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Revenue Provisions in Annual Appropriations Acts

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ABSTRACT

Under the standing rules and practices of the House of Representatives and the Senate, legislation affecting the revenues of the federal government usually is considered separately from legislation providing annual appropriations to federal agencies. Notwithstanding this general feature of the legislative process, revenue provisions are included in annual appropriations acts from time to time. This report discusses the procedural context of this practice and identifies several such provisions enacted during the 1980s and 1990s.

On the basis of information provided by the Congressional Budget Office, six annual appropriations acts enacted during FY1991-1999 included revenue provisions. Three of the measures were regular appropriations acts and the other three were omnibus appropriations acts. Two of the six measures involved revenue increases (ranging from \$25 million to \$967 million over five years); the other four involved revenue losses (ranging from \$55 million to \$516 million over five years).

This report will not be updated. (For related information, see *Legislative Provisions ("Riders") in Omnibus Appropriations Acts: Recent Examples*, CRS Report 98-834, updated October 28, 1998.)

Revenue Provisions in Annual Appropriations Acts

Summary

Under the standing rules and practices of the House of Representatives and the Senate, legislation affecting the revenues of the federal government usually is considered separately from legislation providing annual appropriations to federal agencies. Coordination of revenue and spending decisions occurs under the congressional budget process, in which the appropriate aggregate levels of revenue and spending for a multi-year period are set forth in a concurrent resolution on the budget. The revenue and spending legislation necessary to implement budget resolution policies, however, usually is developed under separate and distinct procedures. Notwithstanding this general feature of the legislative process, revenue provisions are included in annual appropriations acts from time to time.

During the 1980s and 1990s, revenue provisions have been included in regular appropriations acts on several occasions. For the most part, these provisions have been relatively minor in scope, with modest budgetary impact. However, as discussed in this report, four measures enacted in the late 1990s involved 5-year revenue losses in excess of \$150 million. Nearly all legislative changes affecting revenues during this period have occurred in revenue bills and reconciliation measures considered under regular legislative procedures, with a multi-year revenue impact of hundreds of billions of dollars. In some cases, provisions involving offsetting collections with a substantial budgetary impact have been included in annual appropriations acts, but such transactions are not counted as revenues.

On the basis of information provided by the Congressional Budget Office, six annual appropriations acts enacted during FY1991-1999 included revenue provisions: (1) the Omnibus Consolidated Rescissions and Appropriations Act, FY1996 (P.L. 104-134); (2) the VA-HUD Appropriations Act, FY1997 (P.L. 104-204); (3) the Omnibus Consolidated Appropriations Act, FY1997 (P.L. 104-208); (4) the Treasury-Postal Appropriations Act, FY1998 (P.L. 105-61); (5) the VA-HUD Appropriations Act, FY1999 (P.L. 105-276); and (6) the Omnibus Consolidated and Supplemental Emergency Appropriations Act, FY1999 (P.L. 105-277). Three of the six measures were regular appropriations acts; the other three were omnibus appropriations acts. Two of the measures involved revenue increases (ranging from \$25 million to \$967 million over 5 years); the other four involved revenue losses (ranging from \$55 million to \$516 million over 5 years).

The revenue provisions included in these six acts dealt with such matters as the adjustment of monetary penalties for inflation; the required use by federal agencies of electronic fund transfers; newborns' and mothers' health protection; parity in certain mental health benefits; bank insurance funds; a one-time open season so that federal employees in the Civil Service Retirement System could choose to switch to the newer Federal Employees Retirement System; a change to the Freddie Mac charter involving default loss protection (which subsequently was repealed); the extension of expiring tax provisions; Medicare-related provisions; and revenue offsets.

