

INFORMED BUDGETEER:

RESERVING JUDGMENT ON RESERVE FUNDS
THE POWER OF THE CHAIRMAN!

- The Conference Agreement on the FY 2002 Budget Resolution was adopted on May 10 in the Senate and includes 7 reserve funds that permit the Budget Committee chairman to adjust committee allocations for legislation addressing specific purposes.
- Reserve funds have been included in every budget resolution since FY 1987. In the FY 1995 budget resolution a peak number of reserve funds was reached with 11 separate categories for legislation.
- Why have reserve funds? During periods of deficits, reserve funds permitted authorizing committees to report legislation that was deficit neutral. Providing a reserve fund allowed the Chairman of the Budget Committee to adjust the budget resolution’s spending and revenue assumptions to prevent the reporting committee from facing Budget Act points of order.
- In a time of surpluses, reserve funds provide a mechanism to target mandatory spending proposals in ways that the full Congress has decided is the best use of surplus dollars. Only upon the reporting of the specified legislation will the Chairman of the Budget Committee increase the authorizing committee’s allocations so that the legislation will not be subject to Budget Act points of order.
- Not all of the mandatory spending assumed in the most recent budget resolution is subject to the reserve fund mechanism - - but 92% is! Of the total assumed new mandatory spending in the current budget - - \$460 billion - - \$423.8 billion can not be spent unless the Chairman of the Budget Committee determines the legislation meets the criteria required for its release. “The power of the Chairman!”
- In the Senate, the authority granted for each reserve fund applies only to the reported legislation from the authorizing committee; it does not apply to amendments offered on the Senate floor. Further, each reserve fund, with the exception of the Medicare reserve fund, includes language that prohibits any adjustment if the cost of the legislation, taken together with all previously enacted legislation, would reduce the on-budget surplus below the level of the Medicare HI trust fund surplus for any year in the 2002-2011 period.

prescription drug benefit with overall reform of Medicare in order to ensure the long term fiscal viability of the program. This reserve fund clearly states that these funds must be used for **both** Medicare reform and prescription drugs, not just one or the other.

- < **Medicare Home Health:** Funding of \$13.7 billion over 10 years is provided to the Finance Committee for additional Medicare payments to home health providers. As part of the Balanced Budget Act of 1997, a 15% reduction in Medicare home health payments is currently scheduled to take effect on October 1, 2002. These funds will finance the repeal of the rate cut and will ensure that seniors continue to receive the home health care they need.
- < **Family Opportunity Act:** The budget resolution sets aside \$8.3 billion over 10 years for the Family Opportunity Act to the Finance Committee. This legislation will enable the parents of severely disabled children to purchase health insurance for their children through the Medicaid program.
- < **Health Insurance for the Uninsured:** This reserve fund provides \$28 billion over 3 years (2002-2004) to the Finance Committee to provide health insurance for the uninsured. These funds can be used either for direct spending through Medicaid and the State Children’s Health Insurance Program (S-CHIP) or for tax incentives to enable people to purchase private insurance. This funding will help millions of uninsured Americans gain access to health insurance.
- < **Agriculture:** For FY 2003-2011 the Conference Agreement establishes a \$66.15 billion reserve fund to the Agriculture Committee for the reauthorization, modification, extension, expansion and innovation concerning any or all titles of the 1996 Federal Agriculture Improvement and Reform (FAIR) Act. FAIR Act titles are the Agricultural Marketing Transition Act, Agricultural Trade, Conservation, Nutrition Assistance, Agriculture Promotion, Credit, Rural Development, Research, Extension and Education, and Miscellaneous.
- < **Student Loans:** The Conference Agreement includes a technical reserve for legislation that permanently retains the interest rate schedule currently in effect for student loans and that repeals the switch to a replacement interest rate structure scheduled to occur under current law on July 1, 2003. This technical reserve would permit extension of the overwhelmingly bipartisan agreement reached in the Higher Education Amendments of 1998 to support the interest rate structure of the student loan program as it operates today.

