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Federal Budget Process Reform: A Brief Overview

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Summary

In 2005, during the first session of the 109th Congress, the House and Senate face a wide array of budget process reform proposals, pertaining to such matters as restoration of the statutory discretionary spending limits and PAYGO requirement, modifications to budget resolution, reconciliation, and appropriations processes, and item veto/expanded rescission authority for the President. The House and Senate may pursue budget process reform in various ways, including modifications to each chamber's rules and practices, the enactment of freestanding legislation, or the inclusion of budget process changes in other budgetary legislation, such as a reconciliation or debt-limit measure. This report provides a context for congressional actions in this area and briefly discusses selected actions or proposals to illustrate the diversity of issues involved. The report will be updated.

Congress and the President regularly propose and make changes to the federal budget process in order to achieve certain budgetary objectives. Projected deficits in the unified budget in each of the next several fiscal years, in particular, have increased congressional interest in various budget process reform proposals.¹ This report briefly discusses the context in which federal budget process changes are made and identifies selected reform

¹ The Office of Management and Budget (OMB) projects that under President Bush's proposals the FY2005 unified budget deficit will be \$427 billion, with deficits continuing but declining through FY2010. The Congressional Budget Office (CBO) projects, under its baseline budget projections (which do not assume any changes in policy), that the FY2005 unified budget deficit will be \$368 billion, with a surplus returning in FY2012. For further information on the current budget deficit projections, see OMB, *Budget of the U.S. Government, Fiscal Year 2006* (Washington: GPO, 2005), Table S-1, p. 343; and CBO, *The Budget and Economic Outlook: Fiscal Years 2006-2015*, Jan. 2005, Summary Table 1, p. xiv.

proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive; other CRS reports discuss different aspects of budget process reform in more detail.²

The Context of Budget Process Reform

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.³ Thus, there are several avenues through which Congress and the President can change the various elements of the budget process. (This report addresses only changes made through legislative action.)

In some years, comprehensive changes were made in the budget process through statutes enacted by Congress and the President. 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 (BEA) of 1990 imposed additional budget controls on a temporary basis.⁴ 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 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 in the budget process and sometimes instituted new ones.⁵

Because 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 radiates throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, 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 may exert influence over budget process changes affecting their legislative interests.

Changes in the budget process may take the form of freestanding legislation (e.g., the Line Item Veto Act) or may be incorporated into other budgetary legislation, such as

² For example, see (1) CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr.; (2) CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr.; and (3) CRS Report RL30550, *Biennial Budgeting: Issues and Options*, by James V. Saturno.

³ For a comprehensive overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick.

⁴ 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*, Clinton T. Brass (coordinator).

⁵ For example, at the beginning of the 109th Congress, the House made rules changes that affect the budget process. See CRS Report RS22021, *House Rules Changes Affecting the Congressional Budget Process in the 109th Congress (H.Res. 5)*, by Bill Heniff Jr.

acts raising the debt limit (e.g., the 1985 Balanced Budget Act) or implementing reconciliation instructions (e.g., the BEA of 1990). Budget process changes also may be included in the annual budget resolution or other House and Senate resolutions.

Selected Budget Process Reform Proposals

Among the various budget process reform proposals currently under discussion, many pertain to categories such as the restoration of the statutory discretionary spending limits and the “pay-as-you-go” (PAYGO) requirement, the congressional budget resolution and reconciliation, the annual appropriations process, and item veto/expanded rescission authority. These and other categories of reform are discussed separately below.

Restoration of Discretionary Spending Limits and PAYGO Requirement.

For FY1991 through FY2002, 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 BEA 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, but effectively expired at the end of FY2002 on September 30, 2002.

For the last several years, there has been considerable interest in restoring and possibly making significant modification to the BEA procedures beyond FY2002. Many Members of Congress and some outside observers agree that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a unified budget surplus in FY1998 — the first in almost 30 years. With the return of deficits, some have argued for restoring such fiscal discipline mechanisms.

Two of the major issues in this area are the duration of any new discretionary spending limits and whether the PAYGO requirement should apply to both revenue and direct spending legislation, or instead be confined to just direct spending legislation. In the past, the discretionary spending limits covered a five-year time frame and were adjusted from time to time. Eventually, the limits became quite out of sync with actual spending policy, so much so that they were regarded as “unrealistic,” leading to practices which undermined enforcement. Some argue that restricting the renewal of the discretionary spending limits to a shorter time frame, such as two years, would be more likely to yield realistic, workable enforcement. President Bush recommended a two-year extension of discretionary spending limits in his FY2004 budget and five-year extensions in his FY2005 and FY2006 budgets.⁶ In addition, he recommended that the PAYGO requirement be reestablished, but that it apply only to direct spending legislation and not revenue legislation. Some have countered that restricting the PAYGO requirement to the

⁶ President Bush’s proposals in this regard, and on other budget process matters, are set forth in the *Budget of the United States Government, Fiscal Year 2006, Analytical Perspectives*, Chapter 15, pp. 235-242.

spending side of the budget could hamper overall efforts to contend with projected large deficits.

