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

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Summary

The Senate pay-as-you-go, or PAYGO, rule prohibits consideration of legislation that is projected to increase on-budget deficits in any of the following four fiscal-year periods: (1) the current year; (2) the budget year; (3) the six years beginning with the current year; and (4) the 11 years also beginning with the current year. The rule applies to legislation estimated to affect direct spending (commonly referred to as mandatory spending) and revenues. It does not apply to spending provided and controlled through the annual appropriations process (i.e., discretionary spending).

The rule generally requires that any legislation estimated to increase direct spending or reduce revenues must be offset so that the legislation does not increase the on-budget deficit. The offsetting provisions must be estimated to reduce direct spending, increase revenues, or a combination of the two. Without such offsetting provisions, the legislation would require the support of at least 60 Senators to waive the rule and be considered on the Senate floor.

The Senate first established the PAYGO rule in the FY1994 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. The Senate has modified and extended the rule seven times in subsequent budget resolutions and once in a Senate simple resolution. Most recently, in the FY2018 budget resolution, the Senate modified the rule to add two additional periods (the current fiscal year and the budget year) to the existing periods (the six-year and 11-year periods) for which legislation may not increase the projected on-budget deficit.

Since 1993, when the rule was established, through November 5, 2021, the PAYGO rule has been used to prevent the consideration of 46 amendments. During the same period, the Senate voted to waive the PAYGO rule 18 times, allowing consideration of the matter: six times in relation to a measure, 11 times in relation to an amendment (eight of these amendments were full-text substitutes to a bill), and once in relation to the disposition of a House amendment.

This report was first issued in 2003 and has been updated periodically since then. This update adds information on points of order raised under the rule since the beginning of 2018 and includes minor revisions to the previous version (dated January 9, 2018).

This report will continue to be updated as developments warrant.

Introduction

The Senate pay-as-you-go, or PAYGO, rule prohibits consideration of legislation that is projected to increase on-budget deficits in any of the following four fiscal-year periods: (1) the current year; (2) the budget year; (3) the six years beginning with the current year; and (4) the 11 years also beginning with the current year.[1] The rule applies to legislation estimated to affect direct spending and revenues. It does not apply to discretionary spending.

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 rule generally requires that any legislation estimated to increase direct spending or reduce revenues must be offset so that the legislation does not increase the on-budget deficit. The offsetting provisions must be estimated to reduce direct spending, increase revenues, or a combination of the two. Without such offsetting provisions, the legislation would require the support 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 exists alongside a similar PAYGO requirement in statute. Like the Senate rule, the Statutory Pay-As-You-Go Act of 2010 (Title I of P.L. 111-139, 124 Stat. 8-29), enacted on February 12, 2010, is intended to discourage or prevent Congress from taking certain legislative action that would increase the on-budget deficit.[4] It generally requires that legislation affecting direct spending or revenues not increase the deficit over the six-year and 11-year time periods, as in the Senate rule.[5]

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[1] The on-budget deficit excludes the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Postal Service Fund.

[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.)," 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] For more detailed information on the statutory requirement, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*.

[5] While the Statutory PAYGO Act requires the calculation of budgetary effects of legislation over five-year and 10-year periods, it also requires that any budgetary effects in the current year shall be treated as though they occurred in the budget year (i.e., the first year of the five-year and 10-year periods), effectively applying the requirement over six-year and 11-year periods.

While the Senate PAYGO rule and the statutory requirement are similar, they are different in significant ways relating to when and how they are enforced. The Senate rule applies the PAYGO requirement during the consideration of legislation on the Senate floor, generally applies to each measure individually, and is enforced by a point of order. The Statutory PAYGO Act, in contrast, applies the requirement to legislation after it has been enacted, applies to the net effect of all legislation enacted during a session of Congress, and is enforced by sequestration—the cancellation of budgetary resources provided by laws affecting direct spending—to eliminate any increase in the deficit resulting from the enactment of legislation.

