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Budget Enforcement for FY2002: An Overview of Procedural Developments

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Abstract. Congressional action on budgetary legislation for FY2002 is subject to constraints imposed by the 1974 Congressional Budget Act and the 1985 Balanced Budget Act, as amended. Congress and the President are expected to prevent sequesters for FY2002 by enacting before the end of the session legislation that increases the discretionary spending limits as needed and resets the PAYGO balance to zero.

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Budget Enforcement for FY2002: An Overview of Procedural Developments

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Summary

Congressional action on budgetary legislation for FY2002 is subject to constraints imposed by the 1974 Congressional Budget Act and the 1985 Balanced Budget Act, as amended. The 1974 act requires that spending and revenue legislation adhere to policies set forth in the annual budget resolution, while the 1985 act imposes limits on discretionary spending and a "pay-as-you-go" (PAYGO) requirement on direct spending and revenue legislation. Budget resolution policies are enforced by points of order and reconciliation; the discretionary spending limits and PAYGO requirement are enforced by sequestration, which involves automatic, largely across-the-board spending cuts.

The FY2002 budget resolution called for over $100 billion more discretionary spending than the then-existing limits would have allowed, as well as large tax cuts and significant increases in direct spending that would have caused a PAYGO violation in excess of $100 billion. Budget resolution policies assumed that legislation increasing the discretionary spending limits and preventing a PAYGO sequester for FY2002 would be enacted later in the 2001 session. In late December 2001, the Defense Appropriations Act for FY2002 was enacted (P.L. 107-117), which raised the discretionary spending limits and set balances on the PAYGO scorecard for FY2001-2002 to zero, thereby preventing sequesters. According to the *Final Sequestration Report for FY2002*, issued by the OMB director on January 31, 2002, the revisions required by P.L. 107-117, together with other required adjustments, yielded a new budget authority limit of $706.3 billion and an outlay limit of $731.3 billion for all FY2002 discretionary spending.

The House and Senate are considering supplemental appropriations for FY2002 during the 2002 session, but techniques such as emergency designations and offsets are expect to be used to prevent a sequester from occurring. Further, the FY2002 effects of any revenue or direct spending legislation enacted through September 30 will be included in the calculations for any PAYGO sequester for FY2003, but a PAYGO sequester likely will be avoided through directed scorekeeping, as has been done in past years. This report will be updated as developments warrant.

Budget Enforcement Procedures

Federal budget policies are enforced under two major statutes—the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. Budget enforcement procedures under the 1974 Congressional Budget Act are, for the most part, permanent and ongoing, whereas budget enforcement procedures under the 1985 Balanced Budget Act apply to legislation enacted through the end of FY2002. In his budgets for FY2002 and FY2003, President Bush proposed extending procedures under the 1985 act or pursuing other procedural alternatives[1]

The 1974 Congressional Budget Act provides for the adoption by Congress of an annual concurrent resolution on the budget. The budget resolution recommends the total level of revenues, spending, the surplus or deficit, and the public debt for each year covering at least a 5-year period. Total spending is allocated to each of the House and Senate committees with jurisdiction over discretionary or direct spending; the House and Senate Appropriations Committees subdivide their spending allocations by subcommittee.

If the House and Senate wish to compel their committees to develop legislation conforming existing revenue, direct spending, or debt-limit law to budget resolution policies, they may include reconciliation directives in the budget resolution so instructing the appropriate committees. Reconciliation submissions from committees usually are consolidated into an omnibus bill that is considered under expedited procedures.

Enforcement of budget resolution policies occurs as individual revenue and spending measures, including any required reconciliation legislation, are considered. Points of order established in different provisions of the 1974 Congressional Budget Act allow Members to object to legislation that would violate budget resolution policies, unless the points of order are waived or set aside.

The 1985 Balanced Budget Act, as amended in 1990 and later years, establishes adjustable limits on discretionary spending and subjects direct spending and revenue legislation to a "pay-as-you-go" (PAYGO) requirement. Under the PAYGO requirement, direct spending and revenue legislation enacted for a fiscal year may not, in the net, incur a positive balance on a multiyear PAYGO "scorecard." While these procedures apply to legislation enacted through the end of FY2002, the PAYGO effects of such legislation are reflected on the PAYGO scorecard and subject to sequester through FY2006.

