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Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule

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Summary

The Senate “pay-as-you-go,” or PAYGO, rule generally requires that any legislation increasing direct spending or reducing revenues be offset. A motion to waive the rule requires an affirmative vote of three-fifths of the membership (i.e., 60 Senators if no seats are vacant). The rule expired on September 30, 2002. On October 16, however, the Senate agreed to restore and extend the PAYGO point of order through April 15, 2003.

Beginning in 1993, six points of order under the PAYGO rule have been raised against an entire bill or an amendment. Of these six points of order, four were sustained and two fell upon the adoption of a waiver motion.

This report will be updated as developments warrant.

Introduction

The Senate “pay-as-you-go,” or PAYGO, rule generally requires direct spending and revenue legislation to be budget neutral over a 10-year period. Any increase in direct spending or reduction in revenues resulting from such legislation must be offset by an equivalent amount of direct spending cuts, tax increases, or a combination of the two. Without an offset, such legislation would require the approval of at least 60 Senators to waive the rule and be considered on the Senate floor.

Direct spending is provided in substantive law, and funds such mandatory items as Medicare, unemployment compensation, and retirement programs. It is distinguished from *discretionary spending*, which is controlled through the annual appropriations process.

The Senate PAYGO rule does not apply to direct spending or revenues generated under existing law; it applies only to legislation considered by the Senate. Consequently, direct spending may increase and revenues may decline in any fiscal year due to factors beyond the control of the PAYGO rule.

A statutory PAYGO requirement, as well as limits on discretionary spending, was established by the Budget Enforcement Act of 1990 (BEA, Title XIII of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990) and has been extended twice, in 1993 and 1997.¹ Under the statutory PAYGO requirement, the net effect of new direct spending and revenue legislation enacted for a fiscal year may not cause a positive balance (reflecting an increase in the on-budget deficit or a reduction in the on-budget surplus) on a multiyear PAYGO “scorecard.” For each fiscal year, this scorecard maintains the balances of the accumulated budgetary effects of laws enacted during the session and prior years. The statutory PAYGO requirement is enforced by sequestration, which involves automatic, largely across-the-board spending cuts in non-exempt programs.²

The Senate PAYGO rule differs from the statutory PAYGO requirement in that it is enforced by a point of order during consideration of legislation instead of by sequestration after legislation is enacted into law. In addition, the Senate PAYGO rule has a 10-year time frame whereas the statutory PAYGO requirement covers, through FY2006, the effects of legislation enacted before the end of FY2002.

The Senate PAYGO rule, like many other budget enforcement procedures, expired on September 30, 2002.³ On October 16, however, the Senate agreed to restore and extend the PAYGO point of order through April 15, 2003.

This report describes the legislative history of the Senate PAYGO rule, explains its current features, and reviews Senate actions under the rule.

Legislative History of the Senate PAYGO Rule

The Senate PAYGO rule originated in a budget resolution in 1993 and has been modified and extended in subsequent budget resolutions over the years.⁴

¹ The BEA amended the Balanced Budget and Emergency Deficit Control Act (Title II of P.L. 99-177), commonly known as the Gramm-Rudman-Hollings Act. The 1993 and 1997 extensions were included in Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and the Budget Enforcement Act of 1997 (Title X of P.L. 105-33), respectively.

² For further information on the statutory PAYGO requirement, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick; and CRS Report RL31194, *Pay-As-You-Go Requirement for FY2002: A Procedural Assessment*, by Robert Keith.

³ The statutory limits on discretionary spending and the statutory PAYGO requirement for direct spending and revenue legislation, first established by the BEA, expired on Sept. 30, 2002, as well. For additional information on the extension of these budget enforcement mechanisms, see the applicable section in CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr. In addition, the three-fifths vote requirements in the Senate to waive certain points of order under the Congressional Budget Act of 1974 (CBA, Titles I-IX of P.L. 93-344), as amended, and to sustain an appeal of a ruling of the chair on a point of order under the CBA, expired on Sept. 30, 2002. These supermajority waiver requirements, however, were restored and extended through Apr. 15, 2003, along with the Senate PAYGO point of order.

