

CRS Report for Congress

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Techniques for Preventing a Budget Sequester

Updated March 8, 2002

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Techniques for Preventing a Budget Sequester

Summary

For the past 17 fiscal years, beginning with FY1986, the budgetary decisions of Congress and the President have been guided in part by specific goals in statute enforced by a process known as sequestration. The statutory goals initially took the form of deficit targets, but later were changed to limits on discretionary spending (first effective for FY1991) and a “pay-as-you-go” requirement for direct spending and revenue legislation (first effective for FY1992). Five sequesters were triggered during years in which Congress and the President did not adhere to these statutory goals. No sequester has occurred, however, since FY1991.

In many of the years since FY1991, Congress and the President were able to avoid a sequester by ensuring that it did not enact spending or revenue legislation in violation of the statutory goals. At times, Congress and the President had to take advantage of flexibility in the procedures, such as the ability to designate certain spending as “emergency requirements,” in order to achieve this outcome. In other instances, however, Congress and the President prevented a sequester that otherwise would have occurred by enacting into law provisions that intervened in the normal operation of the process.

During the 12-year period that the discretionary spending limits have been in effect, Congress and the President have enacted statutory provisions intervening in the normal operation of the enforcement process three times. Congress and the President enacted a provision in the middle of 2000 with the intent of preventing a “within-session” sequester under the discretionary spending limits for FY2000. The action was necessitated by the enactment of supplemental appropriations for the fiscal year. Additionally, significant upward revisions of the discretionary spending limits for FY2001 and FY2002 were enacted to prevent a sequester at the end of the 2000 and 2001 sessions. These actions had been assumed in the budget resolutions adopted earlier in the year (although, in each case, the revision increased the limits more than had been assumed).

On six occasions during this period, Congress and the President enacted statutory provisions intervening in the normal operation of the PAYGO process. In three of these instances (for FY1994, FY1997, and FY1998), the OMB director was instructed to remove savings balances so that they could not be used to offset legislation considered in subsequent sessions. This directive applied only to a single fiscal year for FY1997 (amounting to \$6.301 billion in savings), but applied to multiple fiscal years for the FY1994-1998 period (amounting to \$505 billion in savings) and the FY1998-2002 period (amounting to \$74.9 billion in savings).

In the remaining three cases, the statutory intervention resulted in the removal from the PAYGO scorecard of costs that would have led to a \$10.5 billion sequester for FY2001 and a \$130.279 billion sequester for FY2002, and that might lead to future-year sequesters. In all three instances, the legislative vehicles were annual appropriations acts considered toward the very end of the session (the Consolidated Appropriations Acts for FY2000 and FY2001 and the Defense Appropriations Act for FY2002).

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Techniques for Preventing a Budget Sequester

For the past 17 fiscal years, beginning with FY1986, the budgetary decisions of Congress and the President have been guided in part by specific goals in statute enforced by a process known as sequestration. The statutory goals initially took the form of deficit targets, but later were changed to limits on discretionary spending (first effective for FY1991) and a “pay-as-you-go” requirement for direct spending and revenue legislation (first effective for FY1992). Five sequesters were triggered during years in which Congress and the President did not adhere to these statutory goals. No sequester has occurred, however, since FY1991.

In many of the years since FY1991, Congress and the President were able to avoid a sequester by ensuring that it did not enact spending or revenue legislation in violation of the statutory goals. At times, Congress and the President had to take advantage of flexibility in the procedures, such as the ability to designate certain spending as “emergency requirements,” in order to achieve this outcome. In other instances, however, Congress and the President prevented a sequester that otherwise would have occurred by enacting into law provisions that intervened in the normal operation of the process.

The purpose of this report is to briefly describe the sequestration process, including the ways in which a sequester could be avoided under the regular process, and then to discuss in more detail various techniques that have been used since FY1991 to prevent a sequester by intervening in the regular process.

The Sequestration Process

The sequestration process, which involves automatic, largely across-the-board spending reductions made toward the beginning of the fiscal year, was established under the Balanced Budget and Emergency Deficit Control Act of 1985 as a means of enforcing deficit targets.¹ The 1985 Balanced Budget Act was amended in 1990 to supersede the deficit targets with two new enforcement mechanisms—limits on discretionary spending (*i.e.*, spending controlled through the annual appropriations process) and a “pay-as-you go” (PAYGO) requirement applicable to legislation affecting direct spending (*i.e.*, spending controlled outside of the annual appropriations process) and revenues. The discretionary spending limits are divided into several different categories, which have changed over time, and any violation of the limits is remedied in the category in which it occurred.

¹ For a more detailed history and description of the sequestration process, see CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

The two budget enforcement mechanisms have been revised and extended (affecting legislation enacted through FY2002) in recent years by such measures as the Budget Enforcement Act of 1997, the Transportation Equity Act for the 21st Century, and several recent annual appropriations acts.

