

# Committee on Rules Legislative Process Program

Section 3 – *The Committee System and the Federal Budget Process*

111<sup>TH</sup> CONGRESS

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## The Budget Process

Section 3, chapter 2 of 5

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# The Budget Process

## Section 3 chapter 2 of 5

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## The Timetable of the Budget Process

Title III of the Congressional Budget Act establishes a specific timetable for the congressional budget process:

On or Before	Action to be Completed
<b>First Monday in February</b>	President submits his budget.
<b>February 15</b>	Congressional Budget Office reports to the Budget Committees
<b>Not later than 6 weeks after the President submits the budget</b>	Committees submit views and estimates on the President's Budget to the Budget Committees. (Frequently, the House Budget Committee sets its own date based on the Legislative Calendar)
<b>April 1</b>	Senate Budget Committee reports concurrent resolution on the budget
<b>April 15</b>	Congress completes action on the concurrent resolution on the budget. (This is not signed by the President)
<b>May 15</b>	Annual appropriations bills may be considered in the House.
<b>June 10</b>	House Appropriations Committee reports last annual appropriations bill.
<b>June 15</b>	Congress completes action on reconciliation legislation. (If required by the budget resolution)
<b>June 30</b>	House completes action on annual appropriations bills.
<b>October 1</b>	Fiscal Year begins.

These deadlines are designed to be flexible to accommodate the legislative scheduling priorities of the House and Senate Majority Leadership. For further information on the congressional budget process see the Rules Committee web site at [www.rules.house.gov](http://www.rules.house.gov) or contact the Rules Committee at (202) 225-9091 or the Budget Committee at (202) 226-7200.

# Mandatory vs. Discretionary Spending

Excerpt from S. Rept. 105-67<sup>1</sup>  
December 1998

“The Congressional Budget Process: An Explanation” (pages 5-6)  
Senate Budget Committee

## Mandatory Spending, Direct Spending and Entitlement Spending

Mandatory spending generally includes all spending that is made pursuant to laws other than appropriations laws. The fundamental characteristic of mandatory spending is the lack of annual discretion to establish spending levels. Instead, mandatory spending usually involves a binding legal obligation by the Federal Government to provide funding for an individual, program, or activity. Another way of defining mandatory spending is that it is all spending that is not discretionary.

Mandatory spending is frequently referred to as entitlement spending. Entitlement spending is a subset of mandatory spending and represents the largest component of mandatory spending. Most entitlement spending is pursuant to laws that provide all eligible individuals (or an entity or unit of government) with financial assistance or other benefits, such as SSI and unemployment. An entitlement represents a binding obligation on the part of the Federal Government; eligible recipients have legal recourse to compel payment from the government if the obligation is not fulfilled.

Usually, the laws providing for an entitlement contain formulas or criteria that specify who is eligible for Federal assistance. Unless the underlying law establishing the entitlement is modified, these individuals retain a legal right to benefits, regardless of the budget situation. For example, the Social Security law sets formulas under which retired workers receive benefits based on the length of time they have worked and their earnings. The cost of Social Security for a given fiscal year is thus determined by the number of qualifying retirees rather than by the amount of money in the Treasury or an annual appropriation.

Some appropriations bills include funding for entitlement programs. Even though this funding is included in an appropriations bill, it is still considered mandatory spending rather than discretionary spending. For example, the Congress provides annual funding for the Medicaid program through an appropriations bill. However, the actual funding level for Medicaid is determined by criteria in Title XIX of the Social Security Act. This law provides an entitlement to low-income individuals to pay for a portion of their health care expenses. The appropriations bill simply liquidates this obligation by appropriating sums necessary to cover the cost of the Medicaid program. Congress, in the appropriations process, does not have the discretion to change the amount spent on Medicaid.

## Discretionary Spending

By contrast, *discretionary spending* refers to those programs that are subject to annual funding decisions in the appropriations process. If the Congress decides to lower funding for a program of this type, it can simply reduce the annual appropriation. Unlike entitlement programs, generally no formulas need to be changed to alter funding levels. Most of the actual operations of the Federal Government are funded by discretionary spending. Examples of discretionary spending include funding for the Department of Defense, the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), and the Environmental Protection Agency (EPA).

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<sup>1</sup> [http://budget.senate.gov/democratic/the\\_budget\\_process.pdf](http://budget.senate.gov/democratic/the_budget_process.pdf)

## Procedures for Spending

Excerpt from CRS Report: 98-721<sup>2</sup>  
Updated November 20, 2008

“Introduction to the Federal Budget Process” (pages 6-7)  
Robert Keith  
Specialist in American National Government  
Government Division

The procedures for discretionary and direct spending converge at two critical points in federal budgeting: formulation of the President’s budget and formulation of the congressional budget resolution. Both of these policy statements encompass discretionary and direct spending, but the procedures used in budgeting for these types of expenditure differ greatly. The distinctions have some notable exceptions. Some procedures associated with direct spending are applied to particular types of discretionary programs, and vice versa. Nevertheless, the generalizations presented here help to explain the complications of the budget process and explain how decisions are made.

*(1) Budgetary Impact of Authorizing Legislation.* An authorization for a discretionary spending program is only a license to enact an appropriation. The amount of budgetary resources available for spending is determined in annual appropriations acts. For direct spending programs (principally entitlements), on the other hand, the authorizing legislation either provides, or effectively mandates the appropriation of, budget authority. In those entitlement programs that are subject to annual appropriation, the Appropriations Committees have little or no discretion as to the amounts they provide.

*(2) Committees That Provide or Mandate Budget Authority.* The Appropriations Committees have jurisdiction and effective control over discretionary spending programs, while authorizing committees effectively control direct spending programs (including those funded in annual appropriations acts). In fact, committee jurisdiction determines whether a program is classified as discretionary or direct spending. All spending under the effective control of the Appropriations Committees is discretionary; everything else is direct spending. Accordingly, when legislation establishes a program as discretionary or direct spending, it not only determines the character of spending but the locus of congressional committee control as well.

*(3) Frequency of Decision-Making.* Discretionary appropriations are, with few exceptions, made annually for the current or next fiscal year. Direct spending programs typically are established in permanent law that continues in effect until such time as it is revised or terminated by another law. The fact that many entitlements have annual appropriations does not diminish the permanence of the laws governing the amounts spent. It should be noted, however, that some direct spending programs, such as Medicare, have been subject to frequent legislative changes. The purpose of such legislation has been to modify existing law, not to provide annual funding.

*(4) Means of Enforcing the Budget Resolution.* The procedures used by Congress to enforce the policies set forth in the annual budget resolution differ somewhat for discretionary and direct spending programs. For both types of spending, Congress relies on allocations made under Section 302 of the 1974 Congressional Budget Act to ensure that spending legislation reported by House and Senate committees conforms to established budget policies. But although this procedure is effective in controlling new legislation—both annual appropriations measures and new entitlement legislation—it is not an effective control on the spending that results from existing laws. Hence, Congress relies on reconciliation procedures to enforce budget policies with respect to existing spending and revenue laws. Reconciliation is not currently applied to discretionary programs funded in annual appropriations measures.

*(5) Budget Enforcement Act Controls.* Discretionary programs have been subject to the spending limits set in the BEA. Direct spending has not been capped, but has operated under the PAYGO process, which required that direct spending and revenue legislation enacted for a fiscal year not

<sup>2</sup> <http://apps.crs.gov/products/rl/pdf/98-721.pdf>

cause the deficit to rise or the surplus to decrease. The lack of caps was due to the fact that most direct spending programs are open-ended, with spending determined by eligibility rules and payment formulas in existing law rather than by new legislation.



# CBO: Congressional Budget Office

The Congressional Budget Office (CBO) was created under the Congressional Budget Control and Impoundment Act of 1974. “[The primary role of CBO] is to provide budget-related information to all committees of both Houses, with priority on the House side given to the needs of House Committees on the Budget, Appropriations, and Ways and Means. The law also requires CBO to prepare several budget projections each year and to perform studies of budgetary issues. In addition, CBO must prepare estimates of new budget authority, outlays, or revenues that would result from bills or joint resolutions reported from committees of either House, and of the costs that the government would incur in carrying out the provisions of the proposed legislation. Those cost estimates are usually included in the committee reports accompanying bills or resolutions before action in the House or the Senate.”<sup>3</sup>

“[Additionally], The Unfunded Mandates Reform Act of 1995 requires CBO to estimate the costs of federal mandates in legislation that would affect state, local, and tribal governments or the private sector. The act also authorizes CBO to prepare analyses and studies of the budgetary or financial impact of proposed legislation that may significantly affect state and local governments or the private sector, to the extent practicable, at the request of any committee.”<sup>4</sup>

“Occasionally, other laws have directed CBO to analyze specific subjects. Such analyses have included the treatment of administrative costs under credit reform accounting and the financial risks posed by government-sponsored enterprises.”<sup>5</sup>

As it assists the House and Senate Budget Committees, and the Congress more generally, CBO prepares a variety of reports and analyses.

“The documents that CBO publishes fall into two main categories:

- Cost estimates and mandate statements, for every bill when it is reported by a Congressional committee and, upon request, for bills at other stages of the legislative process.
- Publications of various types, including:
  - Reports needed for the budget process, such as *The Budget and Economic Outlook*, *An Analysis of the President's Budget*, and other annual, biannual, and semiannual reports.
  - Analytical studies, which explore economic and budgetary issues involving the federal government.
  - Briefs, which provide short analyses of policy issues.
  - The *Monthly Budget Review*, which summarizes the fiscal activity of the government during the previous month.
  - Background papers and related documents, which describe the assumptions and technical methods underlying various aspects of CBO's analyses.”<sup>6</sup>

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<sup>3</sup> CBO' Policies for Preparing and Distributing Its Estimates and Analyses. Congressional Budget Office. 11 February 2008. <http://www.cbo.gov/aboutcbo/policyforestimates.pdf>. p.1

<sup>4</sup> CBO' Policies for Preparing and Distributing Its Estimates and Analyses. Congressional Budget Office. 11 February 2008. <http://www.cbo.gov/aboutcbo/policyforestimates.pdf>. p.1

<sup>5</sup> CBO' Policies for Preparing and Distributing Its Estimates and Analyses. Congressional Budget Office. 11 February 2008. <http://www.cbo.gov/aboutcbo/policyforestimates.pdf>. p.1.

<sup>6</sup> What CBO Publishes. Congressional Budget Office. 3 January 2008. <http://www.cbo.gov/aboutcbo/publishes.shtml>

## Baseline

"In late January of each year, CBO reports on the economic and budget outlook, including estimates of spending and revenue levels for the next 10 years under current law. This so-called budget baseline serves as a neutral benchmark against which Members of Congress can measure the budgetary effect of proposed legislation. The baseline is constructed according to rules set forth in law, which generally instruct CBO to assume that current spending and revenue laws continue without change. Thus, the baseline is not a prediction of future budget outcomes. Rather, it reflects CBO's best judgment about how the economy and other factors will affect federal revenues and spending under existing laws. Each summer, CBO updates its baseline projections, incorporating a new economic forecast and the effects of laws that have been enacted to date in that session of Congress."<sup>7</sup>

### What Baselines Can and Cannot Do

Excerpt from CRS Report: RL31414 (pages 1-2)<sup>8</sup>  
Updated February 7, 2008

"Baseline Budget Projections: A Discussion Issues"  
Marc Labonte.  
Specialist in Macroeconomics  
Government and Finance Division

### What Baselines Can Do

Both CBO and the Office of Management and Budget (OMB) produce baseline projections of the budget semi-annually. The purpose of the baseline is to project revenues and outlays under current policy over the next 10 years. A concise definition of the baseline comes from CBO:

**The baseline is intended to provide a neutral, nonjudgmental foundation for assessing policy options. It is not "realistic," because tax and spending policies will change over time. Neither is it intended to be a forecast of future budgetary outcomes. Rather, the projections ... reflect CBO's best judgment about how the economy and other factors will affect federal revenues and spending under existing policies.**<sup>9</sup>

Thus, headlines such as "CBO baseline predicts that the budget will be balanced by 2012" or "Changes in the baseline projections prove policy change was unaffordable" are a misuse of the baseline. As indicated in the CBO quote, the baseline is not a "best guess" of future policy outcomes.

The proper way to use a baseline is as a rule-of-thumb estimate for the budgetary ramifications of current policy. This offers the policymaker a means to measure the relative effects of proposed legislation in the context of the overall budget. Current policy is very narrowly defined in these projections. It does not include proposals made in adopted budget resolutions, bills passed by only one chamber, or even bills passed by both chambers but not yet signed into law.

### What Baselines Cannot Do

Without a baseline projection, policymakers would be in the dark when planning the budget. Nevertheless, an overriding focus on the baseline projection can lead to radically misleading conclusions. This is true for three reasons.

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<sup>7</sup> CBO's Role in the Budget Process: Budget and Economic Outlook. Congressional Budget Office. 3 January 2008.  
<http://www.cbo.gov/aboutCBO/budgetprocess.shtml>.

<sup>8</sup> <http://apps.crs.gov/products/rl/pdf/RL31414.pdf>

<sup>9</sup> CBO, *The Budget and Economic Outlook*, January 2001, p. 7. Instructions for creating the baseline estimates are contained in the Budget Enforcement Act (BEA) as amended.

First, baseline projections are only as accurate as the assumptions underlying them. Critics have argued that several of the underlying assumptions or rules followed by CBO and OMB in making the budget baselines are not as realistic as they could be. Applying alternative assumptions to the baseline could significantly increase the projected size of the deficit. As discussed more fully below, the baseline treatment of discretionary spending, supplemental spending on military operations in Iraq and Afghanistan, expiring tax provisions, and the alternative minimum tax are four assumptions that have been criticized.

Second, budget estimates and projections are highly sensitive to relatively small changes in the underlying assumptions and economic factors. These changes can have substantial effects on the deficit projection, and the effect on the projection compounds when extrapolated into the future. In particular, our understanding of the economy remains limited and economic forecasts remain subject to extremely large margins of error, even over short time periods. Thinking of the baseline projection as a certain outcome can distort the policymaking process.

Third, baseline projections are limited to current-year expenditures (for 10 years). Although one would expect 10 years to be a more than adequate time horizon to assess the course of future policy, the United States faces a unique situation beyond that horizon: the retirement of the baby boomers. Under current policy, their retirement, coupled with rising medical costs, would lead to a large expansion in funds dedicated to Social Security and Medicare that is likely to place an unsustainable strain on government finances. Because their retirement will mostly occur outside the 10-year window, the baseline does not reflect this problem. In a narrow sense, it should not reflect the problem, for the baseline is not supposed to advocate policy changes. Nevertheless, to the extent that the baseline frames the budget debate, critics argue that a baseline that makes unsustainable policy appear sustainable is misleading.

## Scoring

In order for Congress to act on legislation, Congress must be informed of an item's impact on future budgeting. Thus, CBO is required to develop a measure of impact or cost estimate, for virtually every bill reported by Congressional committees to show how it would affect spending or revenues.<sup>10</sup> This measure is often described as 'scoring' or 'scorekeeping'. "For most tax legislation, CBO uses estimates provided by the Joint Committee on Taxation, a separate Congressional analytic group that works closely with the two tax-writing committees. CBO also prepares cost estimates for use in drafting bills (especially in the early stages), formulating floor amendments, and working out the final form of legislation in conference committees. To the extent that its resources permit, CBO estimates the cost of bills at the request of individual Members."<sup>11</sup>

"Scoring discretionary spending measures is a much simpler task than scoring direct spending and revenue legislation. In the latter case, scoring always is done in reference to baseline projections of future revenues and spending. Most appropriations are for a definite amount and the budget authority is provided for a single fiscal year. The main task is to estimate the outlays that will derive in the next year and beyond from the budget authority provided in the appropriations bill. CBO and the Appropriations Committees base these estimates on outlay (or spendout) rates — the percentage of budget authority that is spent in each year. These outlay rates vary by account and are based on historical records. For example, if \$1 billion is appropriated to an account that has a spendout rate of 80% in the first fiscal year that funds become available, the outlay estimate for that fiscal year will be \$800 million; the remaining \$200 million will become outlays in one or more subsequent years."<sup>12</sup>

Scorekeeping is much more complex in enforcing a PAYGO requirement. For one thing, unlike appropriations, revenue and direct spending legislation usually is open-ended; it does not specify the amount by which revenue or spending will be changed. For another, the impact of this type of

<sup>10</sup> Background on Cost Estimates. Congressional Budget Office. 11 February 2008. <http://www.cbo.gov/CEBackground.shtml>.