The discretionary spending limits and PAYGO requirement are enforced by sequestration, a procedure involving largely across-the-board spending cuts in nonexempt programs.[2] Sequestration is triggered shortly after the end of a congressional session if the director of the Office of Management and Budget (OMB) estimates in a sequestration report that one or more of the discretionary spending categories will be breached or the PAYGO requirement will be violated. A "within-session" sequester may be triggered during the following session if the enactment of a supplemental appropriations act causes

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[1] See the *Analytical Perspectives* volume (page 243 for FY2002 and pages 283-284 for FY2003). The House Budget Committee held hearings on this matter on June 27, 2001; the testimony is available at [http://www.house.gov/budget/hearingstatements.htm].

[2] A more detailed explanation of sequestration is presented in CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith.

a breach of the limits. Section 254 of the 1985 act requires the President to issue a sequestration order carrying out any spending reductions identified by the OMB director as being necessary to eliminate a spending limit breach or a PAYGO violation. In recent years, Congress and the President have enacted legislation including procedural features that have prevented a sequester from occurring.[3]

Budget Policies for FY2002

The initial policies for FY2002 regarding discretionary spending, direct spending, and revenues were established by the submission of the President George W. Bush's budget on April 9, 2001, and the adoption by the House and Senate of the annual budget resolution (H.Con.Res. 83) on May 10. With regard to discretionary spending, both President Bush and Congress recommended spending levels well above the existing limits. The initial approach taken by the President and Congress for FY2002 mirrored actions taken the year before by President Clinton and Congress when the discretionary spending limits for FY2001 were raised by nearly $100 billion.[4]

For FY2002, President Bush proposed a revised budget authority limit of $661 billion and a revised outlay limit of $692 billion for discretionary spending. The President's request was $112 billion higher than the existing limit on budget authority ($549 billion) and $120 billion higher than the existing limit on outlays ($572 billion). The President reserved $841 billion over 10 years, covering FY2002-2011, for "contingencies," which was expected to include, among other things, additional discretionary spending stemming from a review of defense needs and other factors.

Discretionary spending for FY2002 assumed in the budget resolution amounted to $661.3 billion in budget authority and $682.776 billion in outlays.[5] House procedures under the 1974 Congressional Budget Act allow it to consider annual appropriations bills at variance with the statutory discretionary spending limits as long as the budget resolution levels are not violated (or any violations are waived by a simple majority vote). Accordingly, the House planned to consider regular appropriations acts for FY2002 compatible with the budget resolution policy and expected that the statutory limits would be revised later in the session so that no sequester would occur.

The Senate was faced with a more difficult procedural situation because of the point of order provided in Section 312(b) against Senate consideration of any appropriation measure violating the statutory discretionary spending limits. Further, waivers of the point of order could be obtained only with a three-fifths vote.

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[3] The enactment of such techniques is examined in depth in CRS Report RL31155, *Techniques for Preventing a Budget Sequester,* by Robert Keith.

[4] These actions are discussed in detail in CRS Report RL30696, *Discretionary Spending Limits for FY2001: A Procedural Assessment*, by Robert Keith. See also the companion report, CRS Report RL30706, *Pay-As-You-Go Requirement for FY2001: A Procedural Assessment*, by Robert Keith.

[5] See the conference report on H.Con.Res. 83, H. Rept. 107-60 (May 8, 2001), page 48.

Section 203 of the budget resolution provided a mechanism for the Senate to begin consideration of the regular appropriations acts for FY2002 without the statutory limits having first been increased. Section 203(a)(2) stated that the functional totals in the budget resolution envisioned $659.540 billion in budget authority and $647.780 billion in outlays for the single discretionary spending category in FY2002. In addition, $28.489 billion and $5.275 billion in highway and mass transit outlays were envisioned, as well as $1.760 billion in budget authority and $1.232 billion in outlays for the conservation category. Section 206(a)(3) reflected Senate anticipation of the need to raise the statutory limits for FY2001 in order to accommodate these spending levels. Further, Section 203(b) provided for the necessary adjustments under the budget resolution, including increased allocations to the Appropriations Committees, whenever legislation raising the statutory limits became law.

