



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

Bill Heniff Jr.

Analyst on Congress and the Legislative Process

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Summary

The Senate pay-as-you-go, or PAYGO, rule generally requires that any legislation projected to increase direct spending or reduce revenues must also include equivalent amounts of direct spending cuts, revenue increases, or a combination of the two, so that the legislation does not increase the on-budget deficit over a six-year period and an 11-year period. Without such offsetting provisions, the legislation would require the approval of at least 60 Senators to waive the rule and be considered on the Senate floor.

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.

The Senate PAYGO rule differs from the now-expired *statutory* PAYGO requirement, established by the Budget Enforcement Act of 1990, 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 requires deficit neutrality in a six-year period and an 11-year period whereas the statutory PAYGO rule required deficit neutrality in each year covering a six-year period, through FY2006. The statutory PAYGO requirement effectively expired at the end of FY2002 (i.e., September 30, 2002).

The Senate PAYGO rule originated in a budget resolution in 1993. As originally established, the rule prohibited the consideration of any direct spending and revenue legislation that was projected to increase the deficit over a 10-year period. It has been modified and extended five times in subsequent budget resolutions and once in a Senate simple resolution. Most recently, the Senate modified and extended the rule through September 30, 2017, by agreeing to the FY2008 budget resolution (S.Con.Res. 21, 110th Congress). This latest modification brought the Senate PAYGO rule (Section 201 of S.Con.Res. 21) in line with the House PAYGO rule (Rule XXI, clause 10), which was adopted as part of the opening-day rules package of the 110th Congress.

During the period between 1993, when the Senate PAYGO rule was established, and the end of the first session of the 111th Congress, the PAYGO rule has been used to prevent the consideration of 35 amendments. During the same period, the Senate has voted to waive the PAYGO rule eight times: twice in relation to bills; five times in relation to amendments; and once in relation to a motion to concur in the House amendment to the Senate amendment to a bill.

This report will be updated as developments warrant.

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Introduction

The Senate pay-as-you-go, or PAYGO, rule generally requires that any legislation projected to increase direct spending or reduce revenues must also include equivalent amounts of direct spending cuts, revenue increases, or a combination of the two, so that the legislation does not increase the on-budget deficit over a six-year period and an 11-year period.¹ Without such offsetting provisions, the legislation would require the approval of at least 60 Senators to waive the rule and be considered on the Senate floor.

Direct spending, also referred to as mandatory spending, is provided or controlled by laws other than appropriations acts, generally continues without any annual legislative action, and provides spending authority for such programs as Medicare, unemployment compensation, and federal retirement programs.² It is distinguished from *discretionary spending*, which is controlled through the annual appropriations process. Furthermore, direct spending is under the jurisdiction of the respective authorizing committees, while discretionary spending is under the jurisdiction of the Senate Committee on Appropriations. *Revenues*, which are under the jurisdiction of the Senate Committee on Finance, are the funds collected from the public primarily as a result of the federal government's exercise of its sovereign powers.³ They consist of receipts from individual income taxes, social insurance taxes (or payroll taxes, such as Social Security and Medicare taxes), corporate income taxes, excise taxes, duties, gifts, and miscellaneous receipts.

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 similar *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, 104 Stat. 1388-573-1388-630) and was extended twice, in 1993 and 1997.⁴ Under the statutory PAYGO requirement, the projected net effect of new direct spending and revenue legislation enacted during each session of Congress could not cause a positive balance (reflecting an increase in the deficit or a reduction in the surplus) on a multiyear PAYGO “scorecard.” For each fiscal year, covering a rolling six-year period through FY2006, this scorecard maintained the balances of the accumulated budgetary effects of laws enacted during the session and prior years. The statutory PAYGO requirement was enforced by sequestration, which involved automatic, largely across-the-board spending cuts in non-exempt

¹ The on-budget deficit excludes the Social Security trust fund surpluses and the net cash flow of the U.S. Postal Service.

² The rule refers to direct spending “as that term is defined by, and interpreted for purposes of,” the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, 2 U.S.C. 900 et seq.), commonly known as the Gramm-Rudman-Hollings Act, as amended. Section 250(c)(8) of the act states that “‘direct spending’ means—(A) budget authority provided by law other than appropriations acts; (B) entitlement authority; and (C) the food stamp program.”

³ Other legislative committees may have jurisdiction over legislation affecting a small portion of revenues.

⁴ The BEA amended the Balanced Budget and Emergency Deficit Control Act (Title II of P.L. 99-177, 99 Stat. 1038-1101), 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, 107 Stat. 683-685) and the Budget Enforcement Act of 1997 (Title X of P.L. 105-33, 111 Stat. 677-712), respectively.

programs.⁵ This statutory PAYGO requirement, however, effectively expired at the end of FY2002 (i.e., September 30, 2002).⁶

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 requires deficit neutrality in a six-year period and an 11-year period whereas the statutory PAYGO rule required deficit neutrality in each year covering a six-year period, through FY2006.

This report explains the current features of the Senate PAYGO rule, describes its legislative history, including key changes to the rule since it was established in 1993, and reviews Senate procedural actions under the rule.

Current Features of the Senate PAYGO Rule

The current Senate PAYGO rule prohibits the consideration of direct spending or revenue legislation that is projected to increase or cause an on-budget deficit in either of two time periods: (1) the six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years; and (2) the 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years.⁷ The rule generally requires that each measure (including amendments) affecting direct spending and revenues not increase the on-budget deficit in either of the two time periods specified.⁸ That is, to comply with the rule, each measure projected to increase direct spending or reduce revenues must also include changes to existing law that would result in a reduction in direct spending, an increase in revenues, or both, by equivalent amounts. The full text of the Senate PAYGO rule in its current form is provided in **Appendix**.

The Senate PAYGO rule provides for a “pay-as-you-go ledger” to record any projected deficit reduction resulting from legislation (except reconciliation legislation) enacted since the beginning of the calendar year and not accounted for in the baseline, as defined by the rule. This is

⁵ For further information on the statutory PAYGO requirement, see CRS Report R41005, *The Statutory PAYGO Process for Budget Enforcement: 1991-2002*, by Robert Keith.

⁶ At the end of the 107th Congress, the House and Senate passed and President George W. Bush signed legislation (P.L. 107-312, 116 Stat. 2456) that removed the positive balances on the PAYGO scorecard through FY2006, thereby preventing any future PAYGO sequestration unless the budget enforcement mechanism is restored. For further information, see CRS Report RS21378, *Termination of the “Pay-As-You-Go” (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.

