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INFORMED BUDGETEER

PAYGO REFRESHER COURSE

- The current Senate pay-as-you-go ("paygo") point of order has been in place since 2003, yet there is still widespread confusion about how paygo operates. Most of the confusion certainly stems from the fact that "paygo" has meant many different things since the statutory paygo process, was first created in the Budget Enforcement Act of 1990.

- Statutory paygo, which expired at the end of fiscal year 2002, sought to prevent direct spending and revenue legislation from increasing the deficit or decreasing the surplus. OMB enforced statutory paygo through sequestration (but during the 12-year life of the statutory paygo process, there was never a paygo sequester because the Congress and the President always agreed to avert a sequester by legislation).

- The Senate originated its paygo point of order in 1993 (on top of the statutory paygo process already in place), and has changed it four times since then. (See CRS Report RL32835 for a thorough history of the Senate paygo point of order.) In 2003, section 505 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, set out the version of the paygo point of order that is currently in effect. The current paygo point of order allows an amount of on-budget deficit change that is equivalent to the net total of the changes from the baseline in direct spending and revenues that are assumed in the budget resolution. This is known as post-policy paygo – in other words, the deficit levels assumed in the budget resolution are enforced through paygo. The Congress decides how much of a deficit change it can tolerate, and the paygo point of order is there to make it more difficult to increase the deficit any further than those amounts. (But direct spending or revenue changes defined as emergencies are exempt from paygo.)

- Under the current paygo point of order, when the Congress adopts a budget resolution, it simultaneously establishes (in the Senate only) a scorecard that sets out the total amount of deficit change assumed in the budget resolution. This scorecard, as maintained by the Chairman of the Senate Budget Committee, is used to compare the budgetary effects of legislation changing direct spending or revenues against those balances. As with previous incarnations of the paygo point of order, the current rule covers the first year (currently 2006) and the first five years (2006-2010), required to be included in the budget resolution, as well as the five-year period after the first five years (2011-2015).

- When Congress adopted the 2006 budget resolution, it established a paygo scorecard that allowed a deficit increase of up to $76 billion over the five-year period 2006-2010. This number was arrived at by adding together all of the assumptions for changes in mandatory spending and revenues in the resolution (both reconciliation and non-reconciliation) – a net $30 billion in spending cuts ($35b in reconciliation savings plus $5b in new non-reconciliation spending) plus a net $106 billion in tax cuts ($70b reconciliation revenue reduction plus $36b in revenue reduction outside of reconciliation).

- Since the adoption of the budget resolution last April (and prior to the adoption of the reconciliation spending bill), Congress had enacted non-emergency direct spending and/or revenue legislation that decreased the deficit by a net $18 billion (over 5 years). That has been posted to the scorecard, so there are now $94 billion of paygo balances available in 2006-2010 ($76b - $-18b). In general, the deficit impacts of enacted legislation will continue to be posted to the current scorecard, until a new budget resolution is agreed to and a new scorecard is created. Why "in general?"

- Enactment of a spending reconciliation bill resulted in changes to the paygo balances, but the scorecard was not adjusted by the full amount of deficit reduction scored to the bill. Instead, the scorecard was adjusted by the amount of reconciliation savings assumed in the budget resolution. Why is this the case?

- It is because of section 505(a)(6) of H.Con.Res.95 (the 2004 Budget Resolution), which describes the current paygo point of order in the Senate. The section reads as follows:

  > "PRIOR SURPLUS - If direct spending or revenue legislation increases the on-budget deficit or causes an on-budget deficit when taken individually, it must also increase the on-budget deficit or cause an on-budget deficit when taken together with all direct spending and revenue legislation enacted since the beginning of the calendar year not accounted for in the baseline under paragraph 5(A), <u>except that direct spending or revenue effects resulting in net deficit reduction enacted pursuant to reconciliation instructions since the beginning of that same calendar year shall not be available</u>." (emphasis added)

- When originally written, the "prior surplus" language was designed to prevent the practice of carrying over paygo surpluses enacted in one session of Congress to be used in a following session of Congress. The current point of order resets the scorecard with every new budget resolution, so the original way of reading this language (which has lived on as an artifact) is no longer relevant. However, any lingering meaningful intent of the language in Sec. 505(a)(6) appears to be that savings achieved through reconciliation in excess of the instructions are not to be made available for spending or tax cuts. The Budget Committee's methodology -- of setting the paygo scorecard based on all the direct spending and revenue assumptions in the budget resolution and measuring all subsequent direct spending and revenue legislation against the scorecard -- successfully balances and achieves both the goals of post-policy paygo and any remaining intent of Sec. 505(a)(6).