On March 19, 2004, the House Budget Committee reported H.R. 3973 (H.Rept. 108-442), the Spending Control Act of 2004, a measure restoring discretionary spending limits and a PAYGO requirement (applicable only to direct spending) for FY2005-FY2009. The House considered H.R. 4663, a revised version of H.R. 3973, on June 24, defeating it by a vote of 146-268. Amendments dealing with various topics in budget process reform were considered; two were agreed to and the remainder were rejected or withdrawn.

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 may be significantly delayed.

The expedited features applicable to the consideration of budget resolutions and reconciliation measures are a particular concern in the Senate, which often operates under "extended debate," where legislation may be considered without constraints on debate time or the offering of nongermane amendments. Limits on debate time sometimes lead to a situation referred to as "vote-arama," where the Senate considers and disposes of many amendments after official debate time has expired. Some Senators have proposed various solutions to the "vote-arama" problem so that they have better opportunities to understand the content of amendments and to debate them adequately.

The Senate also expedites reconciliation legislation by a device known as the Byrd rule (which is Section 313 of the 1974 act). Under the Byrd rule, which prohibits the inclusion of extraneous matter in reconciliation legislation, a Senator may raise a point of order against a provision that meets any of the six definitions of extraneous matter specified in the 1974 act. While the Byrd rule has been very effective in excluding extraneous matter from reconciliation measures, some assert that the rule unduly limits the flexibility needed to formulate effective legislative policies and disadvantages the House in conference negotiations with the Senate on such legislation.⁷

⁷ For example, see the explanations of the modifications to the Byrd rule proposed by H.R. 853, (continued...)

Congress enforces budget resolution policies through points of order on the floor of each chamber during the consideration of budget legislation. Points of order, however, are not self-enforcing; a Member must raise a point of order on the floor. In addition, points of order under the 1974 act may be waived or set aside by unanimous consent. In the Senate, a motion to waive most Budget Act points of order requires a three-fifths vote (60 Senators if no seats are vacant). In the House, points of order may be waived by a special rule reported by the Rules Committee; consequently, points of order under the 1974 act may be waived by a simple majority. Some argue that a super-majority vote should be required to waive Budget Act points of order in the House, to make it more difficult to consider legislation that would violate the policies set forth in the budget resolution. Others, however, argue that a super-majority threshold to waive Budget Act points of order would obstruct the will of the majority in the House.

On April 28, 2005, the House adopted a special procedure aimed at bolstering the enforcement of discretionary spending levels during the remainder of the 109th Congress.⁸ The procedure affords the House an additional opportunity (at the conclusion of consideration by the Committee of the Whole) to assess whether an appropriations measure complies with the spending suballocations made under the budget resolution.

Annual Appropriations Process. Discretionary spending, which amounts to about 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.

At the beginning of the 109th 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.⁹ Both committees disbanded their VA-HUD Appropriations Subcommittee, and the House Appropriations Committee disbanded two others (District of Columbia and Legislative Branch), leaving 12 Senate and 10 House appropriations subcommittees. Some Members have raised concerns as to whether the reduction in the number of subcommittees (and, hence, in the number of regular appropriations bills) would be sufficient to make appropriations actions more timely and Congress less reliant on consolidated appropriations acts.

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

⁷ (...continued)

the Comprehensive Budget Process Reform Act of 1999, which was introduced and defeated in the 106th Congress: *Comprehensive Budget Process Reform Act of 1999*, report to accompany H.R. 853, H.Rept. 106-198 (August 5, 1999), part 2 (House Budget Committee) and part 3 (House Rules Committee).

⁸ The special procedure is set forth in Section 2 of H.Res. 248, the special rule governing consideration of the conference report on the FY2006 budget resolution (H.Con.Res. 95).

⁹ For a further discussion on reorganization of the appropriations subcommittees, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2005*, by James V. Saturno.

employees and disruptions in service. 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.

Biennial Budgeting. While most 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, a biennial approach could impair Congress's ability to respond to changing economic and budgetary circumstances.

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 spending control 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, 1988, in *Clinton v. City of New York*, 524 U.S. 417 (1988). Under this act, the President was authorized to strike individual items of discretionary spending, mandatory spending, and certain limited tax benefits in any law.

In the years following the Supreme Court decision, various proposals have been offered 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 Bush, in his FY2005 and FY2006 budgets, proposed a line-item veto under which savings could be used only for deficit reduction; he asserts that his proposal would correct the constitutional flaw in the 1996 act, but the manner in which this would be done is not specified in either budget.¹⁰ 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.

¹⁰ For additional information, see (1) CRS Report RS21991, *A Presidential Item Veto*, by Louis Fisher; and (2) CRS Report RL30223, *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, by Virginia A. McMurtry.