Current sequestration procedures under the 1985 Balanced Budget Act require the director of the Office of Management and Budget (OMB) to issue a sequestration report at the time the President's budget is submitted to Congress (the preview report), midway through the congressional session (the update report), and within 15 days after the end of the session (the final report). In these reports, the OMB director adjusts the discretionary spending limits for various factors specified in the 1985 act. The director of the Congressional Budget Office (CBO) issues sequestration reports in advance of the OMB reports, but they are advisory only.

If the OMB director's *Final Sequestration Report* indicates that enacted appropriations measures have exceeded the discretionary spending limits, or that enacted direct spending and revenue levels have incurred a net cost for the fiscal year on the PAYGO scorecard, then the President must immediately issue a sequestration order to remedy the violation through automatic, across-the-board spending reductions. Any required sequester under the discretionary spending limits, the PAYGO requirement, or both must occur within 15 calendar days after Congress adjourns at the end of a session. A sequester of discretionary spending would have to eliminate the amount of any breach of the limits caused by the enactment of annual appropriations measures for the fiscal year. A PAYGO sequester would have to eliminate any net positive balance on the PAYGO scorecard, for that fiscal year and the prior fiscal year combined, caused by the enactment of legislation during the session and in prior years.

During the following session, a "within-session" sequester could occur under the discretionary spending limits if Congress and the President enacted a supplemental appropriations measure causing a breach. Under a "look-back" feature, the enactment of such a measure on or after July 1 (*i.e.*, during the final quarter of the fiscal year) would not cause a sequester, but it would cause the applicable limits for the following fiscal year to be reduced by the amount of the breach.

Avoidance of a Sequester Under Existing Procedures

The most direct way for Congress and the President to avoid a sequester is to not enact any legislation that violates the discretionary spending limits or the PAYGO requirement. The prospect of automatic, formulaic spending reductions under a sequester is considered so undesirable as to give Congress and the President strong motivation to adhere to its stated budgetary goals. Adherence to the goals is promoted in the congressional budget process, which requires Congress each year to adopt a budget resolution. The House and Senate generally have adopted budget resolutions consistent with the discretionary spending limits and PAYGO requirement, although in some instances budget resolutions have reflected congressional intent to

revise the discretionary spending limits later in the session to accommodate increased spending or to suspend the PAYGO requirement to accommodate tax cuts.²

During times of war or low economic growth, key budget enforcement procedures (including sequestration) may be suspended for all legislation. Suspension procedures are set forth in Section 258 of the 1985 Balanced Budget Act.³

The 1985 Balanced Budget Act also includes several features that are intended to lend some flexibility to budget enforcement procedures on a case-by-case basis. For example, the designation of an appropriation as an emergency requirement by Congress in statute and by the President leads to a commensurate increase in the applicable discretionary spending limits, effectively exempting such emergency spending from enforcement. Similarly, the applicable discretionary spending limits are increased if Congress and the President enact new spending for certain programs specified in the 1985 Balanced Act, such as continuing disability reviews and adoption incentive payments. The emergency designation feature also applies to direct spending and revenue legislation covered under the PAYGO process.

Additional flexibility in these procedures is provided by “Scorekeeping Rule 3.”⁴ The rule provides that changes in direct spending made in an annual appropriations act be counted under the discretionary spending limits. Accordingly, a reduction in direct spending made in an annual appropriations act would be treated as an offset to an equivalent increase in discretionary spending; such changes in direct spending are referred to as “mandatory offsets.”

Finally, the task of avoiding a sequester also may be aided by the innovative use of certain types of customary budget devices, such as advance appropriations, rescissions, and timing shifts and obligation delays.

During the past several years, the use of the emergency designation procedure and other devices has been perceived by many as abusive. The most prolific use of such devices to avoid a sequester so far may have occurred for FY2000. According to OMB, these adjustments amounted to about \$49 billion in budget authority and \$30 billion in outlays for the fiscal year—

- emergency spending: \$23.7 billion in budget authority; \$14.3 billion in outlays;
- mandatory savings offsets: \$8.7 billion in budget authority; \$8.8 billion in outlays;

² The House and Senate did not reach agreement in 1998 on a budget resolution for FY1999.

³ For more information on this topic, see CRS Report RL31068, *Budget Enforcement Procedures Suspended During Low Economic Growth*, by Robert Keith, and CRS Report RS20182, *Suspension of Budget Enforcement Procedures During Hostilities Abroad*, by Robert Keith.

⁴ The joint explanatory statement accompanying the conference report on the BEA of 1990 set forth several scorekeeping rules to be used in scoring legislation under these enforcement procedures. The scorekeeping rules were revised under the BEA of 1997. They are presented as an addendum at the end of OMB Circular A-11, which deals with budget formulation, and may be found on OMB’s web site at [[http:// www.omb.gov](http://www.omb.gov)].

