

# CRS Report for Congress

## Pay-As-You-Go Procedures for Budget Enforcement

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# Pay-As-You-Go Procedures for Budget Enforcement

## Summary

“Pay-as-you-go” (PAYGO) procedures play an important role in enforcing budget policies with respect to the consideration of revenue and direct spending legislation. Generally, the purpose of PAYGO procedures is to discourage or prevent the enactment of legislation that would cause, or increase, a deficit or reduce a surplus. PAYGO procedures are not a comprehensive means of budget enforcement because they do not apply to discretionary spending, which is provided in annual appropriations acts; such spending is subject to other budget enforcement procedures. Further, PAYGO rules deal only with the budgetary impact of legislation considered during a session; they do not address changes in direct spending and revenue levels under current law stemming from changes in the economy, demographic trends, and other factors.

Over the years, several different PAYGO procedures have been used for budget enforcement purposes. The PAYGO procedures have been based in statute as well as congressional rules. Statutory and rules-based PAYGO procedures have been in effect simultaneously at times, while at other times only one form of PAYGO procedures was in effect. The scope and effect of PAYGO procedures have varied depending on their form.

At present, the House and Senate each have their own PAYGO rules, but the statutory procedures that existed for more than a decade effectively were terminated in late 2002. Efforts to restore the statutory PAYGO procedures so far have been unsuccessful, but new calls to restore them have been made in the 110<sup>th</sup> Congress.

The Senate has had its own PAYGO rule since 1993, while the House did not adopt its own PAYGO rule until 2007. The House PAYGO rule, which is Clause 10 of Rule XXI, was adopted on January 5, 2007 as part of the “opening-day” rules package (H.Res. 6). The Senate revised its PAYGO rule on May 17, 2007 as part of the conference agreement on the FY2008 budget Resolution (Section 201 of S.Con.Res. 21).

Although there are differences in the two rules, they essentially are the same in their fundamental purpose — to discourage the consideration and enactment during a session of direct spending and revenue legislation that is not deficit neutral. Both rules prohibit the consideration of direct spending or revenue legislation that would cause or increase a deficit in either of two time periods: (1) a six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years; and (2) an 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years. Determinations regarding the cost of legislation for purposes of enforcing the PAYGO rule are made by the respective Budget Committee.

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Over the years, several different PAYGO procedures have been used for budget enforcement purposes. The PAYGO procedures have been based in statute as well as congressional rules. Statutory and rules-based PAYGO procedures have been in effect simultaneously at times, while at other times only one form of PAYGO procedures was in effect. The scope and effect of PAYGO procedures have varied depending on their form.

At present, the House and Senate each have their own PAYGO rules, but the statutory procedures that existed for more than a decade effectively were terminated in late 2002. Efforts to restore the statutory PAYGO procedures so far have been unsuccessful, but new calls to restore them have been made in the 110<sup>th</sup> Congress.

## **Statutory PAYGO Procedures**

The statutory PAYGO requirement was put into place by the Budget Enforcement Act (BEA) of 1990, which amended an underlying law, the Balanced Budget and Emergency Deficit Control Act of 1985; the PAYGO requirement was established as Section 252 of the 1985 Act.<sup>1</sup> Under the requirement, legislation proposing new direct spending or decreasing revenues for a fiscal year could not result in a net cost for that year. The PAYGO requirement generally was intended to preserve the sizeable deficit reduction that had been achieved by the Omnibus Budget Reconciliation Act of 1990, and to keep an on-budget deficit from being increased or an on-budget surplus from being reduced.

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<sup>1</sup> The BEA of 1990 was Title XIII of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508; November 5, 1990; see 104 Stat. 1388-573 through 630).

The PAYGO balances for each fiscal year were maintained on a rolling PAYGO “scorecard” that accumulated the budgetary effects of laws enacted during the session and in prior years. The threshold test for a PAYGO sequester dealt with how legislation affected the net cost for a fiscal year on the PAYGO scorecard, not how it changed the surplus or deficit for that fiscal year in the federal budget.

The sequestration process, established by the 1985 Balanced Budget Act and initially used to enforce the act’s annual deficit targets, was retained by the BEA of 1990 as the means of enforcing the PAYGO requirement (as well as the discretionary spending limits in Section 251 of the 1985 Balanced Budget Act).<sup>2</sup> Under the sequestration process, the director of the Office of Management and Budget (OMB) issued a sequestration report at the time the President’s budget was 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).

