

# Budget Enforcement Rules: Emergency Designations

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## Budget Enforcement Rules: Emergency Designations

Under congressional budgetary enforcement rules, Congress can designate a provision as an emergency requirement by stating as such in the legislative text of that measure. These rules generally establish that the spending or revenue effects of provisions designated as emergency requirements are exempt from enforcement under applicable budgetary rules.

Emergency designations have procedural and budgetary significance in the congressional budget process. The exemption of the budgetary effect of provisions designated as emergency requirements has two main practical effects. First, it allows Congress to enact emergency-designated spending or revenues even if doing so would otherwise violate budgetary enforcement rules. Second, the budgetary effects of such provisions do not count for the purposes of enforcing other, non-emergency provisions. In other words, the consideration and passage of spending or revenues designated as an emergency requirement has no effect on the budgetary enforcement of other, non-emergency provisions.

Congress considers budgetary legislation under a set of enforcement rules established over time in statute, congressional rules, and budget resolutions. Such rules are generally intended to provide Congress with greater control over spending, revenues, and the deficit. Budgetary enforcement procedures include those associated with the Congressional Budget Act (the Budget Act) of 1974, statutory discretionary spending limits, the Statutory Pay-As-You-Go (PAYGO) Act of 2010, the House Cut-As-You-Go (CUTGO) rule, and the Senate PAYGO rule, as well as other Senate-specific rules. Each of these enforcement procedures provide for, in some form, the authority for Congress to designate provisions as emergency requirements and for the budgetary effects of such provisions to be exempt from enforcement under the rule.

The consideration of legislation addressing emergencies and other unforeseen budgetary needs has been a long-standing focus for Congress in shaping the congressional budget process. The Budget Act in 1974 and later budgetary agreements in the 1980s included general provisions or informal agreements related to addressing unforeseen or emergency budgetary needs. Procedures for making emergency designations were first formalized, however, in the Budget Enforcement Act of 1990. Congress has since continued its authority to make emergency designations in budgetary legislation, establishing this authority through various statutes, congressional rules, and budget resolutions. The exemptions associated with emergency designations have generally applied to budgetary enforcement rules in effect today and to those that have been in effect periodically over the past few decades. Furthermore, there have been certain developments in the rules and procedures associated with emergency designations over time. This includes developments in the purposes for which emergency designations are used.

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## Introduction

Under congressional budgetary enforcement rules, Congress can designate a provision as an emergency requirement by stating as such in the legislative text of that measure. These rules generally establish that the spending or revenue effects of provisions designated as an emergency requirement are exempt from applicable budget enforcement rules.

Emergency designations have procedural and budgetary significance in the congressional budget process. Current rules generally exempt the budgetary effect of provisions carrying emergency designations from enforcement mechanisms that may apply during their consideration or after enactment. These exemptions have two main practical effects. First, they allow Congress to enact emergency-designated spending or revenues even if doing so would otherwise violate budgetary enforcement rules. Second, the budgetary effects of such provisions do not count for the purposes of enforcing other, non-emergency provisions. In other words, the consideration and enactment of spending or revenues designated as an emergency requirement has no effect on the budgetary enforcement of other, non-emergency provisions.

This report covers the rules and procedures associated with emergency designations in the congressional budget process. First, it describes authorities in the House and Senate for making emergency designations and their effect with regard to each budgetary enforcement rule. Next, the report provides a history of emergency designations in the congressional budget process since Congress enacted the Budget Act in 1974.<sup>1</sup>

## Emergency Designation Rules and Procedures

Congress considers spending and revenue legislation under a set of enforcement procedures that are generally intended to provide greater control over spending, revenues, and the deficit. Under these rules, Congress can designate a measure, or certain provisions within a measure, as an emergency requirement simply by stating as such in the legislative text of that measure. In current practice, congressional budgetary rules preclude such provisions from enforcement either by establishing that the spending and revenue effects not count for the purposes of applicable enforcement mechanisms or by requiring adjustments to relevant budgetary levels to accommodate such spending. The following sections describe the rules and procedures (summarized in **Table 1**) related to the application of emergency designations in the congressional budget process.

**Table 1. Emergency Designation Provisions Related to Congressional Budget Enforcement Rules**

Chamber	Emergency Designation Provision	Applicable Budget Enforcement Rule(s)
House and Senate	<ul style="list-style-type: none"> <li>Section 314(a) of the Congressional Budget Act (the Budget Act) of 1974<sup>a</sup></li> <li>Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act (the Deficit Control Act) of 1985<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>Budget Act enforcement of discretionary spending levels established in association with the budget resolution</li> <li>Statutory Discretionary Spending Limits for FY2024 and FY2025</li> </ul>

<sup>1</sup> Titles I-IX of the Congressional Budget and Impoundment Control Act of 1974, codified as amended at 2 U.S.C. §§601-661f.

Chamber	Emergency Designation Provision	Applicable Budget Enforcement Rule(s)
Senate	Section 4001(a) of S.Con.Res. 14 (117 <sup>th</sup> Congress) <sup>c</sup>	<ul style="list-style-type: none"> <li>Budget Act enforcement of aggregate spending and revenue levels, as well as committee spending allocations, established in association with the budget resolution</li> <li>Senate Pay-As-You-Go (PAYGO) point of order<sup>d</sup></li> <li>Senate long-term deficit point of order<sup>e</sup></li> <li>Senate short-term deficit point of order<sup>f</sup></li> </ul>
House and Senate	Section 4(g) of the Statutory Pay-As-You-Go (PAYGO) Act of 2010 <sup>g</sup>	Statutory PAYGO
House	Clause 10(c)(1) of House Rule XXI	House Cut-As-You-Go (CUTGO) Rule

**Source:** Information compiled from text of specified provisions accessed through Congress.gov.

**Notes:** Each of the emergency designation provisions included in this table establish for its applicable budget enforcement rule: (1) the authority for Congress to designate applicable provisions as emergency requirements and (2) that the budgetary effects of such provisions will not count, or that relevant budgetary levels will be adjusted, for the purposes of enforcing the rule.