- An example (see figure 1 below) may be useful to describe the principle of post-policy paygo. Take a simple case – imagine that the only assumptions in a budget resolution are a $10 billion non-reconciliation spending assumption and a $35 billion reconciliation savings assumption. The paygo scorecard starts at -$25 billion, so there would be a paygo point of order against legislation to spend money or cut taxes. Then reconciliation is enacted and saves exactly $35 billion. The scorecard would be adjusted by that amount, leaving the scorecard with a balance of +$10 billion. <u>No reconciliation savings have been made "available" to be spent.</u> Because there would be a $10 billion balance on the scorecard after completing reconciliation, there would still be a paygo point of order against any legislation cutting taxes or increasing spending beyond the $10 billion deficit-increase assumption included in the budget resolution.

Figure 1: Exact Reconciliation Assumption Achieved		($ millions) 2006-2010
Beginning paygo balance		-25,000
Adjust for 35B reconciliation	-	-35,000
Remaining paygo balance	=	10,000
New additional spending	-	10,000
Remaining paygo balance	=	0

- One <u>might</u> argue that the above scenario violates the letter of the "except" clause in 505(a)(6) [net deficit reduction enacted pursuant to reconciliation …shall not be available] because the act of putting reconciliation savings on the scorecard is making money available. *The Bulletin* notes that it <u>is not</u> the reconciliation savings that are being made available. Completing reconciliation is just exposing the other policy assumptions that were in the budget resolution the whole time. **It is the inclusion of spending assumptions in the budget resolution that is causing that money to be available.** In this scenario, the budget resolution intends that $10 billion to be available (and it is included in the 302(a) allocations to committees) once reconciliation is enacted. If the scorecard were not adjusted by the $35 billion in reconciliation savings, the committee producing the $10 billion spending legislation would have to find an additional $35 billion in savings, outside of reconciliation, in order to do the originally assumed spending. Even though the committee's allocation includes the $10 billion to spend and the committee would not face a 302(f) committee allocation point of order, it would face a paygo point of order without an offset if the scorecard was not adjusted for enactment of reconciliation.

- When fashioning the budget resolution, the Budget Committee could have set up the paygo scorecard in a different way. The $35 billion assumed reconciliation savings could have been left out of the original scorecard computation, and then not applied to the scorecard when reconciliation savings were achieved. If it had been done this way, the scorecard would have started out with -$111 billion balance ($106b in revenue reductions and $5b in new spending), which would be a more fiscally irresponsible way of doing things because it would allow large deficit increases regardless of whether any savings were achieved or not. The way the scorecard is currently set up makes it much more likely that spending reconciliation savings had to happen before tax cuts could be enacted through reconciliation or before any other legislation that would increase the deficit could be considered.

- Let's get back to explaining why the scorecard was not adjusted by the full amount of deficit reduction scored to the spending reconciliation bill. Imagine (see figure 2 below) an illustrative budget resolution that contains $35 billion in reconciliation savings assumptions and $10 billion in new non-reconciliation spending assumptions, so the paygo scorecard starts at -$25 billion. Again imagine Congress enacts a reconciliation bill saving $40 billion. Because of Sec. 505(a)(6), the scorecard would only be adjusted by the original, lower assumption of $35 billion, because the paygo point of order says net deficit reduction shall not be "available." To adjust by more than the original $35 billion reconciliation assumption would have the effect of making net deficit reduction "available." If the scorecard was adjusted by the full $40 billion, then the resulting scorecard would be at +$15 billion (-$25b plus the $40b reconciliation savings), which would accommodate $15 billion in additional deficit increase rather than the $10 billion policy envisioned by the budget resolution. This would violate both the letter and the spirit of the "except" clause that is in question.