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Revenue Provisions in Annual Appropriations Acts

Background

Under the standing rules and practices of the House of Representatives and the Senate, legislation affecting the revenues of the federal government usually is considered separately from legislation providing annual appropriations to federal agencies. Coordination of revenue and spending decisions occurs under the congressional budget process, in which the appropriate aggregate levels of revenue and spending for a multi-year period are set forth in a concurrent resolution on the budget. The revenue and spending legislation necessary to implement budget resolution policies, however, usually is developed under separate and distinct procedures. Notwithstanding this general feature of the legislative process, revenue provisions are included in annual appropriations acts from time to time. The purpose of this report is to briefly assess the extent of this practice in recent years.

Definition of Terms. *Revenues* of the federal government (also called *receipts*) are income derived principally from the government's exercise of its sovereign powers. They consist mainly of individual and corporate income taxes and social insurance taxes, such as the Social Security payroll tax. In addition, revenues include excise taxes; customs duties and tariffs; certain fines, fees, and user charges; gifts and donations; and certain other income.

Budget authority is the first step in the spending process. It represents the legal authority for agencies to create financial commitments by incurring obligations. *Annual appropriations* are one of the most widely known forms of budget authority. *Outlays*, which complete the spending process, occur when obligations are paid off. For budget enforcement purposes, all federal spending is divided into two categories—*discretionary spending* (which is spending controlled through the annual appropriations process) and *direct spending* (which is spending controlled outside of the annual appropriations process). All discretionary spending, and some direct spending (e.g., Medicaid), is funded in *annual appropriations acts*. The remainder of direct spending is funded through devices such as permanent appropriations (e.g., Social Security and Medicare), borrowing authority, and contract authority.

Some funds received by accounts in the federal budget are treated as *offsetting collections*, which are deducted from budget authority and outlays instead of being counted as revenue. Offsetting collections involve business-like or market-oriented activities, or payments from one federal account to another.

Committee Jurisdiction. Both the House and Senate split jurisdiction over revenues and annual appropriations between two different committees. In the House,

jurisdiction over “revenue matters generally” and other specific revenue matters is vested in the Ways and Means Committee by Clause (1)(s) of Rule X. The Appropriations Committee is assigned jurisdiction over “appropriations of the revenue for the support of the Government” under Clause (1)(b) of Rule X. While the House Appropriations Committee exercises sole jurisdiction over all discretionary spending, most of the other House committees (including the Ways and Means Committee) have jurisdiction over some direct spending.

Similarly, in the Senate, Paragraph (1)(i) of Rule XXV assigns jurisdiction over “revenue matters generally” and other specific revenue matters to the Finance Committee. The Appropriations Committee is given jurisdiction, under Paragraph (1)(b) of Rule XXV, over “appropriations of the revenue for the support of the Government.” As is the case in the House, the Senate Appropriations Committee exercises sole jurisdiction over all discretionary spending, but most of the other Senate committees (including the Finance Committee) have jurisdiction over some direct spending.

Legislative Procedures. Under the regular legislative procedures of the House and Senate, revenue measures are considered separately from annual appropriations acts. Revenue measures often are constrained in their scope solely to revenue matters; such measures may range from the imposition or waiver of a single tariff to extensive changes in the Internal Revenue Code. Sometimes, omnibus measures dealing with direct spending programs may include one or more revenue titles along with titles containing direct spending and other legislative provisions. For example, legislation pertaining to Social Security or Medicare may contain provisions dealing with payroll taxes and other revenue features pertinent to the program, as well as provisions dealing with the program’s eligibility criteria and benefit payments. In some instances, such as for highway and aviation spending, the Ways and Means Committee and Finance Committee develop the revenue portion (*i.e.*, excise taxes) of the legislation, while other House and Senate committees develop the spending portion. During the 1980s and 1990s, the Ways and Means Committee and the Finance Committee also have developed revenue reconciliation bills in response to reconciliation directives in the annual budget resolution.