<sup>11</sup> Background on Cost Estimates. Congressional Budget Office. 11 February 2008. <http://www.cbo.gov/CEBackground.shtml>.

<sup>12</sup> Robert Keith. "Introduction to the Federal Budget Process," CRS Report: 98-721, December 28, 2004, p. 8. <http://www.congress.gov/erp/rl/pdf/98-721.pdf>.

legislation continues in future years. In enforcing the statutory PAYGO requirement, Congress had to estimate the revenue gain or loss for the ensuing five years; under the Senate PAYGO rule, revenue estimates must cover 10 years. Congress cannot develop the revenue estimates simply by referring to the text of the legislation being scored. It must also take into account the behavior of taxpayers, economic conditions, and other factors that affect revenue collection."<sup>13</sup>

"Keep in mind that each CBO estimate provided... is for a bill or resolution at a particular stage of the legislative process and that the bill--and its estimated budgetary effects--may have changed since the estimate was prepared."<sup>14</sup>

"In addition to regular cost estimates (prepared primarily for committee-reported bills), CBO prepares estimates for legislation that has been cleared by the Congress and for which CBO estimates an impact on either direct spending or governmental receipts."<sup>15</sup>

"CBO's cost estimates have become an integral part of the legislative process, and committees increasingly refer to them at every stage of drafting bills. The estimates may also have an impact on the final outcome of legislation because they are used to determine whether committees are complying with the annual budget resolutions and reconciliation instructions."<sup>16</sup>

## Unfunded Mandates

Excerpt From: A Review of CBO's Activities in 2006 Under the Unfunded Mandates Reform Act (p. 1)  
April 2007  
Congressional Budget Office<sup>17</sup>

The Federal Government – through laws and regulations – sometimes requires that state, local, and tribal governments and various entities in the private sector expend resources to achieve national goals. In 1995, the Unfunded Mandates Reform Act (UMRA) was enacted to ensure that, during the legislative process, the Congress receives information about particular requirements that it considers to be federal mandates before enacting legislation that would affect state, local, or tribal governments or private-sector entities. Similarly, the act seeks to ensure that such information is provided to the executive branch agencies during the rulemaking process.

UMRA defines a mandate as an position in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or on the private sector; that would reduce or eliminate funding authorized to cover the costs of existing mandates; or that would increase the stringency of conditions that apply to certain mandatory programs or make cuts in federal funding for those programs. Duties are imposed as a condition of federal assistance or that arise from participation in a voluntary federal program generally not mandates as defined by UMRA.

The act consists of four titles, the first of which specifically applies to the Congressional Budget Office (CBO). Title I of UMRA requires that CBO provide Congress with information about the costs of proposed federal mandates. CBO fulfills its responsibilities under UMRA by preparing mandate statements that address whether mandates are contained in a bill and whether they would impose direct costs that are greater than the statutory thresholds established by UMRA. (In 2006, those thresholds, which are adjusted annually for inflation, were \$64 million for inter-governmental mandates and \$128 million for private-sector mandates.) If CBO cannot estimate the cost of a mandate, its statement must indicate that such an estimate is not feasible and why.

UMRA also established procedural rules for both the House and Senate that enforce requirements of title I through the use of points of order. A point of order can be raised in the House or

<sup>13</sup> Robert Keith. "Introduction to the Federal Budget Process," CRS Report: 98-721, December 28, 2004, p. 8.  
<http://www.congress.gov/erp/rl/pdf/98-721.pdf>.

<sup>14</sup> Background on Cost Estimates. Congressional Budget Office. 3 January 2008.  
<http://www.cbo.gov/CEBackground.shtml>.

<sup>15</sup> Background on Cost Estimates. Congressional Budget Office. 3 January 2008.  
<http://www.cbo.gov/CEBackground.shtml>.

<sup>16</sup> Background on Cost Estimates. Congressional Budget Office. 3 January 2008.  
<http://www.cbo.gov/CEBackground.shtml>.

<sup>17</sup> 3 January 2008. <http://www.cbo.gov/ftpdocs/79xx/doc7982/04-03-UMRA.pdf>.

Senate against the consideration of legislation if the committee reporting a bill has not published a statement by CBO on intergovernmental and private-sector mandates. (Title I specifically requires that authorizing committees add information about mandates to their reports, including mandate statements prepared by CBO.) In addition, Members of Congress may raise a point of order against legislation that creates an intergovernmental mandate which costs above the threshold specified in UMRA- unless the legislation authorizes or provides funding to cover these costs. If a point of order is raised under UMRA, each chamber resolves the issue according to its established rules and procedures. Although such procedural requirements do not preclude the Congress from passing bills that contain mandates, they may introduce additional hurdles to passage.

# The Role of the Office of Management and Budget in Budget Development

CRS Report: RS20167  
Updated June 17, 2008

Bill Heniff Jr.  
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Government and Finance Division

The Office of Management and Budget (OMB) assists the President in carrying out his budgetary duties. Originally created by the 1921 Budget and Accounting Act as the Bureau of the Budget, it was reconstituted as OMB in 1970. Its primary function is to oversee the development and implementation of the federal budget.

The OMB and its director play a unique role in the preparation of the President's budget submission to Congress. As the overseer of budget development for the President, OMB sets forth the framework by which agencies formulate their budget requests, and is responsible for ensuring agency budget requests are consistent with the President's agenda and policy goals. As a consequence, the OMB director potentially can wield a great deal of influence over agency budget requests and the final shape of the President's budget.

Each spring, approximately 10 months before the President's budget is submitted to Congress, the initial formation of the budget begins at the agency level. At the same time, OMB reviews major policy issues and updates its multi-year forecasts for spending and revenue. Once OMB completes its review, the budget outlook and policy alternatives are presented to the President. After the President makes his initial policy decisions regarding the budget, OMB is responsible for notifying federal departments and agencies. These decisions may include specific budgetary guidelines and spending ceilings to be used by agencies in the preparation of their budgets. Generally, these instructions vary from year to year depending on current budgetary and political conditions.

OMB communicates process and policy guidelines to agencies through circulars, bulletins, and other detailed communications. In particular, OMB Circular No. A-11 contains detailed instructions and schedules for submission of agency budget requests and other material to ensure that budget requests adhere to standardized conventions and formats. OMB staff also maintain ongoing contact with agencies as they formulate their budget requests to provide guidance and to keep apprised of agencies' budgetary concerns.

Agencies submit their formal budget requests to OMB in early fall, usually about five months before the President submits his budget to Congress (and about 13 months before the start of the fiscal year). OMB staff responsible for each particular department or agency review the initial budget requests and clarify any policy and technical questions with agency officials. If an agency includes legislative initiatives in its budget request, OMB determines whether the proposals are consistent with the President's policy goals. Then, based on these evaluations, OMB staff make recommendations regarding program policy and spending levels to the OMB director. Final decisions are made by the OMB director, and agencies are notified of these decisions through what is known as an OMB "passback." If an agency disagrees with aspects of the passback, it may appeal to the director, or in some cases, directly to the President. Once a final decision is made, the agency must revise its budget request accordingly.

The finalized agency budgets, as modified, are then incorporated into the budget the President submits to Congress. OMB is responsible for preparing the accompanying budget documents that provide an explanation and justification of the President's government-wide budget policy. The budget documents then are printed and submitted to Congress and the public.

OMB also assists in the integration of program performance and budgeting. For instance, under the Government Performance and Results Act (GPRA) of 1993 ([P.L. 103-62](#)), OMB is required to have agencies prepare annual performance plans along with their budget requests. The annual

performance plans set out measurable performance goals for the fiscal year, a description of the operational processes and resources necessary to meet the performance goals, and a description of how the measured values will be verified and validated. Like agency budget requests, agency performance plans are submitted to OMB for review in early fall. OMB staff review the agency performance plans, and the OMB director gives final approval to these plans. Agencies must revise their performance plans to reflect these decisions. Based on these agency annual performance plans, OMB is required to prepare a government-wide performance plan as a part of the President's budget.

In addition, as part of President George W. Bush's Management Agenda, OMB has developed the Performance Assessment Resource Tool (PART) to evaluate the performance of programs. The "accountability tool" is intended to assist OMB budget examiners and agency program managers in making "evidence-based funding decisions." For further information on GPRA and PART, see CRS Report RL32164, [\*Performance Management and Budgeting in the Federal Government: Brief History and Recent Developments.\*](#)

# The President's Budget

Excerpt from CRS Report: 98-721<sup>18</sup>  
Updated November 20, 2008

Introduction to the Federal Budget Process (pages 9-10)  
Robert Keith  
Specialist in American National Government  
Government Division

## The Presidential Budget Process

The President's budget, officially referred to as the *Budget of the United States Government*, is required by law to be submitted to Congress early in the legislative session, no later than the first Monday in February. The budget consists of estimates of spending, revenues, borrowing, and debt; policy and legislative recommendations; detailed estimates of the financial operations of federal agencies and programs; data on the actual and projected performance of the economy; and other information supporting the President's recommendations.

The President's budget is only a request to Congress; Congress is not required to adopt his recommendations. Nevertheless, the power to formulate and submit the budget is a vital tool in the President's direction of the executive branch and of national policy. The President's proposals often influence congressional revenue and spending decisions, though the extent of the influence varies from year to year and depends more on political and fiscal conditions than on the legal status of the budget.

The Constitution does not provide for a budget, nor does it require the President to make recommendations concerning the revenues and spending of the federal government. Until 1921, the federal government operated without a comprehensive presidential budget process. The Budget and Accounting Act of 1921, as amended, provides for a national budget system. Its basic requirement is that the President should prepare and submit a budget to Congress each year. The 1921 act established the Bureau of the Budget, now named the Office of Management and Budget (OMB), to assist the President in preparing and implementing the executive budget. Although it has been amended many times, this statute provides the legal basis for the presidential budget, prescribes much of its content, and defines the roles of the President and the agencies in the process.

### Formulation and Content of the President's Budget

Preparation of the President's budget typically begins in the spring (or earlier) each year, at least nine months before the budget is submitted to Congress, about 17 months before the start of the fiscal year to which it pertains, and about 29 months before the close of that fiscal year. The early stages of budget preparation occur in federal agencies. When they begin work on the budget for a fiscal year, agencies already are implementing the budget for the fiscal year in progress and awaiting final appropriations actions and other legislative decisions for the fiscal year after that. The long lead times and the fact that appropriations have not yet been made for the next year mean that the budget is prepared with a great deal of uncertainty about economic conditions, presidential policies, and congressional actions.

As agencies formulate their budgets, they maintain continuing contact with the OMB examiners assigned to them. These contacts provide agencies with guidance in preparing their budgets and also enable them to alert OMB to any needs or problems that may loom ahead. Agency requests are submitted to OMB in late summer or early fall; these are reviewed by OMB staff in consultation with the President and his aides. The 1921 Budget and Accounting Act bars agencies from submitting their budget requests directly to Congress. Moreover, OMB regulations provide for confidentiality in all budget requests and recommendations prior to the transmittal of the Presi-

<sup>18</sup> <http://apps.crs.gov/products/rl/pdf/98-721.pdf>



dent's budget to Congress. However, it is quite common for internal budget documents to become public while the budget is still being formulated.

The format and content of the budget are partly determined by law, but the 1921 act authorizes the President to set forth the budget "in such form and detail" as he may determine. Over the years, there has been an increase in the types of information and explanatory material presented in the budget documents.

In most years, the budget is submitted as a multi-volume set consisting of a main document setting forth the President's message to Congress and an analysis and justification of his major proposals (the *Budget*) and supplementary documents providing account and program level details, historical information, and special budgetary analyses (the *Budget Appendix*, *Historical Tables*, and *Analytical Perspectives*), among other things.

Much of the budget is an estimate of requirements under existing law rather than a request for congressional action (more than half of the budget authority in the budget becomes available without congressional action). The President is required to submit a budget update (reflecting changed economic conditions, congressional actions, and other factors), referred to as the *Mid-Session Review*, by July 15 each year. The President may revise his recommendations any time during the year.

### **Executive Interaction with Congress**

The President and his budget office have an important role once the budget is submitted to Congress. OMB officials and other presidential advisors appear before congressional committees to discuss overall policy and economic issues, but they generally leave formal discussions of specific programs to the affected agencies. Agencies thus bear the principal responsibility for defending the President's program recommendations at congressional hearings.

Agencies are supposed to justify the President's recommendations, not their own. OMB maintains an elaborate legislative clearance process to ensure that agency budget justifications, testimony, and other submissions are consistent with presidential policy. As the session unfolds, the President may formally signal his position on pending legislation through the issuance of a Statement of Administration Policy (SAP). These statements, which are maintained by OMB on its website, sometimes are used to convey a veto threat against legislation the President feels requires modifications to meet his approval.

Increasingly in recent years, the President and his chief budgetary aides have engaged in extensive negotiations with Congress over major budgetary legislation. These negotiations sometimes have occurred as formal budget "summits" and at other times as less visible, behind-the-scenes activities.

# Budget Laws and the Budget Committees

## History of the Budget Laws

Excerpt From: The Congressional Budget Process: An Explanation (p. 6-10)<sup>19</sup>  
December 1998  
Senate Budget Committee

### **Congressional Budgeting Prior to 1974**

Prior to the enactment of the Congressional Budget Act of 1974, Congress often wrestled with how to effectively oversee increasing government expenditures. In the late 19th century and the early 20th century, Congress enacted a number of laws to control and coordinate spending by the executive branch. Similar efforts were made during the 1940's with respect to the legislative branch; however, none of these changes endured. In 1974, Congress enacted the Congressional Budget and Impoundment Control Act to coordinate and control the legislative branch's budget activities and to curb the President's impoundment powers.

#### The Anti-Deficiency Act

In 1870, the legislative appropriations bill was the vehicle for a number of reforms relating to appropriations practices, including the section later known as the Anti-Deficiency Act. This was the first major effort by Congress to exert more control over Government expenditures. At the time, agencies frequently obligated more funds than they had been appropriated and then submitted "coercive deficiency" requests to Congress to pay their bills. The Anti-Deficiency Act provided that no department could make greater expenditures during a fiscal year than had been provided by Congress. In addition, the departments could not enter into contracts for the future payment of money in excess of appropriations.

#### The Budget and Accounting Act of 1921

The Budget and Accounting Act of 1921 was enacted in response to the consensus that developed shortly after the turn of the century that a more centralized approach to financial policy and processes was needed, in both the executive and legislative branches. The Act codified the submission of the President's budget and created the Bureau of the Budget (the predecessor to the Office of Management and Budget (OMB)) to oversee the executive budget process. The Act also established the General Accounting Office (GAO), since renamed the Government Accountability Office, as the government's auditor, responsible only to Congress. The mission of GAO is to provide Congress with an independent audit of executive accounts and to report on violations of the fiscal statutes.

#### Joint Committee on the Reduction of Federal Expenditures

The Joint Committee was established by the Revenue Act of 1941. Its membership was composed of the members of the House and Senate Appropriations Committees. The staff of the committee tracked Congressional action against the President's budget request, generally using Bureau of the Budget estimates. Scorekeeping reports of Congressional action were published on a regular basis when Congress was in session. The Joint Committee was replaced by the Congressional Budget Office following enactment of the Budget Act.

#### Joint Committee on the Legislative Budget

The Legislative Reorganization Act of 1946 created the Joint Committee on the Legislative Budget. Its membership was comprised of members of the House and Senate Appropriations

<sup>19</sup> 3 January 2008. [http://budget.senate.gov/democratic/the\\_budget\\_process.pdf](http://budget.senate.gov/democratic/the_budget_process.pdf)

Committees, the Senate Finance Committee and the House Ways and Means Committee. The Joint Committee was to meet at the beginning of each session of Congress and report to their respective Houses a legislative budget for the ensuing fiscal year, including total estimated Federal receipts and expenditures. A concurrent resolution was to accompany the report adopting such a budget, which would fix the maximum amount to be appropriated during the year. If estimated expenditures were to exceed estimated receipts, the resolution was to include a statement that it was the sense of Congress that the public debt would be increased by that amount. Attempts were made in 1947 and 1948 to carry out the intent of the legislative budget provision. In 1947, conferees were unable to reach a final agreement. In 1948, a joint resolution was adopted by both Houses, but a strongly worded minority report noted basic defects in the procedure. No further attempts were made to comply with the Act after 1949.

