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Suspension of Budget Enforcement Procedures During Hostilities Abroad

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Summary

Federal budget policies are enforced by two major statutes—the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985. The first act establishes the congressional budget process, involving the annual adoption of a budget resolution; the second act establishes discretionary spending limits and a “pay-as-you-go” (PAYGO) requirement, enforced by sequestration.

Six enforcement mechanisms associated with these acts are suspended automatically if a declaration of war takes effect. Four involve points of order under the 1974 act against legislation that violates: (1) the spending ceilings or revenue floors in the budget resolution; (2) committee allocations and subdivisions of spending made under the budget resolution; (3) a deficit-neutral requirement for amendments offered to reconciliation bills; and (4) in the Senate only, the discretionary spending limits established under statute. Another point of order, which is suspended upon a declaration of war, was established in the budget resolution for FY2002 (H.Con.Res. 83); Section 203 of the resolution makes it out of order in the Senate to consider legislation providing defense or nondefense discretionary spending in excess of specified limits for that fiscal year.

The remaining procedural mechanism suspended during a declaration of war is the sequestration process under the 1985 act, which enforces the discretionary spending limits and the PAYGO requirement.

During the years that these suspension provisions have been available, the United States has been involved in several instances of armed hostilities abroad, including the Persian Gulf War, but budget enforcement procedures were not suspended in any of these instances because no declaration of war was enacted. Congress and the President met the additional spending needs associated with these hostilities largely by using procedures that allow such spending to be declared “emergency requirements,” thus freeing it from budget enforcement constraints. This report will be updated as developments warrant.

The existing laws that establish the principal enforcement procedures of the federal budget process include within them provisions under which the procedures may be suspended because of low economic growth or war. With regard to low economic growth, the suspension of procedures occurs only if a suspension resolution directed toward that purpose is enacted into law.¹ In the case of war, the procedures are suspended automatically upon the enactment of a declaration of war.

Budget Enforcement Procedures

Federal budget policies are enforced under two major statutes—the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985.² Budget enforcement procedures under the 1974 Congressional Budget Act are, for the most part, permanent and ongoing, whereas budget enforcement procedures under the 1985 Balanced Budget Act are scheduled to expire at the end of FY2002.³ In his budget for FY2002, President Bush proposed extending procedures under the 1985 act for several more years, but Congress has not yet acted on the proposal.⁴

Congressional Budget Act of 1974. The 1974 Congressional Budget Act provides for the adoption by Congress of an annual concurrent resolution on the budget. The budget resolution recommends the total level of revenues, spending, the surplus or deficit, and the public debt for each year covering at least a five-year period. Spending for each fiscal year is distributed among the functional categories of the budget, such as national defense, agriculture, and transportation. In addition, total spending is allocated to each of the House and Senate committees with jurisdiction over discretionary or direct spending; the House and Senate Appropriations Committees subdivide their spending allocations by subcommittee.

If the House and Senate wish to compel their committees to develop legislation conforming existing revenue, direct spending, or debt-limit law to budget resolution policies, they may include reconciliation directives in the budget resolution so instructing the appropriate committees. Reconciliation submissions from committees usually are consolidated into an omnibus bill that is considered under expedited procedures.

¹ For more information, see: U.S. Library of Congress. Congressional Research Service. *Suspension of Budget Enforcement Procedures During Low Economic Growth*, by Robert Keith, CRS Report RL31068 (Washington: July 27, 2001), 11 pages.

² These statutes have been amended several times over the years by such laws as the Budget Enforcement Act of 1990, the Unfunded Mandates Reform Act of 1995, the Budget Enforcement Act of 1997, and the Transportation Equity Act for the 21st Century. For more information on these statutes and their subsequent amendment, see: U.S. Library of Congress. Congressional Research Service. *General Management Laws: A Selective Compendium*, CRS Report RL30795 (Washington: January 8, 2001), 313 pages.

³ Certain procedures remain in effect through FY2006 to deal with the multiyear effects of legislation enacted through FY2002.

⁴ See the discussion on page 243 of the *Analytical Perspectives* volume (Chapter 13—Preview Report). The House Budget Committee held hearings on this matter on June 27, 2001; the testimony is available at: www.house.gov/budget/hearingstatements.htm.

Enforcement of budget resolution policies occurs as individual revenue and spending measures, including any required reconciliation legislation, are considered. Points of order established in different provisions of the 1974 Congressional Budget Act allow Members to object to legislation that would violate budget resolution policies, unless the points of order are waived or set aside.⁵

Balanced Budget and Emergency Deficit Control Act of 1985. The 1985 Balanced Budget Act, as amended in 1990 and later years, establishes adjustable limits on discretionary spending and subjects direct spending and revenue legislation to a “pay-as-you-go” (PAYGO) requirement. Under the PAYGO requirement, direct spending and revenue legislation enacted during a session may not, in the net, incur a deficit on a multiyear PAYGO “scorecard.”