The House and Senate Appropriations Committees typically report three different types of annual appropriations acts each year. Each of the 13 different House and Senate Appropriations subcommittees develop one regular appropriations act, which provides budget authority to federal agencies for the next fiscal year. Supplemental appropriations acts provide additional budget authority during the current fiscal year when the regular appropriation is insufficient or to finance activities not provided for in the regular appropriation. Continuing appropriations acts, also called continuing resolutions (or CRs) provide stop-gap funding for agencies that have not received a regular appropriation. Any of these three types of annual appropriations acts may become an *omnibus* appropriations act if it is expanded to encompass agencies and accounts normally covered in two or more of the regular appropriations acts (or, in the case of a continuing resolution, if it goes beyond formula-funding for multiple bills to include the full text of the regular appropriations).

The Constitution, in Article I, Section 7, requires that revenue measures originate in the House. By custom, the annual appropriations acts originate in the House as well.¹

In the House, the jurisdictions of the Appropriations Committee and the Ways and Means Committee are protected by Rule XXI. In order to keep the consideration of annual appropriations acts separate from the consideration of substantive legislation, Clauses 2(b) and 2(c) of the rule prohibit the inclusion of “legislative provisions” (*i.e.*, provisions changing existing law) in *general* appropriations bills, while Clause 5(a) prohibits the inclusion of appropriations in legislation reported by any committee other than the Appropriations Committee. Similarly, Clause 5(b) of the rule bars the inclusion of any “tax or tariff measure” in legislation reported by any committee other than the Ways and Means Committee. Revenue provisions, inasmuch as they involve changing existing (or creating new) substantive law, normally would be regarded as a type of “legislative provision” in an appropriations act. The House does not regard continuing resolutions to be general appropriations bills.

In the Senate, Rule XVI had served for many years to separate the consideration of legislative and appropriations matters in a fashion similar to that employed by the House. In 1995, however, during the Senate’s consideration of a supplemental appropriations bill, the chair’s ruling that a particular amendment offered by a Senator was out of order as legislation was overturned by the full Senate.² The Senate has not enforced the prohibition against legislative provisions in annual appropriations acts since that time.

During the 1980s and 1990s, various factors contributed to the greater use of omnibus appropriations acts, particularly escalating disagreements between the President and Congress over general budgetary policy and policies in key program areas. At first, the omnibus appropriations acts took the form of continuing resolutions, but on two occasions in recent years several of the regular appropriations bills simply have been merged into an “omnibus consolidated” appropriations act.

In most instances, a considerable portion of these omnibus appropriations acts has consisted of legislative provisions.³ The two main reasons for this practice are that: (1) legislation stalled at the end of a session, that otherwise might not advance,

¹ When House action on appropriations bills is delayed, the Senate sometimes expedites its actions by considering a Senate-numbered bill up to the stage of final passage. Upon receipt of the House-passed bill in the Senate, it is amended with the text that the Senate already has agreed to (as a single amendment) and then passed by the Senate. In this manner, the Senate continues to adhere to the custom of House origination of appropriations acts.

² See the consideration in the *Congressional Record* of March 16, 1995, of an amendment offered by Senator Kay Bailey Hutchison to H.R. 889, a supplemental appropriations and rescission act.

³ For information on this practice, see *Legislative Provisions (“Riders”) in Omnibus Appropriations Acts: Recent Examples*, by (name redacted), CRS Report 98-834 GQV updated October 28, 1998, 6 pages.

can be carried through to enactment on the funding bill, which is considered to be “must-pass” legislation; and (2) legislation without strong support, especially legislation that faces a veto threat, may have a greater chance of prevailing when it is mixed in with high-priority funding matters.

The practice of including major legislative provisions in omnibus appropriations acts sometimes generates considerable controversy. Some Members decry the practice as undermining the deliberative process. They assert that in many instances the inclusion of riders in lengthy and complex appropriations bills may require Members to vote on matters with which they are largely unfamiliar, may give them too little time to debate these matters, may usurp the prerogatives of the relevant authorizing committees, and may shield from proper scrutiny legislation that would not prevail on its own merits.