Specifically, the legislation (which would be reported from the Senate Committee on Health, Education, Labor and Pensions and within the jurisdiction of House Committee on Education and the Workforce) would repeal a provision (from 1993) that, if left in place, would dismantle the existing interest rate structure for student loans starting July 1, 2003.

- < **Defense:** If the President requests additional defense spending to accommodate Secretary of Defense Rumsfeld’s “National Defense Review,” and if the Armed Services or Appropriations Committee reports legislation pursuant to that review, the Chairman of the Budget Committee “may” increase the National Defense allocation “for that purpose.” The amount permitted is not specified. Under current budget resolution assumptions, \$12 billion in outlays would be available in 2002 before any impact on the Medicare HI surplus.

The Budget Committee Chairman may not release this additional money until the statutory discretionary spending limits of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 has been increased by statute for 2002 by an amount sufficient to accommodate the increase envisioned by this reserve fund.

CONSIDERING TAX RECONCILIATION PROCEDURES

- Last week the Finance Committee reported a tax cut reconciliation bill as instructed by the Budget Resolution, and the full Senate began

Senate Mandatory Reserve Funds in the Budget Resolution (\$ in millions)				
		2001	2002	2002-2011
Agriculture*	BA	0	0	66,150
	OT	0	0	66,150
Family Opportunity Act	BA	0	227	8,337
	OT	0	180	7,867
Health Insurance for Uninsured	BA	0	8,000	28,000
	OT	0	8,000	28,000
Medicare	BA	0	0	300,000
	OT	0	0	300,000
Medicare Home Health	BA	0	0	13,700
	OT	0	0	13,700
Student Loan Technical	BA	65	45	7,600
	OT	60	40	6,530
Total, Mandatory**	BA	65	8,272	423,787
	OT	60	8,220	422,247

SOURCE: Senate Budget Committee; *The FY 2002 Budget Resolution allocated directly to the Agriculture Committee \$12.85 billion in FY01 and FY02 not subject to the reserve fund. **In addition to the mandatory funds listed here, the 2002 Budget Resolution also adopted a discretionary reserve fund in the Senate that allows for additional resources for defense spending in response to the recommendations of the President’s National Defense Review.

- < **Medicare Reform and Prescription Drugs:** This reserve fund would provide \$300 billion over 10 years to the Finance Committee for Medicare reform and a prescription drug benefit. Budget Committee hearings earlier this year clearly established the need to link a new

floor consideration of the bill. Debate on this bill will be governed by section 103 of the FY2002 Budget Resolution (H. Con. Res. 83) and the procedures set out in sections 305 and 310 of the Congressional Budget Act of 1974.