If the OMB director’s final sequestration report indicated that enacted direct spending and revenue levels had incurred a net cost for the fiscal year beginning on October 1 (the “budget year”) on the PAYGO scorecard, then the President was required to immediately issue a sequestration order to remedy the violation through automatic, largely across-the-board spending reductions. If a sequester under this process was required, it had to occur within 15 calendar days after Congress adjourned at the end of a session and on the same day as any sequestration tied to enforcement of the discretionary spending limits. The sequester had to eliminate any net positive balance on the PAYGO scorecard, for the budget year and the prior fiscal year (the “current year”) combined, caused by the enactment of legislation during the session and in prior years. The purpose behind adding in the balance for the current year was to fully capture the budgetary effects of any direct spending and revenue legislation enacted into law after the final sequestration report for a fiscal year had been issued but before the next congressional session got underway, thereby closing any enforcement loophole.

As extended in 1993 and 1997, the PAYGO requirement applied to legislation enacted through the end of FY2002, but it covered the effects of such legislation through FY2006.<sup>3</sup> The PAYGO requirement effectively was terminated in December 2002 by the enactment of P.L. 107-312, which set all remaining balances on the PAYGO scorecard to zero.<sup>4</sup>

The OMB director issued 12 final sequestration reports under the PAYGO process, for FY1992-FY2003. The final combined balances on the PAYGO

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<sup>2</sup> For a more detailed discussion of the sequestration process, see CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

<sup>3</sup> The PAYGO requirement was extended through FY1998 by the Omnibus Budget Reconciliation Act (OBRA) of 1993 and through FY2002 by the Budget Enforcement Act (BEA) of 1997. OBRA of 1993 is P.L. 103-66 (August 10, 1993); see Title XIV at 107 Stat. 683-685. The BEA of 1997 is Title X of P.L. 105-33 (August 5, 1997), the Balanced Budget Act of 1997; see 111 Stat. 677-712.

<sup>4</sup> For more information on this topic, see CRS Report RS21378, *Termination of the “Pay-As-You-Go” (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.

scorecard for all years, as determined by the OMB director, either were negative amounts (reflecting net savings) or zero. Accordingly, no PAYGO sequester was required for any fiscal year during this period.

While the OMB director's final determinations indicated compliance with the PAYGO requirement in all years, in some cases the balances reflected adjustments due to emergency requirements, provided for under the process, or directed scorekeeping provisions in law that intervened in the normal operation of the process in order to prevent a sequester.

Section 252 of the 1985 Balanced Budget Act provided that any provision of direct spending or revenue legislation could be designated by the President and Congress as an "emergency requirement." The budgetary impact of any provision so designated was not scored on the PAYGO scorecard. Although the emergency designation was used often for discretionary spending provisions in annual appropriations acts, it rarely was used for direct spending or revenue provisions. The most significant emergency designation under the PAYGO process applied to the Job Creation and Worker Assistance Act (P.L. 107-147), which removed net costs of nearly \$89 billion from the PAYGO scorecard over the period covering FY2002-FY2006.

Congress and the President enacted legislation intervening in the operation of the PAYGO process largely to deal with two different types of problems. First, in some years, the enactment of deficit-reduction measures would have resulted in large negative balances on the PAYGO scorecard that were not intended. The savings reflected in these balances could have been used to offset direct spending increases or revenue reductions that were not contemplated by the budget resolution. Second, in more recent years, the budget resolution recommended significant reductions in revenues, coupled with increases in direct spending, that would have incurred substantial positive balances (reflecting net costs) on the PAYGO scorecard.

As a result of these two concerns, Congress and the President enacted provisions in at least seven different laws intervening significantly in the normal operation of the PAYGO requirement. The interventions involved scorekeeping directions to the OMB director that prohibited him from counting direct spending or revenue changes in certain legislation on the PAYGO scorecard, or that instructed him to reduce balances on the PAYGO scorecard or to set them to zero.

The seven measures containing directed scorekeeping provisions did not make adjustments in the FY1991-FY1993 balances on the PAYGO scorecard. For FY1994-FY2000, the net effect of the adjustments each year was to remove savings balances from the scorecard or to not count savings provisions in legislation. These net effects ranged from \$13.991 billion (for FY1999) to \$140.221 billion (for FY1998). The cumulative effect of all provisions to remove or not count savings through FY2006 was \$628.980 billion.