⁴ Such procedural provisions may be included in a budget resolution under the authority provided by Section 301(b)(4), the so-called “elastic clause,” of the CBA. This section gives Congress the
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In 1993, the Senate created the PAYGO rule as a provision in the FY1994 budget resolution (H.Con.Res. 64) for the purpose of preventing the deficit reduction expected to be achieved in a subsequent reconciliation bill from being used to offset the costs of any new direct spending or revenue legislation.⁵ Section 12(c) of H.Con.Res. 64 prohibited the consideration of any direct spending and revenue legislation that would increase the deficit in the FY1994 budget resolution for any fiscal year through FY1998 or would increase the deficit for any other fiscal year through FY2003. In this initial form, the Senate PAYGO rule had no expiration date.

The Senate has modified and extended the Senate PAYGO rule three times in subsequent budget resolutions. First, Section 23 of H.Con.Res. 218, the FY1995 budget resolution, modified the PAYGO rule to require direct spending and revenue legislation to be deficit neutral for any one of the three time periods contained in the current PAYGO rule (explained below) and added an expiration date of September 30, 1998. Second, Section 202 of H.Con.Res. 67, the FY1996 budget resolution, restated the existing PAYGO rule language and extended its expiration date to September 30, 2002. Lastly, Section 207 of H.Con.Res. 68, the FY2000 budget resolution, modified the PAYGO rule to allow on-budget surpluses to be used to offset tax reductions or spending increases. After decades of on-budget deficits, the federal government recorded a small on-budget surplus for FY1999 and an on-budget surplus of \$87 billion for FY2000.

During the 107th Congress, several attempts had been made on the Senate floor to extend the PAYGO rule before it was scheduled to expire on September 30, 2002. On June 5, 2002, Senators Judd Gregg and Russell Feingold offered an amendment (S.Amdt. 3687) that would have extended expiring budget enforcement procedures, including the Senate PAYGO rule, to H.R. 4775, the Supplemental Appropriations Act, 2002. The amendment fell on a point of order.⁶ The next day, June 6, Senate Majority Leader Tom Daschle offered an amendment (S.Amdt. 3764) that would have extended the Senate PAYGO rule, among other budget enforcement procedures, through FY2007 to H.R. 4775, but that amendment also fell on a point of order.⁷ Another attempt was made on

⁴ (...continued)

option to include in a budget resolution other matters and procedures consistent with the purposes of the Budget Act.

⁵ See U.S. Congress, Conference Committee, *FY1994 Budget Resolution*, conference report to accompany H.Con.Res. 64, 103rd Cong., 1st sess., (Washington: GPO, 1993), p. 47. The reconciliation bill enacted later that session, P.L. 103-66 (the Omnibus Budget Reconciliation Act of 1993), was estimated at the time as reducing the deficit by about \$500 billion over FY1994-FY1998.

⁶ The amendment was subject to a point of order under Section 306 of the CBA, which prohibits consideration of any measure within the jurisdiction of the Budget Committee unless it is reported by the Budget Committee, discharged from the committee, or is an amendment to such a measure. A motion to waive the point of order requires a three-fifths vote in the Senate. A motion to waive the point of order raised against the amendment was rejected by a 49-49 vote. See *Congressional Record*, daily edition, vol. 148 (June 5, 2002), pp. S5004-S5015.

⁷ On June 6, 2002, cloture was invoked on H.R. 4775. Under cloture, a point of order may be raised against nongermane amendments. The chair ruled that Senator Daschle's amendment was not germane to the FY2002 supplemental appropriations act and the amendment fell. See

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June 20, 2002, during consideration of S. 2514, the Defense Authorization Act for FY2003. Senator Feingold offered an amendment (S.Amdt. 3915), which was modified by an amendment (S.Amdt. 3916) offered by Senators Harry Reid and Kent Conrad, that also would have extended the expiration date of the Senate PAYGO rule, among other things, through FY2007. This amendment also fell on a point of order.⁸

On October 16, the Senate restored and extended the PAYGO point of order through April 15, 2003.⁹ The Senate agreed by unanimous consent to S.Res. 304, as amended by the modified amendment offered by Senators Conrad, Pete Domenici, Gregg, and Feingold (S.Amdt. 4886).¹⁰ The legislation also restored and extended the three-fifths vote requirement for certain waivers of the Congressional Budget Act of 1974.

Current Senate PAYGO Rule

The current Senate PAYGO rule prohibits the consideration of direct spending or revenue legislation that would increase or cause an on-budget deficit in any one of three time periods: the first year, the first 5 years, and the second 5 years, covered by the most recently adopted budget resolution. Legislation increasing or causing an on-budget deficit is not considered as violating the rule if it is offset by direct spending and revenue legislation enacted since the beginning of the calendar year that was not assumed in the most recently adopted budget resolution.