- a. Titles I-IX of the Budget Act, codified as amended at 2 U.S.C. §601-§661f.
- b. Title II of the Deficit Control Act, codified as amended at 2 U.S.C. §901(b)(2)(A).
- c. The budget resolution for FY2022.
- d. Section 4106 of H.Con.Res. 71 (115<sup>th</sup> Congress), the budget resolution for FY2018.
- e. Section 3101 of S.Con.Res. 11 (114<sup>th</sup> Congress), the budget resolution for FY2016.
- f. Section 404(a) of S.Con.Res. 13 (111<sup>th</sup> Congress), the budget resolution for FY2010.
- g. Title I of P.L. 111-139, codified at 2 U.S.C. §§931-939.

## Budget Act and Related Enforcement

The Budget Act created procedures that allow Congress to establish a fiscal framework for the consideration of budgetary legislation through the adoption of a concurrent resolution on the budget for each fiscal year (the budget resolution). The budget resolution serves as a congressional budget plan establishing, among other matters, spending, revenue, and deficit levels covering at least five fiscal years.<sup>2</sup> The Budget Act also established a process through which the total spending levels set forth in the budget resolution are allocated among all committees with jurisdiction over spending legislation (known as “302(a)” allocations). The House and Senate Appropriations committees are each required to subdivide their 302(a) allocations among their 12 subcommittees (known as “302(b)” suballocations).<sup>3</sup>

Congress enforces the budgetary levels associated with the budget resolution through points of order established in the Budget Act.<sup>4</sup> Under the act, legislation may generally not cause total new budget authority to exceed—and total revenue to fall below—the levels established in the most

<sup>2</sup> In recent years, budget resolutions have often covered 10 fiscal years.

<sup>3</sup> Sections 302(a) and 302(b) of the Budget Act, codified as amended at 2 U.S.C. §633. For further information on these allocations, see CRS Report R47388, *Enforceable Spending Allocations in the Congressional Budget Process: 302(a)s and 302(b)s*, by Drew C. Aherne.

<sup>4</sup> For more on points of order in the congressional budget process, see CRS Report R47413, *Points of Order in the Congressional Budget Process*, by James V. Saturno and Megan S. Lynch.

recently adopted budget resolution.<sup>5</sup> Budget Act points of order may also be raised against measures that would cause the total budget authority or outlays under a committee’s jurisdiction to exceed its 302(a) allocation or the level of budget authority (and outlays in the Senate) in an appropriations bill to exceed the applicable appropriations subcommittee’s 302(b) suballocation.<sup>6</sup>

Congress generally exempts provisions designated as emergency requirements from enforcement under the Budget Act. Historically, Congress has done this through authorities adopted in budget resolutions (or alternative legislative measures that trigger Budget Act enforcement, known as “deeming resolutions”) as well as in statute.<sup>7</sup> These authorities have generally established either that budgetary levels will be adjusted to accommodate the estimated budgetary effects of provisions designated as emergency requirements or that they not count for enforcing relevant Sections of the Budget Act. This includes those that enforce aggregate spending and revenue levels (Section 311) as well as 302(a) and 302(b) levels (Section 302).

For FY2024 and FY2025, discretionary appropriations designated as emergency requirements are exempt from enforcement under the Budget Act in the House and Senate pursuant to Section 314(a) of the act.<sup>8</sup> This Section allows for adjustments to budgetary levels (including aggregates, 302(a) allocations, and 302(b) suballocations) to accommodate spending designated as an emergency requirement.<sup>9</sup> The Budget Act establishes that these adjustments will:

- apply while the legislation containing the emergency designation is under consideration,
- take effect upon its enactment, and
- be published in the *Congressional Record* as soon as practicable.<sup>10</sup>

This procedure effectively exempts discretionary appropriations designated as emergency requirements from Budget Act enforcement related to discretionary spending (i.e., aggregate spending levels, 302(a) allocations to the Appropriations Committees, and 302(b) suballocations).<sup>11</sup>

<sup>5</sup> Section 311(a)(1) (House) and Section 311(a)(2) (Senate) of the Budget Act, codified as amended at 2 U.S.C. §642.

<sup>6</sup> Section 302(f)(1) of the Budget Act (House) and Section 302(f)(2) of the Budget Act (Senate), codified as amended at 2 U.S.C. §633.

<sup>7</sup> For some fiscal years, Congress has not adopted a budget resolution. In such years, the House and/or Senate have employed alternative legislative tools, known as “deeming resolutions,” to substitute for the budget resolution in establishing enforceable budget levels. For more on deeming resolutions, see CRS Report R44296, *Deeming Resolutions: Budget Enforcement in the Absence of a Budget Resolution*, by Megan S. Lynch.

<sup>8</sup> Section 314(a) of the Budget Act, codified as amended at 2 U.S.C. §645(a). The Fiscal Responsibility Act of 2023 (P.L. 118-5) established statutory discretionary spending limits for FY2024 and FY2025. Section 314(a), in tandem with other statutory provisions (specifically, Section 251(b) of the Deficit Control Act), exempts discretionary appropriations from Budget Act enforcement while these limits are in place. For more on these discretionary spending limits, see the section of this report titled “Statutory Discretionary Spending Limits.”

<sup>9</sup> Section 314(a) allows for the chairs of the House and Senate Budget Committees to adjust budgetary levels “in the same amount as required by section 251(b)” of the Deficit Control Act. Section 251(b)(2)(A) of the Deficit Control Act allows for statutory discretionary spending caps to be adjusted up to any amount to accommodate spending designated by Congress and the President as an emergency requirement. For more on Section 251(b)(2)(A), see the section of this report titled “Statutory Discretionary Spending Caps.”