The discretionary spending limits and PAYGO requirement are enforced by sequestration, a procedure involving largely across-the-board spending cuts in nonexempt programs. Sequestration is triggered shortly after the end of a congressional session if the director of the Office of Management and Budget (OMB) estimates in a sequestration report that one or more of the discretionary spending categories will be breached or the PAYGO requirement will be violated. Section 254 of the 1985 act requires the President to issue a sequestration order carrying out any spending reductions identified by the OMB director as being necessary to eliminate a spending limit breach or a PAYGO violation.

Mechanisms Automatically Suspended

Six enforcement mechanisms—five in these two acts and one in the FY2002 budget resolution—are suspended automatically if a declaration of war takes effect (see **Box 1**). For the most part, the authority to suspend these mechanisms is provided in Section 258(b) of the 1985 act, but such authority is provided elsewhere as well (as noted below).⁶

Four of the mechanisms involve points of order under the 1974 act against legislation that violates: (1) the spending ceilings or revenue floors in the budget resolution; (2) committee allocations and subdivisions of spending made under the budget resolution; (3) a deficit-neutral requirement for amendments offered to reconciliation bills; and (4) in the Senate only, the discretionary spending limits established under statute. A fifth point of order stems from Section 203(c) of H.Con.Res. 83, the budget resolution for FY2002.

⁵ For more information on points of order under the 1974 act, see: U.S. Library of Congress. Congressional Research Service. *Points of Order in the Congressional Budget Process*, by James V. Saturno, CRS Report 97-865 (Washington: June 1, 2001), 15 pages.

⁶ The current text of Section 258(b) also references two other provisions of law, but inappropriately: (1) Title VI of the 1974 act, which was repealed by Section 10118(a) of the Budget Enforcement Act of 1997 (P.L. 105-33; 111 *Stat.* 695); and (2) 31 *U.S.C.* 1103, which generally states Congress’s commitment to the goal of avoiding deficits. (Another provision of Title 31—31 *U.S.C.* 1105(f)—required the President’s annual budget submission to comply with the deficit targets established in the 1985 Balanced Budget Act. This requirement was terminated several years later when the use of deficit targets was abandoned. Presumably, the drafters of Section 258(b) had intended to refer to Section 1105(f), not Section 1103. In any event, Section 1103 does not contain any enforcement mechanism, merely a policy exhortation.)

The section establishes a point of order in the Senate against legislation violating specified limits on defense and nondefense discretionary spending for that fiscal year.

The remaining procedural mechanism suspended during a declaration of war is the sequestration process under the 1985 act, which enforces the discretionary spending limits and the PAYGO requirement.

**Box 1. Budget Enforcement Mechanisms
Automatically Suspended If a Declaration of War is in Effect**

Requirement	Source
1 Cost of legislation may not exceed committee allocations and subdivisions of spending under the budget resolution	Section 302(f) of the 1974 Congressional Budget Act
2 Amendments to reconciliation measures must be deficit-neutral	Section 310(d) of the 1974 Congressional Budget Act
3 Cost of legislation may not violate spending ceilings or revenue floors in the budget resolution	Section 311(a) of the 1974 Congressional Budget Act
4 Cost of legislation (in the Senate only) may not exceed the discretionary spending limits established under statute	Section 312(b) of the 1974 Congressional Budget Act)
5 In the Senate, discretionary spending for FY2002 may not exceed defense and nondefense levels specified under a “firewall.”	Section 203(c) of H.Con.Res. 83, the FY2002 budget resolution (107 th Congress)
6 A presidential sequestration order (providing for largely across-the-board spending cuts in nonexempt programs) must be issued if annual appropriations exceed the statutory limits on discretionary spending or the net effect of direct spending and revenue legislation enacted for the fiscal year leads to a deficit on the PAYGO scorecard	Section 254 of the 1985 Balanced Budget Act

These six enforcement mechanisms and the specific suspension provisions are discussed in more detail below.

Section 302(f) of the 1974 Act. Section 302 of the act provides for the allocation to committees of the aggregate spending levels in the budget resolution. The House and Senate Appropriations Committees, in turn, subdivide their total spending allocations among their 13 subcommittees. This process allows the spending policies in the budget resolution to be enforced as individual bills, particularly the annual appropriations acts, are considered.

Section 302(f) generally prohibits the consideration of legislation that would violate a committee spending allocation or subdivision. Although Section 302 of the act is silent regarding the suspension of the prohibition, Section 258(b) of the 1985 Balanced Budget

Act suspends the requirements of Section 302(f) upon the enactment of a declaration of war.