For FY2001-FY2006, the net effect of the adjustments each year was to remove cost balances from the scorecard or to not count cost provisions in legislation. These net effects ranged from \$9.214 billion (for FY2002) to \$150.790 billion (for

FY2004). The cumulative effect of all provisions to remove or not count costs through FY2006 was \$731.527 billion.

Proposals have been made from time to time to restore the statutory PAYGO requirement, but disagreements have centered on whether it should apply to both direct spending and revenue legislation (as originally framed and generally favored by Democrats) or only to direct spending legislation (as generally favored by Republicans).

In the 108<sup>th</sup> Congress, President George W. Bush submitted draft legislation to Congress, the Spending Control Act of 2004, that would have restored the discretionary spending limits and the PAYGO requirement for direct spending legislation only. The House Budget Committee reported a bill, H.R. 3973 (H.Rept. 108-442; March 19, 2004), reflecting the President's proposal; a comparable measure, H.R. 4663, was considered in the House on June 25, 2004, but failed to pass by a vote of 146-268.

In the 110<sup>th</sup> Congress, interest has been renewed in restoring a comprehensive PAYGO requirement.<sup>5</sup> Section 508 (Sense of Congress Regarding Extension of the Statutory Pay-As-You-Go Rule) of the FY2008 budget resolution, S.Con.Res. 21, states: "It is the sense of Congress that in order to reduce the deficit Congress should extend PAYGO consistent with provisions of the Budget Enforcement Act of 1990." No action has been taken so far in the 110<sup>th</sup> Congress on legislation to carry out this sense-of-Congress statement.

## Rules-Based PAYGO Procedures

The Senate has had its own PAYGO rule since 1993, while the House did not adopt its own PAYGO rule until 2007. Consequently, for the first time since PAYGO procedures were put into effect, both the House and Senate now have PAYGO rules. Although there are differences in the two rules, they essentially are the same in their fundamental purpose — to discourage the consideration and enactment during a session of direct spending and revenue legislation that is not deficit neutral. A comparison of the two rules is provided in **Table 1** and the two rules are discussed separately in more detail below.

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<sup>5</sup> The House Budget Committee held a hearing on the matter, "Perspectives on Renewing Statutory PAYGO," on July 25, 2007.

**Table 1. Comparison of Current House and Senate PAYGO Rules**

<b>Feature</b>	<b>House Rule</b>	<b>Senate Rule</b>
Basis of Authority	House Rule XXI, Clause 10.	Section 201 of the FY2008 Budget Resolution (S.Con.Res. 21).
Prohibition under Rule	Not in order to consider legislation having “the net effect of increasing the deficit or reducing the surplus.”	Not in order to consider legislation “that would increase the on-budget deficit or cause an on-budget deficit.”
Legislation Subject to Rule	Any bill, joint resolution, amendment, or conference report affecting direct spending or revenues.	Any bill, joint resolution, amendment, motion, or conference that affects direct spending (as defined in the 1985 Balanced Budget Act) or revenues.
Legislation Exempted from Rule	None stated.	(1) budget resolutions, (2) any provision of legislation that affects the full funding and continuation of the 1990 deposit insurance guarantee commitment, and (3) legislation, excluding reconciliation measures, that is covered by a “prior surplus” achieved during the calendar year.
Periods of Enforcement	(1) current fiscal year and next five fiscal years; and (2) current fiscal year and next ten fiscal years.	(1) current fiscal year and next five fiscal years; and (2) current fiscal year and next ten fiscal years.
Budget Determinations	Made by the House Budget Committee.	Made by the Senate Budget Committee.
Waiver Requirement	None stated, but House rules may be waived by a special rule reported by the House Rules Committee, usually by a simple majority vote, or by other techniques.	Three-fifths of the Members, duly chosen and sworn (60 votes, if no seats are vacant).
Expiration Date	None stated, but the House Rules are adopted, with modifications, at the start of each Congress.	September 30, 2017.



**The Senate PAYGO Rule.** In 1993, the Senate decided to augment the statutory PAYGO procedures with a new rule that would constrain the consideration of revenue and direct spending legislation in the Senate. 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.<sup>6</sup> 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.