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

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 any of the following four time periods: (1) the current fiscal year; (2) the budget year; (3) the six-year period consisting of the current fiscal year, the budget year, and the 4 ensuing fiscal years; or (4) the 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years.[6] The rule generally requires that each measure (including amendments) affecting direct spending and revenues not increase the on-budget deficit in any of the four time periods specified.[7] 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 at least equivalent amounts. The full text of the Senate PAYGO rule in its current form is provided in the **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 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 Budget Committee (SBC).[8] Generally,

[6] 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 that immediately precedes the "budget year." 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.

[7] 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 would presumably 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.

[8] This requirement is consistent with other budget-related rules. Specifically, estimates by the SBC must also be used to determine any violations of the rules associated with the budget resolution (see Section 312 of the Budget Act).

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 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 revenue, spending, and deficit or surplus levels under existing law (i.e., assuming no legislative changes). For fiscal years not covered by the current budget resolution, the estimates must be calculated using the rules set forth in "subsections (b) through (d)" of the Balanced Budget and Emergency Deficit Control Act of 1985 (see 2 U.S.C. 907(b)-(d)).[9]

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 Senators, duly chosen and sworn (i.e., 60 Senators if no more than one vacancy). 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 if it does not adhere to the PAYGO rule even if no waiver motion is agreed to so long as a point of order is not raised.

Finally, the current Senate PAYGO rule has no expiration date.

Procedural Actions Under the Senate PAYGO Rule

The Senate PAYGO rule, when it has been enforced through a point of order, has generally been successful in preventing the consideration of matters projected to increase the deficit: Most motions to waive the rule have been rejected. Since 1993, when the rule was established, the PAYGO rule has been used to prevent the consideration of 46 amendments.[10] In that time, a total of 63 points of order under the PAYGO rule were raised (see **Table 1**). In most cases, a motion to waive the PAYGO point of order was made.[11] The Senate voted to waive the PAYGO rule 18 times, allowing consideration of the matter: six times in relation to a measure, 11 times in relation to an amendment (eight of these amendments were full-text substitutes to a bill), and once in relation to the disposition of a House amendment. The Senate rejected the remaining 40 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, has generally 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

[9] 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.

[10] Through November 5, 2021.

[11] As indicated in **Table 1**, in four instances, a motion to waive the point of order was not made. In addition, two separate waiver motions were made relating to the point of order raised against H.R. 3167 (103rd Congress). 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.

PAYGO rule as adopted in the FY2002 and FY2004 budget resolutions, respectively;[12] (2) by allowing for adjustments to the Senate PAYGO ledger to accommodate the budgetary effects of certain legislation, most recently reconciliation legislation that complies with directives in the budget resolution;[13] (3) by designating the spending or revenue provisions as emergency requirements;[14] and (4) 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).[15]

[12] 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 JCT 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*, 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 CBO 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]*, November 20, 2003.

[13] The following budget resolutions included one or more provisions to allow for such adjustments: (1) S.Con.Res. 13, FY2010 budget resolution (Section 301, which still required the specified legislation to not increase the deficit over the 11-year period); (2) S.Con.Res. 11, FY2016 budget resolution (Section 4303, which still required the specified legislation to not increase the deficit over the 11-year period); (3) S.Con.Res. 3, FY2017 budget resolution (Sections 3001 and 3002, which combined appear to limit any net increase in the deficit by $2 billion over the 11-year period); (4) H.Con.Res. 71, FY2018 budget resolution (Section 3003, relating to reconciliation legislation, and several other "reserve funds" that still required that the specified legislation not increase the deficit over the 11-year period); (5) S.Con.Res. 5, the FY2021 budget resolution (Section 3001(b), relating to reconciliation legislation, and several other "reserve funds" that effectively exempted the specified legislation from the current year and budget year requirement but not the six-year and 11-year requirement); and (6) S.Con.Res. 14, FY2022 budget resolution (Section 3002(a), relating to reconciliation legislation, and several other "reserve funds" that effectively exempted the specified legislation from either the current and budget year requirement or also the six-year requirement but not the 11-year requirement).