- advance appropriations: \$14.4 billion in budget authority; \$0 in outlays;
- rescissions: \$ 2.5 billion in budget authority; \$0.052 billion in outlays; and
- timing shifts and obligation delays: \$0 in budget authority; \$6.5 billion in outlays.⁵
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In response to this concern, several provisions were added to the FY2001 and FY2002 budget resolutions aimed at thwarting a repeat of the FY2000 experience, including points of order in the House and Senate against the use of advance appropriations above a certain threshold, a point of order in the House against directed scorekeeping provisions in general appropriations acts, and a point of order in the Senate against legislation providing for delayed obligations.

Techniques for Preventing a Sequester

Several techniques have been used to prevent a sequester for the upcoming fiscal year or to reduce the likelihood of a sequester in future fiscal years. The techniques are discussed below by enforcement mechanism. It should be noted that legislative provisions containing such techniques could violate Section 306 of the 1974 Congressional Budget Act. The section bars the consideration in the House or Senate of any legislation containing subject matter within the jurisdiction of the respective Budget Committee unless it has been reported by (or discharged from) that committee. Violations of Section 306 may be waived, typically by a special rule in the House or a motion in the Senate. In the Senate, such waivers require a three-fifths majority (60 Senators, if no seats are vacant). Further, the prohibition in Section 306 is not self-enforcing; a Member must raise a point of order to enforce the prohibition.

Discretionary Spending Limits. During the 12-year period that the discretionary spending limits have been in effect, Congress and the President have enacted statutory provisions intervening in the normal operation of the enforcement process three times. Congress and the President enacted a provision in 2000 with the intent of preventing a “within-session” sequester under the discretionary spending limits for FY2000. Additionally, significant upward revisions of the discretionary spending limits for FY2001 and FY2002 were enacted to prevent a sequester at the end of the 2000 and 2001 sessions.⁶ These actions had been assumed in the budget resolutions adopted earlier in the year (although, in each case, the revision increased the limits more than had been assumed).

FY2000. In the middle of the 2000 session, the House and Senate attempted to bring action on the FY2000 budget to a close by considering supplemental appropriations for the fiscal year in a single bill (in the House) or as elements incorporated into several regular appropriations bills for FY2001 (in the Senate).

⁵U.S. Executive Office of the President. Office of Management and Budget. *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2000* (Washington: January 25, 2000), pages 4-6.

⁶ For a more detailed discussion of congressional budget actions and the discretionary spending limits for FY2001-2002, see CRS Report RL30696, *Discretionary Spending Limits for FY2001: A Procedural Assessment*, by Robert Keith, and CRS Report RL31193, *Discretionary Spending Limits for FY2002: A Procedural Assessment*, by Robert Keith.

Eventually, the supplemental appropriations for FY2000 were merged into a single regular appropriations bill, the Military Construction Appropriations Act for FY2001. The measure was enacted into law on July 13, 2000, as P.L. 106-246.

According to OMB estimates, the non-emergency supplemental appropriations included in P.L. 106-246 caused a breach in the budget authority and outlay limits for the “other discretionary” category of \$2.359 billion and \$6.763 billion, respectively. Levels in the remaining discretionary spending categories were not changed by P.L. 106-246. In anticipation that the measure would become law in late June or early July, Congress had inserted into the bill a provision barring a sequester (which would have been required if enactment occurred in June) or a reduction in the FY2001 limits (which would have been required because of enactment on or after the July 1 triggering date). Section 5107 (114 *Stat.* 582) in Title V of Division B of the act stated:

Sec. 5107. Notwithstanding section 251(a) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, there shall be no sequestration under that section to eliminate a fiscal year 2000 breach or no reductions in discretionary spending limits for fiscal year 2001 that might be caused by the appropriations or other provisions in this Act.

Because the measure was enacted into law in July, the “look-back” feature in Section 251 of the 1985 Balanced Budget Act would have required that the FY2001 limits for the “other discretionary” category be reduced by the amounts of the breach. The ultimate effect of the section in P.L. 106-246, therefore, was to prevent the reduction in the FY2001 limits.

FY2001. Under the FY2001 budget resolution adopted by the House and Senate in April 2000, total discretionary spending for the fiscal year was envisioned at about \$600 billion in budget authority and \$625 billion in outlays, well above the existing statutory limits on such spending, and the assumption was made that the statutory limits would be raised to accommodate the new levels. (The statutory limits also are adjusted from time to time by the OMB director as required by law.)