⁷ The “budget year” refers to the fiscal year that begins on October 1 of the calendar year in which the session of Congress begins. The “current fiscal year” is the fiscal year immediately preceding the “budget year.” Taken literally, between October and December of any given year, the requirement would cover five- and 10-year periods, instead of the six- and 11-year periods.

⁸ The rule defines “direct spending legislation” as “any bill, joint resolution, amendment, motion [such as a motion to concur with a House amendment], or conference report that affects direct spending as that term is defined by ... the Balanced Budget and Emergency Deficit Control Act of 1985.” Section 250(c)(8) of the Deficit Control Act states that “‘direct spending’ means—(A) budget authority provided by law other than appropriations acts; (B) entitlement authority; and (C) the food stamp program.” While no specific provision of the rule defines revenue legislation, the rule presumably would apply to any bill, joint resolution, amendment, motion or conference report that affects revenues, as defined in the text above. The rule explicitly excludes any direct spending and revenue provision in a concurrent resolution on the budget or that affects “the full funding of, and continuation of, the deposit insurance guarantee commitment in effect on” November 5, 1990.

presumably intended to provide some flexibility to the bill-by-bill application of the requirement. A measure projected to increase the on-budget deficit may use any deficit reduction balance on this ledger as an offset to comply with the PAYGO rule.

The rule specifies that the levels of new direct spending and revenues for a fiscal year must be determined on the basis of estimates made by the Senate Committee on the Budget (SBC).⁹ Generally, the estimates used by the SBC would be based on the cost estimates prepared by the Congressional Budget Office (CBO) and, for revenue legislation, the Joint Committee on Taxation (JCT), but the SBC has the authority to make its own estimates, which may vary from the CBO and JCT estimates. The rule also specifies that the estimates used in determining whether or not a measure increases the on-budget deficit, and thus violates the PAYGO requirement, must use the baseline surplus or deficit used for the most recently adopted budget resolution. Congress usually uses the baseline provided by CBO. In producing its baseline estimates, CBO projects revenues, spending, and deficit or surplus levels under existing law (i.e., assuming no legislative changes).¹⁰ For fiscal years not covered by the current budget resolution, the estimates must be calculated using the rules set forth in Sections 257(b)-(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; 2 U.S.C. 900 et seq.).¹¹

The Senate PAYGO rule may be waived or set aside by unanimous consent. A motion to waive the rule, or to sustain an appeal of the ruling of the presiding officer on the point of order, requires an affirmative vote of three-fifths of the membership, duly chosen and sworn (i.e., 60 Senators if no seats are vacant). Note that like any other Senate rule, the Senate PAYGO rule is not self-enforcing. A Senator must raise a point of order under the rule to prevent the consideration of legislation that violates the rule. It is possible, therefore, for the Senate to consider and pass legislation even if it does not adhere to the limits of the PAYGO rule, and even if no waiver motion is agreed to, as long as a point of order is not raised.

Finally, the current Senate PAYGO rule is set to expire on September 30, 2017.

Legislative History of the Senate PAYGO Rule

The Senate PAYGO rule originated in a budget resolution in 1993; it has been modified and extended five times in subsequent budget resolutions and once in a Senate simple resolution.¹² Moreover, other proposed modifications to the Senate PAYGO rule have been considered,

⁹ This requirement is consistent with other budget-related rules. Specifically, estimates by the Senate Committee on the Budget also must be used to determine any violations of the rules associated with the annual budget resolution (see Section 312 of the Budget Act).

¹⁰ Until the expiration of the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 900 et seq.), at the end of FY2006, CBO was required to follow the provisions of Section 257 of the act in producing its baseline projections (see next footnote). At the beginning of 2007, CBO indicated that it will follow these practices until directed otherwise by Congress. See CBO, *The Budget and Economic Outlook: Fiscal Years 2008 to 2017*, p. xi, fn. 1.

¹¹ Section 257 of the Deficit Control Act sets forth certain assumptions regarding direct spending and revenues (as well as discretionary spending) in calculating baseline projections.

¹² Such procedural provisions may be included in a budget resolution under the authority provided by Sec. 301(b)(4), the so-called “elastic clause,” of the Budget Act. This section gives Congress the option to include in a budget resolution other matters and procedures consistent with the purposes of the Budget Act.

especially during the consideration of the annual budget resolution, over the past several Congresses.

Key Changes to the Senate PAYGO Rule

In 1993, the Senate established the PAYGO rule as a provision in the FY1994 budget resolution (H.Con.Res. 64, 103rd Congress) 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.¹³ 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.

Following the establishment of the PAYGO rule in 1993, the Senate has modified it several times. The changes in the rule have occurred for several reasons, including to establish and extend an expiration date, to allow on-budget surpluses to offset revenue reductions and direct spending increases, and to exempt increases in the deficit assumed by the annual budget resolution. The key changes are summarized in **Table 1** at the end of this section.

In 1994, a year after establishing the PAYGO rule, the Senate modified the rule to require direct spending and revenue legislation to be deficit neutral for any one of three time periods: (1) the first fiscal year covered by the most recently adopted budget resolution; (2) the first five fiscal years covered by the budget resolution; and (3) the next five fiscal years after that.¹⁴ In addition, the modification provided that direct spending and revenue legislation would violate the rule only if it increased the deficit individually and also increased the deficit when combined with any legislation enacted since the enactment of the previous year's reconciliation legislation (i.e., the Omnibus Budget Reconciliation Act of 1993). This modification to the rule basically permitted the use of any deficit reduction provided in other legislation to be used as an offset for any subsequent deficit increasing legislation. The 1994 modification also added an expiration date of September 30, 1998.

In 1995, the Senate modified the PAYGO rule to allow only deficit reduction resulting from legislation enacted since the beginning of the calendar year to be used as an offset for subsequent legislation in order to comply with the rule.¹⁵ The rule, however, expressly prohibited the use of

¹³ See U.S. Congress, Committee of Conference, *Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998*, 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.

¹⁴ Section 23 of H.Con.Res. 218 (103rd Congress). See U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 1995*, conference report to accompany H.Con.Res. 218, 103rd Cong., 2nd sess., (Washington: GPO, 1994), pp. 18-19 (legislative text) and pp. 54-56 (joint explanatory statement).