Sections 310(d)(1) and (2) of the 1974 Act. Section 310 of the act sets forth budget reconciliation procedures. Under reconciliation, a budget resolution may include directives to House and Senate committees to recommend changes in direct spending and revenue laws in order to bring direct spending and revenue levels into conformity with budget resolution policies. The recommendations of the instructed committees usually are incorporated into an omnibus reconciliation bill, which is considered under expedited procedures.

Sections 310(d)(1) and (2) generally prohibit amendments to reconciliation measures considered in the House and Senate, respectively, that are not deficit neutral. Section 310(d)(3) states that these requirements “shall not apply if a declaration of war by the Congress is in effect.” In addition, Section 258(b) of the 1985 Balanced Budget Act also suspends the requirements of Section 310(d) upon the enactment of a declaration of war.

Section 311(a)(1) of the 1974 Act. Section 311(a) of the act generally prohibits the consideration of budgetary measures that would violate the aggregate levels in the budget resolution (*i.e.*, total budget authority, outlays, and revenues). Violations would occur if the legislation was expected to cause spending to exceed the ceilings or revenues to fall below the floors.

Section 311(a)(1) sets forth specific enforcement procedures that apply in the House, “except when a declaration of war by the Congress is in effect.” In addition, Section 258(b) of the 1985 Balanced Budget Act also suspends the requirements of Section 311(a) upon the enactment of a declaration of war.

Section 312(b)(1) of the 1974 Act. Section 312(b)(1) of the act provides for a point of order in the Senate against the consideration of any measure that would cause the discretionary spending limits established under Section 251 of the 1985 Balanced Budget Act, as adjusted, to be exceeded.

Section 312(b)(2) suspends the application of the point of order provision “if a declaration of war by the Congress is in effect.” Section 258(b) of the 1985 Balanced Budget Act does not refer to Section 312(b)(1).

Section 203(c) of the FY2002 Budget Resolution. The discretionary spending limits currently in effect for FY2002 do not distinguish between defense and nondefense spending, as had been the case for some prior fiscal years. For purposes of enforcement only in the Senate, Section 203(c) establishes separate defense and nondefense limits of new budget authority for FY2002 under a “firewall.” The separate limits are enforced by a point of order under Section 203(c)(2)(A), which requires a three-fifths vote to waive. Section 203(c)(2)(B) suspends the point of order if a declaration of war is in effect.

Part C of the 1985 Balanced Budget Act. Part C of the 1985 Balanced Budget Act establishes discretionary spending limits and a PAYGO requirement, enforced by sequestration. Section 254 of the 1985 act requires OMB to issue sequestration reports at least three times a year: a preview report in conjunction with the submission of the

President's budget early in the session; an update report in August; and a final report within 15 days after a congressional session ends. (CBO issues sequestration reports as well, but they are advisory only.) Any sequester under the discretionary spending limits, the PAYGO requirement, or both, would occur shortly after the final OMB report is issued. In addition, a "within-session" sequester under the discretionary spending limits could be required during the following session (but prior to July 1) if the enactment of a supplemental appropriations measure caused a violation of the discretionary spending limits.

Section 258(b) would preclude the "subsequent issuance" of any sequestration report or any sequestration order. The enactment of a suspension resolution would not, however, cancel a sequestration order that already had been issued.

Record of Experience

Some of the provisions to suspend budget enforcement mechanisms originated in 1985 (as part of the 1985 Balanced Budget Act) and others were added in later. During the years that these suspension provisions have been available, the United States has been involved in several instances of armed hostilities abroad, including the Persian Gulf War.⁷ Budget enforcement procedures were not suspended in any of these instances, however, because no declaration of war was enacted. (The last time the United States declared war occurred during World War II, when war was declared on Japan, Germany, and Italy in December 1941 and on Bulgaria, Hungary, and Romania in June 1942.)

One of the main purposes of the suspension provisions is to allow the federal government to respond to the sudden and urgent need for additional spending that arises when armed hostilities occur abroad. Current budget enforcement procedures, however, contain an alternate procedure for dealing with such needs. Most, if not all, spending for such activities is considered to be *discretionary spending* (which is controlled by the Appropriations Committees), rather than *direct spending* (which is controlled by the legislative committees). Current budget enforcement procedures allow any spending designated as an "emergency requirement" by the President and Congress in statute to be provided free of the constraints of the statutory discretionary spending limits and the associated procedures under the congressional budget process. (Further, under the Budget Enforcement Act of 1990, spending for the Persian Gulf War automatically was deemed to be emergency spending, without requiring any further action by the President and Congress.) The President and Congress have used this procedure over the years to designate billions of dollars in spending as emergency requirements, for both military and nonmilitary activities.⁸

⁷ See *Instances of the Use of United States Armed Forces Abroad, 1798-1998*, by Richard F. Grimmett, CRS Report 98-881, October 27, 1998, 28 pages.

⁸ For information on the practice of providing emergency spending, see the following report of the Congressional Budget Office: *Emergency Spending Under the Budget Enforcement Act*, December 1998.