[14] For example, in 2009, the Senate considered the conference report on H.R. 1, the 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 CBO, 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 Website of the House Committee on Rules*, February 13, 2009. The emergency designation was itself subject to a point of order and was waived. See *Congressional Record*, vol. 155, part 3 (February 13, 2009), p. 4269.

[15] 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*, March 20, 2007.

Table 1. Points of Order and Waiver Motions Under the Senate PAYGO Rule

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
10-26-1993	Emergency Unemployment Compensation (H.R. 3167)— Measure.	Rejected, 59-38	Fell on reconsidered vote on waiver motion (see next item)
10-27-1993	Emergency Unemployment Compensation (H.R. 3167)— Measure.	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	Uruguay Round Agreements Act (also referred to as General Agreement on Tariffs and Trade or GATT) (H.R. 5110)— Measure.	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 Frist 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
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

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
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
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

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
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[a]
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
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

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
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. 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
02-24-2010	Hiring Incentives to Restore Employment Act (H.R. 2847)— Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid S.Amdt. 3310 (to the House Amendment to the Senate Amendment), in the nature of a substitute.	Approved, 70-28	Fell
03-03-2010	Tax Extenders Act (H.R. 4213)— Burr S.Amdt. 3390 (to S.Amdt. 3336), to provide an emergency benefit of $250 to seniors, veterans, and persons with disabilities in 2010 to compensate for the lack of cost-of-living adjustment for such year, to provide an offset using unobligated stimulus funds.	[none]	Sustained
03-03-2010	Tax Extenders Act (H.R. 4213)— Reid (for Sanders) Modified S.Amdt. 3353 (to S.Amdt. 3336), to provide an emergency benefit of $250 to seniors, veterans, and persons with disabilities in 2010 to compensate for the lack of cost-of-living adjustment for such year.	[none]	Sustained
03-04-2010	Tax Extenders Act (H.R. 4213)— Brown (MA) S.Amdt. 3391 (to S.Amdt. 3336), to provide for a 6-month employee payroll tax rate cut.	[none]	Sustained
03-04-2010	Tax Extenders Act (H.R. 4213)— Burr S.Amdt. 3389 (to S.Amdt. 3336), to provide Federal reimbursement to State and local Governments for a limited sales, use, and retailers' occupation tax holiday, and to offset the cost of such reimbursements.	Rejected, 22-78	Sustained
03-09-2010	Tax Extenders Act (H.R. 4213)— Reid (for Murray/Kerry) Further Modified S.Amdt. 3356 (to S.Amdt. 3336), to extend the TANF Emergency Fund through fiscal year 2011 and to provide funding for summer employment for youth.	Rejected, 55-45	Sustained
04-24-2012	21st Century Postal Service Act of 2012 (S. 1789)— Reid (for Lieberman) Modified S.Amdt. 2000, in the nature of a substitute.	Approved, 62-37	Fell
06-26-2013	Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744)— Measure and amendments.	Approved, 68-30	Fell
01-29-2014	Homeowner Flood Insurance Affordability Act (S. 1926)— Measure.	Approved, 64-35	Fell