¹⁵ Section 202 of H.Con.Res. 67 (104th Congress). See U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 1996*, conference report to accompany H.Con.Res. 67, 104th Cong., 1st sess., (Washington: GPO, 1995), pp. 26-27 (legislative text) and p. 91 (joint explanatory statement). Like the original rule established in 1993, the 1995 rule also contained a provision preventing the deficit reduction expected to be achieved from enactment of a subsequent reconciliation bill from being used to offset the costs of any new direct spending or revenue legislation. The subsequent reconciliation legislation (H.R. 2491), however, was not enacted; it was vetoed by the President.

the deficit reduction resulting from reconciliation legislation as an offset. The Senate also extended the rule's expiration date to September 30, 2002.

After decades of on-budget deficits, the federal government recorded a small on-budget surplus for FY1999. Moreover, at the time, baseline budget projections showed on-budget surpluses increasing each year well into the future.¹⁶ Subsequently, in 1999, the Senate modified the PAYGO rule to reflect this change in the federal government's budget outlook by allowing on-budget surpluses to be used to offset tax reductions or spending increases.¹⁷ That is, the rule was modified to prohibit only direct spending and revenue legislation that was projected to cause an on-budget deficit (or increase the on-budget deficit), instead of such legislation that was projected to increase the unified budget deficit. The Senate retained the existing expiration date of September 30, 2002.

In 2002, the rule was allowed to expire on September 30.¹⁸ Two weeks later, however, on October 16, 2002, the Senate adopted S.Res. 304 (107th Congress), restoring and extending the PAYGO rule through April 15, 2003. S.Res. 304 retained the basic formulation of the rule with one addition. It was expanded to cover any direct spending or revenues included in appropriations acts, effectively curtailing the use of such measures potentially to evade the rule (due to expired discretionary spending limits and the absence of a budget resolution for FY2003).

The following year, as a provision in the FY2004 budget resolution (H.Con.Res. 95, 108th Congress), the Senate modified its PAYGO rule to exempt legislation implementing the direct spending and revenue policy changes assumed in the most recently adopted budget resolution, even though it might have been projected to increase or cause an on-budget deficit.¹⁹ Reconciliation legislation considered in 2003 (S. 1054 and H.R. 2, 108th Congress), for example, although projected at the time to increase the on-budget deficit, did not violate the rule because it was consistent with the reconciliation instructions contained in Title II of the FY2004 budget resolution. The Senate also extended the rule through September 30, 2008.

The latest key change to the Senate PAYGO rule occurred in 2007 and reflects the rule in its current form.²⁰ As a provision to the FY2008 budget resolution, the Senate modified its PAYGO rule by eliminating the exemption for direct spending and revenue changes assumed in the budget resolution. In addition, consistent with the PAYGO rule in the House, the Senate changed the rule's applicable time periods to prohibit an on-budget deficit increase in either of two time periods: the current fiscal year and the following five fiscal years; and the current fiscal year and

¹⁶ See Congressional Budget Office, *The Economic and Budget Outlook: Fiscal Years 2000-2009*, (Washington: CBO, 1999), Summary Table 1, p. xiv.

¹⁷ Section 207 of H.Con.Res. 68 (106th Congress). See U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2000*, conference report to accompany H.Con.Res. 68, 106th Cong., 1st sess., (Washington: GPO, 1999), pp. 20-21 (legislative text) and pp. 72-73 (joint explanatory statement). As noted earlier, the on-budget deficit excludes the Social Security trust fund surpluses and the net cash flow of the U.S. Postal Service.

¹⁸ Congress did not complete action on an FY2003 budget resolution. The Senate Budget Committee reported a FY2003 budget resolution (S.Con.Res. 100), but the Senate did not consider it.

¹⁹ Section 505 of H.Con.Res. 95 (108th Congress). See U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2004*, conference report to accompany H.Con.Res. 95, 108th Cong., 1st sess., (Washington: GPO, 2003), pp. 29-30 (legislative text) and pp. 122-123 (joint explanatory statement).

²⁰ Section 201 of S.Con.Res. 21 (110th Congress). See U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2008*, conference report to accompany S.Con.Res. 21, 110th Cong., 1st sess., (Washington: GPO, 2007), pp. 12-13 (legislative text) and pp. 103, 133 (joint explanatory statement).

the following 10 fiscal years. Further information on the PAYGO rule in its current form is provided in the “Current Features of the Senate PAYGO Rule” section, above.

Table I. Key Changes to the Senate PAYGO Rule

| Effective Date | Source of Change | Expiration Date | Nature of Change |
|-----------------------|---|----------------------------|---|
| 04-01-1993 | Section 12(c) of H.Con.Res. 64 (103 rd Congress), FY1994 budget resolution | None | Rule established. |
| 05-12-1994 | Section 23 of H.Con.Res. 218 (103 rd Congress), FY1995 budget resolution | 09-30-1998 date added | Applicable time periods modified to prohibit a deficit increase in any one of three time periods: first fiscal year; total of first five fiscal years; and total of following five fiscal years. |
| 06-29-1995 | Section 202 of H.Con.Res. 67 (104 th Congress), FY1996 budget resolution | Extended to 09-30-2002 | Provided that only deficit reduction resulting from legislation enacted since the beginning of the calendar year (except any reconciliation legislation) could be used as an offset to comply with the rule . |
| 04-15-1999 | Section 207 of H.Con.Res. 68 (106 th Congress), FY2000 budget resolution | Maintained 09-30-2002 date | Deficit neutrality requirement modified so that any on-budget surplus could be used to offset revenue reductions or direct spending increases. |
| 10-16-2002 | Section 2(b) of S.Res. 304 (107 th Congress) | Extended to 04-15-2003 | Coverage of rule expanded to include revenue or direct spending changes in annual appropriations acts (due to expired discretionary spending limits and absence of a budget resolution for FY2003). |
| 04-11-2003 | Section 505 of H.Con.Res. 95 (108 th Congress), FY2004 budget resolution | Extended to 09-30-2008 | Exemption provided for direct spending and revenue changes assumed in the budget resolution. Application of rule to annual appropriations acts eliminated. |
| 05-17-2007 | Section 201 of S.Con.Res. 21 (110 th Congress), FY2008 budget resolution | Extended to 09-30-2017 | Exemption for direct spending and revenue changes assumed in the budget resolution eliminated. Applicable time periods modified to require on-budget deficit neutrality for two time periods: the current fiscal year and the following five fiscal years; and the current fiscal year and the following 10 fiscal years. |

Consideration of Proposed Changes to the Senate PAYGO Rule

Over the past several Congresses, the Senate PAYGO rule has drawn considerable attention on the Senate floor, in most cases in the context of the annual budget resolution.