Figure 2: More Recon. Savgins are Enacted Than Were Assumed		($ millions) 2006-2010
Beginning paygo balance		-25,000
Adjust for 40B reconciliation	-	-40,000
Remaining paygo balance	=	15,000
New additional spending	-	10,000
Remaining paygo balance	=	5,000

THE DEFICIT REDUCTION ACT

- Upon reconvening this week, the House of Representatives passed and cleared for the President's signature the Deficit Reduction Act (DRA), the spending reduction reconciliation bill. The House had already passed the DRA conference report on December 19, 2005, and sent it to the Senate. The Senate then approved the DRA on December 21, 2005, but only after stripping the bill of three minor provisions as a result of a point of order. The procedural impact of the Senate action was that the bill was no longer a conference report; it became instead an amendment between the House and Senate and had to be returned to the House for final approval.

- The bill reduces mandatory spending and reduces the deficit by nearly $40 billion over five years, exceeding the $35 billion goal that was set in the 2006 Budget Resolution. The following summarizes each title of the bill, including the amount saved over the 2006-2010 periods.

- Agriculture Provisions ($2.7 billion). The bill reduces payments under commodity, conservation, energy, and rural development programs, and grants for agriculture research and education.

- Housing and Deposit Insurance Provisions ($0.5 billion). The DRA merges the Bank Insurance Fund with the Savings Association Insurance Fund, and makes spending for renovation of foreclosed properties under the mortgage insurance program of the Federal Housing Administration subject to annual appropriations.

- Digital TV Transition and Public Safety Provisions ($7.4 billion). The DRA sets an auction of analog spectrum and sets a final date for analog broadcast. It includes a set-top converter box subsidy program costing $1.4 billion and spends $1.3 billion for interoperability grants, a national alert system and other costs related to the transition to digital television.

- Transportation Provisions ($0.2 billion). The DRA increases vessel tonnage fees collected by the U.S. Customs Service.

- Medicare Provisions ($6.4 billion). The DRA reforms Medicare by making payments to insurance plans and certain providers more accurate. It also includes spending of $7.3 billion to freeze physician payments at the 2005 level, eliminating the 4.4 percent reduction required by current law.

- Medicaid Provisions ($4.8 billion). The bill makes reimbursements to pharmacies and drug manufacturers more accurate, clarifies the ways states can use case management programs, and closes a loophole that permits individuals with assets to qualify for long-term coverage in Medicaid. It also includes $2 billion to pay for additional health care benefits for hurricane victims in the Gulf Coast; nearly $1.4 billion to expand Medicaid benefits to parents of severely disabled children; and $770 million for home and community-based health programs.

- Human Resources Provisions & Continued Dumping and Subsidy Offset ($1.5 billion). The bill reauthorizes the welfare reform law by strengthening work requirements and child support enforcement collection and payment mechanisms, reforms foster care and the Supplemental Security Income program, and repeals the payments to companies under the CDSO program. It also adds an additional $1 billion for child care.

- Education & Pension Benefit Provisions ($15.5 billion). The DRA reduces bank and lender special payments and profits and increases premiums paid to the Pension Benefit Guaranty Corporation. It also includes $9.6 billion in new student benefits, such as direct grant aid to low-income students, phasing out student loan origination fees, increasing teacher loan forgiveness, and providing new loan deferment for active military personnel.

- LIHEAP Provisions. This title does not reduce spending. Instead, in a one-time expenditure, it provides $1 billion in additional budget authority in 2007 to assist low-income consumers with higher home heating costs following production disruptions caused by Gulf Coast hurricanes. Twenty-five percent of these funds will be allocated through the program formula, and 75 percent will be allocated through the contingency fund.

- Judiciary Provisions ($0.5 billion). The bill increases bankruptcy and civil case filing fee increases (although a technical correction would need to be enacted to collect all of the fees that were intended).