During the following 6 months, Congress considered the regular appropriations acts for FY2001 without enacting the necessary revisions in the discretionary spending limits. On October 18, 2000, the Republican leadership in Congress proposed increasing the FY2001 limits in order to accommodate total discretionary spending of \$637 billion in budget authority and \$645 billion in outlays, considerably more than had been envisioned by the budget resolution. After a brief period of negotiation between the parties, the proposal was incorporated into the conference report on the Foreign Operations Appropriations Act for FY2001 (H.R. 4811). The two chambers agreed to the conference report on October 25, and President Clinton signed H.R. 4811 into law on November 6 (P.L. 106-429).

The measure enacted into law by cross-reference another appropriations bill for foreign operations, H.R. 5526, which effectively superseded H.R. 4811. Section 701 of H.R. 5526 increased the budget authority limit for FY2001 in the “other discretionary” category to \$637.000 billion and the outlay limit in that category to

\$612.695 billion. The outlay limits for highway and mass transit programs, amounting to about \$31.6 billion for FY2001, remained unchanged.

In addition to increasing the discretionary spending limits for FY2001, Section 701 prohibited the OMB director from adjusting the limits in the final sequestration report for FY2001 for legislation providing emergency appropriations and for certain other factors, but other adjustments under existing authority still were allowed. Further, Section 701 authorized rounding adjustments of 0.5% in the budget authority limit for the “other discretionary” category, which increased the discretionary budget authority limit for FY2001 by about \$3.2 billion.

Following the changes in the discretionary spending limits, no sequester for FY2001 was required.

FY2002. Budgetary actions taken so far for FY2002 mirrored those taken the year before for FY2001. The FY2002 budget resolution called for over \$100 billion more discretionary spending for the fiscal year than the then-existing limits would have allowed. Budget resolution policies assumed that legislation increasing the discretionary spending limits for FY2002, to \$661 billion in budget authority, would be enacted later in the 2001 session. On October 2, 2001, the Bush Administration reached agreement with congressional leaders to increase discretionary spending for FY2002 by another \$25 billion, to \$686 billion in budget authority.

In late December 2001, Congress enacted the Defense Appropriations Act for FY2002. Section 101(a) in Division C of the act, as passed by the House and Senate on December 20, revised the limits for FY2002 in a manner accommodating the \$686 billion level agreed to on October 2 and preventing a sequester.⁷ In addition, Section 101(d) provided for a further increase of 0.12% in the limits on discretionary budget authority if needed to cover technical estimates made by the OMB director. The act became law on January 10, 2002 (P.L. 107-117).

During the 2002 session, Congress is expected to consider supplemental appropriations for FY2002. Supplemental appropriations in excess of the revised limits, if enacted before July 1, could trigger a “within-session” sequester for FY2002.

Additional Actions Affecting Enforcement of the Limits. Two other types of action have occurred affecting the enforcement of the discretionary spending limits. First, Scorekeeping Rule 3 was set aside on two occasions so that changes in direct spending and revenues made in omnibus appropriations acts for FY2000 and FY2001 would not be counted under the discretionary spending limits. The effect of these actions was to hold the Appropriations Committees harmless for the costs of legislation under the jurisdiction of other committees that had been merged into the omnibus appropriations act at the direction of the House and Senate leadership. (This issue is discussed further in the next section.)

⁷The provision originated in the substitute amendment recommended by the Senate Appropriations Committee (see S.Rpt. 107-109, December 5, 2001, page 232).

The second type of action involves cancellation of a sequester after it has taken place. On November 9, 1990, a drafting error in an appropriations act resulted in the sequester of \$395 million in budget authority for FY1991 in the international category. The problem was rectified the following session. On April 10, 1991, the sequester was rescinded by Section 401 of P.L. 102-27, a supplemental appropriations act.⁸

PAYGO Requirement. During the 11-year period that the PAYGO requirement has been effect,⁹ the OMB director's *Final Sequestration Report* reflected a combined negative balance (*i.e.*, savings rather than costs) for the pertinent fiscal years in nine instances, thereby obviating the need for a PAYGO sequester. These savings balances ranged from \$11 million (for FY1998) to \$7.532 billion (for FY1997). For FY2001, however, the *Final Sequestration Report* indicated a positive balance of \$10.542 billion; for FY2002, the *Final Sequestration Report* indicated a positive balance of \$130.279 billion.¹⁰

On six occasions during this period, Congress and the President enacted statutory provisions intervening in the normal operation of the PAYGO process (see **Table 1**; the text of these provisions is provided in **Appendix A**).

In three of these instances (for FY1994, FY1997, and FY1998), the OMB director was instructed to remove savings balances so that they could not be used to offset legislation considered in subsequent sessions. This directive applied only to a single fiscal year for FY1997 (amounting to \$6.301 billion in savings), but applied to multiple fiscal years for the FY1994-1998 period (amounting to \$505 billion in savings) and the FY1998-2002 period (amounting to \$74.9 billion in savings). The legislative vehicle for the FY1997 action was an annual appropriations act (the Omnibus Consolidated Appropriations Act for FY1997); the legislative vehicles in the other 2 years were reconciliation bills (the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997).