Action in the 107th Congress

During the 107th Congress, several attempts were 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.²¹ 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.²² Another attempt was made on 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.²³

Without any successful extension prior to its expiration, the Senate PAYGO rule, like many other budget enforcement procedures, expired on September 30, 2002.²⁴ Subsequently, on October 16, 2002, the Senate restored and extended the PAYGO point of order through April 15, 2003.²⁵ 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).²⁶

Action in the 108th Congress

During the 108th Congress, in 2003, the Senate modified and extended its PAYGO rule in the FY2004 budget resolution. The following year, in 2004, the Senate agreed to an amendment restoring the rule to its pre-108th Congress form in the FY2005 budget resolution, but ultimately it did not agree to a conference report to the budget resolution, thereby retaining the version set forth in the FY2004 budget resolution.

²¹ The amendment was subject to a point of order under Sec. 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, is 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.

²² 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 *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.

²³ The amendment was subject to a point of order under Section 306 of the Budget Act. 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.

²⁴ The statutory limits on discretionary spending and the statutory PAYGO requirement for direct spending and revenue legislation, first established by the BEA, expired on September 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. In addition, the three-fifths vote requirements in the Senate to waive certain points of order under the Budget Act, and to sustain an appeal of a ruling of the chair on such points of order, expired on September 30, 2002. These supermajority waiver requirements subsequently were restored (see Section 2(a) of S.Res. 304, 107th Congress) and currently are scheduled to expire on September 30, 2017 (see Section 205 of S.Con.Res. 21, the FY2008 budget resolution, 110th Congress).

²⁵ Under the Congressional Budget Act, April 15 is the target date for Congress to complete action on the annual budget resolution.

²⁶ See *Congressional Record*, daily edition, vol. 148 (October 16, 2002), pp. S10527-S10531 and S10553. The legislation also restored and extended through April 15, 2003, the three-fifths vote requirement for certain waivers of the Congressional Budget Act of 1974.

On March 14, 2003, the Senate Budget Committee reported S.Con.Res. 23, the FY2004 budget resolution, without written report. The reported resolution modified the PAYGO rule to exempt legislation assumed in the budget resolution and extend it through September 30, 2008.²⁷ After six days of consideration, the Senate agreed to S.Con.Res. 23, as amended, on March 26, by a vote of 56-44.²⁸ While the Senate considered and agreed to several amendments to S.Con.Res. 23, none were related to the PAYGO provision. Subsequently, on April 11, the Senate agreed to the conference report on H.Con.Res. 95 (H.Rept. 108-71) by a 51-50 vote.²⁹ Section 505 of the FY2004 budget resolution contained the Senate language without change, which exempted legislation assumed in the budget resolution and extended the rule through September 30, 2008.³⁰

In 2004, during the second session of the 108th Congress, modification of the Senate PAYGO rule reportedly was a major obstacle to reaching an agreement on the FY2005 budget resolution (S.Con.Res. 95).³¹ On March 10, during consideration of the FY2005 budget resolution, Senator Russell Feingold offered an amendment (S.Amdt. 2748) that would have restored the Senate PAYGO rule to its pre-108th Congress form, under which it did not exempt legislation assumed in the budget resolution. The Senate adopted the Feingold amendment by a vote of 51-48.³² On March 12 (legislative day, March 11), the Senate subsequently agreed to S.Con.Res. 95, as amended by the Feingold amendment, among others, by a vote of 51-45 vote.³³ The House-passed FY2005 budget resolution (H.Con.Res. 393), agreed to on March 25, however, included no modification to the existing PAYGO rule.

The conference report included a provision (Section 407 of S.Con.Res. 95, H.Rept. 108-498) similar to the Senate language, but it exempted the reconciliation legislation provided for in the budget resolution (Title II) and expired on April 15, 2005.³⁴ While the House agreed to the conference report to S.Con.Res. 95, the Senate never considered it. The 2003 version of the

²⁷ See U.S. Congress, Senate Committee on the Budget, *Concurrent Resolution on the Budget FY2004*, committee print to accompany S.Con.Res. 23, 108th Cong., 1st sess., S.Prt. 108-19, March 2003 (Washington: GPO, 2003), pp. 60-61. Like the temporary extension agreed to in 2002, the FY2004 budget resolution also contained an extension through September 30, 2008, of the three-fifths vote requirement for certain waivers of the Congressional Budget Act of 1974.

²⁸ For the Senate consideration and adoption of the FY2004 budget resolution, see *Congressional Record*, daily edition, vol. 149 (March 17-21 and 25-26, 2003), pp. S3774-S4268 and S4334-S4422.

²⁹ For the Senate consideration of the conference report to H.Con.Res. 95, the FY2004 budget resolution, see *Congressional Record*, daily edition, vol. 149 (April 11, 2003), pp. S5266-S5293, S5295-S5316. The House agreed to the conference report on April 11 (legislative day April 10).

³⁰ The joint explanatory statement of the committee of conference on the FY2004 budget resolution indicated that the budget resolution assumed direct spending increases and revenue reductions totaling \$1,755.957 billion over the period FY2003-FY2013.

³¹ See, for example: Bud Newman and Heather M. Rothman, "GOP Budget Stalemate Over Pay-Go Continues With No New Offers on Table," BNA's *Daily Report for Executives* (May 5, 2004), p. G-6; and Bud Newman, "House OKs One-Year Budget Resolution; Plan May Still Lack 50 Votes in Senate," BNA's *Daily Report for Executives* (May 20, 2004), p. GG-1.

³² For the consideration and adoption of the Feingold amendment, see *Congressional Record*, daily edition, vol. 150 (March 10, 2004), pp. S2510-S2516, S2518.

³³ For the consideration and adoption of the Senate version of the FY2005 budget resolution, see *Congressional Record*, daily edition, vol. 150 (March 8-11, 2004), pp. S2256-S2294, S2377-S2403, S2404-S2423, S2465-S2537, S2591-S2641, S2643-S2699.

³⁴ The reconciliation instructions directed the Senate Committee on Finance and the House Committee on Ways and Means to reduce revenues by \$22.9 billion and increase direct spending by \$4.6 billion (i.e., increasing the on-budget deficit by \$27.5 billion) over the period covering FY2005-FY2009.

PAYGO rule (Section 505 of H.Con.Res. 95, 108th Congress), therefore, continued to remain in effect.