Date	Object of Point of Order	Waiver Motion	Disposition of Point of Order
03-31-2014	Protecting Access to Medicare Act (H.R. 4302)— Measure.	Approved, 64-35	Fell
07-17-2014	Terrorism Risk Insurance Program Reauthorization Act (S. 2244)— Coburn S.Amdt. 3549, to allow the Secretary to extend the deadline for collecting terrorism loss risk-spreading premiums if the mandatory recoupment is more than $1,000,000,000.	Rejected, 48-49	Sustained
04-14-2015	Medicare Access and CHIP Reauthorization Act (H.R. 2)— Bennet S.Amdt. 1115, to protect and retain our Children's Health Insurance Program for 4 years (PRO-CHIP).	Rejected, 50-50	Sustained
04-14-2015	Medicare Access and CHIP Reauthorization Act (H.R. 2)— Murray S.Amdt. 1117, to improve women's access to quality health care.	Rejected, 43-57	Sustained
04-14-2015	Medicare Access and CHIP Reauthorization Act (H.R. 2)— Cardin S.Amdt. 1119, to repeal the therapy cap and provide for medical review of outpatient therapy services.	Rejected, 58-42	Sustained
09-14-2016	Water Resources Development Act (S. 2848)— McConnell (for Inhofe) S.Amdt. 4979, in the nature of a substitute.	Approved, 85-12	Fell
03-14-2018	Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155)— Measure.	Approved, 67-31	Fell
03-21-2018	Allow States and Victims to Fight Online Sex Trafficking Act (H.R. 1865)— Wyden S.Amdt. 2213, to provide additional funding to the Department of Justice to combat the online facilitation of sex trafficking.	Rejected, 21-78	Sustained
06-18-2018	National Defense Authorization Act (H.R. 5515)— Inhofe/McCain S.Amdt. 2282, in the nature of a substitute.	Approved, 81-14	Fell
06-15-2020	To amend the Internal Revenue Code of 1986 to modernize and improve the Internal Revenue Service (H.R. 1957)— McConnell (for Gardner) S.Amdt. 1617, in the nature of a substitute (Great American Outdoors Act).	Approved, 68-30	Fell
06-08-2021	United States Innovation and Competition Act of 2021 (S. 1260)— Schumer S.Amdt. 1502, in the nature of a substitute.	Approved, 72-28	Fell

Source: *Congressional Record*, especially the Daily Digest section, various years, searched through Congress.gov.

Note: Information is current through November 5, 2021.

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) February 5, 2009, p. S1617.

Legislative History of the Senate PAYGO Rule

The Senate established the PAYGO rule in the FY1994 budget resolution in 1993. It has been modified and extended seven times in subsequent budget resolutions and once in a Senate simple resolution.[16] Moreover, other proposed modifications to the Senate PAYGO rule have been considered, especially during the consideration of the budget resolution.

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.[17] Section 12(c) of H.Con.Res. 64 prohibited the consideration of any direct spending and revenue legislation that would increase the deficit assumed in the FY1994 budget resolution for any fiscal year through FY1998 or increase the deficit for any other fiscal year through FY2003. In this initial form, the Senate PAYGO rule had no expiration date.

The changes in the rule since 1993 have occurred for several reasons, including to establish, extend, and repeal the expiration date; to allow on-budget surpluses to offset revenue reductions and direct spending increases; and to exempt increases in the deficit assumed in the budget resolution. The key changes are summarized in **Table 2**.

In 1994, a year after establishing the PAYGO rule, the Senate modified the rule to prohibit the consideration of direct spending and revenue legislation that would increase the deficit in any of the following 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.[18] 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, P.L. 103-66). This modification to the rule basically permitted the use of any deficit reduction provided in other legislation 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 as an offset for subsequent legislation in order to comply with the rule.[19] The rule, however, expressly prohibited the use of the deficit

[16] Such procedural provisions may be included in a budget resolution under the authority provided by Section 301(b)(4), the "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.

[17] 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.

[18] 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).

[19] Section 202 of H.Con.Res. 67 (104th Congress). See U.S. Congress, Committee of Conference, *Concurrent*

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

Table 2. 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 (103rd Congress), FY1994 budget resolution	None	Rule established.
05-12-1994	Section 23 of H.Con.Res. 218 (103rd Congress), FY1995 budget resolution	09-30-1998 date added	Established new applicable time periods for which legislation may not increase the deficit: 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 (104th 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 (106th Congress), FY2000 budget resolution	Maintained 09-30-2002 date	Modified rule to permit the use of projected on-budget surpluses to offset any revenue reductions or direct spending increases.
10-16-2002	Section 2(b) of S.Res. 304 (107th Congress)	Extended to 04-15-2003	Expanded coverage of rule temporarily 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 (108th Congress), FY2004 budget resolution	Extended to 09-30-2008	Modified rule to exempt direct spending and revenue changes assumed in the budget resolution.
05-17-2007	Section 201 of S.Con.Res. 21 (110th Congress), FY2008 budget resolution	Extended to 09-30-2017	Eliminated exemption for direct spending and revenue changes assumed in the budget resolution. Changed the applicable time periods for which legislation may not cause an increase in the on-budget deficit to the following two time periods: (1) the current fiscal year and the following five fiscal years, and (2) the current fiscal year and the following 10 fiscal years.
05-05-2015	Section 3201(b)(1) of S.Con.Res. 11 (114th Congress), FY2016 budget resolution	None	Repealed the expiration date.