<sup>10</sup> Section 314(b) of the Budget Act, codified as amended at 2 U.S.C. §645(b). For examples of these adjustments printed in the *Congressional Record*, see *Congressional Record*, daily edition (July 22, 2020), vol. 166, no. 129, p. H3691 for the House for FY2021; and *Congressional Record*, daily edition (September 24, 2020), vol. 166, no. 166, pp. S5859-S5860 for the Senate for FY2021.

<sup>11</sup> Section 314(c) of the Budget Act allows the Committees on Appropriations in the House and Senate to report revised 302(b) suballocations to reflect adjustments made under Section 314(a).

Additionally, the Senate exempts provisions with emergency designations from Budget Act enforcement of all spending and revenue levels associated with the budget resolution. This authority was adopted through Section 4001(a) of the FY2022 budget resolution, which effectively exempts emergency-designated spending and revenues from Budget Act points of order enforcing committee spending allocations (Section 302) and aggregate spending levels (Section 311).<sup>12</sup>

This provision also exempts emergency-designated spending and revenues from other, Senate-specific budget enforcement rules, including the Senate's short-term deficit point of order, long-term deficit point of order, and PAYGO point of order.<sup>13</sup>

## **Statutory Discretionary Spending Limits**

The Fiscal Responsibility Act of 2023 established statutory limits on discretionary spending for FY2024 and FY2025.<sup>14</sup> These limits, which are divided into security (defense) and nonsecurity (nondefense) categories, serve as enforceable topline levels for discretionary spending in each category.<sup>15</sup>

The limits for FY2024 and FY2025 are enforceable through sequestration procedures under the Deficit Control Act. These procedures are the same or similar to those that enforced discretionary limits previously in place at various points over the past few decades. Under these procedures, if enacted discretionary appropriations in either category—defense or nondefense—exceed the applicable cap for that fiscal year, then the President is required to issue a sequestration order that implements an across-the-board reduction of budget authority for non-exempt accounts.<sup>16</sup> These reductions would generally apply at a uniform percentage across non-exempt accounts within the category for which the caps have been exceeded at a level sufficient to eliminate the breach.<sup>17</sup> Discretionary spending limits are also enforceable during the consideration of applicable bills

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<sup>12</sup> Section 4001(a)(2) of S.Con.Res. 14, 117<sup>th</sup> Congress.

<sup>13</sup> The Senate's short-term deficit point of order (Section 404(a) of S.Con.Res. 13 (111<sup>th</sup> Congress)), long-term deficit point of order (Section 3101 of S.Con.Res. 11 (114<sup>th</sup> Congress)), and PAYGO point of order (Section 4106 of H.Con.Res. 71 (115<sup>th</sup> Congress)). For more on these points of order, see U.S. Senate Committee on the Budget, *Budget Points of Order*, <https://www.budget.senate.gov/budgetpointsoforder>. For more on the Senate PAYGO point of order, see the section of this report titled "House CUTGO and Senate PAYGO Rules."

<sup>14</sup> Section 101 of P.L. 118-5.

<sup>15</sup> The Fiscal Responsibility Act also included deeming resolutions for the House for FY2024 and the Senate for FY2024 and FY2025, making these levels enforceable under the Budget Act during the consideration of measures making discretionary appropriations for these fiscal years.

<sup>16</sup> Section 254 of the Deficit Control Act (codified as amended at 2 U.S.C. §904) requires the Office of Management and Budget (OMB) and the Congressional Budget Office to submit periodic reports over the course of a congressional session that include (1) the applicable discretionary spending limits for each category and an explanation of any adjustments to such limits; (2) estimated new budget authority and outlays for each category and, if applicable, the amount that those levels exceed the applicable cap on discretionary spending; and (3) the sequestration percentages necessary to achieve the required reduction in each category (and on an account-by-account basis). OMB is required to issue a sequestration report 15 days after the end of a congressional session. If the report determines that a breach of the discretionary cap for any category has occurred, then the President is required to issue an order fully implementing all sequestrations outlined in the OMB report. Additionally, if a measure is enacted after the end-of-session report and prior to July 1 of the fiscal year in progress that causes the caps to be exceeded, then OMB and the President are required to issue a report and subsequent sequester order remedying the violation ("within-session sequestration").

<sup>17</sup> The Deficit Control Act exempts certain accounts from sequestration related to the enforcement of statutory discretionary spending caps (Section 255 of the Deficit Control Act, codified as amended at 2 U.S.C. §905).



through a point of order under Section 314(e) of the Budget Act that prohibits the consideration of measures that would cause the limits to be exceeded.<sup>18</sup>

The Deficit Control Act exempts provisions that Congress designates (and that the President subsequently designates) as emergency requirements from the enforcement of statutory discretionary spending limits. Section 251(b)(2)(A), in part, requires that discretionary spending caps be adjusted up to any amount to accommodate appropriations that Congress designates, on an account-by-account basis, as emergency requirements. When OMB submits its final sequestration report, it is required to calculate and include adjustments for the full amounts of appropriations that Congress designated as emergency requirements over the period the report is required to cover.<sup>19</sup> These adjustments effectively establish that the budgetary effect of emergency-designated discretionary appropriations do not count in the final calculation of a potential breach of the discretionary spending limits. Discretionary appropriations designated as emergency requirements are not exempt from any potential sequester, however, unless they are within an exempted account.

In the Senate, a point of order may be raised against any emergency designation made pursuant to Section 251 of the Deficit Control Act.<sup>20</sup> Section 314(e) of the Budget Act establishes this point of order, stating:

(e) SENATE POINT OF ORDER AGAINST AN EMERGENCY DESIGNATION. –

(1) IN GENERAL. – When the Senate is considering a bill, resolution, amendment, motion, amendment between the Houses, or conference report, if a point of order is made by a Senator against an emergency designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment on the floor.