⁸ Similar actions occurred on two occasions when sequestration was used to enforce deficit targets. A deficit sequester of \$20 billion for FY1988 was cancelled following a budget summit agreement on November 20, 1987. Also, a deficit sequester of \$16.1 billion for FY1990 was reduced to \$5.75 billion by Section 11002 of the Omnibus Budget Reconciliation Act of 1989.

⁹ Unlike the process associated with the discretionary spending limits, which commenced with FY1991, the PAYGO process did not take effect until FY1992.

¹⁰ For a more detailed discussion of congressional budget actions and the PAYGO requirement for FY2001-2002, see CRS Report RL30706, *Pay-As-You-Go Requirement for FY2001: A Procedural Assessment*, by Robert Keith, and CRS Report RL31194, *Pay-As-You-Go Requirement for FY2002: A Procedural Assessment*, by Robert Keith.

Table 1. Summary of Final PAYGO Actions for Fiscal Years 1992-2002

Fiscal year	Congress /session	Final PAYGO balance (\$ billions) ^a	PAYGO sequester required?	Statutory interventions in the operation of the PAYGO process ^b
1992	102/1	-1.095	No	None.
1993	102/2	-0.060	No	None.
1994	103/1	-2.670	No	The Omnibus Budget Reconciliation Act of 1993 instructed the OMB director not to count savings in the act, amounting to \$47 billion for FY1994 and \$505 billion for FY1994-1998, on the PAYGO scorecard in order to preserve the deficit-reduction actions for the 5-year period. [Section 14003(c) (107 <i>Stat.</i> 685) of P.L. 103-66; August 10, 1993]
1995	103/2	-2.489	No	None.
1996	104/1	-1.143	No	None.
1997	104/2	-7.532	No	The Omnibus Consolidated Appropriations Act for FY1997 instructed the OMB director (and the CBO director) to remove any savings for FY1997 from the PAYGO scorecard on the day after issuance of the OMB director's <i>Final Sequestration Report</i> for FY1997. The savings for that year, amounting to \$6.301 billion, were removed so that they could not be used to offset legislation considered in the following session. [Division A, Section 4001 (110 <i>Stat.</i> 3009-500) of P.L. 104-208; September 30, 1996]

Fiscal year	Congress /session	Final PAYGO balance (\$ billions) ^a	PAYGO sequester required?	Statutory interventions in the operation of the PAYGO process ^b
1998	105/1	-0.011	No	<p>The Balanced Budget Act (BBA) of 1997 instructed the OMB director to reduce the preexisting balances for FY1997-2002 on the PAYGO scorecard to zero and to not count on the scorecard the 5-year savings from the BBA of 1997 or the Taxpayer Relief Act of 1997. These actions, implemented upon enactment of the BBA of 1997, eliminated from the scorecard total preexisting savings for FY1997-1998 of \$5.881 billion and prevented the addition to the scorecard of net savings from the two acts of \$74.9 billion for FY1998-2002. The savings were removed so that they could not be used to offset legislation considered in the following sessions.</p> <p>[Section 10213 (111 <i>Stat.</i> 712) of P.L. 105-33; August 5, 1997]</p>
1999	105/2	-1.143	No	None.
2000	106/1	-3.014	No	<p>The Consolidated Appropriations Act for FY2000 prohibited scoring the direct spending and revenue changes made in the act under the discretionary spending limits or on the PAYGO scorecard.^c This prevented costs of \$1.552 billion for FY2000 (and costs of \$15.193 billion for FY2000-2004) from being added to the PAYGO scorecard. However, even if the \$1.552 billion for FY2000 had been added to the PAYGO scorecard, it would not have triggered a PAYGO sequester because a savings balance of \$1.462 billion would have remained.</p> <p>Further, the Consolidated Appropriations Act for FY2000 instructed the OMB director to change any balances on the scorecard for FY2000-2004 to zero on January 3, 2000. This action removed the combined FY1999-2000 savings of \$3.014 billion from the scorecard, but also removed costs for FY2001-2004 amounting to \$15.763 billion (from the Consolidated Appropriations Act and other measures) that would have triggered PAYGO sequesters in those years if not offset or otherwise prevented.</p> <p>[Division B, Section 1001(c) (113 <i>Stat.</i> 1537) of P.L. 106-113; November 29, 1999]</p>