### President's Commission on Budget Concepts

In 1967, President Johnson appointed a commission to make a thorough study of the federal budget and the manner of its presentation. The Commission's most important recommendation was that a unified budget presentation replace the several competing and confusing measures of the total scope of federal financial activity. The report of the President's Commission on Budget Concepts serves as the foundation for most budgetary concepts used at the present time.

### The Congressional Budget Act: Need for the law in the 1970's

Two developments provided the impetus for the enactment of the Budget Act in 1974. One development was an increasing realization by Congress that it had no means to develop an overall budget plan. Prior to 1974, Congress responded to the President's budget (which contains the President's many spending and revenue proposals) each year in a piece-meal fashion. There existed no framework for Congress to establish its own spending priorities before work began on specific spending and revenue bills during the spring and summer.

A second, and more immediate, cause for passage of the Budget Act was a dispute in the early 1970's regarding presidential authority to impound money appropriated by Congress. During this time, President Nixon repeatedly asserted authority (as had many of his predecessors) to withhold from Federal agencies money appropriated by Congress. By 1973, it was believed that President Nixon had impounded up to \$15 billion of spending previously approved by Congress. A large portion of these funds were to have gone towards the building of highways and pollution control projects. Many in Congress disputed these actions by the President. The authorization for the pollution control projects, for example, had been enacted by Congress in 1972 with a strong vote in both Houses overriding President Nixon's veto. Nonetheless, the President impounded much of this spending. These events led Members of Congress to seek a legislative solution.

In 1974 Congress enacted the Congressional Budget and Impoundment Control Act to establish procedures for developing an annual congressional budget plan and achieving a system of impoundment control. The Budget Act also created, for the first time, congressional standing committees devoted solely to the budget. It also created the Congressional Budget Office (CBO) to serve as the "scorekeeper" for Congress. CBO is responsible for producing an annual economic forecast, formulating the baseline, reviewing the President's annual budget submission, scoring all spending legislation reported from committee and passed by the Congress, and preparing reports in compliance with the Unfunded Mandates Reform Act. CBO's policy with respect to providing estimates is set out in Appendix B. The Joint Committee on Taxation scores all revenue measures.

### The Committee on the Budget

The Budget Act created the Budget Committees of the Senate and House and gave them the responsibility to draft Congress's annual budget plan and to monitor action on the budget for the Federal Government. For the first time, congressional institutions were in place whose unique concern would be Federal budgetary policy. As a result, the Budget Committee was, and remains today, uniquely focused on the details of our Federal budget, the drafting of the budget resolution, and the compilation of reconciliation legislation.

The Budget Committee has jurisdiction over the congressional budget process and the operation of CBO...

## **Changes to the Budget Act since 1974**

### Gramm-Rudman-Hollings 1985 and 1987

In the face of ever increasing budget deficits, in 1985 Congress enacted the Balanced Budget and Emergency Deficit Control Act. This Act is known as Gramm-Rudman-Hollings-- after the Senate authors of the original bill (Senators Phil Gramm of Texas, Warren Rudman of New Hampshire, and Ernest F. Hollings of South Carolina).

Gramm-Rudman-Hollings established "maximum deficit amounts." If the deficit exceeded these statutory limits, the President was required to issue a sequester order that would reduce all non-exempt spending by a uniform percentage. Gramm-Rudman-Hollings also made a number of changes to the congressional budget process to enforce maximum deficit amounts and to strengthen congressional budget enforcement procedures. The most significant change was to increase the margin necessary to waive certain points of order from a simple majority vote to a three-fifths margin in the Senate.

In July of 1986 in *Bowsher v. Synar* (478 U.S. 714, 1986), the Supreme Court held that the provision of Gramm-Rudman-Hollings that vested certain powers in the General Accounting Office violated the separation of powers doctrine of the Constitution. This was due to the Office's (a creature of Congress) role in implementing sequester orders. The Court found it unacceptable from a constitutional perspective for Congress to vest in a congressional entity a duty of the executive branch--the responsibility for executing a law. In 1987, Congress enacted the Balanced Budget and Emergency Deficit Control Reaffirmation Act, which corrected the constitutional flaw in Gramm-Rudman-Hollings by assigning all the sequester responsibilities to the Office of Management and Budget (OMB), part of the executive branch. The 1987 Act also extended the system of deficit limits through fiscal year 1992.

### The Budget Enforcement Act of 1990

It was not long, however, before Congress realized that despite Gramm-Rudman-Hollings procedures, the deficit continued to increase. In the spring of 1990, it became clear that the deficit was going to exceed the Gramm-Rudman's maximum deficit limit by nearly \$100 billion. Later that year, OMB estimated that a sequester of \$85 billion would be necessary to eliminate this excess deficit amount. Because Congress had exempted most of the budget from the sequester process, such a sequester order was going to require a 32 percent reduction in defense programs and a 35 percent reduction in non-defense programs. To respond to growing deficits, President Bush and the congressional leadership agreed to convene negotiations on the budget in May of 1990. Six months later, President Bush signed into law the Omnibus Budget Reconciliation Act of 1990, which represented the budget agreement negotiated between the Bush Administration and Congress.

Title XIII of this reconciliation act, the Budget Enforcement Act, constituted the enforcement provisions of the agreements. The 1990 Budget Enforcement Act (BEA) effectively replaced the Gramm-Rudman-Hollings system of deficit limits with two independent enforcement regimens: caps on discretionary spending and a pay-as-you-go requirement for direct spending and revenue legislation. The BEA also provided for enforcement by both the congressional and executive branch of the discretionary caps and the pay-as-you-go requirement.

### Amendments Since 1990

The budget disciplines of the BEA were extended in the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997 and are due to expire at the end of FY 2002. In addition to extending spending discipline through FY 2002, the Balanced Budget Act of 1997 also

made a number of changes to the Congressional Budget Act of 1974. These changes were largely technical in nature and were intended to conform the Act to current congressional practices and precedents.

# The Congressional Budget

Excerpts from CRS Report: RL30297<sup>20</sup>  
Updated January 29, 2010

“Congressional Budget Resolutions: Historical Information” (pages 1, 9 – 27)

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## Introduction

The Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, as amended; 2 U.S.C. 601-688) provides for the annual adoption of a concurrent resolution on the budget. The annual budget resolution is an agreement between the House and Senate on a budget plan for the upcoming fiscal year and at least the following four fiscal years. As a concurrent resolution, it is not presented to the President for his signature and thus does not become law. The budget resolution, however, provides the framework for subsequent legislative action on the annual appropriations bills, revenue measures, debt-limit legislation, reconciliation legislation, and any other budgetary legislation. ...

Congress has modified the congressional budget process several times since it was first established in 1974... As originally enacted, the Budget Act required that Congress adopt two budget resolutions each year. The first budget resolution, which was to be adopted by May 15, was advisory in nature. The second budget resolution, which was to be adopted by September 15 (about two weeks before the beginning of the fiscal year), was binding. The second budget resolution revised or reaffirmed the first budget resolution by taking into account budget and economic changes in the months since the first resolution. Additional budget resolutions could be adopted at any time.

The Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, 99 Stat. 1038-1101) eliminated the requirement for a second budget resolution beginning in FY1987. For several preceding years, for FY1983-FY1986, Congress did not adopt a second budget resolution, but instead included a provision in the first budget resolution that made the spending and revenue totals in it binding automatically as of the beginning of the fiscal year.

## Formulation and Content of the Budget Resolution

Following the submission of the President's budget in January or February, Congress begins formulating its budget resolution. The House and Senate Budget Committees are responsible for developing and reporting the budget resolution.

Within six weeks after the President's budget submission, each House and Senate committee is required to submit its "views and estimates" relating to budget matters under their jurisdiction to their respective Budget Committee (Section 301(d) of the Budget Act). These views and estimates, often submitted in the form of a letter to the chair and ranking member of the Budget Committee, typically include comments on the President's budget proposals and estimates of the budgetary impact of any legislation likely to be considered during the current session of Congress. The Budget Committees are not bound by these recommendations. The views and esti-

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<sup>20</sup> See the full and updated report at: <http://apps.crs.gov/products/rl/pdf/RL30297.pdf>

mates often are printed in the committee report accompanying the resolution in the Senate or compiled in a separate committee print in the House.

The budget resolution was designed to provide a framework to make budget decisions, leaving specific program determinations to the Appropriations Committees and other committees with spending and revenue jurisdiction. In many instances, however, particular program changes are considered when formulating the budget resolution. Program assumptions are sometimes referred to in the reports of the Budget Committees or may be discussed during floor action. Although these program changes are not binding, committees may be strongly influenced by these recommendations when formulating appropriations bills, reconciliation measures, or other budgetary legislation...

## Content and Coverage of the Budget Resolution

Section 301(a) of the Budget Act requires that the budget resolution include the following matters for the upcoming fiscal year and at least the ensuing four fiscal years:

- aggregate levels of new budget authority, outlays, the budget surplus or deficit, and the public debt;
- aggregate levels of federal revenues and the amount, if any, by which the aggregate levels of federal revenues should be increased or decreased by legislative action;
- amounts of new budget authority and outlays for each of the major functional categories; and
- for purposes of Senate enforcement procedures, Social Security outlays and revenues (although these amounts are not included in the budget surplus or deficit totals due to their off-budget status).

In addition to the content required by the Budget Act, Section 301(b) lists several other matters that may be included in the budget resolution...

The most important of the optional matters is the inclusion of reconciliation directives provided by Section 310 of the Budget Act. Budget reconciliation is an optional two-step process Congress may use to bring direct spending, revenue, and debt-limit levels into compliance with those set forth in budget resolutions.<sup>21</sup> In order to accomplish this, Congress first includes reconciliation directives in a budget resolution directing one or more committees in each chamber to recommend changes in statute to achieve the levels of direct spending, revenues, debt limit, or a combination thereof, agreed to in the budget resolution. The legislative language recommended by committees then is packaged "without any substantive revision" into one or more reconciliation bills, as set forth in the budget resolution, by the House and Senate Budget Committees. In some instances, a committee may be required to report its legislative recommendations directly to its chamber.

Once the Budget Committees, or individual committees if so directed, report reconciliation legislation to their respective chambers, consideration is governed by special procedures.<sup>22</sup> These special rules serve to limit what may be included in reconciliation legislation, to prohibit certain amendments, and to encourage its completion in a timely fashion...

Another optional component of budget resolutions has been the inclusion of reserve funds. The reserve fund provisions generally provide for the revision of budget resolution aggregates, functional allocations, and committee allocations if certain deficit-neutral legislation is enacted or

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<sup>21</sup> For a more detailed discussion of the reconciliation process, see CRS Report RL33030, "The Reconciliation Process: House and Senate Procedures," by Robert Keith and Bill Heniff, Jr.

<sup>22</sup> For a brief summary of these procedures, see [CRS Report 98-814](#), Budget Reconciliation Legislation: Development and Consideration, by Bill Heniff, Jr.

some other condition is met. Over the last decade, Congress often has included several reserve funds in budget resolutions... For instance, the FY2010 budget resolution ([S.Con.Res. 13](#), 111th Congress) included 34 reserve funds...

As an indication of policy intent, Congress has often included declaratory statements in budget resolutions. These nonbinding statements express the sense of Congress, the sense of the House, or the sense of the Senate on various issues... Congress has included, on average, 22 declaratory statements in the last 13 budget resolutions (not including budget resolutions for FY1999, FY2003, FY2005, and FY2007 because Congress did not complete action on these measures) but only, on average, about two and a half declaratory statements in the first 18 budget resolutions.

The annual budget resolution also may require a deferred enrollment procedure (see Section 301(b)(3) of the Budget Act), under which all or certain bills providing new budget authority or new entitlement authority for the upcoming fiscal year cannot be enrolled until Congress has completed action on a reconciliation measure (or, prior to FY1987, a reconciliation measure or the second budget resolution). Budget resolutions for FY1981, FY1982, FY1983, and FY1984 contained deferred enrollment provisions.<sup>23</sup>

Lastly, Congress has included several other procedural provisions in budget resolutions. Under Section 301(b)(4) of the Budget Act, the so-called *elastic clause*, Congress may "set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of" the Congressional Budget Act in the budget resolution... Some of these procedural provisions include deferred enrollment; automatic second budget resolutions; special budgetary treatment of certain activities, such as the sale of government assets; and more recently, enforcement of a pay-as-you-go requirement in the Senate, and limits on advance appropriations.

### **Number of Years Covered by the Budget Resolution**

Originally, the Budget Act mandated that budget resolutions cover only the upcoming fiscal year beginning on October 1 (referred to as the budget year). A desire to use the budget resolution as a tool for budget planning and other factors prompted Congress to expand this time frame to include the upcoming fiscal year as well as the two ensuing fiscal years. Congress used the authority provided by the elastic clause of the Budget Act to adopt three-year budget resolutions for the period covering the second budget resolution for FY1980 through the FY1986 budget resolution. The practice of including three fiscal years was formalized by the 1985 Balanced Budget Act.

The Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, 104 Stat. 1388-573-1388 through 630) temporarily extended to five fiscal years the period the budget resolution is required to cover. The 1990 BEA provision originally covered five-year periods beginning in FY1991 and continuing through FY1995; this provision was extended to cover the FY1996 through FY1998 budget resolutions in 1993 (Title XIV of P.L. 103-66, Omnibus Budget Reconciliation Act of 1993, 107 Stat. 683-685). As an integral part of Congress's goal of achieving a balanced budget by FY2002, the FY1996 and FY1997 budget resolutions covered seven and six fiscal years, respectively. The Budget Enforcement Act of 1997 (Title X of P.L. 105-33, Balanced Budget Act of 1997, 111 Stat. 677-712) amended the Budget Act to require permanently that a budget resolution cover the budget year and *at least* the four ensuing fiscal years...

Congress also may revise budget levels for the current year in the budget resolution, pursuant to Section 304 of the Budget Act. Congress has adopted 13 first budget resolutions that revised current-year budget levels.

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<sup>23</sup> The FY 1983 Budget Resolution exempted legislation dealing with certain trust funds from its deferred enrollment provision



## Consideration and Adoption of the Budget Resolution

Floor consideration of the budget resolution differs in the House and Senate. Section 305 of the Budget Act sets forth special procedures for the consideration of the budget resolution, generally to expedite its consideration. The House, however, regularly adopts a special rule, a simple House resolution, setting forth the terms for consideration of the measure. In particular, special rules have been used for more than a decade to limit the offering of amendments to a few major substitutes...

In contrast, floor consideration in the Senate is governed by the procedures set forth in the Congressional Budget Act. The procedures generally limit debate and prohibit certain amendments and motions<sup>24</sup> ...

### Amendments to the Budget Resolution

The House has considered, on average, almost seven amendments per budget resolution.<sup>25</sup> The largest number of amendments considered was 45 in 1979; the largest number agreed to was 11 in 1979 (the first FY1983 budget resolution also was amended 11 times, but it subsequently was rejected)... The amending activity in the House during the last several years is in marked contrast to the early years of the congressional budget process. During the first eight years, the House considered, on average, 16 amendments per budget resolution, agreeing to, on average, four of these. In contrast, during the past 27 years, the House has considered very few amendments to budget resolutions, averaging three per budget resolution, and agreeing to even fewer of these. Of the 96 amendments considered by the House during this time period, only four were adopted. Since 1992, the House has rejected all amendments.

Contributing to this trend, the House special rule typically has allowed for consideration of only amendments in the nature of a substitute to the budget resolution. For example, between 1983 and 2009 (for the FY1984-FY2010 budget resolutions), 91 out of the 96 amendments to the budget resolution made in order by the special rule were amendments in the nature of a substitute. Only one of these 91 amendments in the nature of a substitute was agreed to; that one contained the budget resolution text recommended by the House Budget Committee offered by its chair at the time, Representative William H. Gray III (PA)...