Action in the 109th Congress

During the 109th Congress, in the context of considering the budget resolutions for FY2006 and FY2007, the Senate considered modifications to the PAYGO rule. In each case, an amendment to the budget resolution would have restored the Senate PAYGO rule to its pre-108th Congress form, under which it did not exempt legislation assumed in the budget resolution. In each case, however, the Senate rejected the amendment. As in the previous Congress, therefore, the 2003 version of the PAYGO rule (Section 505 of H.Con.Res. 95, 108th Congress) continued to remain in effect through the 109th Congress.

On March 16, 2005, during the consideration of the FY2006 budget resolution (S.Con.Res. 18), Senator Russell Feingold offered an amendment (S.Amdt. 186) that proposed to modify the PAYGO rule by removing the exemption for legislation assumed in the budget resolution. The Senate rejected the Feingold amendment by a vote of 50-50.³⁵ On March 17, the Senate agreed to S.Con.Res. 18, as amended, by a vote of 51-49.³⁶ Subsequently, on April 28, the Senate agreed to the conference report on S.Con.Res. 18 (H.Rept. 109-62) by a 52-47 vote.³⁷

In 2006, during the consideration of the FY2007 budget resolution (S.Con.Res. 83), Senator Kent Conrad offered an amendment (S.Amdt. 3013) similar to the one offered by Senator Feingold in the previous year. The Senate rejected the Conrad amendment by a vote of 50-50.³⁸ On March 16, the Senate agreed to S.Con.Res. 83, as amended, by a vote of 51-49.³⁹ Subsequently, however, the House and Senate did not take final action to adopt a conference report for the FY2007 budget resolution in 2006.

Action in the 110th Congress

Even before the 110th Congress began, the new Democratic leadership in both chambers indicated that it intended to “restore” PAYGO rules.⁴⁰ Accordingly, the House adopted its own PAYGO rule

³⁵ For the consideration and rejection of the Feingold amendment, see *Congressional Record*, daily edition, vol. 151 (March 16, 2005), pp. S2795-S2806.

³⁶ For the consideration and adoption of the Senate version of the FY2006 budget resolution, see *Congressional Record*, daily edition, vol. 151 (March 14-17, 2005), pp. S2587-S2641, S2661-S2728, S2759-S2841, S2875-S2897, S2899-S2926, S2929-S2967.

³⁷ For the Senate consideration of the conference report to H.Con.Res. 95, see *Congressional Record*, daily edition, vol. 151 (April 28, 2005), pp. S4481-S4527. The House agreed to the conference report on April 28 as well. The joint explanatory statement of the committee of conference on the FY2006 budget resolution indicated that the budget resolution assumed direct spending increases and revenue reductions totaling \$351.015 billion over the period FY2005-FY2015, as reflected on a “PAYGO scorecard.”

³⁸ For the consideration and rejection of the Conrad amendment, see *Congressional Record*, daily edition, vol. 152 (March 14, 2006), pp. S2056-S2062, S2091-S2092.

³⁹ For the consideration and adoption of the Senate version of the FY2007 budget resolution, see *Congressional Record*, daily edition, vol. 152 (March 13-16, 2006), pp. S1987-S2019, S2054-S2116, S2146-S2184, S2225-S2236, S2241-S2293.

⁴⁰ By “restore,” the leadership was referring to the PAYGO rules prior to the modification in 2003; the pre-2003 PAYGO rule did not exempt direct spending and revenue legislation assumed in the most-recently adopted budget resolution. See, for example, Steven T. Dennis, “Democrats’ First 100 Hours: Costly AMT Rewrite An Opening (continued...)”

as part of its opening-day rules package.⁴¹ The Senate, subsequently, modified its PAYGO rule in the FY2008 budget resolution.

On March 15, 2007, the Senate Budget Committee reported S.Con.Res. 21, the FY2008 budget resolution, without written report. The reported resolution modified the PAYGO rule by eliminating the exemption for direct spending and revenue changes assumed in the budget resolution, generally restoring the rule to its pre-108th Congress form.⁴² During the four days of consideration on the floor, the Senate did not consider any amendments proposing to modify the reported version of the PAYGO rule. Senator Jeff Sessions, however, offered an amendment (S.Amdt. 466) proposing to exempt legislation “that would provide for the extension of the tax relief provided in” the reconciliation measures enacted in 2001 (P.L. 107-16), 2003 (P.L. 108-27), and 2006 (P.L. 109-222) from several budget-related points of order, including the modified PAYGO point of order.⁴³ The Senate rejected the Sessions amendment by a 46-52 vote. On March 23, the Senate agreed to S.Con.Res. 21, as amended, by a 52-47 vote.⁴⁴

Subsequently, after resolving legislative differences with the House, the Senate agreed to the conference report to accompany the FY2008 budget resolution (H.Rept. 110-153) by a vote of 52-40, on May 17.⁴⁵ The conference agreement included a modified version of the Senate-passed PAYGO rule. As explained in more detail in the “Current Features of the Senate PAYGO Rule” section, above, this current form of the Senate PAYGO rule generally prohibits the consideration of direct spending and revenue legislation that is projected to increase the on-budget deficit in either of two time periods: the current fiscal year and the following five fiscal years; and the current fiscal year and the following 10 fiscal years.

Procedural Actions Under the Senate PAYGO Rule

The Senate PAYGO rule, when it has been enforced through a point of order, generally has been successful in preventing the consideration of matters projected to increase the deficit: most motions to waive the rule have been rejected. During the period between 1993, when the Senate PAYGO rule was established, and the end of the first session of the 111th Congress, the PAYGO

(...continued)

Challenge to Anti-Deficit Goals,” *CQ Weekly* (November 20, 2006), p. 3107.

⁴¹ The House PAYGO rule (Rule XXI, clause 10) prohibits the consideration of direct spending and revenue legislation that is projected to increase the deficit (or reduce the surplus) in either of two time periods: (1) the six-year period beginning with the current fiscal year; and (2) the 11-year period beginning with the current fiscal year. For more detailed information on the House PAYGO rule, see CRS Report RL33850, *The House’s “Pay-As-You-Go” (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith.