This point of order can be waived by a three-fifths vote from the Senate, which effectively requires that any emergency designation in a provision providing discretionary appropriations be supported by 60 Senators (assuming no more than one vacancy) for it to remain in a provision.<sup>21</sup> If the waiver is not agreed to, the emergency designation is stricken from the measure and the budgetary effects of the provision in question are subject to applicable budgetary enforcement rules.

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<sup>18</sup> Section 314(f) of the Budget Act, codified as amended at 2 U.S.C. §645(f).

<sup>19</sup> Section 251(b) of the Deficit Control Act. For example, in its “Final Sequestration Report to the President and Congress for Fiscal Year 2021,” OMB indicated that it had increased the discretionary spending caps to accommodate around \$193 billion in spending that had been designated as an emergency requirement.

<sup>20</sup> Section 314(e)(3) of the Budget Act establishes that the point of order may be raised against legislation that makes an emergency designation pursuant to Section 251(b)(2)(A) of the Deficit Control Act. This point of order was first adopted in the FY2000 budget resolution (Section 206 of H.Con.Res. 68, 106<sup>th</sup> Congress). It was subsequently readopted in modified form in Section 205 of H.Con.Res. 290 (106<sup>th</sup> Congress), the FY2001 budget resolution; Section 502 of H.Con.Res. 95 (108<sup>th</sup> Congress), the FY2004 budget resolution; Section 402 of H.Con.Res. 95 (109<sup>th</sup> Congress), the FY2006 budget resolution; Section 204 of S.Con.Res. 21 (109<sup>th</sup> Congress), the FY2008 budget resolution; Section 403 of S.Con.Res. 13 (111<sup>th</sup> Congress), the FY2010 budget resolution; and Section 4112 of H.Con.Res. 71 (115<sup>th</sup> Congress), the FY2018 budget resolution. The point of order was added to Section 314(e) of the Budget Act in Section 511 of the Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78).

<sup>21</sup> Section 314(e)(2) of the Budget Act, codified as amended at 2 U.S.C. §645(e)(2).



## Statutory PAYGO

The Statutory Pay-As-You-Go (PAYGO) Act of 2010 established a process intended to encourage budget neutrality on new direct spending (also known as mandatory spending) and revenue legislation, generally requiring such “PAYGO” legislation not to increase the deficit.<sup>22</sup>

Statutory PAYGO aims to enforce deficit levels through sequestration, which implements across-the-board cuts to non-exempt direct spending programs when its requirements are violated. The Statutory PAYGO Act requires the Office of Management and Budget (OMB) to maintain two PAYGO scorecards covering rolling five- and 10-year periods that record the budgetary effects of new direct spending and revenue provisions enacted into law.<sup>23</sup> Shortly after the end of a congressional session, OMB is required to finalize the two PAYGO scorecards. If a net increase in the deficit has been recorded for the budget year on either scorecard, then the President is required to issue a sequestration order to implement across-the-board cuts to non-exempt direct spending programs sufficient to remedy the deficit increase.<sup>24</sup>

The Statutory PAYGO Act created an emergency designation for PAYGO legislation that exempts new direct spending and revenues resulting from provisions designated as emergency requirements from enforcement under the act. Specifically, Section 4(g)(4) of the act, as shown below, establishes that the budgetary effect of such provisions will not be counted on the PAYGO scorecards.

(4) EFFECT OF DESIGNATION ON SCORING. – If a provision is designated as an emergency requirement under this Act, CBO or OMB, as applicable shall not include the budgetary effects of such a provision in its estimate of the budgetary effects of that PAYGO legislation.

Section 4(g) of the Statutory PAYGO Act also established certain procedures related to making an emergency designation in legislation subject to PAYGO in the House and Senate. In the House, if a PAYGO bill contains an emergency designation, then the chair must put the question of consideration to the full House prior to its consideration.<sup>25</sup> That is, the House must vote on whether to consider the legislation even though it contains an emergency designation exempting all or certain budgetary effects from Statutory PAYGO. If the full House decides the question in the affirmative by a majority vote, then the legislation is considered. (Conversely, if a majority votes in the negative, then the legislation is not considered.) In the Senate, a Senator may raise a point of order against an emergency designation in a PAYGO bill.<sup>26</sup> This point of order may be waived by an affirmative vote of three-fifths of the Senate (60 Senators if there is no more than one vacancy). If the waiver motion is rejected, then the emergency designation is stricken, and the

<sup>22</sup> Section 3(7) of the Statutory PAYGO Act of 2010 (codified at 2 U.S.C. §932) defines *PAYGO legislation* or a *PAYGO Act* as a bill or joint resolution that affects direct spending or revenue relative to the baseline (including the budgetary effect of changes in revenues and outyear modifications to substantive law included in appropriations acts). Section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, codified as amended at 2 U.S.C. §900(c)(8)) defines *direct spending* as (a) budget authority provided by law other than appropriations acts, (b) entitlement authority, or (c) the Supplemental Nutrition Assistance Program. For additional information on the Statutory PAYGO Act, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.

<sup>23</sup> In practice, OMB generally determines the budgetary effects of PAYGO measures unless Congress follows the process provided for in Section 2(a) of the Statutory PAYGO Act, whereby the chair of the House or Senate Budget Committee submits an estimate of the budgetary effect of a PAYGO measure for printing in the *Congressional Record* prior to passage.

<sup>24</sup> If both scorecards show a deficit increase, then the larger of the two amounts must be the basis for sequestration.

<sup>25</sup> Section 4(g)(2) of the Statutory PAYGO Act of 2010, codified at 2 U.S.C. §933(g)(2).

<sup>26</sup> Section 4(g)(3) of the Statutory PAYGO Act of 2010, codified at 2 U.S.C. §933(g)(3).

budgetary effects of the legislation, if enacted, would be added to the five- and 10-year PAYGO scorecards.