- Because this year's instructions were given to only one committee in the Senate, the bill was not reported out of the Budget Committee but rather went straight onto the Senate Calendar from the Finance Committee. The bill was privileged for consideration. The motion to proceed to the bill was not debatable.
- Under the Budget Act, there are 20 hours available for debate on the bill. This is not an overall limit on consideration. Thus amendments may be offered and motions made after the expiration of 20 hours. Such amendments and motions will be disposed of without debate unless unanimous consent is obtained.
- During the 20 hours, 1st degree amendments are debatable for 2 hours and 2nd degree amendments and debatable motions and appeals are debatable for 1 hour. All time limitations are equally divided and controlled by the Majority Leader and the Minority Leader or their designees.
- As is the case with all legislation considered in the Senate, the tax reconciliation bill and any amendments offered thereto must conform with the parameters of the Budget Resolution and the section 306 prohibition regarding matters within the jurisdiction of the Budget Committee.
- That means that the bill and any amendments must comply with the reconciliation instructions, the revenue aggregates, and the committee allocation. If not, they will be subject to Budget Act points of order (section 311 with respect to the revenue aggregates and section 302 with respect to committee allocations).
- Because this is a *reconciliation bill*, the legislation (and any amendments thereto and the conference report) must also conform to: (i) the **germaneness** requirement found in section 305(b) - although this applies to amendments only, (ii) the prohibition regarding changes to **Social Security** found in section 310(g), and (iii) the **Byrd Rule**.
- Savvy budgeteers will remember that the Byrd Rule is found at section 313 of the Budget Act and prohibits the inclusion of "extraneous matter" in reconciliation legislation. Unlike other points of order in the Senate, the Byrd Rule applies to "provisions" and as such may be used to excise language from within the bill and the conference report.
- Section 313(b)(1)(E) of the Byrd Rule requires that there be no net change in spending or revenues in the years beyond the reconciliation instructions. What this means is that the tax cuts must sunset after FY 2011; otherwise the tax cutting provisions will be vulnerable to a 60-vote point of order.
- All of these points of order require the affirmative vote of 60 Senators in order to prevail on a motion to waive or to appeal a ruling of the Chair.
- Because this is a revenue bill, the vehicle in conference must be a House revenue bill. Otherwise there is the potential of a "blue slip" from the House. "Blue slip" is the term used to describe the situation where a simple House resolution accompanies a message from the House of Representatives regarding a Senate-passed bill. In such cases, the House declines to consider that particular measure on the grounds that it infringes upon the House's constitutional

prerogative to originate all revenue legislation (Article I, Section 7).

- The Budget Act does not specifically address the amount of time which may be spent on the various motions required to get a reconciliation bill to conference and the appointment of conferees.
- The Senate Parliamentarian has advised, however, that since the Act envisions limited debate on reconciliation, a limit of 10 hours for disposing of the motions would be appropriate. Nonetheless, in the past these motions and the naming of conferees have generally been disposed of by unanimous consent without debate.

BUDGET QUIZ

Question: The FY 2002 Budget Resolution contains 7 reserve funds which provide the Chairman with the authority to make adjustments to aggregates and allocations if committees report the specified legislative measures. In addition, last week, the Chairman made adjustments to the aggregates and allocations in the resolution for a measure not covered by a reserve fund – S. 869, the tax reconciliation bill reported by the Senate Committee on Finance. Under what authority did the Chairman make these adjustments?

Answer: Section 310(c) of the Budget Act, often referred to as the "fungibility rule", provides the Chairman of Budget Committee with the authority to adjust functional levels, committee allocations, and aggregates set out in the budget resolution with respect to a reconciliation bill reported in response to reconciliation instructions to a committee calling for changes in both outlays and revenues. The Chairman is permitted to exercise this authority if the instructed committee has changed the mix between revenue and outlay, if the sum of the changes does not exceed 20% of the total instruction, and the bill as reported still complies with the total of the instructions.

- H. Con. Res. 68 instructed the Committee on Finance to report a bill which increases outlays by \$100 billion over the period of FY 2001 - 2011 and which decreases revenues by \$1.250 trillion over that same time period – for a total of \$1.350 trillion. Applying the fungibility rule to the \$1.350 total produces a range of plus or minus \$270 billion.
- On May 17, 2001 the Committee on Finance reported S. 869 which contains \$108.3 billion in outlay increases and \$1.238.8 trillion in revenue reductions – for a total of \$1.347 trillion. These figures do not exceed the total reconciled amount of \$1.350 trillion and the change from the original outlay and revenue instructions were well within the \$270 billion range. Consequently, on Thursday May 18th, the Chairman of the Committee on the Budget adjusted the functional levels, committee allocations and aggregates to conform with S. 869. These adjusted levels thus became the basis upon which all subsequent Budget Act point of order will be enforced.

○ The *Bulletin* would like to welcome Bernadette Kilroy to the SBC staff. Bernadette is joining us as the International Affairs analyst. Previously she held academic positions at the University of California, Los Angeles; the Centre for European Policy Studies, Brussels; and the European University Institute, Florence.