⁴² See U.S. Congress, Senate Committee on the Budget, *Concurrent Resolution on the Budget FY2008*, committee print to accompany S.Con.Res. 21, 110th Cong., 1st sess., S.Prt. 110-19, March 2007 (Washington: GPO, 2007), p. 19. In addition to eliminating the exemption, the reported budget resolution added the current fiscal year as another time period requiring deficit neutrality, clarified that any deficit reduction resulting from reconciliation legislation could not be used to offset an on-budget deficit in subsequent legislation, and extended the rule through September 30, 2017.

⁴³ See *Congressional Record*, daily edition, vol. 153 (March 20, 2007), p. S3332.

⁴⁴ For the consideration and adoption of the Senate version of the FY2008 budget resolution, see *Congressional Record*, daily edition, vol. 153 (March 20-23, 2007), pp. S3308-S3340, S3452, S3453-S3512, S3545, S3547-S3603, S3647-S3655, S3659-S3702.

⁴⁵ For the Senate consideration of the conference report to S.Con.Res. 21, see *Congressional Record*, daily edition, vol. 153 (May 17, 2007), pp. S6220-S6253.

rule has been used to prevent the consideration of 35 amendments. A total of 43 points of order under the PAYGO rule have been raised (see **Table 2**), over half (29 of 43) raised in the past three years. In each of these cases except one (Senator Ensign's S.Amdt. 897 to S. 378 on April 19, 2007), a motion to waive the PAYGO point of order was made.⁴⁶ The Senate voted to waive the PAYGO rule only eight times, allowing consideration of the matter: twice in relation to bills; five times in relation to amendments (two of these amendments were full-text substitutes to a bill); and once in relation to a motion to concur in the House amendment to the Senate amendment to a bill. The Senate rejected the remaining 35 motions, and in each case, the point of order was sustained, preventing consideration of the matter.

Although the Senate PAYGO point of order, when raised, generally has been successful, the rule has not completely prevented the Senate from considering and passing legislation that was projected to increase the deficit or reduce the surplus during the period the rule has been in effect. In addition to directly waiving the PAYGO rule, as noted above, the Senate has considered and passed such legislation: (1) by fitting legislation within the available on-budget surplus or assuming a deficit increase in the budget resolution, in accordance with the provisions of the rule as adopted in the FY2002 and FY2004 budget resolution, respectively;⁴⁷ (2) by designating the spending or revenue provisions as emergency requirements;⁴⁸ and (3) by not raising the point of order to enforce the rule (in cases for which available cost estimates projected a net budgetary impact that would increase the deficit).⁴⁹

⁴⁶ Two separate waiver motions were made relating to the point of order raised against H.R. 3167 (103rd Congress). As indicated in **Table 2**, 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.

⁴⁷ For example, in 2001, the Senate considered and passed the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16), which the Joint Committee on Taxation projected would reduce revenues by \$1.26 trillion over the 11-year period of FY2001-FY2011, without violating the PAYGO rule because it did not increase the on-budget deficit. See CBO, *Pay-As-You-Go Estimate, H.R. 1836, Economic Growth and Tax Relief Reconciliation Act of 2001, as cleared by the Congress on May 26, 2001*, dated June 4, 2001. In addition, in 2003, the Senate considered and passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173), which the Congressional Budget Office projected would increase direct spending by \$395 billion over the 10-year period of FY2004-FY2013, without violating the PAYGO rule because the deficit increase was assumed in the budget resolution. See CBO, *Letter to Honorable William "Bill" M. Thomas, Chairman, Committee on Ways and Means, Estimate of Effect on Direct Spending and Revenues of Conference Agreement on H.R. 1 [Medicare Prescription Drug, Improvement, and Modernization Act of 2003]*, dated November 20, 2003.

⁴⁸ For example, in 2009, the Senate considered the conference report on H.R. 1, American Recovery and Reinvestment Act of 2009, which contained an emergency designation and thereby exempted the spending and revenue provisions from counting for purposes of the PAYGO rule. According to the Congressional Budget Office, the conference report on H.R. 1 was projected to increase the on-budget deficit by \$805 billion over the FY2009-FY2014 period and \$789 billion over the FY2009-FY2019 period. See CBO, *Letter to Honorable Nancy Pelosi, Speaker, U.S. House of Representatives, Estimated Cost of the Conference Agreement for H.R. 1, the American Recovery and Reinvestment Act of 2009, as posted on the Web site of the House Committee on Rules*, dated February 13, 2009. The emergency designation was itself subject to a point of order and was waived. For further explanation of the emergency designation, see CRS Report RS21035, *Emergency Spending: Statutory and Congressional Rules*, by Bill Heniff Jr.

⁴⁹ For example, on September 18, 2007, the Senate passed S. 558, the Mental Health Parity Act of 2007, with an amendment in the nature of a substitute by unanimous consent. According to CBO, the bill as reported by the Senate Committee on Health, Labor, Education, and Pensions was projected to increase the on-budget deficit by \$930 million over the FY2008-FY2012 period and \$2,760 million over the FY2008-FY2017 period. See CBO, *S. 558, Mental Health Parity Act of 2007, as ordered reported by the Senate Committee on Health, Education, Labor, and Pensions on February 14, 2007*, dated March 20, 2007.

Table 2. Points of Order and Waiver Motions Under the Senate PAYGO Rule, Calendar Years 1993-2009

| 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 S.Amdt. 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 S.Amdt. 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 S.Amdt. 2353, to prohibit the use of random audits. | Rejected, 37-60 | Sustained |
| 07-28-1998 | Treasury/Postal Service Appropriations, 1999 (S. 2312)— Hutchinson S.Amdt. 3249, to terminate the Internal Revenue Code of 1986. | Rejected, 49-49 | Sustained |
| 01-22-2003 | Omnibus Appropriations Resolution (H.J.Res. 2)— Reed S.Amdt. 40, to expand the Temporary Extended Unemployment Compensation Act of 2002. | Rejected, 45-49 | Sustained |
| 01-23-2003 | Omnibus Appropriations Resolution (H.J.Res. 2)— Clinton S.Amdt. 89, to improve health care under the Medicare and Medicaid programs. | Rejected, 41-56 | Sustained |
| 03-11-2003 | Partial-Birth Abortion Ban (S. 3)— Murray S.Amdt. 258, to improve the availability of contraceptives for women. | Rejected, 49-47 | Sustained |