Advocates of the practice, however, argue that it provides needed flexibility to the legislative process, allowing Congress to process its business more efficiently in the waning days of a session. Many such provisions, they maintain, already have been given a thorough review under regular procedures and their inclusion in annual appropriations bills often is at the behest of authorizing committee members.

Budget Enforcement Procedures. Revenue measures and annual appropriations bills, as well as other types of budgetary legislation, are subject to two different sets of budget enforcement procedures.⁴ First, under the congressional budget process, such legislation must adhere to constraints established by the yearly budget resolution. Potential violations of the appropriate budget resolution levels may be blocked by points of order established under the Congressional Budget Act of 1974. In the case of revenue bills, Section 311 of the act prohibits any measure that would cause estimated revenues to fall below the revenue floor set in the budget resolution. The Senate, but not the House, supplements this requirement with a special “pay-as-you-go” rule that requires revenue (and direct spending) legislation to be deficit neutral over a one-year, 5-year and 10-year period. This special Senate rule also is enforced by a point of order.

In the case of annual appropriations, Section 311 of the act generally bars annual appropriations acts from breaching the aggregate levels of new budget authority and outlays set in the budget resolution. Further, Section 302 of the act requires that such bills conform to the spending allocations made to the Appropriations Committees under the budget resolution, and to the subdivisions of spending allocations made to each of the subcommittees.

The second set of enforcement procedures stems from the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Enforcement Act of 1990, the Budget Enforcement Act of 1997, and other laws. Under the act, all revenue and direct spending legislation enacted during a session must be deficit-neutral under a “pay-as-you-go” (PAYGO) requirement. Also, all

⁴ Budget enforcement procedures, as well as other aspects of the budget process, are explained in: *Manual on the Federal Budget Process*, by (name redacted) and Allen Schjick CRS Report 98-720 GOV, August 28, 1998, 184 pages.

discretionary spending is subject to annual statutory limits (on both budget authority and outlays). These procedures apply to legislation enacted through FY2002; violations are enforced by means of sequestration, a procedure under which largely across-the-board spending cuts in nonexempt programs are made automatically shortly after the end of a congressional session.

Recent Practices

During the 1980s and 1990s, revenue provisions have been included in regular appropriations acts on several occasions. For the most part, these provisions have been relatively minor in scope, with modest budgetary impact. However, as discussed below, two measures enacted in the late 1990s involved 5-year revenue losses in excess of \$150 million. Nearly all legislative changes affecting revenues during this period have occurred in revenue bills and reconciliation measures considered under regular legislative procedures, with a multi-year revenue impact of hundreds of billions of dollars. In some cases, provisions involving offsetting collections with a substantial budgetary impact have been included in annual appropriations acts, but such transactions are not counted as revenues.

In the House and Senate, revenue provisions, as a type of “legislative provision,” may be included in annual appropriations acts in several ways. First, the rules that enforce the boundaries between legislation and appropriations are not self-enforcing; in order for a potential violation to be stopped, a Member must successfully raise a point of order and it must be sustained if challenged. Second, like any other rules of the House and Senate, these rules may be waived in various ways (in the House, it is not uncommon to waive Rule XXI under a “special rule” governing consideration of the annual appropriations act). Finally, the rules are not fully comprehensive in their coverage and application. Both House Rule XXI and Senate Rule XVI afford some exceptions (particularly in the Senate); in recent years, as previously mentioned, the Senate has chosen not to enforce this portion of the rule at all, pursuant to the 1995 precedent. Further, because the House does not regard continuing resolutions to be general appropriations bills, Rule XXI does not apply to their consideration.