Unlike the House, which has no reporting deadline for its budget committee to report a budget resolution, the Senate has an April 1 reporting deadline for the budget resolution.<sup>26</sup> In addition, the terms of debate and the consideration of amendments are not structured by a special rule, as in the House, but instead are governed by the procedures set forth in Section 305(b) of the Budget Act. Typically, a larger number of amendments is considered, consisting of substitute amendments as well as amendments that address specific issues.

During the period between 1975 and 2009, the Senate considered, on average, about 46 amendments per budget resolution, agreeing to, on average, 26 of these.<sup>27</sup> The largest number of amendments considered was 121 in 2009; the largest number agreed to was 101, also in 2009... In contrast to the House, the number of amendments considered by the Senate has increased over the last decade. For the last 16 budget resolutions considered on the floor, for example, the Senate considered, on average, 78 amendments per budget resolution, agreeing to, on average, almost 50 of these. Amendments have been agreed to in the Senate at a much higher rate compared to the House as well. For instance, in 12 of the past 16 years in which a budget resolution was considered on the floor, the success rate for amendments has equaled or exceeded 60%.

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<sup>24</sup> For a discussion of these procedures, see CRS Report 98-511, *Consideration of the Budget Resolution*, by Bill Heniff, Jr.

<sup>25</sup> The averages, as well as the averages related to Senate amendments, derive from all first budget resolutions considered and adopted on the House or Senate floor. That is, the averages do not include amendments to budget resolutions that subsequently were rejected.

<sup>26</sup> For further information, see CRS Report RS20541, *Congressional Budget Resolutions: Reporting Deadline in the Senate*, by Robert Keith.

<sup>27</sup> This averages presented in this section are derived from all first budget resolutions considered on the Senate floor. Accordingly, they do not include the FY2003 budget resolution because it was not considered on the Senate floor.

## Consequences of Failure to Pass a Budget Resolution: Deeming Resolutions

Excerpt from CRS Report: RL33122<sup>28</sup> (p. 16)  
April 16, 2009

“Congressional Budget Resolutions: Revisions and Adjustments”

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“Deeming resolution” is a term that refers to legislation deemed to serve as an annual budget resolution for purposes of establishing enforceable budget levels for a budget cycle.<sup>29</sup> A deeming resolution is used when the House and Senate are late in reaching final agreement on a budget resolution or fail to reach agreement altogether.

The term “deeming resolution” is not officially defined, nor is there any specific statute or rule authorizing such legislation. Instead, the use of a deeming resolution simply represents the House and Senate employing regular legislative procedures to deal with the issue on an ad hoc basis.

The form and content of a deeming resolution is not prescribed, so it may be shaped to meet the particular needs at hand. For example, the House and Senate have used simple resolutions as the legislative vehicle in the past, but a deeming resolution may be incorporated into a bill, such as an annual appropriations act, as a single provision. At a minimum, deeming resolutions provide new spending allocations to the Appropriations Committees, but they also may set new aggregate budget levels, provide revised spending allocations to other House and Senate committees, or provide for other related purposes.

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<sup>28</sup> <http://www.congress.gov/erp/rl/pdf/RL33122.pdf>

<sup>29</sup> For more information on this topic, see CRS Report RL31443, *The “Deeming Resolution”: A Budget Enforcement Tool*, by Robert Keith.

# The “Gephardt Rule”

Excerpt from CRS Report: RL31913<sup>30</sup> (p.1 – 4)  
Updated July 1, 2009

“Developing Debt-Limit Legislation: The House's 'Gephardt Rule'”

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The amount of money the federal government is allowed to borrow generally is subject to a statutory limit, which is set forth as a dollar limitation in 31 U.S.C. 3101(b). From time to time, Congress and the President enact legislation adjusting the limit.<sup>31</sup> Legislation adjusting the debt limit takes the form of an amendment to 31 U.S.C. 3101(b), usually striking the current dollar limitation and inserting a new one.

The House may develop debt-limit legislation under House Rule XXVIII, commonly referred to as the Gephardt rule, named after its author, former Representative Richard Gephardt. The rule, which first applied in calendar year 1980, provides for the automatic engrossment and transmittal to the Senate of a joint resolution changing the public debt limit, upon the adoption by Congress of the budget resolution, thereby avoiding a separate vote in the House on the public debt-limit legislation. The Senate has no comparable procedure; if it chooses to consider a House-passed joint resolution, it does so under the regular legislative process.

The House also may develop and consider debt-limit legislation without resorting to the Gephardt rule, either as freestanding legislation, as part of another measure, or as part of a budget reconciliation bill.<sup>32</sup> Regardless of the process by which debt-limit legislation is developed, the House Ways and Means Committee maintains exclusive jurisdiction over debt-limit legislation. (In the Senate, the Finance Committee has exclusive jurisdiction over debt-limit legislation.)

This report describes the legislative history of the Gephardt rule, explains its current features, and reviews its implementation from its inception through the present.

## Legislative History of the Gephardt Rule

The Gephardt rule, initially codified as Rule XLIX of the Standing Rules of the House of Representatives, was established by P.L. 96-78 (93 Stat. 589-591), an act to provide for a temporary increase in the public debt limit. The House adopted the legislation ([H.R. 5369](#)) by a vote of 219-198 on September 26, 1979.<sup>33</sup>

During consideration of the measure, Representative Gephardt explained that the purpose of the new House rule was to place the consideration of the public debt limit within the context of the overall budget policies contained in the annual budget resolution. In addition, it was intended to reduce the amount of time spent and the number of votes in the House and in committees on the issue of raising the public debt limit.

One of the aggregate figures required to be included in the annual budget resolution is the appropriate level of the public debt. As the budget resolution has evolved over time from a single-year time frame to a multi-year time frame, the budget resolution has gone from including a debt-limit

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<sup>30</sup> <http://apps.crs.gov/products/rl/pdf/RL31913.pdf>

<sup>31</sup> For more information on the debt limit, see [CRS Report RL31967](#), *The Debt Limit: History and Recent Increases*, by D. Andrew Austin and Mindy R. Levit.

<sup>32</sup> For more information on these alternative procedures see [CRS Report RS21519](#), *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill Heniff Jr.

<sup>33</sup> For the consideration in the House, see *Congressional Record*, vol. 125 (September 26, 1979), pp. 26337-26350. The Senate passed H.R. 5369 by a vote of 49-29 on September 28, 1979. For the consideration in the Senate, see *Congressional Record*, vol. 125 (September 28, 1979), pp. 26669-26691. The President signed the legislation into law on September 29, 1979.

level for only one fiscal year to including debt-limit levels for each fiscal year over a multi-year period. Because a budget resolution does not become law, it is necessary to enact legislation in order to implement budget resolution policies regarding debt-limit adjustments. The Gephardt rule enables the House to combine the finalization of the budget resolution and the initiation of debt-limit legislation into a single step.

Representative Gephardt stated that the new automatic engrossment process:

**puts the consideration of the appropriate level for the debt ceiling where it legitimately and logically belongs. That is in the context of when we vote for the spending that creates the need to change the debt ceiling.**<sup>34</sup>

In its original form, the rule required the engrossment of a joint resolution changing the temporary public debt limit. In 1983, the existing, separate temporary and permanent statutory limits on the public debt were combined into one permanent statutory limit (P.L. 98-34). Subsequently, the House amended the Gephardt rule to reflect this change by agreeing to [H.Res. 241](#) (98<sup>th</sup> Congress) by voice vote on June 23, 1983.<sup>35</sup> Under the modified rule, the automatically engrossed joint resolution would contain a change to the permanent statutory limit. In addition to this modification,

**The rules change also provided that where a budget resolution contains more than one public debt limit figure (for the current and the next fiscal year), only one joint resolution be engrossed, containing the debt limit figure for the current fiscal year with a time limitation, and the debt limit figure for the following fiscal year as the permanent limit.**<sup>36</sup>

During consideration of H.Res. 241, Representative Butler C. Derrick explained the limitation of a single joint resolution by stating that:

**The Committee on Rules ... believes that it is unnecessary and confusing to have ... a single concurrent resolution on the budget trigger the engrossment and passage of two separate joint resolutions to increase or decrease the public debt [limit].**<sup>37</sup>

At the beginning of the 106<sup>th</sup> Congress, the House recodified the rule as House Rule XXIII. Certain language was deleted and modified from the existing rule but the revisions were intended to continue the automatic engrossment process "without substantive change."<sup>38</sup>

The House repealed the rule at the beginning of the 107<sup>th</sup> Congress.<sup>39</sup> On the opening day of the 108<sup>th</sup> Congress, the House reinstated this automatic engrossing process as a new rule, Rule XXVII.<sup>40</sup> The current rule contains the exact language as Rule XXIII of the 106<sup>th</sup> Congress.

Finally, the rule was redesignated (without change) as Rule XXVIII during the 110<sup>th</sup> Congress upon the enactment of the Honest Leadership and Open Government Act of 2007 (S. 1, P.L. 110-81, September 14, 2007, see Section 301(a)).

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<sup>34</sup> *Congressional Record*, vol. 125 (Sept. 26, 1979), p. 26342.

<sup>35</sup> See *Congressional Record*, vol. 129 (June 23, 1983), pp. 17162-17164

<sup>36</sup> U.S. Congress, Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Tenth Congress, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 109-157 (Washington: GPO, 2007), p. 981.

<sup>37</sup> *Congressional Record*, vol. 129 (June 23, 1983), p. 17163.

<sup>38</sup> See *Congressional Record*, vol. 145 (January 6, 1999), pp. 206-208; or U.S. Congress, House Committee on Rules, *The Recodification of the Rules of the House of Representatives*, committee print, 106<sup>th</sup> Cong. 1<sup>st</sup> sess. (Washington: GPO, 1999) pp. 172 – 174.

<sup>39</sup> It was repealed by [H.Res. 5](#), adopted on January 3, 2001. See *Congressional Record*, vol. 147 (January 3, 2001), pp. 24 – 37.

<sup>40</sup> Section 2(t) of [H.Res. 5](#), which was agreed to by the House on January 7, 2003. See *Congressional Record*, vol. 149 (January 7, 2003), pp. 7 – 21.

## Current Features of the Gephardt Rule

House Rule XXVIII requires that the House clerk automatically engross and transmit to the Senate, upon the adoption of the budget resolution, a joint resolution changing the public debt limit to the level specified in the budget resolution. The rule stipulates that the joint resolution is deemed to have passed the House by the same vote as the conference report on the budget resolution.

Under clause 2 of the current rule:

**If an adopted concurrent resolution under clause 1 sets forth different appropriate levels of the public debt for separate periods, only one engrossed joint resolution shall be prepared under clause 1; and the blank referred to in the preceding sentence shall be filled with the limitation that is to apply for each period.**

Further, clause 3(a) of Rule XXVIII requires the House Budget Committee and the conference committee on the budget resolution to issue a clear statement regarding the impact of the automatically engrossed joint resolution on the public debt.<sup>41</sup> Specifically, clause 3(a) states:

**The report of the Committee on the Budget on a concurrent resolution described in clause 1 and the joint explanatory statement of the managers on a conference report to accompany such a concurrent resolution each shall contain a clear statement of the effect the eventual enactment of a joint resolution engrossed under this rule would have on the statutory limit on the public debt.**

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<sup>41</sup> For a recent example of such a statement, see U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2008*, conference report to accompany [S.Con.Res 21](#), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., [H.Rept. 110-153](#) (Washington: GPO, 2007), p. 133.

## Crosswalk

“The annual budget resolution sets forth total spending and revenue levels for at least five fiscal years. The spending amounts are allocated, or “crosswalked,” to the House and Senate committees having jurisdiction over discretionary spending (the Appropriations Committees) and direct spending (the legislative committees). The committee allocations provide Congress with one means of enforcing the spending levels of a budget resolution after it has been adopted.”<sup>42</sup>

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<sup>42</sup> Bill Heniff Jr. “Allocations and Subdivisions in the Congressional Budget Process,” CRS Report: RS20144, June 17, 2008 p.1. <http://www.congress.gov/erp/rs/pdf/RS20144.pdf>.

# Budget Resolution Enforcement: Sections 302 and 311

Excerpt from CRS Report: RL33122<sup>43</sup>  
Updated April 16, 2009

“Congressional Budget Resolutions: Revisions and Adjustments” (pages 1-3)  
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Enforcement of the budget resolution relies primarily upon points of order and reconciliation procedures. Point-of-order provisions contained in the 1974 act, which sometimes are supplemented by point-of-order provisions carried in annual budget resolutions, allow any Member in either chamber to prevent the consideration of legislation that would violate budget resolution policies.<sup>44</sup> Of course, points of order are not self-enforcing and may be waived with a sufficient majority, thereby allowing legislation in violation of budget resolution policies to be considered. In the Senate, most of the points of order pertaining to budget enforcement require the affirmative vote of three-fifths of the membership (60 votes, if no seats are vacant) in order to be waived.

With regard to the substantive enforcement of the budget resolution (i.e., enforcement of budgetary levels), the major points of order under the 1974 act are found in Sections 311 and 302, which deal with the enforcement of budget aggregates and committee spending allocations, respectively. House and Senate rules and practices differ somewhat with regard to these two points of order.

Section 311(a) generally bars the consideration of any spending measure that would violate the aggregate budget authority and outlays levels for the first fiscal year covered by the budget resolution, and any revenue measure that would violate the aggregate revenue level for the first fiscal year or the sum of all fiscal years covered by the budget resolution.

Section 302(a) generally requires that the aggregate amounts of spending recommended in the annual budget resolution be allocated by committee; the House and Senate Appropriations Committees receive an allocation for only one fiscal year, but the remaining House and Senate committees receive allocations for all of the years covered by the budget resolution. Section 302(b) requires the House and Senate Appropriations Committees to subdivide their allocations by subcommittee.<sup>45</sup> Section 302(f) generally bars the consideration of any spending measure that would violate the committee spending allocations made under Section 302(a) or the Appropriations Committees' suballocations of spending made under Section 302(b). In view of the different time frames for making committee spending allocations, the spending levels are enforceable for one year in the case of the Appropriations Committees but are enforceable for a multi-year period in the case of the other House and Senate committees.

The purpose of the budget reconciliation process is to change substantive law so that revenue and mandatory spending levels are brought into line with budget resolution policies.<sup>46</sup> Reconciliation generally has been used to reduce the deficit through spending reductions or revenue increases, or a combination of the two. In recent years, however, the reconciliation process also has encompassed revenue reduction generally and spending increases in selected program areas.

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<sup>43</sup> <http://apps.crs.gov/products/rl/pdf/RL33122.pdf>

<sup>44</sup> For a listing of the points of order, see [CRS Report 97-865](#), *Points of Order in the Congressional Budget Process*, by James V. Saturno.

<sup>45</sup> The spending allocations to committees usually are included in the joint explanatory statement on the budget resolution; the spending suballocations made by the Appropriations Committees are set forth in House or Senate reports, as appropriate.

<sup>46</sup> The reconciliation process is discussed extensively in [CRS Report RL33030](#), *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr., and [CRS Report RL30458](#), *The Budget Reconciliation Process: Timing of Legislative Action*, by Robert Keith.

Reconciliation is a two-step process. Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision, into a single, omnibus budget reconciliation measure. When only one committee is given instructions, that committee reports its reconciliation legislation directly to its chamber, thus bypassing its respective Budget Committee.

Under the second step of the reconciliation process, reconciliation legislation is considered in the House and Senate under expedited procedures (for example, debate time in the Senate on a reconciliation measure is limited to 20 hours and amendments must be germane). The process culminates when the reconciliation legislation is enacted, and the policies of the budget resolution are put into effect, or the reconciliation legislation is vetoed (and the veto is not overridden).