| Date | Object of Point of Order | Waiver Motion | Disposition of Point of Order |
|------------|--|-----------------|-------------------------------|
| 07-10-2003 | State Department Authorization (S. 925)— Murray S.Amdt. 1170 (to S.Amdt. 1136), to provide additional weeks of temporary extended unemployment compensation for individuals who have exhausted such compensation and to make extended unemployment benefits under the Railroad Unemployment Insurance Act temporarily available for employees with less than 10 years of service. | Rejected, 48-48 | Sustained |
| 03-25-2004 | Unborn Victims of Violence Act (H.R. 1997)— Murray S.Amdt. 2859, to provide for domestic violence prevention. | Rejected, 46-53 | Sustained |
| 05-04-2004 | Jumpstart Our Business Strength (JOBS) Act (S. 1637)— Wyden modified S.Amdt. 3109, to provide trade adjustment assistance for service workers. | Rejected, 54-45 | Sustained |
| 05-11-2004 | Jumpstart Our Business Strength (JOBS) Act (S. 1637)— Cantwell-Voinovich S.Amdt. 3114, to extend the Temporary Extended Unemployment Compensation Act of 2002. | Rejected, 59-40 | Sustained |
| 12-08-2006 | Tax Extenders—House Message Motion to concur in the House amendment to the Senate amendment to H.R. 6111, to amend the Internal Revenue Code of 1986 to provide that the Tax Court may review claims for equitable innocent spouse relief and to suspend the running on the period of limitations while such claims are pending. | Approved, 67-21 | Fell |
| 01-25-2007 | Fair Minimum Wage (H.R. 2)— Enzi (for Ensign) S.Amdt. 154 (to S.Amdt. 100), to improve access to affordable health care. | Rejected, 47-48 | Sustained |
| 01-25-2007 | Fair Minimum Wage (H.R. 2)— Bunning S.Amdt. 119 (to S.Amdt. 100), to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits. | Rejected, 42-51 | Sustained |
| 01-25-2007 | Fair Minimum Wage (H.R. 2)— Smith S.Amdt. 113 (to S.Amdt. 100), to make permanent certain education-related tax incentives. | Rejected, 43-50 | Sustained |
| 01-31-2007 | Fair Minimum Wage (H.R. 2)— Kyl S.Amdt. 115 (to S.Amdt. 100), to extend through December 31, 2008, the depreciation treatment of leasehold, restaurant, and retail space improvements. | Rejected, 46-50 | Sustained |
| 04-19-2007 | Court Security Improvement Act (S. 378)— Ensign S.Amdt. 897, to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into two circuits. | [none] | Sustained |

| Date | Object of Point of Order | Waiver Motion | Disposition of Point of Order |
|------------|---|-----------------|-------------------------------|
| 06-06-2007 | Comprehensive Immigration Reform (S. 1348)— Menendez S.Amdt. 1194 (to S.Amdt. 1150), to modify the deadline for the family backlog reduction. | Rejected, 53-44 | Sustained |
| 06-06-2007 | Comprehensive Immigration Reform (S. 1348)— Salazar (for Clinton) further modified S.Amdt. 1183 (to S.Amdt. 1150), to reclassify the spouses and minor children of lawful permanent residents as immediate relatives. | Rejected, 44-53 | Sustained |
| 06-20-2007 | Clean Energy Act (H.R. 6)— Gregg S.Amdt. 1718 (to S.Amdt. 1704), to strike the provision extending the additional duty on ethanol. | Rejected, 36-56 | Sustained |
| 06-20-2007 | Clean Energy Act (H.R. 6)— Inhofe S.Amdt. 1666 (to S.Amdt. 1502), to ensure agricultural equity with respect to the renewable fuels standard. | Rejected, 31-63 | Sustained |
| 06-21-2007 | Clean Energy Act (H.R. 6)— Kyl/Lott modified S.Amdt. 1733 (to S.Amdt. 1704), to provide a condition precedent for the effective date of the revenue raisers. | Rejected, 38-55 | Sustained |
| 08-02-2007 | State Children’s Health Insurance Program Amendment Act (H.R. 976)— Baucus (for Specter) S.Amdt. 2557 (to S.Amdt. 2530), to amend the Internal Revenue Code of 1986 to reset the rate of tax under the alternative minimum tax at 24%. | Rejected, 47-52 | Sustained |
| 08-02-2007 | State Children’s Health Insurance Program Amendment Act (H.R. 976)— Grassley (for Graham) modified S.Amdt. 2558 (to S.Amdt. 2530), to sunset the increase in the tax on tobacco products on September 30, 2012. | Rejected, 39-60 | Sustained |
| 08-02-2007 | State Children’s Health Insurance Program Amendment Act (H.R. 976)— Grassley (for Kyl) S.Amdt. 2562 (to S.Amdt. 2530), to amend the Internal Revenue Code of 1986 to extend and modify the 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements and to provide a 15-year straight-line cost recovery for certain improvements to retail space. | Rejected, 49-50 | Sustained |
| 04-03-2008 | Foreclosure Prevention Act of 2008 (H.R. 3221)— Murray S.Amdt. 4397 (to S.Amdt. 4387), to increase the funding for housing counseling resources, to condition Senate consideration of any tax cut reconciliation legislation on previous enactment of legislation to provide an outpatient prescription drug benefit under the Medicare program that is consistent with Medicare reform. | Rejected, 44-40 | Sustained |