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. However, President Clinton vetoed the subsequent reconciliation legislation (H.R. 2491).

Effective Date	Source of Change	Expiration Date	Nature of Change
10-26-2017	Section 4106 of H.Con.Res. 71 (115th Congress), FY2018 budget resolution	None	Added the current fiscal year and the budget year as applicable time periods for which legislation may not cause an increase in the on-budget deficit.

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.[20] 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.[21] 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.[22] 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 features 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 to potentially evade the rule (due to expired discretionary spending limits and the absence of a budget resolution for FY2003).

The following year, in 2003, the Senate modified the 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.[23] 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.[24] The Senate also extended the rule through September 30, 2008.

In 2007, the Senate once again made significant changes to the PAYGO rule.[25] It eliminated the exemption for direct spending and revenue changes assumed in the budget resolution. In addition,

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

[21] 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.

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

[23] 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).

[24] For information on the budgetary effects of S. 1054 and H.R. 2, see (1) CBO, cost estimate, S. 1054, Jobs and Growth Tax Relief Reconciliation Act of 2003, as reported by the Senate Committee on Finance on May 13, 2003 (May 14, 2003), and (2) CBO, cost estimate, H.R. 2, Jobs and Growth Tax Relief Reconciliation Act of 2003, as cleared by the Congress on May 23, 2003 (May 23, 2003).

[25] 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.

the Senate changed the rule's applicable time periods to prohibit an on-budget deficit increase in either of two time periods: (1) the current fiscal year and the following five fiscal years, and (2) the current fiscal year and the following 10 fiscal years.

The 2007 version of the PAYGO rule largely reflects its current form, with two subsequent modifications. First, in 2015, the Senate repealed the expiration date; the rule was scheduled to expire on September 30, 2017.[26] Second, in 2017, the Senate added the current fiscal year and the budget year as applicable time periods for which legislation may not cause an increase in the on-budget deficit.[27]

Further information on the PAYGO rule in its current form is provided in the "Current Features of the Senate PAYGO Rule" section above.

Consideration of Proposed Changes to the Senate PAYGO Rule

The Senate PAYGO rule drew considerable attention on the Senate floor during the previous decade, in most cases in the context of the 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.[28] The next day, June 6, Senate Majority Leader Tom Daschle offered an amendment (S.Amdt. 3764) to H.R. 4775 that would have extended the Senate PAYGO rule, among other budget enforcement procedures, through FY2007, but that amendment also fell on a point of order.[29] 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 would also have extended the expiration date of the Senate PAYGO rule, among other things, through FY2007. This amendment also fell on a point of order.[30]

(Washington: GPO, 2007), pp. 12-13 (legislative text) and pp. 103, 133 (joint explanatory statement).

[26] Section 3201(b)(1) of S.Con.Res. 11 (114th Congress). See U.S. Congress, Committee of Conference, *Concurrent Resolution on the Budget for Fiscal Year 2016*, conference report to accompany S.Con.Res. 11, 114th Cong., 1st sess. (Washington: GPO, 2015), p. 34 (legislative text) and p. 169 (joint explanatory statement).

[27] Section 4106 of H.Con.Res. 71 (115th Congress). For a brief description of this change, see U.S. Congress, Senate Committee on the Budget, *Concurrent Resolution on the Budget, Fiscal Year 2018*, committee print to accompany S.Con.Res. 25, 115th Cong., 1st sess., October 2017, S.Prt. 115-19 (Washington: GPO, 2017), p. 24.