The infrequent occurrence of revenue provisions in annual appropriations acts, and their typically limited scope, make it difficult to identify such provisions in a systematic fashion. Perusal of the text of selected annual appropriations acts of the 1980s reveals several examples:

- Section 139 (95 *Stat.* 967) of a continuing resolution for FY1982 (P.L. 97-51; October 1, 1981) amended the Internal Revenue Code to provide that Members of Congress be treated in the same fashion as private citizens with respect to the dollar limits on tax deductions for living expenses while away from home;
- Section 154 (96 *Stat.* 1203) of a continuing resolution for FY1983 (P.L. 97-276; October 2, 1982) amended the Tariff Schedules of the United States (19 *U.S.C.* 1202) regarding the treatment of steam; and
- Section 118 (99 *Stat.* 1319) of a continuing resolution for FY1986 (P.L. 99-190; December 19, 1985) authorized the President to deny “most-favored nation” status to the products of Afghanistan.

With regard to the 1990s, the establishment of the discretionary spending limits and the PAYGO process under the Budget Enforcement Act (BEA) of 1990 allows such provisions to be identified in a more thorough fashion. Each year, the Congressional Budget Office (CBO) prepares advisory sequester reports at the end of a session that include information on all discretionary spending and PAYGO legislation enacted; additionally, CBO provides an advisory cost estimate following the enactment of each discretionary spending or PAYGO measure. The CBO reports are provided to the Office of Management and Budget (OMB), which has the responsibility of determining whether a discretionary spending or PAYGO sequester must occur.

Discretionary spending in annual appropriations acts is scored by both CBO and OMB under the discretionary spending limits. Revenue and direct spending generally is scored under the PAYGO “scorecard.” Special procedures come into play when revenue or direct spending provisions are included in annual appropriations acts. Pursuant to scorekeeping rule 3, any provision in an annual appropriations act that makes a substantive change in direct spending effectively is accounted for by both CBO and OMB under the discretionary spending limits.⁵ The two agencies follow different practices, however, regarding the treatment of revenue provisions in annual appropriations acts: CBO scores their revenue effect under the PAYGO scorecard, but OMB accounts for them under the discretionary spending limits. All budgetary transactions in annual appropriations acts, therefore, are scored by both CBO and OMB under the discretionary spending limits, except that CBO scores revenue provisions in such acts under the PAYGO scorecard. Consequently, any annual appropriations act listed under the PAYGO scorecard by CBO includes revenue provisions.

The PAYGO process took effect beginning with FY1991 (during the second session of the 101st Congress). During the period from FY1991-1999, CBO (and OMB) have tracked well over 400 separate measures under this process involving revenues, direct spending, or both. As **Table 1** shows, CBO identified in its PAYGO reports six annual appropriations acts during this period (in the 104th and 105th Congresses) as including revenue provisions: (1) the Omnibus Consolidated Rescissions and Appropriations Act, FY1996 (P.L. 104-134); (2) the VA-HUD Appropriations Act, FY1997 (P.L. 104-204); (3) the Omnibus Consolidated Appropriations Act, FY1997 (P.L. 104-208); (4) the Treasury-Postal Appropriations Act, FY1998 (P.L. 105-61); (5) the VA-HUD Appropriations Act, FY1998 (P.L. 105-276); and (6) the Omnibus Consolidated and Emergency Supplemental Appropriations Act, FY1999 (P.L. 105-277).

⁵ Special scorekeeping rules were set forth in the joint explanatory statement accompanying the BEA of 1990; the rules were revised in the joint explanatory statement accompanying the BEA of 1997 (see “Scorekeeping Guidelines” on pages 1007-1014 of H.Rept. 105-217, to accompany H.R. 2015, the Balanced Budget Act of 1997, July 30, 1997). The updated scorekeeping rules are available, as an appendix to OMB Circular A-11, on the Internet at [\[http://www.whitehouse.gov/WH/EOP/OMB/html/circulars/a011/app_a.pdf\]](http://www.whitehouse.gov/WH/EOP/OMB/html/circulars/a011/app_a.pdf).