A motion to waive the PAYGO rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the rule, requires an affirmative vote of three-fifths of the membership, duly chosen and sworn (i.e., 60 Senators if no seats are vacant).

As noted above, under the recent extension, the current Senate PAYGO rule is scheduled to expire on April 15, 2003.

Points of Order and Waiver Motions Under the Senate PAYGO Rule

Beginning in 1993, six points of order have been raised under the Senate PAYGO rule (see **Table 1**). Of these six points of order, two were raised against entire bills and the remaining four were raised against amendments. The two points of order against entire bills fell upon the adoption of a waiver motion, thus allowing consideration of the

⁷ (...continued)

Congressional Record, daily edition, vol. 148 (June 5, 2002), pp. S5015-S5018; and *Congressional Record*, daily edition, vol. 148 (June 6, 2002), pp. S5114-S5120.

⁸ The amendment was subject to a point of order under Section 306 of the CBA. A motion to waive the point of order raised against the amendment was rejected by a 59-40 vote. See *Congressional Record*, daily edition, vol. 148 (June 19, 2002), pp. S5762-S5767; and *Congressional Record*, daily edition, vol. 148 (June 20, 2002), pp. S5808-S5821.

⁹ Under the Congressional Budget Act, April 15 is the target date for Congress to complete action on the annual budget resolution.

¹⁰ See *Congressional Record*, daily edition, vol. 148 (Oct. 16, 2002), pp. S10527-S10531 and S10553.

bills to proceed. All four points of order against amendments were sustained and thus the amendments fell.

A total of seven waiver motions under the PAYGO rule have been made in relation to the six points of order. Two waiver motions were successful, while five were rejected. Two separate waiver motions were made relating to the point of order raised against H.R. 3167 (103rd Congress). As indicated in **Table 1**, the first waiver was rejected on a 59-38 vote on October 26, 1993. The next day, however, the Senate agreed to a motion to reconsider the vote on this waiver motion by voice vote. The Senate, subsequently, approved the waiver motion by a 61-39 vote and the point of order against H.R. 3167 fell.

Like any other Senate rule, the Senate PAYGO rule is not self-enforcing. A Senator must raise a point of order under the rule in order to prevent the consideration of legislation that violates the rule. During the period that the rule has been in effect, the Senate has at times considered legislation significantly increasing direct spending or decreasing revenues without interference from the Senate PAYGO rule, either because a point of order was not raised or, following the change in the FY2002 budget resolution, because the legislation fit within the available on-budget surpluses. In the past 2 years especially, such legislation has incurred sizeable balances on the statutory PAYGO scorecard, but PAYGO sequesters have been averted by directed scoring.¹¹

¹¹ See CRS Report RL31155, *Techniques for Preventing a Budget Sequester*, by Robert Keith.

Table 1. Actions Under the Senate PAYGO Rule, Calendar Years 1993-2002

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
10/26/1993	Emergency Unemployment Compensation (H.R. 3167) — To extend the emergency unemployment compensation program, and to establish a system of worker profiling.	Rejected, 59-38	Fell on reconsidered vote on waiver motion (see next item)
10/27/1993	Emergency Unemployment Compensation (H.R. 3167) — To extend the emergency unemployment compensation program, and to establish a system of worker profiling.	Approved, 61-39	Fell
10/27/1993	Emergency Unemployment Compensation (H.R. 3167) — Bumpers modified amendment no. 1084, to repeal the retroactive income, estate, and gift tax increase and compensate for the lost revenue by terminating the Space Station program.	Rejected, 36-61	Sustained
12/01/1994	GATT (H.R. 5110) — To approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations.	Approved, 68-32	Fell
09/11/1996	Treasury/Postal Service Appropriations, 1997 (H.R. 3756) — Wyden-Kennedy amendment no. 5206 (to committee amendment beginning on page 16, line 16, through page 17, line 2), to prohibit the restriction of certain types of medical communications between a health care provider and a patient.	Rejected, 51-48	Sustained
05/07/1998	IRS Reform (H.R. 2676) — Coverdell amendment no. 2353, to prohibit the use of random audits.	Rejected, 37-60	Sustained
07/28/1998	Treasury/Postal Service Appropriations, 1999 (S. 2312) — Hutchinson amendment no. 3249, to terminate the Internal Revenue Code of 1986.	Rejected, 49-49	Sustained

Source: *Congressional Record*, especially the Daily Digest section, various years, searched through the Legislative Information System [<http://www.congress.gov>].