Following the establishment of the PAYGO rule in 1993, the Senate 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.<sup>7</sup>

In May 2007, during the first session of the 110<sup>th</sup> Congress, the Senate revised its PAYGO rule as part of the FY2008 budget resolution (Section 201 of S.Con.Res. 21).<sup>8</sup> In its current form, the Senate PAYGO rule prohibits the consideration of direct spending or revenue legislation that would cause or increase an on-budget deficit in either of two time periods: (1) a six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years; and (2) an 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years. Enforcement of the rule is monitored by the maintenance of a PAYGO "ledger" that records the budgetary impact of direct spending and revenue legislation considered during the session. Determinations regarding the cost of legislation for purposes of enforcing the PAYGO rule are made by the Senate Budget Committee, based on the baseline used in the most recently agreed to budget resolution.

Waivers of the Senate's PAYGO rule require the affirmative vote of three-fifths of the membership (60 votes, if no seats are vacant). The current expiration date of the rule is September 30, 2017.

The revised Senate PAYGO rule is buttressed by another rule in the FY2008 budget resolution (Section 203 of S.Con.Res. 21) that would prohibit the

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<sup>6</sup> 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.

<sup>7</sup> The Senate's PAYGO rule and its modification over the years is discussed in detail in CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

<sup>8</sup> See *Concurrent Resolution on the Budget for Fiscal Year 2008*; conference report to accompany S.Con.Res. 21 (H.Rept. 110-153; May 16, 2007), pp. 12-13 (legislative text) and pp. 96-97 and pp. 102-103 (joint explanatory statement). The Senate agreed to the conference report on S.Con.Res. 21 on May 17, 2007, by a vote of 52-40.

consideration of legislation increasing the deficit by more than \$5 billion in any of the four 10-year periods covering FY2018-FY2057. Both the PAYGO rule and the long-term deficits rule can be waived only by the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

**The House PAYGO Rule.** The House established its own PAYGO rule in 2007, during the first session of the 110<sup>th</sup> Congress, following several unsuccessful attempts to do so in prior years.

On January 4, 2007, the House began consideration of H.Res. 6, a measure introduced by the House Majority Leader, Representative Steny Hoyer, establishing the chamber's rules for the 110<sup>th</sup> Congress. The measure was considered under the terms of a special rule, H.Res. 5, introduced by the chair of the House Rules Committee, Representative Louise Slaughter. The special rule, which had been agreed to that day by a vote of 235-195, required that each of the five titles of H.Res. 6 be considered separately. Titles I and II of H.Res. 6 were agreed to on January 4, and the remaining three titles were agreed to on January 5, thus completing action on the measure.

Title IV (Fiscal Responsibility) sets forth several changes in the budget process, including a bar against the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus (Section 402); a requirement that points of order under Title III of the 1974 Congressional Budget Act apply to measures considered under a special rule even if they have not been reported by committee (Section 403); and congressional earmark reform (Section 404). Section 405 sets forth the House's PAYGO rule, as Clause 10 of Rule XXI.<sup>9</sup> Title IV was agreed to by a vote of 280-152.<sup>10</sup>

The House's PAYGO rule, like the Senate's PAYGO rule, requires that legislation affecting direct spending or revenues not increase the deficit over a six-year period, including the current year, the upcoming fiscal year, and the four following fiscal years, as well as an 11-year period (the previously cited period and the ensuing five fiscal years).<sup>11</sup> Unlike the Senate's rule, the House's rule also bars the consideration of direct spending legislation that would reduce the surplus. The rule is enforced on the basis of estimates made by the House Budget Committee relative to the baseline projections made by the Congressional Budget Office under established procedures.

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<sup>9</sup> For the consideration of Title IV of H.Res. 6, see the *Congressional Record* (daily ed.), vol. 153, no. 2, January 5, 2007, pp. H60-H79, H82-H83.

<sup>10</sup> The 280 affirmative votes included 232 Democrats and 48 Republicans; the 152 negative votes included no Democrats and 152 Republicans.

<sup>11</sup> The House's PAYGO rule is discussed in more detail in CRS Report RL33850, *The House's "Pay-As-You-Go" (PAYGO) Rule in the 110<sup>th</sup> Congress: A Brief Overview*, by Robert Keith.