Three of the four measures were regular appropriations acts; the other three were omnibus appropriations acts. Two of the six measures involved revenue increases (ranging from \$25 million to \$967 million over 5 years); the other four involved revenue losses (ranging from \$55 million to \$516 million over 5 years).

In some cases, the net 5-year revenue impact of an act shown in **Table 1** masks considerable year-to-year fluctuations and largely offsetting increases and decreases for a single year. For example, the 5-year revenue increase of \$967 million for the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY1999 reflects a one-year increase of as much as \$1,864 million (for FY2000) and a one-year decrease of as much as \$780 million (FY2002). Further, the net increase of \$1,864 million for FY2000 reflects increases of \$1,618 million for Medicare-related provisions and \$1,155 million for revenue offsets, and decreases of \$1,089 million for extension of expiring tax provisions, among other things.

The revenue provisions included in these six acts dealt with such matters as:

- the adjustment of monetary penalties for inflation;
- the required use by federal agencies of electronic fund transfers;
- newborns' and mothers' health protection;
- parity in certain mental health benefits;
- bank insurance funds;
- a one-time open season so that federal employees in the Civil Service Retirement System could choose to switch to the newer Federal Employees Retirement System;⁶
- a change to the Freddie Mac charter involving default loss protection (which subsequently was repealed);
- the extension of expiring tax provisions, including the research and experimentation tax credit, the work opportunity tax credit, the welfare-to-work tax credit, and the Generalized System of Preferences, among others;
- a change in the tax treatment of prizes awarded as part of a contest, lottery, or jackpot in order to offset changes in Medicare spending; and
- revenue offsets, such as adding vaccines against rotavirus gastroenteritis to the list of taxable vaccines and restricting net operating loss carryback rules for specified liability losses.

⁶ The CSRS/FERS open season provision was line-item vetoed by President Clinton, but this action was later nullified (and the President's line-item veto authority was struck down by the Supreme Court in June 1998).

Table Table 1. Annual Appropriations Acts Containing Revenue Provisions: FY1991-1999

Public Law	Annual Appropriations Act	Revenue Provisions	5-Year Revenue Impact
P.L. 104-134	Omnibus Consolidated Rescissions and Appropriations Act, FY1996	Adjustment of civil monetary penalties for inflation; and required use of electronic fund transfers by federal agencies.	+\$25 million (FY1996-2000)
P.L. 104-204	VA-HUD Appropriations Act, FY1997	Newborns' and mothers' health protection; and parity in the application of certain limits to mental health benefits.	-\$516 million (FY1997-2001)
P.L. 104-208	Omnibus Consolidated Appropriations Act, FY1997	Bank insurance funds.	-\$55 million (FY1997-2001)
P.L. 105-61	Treasury-Postal Appropriations Act, FY1998	Federal retirement program (CSRS/FERS) open season.	-\$151 million (FY1998-2002)
P.L. 105-276	VA-HUD Appropriations Act, FY1999	Change to Freddie Mac charter (default loss protection) and drawdown of HUD funds. ^a	-\$260 million ^a (FY1999-2003)
P.L. 105-277	Omnibus Consolidated and Emergency Supplemental Appropriations Act, FY1999	Extension of expiring tax provisions, Medicare-related provisions, revenue offsets, repeal of change to Freddie Mac charter (default loss protection), and other provisions.	+967 million ^b (FY1999-2003)

Source: The information presented in this table is based on PAYGO letters for each act prepared by the Congressional Budget Office and CBO data included in final FY1997 and FY1998 sequester reports prepared by the Office of Management and Budget (see House Document 105-30, February 4, 1997, and House Document 105-188, February 3, 1998, respectively).

^a The change to the Freddie Mac charter, which was estimated to decrease revenues by \$215 million over five years, was repealed by P.L. 105-277.

^b The 5-year revenue impact reflects a \$1,110 million increase in on-budget revenues and a \$143 million decrease in off-budget revenues; the latter involves a change to exempt student employees at state universities from Social Security coverage agreements.

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