[28] The amendment was subject to a point of order under Section 306 of the CBA, which prohibits consideration of any measure within the jurisdiction of the Budget Committee unless it is reported by the Budget Committee, 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.

[29] 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.

[30] 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

Without any successful extension prior to its expiration, the Senate PAYGO rule, like many other budget enforcement procedures, expired on September 30, 2002.[31] Subsequently, on October 16, 2002, the Senate restored and extended the PAYGO point of order through April 15, 2003.[32] 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).[33]

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.

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.[34] After six days of consideration, the Senate agreed to S.Con.Res. 23, as amended, on March 26, by a vote of 56-44.[35] While the Senate considered and agreed to several amendments to S.Con.Res. 23, none was 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.[36] 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.[37]

(June 19, 2002), pp. S5762-S5767; and *Congressional Record*, daily edition, vol. 148 (June 20, 2002), pp. S5808-S5821.

[31] The statutory limits on discretionary spending and the statutory PAYGO requirement for direct spending and revenue legislation, first established by the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990, 104 Stat. 1388-573-1388-630), 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*. 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 were subsequently restored (see Section 2(a) of S.Res. 304, 107th Congress) and are currently scheduled to expire on September 30, 2025 (see Section 3201(a)(1) of S.Con.Res. 11, the FY2016 budget resolution, 114th Congress).

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

[33] 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.

[34] 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.

[35] 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.

[36] 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).

[37] 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.

In 2004, during the second session of the 108th Congress, modification of the Senate PAYGO rule was reportedly a major obstacle to reaching an agreement on the FY2005 budget resolution (S.Con.Res. 95).[38] On March 10, during consideration of the FY2005 budget resolution, Senator 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.[39] 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.[40] 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.[41] While the House agreed to the conference report to S.Con.Res. 95, the Senate never considered it. The 2003 version of the 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 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.[42] On March 17, the Senate agreed to S.Con.Res. 18,

[38] 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.

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

[40] 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.

[41] 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.

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

as amended, by a vote of 51-49.[43] 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.[44]

In 2006, during the consideration of the FY2007 budget resolution (S.Con.Res. 83), Senator 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.[45] On March 16, the Senate agreed to S.Con.Res. 83, as amended, by a vote of 51-49.[46] 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.[47] Accordingly, the House adopted its own PAYGO rule as part of its opening-day rules package.[48] 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.[49] 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),

[43] 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.

[44] 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."

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

[46] 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.

[47] 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 Challenge to Anti-Deficit Goals," *CQ Weekly*, November 20, 2006, p. 3107.

[48] At the time, the House PAYGO rule (Rule XXI, clause 10) prohibited the consideration of direct spending and revenue legislation that was 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 information on the House PAYGO rule, see CRS Report R41510, *Budget Enforcement Procedures: House Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr. The rule has subsequently been revised to not count any revenue effects and is now referred to as the CUTGO rule.

[49] 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.

and 2006 (P.L. 109-222) from several budget-related points of order, including the modified PAYGO point of order.[50] 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.[51]

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.[52] The conference agreement included a modified version of the Senate-passed PAYGO rule. This modified version of the Senate PAYGO rule, which is similar to the current version, as described above, generally prohibited the consideration of direct spending and revenue legislation that was projected to increase the on-budget deficit in either of two time periods: (1) the current fiscal year and the following five fiscal years, or (2) the current fiscal year and the following 10 fiscal years.

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

[51] 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.

[52] 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.

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

(Section 4106 of H.Con.Res. 71, Budget Resolution for FY2018)

SEC. 4106. 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 any 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 any of—

(A) the period of the current fiscal year;

(B) the period of the budget year;

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

(D) 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 (2 U.S.C. 900 et seq.).

(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 November 5, 1990.

(5) BASELINE—Estimates prepared pursuant to this subsection 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.

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