Fiscal year	Congress /session	Final PAYGO balance (\$ billions) ^a	PAYGO sequester required?	Statutory interventions in the operation of the PAYGO process ^b
2001	106/2	+10.542	Yes	<p>The Consolidated Appropriations Act for FY2001 prohibited scoring the direct spending and revenue changes made in the act under the discretionary spending limits, but did require them to be scored on the PAYGO scorecard.^c This resulted in costs of \$7.170 billion for FY2001 (and costs of \$49.463 billion for FY2001-2005) being added to the PAYGO scorecard.</p> <p>Further, the Consolidated Appropriations Act for FY2001 instructed the OMB director to change the balance on the scorecard for FY2001 to zero in the course of preparing the <i>Final Sequestration Report</i> for that year. This action removed the combined FY2000-2001 costs of \$10.542 billion from the scorecard, thereby preventing a PAYGO sequester. Costs on the PAYGO scorecard for FY2002-2005 amounting to \$74.527, which will trigger PAYGO sequesters for those years if not offset or otherwise prevented, were not affected.</p> <p>[Section 2 (114 Stat. 2763-2764) of P.L. 106-554; December 21, 2000]</p>
2002	107/1	+130.279	Yes	<p>The Defense Appropriations Act for FY2002 instructed the OMB director to change the balances on the PAYGO scorecard for FY2001 and FY2002 to zero in the course of preparing the <i>Final Sequestration Report</i> for FY2002. This action removed the combined FY2001-2002 costs of \$130.279 billion from scorecard, thereby preventing a PAYGO sequester. Costs on the PAYGO scorecard for FY2003-2006, ranging from \$110 billion to \$135 billion a year and which will trigger PAYGO sequesters for those years if not offset or otherwise prevented, were not affected.</p> <p>[Section 102, Division C (115 Stat. 2342) of P.L. 107-117; January 10, 2002]</p>

a

The necessity of a PAYGO sequester is determined by the OMB director in his *Final Sequestration Report* for the fiscal year, issued after the congressional session has ended. In making the determination, the OMB director must add together the balances on the PAYGO scorecard for the then current fiscal year and the preceding fiscal year (this table shows the combined balances); if the resultant combined figure is positive (reflecting net increases in spending and/or reductions in revenue), a sequester is required. The OMB director's *Final Sequestration Report*, which was printed as a House document in every year (except for FY1996), was issued as follows:

FY1992—January 13, 1992, H.Doc. 102-181 (January 28, 1992);
FY1993—October 23, 1992, H.Doc. 103-27 (January 21, 1993);
FY1994—December 10, 1993, H.Doc. 103-201 (January 26, 1994);
FY1995—December 16, 1994, H.Doc. 104-16 (January 4, 1995);
FY1996—January 18, 1996 (not printed as a House Document);
FY1997—November 15, 1996, H.Doc. 105-30 (February 4, 1997);
FY1998—November 24, 1997, H.Doc. 105-188 (February 3, 1998);
FY1999—December 10, 1998, H.Doc. 105-356 (December 19, 1998);
FY2000—January 25, 2000, H.Doc. 106-182 (January 31, 2000);
FY2001—January 16, 2001, H.Doc. 107-31 (January 30, 2001); and
FY2002—[not yet printed]

b

See Appendix A of this report for the text of cited provisions.

c

The Consolidated Appropriations Acts for FY2000 and FY2001 both enacted by cross-reference legislation that made changes in direct spending and revenues. Under Scorekeeping Rule 3, set forth in the scorekeeping rules contained in the joint explanatory statement accompanying the conference report on the Balanced Budget Act of 1997 (H.Rept. 105-217; July 30, 1997; pages 1007-1014), any such changes made in an annual appropriations act must be scored under the discretionary spending limits rather than the PAYGO scorecard. Provisions in the two consolidated appropriations acts set aside this requirement.

In the remaining three cases, the statutory intervention resulted in the removal from the PAYGO scorecard of costs that would have led to a \$10.5 billion sequester for FY2001 and a \$130.279 billion sequester for FY2002, and that might lead to future-year sequesters. In all three instances, the legislative vehicles were annual appropriations acts considered toward the very end of the session (the Consolidated Appropriations Acts for FY2000 and FY2001 and the Defense Appropriations Act for FY2002).

The Consolidated Appropriations Acts for FY2000 and FY2001 both enacted by cross-reference legislation that made changes in direct spending and revenues. Under Scorekeeping Rule 3, any such changes made in an annual appropriations act must be scored under the discretionary spending limits rather than the PAYGO scorecard. However, provisions in the two consolidated appropriations acts set aside this requirement.

Circumstances surrounding the latter three cases are discussed in more detail below.

FY2000. Section 1001 (113 *Stat.* 1537) in Division B of the Consolidated Appropriations Act for FY2000 (P.L. 106-113; November 29, 1999), in addition to prohibiting the scoring of direct spending and revenue changes made in the act under the discretionary spending limits, also prohibited the scoring of these changes under the PAYGO scorecard. This prevented costs of \$1.552 billion for FY2000 (and costs of \$15.193 billion for FY2000-2004) from being added to the PAYGO scorecard. However, even if the \$1.552 billion for FY2000 had been added to the PAYGO scorecard, it would not have triggered a PAYGO sequester for that year because a savings balance of \$1.462 billion would have remained.