# Reconciliation

## Introduction

Excerpt from CRS Report: RL34015  
Updated June 4, 2007

“Congressional Budget Actions in 2007” (page 12)  
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Congress may implement changes to existing law related to direct spending, revenues, or the debt limit through the reconciliation process, under Section 310 of the Budget Act.<sup>47</sup> The reconciliation process has two stages. First, Congress includes reconciliation directives in a budget resolution directing one or more committees in each chamber to recommend changes in statute to achieve the levels of direct spending, revenues, debt limit, or a combination thereof, agreed to in the budget resolution.<sup>48</sup>

Second, each instructed committee develops legislative recommendations to meet its reconciliation directives and reports its legislative recommendations to its respective chamber directly or transmits such recommendations to its respective budget committee. Section 310(b) of the Budget Act specifies two options for the submission of legislative recommendations to comply with reconciliation directives: (1) if one committee is instructed, the committee reports its legislative recommendations to its parent chamber directly; or (2) if two or more committees are instructed, the committees submit their legislative recommendations to their respective Budget Committee. In the latter case, the legislative language recommended by committees is packaged "without any substantive revision" into one or more budget reconciliation bills, as set forth in the budget resolution, by the House and Senate Budget Committees.

Once the reconciliation legislation is reported in the House or Senate, consideration is governed by special procedures. These procedures serve to limit what may be included in reconciliation legislation, prohibit certain amendments, and encourage its completion in a timely fashion. In the House, as with the budget resolution, reconciliation legislation usually is considered under a special rule, establishing the time allotted for debate and what amendments will be in order. In the Senate, debate on a budget reconciliation bill, and on all amendments, debatable motions, and appeals, is limited to not more than 20 hours. After the 20 hours of debate has been reached, consideration of amendments, motions, and appeals may continue, but without debate.

In both chambers, the Budget Act requires that amendments to reconciliation legislation be germane and not increase the deficit. Also, the Budget Act prohibits the consideration of reconciliation legislation, or any amendment to a reconciliation bill, recommending changes to the Social Security program. Finally, in the Senate, Section 313 of the Budget Act, commonly referred to as the Byrd rule, prohibits extraneous matter in a reconciliation bill.<sup>49</sup>

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<sup>47</sup> For a full discussion of the reconciliation process, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

<sup>48</sup> At the beginning of the 110th Congress, the House adopted a new rule (clause 7 of rule XXI) that prohibits the consideration of a budget resolution containing reconciliation directives that would have the net effect of increasing the deficit or reducing the surplus. In the Senate, Section 202 of S.Con.Res. 21, the FY2008 budget resolution, agreed to on May 17, prohibits the consideration of a reconciliation measure that would increase the deficit or reduce the surplus.

<sup>49</sup> For detailed information on the Byrd rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*, by Robert Keith.

## The “Byrd Rule”

Excerpt from CRS Report: RL30862<sup>50</sup>  
Updated July 8, 2009

“The Budget Reconciliation Process: The Senate's ‘Byrd Rule’” (p. 1-6)

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### Summary

Reconciliation is a procedure under the Congressional Budget Act of 1974 by which Congress implements budget resolution policies affecting mainly permanent spending and revenue programs. The principal focus in the reconciliation process has been deficit reduction, but in some years reconciliation has involved revenue reduction generally and spending increases in selected areas. Although reconciliation is an optional procedure, it has been used most years since its first use in 1980 (19 reconciliation bills have been enacted into law and three have been vetoed).

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of implementing budget resolution policies. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues when the reconciliation instructions called for reduced spending or increased revenues, or that violated another committee's jurisdiction.

In 1985 and 1986, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) on a temporary basis as a means of curbing these practices. The Byrd rule has been extended and modified several times over the years. In 1990, the Byrd rule was incorporated into the Congressional Budget Act of 1974 as Section 313 and made permanent (2 U.S.C. 644).

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation, or, under the Byrd rule, a Senator may raise a point of order against such matter. In general, a point of order authorized under the Byrd rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).

The Byrd rule provides six definitions of what constitutes extraneous matter for purposes of the rule (and several exceptions thereto), but the term is generally described as covering provisions unrelated to achieving the goals of the reconciliation instructions.

The Byrd rule has applied to 17 reconciliation measures considered by the Senate from 1985 through the present. There have been 53 points of order and 42 waiver motions considered and disposed of under the Byrd rule, largely in a manner that favored those who opposed the inclusion of extraneous matter in reconciliation legislation (43 points of order were sustained, in whole or in part, and 33 waiver motions were rejected).

### Introduction

Reconciliation is a process established under Section 310 of the Congressional Budget Act of 1974 (P.L. 93-344), as amended.<sup>51</sup> The purpose of reconciliation is to change substantive law so

<sup>50</sup> <http://apps.crs.gov/products/rl/pdf/RL30862.pdf>

<sup>51</sup> For a detailed discussion of the reconciliation process, see [CRS Report RL33030](#), *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

that revenue and mandatory spending levels are brought into line with budget resolution policies. Reconciliation generally has been used to reduce the deficit through spending reductions or revenue increases, or a combination of the two. In recent years, however, the reconciliation process also has encompassed revenue reduction generally and spending increases in selected program areas.

Reconciliation is a two-step process. Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision, into a single, omnibus budget reconciliation measure. Reconciliation procedures during a session usually have applied to multiple committees and involved omnibus legislation.

Under the second step, the omnibus budget reconciliation measure is considered in the House and Senate under expedited procedures (for example, debate time in the Senate on a reconciliation measure is limited to 20 hours and amendments must be germane). The process culminates with enactment of the measure, thus putting the policies of the budget resolution into effect.

Reconciliation, which was first used by the House and Senate in 1980, is an optional procedure, but it has been used in most years. Over the period covering from 1980 to the present, 19 reconciliation bills have been enacted into law and three have been vetoed.<sup>52</sup>

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of reducing the deficit. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues, or that violated another committee's jurisdiction.

In 1985 and 1986, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) as a means of curbing these practices. Initially, the rule consisted of two components, involving a provision in a reconciliation act and a Senate resolution. The Byrd rule has been modified several times over the years.

The purpose of this report is to briefly recount the legislative history of the Byrd rule, summarize its current features, and describe its implementation from its inception through the present.

## Legislative History of the Byrd Rule

During the first five years that the Byrd rule was in effect, from late 1985 until late 1990, it consisted of two separate components—(1) a provision in statute applying to initial Senate consideration of reconciliation measures, and (2) a Senate resolution extending application of portions of the statutory provision to conference reports and amendments between the two Houses. Several modifications were made to the Byrd rule in 1986 and 1987, including extending its expiration date from January 2, 1987, to January 2, 1988, and then to September 30, 1992, but the two separate components of the rule were preserved. In 1990, these components were merged together and made permanent when they were incorporated into the Congressional Budget Act (CBA) of 1974 as Section 313. There have been no further changes in the Byrd rule since 1990.

The Byrd rule originated on October 24, 1985, when Senator Robert C. Byrd, on behalf of himself and others, offered Amendment No. 878 (as modified) to [S. 1730](#), the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.<sup>53</sup> The Senate adopted the amendment by a vote of

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<sup>52</sup> For additional information on reconciliation measures that became law, see CRS Report R40480, *Budget Reconciliation Measures Enacted Into Law: 1980 – 2008*, by Robert Keith.

<sup>53</sup> For a detailed legislative history of the Byrd rule, see the following print of the Senate Budget Committee: *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., S. Prt. 103-49, October 1993, notes on pp. 229-246.

96-0.<sup>54</sup> In this form, the Byrd rule applied to initial Senate consideration of reconciliation measures.

Senator Byrd explained that the basic purposes of the amendment were to protect the effectiveness of the reconciliation process (by excluding extraneous matter that often provoked controversy without aiding deficit reduction efforts) and to preserve the deliberative character of the Senate (by excluding from consideration under expedited procedures legislative matters not central to deficit reduction that should be debated under regular procedures). He opened his remarks by stating:

**. . . we are in the process now of seeing . . . the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.**

**It was never foreseen that the Budget Reform Act would be used in that way. So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate -- which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.<sup>55</sup>**

The Byrd amendment was included in modified form in COBRA of 1985 (P.L. 99-272), which was not enacted into law until April 7, 1986, as Section 20001 (100 Stat. 390-391). The Byrd rule, in this form, thus became effective on April 7. As originally framed, the Byrd rule was set to expire on January 2, 1987.

**Figure 1. Laws and Resolutions  
Establishing the Byrd Rule**

**P.L. 99-272**, Consolidated Omnibus Budget Reconciliation Act of 1985, Section 2001 (100 Stat. 390-391), April 7, 1986.

**S.Res. 286** (99th Congress, 1st Session), December 19, 1985.

**S.Res. 509** (99th Congress, 2nd Session), October 16, 1986.

**P.L. 99-509**, Omnibus Budget Reconciliation Act of 1986, Section 7006 (100 Stat. 1949-1950), October 21, 1986.

**P.L. 100-119**, Increasing the Statutory Limit on the Public Debt, Section 205 (101 Stat. 784-785), September 29, 1987.

**P.L. 101-508**, Omnibus Budget Reconciliation Act of 1990, Section 13214 (104 Stat. 1388-621 through 1388-623), November 5, 1990.

**P.L. 105-33**, Balanced Budget Act of 1997, Section 10113(b)(1) (111 Stat. 688), August 5, 1997.

Over the years, the Senate has expanded and revised the Byrd rule through the adoption of two resolutions and the inclusion of provisions in four laws. **Table 1** lists the laws and resolutions that have established and revised the Byrd rule.

On December 19, 1985, the Senate adopted by voice vote a resolution ([S.Res. 286](#)), sponsored by Senator Alan Simpson and others, that extended the application of portions of the statutory provision to conference reports and amendments between the two Houses. Because the enactment of COBRA of 1985 was delayed until early 1986, the portion of the Byrd rule dealing with conference reports became effective first. The provisions of [S.Res. 286](#) were set to expire on the same date as the provision in COBRA of 1985 (January 2, 1987).

In the following year, the Senate was involved in two actions affecting the Byrd rule. First, the Senate adopted [S.Res. 509](#) by voice vote on October 16, 1986. The measure, offered by Senator Alan Simpson and others, modified [S.Res. 286](#) in a technical fashion. Second, the Omnibus

<sup>54</sup> See the Senate's consideration of and vote on the amendment in the Congressional Record, daily edition (October 24, 1985), pp. S14032 – S14038.

<sup>55</sup> See the remarks of Senator Robert C. Byrd on p. S14032 of the *Congressional Record* (daily ed.), Oct. 24, 1985.

Budget Reconciliation Act of 1986 was enacted into law, as [P.L. 99-509](#), on October 21, 1986. Section 7006 of the law made several minor changes in the Byrd rule and extended its expiration date by one year—until January 2, 1988.

Further changes in the Byrd rule were made in 1987. These changes were included in a measure increasing the statutory limit on the public debt, modifying procedures under the Balanced Budget and Emergency Deficit Control Act of 1985, and making other budget process changes ([P.L. 100-119](#), signed into law on September 29; see Title II (Budget Process Reform)). Section 205 of the law added an item to the list of definitions of extraneous matter in the Byrd rule and extended its expiration until September 30, 1992.

In 1990, Congress and the President agreed to further modifications of the budget process by enacting the Budget Enforcement Act (BEA) of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990). Section 13214 of the law made significant revisions to the Byrd rule and incorporated it (as permanent law) into the CBA of 1974 as Section 313 (2 U.S.C. 644).

Finally, the Budget Enforcement Act of 1997 (Title X of the Balanced Budget Act of 1997) made minor technical changes in Section 313 of the CBA of 1974 to correct drafting problems with the BEA of 1990.

## Current Features of the Byrd Rule

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation has two principal options for dealing with the problem. First, a Senator may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation. Second, under the Byrd rule, a Senator may raise a point of order against extraneous matter.

The Byrd rule is a relatively complex rule<sup>56</sup> that applies to two types of reconciliation measures considered pursuant to Section 310 of the CBA of 1974—reconciliation bills and reconciliation resolutions.<sup>57</sup> (A reconciliation resolution could be used to make changes in legislation that had passed the House and Senate but had not yet been enrolled and sent to the President. The practice of the House and Senate has been to consider only reconciliation bills.)

In general, a point of order authorized under the Byrd rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A point of order may be raised against a single provision or two or more provisions (as designated by title or section number, or by page and line number), and may be raised against a single amendment or two or more amendments. The chair may sustain a point of order as to all of the provisions (or amendments) or only some of them.

Once material has been stricken from reconciliation legislation under the Byrd rule, it may not be offered again as an amendment.

A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).<sup>58</sup> A single waiver motion can: (1) apply to the Byrd rule as well

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<sup>56</sup> Some of the complexities of the Byrd rule are examined in: (1) *Riddick's Senate Procedure* (S.Doc. 101-28, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., 1992), by Floyd M. Riddick and Alan S. Frumin, pp. 624-626; and (2) *Budget Process Law Annotated—1993 Edition*, by William G. Dauster, op. cit., beginning on p. 198.

<sup>57</sup> Part of the Byrd rule, Section 313(a), also applies to reconciliation measures considered pursuant to Section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985. This section, which has never been invoked, provides for the consideration of reconciliation legislation in the fall in order to achieve deficit reductions that would obviate the need for an expected sequester under the pay-as-you-go (PAYGO) requirement (or, previously, the deficit targets). The PAYGO requirement effectively expired at the end of the 107<sup>th</sup> Congress (see CRS Report RS21378, *Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith (pdf).) All of the reconciliation measures considered by the Senate thus far have originated pursuant to Section 310 of the CBA of 1974.

<sup>58</sup> In the Senate, many points of order under the CBA of 1974 require a three-fifths vote of the membership to waive (or to sustain an appeal of the ruling of the chair). Most of these three-fifths waiver requirements are temporary, but in the case of the Byrd rule it is permanent. Section 503 of the FY2004 budget resolution (H.Con.Res 95, 108<sup>th</sup> Cong.), adopted on April 11, 2003, extended the expiration date for the temporary requirements to September 30, 2008.

as other provisions of the Congressional Budget Act; (2) involve multiple as well as single provisions or amendments; (3) extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and (4) be made prior to the raising of a point of order, thus making the point of order moot.

When a reconciliation measure, or a conference report thereon, is considered, the Senate Budget Committee must submit for the record a list of potentially extraneous matter included therein.<sup>59</sup> This list is advisory, however, and does not bind the chair in ruling on points of order.

Determinations of budgetary levels for purposes of enforcing the Byrd rule are made by the Senate Budget Committee.

## Definitions of Extraneous Matter

Subsection (b)(1) of the Byrd rule provides definitions of what constitutes extraneous matter for purposes of the rule. The Senate Budget Committee, in its report on the budget resolution for FY1994, noted:

'Extraneous' is a term of art. Broadly speaking, the rule prohibits inclusion in reconciliation of matter unrelated to the deficit reduction goals of the reconciliation process.<sup>60</sup>

A provision is considered to be extraneous if it falls under one or more of the following six definitions:

- it does not produce a change in outlays or revenues;
- it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
- it is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
- it produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
- it would increase the deficit for a fiscal year beyond the "budget window" covered by the reconciliation measure;<sup>61</sup> and
- it recommends changes in Social Security.

The last definition complements a ban in Section 310(g) of the CBA of 1974 against considering any reconciliation legislation that contains recommendations pertaining to the Social Security. For purposes of these provisions, Social Security is considered to include the Old-Age, Survivors, and Disability Insurance (OASDI) program established under Title II of the Social Security Act; it does not include Medicare or other programs established as part of that act.

## Exceptions to the Definition of Extraneous Matter

Subsection (b)(2) of the Byrd rule provides that a Senate-originated provision that does not produce a change in outlays or revenues shall not be considered extraneous if the chairman and ranking minority members of the Budget Committee and the committee reporting the provision certify that—

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<sup>59</sup> For an example of such a list, see the remarks of Senator Pete Domenici regarding the conference report on the Balanced Budget Act of 1997 in the *Congressional Record* (daily ed.) of July 31, 1997, at pp. S8406-S8408.

<sup>60</sup> See the report of the Senate Budget Committee to accompany [S.Con.Res. 18](#), Concurrent Resolution on the Budget, FY1994 (S.Rept. 103-19, March 12, 1993), p. 49.

<sup>61</sup> The "budget window" refers to the period covered by the budget resolution, and to any reconciliation directives included therein and the resultant reconciliation legislation. Beginning in the late 1980s, the budget resolution is required to cover at a minimum the "budget year" (the fiscal year beginning on October 1 in the session that the budget resolution is adopted) and the four following fiscal years (the "outyears"). In addition, budget resolutions sometimes cover the "current year" (the fiscal year preceding the budget year) and up to five additional outyears. Accordingly, the longest budget window that has applied to a budget resolution and associated reconciliation legislation covered 11 years, including the current year.