One example of legislation with an emergency designation being exempted from enforcement under Statutory PAYGO is the Emergency Repatriation Assistance for Returning Americans Act of 2021.<sup>27</sup> The act, which provided authority for increased payments under the Social Security Act for temporary assistance to U.S. citizens returned from foreign countries, contained an emergency designation exempting the resulting increase in direct spending from enforcement under Statutory PAYGO. Specifically, Section 2(b)(1) of the act states as follows:

(b) EMERGENCY DESIGNATION. –

(1) IN GENERAL. – The amounts provided by the amendment made by this section are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

As a result, pursuant to Section 4(g) of the Statutory PAYGO Act, the budgetary effect of P.L. 117-39 did not count for the purposes of Statutory PAYGO. OMB's *2021 Statutory Pay-As-You-Go Act Annual Report* reflects this, conveying that the budgetary effect of P.L. 117-39 was not included in the final calculation of the OMB PAYGO scorecards for the purposes of determining a potential deficit increase. This is despite OMB estimating that the act would increase the deficit by \$2 million over the five- and 10-year periods. Specifically, the report states, "The effects of the provisions in these laws that are designated as emergency requirements appear on the scorecard, but are subtracted before computing the scorecard totals."<sup>28</sup>

## House CUTGO and Senate PAYGO Rules

Over the years, the House and Senate have each adopted their own rules encouraging deficit neutrality on certain direct spending and revenue legislation. As with other budget enforcement mechanisms, these House and Senate rules also provide the authority to exempt the budgetary effects of provisions designated as emergency requirements.

### *House Cut-As-You-Go (CUTGO) Rule*

The House has its own rule generally requiring budget neutrality for any legislation that is estimated to affect mandatory spending. A version of this rule (Clause 10 of House Rule XXI) has been adopted in various forms for each Congress since the 110<sup>th</sup>.<sup>29</sup>

The latest version of this rule, known as "Cut-As-You-Go," or "CUTGO," was adopted as part of the House rules package for the 118<sup>th</sup> Congress.<sup>30</sup> The rule prohibits the consideration of any legislation that would cause a net increase in mandatory spending over either of two periods:

- the six-year period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years; or

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<sup>27</sup> P.L. 117-39.

<sup>28</sup> OMB, *Notice; 2021 Statutory Pay-As-You-Go Act Annual Report*, January 26, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/01/annualpaygoreport2021.pdf>.

<sup>29</sup> The rule was first adopted through H.Res. 6 (110<sup>th</sup> Congress) in January 2007, the House rules package for the 110<sup>th</sup> Congress.

<sup>30</sup> Section 2(a)(1) of H.Res. 5 (118<sup>th</sup> Congress).

- the 11-year period consisting of the current year, the budget year, and the nine ensuing fiscal years.<sup>31</sup>

Unlike Statutory PAYGO and similar rules in the Senate, the House CUTGO rule does not include revenue when evaluating the budgetary effect of applicable provisions. In other words, under the rule, revenue increases cannot offset increases in mandatory spending, and revenue decreases do not need to be offset even if they increase the deficit.<sup>32</sup>

Each version of clause 10 of House Rule XXI adopted since the 111<sup>th</sup> Congress has included a provision exempting the budgetary effects of provisions designated as emergency requirements from enforcement under the rule. The House CUTGO rule adopted at the beginning of the 118<sup>th</sup> Congress establishes that a provision designated as an emergency requirement under Statutory PAYGO shall be excluded from the evaluation under CUTGO of the provision's net effect on mandatory spending.<sup>33</sup> This emergency designation authority applies in the case of a point of order under the rule against the consideration of any bill or joint resolution, amendment made in order as original text by a special order of business, conference report, or amendment between the houses. It does not apply, however, to a floor amendment to a bill or joint resolution.<sup>34</sup>

### *Senate PAYGO Rule*

Since its first adoption in the FY1994 budget resolution, a PAYGO point of order has prohibited consideration in the Senate of new direct spending or revenue legislation that would increase the deficit over certain periods.<sup>35</sup> The latest version of the point of order adopted in the FY2018 budget resolution makes it out of order to consider any direct spending or revenue legislation that would increase the on-budget deficit for any of the following periods:<sup>36</sup>

- the current fiscal year,
- the budget year,
- the six-year period beginning with the current fiscal year, and
- the 11-year period beginning with the current fiscal year.<sup>37</sup>

As previously mentioned, the Senate has generally exempted emergency-designated provisions from various Senate budget enforcement rules through authorities adopted in budget resolutions.

<sup>31</sup> The term *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 the five- and 10-year periods instead of the six- and 11-year periods.

<sup>32</sup> For more on House Rule XXI, clause 10, see CRS Report R41510, *House Rule XXI, Clause 10: The CUTGO Rule*, by Bill Heniff Jr. For more on changes to House Rule XXI, clause 10, for the 118<sup>th</sup> Congress, see CRS Report R47384, *Changes to House Rules Affecting the Congressional Budget Process Included in H.Res. 5 (118th Congress)*, by James V. Saturno and Megan S. Lynch.

<sup>33</sup> Clause 10(c)(1) of House Rule XXI. Pursuant to Statutory PAYGO, the chair must put the question of consideration to the full House prior to its consideration, as discussed in more detail in the section of this report titled “Statutory PAYGO.”

<sup>34</sup> Clause 10(c)(2) of House Rule XXI.

<sup>35</sup> Section 12(c) of H.Con.Res. 64 (103<sup>rd</sup> Congress).

<sup>36</sup> Currently, there are three accounts in the federal budget designated as “off-budget:” the Federal Old-Age and Survivors Insurance Trust Fund (Social Security retirement), the Federal Disability Insurance Trust Fund (Social Security disability), and the Postal Service Fund. Receipts and expenditures associated with these accounts are not included in calculations of the “on-budget” deficit.

<sup>37</sup> Section 4106 of H.Con.Res. 71 (115<sup>th</sup> Congress). For further information on the Senate PAYGO rule, see CRS Report RL31943, *Budget Enforcement Procedures: The Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

This includes the Senate PAYGO point of order. As with Budget Act enforcement and other Senate-specific points of order, the Senate exempts emergency-designated provisions from its PAYGO point of order through Section 4001(a) of S.Con.Res. 14 (117<sup>th</sup> Congress), the FY2022 budget resolution.