Section 1001 of the act also instructed the OMB director to change any balances on the scorecard for FY2000-2004 to zero on January 3, 2000. This action removed the combined FY1999-2000 savings of \$3.014 billion from the scorecard, but also removed costs for FY2001-2004 amounting to \$15.763 billion (from the Consolidated Appropriations Act and other measures) that could have triggered PAYGO sequesters in those years if not offset or otherwise prevented.

FY2001. At the end of the 2000 session, Congress and the President wrapped up business by enacting the Consolidated Appropriations Act for FY2001 (P.L. 106-554; 114 *Stat.* 2763-2764; December 21, 2000), which enacted regular appropriations as well as significant direct spending and revenue legislation by cross-reference. Section 2 of the act prohibited scoring the direct spending and revenue changes made in the act under the discretionary spending limits, but did require them to be scored on the PAYGO scorecard. This resulted in costs of \$7.170 billion for FY2001 (and costs of \$49.463 billion for FY2001-2005) being added to the PAYGO scorecard.

Further, Section 2 of the act instructed the OMB director to change the balance on the scorecard for FY2001 to zero in the course of preparing the *Final Sequestration Report* for that year. This action removed the combined FY2000-2001 costs of \$10.542 billion from the scorecard, thereby preventing a PAYGO sequester. Costs on the PAYGO scorecard for FY2002-2005 amounting to \$74.527 billion, which will trigger PAYGO sequesters for those years if not offset or otherwise prevented, were not affected.

FY2002. One of the last of the regular appropriations acts for FY2002 to be considered during the 2001 session, the Defense Appropriations Act, became the legislative vehicle for preventing a PAYGO sequester. The bill was signed into law on January 10, 2002 (as P.L. 107-117; 115 *Stat.* 2230-2355).

Section 102 in Division C of the act (115 *Stat.* 2342) prevented a PAYGO sequester for FY2002 by requiring the OMB director to set the balances on the PAYGO scorecard for FY2001 and FY2002 to zero. According to the OMB *Final Sequestration Report*, the combined balance for FY2001-2002 on the scorecard before the required adjustment was \$130.279 billion.

In its earlier sequestration update report, OMB had noted maximum savings achievable from a PAYGO sequester for FY2002 of \$33.3 billion.¹¹ Consequently, had a full PAYGO sequester (including a 4% cut in Medicare) been implemented, there still would have been a balance on the scorecard of nearly \$100 billion. The remaining PAYGO balances for FY2003-2006, ranging from \$110 billion to \$135 billion a year, were not affected by the required adjustment.¹²

Unsuccessful Efforts to Intervene in the PAYGO Process. In addition to the successful efforts to intervene in the PAYGO process discussed above, there have been several unsuccessful ones involving instructions to the OMB director to reset PAYGO balances or not to score direct spending and revenue changes.

In the 105th Congress, the House considered the Taxpayer Relief Act of 1998 (H.R. 4579), its principal vehicle for implementing large revenue reductions. As passed by the House on September 26, 1998, the measure instructed the OMB director “not to make any estimates of changes in receipts” on the PAYGO scorecard due to the enactment of the bill (see Section 607). Had the measure been enacted into law, the tax cuts would have taken effect without triggering a PAYGO sequester for FY1999.

As mentioned previously, one obstacle to this approach is that any legislation directly or indirectly changing the budget process is prohibited by Section 306 of the 1974 Congressional Budget Act unless it was reported by the House or Senate Budget Committee, as appropriate (or unless the committee was discharged from further consideration). In the case of H.R. 4579, therefore, the House needed to waive the prohibition so that it could consider the bill; the House did so by adopting a special rule, H.Res. 552, that waived all points of order against its consideration.

During the first session of the 106th Congress, a similar directed scorekeeping provision was included by the House in Section 1801 of the Taxpayer Relief Act of 1999 (H.R. 2488), but was dropped in the Senate due to difficulties in securing the

¹¹ U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002, Mid-Session Review*, Appendix B (Washington: August 2001), page 67.

¹² Measures with a significant impact on the PAYGO scorecard for FY2002 and later years may be considered during the remainder of the 2002 session. The FY2002 effects of any PAYGO legislation enacted during this session (before October 1) will be added to the PAYGO scorecard for FY2003 in determining whether a PAYGO sequester for FY2003 is needed.

60 votes needed to obtain a waiver of Section 306. President Clinton vetoed the measure on September 23, 1999, in part because the absence of the directed scorekeeping provision would have led to a sequester.