- the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; or
- the provision will (or is likely to) reduce outlays or increase revenues: (1) in one or more fiscal years beyond those covered by the reconciliation measure; (2) on the basis of new regulations, court rulings on pending legislation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision; or (3) but reliable estimates cannot be made due to insufficient data.

Additionally, under subsection (b)(1)(A), a provision that does not change outlays or revenues in the net, but which includes outlay decreases or revenue increases that exactly offset outlay increases or revenue decreases, is not considered to be extraneous.

# Impoundments

Excerpt from CRS Report: RL33635

Updated April 29, 2009

“Item Veto and Expanded Impoundment Proposals: History and Current Status” (pages 1-3)

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## Brief History of Impoundment

Impoundment includes any executive action to withhold or delay the spending of appropriated funds. One useful distinction among impoundment actions, which received statutory recognition in the 1974 Impoundment Control Act, focuses on duration: whether the President's intent is permanent cancellation of the funds in question (rescission) or merely a temporary delay in availability (deferral).

Another useful contrast distinguishes presidential deferrals for routine administrative reasons from deferrals for policy purposes. Virtually all Presidents have impounded funds in a routine manner as an exercise of executive discretion to accomplish efficiency in management. The creation of budgetary reserves as a part of the apportionment process required by the Antideficiency Acts (31 U.S.C. 1511-1519) provided formal structure for such routine impoundments, which originated with an administrative regulation issued in 1921 by the Bureau of the Budget and then received a statutory base in 1950.<sup>62</sup> Impoundments for policy reasons, such as opposition to a particular program or a general desire to reduce spending, whether short-term or permanent, have proved far more controversial.

## Controversies Increase

Instances of presidential impoundment date back to the early nineteenth century, but Presidents typically sought accommodation rather than confrontation with Congress.<sup>63</sup> In the 1950s and 1960s, disputes over the impoundment authority resulted from the refusal of successive Presidents to fund certain weapons systems to the full extent authorized by Congress. These confrontations between the President and Congress revolved around the constitutional role of Commander-in-Chief and tended to focus on relatively narrow issues of weapons procurement. President Johnson made broader use of his power to impound by ordering the deferral of billions of dollars of spending during the Vietnam war in an effort to restrain inflationary pressures in the economy. While some impoundments during these periods were motivated by policy concerns, they typically involved temporary spending delays, with the President acting in consultation with congressional leaders, so that a protracted confrontation between the branches was avoided.

Conflict over the use of impoundments greatly increased during the Nixon Administration and eventually involved the courts as well as Congress and the President. In the 92<sup>nd</sup> and 93<sup>rd</sup> Congresses (1971-1974), the confrontation intensified as the President sought to employ the tool of impoundment to reorder national priorities and alter programs previously approved by Congress. Following President Nixon's reelection in 1972, the Administration announced major new impoundment actions affecting a variety of domestic programs. For example, a moratorium was imposed on subsidized housing programs, community development activities were suspended, and disaster assistance was reduced. Several farm programs were likewise targeted for elimination. Perhaps the most controversial of the Nixon impoundments involved the Clean Water Act funds.

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<sup>62</sup> See Budget and Accounting Procedures Act of 1950, P.L. 81-784, 64 Stat. 2317.

<sup>63</sup> For a history of presidential impoundment before 1974, see Louis Fisher, *Presidential Spending Power* (Princeton, NJ: Princeton University Press, 1975), pp. 147-201; and Ralph S. Abascal and John R. Kramer, "Presidential Impoundment Part I: Historical Genesis and Constitutional Framework," *Georgetown Law Journal*, vol. 62 (July 1974), pp. 1549-1618.



Court challenges eventually reached the Supreme Court, which in early 1975 decided the case on narrower grounds than the extent of the President's impoundment authority.<sup>64</sup>

## Impoundment Control Act of 1974

During these impoundment conflicts of the Nixon years, Congress responded not only with ad hoc efforts to restore individual programs, but also with gradually more restrictive appropriations language. Arguably, the most authoritative response was the enactment of the Impoundment Control Act (ICA), Title X of the Congressional Budget and Impoundment Control Act of 1974.<sup>65</sup> As a result of a compromise in conference, the ICA differentiated deferrals, or temporary delays in funding availability, from rescissions, or permanent cancellations of designated budget authority, with different procedures for congressional review and control of the two types of impoundment.<sup>66</sup> The 1974 law also required the President to inform Congress of all proposed rescissions and deferrals and to submit specified information regarding each. The ICA further required the Comptroller General to oversee executive compliance with the law and to notify Congress if the President failed to report an impoundment or improperly classified an action.

The original language allowed a deferral to remain in effect for the period proposed by the President (not to exceed beyond the end of the fiscal year so as to become a de facto rescission) unless either the House or the Senate took action to disapprove it. Such a procedure, known as a one-house legislative veto, was found unconstitutional by the Supreme Court in *INS v. Chadha* (462 U.S. 919 (1983)). In May 1986 a federal district court ruled that the President's deferral authority under the ICA was inseverable from the one-house veto provision and hence was null; the lower court decision was affirmed on appeal in *City of New Haven v. United States* (809 F.2d 900 (D.C.C. 1987)).

In the case of a rescission, the ICA provided that the funds must be made available for obligation unless both houses of Congress take action to approve the rescission request within 45 days of "continuous session" (recesses of more than three days not counted). In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after about 60 calendar days, although the period can extend to 75 days or longer. Congress may approve all or only a portion of the rescission request. Congress may also choose after the 45-day period to rescind funds previously requested for rescission by the President. Congress does rescind funds never proposed for rescission by the President, but such action is not subject to the ICA procedures.

The ICA establishes no procedures for congressional disapproval of a rescission request during the 45-day period. However, some administrations have voluntarily followed a policy of releasing funds before the expiration of the review period, if either the House or the Senate authoritatively indicates that it does not intend to approve the rescission.

In the fall of 1987, as a component of legislation to raise the limit on the public debt ([P.L. 100-119](#)), Congress enacted several budget process reforms. Section 207 prohibited the practice, sometimes used by Presidents when Congress failed to act on a rescission proposal within the allotted period, of submitting a new rescission proposal covering identical or very similar matter.

By using such resubmissions, the President might continue to tie up funds even though Congress, by its inaction, had already rejected virtually the same proposal. The prohibition against such seriatim rescission proposals contained in the 1987 law applies for the duration of the appropriation, so that it may remain in effect for two or more fiscal years. Section 206 of [P.L. 100-119](#) served to codify the decision in the *New Haven* case, allowing deferrals to provide for contingencies, to achieve savings made possible through changes in requirements or efficiency of op-

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<sup>64</sup> *Train v. City of New York*, 420 U.S. 35 (1975). For further discussion regarding the role of the courts in the impoundment disputes during the Nixon Administration, see James P. Pfiffner, *The President, the Budget, and Congress: Impoundment and the 1974 Budget Act* (Boulder, CO: Westview Press, 1979), pp. 77-108.

<sup>65</sup> [P.L. 93-344](#), 88 Stat. 332. The ICA became effective upon signing of the law on July 12, 1974. For further discussion of the impoundment conflicts and the legislative history of the 1974 law, see Allen Schick, *Congress and Money* (Washington, DC: The Urban Institute, 1980), pp. 17-81.

<sup>66</sup> According to one account, "Written by the staff members who put together the final version of budget reform, Title X was a novel combination of the House and Senate versions of the impoundment control bills." See Joel Havemann, *Congress and the Budget* (Bloomington, IN: Indiana University Press, 1978), pp. 178-179.

erations, or as provided in statute. The ICA as amended no longer sanctions policy deferrals.<sup>67</sup>

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<sup>67</sup> "Conference Report on House Joint. Resolution 324," (H.Rept. 100-313), *Congressional Record*, vol. 133, Sept. 21, 1987, p. 24655.

## Rescissions

Excerpt from CRS Report: 97-684<sup>68</sup>  
Updated December 2, 2008

“The Congressional Appropriations Process: An Introduction” (page 24)

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Rescissions cancel previously enacted budget authority. For example, if Congress provided \$1.6 billion to construct a submarine, it could enact subsequent legislation canceling all or part of the budget authority prior to its obligation. Rescissions are an expression of changed or differing priorities. They may also be used to offset increases in budget authority for other activities.

The President may recommend rescissions to Congress, but it is up to Congress to act on them. Under Title X of the Congressional Budget Act,<sup>69</sup> if Congress does not enact a bill approving the President's rescissions within 45 days of continuous session of Congress, the budget authority must be made available for obligation.

In response to the President's recommendation, Congress may decide not to approve the amount specified by the President, approve the total amount, or approve a different amount. For example, in 2005, the President requested a rescission of \$106 million from the Department of Defense (DOD), Operations and Maintenance, Defense-Wide account and \$48.6 million from DOD, Research, Development, Test, and Evaluation, Army account. Congress provided a rescission of \$80 million from the first account in the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.<sup>70</sup> The act did not provide a rescission from the second account.

Congress may also initiate rescissions. In the above Act, Congress also included a rescission of \$10 million from the Department of State, Diplomatic and Consular Programs account.

As budget authority providing the funding must be enacted into law, so, too, a rescission canceling the budget authority must be enacted into law. Rescissions can be included either in separate rescission measures or any of the three types of appropriations measures.

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<sup>68</sup> <http://apps.crs.gov/products/rl/pdf/97-684.pdf>

<sup>69</sup> Title X is referred to as the Impoundment Control Act.

<sup>70</sup> [P.L. 109-148](#), 119 Stat. 2680.

# Federal Budget Process Reform in the 111<sup>th</sup> Congress: A Brief Overview

CRS Report: R40113<sup>71</sup>  
Updated December 22, 2009

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Procedural change is a recurrent feature of federal budgeting, although the scope and impact of changes may vary from year to year. In order to advance their budgetary, economic, or political objectives, both Congress and the President regularly propose and make changes to the federal budget process. This report briefly discusses the context in which federal budget process changes are made and identifies selected reform proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive; other Congressional Research Service reports discuss different aspects of budget process reform in more detail.<sup>72</sup>

## The Context of Budget Process Reform

### Sources of Budget Process Reform Proposals

A variety of sources give rise to the interest in budget process reform, including Congress, the President, State and local government officials, and special commissions, among others. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act (but was invalidated by court action in 1998). State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted. (Citations to laws identified in this report are provided in the [Appendix](#).)

Outside of Congress itself, the President probably has been the most important source of budget process reform proposals over the years. The President's annual budget submission to Congress typically includes at least several proposed changes in budget procedure.<sup>73</sup> In his final budget submission, for example, President George W. Bush advocated proposals involving such matters as enhanced controls over mandatory and discretionary spending, stricter standards for emergency spending designations, changes in how baseline calculations are made, earmark reform, line-item veto, biennial budgeting, a joint budget resolution, and an automatic continuing resolution.<sup>74</sup>

In late November 2008, President-elect Barack Obama signaled his interest in pursuing budget process reform during the 111<sup>th</sup> Congress when he announced that he intended to nominate Peter Orszag to the position of director of the Office of Management and Budget (OMB) and Rob Nabors to the position of OMB deputy director. In making the announcement, President-elect

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<sup>71</sup> <http://www.crs.gov/ReportPDF/R40113.pdf>

<sup>72</sup> CRS reports on different budget process reforms are listed under the appropriate terms under "Current Legislative Issues" on the CRS homepage; other pertinent CRS reports may be accessed in several ways, including by subject term and author searches on CRS homepage. Also, see [CRS Report RL 31478](#), *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno, for a discussion of selected reforms proposed in past years.

<sup>73</sup> In recent years, the President's budget process reform proposals have been included in a separate chapter of the *Analytical Perspectives* volume.

<sup>74</sup> See the Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009, Analytical Perspectives*, February 4, 2008, Chapter 15 (Budget Reform Proposals), pp. 215-225.

Obama stated: "In these challenging times, when we are facing both rising deficits and a sinking economy, budget reform is not an option. It is an imperative."<sup>75</sup>

Perhaps more than any other factor over the years, concern about the size and persistence of the federal deficit has animated calls for budget process reform. The federal deficit, which amounted to \$162 billion for FY2007 and \$455 billion for FY2008, jumped to \$1.417 trillion for FY2009 in the face of a significant economic downturn. In the August 2009 update of its baseline budget projections, the Congressional Budget Office (CBO) estimated the deficit for FY2010 at \$1.381 trillion (9.6% of GDP) and continuing annually at above \$500 billion through FY2019.<sup>76</sup>

The dramatic increase in the deficit, its likely persistence at high levels in the short term, and its unsustainable path in the long run, already has fueled strong interest in procedural reform. On January 14, 2009, several private organizations, including the Peter G. Peterson Foundation, the Pew Charitable Trusts, and the Committee for a Responsible Federal Budget, announced a joint enterprise (the Peterson-Pew Commission on Budget Reform) to foster changes in the budget process.<sup>77</sup>

The next day, President-elect Obama stated in an interview with the Washington Post that he would convene a "fiscal responsibility summit" prior to submitting the FY2010 budget to Congress, focusing on control of long-term obligations for entitlement programs.<sup>78</sup> The summit was held on February 23, 2009, and included a session on budget process reform in which, among other issues, the notion of different types of commissions to formulate long-term budget solutions was addressed.<sup>79</sup>

In his budget submission for FY2010, President Obama pledged to cut the deficit in half by the end of his first term and asked Congress to act on various changes in the budget process that would, in part, contribute to this goal. The proposed changes include, among other things, restoration of the statutory "pay-as-you-go" requirement (with significant modifications), expedited legislative procedures for the consideration of certain presidential rescission proposals, and a limit on advance appropriations.<sup>80</sup>

## Avenues of Reform

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.<sup>81</sup> Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instruc-

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<sup>75</sup> Press release, "President-elect Barack Obama announces Office of Management and Budget Director and Deputy Director," November 25, 2008, available on the Obama transition Website at <http://change.gov/newsroom>.

<sup>76</sup> Congressional Budget Office, *The Budget and Economic Outlook: An Update*, August 2009, Summary Table 1 (CBO's Baseline Budget Outlook), p. 2.

<sup>77</sup> Information regarding the commission may be found on the Websites of the organizations, at <http://www.pgpf.org>, <http://www.pewtrusts.org>, and [http://www.newamerica.net/programs/fiscal\\_policy#](http://www.newamerica.net/programs/fiscal_policy#).

<sup>78</sup> *Washington Post*, "Obama Pledges Entitlement Reform," by Michael D. Shear, January 16, 2009, p. A-1.

<sup>79</sup> Activities during the summit are summarized in The White House, *Fiscal Responsibility Summit*, March 20, 2009; see the discussion of budget process reform on pp. 28-33. The report is available on the White House website at [http://www.whitehouse.gov/assets/blog/Fiscal\\_Responsibility\\_Summit\\_Report.pdf](http://www.whitehouse.gov/assets/blog/Fiscal_Responsibility_Summit_Report.pdf).

<sup>80</sup> See the Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2010, Analytical Perspectives*, May 7, 2009, Chapter 15 (Budget Reform Proposals), pp. 215-220.

<sup>81</sup> For an overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith.

tions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations).<sup>82</sup> Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

In some years, changes made in the budget process were comprehensive. The Budget and Accounting Act of 1921 established the executive budget process, the Congressional Budget Act of 1974 created the congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act of 1990 imposed additional budget controls on a temporary basis. In other years, such as 1987, 1993, and 1997, existing budget process statutes were modified in a less comprehensive fashion and extended for limited periods. At other times, Congress and the President enacted statutes changing only selected aspects of the budget process; the Line Item Veto Act (of 1996) is one example. Finally, in every Congress, the House and Senate have modified existing rules and practices affecting the budget process and sometimes instituted new ones.