## **History of Emergency Designations**

The procedural treatment of legislation addressing unanticipated budgetary needs has long been a consideration for Congress in shaping the congressional budget process. Prior to 1990, however, there existed no formal procedures for considering such provisions. With the onset of new statutory budget enforcement procedures in 1990, Congress established formal procedures for making emergency designations and exempting the budgetary effects of such provisions from enforcement. In the years since, Congress has continued its authority to make these designations and exempt emergency-designated provisions from enforcement under applicable rules. As previously discussed, this includes establishing and reaffirming this authority through various statutes, budget resolutions, and congressional rules.

The rules and procedures associated with emergency designations in the congressional budget process have varied in some ways and undergone certain changes over time. This includes variations in the procedures for exempting the budgetary effect of emergency-designated provisions (i.e., adjusting budgetary levels to accommodate such provisions versus not counting their budgetary effects). There have also been significant developments in the purposes for which emergency designations are used in the past few decades, most notably through separate designations and exemptions for purposes that had historically been designated as emergency requirements (e.g., Overseas Contingency Operations/Global War on Terrorism and disaster relief).

The following sections outline these developments in detail, covering the history of emergency designations in the congressional budget process since 1974.

### **Early Treatment of Emergency Appropriations**

Prior to 1990, non-explicit, informal rules and agreements largely dictated the consideration of budgetary provisions considered to be for emergency purposes.

In 1974, the Budget Act included requirements for Congress and the President, respectively, to account for expenditures related to unforeseen funding needs in the budget resolution and President's budget. The Budget Act required Congress to include an allowance for "contingencies" in the budget resolution for such purposes.<sup>38</sup> Similarly, the act required the President's budget to include "an allowance for additional estimated expenditures and proposed appropriations for the ensuing fiscal year, and an allowance for unanticipated uncontrollable expenditures for the ensuing fiscal year."<sup>39</sup> The Budget Act did not place any explicit limitations on either branch, however, with regard to their ability to request or enact spending for any purpose, including supplemental appropriations.

The informal treatment of appropriations for emergency purposes continued through the 1980s. Congress came together with President Ronald Reagan in 1987, and again with President George H. W. Bush in 1989, to negotiate budgetary agreements to meet enforceable deficit limits

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<sup>38</sup> P.L. 93-344, Section 301(a)(2), 88 Stat. 306.

<sup>39</sup> P.L. 93-344, Section 604, 88 Stat. 324.

established in the Deficit Control Act in 1985.<sup>40</sup> Caps on discretionary appropriations were agreed to as part of these “budget summit” agreements in 1987 and 1989. In both cases, the two branches agreed not to initiate supplemental spending above these amounts “except in the case of dire emergency.” Neither agreement specified a definition of a *dire emergency* or included a requirement that any supplemental spending for such purposes be offset.<sup>41</sup>

## The Budget Enforcement Acts of 1990 and 1997

The Budget Enforcement Act (BEA) of 1990 first formalized the process for considering emergency spending and revenue provisions.<sup>42</sup> It generally shifted the focus of the budget control mechanisms first established through the Deficit Control Act from the projected deficit to the spending or revenue effects of new legislation. The BEA of 1990 did so by providing for the enforcement of statutory discretionary spending limits and a limitation on changes to direct spending and revenues (PAYGO). Procedures for enforcing the discretionary spending limits and PAYGO were extended twice (in 1993 and 1997) and were effectively in place from FY1991 through FY2002.<sup>43</sup>

As part of the enforcement procedures for the statutory discretionary spending limits, the BEA of 1990 also established allowable adjustments to accommodate certain spending, including emergency appropriations. Specifically, the act amended Section 251 of the Deficit Control Act to allow for adjustments to the discretionary caps up to any amount for discretionary appropriations that the President and Congress designated as emergency requirements.<sup>44</sup> A similar provision in the BEA of 1990 specified that the enforcement of PAYGO would exclude the budgetary effect of emergency-designated provisions as well.<sup>45</sup> These provisions established that either the President (through the President’s budget or other means) or Congress (through statutory language) could initiate an emergency designation but required that both agreed to the designation.

The BEA of 1997 then extended these exemptions to enforcement under the Budget Act by creating Section 314 of the act. As previously discussed, this Section allows for adjustments to the levels associated with the budget resolution to accommodate the budgetary effects of provisions designated as emergency requirements.

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<sup>40</sup> Title II of P.L. 99-177.

<sup>41</sup> William G. Dauster, “Budget Emergencies,” *Journal of Legislation*, vol. 18, no. 2, 1992, pp. 249-315.

<sup>42</sup> Title XIII of P.L. 101-508.

<sup>43</sup> The BEA of 1990 established statutory discretionary caps and PAYGO for FY1991 through FY1995. Discretionary caps and PAYGO enforcement procedures were subsequently extended through FY1998 by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). The BEA of 1997 (Title X of P.L. 103-66) then extended discretionary caps and PAYGO through FY2002. For more on statutory budget controls over this period, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan S. Lynch. Statutory discretionary spending limits were subsequently reestablished for FY2012-FY2021, which is discussed in the section of this report titled “The Budget Control Act of 2011.”

<sup>44</sup> Section 13101 of P.L. 101-508. This section amended Sections 250-258c of the Deficit Control Act. As part of these amendments, the requirement to adjust the statutory discretionary limits to accommodate emergency appropriations was included in Section 251(b)(2)(D) of the Deficit Control Act. This section was subsequently amended by multiple other measures. The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) established that the adjustment for emergency appropriations would apply “for any fiscal year,” effectively making it permanent. The BEA of 1997 (P.L. 105-33) further amended Section 251 of the Deficit Control Act and moved the adjustment for emergency appropriations to Section 251(b)(2)(A) of the act, where it currently remains.