| Date | Object of Point of Order | Waiver Motion | Disposition of Point of Order |
|-------------|---|----------------------|--------------------------------------|
| 04-03-2008 | Foreclosure Prevention Act of 2008 (H.R. 3221)— Kyl S.Amdt. 4407 (to S.Amdt. 4387), to amend the Internal Revenue Code of 1986 to adjust for inflation the dollar limitation for the principal residence gain exclusion. | Rejected, 41-44 | Sustained |
| 05-08-2008 | Flood Insurance Reform and Modernization Act (S. 2284)— Dodd/Shelby S.Amdt. 4707, in the nature of a substitute. | Approved, 70-26 | Fell |
| 06-19-2008 | American Housing Rescue and Foreclosure Prevention Act of 2008 (H.R. 3221)— Bond S.Amdt. 4985 (to S.Amdt. 4983), to strike provisions relating to the HOPE for Homeowners Program. | Rejected, 21-69 | Sustained |
| 09-23-2008 | Renewable Energy and Job Creation Act of 2008 (H.R. 6049)— Baucus S.Amdt. 5635, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions. | Approved, 84-11 | Fell |
| 02-03-2009 | American Recovery and Reinvestment Act (H.R. 1)— Mikulski/Brownback S.Amdt. 104 (to S.Amdt. 98), to amend the Internal Revenue Code of 1986 to allow an above-the-line deduction against individual income tax for interest on indebtedness and for State sales and excise taxes with respect to the purchase of certain motor vehicles. | Approved, 71-26 | Fell |
| 02-03-2009 | American Recovery and Reinvestment Act (H.R. 1)— Boxer S.Amdt. 112 (to S.Amdt. 98), to amend the Internal Revenue Code of 1986 to allow the deduction for dividends received from controlled foreign corporations for an additional year. | Rejected, 42-55 | Sustained |
| 02-04-2009 | American Recovery and Reinvestment Act (H.R. 1)— Grassley (for DeMint) S.Amdt. 168 (to S.Amdt. 98), in the nature of a substitute. | Rejected, 36-61 | Sustained |
| 02-04-2009 | American Recovery and Reinvestment Act (H.R. 1)— Cornyn S.Amdt. 277 (to S.Amdt. 98), to reduce income taxes for all working taxpayers. | Rejected, 37-60 | Sustained |
| 02-04-2009 | American Recovery and Reinvestment Act (H.R. 1)— Bunning S.Amdt. 242 (to S.Amdt. 98), to amend the Internal Revenue Code of 1986 to suspend for 2009 the 1993 income tax increase on Social Security benefits. | Rejected, 39-57 | Sustained |
| 02-06-2009 | American Recovery and Reinvestment Act (H.R. 1)— Cantwell Further Modified S.Amdt. 274 (S.Amdt. 98), to improve provisions relating to energy tax incentives and provisions relating manufacturing tax incentives for energy property. | Approved, 80-16 | Fell |
| 02-06-2009 | American Recovery and Reinvestment Act (H.R. 1)— Thune S.Amdt. 538 (to S.Amdt. 98), to replace all spending and tax provisions with a direct rebate to all Americans filing a tax return. | Rejected, 35-61 | Sustained |

| Date | Object of Point of Order | Waiver Motion | Disposition of Point of Order |
|------------|--|-----------------|-------------------------------|
| 02-10-2009 | American Recovery and Reinvestment Act (H.R. 1)— Reid (for Collins/Nelson (NE)) S.Amdt. 570, in the nature of a substitute. | Approved, 61-37 | Fell |
| 05-06-2009 | Helping Families Save Their Homes Act (S. 896)— Coburn S.Amdt. 1042 (to S.Amdt. 1040), to establish a pilot program for the expedited disposal of Federal real property. | Rejected, 50-46 | Sustained |
| 08-06-2009 | CAR Save Program Supplemental Appropriations Act (H.R. 3435)— Coburn S.Amdt. 2304, to provide assistance to charities and families in need. | Rejected, 41-56 | Sustained |
| 08-06-2009 | CAR Save Program Supplemental Appropriations Act (H.R. 3435)— Isakson S.Amdt. 2306S.Amdt. 2306, to amend the Internal Revenue Code of 1986 to provide an income tax credit for certain home purchases, and to transfer to the Treasury unobligated funds made available by the American Recovery and Reinvestment Act in the amount of the reduction in revenue resulting from such credit. | Rejected, 47-50 | Sustained |

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

Note: Information is current as of January 11, 2010.

- a. On the following day, February 5, 2009, Senator Baucus stated that the amendment did not violate the PAYGO rule and that the point of order was mistakenly made. He further stated that because the vote on the motion to waive the point of order was rejected by a vote of 37-60, the effect of the point of order would not have changed the outcome; that is, the amendment would have been rejected. *Congressional Record* (daily edition) Feb. 5, 2009, p. S1617.

Appendix. Text of the Senate Pay-As-You-Go (PAYGO) Rule

(Section 201 of S.Con.Res. 21, Budget Resolution for FY2008)

SEC. 201. PAY-AS-YOU-GO POINT OF ORDER IN THE SENATE.

(a) POINT OF ORDER.—

(1) **IN GENERAL.**—It shall not be in order in the Senate to consider any direct spending or revenue legislation that would increase the on-budget deficit or cause an on-budget deficit for either of the applicable time periods as measured in paragraphs (5) and (6).

(2) **APPLICABLE TIME PERIODS.**—For purposes of this subsection, the term “applicable time period” means either—

(A) the period of the current fiscal year, the budget year, and the ensuing 4 fiscal years following the budget year; or

(B) the period of the current fiscal year, the budget year, and the ensuing 9 fiscal years following the budget year.

(3) **DIRECT-SPENDING LEGISLATION.**—For purposes of this subsection and except as provided in paragraph (4), the term “direct-spending legislation” means any bill, joint resolution, amendment, motion, or conference report that affects direct spending as that term is defined by, and interpreted for purposes of, the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) **EXCLUSION.**—For purposes of this subsection, the terms “direct-spending legislation” and “revenue legislation” do not include—

(A) any concurrent resolution on the budget; or

(B) any provision of legislation that affects the full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990.

(5) **BASELINE.**—Estimates prepared pursuant to this section shall—

(A) use the baseline surplus or deficit used for the most recently adopted concurrent resolution on the budget; and

(B) be calculated under the requirements of subsections (b) through (d) of section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (as in effect prior to September 30, 2002) for fiscal years beyond those covered by that concurrent resolution on the budget.

(6) **PRIOR SURPLUS.**—If direct spending or revenue legislation increases the on-budget deficit or causes an on-budget deficit when taken individually, it must also increase the on-

budget deficit or cause an on-budget deficit when taken together with all direct spending and revenue legislation enacted since the beginning of the calendar year not accounted for in the baseline under paragraph (5)(A), except that direct spending or revenue effects resulting in net deficit reduction enacted in any bill pursuant to a reconciliation instruction since the beginning of that same calendar year shall never be available on the pay-as-you-go ledger and shall be dedicated only for deficit reduction.

(b) **SUPERMAJORITY WAIVER AND APPEALS.**—

(1) **WAIVER.**—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) **APPEALS.**—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(c) **DETERMINATION OF BUDGET LEVELS.**—For purposes of this section, the levels of new budget authority, outlays, and revenues for a fiscal year shall be determined on the basis of estimates made by the Senate Committee on the Budget.

(d) **SUNSET.**—This section shall expire on September 30, 2017.

(e) **REPEAL.**—In the Senate, section 505 of H.Con.Res. 95 (108th Congress), the fiscal year 2004 concurrent resolution on the budget, shall no longer apply.

Author Contact Information

Bill Heniff Jr.
Analyst on Congress and the Legislative Process
wheniff@crs.loc.gov, 7-8646