Like other types of legislation, statutes making changes in the budget process are subject to review by the judiciary. In several major instances, the Supreme Court has declared procedures established by Congress and the President to be invalid on constitutional grounds. The one-House legislative veto (found in many acts, including the Impoundment Control Act of 1974), for example, was invalidated by *I.N.S. v. Chadha* in 1983, 103 S.Ct. 715 (1983); the triggering of a sequester by the Comptroller General under the Gramm-Rudman-Hollings Act was invalidated by *Bowsher v. Synar* in 1986, 478 U.S. 714 (1986); and the Line Item Veto Act was invalidated by *Clinton v. City of New York* in 1998, 118 S.Ct. 2091 (1998). In the wake of court decisions, Congress and the President may successfully modify legislation (e.g., 1987 legislation modifying the Gramm-Rudman-Hollings Act, vesting the authority to trigger a sequester in the director of the Office of Management and Budget), but sometimes persistent efforts to enact corrective legislation do not succeed (e.g., line-item veto proposals).

Given that nearly every committee of the House and Senate has jurisdiction over legislation with a budgetary impact, interest in the budget process and proposals to change it radiate throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, Oversight and Government Reform, and Rules Committees in the House, and with the Budget, Homeland Security and Governmental Affairs, and Rules and Administration Committees in the Senate, other House and Senate committees, particularly the appropriations and tax committees, may exert influence over budget process changes affecting their legislative interests.

## Initial Budget Process Changes in the 111<sup>th</sup> Congress

The first opportunity in a new Congress to change budget procedures usually occurs on the first or second day of session. The House, which unlike the Senate is not a continuous body, must adopt its rules anew at the beginning of each Congress. Traditionally, the House adopts its rules from the previous Congress, with modifications (that may include changes in the budget process), in the form of a simple resolution.

On January 6, 2009, the House adopted the opening-day rules package for the 111<sup>th</sup> Congress, [H.Res. 5](#), by a vote of 242-181. The measure included several changes in the budget process, including modifications to the "pay-as-you-go" rule and earmarking rules that had been adopted at the beginning of the 110<sup>th</sup> Congress.<sup>83</sup> Some of the specific changes made by [H.Res. 5](#) are discussed below under the applicable areas of reform.

A second opportunity for budget process changes typically comes in March and April, when the two chambers consider the annual budget resolution for the fiscal year beginning on October 1.

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<sup>82</sup> A comprehensive listing and description of major budget process laws enacted over the past century (and full legal citations to them) is provided in CRS Report RL30795, [General Management Laws: A Compendium](#), by Clinton T. Brass et al. (pdf).

<sup>83</sup> For a detailed discussion of these changes in the budget process, see CRS Report RL34149, [House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110<sup>th</sup> Congress](#), by Bill Heniff Jr.

Under authority referred to as the "elastic clause" (in Section 301 of the 1974 Congressional Budget Act), either chamber may include procedural provisions in the annual budget resolution that are consistent with the purposes of the 1974 act.

Various procedural provisions were incorporated into the FY2010 budget resolution ([S.Con.Res. 13](#)), on which the House and Senate reached final agreement on April 29, 2009, principally in a separate title (Title IV—Budget Process). These provisions included House and Senate restrictions on the use of advance appropriations and emergency designations, procedures to adjust budget levels to accommodate program integrity initiatives, and a Senate point of order pertaining to short-term deficits.<sup>84</sup>

Congress also may express its interest in the budget process in venues that do not involve legislative activity. In the past, consideration in the Senate of nominations to the position of OMB director and deputy director often has afforded the opportunity to discuss budget process reforms.<sup>85</sup> Nominations to the position of OMB director and deputy director are considered, pursuant to [S.Res. 445](#) (108<sup>th</sup> Congress), by both the Senate Budget Committee and the Senate Homeland Security and Governmental Affairs Committee.

The Senate Budget Committee and the Senate Homeland Security and Governmental Affairs Committee held hearings on January 13 and January 14, 2009, respectively, regarding President-elect Obama's choices for director (Peter Orszag) and deputy director (Rob Nabors) of OMB. The prospective nominees discussed the need to review a variety of budget process reform proposals, addressing such concerns as the growth of entitlement spending over the long run and the need to better integrate budgeting and performance evaluation activities in OMB.<sup>86</sup>

## Selected Budget Process Reform Proposals

Among the various budget process reform proposals that have been or may be considered during the 111<sup>th</sup> Congress, many pertain to categories such as internal "pay-as-you-go" (PAYGO) rules in the House and Senate; restoration of the statutory discretionary spending limits and PAYGO requirement; earmarking; and modifications to budget resolution, reconciliation, and appropriations processes. In order to illustrate the diversity of proposals, these and other categories of reform are discussed briefly below.

### PAYGO Rules and Discretionary Spending Limits

#### Statutory Enforcement Procedures

From 1991 through 2002, federal budget legislation was constrained by statutory limits on discretionary spending and a PAYGO requirement for direct spending (sometimes referred to as mandatory spending) and revenue legislation. Both of these budget constraints were established by the Budget Enforcement Act of 1990, which amended the Balanced Budget and Emergency Deficit Control Act of 1985. The discretionary spending limits and the PAYGO requirement were enforced by sequestration, a process by which violations were remedied by automatic, across-the-board spending cuts. These statutory budget constraints were extended in 1993 and 1997 (and further modified by other legislation), but the discretionary spending limits expired at the end of FY2002 and the PAYGO requirement effectively was terminated in December 2002.<sup>87</sup>

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<sup>84</sup> The House and Senate reached final agreement on the FY2010 budget resolution by agreeing to the conference report on [S.Con.Res. 13](#) ([H.Rept. 111-89](#); April 27, 2009), by a vote of 233-193 in the House and 53-43 in the Senate.

<sup>85</sup> During the 110<sup>th</sup> Congress, for example, the Senate considered the nomination of Jim Nussle to be OMB director, confirming his appointment on September 4, 2007 (by a vote of 69-24). Although budget process changes were not a prominent part of the debate in committee and on the floor, a PAYGO requirement and other procedural matters were discussed briefly.

<sup>86</sup> *CQ Today*, "Orszag to Suggest Program Cuts in February Budget Outline," by Kerry Young, January 14, 2009; and BNA's *Daily Report for Executives*, "OMB Chief-Designate Orszag Plans February Budget Outline Submission," by Jonathan Nicholson, January 14, 2009.

<sup>87</sup> An overview of statutory and rules-based PAYGO procedures is provided in CRS Report RL34300, [Pay-As-You-Go Procedures for Budget Enforcement](#), by Robert Keith.

In recent years, there has been considerable interest in restoring, and possibly making significant modifications to, the statutory enforcement procedures. Some observers have argued that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a total budget surplus in FY1998—the first in almost 30 years—and the following three fiscal years.

With the return of sizeable deficits in the short term due to economic decline and in the long term due principally to the growth of Medicare, Medicaid, and Social Security, some have argued for restoring such statutory mechanisms to strengthen fiscal discipline. A principal point of contention with regard to the PAYGO requirement has been whether it should apply to revenue legislation. While some maintain that revenue reductions should not face the hurdle of a statutory PAYGO requirement because they are needed to fuel growing revenues, others assert that accommodating further revenue reductions in a PAYGO requirement (i.e., by applying it only to direct spending) likely would undermine efforts to achieve significant deficit reduction, in part by encouraging some spending initiatives to be reformulated as revenue-losing provisions.

The FY2008 and FY2009 budget resolutions included sense-of-the-Congress statements that a statutory PAYGO requirement should be reinstated to help control the deficit (Section 508 of [S.Con.Res. 21](#) and Section 515 of [S.Con.Res. 70](#), respectively), but the 110<sup>th</sup> Congress did not take any action in this regard.

In the case of the statutory limits on discretionary spending, one issue has been the period of time for which they should be established. Advocates of two- or three-year limits argue that the five-year framework employed earlier leads to limits that are too unrealistic in the later years (due to changing circumstances). Limits that are unrealistically high fail to impose discipline, while limits that are unrealistically low encourage evasions through gimmickry and other means. Shorter term limits, they argue, are more apt to be realistic and effective constraints on spending.

On June 9, 2009, President Obama announced that he would submit a PAYGO proposal to Congress, the Statutory Pay-As-You-Go Act of 2009, that would restore a process applying to both direct spending and revenue legislation.<sup>88</sup> House Majority Leader Steny Hoyer introduced the proposal on June 17 as [H.R. 2920](#); the proposal did not include discretionary spending limits. On June 25, the House Budget Committee held a hearing on the proposal, receiving testimony from OMB Director Peter Orszag, among others.<sup>89</sup>

On July 22, 2009, the House considered and passed [H.R. 2920](#). Prior to action on the bill, the House considered and agreed to (by a vote of 243-182) a special rule, [H.Res. 665](#), providing for the bill's consideration. A modified substitute amendment was incorporated into the bill automatically under a "self-executing" provision in the rule, and a substitute amendment offered by Representative Paul Ryan, the ranking minority Member of the House Budget Committee, was defeated, by a vote of 196-234.<sup>90</sup> Following the defeat, by a vote of 196-234, of a motion to recommit with instructions offered by Representative Ryan, the House passed the bill, by a vote of 265-166.<sup>91</sup>

Section 421 of the budget resolution for FY2010 ([S.Con.Res. 13](#)) set forth a procedure, applicable only in the House, effectively exempting from the House PAYGO rule and other budget enforcement procedures the costs of legislation in four policy areas: (1) payments to physicians under Medicare ("Doc Fix"), (2) middle class tax reform, (3) reform of the alternative minimum tax (AMT), and (4) reform of the estate and gift tax. In each case, a limitation on the amount of costs subject to exemption was specified in Section 421.<sup>92</sup>

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<sup>88</sup> The legislative text of the proposal, along with a section-by-section summary and related documentation, is provided on the OMB website at [http://www.whitehouse.gov/omb/news\\_060909\\_paygo/](http://www.whitehouse.gov/omb/news_060909_paygo/).

<sup>89</sup> The hearing testimony is accessible on the Budget Committee's website at <http://budget.house.gov/hearings.aspx#06182009>.

<sup>90</sup> The substitute amendment made in order under [H.Res. 665](#) was printed in Part A (pp. 3-18) of the report of the House Rules Committee ([H.Rept. 111-217](#), July 21, 2009); the modification to the substitute amendment was printed in Part B (p. 18) and the Ryan-submitted amendment was printed in Part C (pp. 18-26). The three amendments were summarized on pp. 2 and 3 of the report.

<sup>91</sup> *CQ Today*, "Pay-as-You-Go Plan Passes House," by David Clarke, July 22, 2009.

<sup>92</sup> The limitations under Section 421 were modified by Section 2 of [H.Res. 665](#), the rule providing for the consideration of [H.R. 2920](#), the Statutory Pay-As-You-Go Act of 2009, as they applied to the "Doc Fix" and "AMT" exemptions.



Pursuant to this procedure, the House considered [H.R. 3961](#) (the Medicare Physician Payment Reform Act of 2009) on November 19, 2009, passing the bill by a vote of 243-183. Under the terms of the special rule governing consideration of the bill, [H.Res. 903](#), the text of the Statutory Pay-As-You-Go Act of 2009, as passed earlier by the House, was added to the engrossed version of [H.R. 3961](#), as Division B.

Prospects for consideration in the Senate of [H.R. 2920](#) or another bill reinstating the statutory PAYGO process are uncertain at this time.<sup>93</sup>

### House and Senate PAYGO Rules

As a supplement to the statutory PAYGO requirement, the Senate established its own PAYGO rule in 1993 as a provision in the FY1994 budget resolution. The rule, which operates differently than the statutory requirement, has been modified several times.

Over the years, several unsuccessful efforts were made to establish a PAYGO rule in the House. A PAYGO rule was contained in the House's rules package for the 110<sup>th</sup> Congress, in Section 405 of [H.Res. 6](#). Title IV was considered separately and adopted by the House on January 5, 2007, by a vote of 280-152 (all five titles of [H.Res. 6](#) were adopted by the House and took effect on that day). The House's PAYGO rule imposes a bar against revenue and direct spending legislation that increases a deficit (or reduces a surplus) over different time periods (i.e., the six-year and 11-year periods beginning with the current fiscal year) and makes no exception for revenue or direct spending proposals assumed in the budget resolution.

In May 2007, the Senate revised its PAYGO rule as part of the FY2008 budget resolution (Section 201 of [S.Con.Res. 21](#)). The revised Senate rule conforms closely to the House rule, applying to the same two time periods and eliminating any exception for revenue or direct spending proposals assumed in the budget resolution; it expires on September 30, 2017. In addition, the revised Senate PAYGO rule is buttressed by other Senate rules designed to discourage legislation that increases the deficit in both the short- and long-terms; these rules can be waived only by the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

The implementation of the House and Senate PAYGO rules in the 110<sup>th</sup> Congress was associated with considerable controversy regarding issues of compliance and the need to effectively waive the rules for the consideration of some major legislation, especially bills dealing with the housing crisis and economic downturn in a manner that substantially increases the deficit in the short term. In response to some of these concerns, modifications to the House PAYGO rule were included in Section 2(j) of [H.Res. 5](#), which was adopted on January 6, 2009. The changes include (1) an alignment with the Senate PAYGO rule so that both Houses use the same CBO baseline for enforcement; (2) a procedure to allow one House-passed measure to pay for spending in a separate House-passed measure, if the two are linked at the engrossment stage; and (3) a procedure for designating in legislation emergency exceptions to the rule.<sup>94</sup>

### **Earmarking**

Reform of congressional earmarking practices in appropriations, direct spending, and tax legislation (and accompanying reports) was addressed by the House and Senate with the adoption of new rules in the 110<sup>th</sup> Congress. In late 2008, House Republicans rejected a proposed moratorium with respect to earmark requests through mid-February 2009; a special 10-member panel of House Republicans was expected to report on further earmark reforms sometime in 2009.<sup>95</sup>

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<sup>93</sup> BNA's *Daily Report for Executives*, "Conrad Reiterates His Opposition to House Pay-As-You-Go Bill; Floor Action Seen July 22," by Jonathan Nicholson, July 22, 2009, 138 DER G-3; and *CongressNow*, "House PAYGO Bill Faces Steep Senate Climb," by Geof Koss, July 22, 2009.

<sup>94</sup> The changes are explained in "Section-by-Section of Rule Changes – 111<sup>th</sup> Congress," undated, available on the Democratic Website of the House Rules Committee at [http://www.rules.house.gov/111/LegText/111\\_hres\\_ruleschnge\\_smmry.pdf](http://www.rules.house.gov/111/LegText/111_hres_ruleschnge_smmry.pdf).

<sup>95</sup> See *CQ Today*: (1) "House GOP Backs Away from Earmark Moratorium," by David Clarke and Alan K. Ota, November 20, 2008; and (2) "House Republicans Create Anti-Earmark Panel," by Catharine Richert, December 19, 2008.

Some changes in earmark rules and practices occurred at the beginning of the 111<sup>th</sup> Congress, as discussed below, but additional reforms in this area may be addressed as the session unfolds.

While definitions of earmarking vary, an earmark generally is considered to be an allocation of resources to specifically-targeted beneficiaries, either through earmarks of discretionary or direct spending, limited tax benefits, or limited tariff benefits. Earmarks may be proposed by the President or may be originated by Congress. Concern about recent earmarking practices arose because some of them were inserted into legislation or accompanying reports without any identification of the sponsor, and the belief that many earmarks were not subject to proper scrutiny and diverted resources to lesser-priority items or items without sufficient justification, thereby contributing to wasteful spending or revenue loss.

The essential feature of earmark reform proposals is a bar against the consideration of legislation that does not identify individual earmarks and the Members who sponsored them, the distribution of such information in a way that makes it readily available before the legislation is considered, and certification by earmark sponsors that neither they nor their spouses have a financial interest in the earmark.

Earmark reform provisions, requiring the identification of earmarks and their sponsors before legislation may be considered and imposing other restrictions on the use of earmarks, were contained in Title IV (Section 404) of the House's rules package for the 110<sup>th</sup> Congress, [H.Res. 6](#), adopted on January 5, 2007. The earmark reform provisions were added to the rules of the House as Clause 9 of Rule XXI and Clauses 16 and 17 of Rule XXIII. The earmark identification requirement applies to all legislation; if no earmarks are included, then a statement to that effect must be supplied.

Later in the session, on June 18, 2007, the House adopted [H.Res. 491](#), a measure dealing (for the remainder of the 110<sup>th</sup> Congress) with the consideration of conference reports on regular appropriations acts containing earmarks that were not submitted to the conference by either chamber. The measure established a point of order intended to curtail the practice of "air-dropping" earmark provisions, not first passed by either chamber, into appropriations acts at the conference stage. The point of order is disposed of by the question of consideration.