<sup>45</sup> Section 252(d)(4)(B) of the Deficit Control Act (codified at 2 U.S.C. §902(d)(4)(B)) excluded from the PAYGO process estimates of amounts for emergency provisions, as provided in Section 252(e) (codified at 2 U.S.C. §904(e)). The BEA of 1990 originally enacted this provision for FY1991-FY1994. The Omnibus Budget Reconciliation Act of 1993 then extended this provision through FY1995, and the BEA of 1997 subsequently extended it through FY2002.



## The Budget Control Act of 2011

The statutory discretionary spending limits established in the BEA of 1990 and extended through subsequent legislation expired after FY2002. Subsequently, there were no statutory controls on discretionary spending in effect for FY2003-FY2011. Statutory discretionary spending limits were reestablished for FY2012 through FY2021, however, by the Budget Control Act (BCA) of 2011 as part of broader efforts to reduce the deficit.<sup>46</sup> The discretionary spending caps established by the BCA were enforced by sequestration, as the previous caps were.<sup>47</sup>

As with the enforcement of discretionary spending limits under the BEA of 1990 and subsequent legislation, the caps established in the BCA included a provision requiring adjustments to accommodate spending designated as an emergency requirement. The amended version of Section 251(b)(2)(A) of the Deficit Control Act enacted through the BCA required that the sequestration report submitted by OMB include adjustments to the discretionary spending limits at levels equaling “the total of such appropriations in discretionary accounts designated as emergency requirements.”<sup>48</sup> The amended version of Section 251(b)(2)(A) requires that Congress designate provisions (and that the President subsequently so designates) as an emergency requirement on an account-by-account basis.

The statutory discretionary spending limits established by the BCA were revised in 2013, 2015, 2018, and 2019 and ultimately expired after FY2021.<sup>49</sup>

## Emergency Designation Provisions in Budget Resolutions

In the absence of statutory discretionary spending limits, the emergency designation provisions in Section 251 of the Deficit Control Act and Section 314 of the Budget Act do not apply. Congress has historically made up for this by adopting authorities in budget resolutions creating emergency designations and exempting such provisions from enforcement under the Budget Act and other budget enforcement rules in the House and Senate. Congress emphasized the purpose of such provisions in the FY2004 budget resolution, the first budget resolution adopted since statutory discretionary spending limits expired after FY2002, stating:

It is the purpose of this section, in the absence of an extension of the discretionary spending limits and PAYGO requirements under the Balanced Budget and Emergency Deficit Control Act of 1985, to enable Congress to designate provisions of legislation as an emergency in order to exempt such measures from enforcement of this resolution with respect to the new budget authority, outlays, and receipts resulting from such provisions.<sup>50</sup>

These provisions have been in effect in various forms for the House and Senate in each fiscal year for which there were not statutory discretionary spending limits in place between FY2004 and

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<sup>46</sup> Budget Control Act of 2011, P.L. 112-25. For further information on the BCA, see CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan.

<sup>47</sup> Section 101 of P.L. 112-25.

<sup>48</sup> Section 251(b)(2)(A) of the Deficit Control Act. This provision also provided for these adjustments for discretionary appropriations that Congress designated for “Overseas Contingency Operations/Global War on Terrorism” purposes, which is discussed further in the section of this report titled “Exemptions for Overseas Contingency Operations/Global War on Terrorism and Disaster Relief.”

<sup>49</sup> The Bipartisan Budget Act of 2013 (P.L. 113-67), the Bipartisan Budget Act of 2015 (P.L. 114-74), the Bipartisan Budget Act of 2018 (P.L. 115-123), and the Bipartisan Budget Act of 2019 (P.L. 116-37), respectively.

<sup>50</sup> Section 502(a) of H.Con.Res. 95 (108<sup>th</sup> Congress).

FY2023 (FY2004, FY2005, FY2006, FY2007, FY2008, FY2009, FY2010, FY2011, FY2022, and FY2023).<sup>51</sup>

While these provisions have varied to some extent over time and between the House and Senate, they have generally:

- established the authority for the House and/or Senate to make emergency designations, and
- exempted the budgetary effects of such provisions from enforcement under relevant sections of the Budget Act.<sup>52</sup>

As previously mentioned, the Senate has also used these authorities to exempt emergency-designated provisions from other Senate-specific budgetary enforcement rules.<sup>53</sup>

### **Exemptions for Overseas Contingency Operations/Global War on Terrorism and Disaster Relief**

In recent decades, congressional rules for considering legislation addressing unforeseen budgetary needs have begun to differentiate between purposes that in the past had generally fallen under the category of emergency requirements. In practice, Congress has achieved this through provisions in budget resolutions and in statute that have established separate designations and exemptions for purposes that were previously designated as emergency requirements.

One of the primary examples of this practice stems from the costs associated with the military operations in Afghanistan, Iraq, and elsewhere in the early 2000s. Initial supplemental appropriations enacted to address the costs associated with these activities were designated as emergency requirements under existing emergency designation procedures and were thus exempt from relevant budgetary enforcement rules.<sup>54</sup> Beginning with the FY2005 budget resolution, however, the House created a separate designation and exemption for “contingency operations related to the global war on terrorism” (known as Overseas Contingency Operations).<sup>55</sup> Both the

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<sup>51</sup> For the House, such provisions were adopted in the budget resolution (or deeming resolution) for FY2004 (Section 502 of H.Con.Res. 95, 105<sup>th</sup> Congress); FY2005 (Section 402 of S.Con.Res. 95, 108<sup>th</sup> Congress); FY2006 (Section 402 of H.Con.Res. 95, 109<sup>th</sup> Congress); FY2007 (Section 501 of H.Con.Res. 376, 109<sup>th</sup> Congress); FY2008 (Section 204 of S.Con.Res. 21, 110<sup>th</sup> Congress); FY2009 (Section 301(b) of S.Con.Res. 70, 110<sup>th</sup> Congress); FY2010 (Section 423(b) of S.Con.Res. 13, 111<sup>th</sup> Congress); FY2011 (Section (a)(2) of H.Res. 1493, 111<sup>th</sup> Congress); FY2022 (Section 4001 of S.Con.Res. 14, 117<sup>th</sup> Congress); and FY2023 (Section 1(d) of H.Res. 1151, 117<sup>th</sup> Congress).