Toward the end of the 106th Congress, the congressional leadership attempted to use a House-passed bill amending the Small Business Investment Act, H.R. 2614, as a vehicle for wide-ranging issues, including significant revenue reductions. Under the conference agreement on H.R. 2614, the bill would have enacted five other measures by cross-reference, including H.R. 5542, the Taxpayer Relief Act of 2000 (as introduced on October 25, 2000). Section 731(a) of H.R. 5542 would have prevented a PAYGO sequester for FY2001 by instructing the OMB director to reset the PAYGO balance for that year to zero when preparing the *Final Sequestration Report*.¹³ Final congressional action on the measure faltered at the end of October 2000.

¹³See H.Rept. 106-1004, October 26, 2000, pages 185 and 394.

APPENDIX A.

Text of Statutory Provisions Intervening in the Operation of the PAYGO Process: Fiscal Years 1992-2002

Omnibus Budget Reconciliation Act of 1993

(P.L. 103-66; August 10, 1993)

Section 14003(c); 107 *Stat.* 685

Sec. 14003. Enforcing Pay-As-You-Go.

(c) Upon enactment of this Act, the director of the Office of Management and Budget shall reduce the balances of direct spending and receipts legislation applicable to each fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 by an amount equal to the net deficit reduction achieved through the enactment in this Act of direct spending and receipts legislation for that year.

[Note: Section 14003(a) and (b) amended the 1985 Balanced Budget Act to extend the expiration of the PAYGO requirement from FY1995 until FY1998]

Omnibus Consolidated Appropriations Act for FY1997

(P.L. 104-208; September 30, 1996)

Division A, Section 4001; 110 *Stat.* 3009-500

Sec. 4001. Adjustment of PAYGO Balances.

For purposes of section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, on the calendar day after the Director of the Office of Management and Budget issues the final sequestration report for fiscal year 1997, the Director and the Director of the Congressional Budget Office shall change the balances (as computed pursuant to section 252(b) of that Act) of direct spending and receipts legislation—

(1) for fiscal year 1997 to zero if such balance for the fiscal year is not an increase in the deficit.

Balanced Budget Act of 1997

(P.L. 105-33; August 5, 1997)

Section 10213; 111 *Stat.* 712

Sec. 10213. Reduction of Preexisting Balances and Exclusion of Effects of This Act From PAYGO Scorecard.

Upon the enactment of this Act, the Director of the Office of Management and Budget shall—

(1) reduce any balances of direct spending and receipts legislation for any fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 to zero; and

(2) not make any estimates of changes in direct spending outlays and receipts under subsection (d) of that section for any fiscal year resulting from the enactment of this Act or of the Taxpayer Relief Act of 1997.

Consolidated Appropriations Act for FY2000

(P.L. 106-113; November 29, 1999)

Division B, Sections 1001(a)-(c); 113 *Stat.* 1536-1537

Sec. 1001. Paygo Adjustments.

(a) Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report No. 105-217, legislation enacted in this division by reference in the paragraphs after paragraph 4 of subsection 1000(a) that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 were it included in an Act other than an appropriations Act shall be treated as direct spending or receipts legislation as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, but shall be subject to subsection (b).

(b) The Director of the Office of Management and Budget shall not make any estimates of changes in direct spending outlays and receipts under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 for any fiscal year resulting from enactment of the legislation referenced in the paragraphs after paragraph 4 of subsection 1000(a) of this division.

(c) On January 3, 2000, the Director of the Office of Management and Budget shall change any balances of direct spending and receipts legislation for any fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 to zero.

Consolidated Appropriations Act for FY2001

(P.L. 106-554; December 21, 2000)

Section 2; 114 *Stat.* 2763-2764

Sec. 2. (a) Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105-217, legislation enacted in section 505 of the Department of Transportation and Related Agencies Appropriations Act, 2001, section 312 of the Legislative Branch Appropriations Act, 2001, titles X and XI of H.R. 5548 (106th Congress) as enacted by H.R. 4942 (106th Congress), division B of H.R. 5666 (106th Congress) as enacted by this Act, and sections 1(a)(5) through 1(a)(9) of this Act that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 were it included in an Act other than an appropriations Act shall be treated as direct spending or receipts legislation, as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) In preparing the final sequestration report required by section 254(f)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 for fiscal year 2001, in addition to the information required by that section, the Director of the Office of Management and Budget shall change any balance of direct spending and receipts legislation for fiscal year 2001 under section 252 of that Act to zero.

Department of Defense Appropriations Act for FY2002

(P.L. 107-117; January 10, 2002)

Division C, Section 102; 115 *Stat.* 2342

Sec. 102. Pay-As-You-Go Adjustment.

In preparing the final sequestration report for fiscal year 2002 required by section 254(f)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Director of the Office of Management and Budget shall change any balance of direct spending and receipts legislation for fiscal years 2001 and 2002 under section 252 of that Act to zero