On January 18, 2007, the Senate adopted [S. 1](#), ethics reform legislation. Title I of the act, referred to separately as the Legislative Transparency and Accountability Act of 2007, included earmark reform provisions requiring the prior identification of earmarks, and their sponsors, in all spending and revenue legislation, and various other constraints on earmarking practices. Senator Robert C. Byrd, the chairman of the Senate Appropriations Committee, announced on April 17 that the committee would follow a policy of requiring earmark disclosure for the FY2008 appropriations cycle, similar to the requirements set forth in [S. 1](#), pending further action on the measure.

On July 31, 2007, the House passed [S. 1](#) with an amendment under the suspension of the rules procedure, by a vote of 411-8. The Senate agreed to the House amendment, by a vote of 83-14, on August 2, thus clearing the measure. President George W. Bush signed the bill into law on September 14, 2007, as [P.L. 110-81](#) (121 Stat. 735-776), the Honest Leadership and Open Government Act of 2007. In its final form, [P.L. 110-81](#) included earmark reform provisions in Section 521 (Congressionally Directed Spending), which were added to the Standing Rules of the Senate as a new Rule XLIV.

At the beginning of the 111<sup>th</sup> Congress, on January 6, 2009, the chairmen of the House and Senate Appropriations Committees, Representative David Obey and Senator Daniel Inouye, jointly announced further changes in earmark practices. The changes, which are effective for FY2010 appropriations acts, include (1) a requirement that Members post information on their earmark requests at the time they are made; (2) the dissemination of earmark disclosure tables at the time of subcommittee action; and (3) a reduction of earmarks to 50% of the FY2006 level for non-project-based accounts and a cap at 1% of discretionary spending in subsequent years.<sup>96</sup>

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<sup>96</sup> House Appropriations Committee, "House and Senate Appropriations Committees Announce Additional Reforms in Committee Earmark Policy," press release, January 6, 2009, available on the committee's Website at <http://appropriations.house.gov/pdf/Obey-InouyeRelease01-06-09.pdf>.

In addition, on January 6, the House also adopted changes in its earmark rules as part of its action on [H.Res. 5](#). Section 2(i) of the resolution incorporated the prohibitions of [H.Res. 491](#) of the prior Congress (restricting the use of "air-dropped" earmarks) into Clause 9 of House Rule XXI.

## **Congressional Budget Resolution and Reconciliation**

The Congressional Budget Act of 1974 requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least five fiscal years. The budget resolution, which is a concurrent resolution and therefore does not become law, provides an overall budget plan that guides congressional action on individual spending, revenue, and debt-limit measures. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of revenue, spending, and debt-limit legislation to carry out budget resolution policies; enforcement of budget resolution policies also occurs by means of various points of order that may be raised on the floor. Budget resolutions and reconciliation measures are considered under expedited procedures in both chambers.

Some Members of Congress, as well as the President, have argued that the budget resolution would be more effective in enforcing budget policy by making it a joint resolution requiring the President's approval. A joint budget resolution would directly involve the President in congressional actions on the budget early in the process. If the President and Congress reach an impasse on a joint budget resolution, however, some are concerned that action on spending and revenue bills might be significantly delayed.

In the Senate, a 50-hour limit on the consideration of a budget resolution applies under the expedited procedures. When the time limit expires, many amendments may still be pending; they are brought up for disposition by vote but without any time left to debate them, a situation referred to as "vote-arama." The Senate typically ameliorates the consequences of a "vote-arama" by allowing a minimal amount of debate time (e.g., two minutes per side) for each amendment under unanimous consent, but proposals have been offered in past Congresses in an effort to eliminate "vote-aramas" altogether. The Senate Budget Committee examined the phenomenon of "vote-arama" and other issues relating to the consideration of budget resolutions in a hearing on February 12, 2009.<sup>97</sup>

During the 1980s and much of the 1990s, reconciliation was used principally as a means of reducing the deficit. While some reconciliation measures included spending increases or revenue reductions, the net impact of the legislation was to reduce the deficit. In recent years, the reconciliation process has been used mainly to expedite the passage of legislation that increases the deficit, primarily through revenue reduction.

Some Members in the House and Senate have argued that the reconciliation process should be altered so that it may be used only to reduce the deficit. As part of the changes in the budget process included in the rules package for the 110<sup>th</sup> Congress, [H.Res. 6](#), the House included a ban (in Section 402) against the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus over the six-year or 11-year periods beginning with the current fiscal year. The Senate included a similar ban for the same two time periods in the FY2008 budget resolution (Section 202 of [S.Con.Res. 21](#)).

Because reconciliation legislation is considered in the Senate under expedited procedures, with a 20-hour time limit for debate, the issue of "vote-arama" applies as well. The proposals offered in the past to deal with this situation with respect to the consideration of budget resolutions also have applied to the consideration of reconciliation bills.

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<sup>97</sup> Access to a video of the hearing and the prepared statements of witnesses is available on the Senate Budget Committee (Majority) website at <http://budget.senate.gov/democratic/hearingstate.html>.

## Annual Appropriations Process

Discretionary spending, which amounts to more than one-third of federal spending, is provided each year in regular, supplemental, and continuing appropriations acts. Discretionary spending funds most of the routine operations of federal agencies.

Considerable attention was focused during the past two Congresses on Appropriations Committee structure. At the beginning of the 109<sup>th</sup> Congress, the House and Senate Appropriations Committees consolidated and realigned their subcommittees in order to streamline the appropriations process, facilitate the timely enactment of appropriations bills, and minimize the likelihood of using consolidated appropriations acts. Both committees disbanded their VA-HUD Subcommittee, and the House Appropriations Committee disbanded two others (District of Columbia and Legislative Branch), leaving 12 Senate and 10 House appropriations subcommittees.

At the start of the 110<sup>th</sup> Congress, further adjustments in subcommittee alignments of the House and Senate Appropriations Committees were made, leaving each committee with 12 subcommittees. Among the changes made, each committee established a Financial Services and General Government Subcommittee and the House Appropriations Committee reestablished a Legislative Branch Subcommittee.

Later during the 110<sup>th</sup> Congress, the House adopted [H.Res. 35](#), a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes Members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence. This action represented the House's response to one of the recommendations of the 9/11 Commission. Although the Senate may address the Commission's recommendation with respect to intelligence activities in the 111<sup>th</sup> Congress, no further major realignments in subcommittee structure of either committee are expected at this time.

When a regular appropriations act or a continuing resolution is not in place after the start of the fiscal year on October 1, an agency does not have the legal authority to incur obligations in order to function and must shut down, resulting in the furlough of federal employees and disruptions in service. In order to prevent a government shutdown (or the threat of one) due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution. An automatic continuing resolution would provide an uninterrupted source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. While such a device could eliminate or reduce employee furloughs and service disruptions, some view an automatic continuing resolution as substituting a formulaic response for deliberate and informed decision-making.

## Item Veto/Expanded Rescission Authority

When a spending or revenue act is sent to the President for his consideration, he must approve or veto the measure in its entirety. After a spending measure has become law, the President may impound funds through rescission, which cancels the funding, or deferral, which delays the expenditure of funds. Congress exercises its responsibilities in this area through procedures established under the Congressional Budget and Impoundment Control Act of 1974 and the regular legislative process.

Advocates of greater budget discipline proposed the Line Item Veto Act, which became law in 1996 ([P.L. 104-130](#)) but was struck down by the Supreme Court on June 25, 1998, in *Clinton v. City of New York*, 118 S.Ct. 2091 (1998). Under this act, the President was authorized to strike individual items of discretionary spending, direct spending, and certain limited tax benefits in any law.

In the years following the Supreme Court decision, various proposals have been made in Congress to grant item veto authority to the President in a manner that passes constitutional muster

or to otherwise expand his rescission powers. President George W. Bush, in 2006, proposed a "legislative line-item veto," under which Congress would have to consider proposed rescissions in an expedited manner. The House passed [H.R. 4890](#), the Legislative Line Item Veto Act of 2006, on June 22, 2006, by a vote of 247-172; the Senate did not act on the measure. The Senate considered a legislative line-item veto proposal in the 110<sup>th</sup> Congress, in the form of an amendment offered by Senator Judd Gregg, first to [S. 1](#) and then to minimum wage legislation, [H.R. 2](#); in both instances, the Gregg amendment ultimately was withdrawn.

As part of the budget process proposals included in his FY2010 budget submission, President Obama asked Congress to establish expedited legislative procedures for the consideration of certain rescission proposals offered by the President.

While advocates of the item veto or expanded rescission powers for the President contend that such tools will enhance budgetary discipline, critics suggest that their usefulness for budgetary discipline is overstated and that they may adversely affect the balance of power between Congress and the President over budget decisions.

### **Commission/Task Force on Long-Term Budgetary Issues**

Considerable attention has been focused recently on the large imbalances projected in the federal budget over the long term, particularly with respect to the Social Security, Medicare, and Medicaid programs. One device advocated by some as a means of compelling action on long-term budgetary issues is a bipartisan commission or task force empowered to recommend legislative changes that would correct or mitigate the imbalances.<sup>98</sup>

Advocates of the commission or task force approach argue that it would be an effective means of surmounting political opposition and achieving an end result because of the bipartisan nature of the group, the avoidance of preconditions with respect to policy options (i.e., all options would be "on the table"), and the action-forcing nature of expedited legislative procedures. Adherents to the use of regular legislative procedures to deal with these issues maintain that while they may entail a more time-consuming and difficult route, they afford more openness and participation in the decision-making process and are more likely to lead to widespread acceptance of the results.

During the 110<sup>th</sup> Congress, a leading example of such a proposal was the Bipartisan Task Force for Responsible Fiscal Action Act of 2007 ([S. 2063](#), introduced by Senators Kent Conrad and Judd Gregg, and [H.R. 3655](#), introduced by Representatives Jim Cooper and Frank Wolf). The bill would have established a bipartisan, 16-member task force (including the Treasury Secretary and another member from the executive branch, and seven members each from the House and Senate). The task force would have been charged with developing legislative recommendations (by December 9, 2008) to significantly improve the long-term balances in the federal budget, including the balances in Social Security and Medicare; the recommendations would have needed to be approved by at least 12 of the task force members. Under the proposal, the recommendations would have been considered by the House and Senate during the 2009 congressional session (during the first year of the new presidential administration), under expedited legislative procedures that would limit consideration to 100 hours in each chamber and bar amendments.<sup>99</sup>

In the 111<sup>th</sup> Congress, Representatives Cooper and Wolf introduced a measure recommending a similar approach—[H.R. 1557](#), the Securing America's Future Economy Commission Act, also referred to as the SAFE Commission Act; the bill was introduced in the Senate by Senator George Voinovich as [S. 1056](#). Senators Conrad and Gregg did not immediately introduce their Bipartisan Task Force bill, but advocated its approach in the media.<sup>100</sup>

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<sup>98</sup> For background on this issue, see CRS Report R40986, [Proposals for a Commission to Address the Federal Government's Long-Term Fiscal Situation](#), coordinated by Clinton T. Brass, Matthew Eric Glassman, and Jacob R. Straus.

<sup>99</sup> The proposal was explained by Senators Conrad and Gregg in the Congressional Record (daily ed.), September 18, 2007, pp. S11662-S11665.

<sup>100</sup> See the *Washington Post*, "A Fiscal Battle on Two Fronts," by Kent Conrad and Judd Gregg, January 5, 2009, available on the Senate Budget Committee website at [http://budget.senate.gov/democratic/documents/2009/Wash%20Post\\_A%20Fiscal%20Battle.pdf](http://budget.senate.gov/democratic/documents/2009/Wash%20Post_A%20Fiscal%20Battle.pdf).

On November 10, 2009, the Senate Budget Committee held a hearing on the matter, "Bipartisan Process Proposals for Long-Term Fiscal Stability."<sup>101</sup> Senators Conrad and Gregg introduced [S. 2853](#), the Bipartisan Task Force for Responsible Fiscal Action Act of 2009, on December 9, 2009.

## Capital Budgeting

Unlike many states, the federal government does not employ separate capital and operating budgets; instead, all revenue and spending is merged together into a "unified" budget. Information on capital budgeting, however, has been provided for many years as a separate chapter in one of the volumes of the President's budget. Interest in adopting a capital budget for the federal government has been examined from time to time. In 1999, a commission established by President Bill Clinton pursuant to Executive Order 13037 (March 3, 1997), the President's Commission to Study Capital Budgeting, recommended several changes in budgetary practice but did not recommend the adoption of a formal capital budget.

Advocates of capital budgeting generally regard it as a means of boosting resources for infrastructure needs (e.g., surface transportation and aviation systems struggling to meet capacity and deteriorating water infrastructure), overcoming an alleged bias against capital spending in the current budget process, and rationalizing decision-making in this area. Critics of capital budgeting assert that shifting a significant portion of the budget to an accrual basis (in which costs are apportioned over the lifetime of an asset rather than accounted for up front) would unduly complicate the budget process and undermine the task of setting priorities over the full range of governmental activities.

As a first step toward improved budgeting for infrastructure needs, some have advocated more information gathering and analysis in this area. One proposal introduced in the 110<sup>th</sup> Congress, for example, would have created a bipartisan National Commission on the Infrastructure of the United States charged with studying, among other things, "the methods used to finance the construction, acquisition, rehabilitation, and maintenance of public works improvements (including general obligation bonds, tax-credit bonds, revenue bonds, user fees, excise taxes, direct governmental assistance, and private investment)."

## Biennial Budgeting

While many authorizations are enacted on a multiyear cycle, Congress acts on budget resolutions and appropriations acts annually. Biennial budgeting proposals would change the cycle under which Congress acts on budget resolutions and appropriations acts (and annual authorization acts) to two years.

Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to allow more time for congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision-making. In the view of some, however, a biennial approach could impair Congress's ability to respond quickly to changing economic and budgetary circumstances.

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<sup>101</sup> A video presentation of the hearing is available on the website of the Senate Budget Committee at <http://www.senate.gov/fplayers/CommPlayer/commFlashPlayer.cfm?fn=budget111009&st=870>.

## Appendix. Citations to Selected Budget Process Laws

### **Budget and Accounting Act of 1921**

P.L. 67-13; June 10, 1921; 42 Stat. 20-27.

### **Budget and Accounting Procedures Act of 1950**

P.L. 81-784; September 12, 1950; 64 Stat. 832-845.

### **Congressional Budget and Impoundment Control Act of 1974**

[P.L. 93-344](#); July 12, 1974; 88 Stat. 297-339.

### **Balanced Budget and Emergency Deficit Control Act of 1985**

Title II of [P.L. 99-177](#) (Increasing the Statutory Limit on the Public Debt); December 12, 1985; 99 Stat. 1038-1101.

### **Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987**

Title I of [P.L. 100-119](#) (Increasing the Statutory Limit on the Public Debt); September 29, 1987; 101 Stat. 754-784.

### **Budget Enforcement Act of 1990**

Title XIII of [P.L. 101-508](#) (Omnibus Budget Reconciliation Act of 1990); November 5, 1990; 104 Stat. 1388-573 through 630.

### **Omnibus Budget Reconciliation Act of 1993**

[P.L. 103-66](#); August 10, 1993; 107 Stat. 683-685 (Title XIV).

### **Unfunded Mandates Reform Act of 1995**

[P.L. 104-4](#); March 22, 1995; 109 Stat. 48-71.

### **Line Item Veto Act**

[P.L. 104-130](#); April 9, 1996; 110 Stat. 1200-1212.

### **Budget Enforcement Act of 1997**

Title X of [P.L. 105-33](#) (Balanced Budget Act of 1997); August 5, 1997; 111 Stat. 677-712.

**Notes:** Major portions of selected budget process laws are codified as follows:

2 U.S.C. 621, et seq. (Congressional Budget and Impoundment Control Act of 1974, as amended);

2 U.S.C. 900, et seq. (Balanced Budget and Emergency Deficit Control Act of 1985, as amended); and

31 U.S.C. 1101, et seq. (Budget and Accounting Act of 1921, as amended).

For additional information on these and other budget process laws, see CRS Report RL30795, [General Management Laws: A Compendium](#), by Clinton T. Brass et al. (pdf).