For the Senate, such provisions were adopted in the budget resolution (or deeming resolution) for FY2004 (Section 502 of H.Con.Res. 95, 105<sup>th</sup> Congress); FY2006 (Section 402 of H.Con.Res. 95, 109<sup>th</sup> Congress); FY2007 (Section 402 of S.Con.Res. 83, 109<sup>th</sup> Congress); FY2008 (Section 204 of S.Con.Res. 21, 110<sup>th</sup> Congress); FY2010 (Section 403 of S.Con.Res. 13, 111<sup>th</sup> Congress); FY2018 (Section 4112 of H.Con.Res. 71, 115<sup>th</sup> Congress); and FY2022 (Section 4001 of S.Con.Res. 14, 117<sup>th</sup> Congress).

<sup>52</sup> House and Senate provisions exempting emergency-designated spending and revenues from Budget Act enforcement have varied historically in how they specify the exemption. The Senate has generally specified the exemption by listing which sections of the Budget Act emergency-designated spending and revenues are exempt from. While the House has also done this in some years, it has more recently specified that such provisions are exempt from all of Titles III and IV of the Budget Act or establishing that the budgetary effect shall not count “for any purpose.”

<sup>53</sup> For example, the Senate PAYGO point of order, long-term and short-term deficit points of order, and discretionary spending limits adopted for the Senate through budget resolutions.

<sup>54</sup> For example, see P.L. 108-106, the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004. Section 4002 of the act designates the amounts provided as an emergency requirement pursuant to Section 502 of H.Con.Res. 95 (108<sup>th</sup> Congress), the emergency designation provision from the FY2004 budget resolution.

<sup>55</sup> Section 402(a) of S.Con.Res. 95 (108<sup>th</sup> Congress) established that, in the House, supplemental appropriations (continued...)



House and the Senate adopted provisions in various forms exempting discretionary appropriations for these purposes for most fiscal years between FY2006 and FY2010.<sup>56</sup> When the BCA reestablished statutory discretionary spending caps for FY2012-FY2021, the act also amended Section 251(b)(2)(A) of the Deficit Control Act to establish a designation and adjustment for “Overseas Contingency Operations/Global War on Terrorism” (OCO/GWOT).<sup>57</sup> Pursuant to this provision, the caps were adjusted up to any amount for discretionary appropriations that Congress designated as being for these activities. The designation in Section 251(b)(2)(A) for appropriations for OCO/GWOT purposes may be used to exempt such spending from the statutory discretionary spending limits for FY2024 and FY2025 enacted in the Fiscal Responsibility Act of 2023.

Congress had also historically designated discretionary appropriations for disaster relief as emergency requirements. Under the BCA, Congress created a separate designation and exemption for disaster spending.<sup>58</sup> The amended version of Section 251 of the Deficit Control Act enacted through the BCA<sup>59</sup> established, for the first time, a separate designation allowing discretionary spending caps to be adjusted to accommodate certain levels of discretionary appropriations for the costs of major disasters declared under the Stafford Act.<sup>60</sup> This designation operates parallel to the emergency designation, and its application has resulted in more disaster relief funding being included in annual appropriations measures, as the designated funding does not compete with other discretionary priorities within 302(b) suballocations. This, in turn, has somewhat reduced the demand for supplemental appropriations measures for these purposes.<sup>61</sup>

The designation in Section 251(b)(2)(D) of the Deficit Control Act for appropriations for disaster relief purposes may be used to exempt such spending from the statutory discretionary spending limits for FY2024 and FY2025 enacted in the Fiscal Responsibility Act of 2023.

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designated as being for contingency operations for the global war on terrorism shall not count for the purposes of Sections 302, 303, and 401 of the Budget Act.

<sup>56</sup> The House did not adopt such a provision in its deeming resolution for FY2007 but did so in every other fiscal year between FY2006 and FY2010. (The Senate had such a provision in effect for each of these fiscal years.) In most fiscal years during this period, the House and/or Senate placed a limit on the amount of appropriations for these purposes that could be exempted from relevant Sections of the Budget Act. For example, Section 301(b)(1) (for the House) and Section 312(c)(3) (for the Senate) of S.Con.Res. 70 (110<sup>th</sup> Congress), the FY2009 budget resolution, established that aggregates and 302(a) and 302(b) levels could be adjusted to accommodate appropriations of up to \$70 billion for “overseas deployments and related activities.”

<sup>57</sup> Section 251(b)(2)(A)(ii) of the Deficit Control Act.

<sup>58</sup> For example, see P.L. 109-61, the Emergency Supplemental Appropriations Act to Meet the Needs Arising From the Consequences of Hurricane Katrina, 2005. This act designated the amounts provided as an emergency requirement pursuant to Section 402 of H.Con.Res. 95 (109<sup>th</sup> Congress), the emergency designation provision from the FY2006 budget resolution.

<sup>59</sup> Section 251(b)(2)(D) of the Deficit Control Act, codified as amended at 2 U.S.C. §901(b)(2)(D).

<sup>60</sup> Formally known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121 et seq. This provision establishes that, for FY2012-FY2021, discretionary spending caps could be adjusted for discretionary appropriations designated as being for disaster relief purposes. The amount of the total allowable adjustment in a given year is capped pursuant to a formula based generally on an average of designated appropriations for these purposes in the previous fiscal years.

<sup>61</sup> For further information on the adjustment’s history, allowable size, and usage, see CRS In Focus IF10720, *Calculation and Use of the Disaster Relief Allowable Adjustment*, by William L. Painter.

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