On September 20, 2001, the chairmen and ranking minority members of the House and Senate Appropriations Committees, with the concurrence of House and Senate leaders, jointly proposed to the Bush Administration an increase in total discretionary spending for FY2002 beyond the levels envisioned in the budget resolution. With regard to budget authority, the proposal involved an increase of about $25 billion, from $661.3 billion to $686 billion. The increase was intended to accommodate President Bush's request for an additional $18.4 billion in budget authority for defense spending, as well as additional budget authority for education ($4 billion) and emergency appropriations for Hurricane Allison, Western forest fires, and other natural disasters.[6]

Following negotiations between OMB Director Mitch Daniels and the Appropriations Committee leaders, an agreement was reached on October 2 to limit discretionary spending for FY2002 to $686 billion.[7] Although some House and Senate Members had asked that President Bush submit a formal budget request for the full $25 billion increase, they accepted his request in the form of a letter. In his letter, President Bush cited the "strong bipartisan effort" that led to the agreement but noted that in the course of implementing the agreement he would review "the policy and program content of legislation before agreeing to sign it."

With regard to "PAYGO measures" (that is, measures affecting direct spending, revenues, or both), the budget resolution assumed large tax cuts and significant increases in direct spending that would have caused a PAYGO violation in excess of $100 billion. Budget resolution policies reflected the assumption that legislation preventing a PAYGO sequester for FY2002, as well as increasing the discretionary spending limits for that year, and would be enacted later in the 2001 session.

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[6] The President's request for $18.4 billion in additional defense funding was intended to meet needs "consistent with the early results of Secretary Rumsfeld's strategy review." See the letter from President George Bush to the Honorable Richard A. Gephardt, Democratic Leader, House of Representatives, June 27, 2001, which accompanied Estimate #9, accessible through the OMB Website: [www.omb.gov].

[7] See: "White House, Appropriators Agree On Discretionary Spending of $686 Billion," by Cheryl Bolen, BNA *Daily Report for Executives*, No. 190, Wednesday, October 3, 2001, page A-20.

Implementation of the FY2002 Policies

Discretionary Spending Limits. For most of the remainder of the 2001 session following adoption of the budget resolution in May, the House and Senate considered the regular appropriations acts for FY2002 (which began on October 1, 2001) without enacting the necessary revisions in the discretionary spending limits for that year. On October 11, the House Budget Committee ordered reported H.R. 3084, the Interim Budget Control and Enforcement Act of 2001, which would have increased the statutory limit on budget authority for FY2002 to an amount sufficient to accommodate the $686 billion spending level agreed upon earlier. Senator Pete Domenici, the ranking minority member of the Senate Budget Committee, introduced similar legislation (S. 1575) on October 25. Neither chamber acted on the legislation.

As action on the regular appropriations acts drew to a close in December, the Defense Appropriations Act for FY2002, H.R. 3338, became the vehicle for revising the discretionary spending limits. Section 101(a) in Division C of the act (115 *Stat*. 2341-2342) revised the limits for FY2002 in a manner accommodating the $686 billion level agreed to on October 2 and preventing a sequester.[8] In addition, Section 101(d) provided for a further increase of 0.12% in the limits on discretionary budget authority if needed to cover technical estimates made by the OMB director. President George W. Bush signed the act into law on January 10, 2002 (P.L. 107-117). OMB's *Final Sequestration Report for FY2002* was issued on January 31, 2002.[9] According to the report, P.L. 107-117 increased the discretionary spending limits for FY2002 by $134.5 billion in budget authority and a comparable amount in outlays. This revision, together with other required adjustments, yielded a new budget authority limit of $706.308 billion and an outlay limit of $731.329 billion for all discretionary spending for the fiscal year. The regular appropriations acts for FY2002 enacted during the 2001 session were under the revised statutory limits in the aggregate by $2 million in budget authority and $3.343 billion in outlays.

A "within-session sequester" could be required during the 2002 session if supplemental appropriations are enacted in violation of the limits. However, Congress is expected to use emergency designations, offsets, and other techniques to prevent a sequester from occurring.

PAYGO Requirement. Following adoption of the FY2002 budget resolution, the House and Senate also began consideration of various PAYGO measures. The centerpiece of congressional action on PAYGO measures during the 2001 session, the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16), was signed into law on June 7. The measure, which was developed in response to the President's tax-cut proposals and the reconciliation directives in the FY2002 budget resolution, placed balances of $69.501 billion and $35.691 billion on the PAYGO scorecard for FY2001 and FY2002, respectively. (In determining the need for a PAYGO sequester for FY2002, the FY2001 and FY2002 balances are combined.)

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[8] The provision originated in the substitute amendment recommended by the Senate Appropriations Committee (see S.Rpt. 107-109, December 5, 2001, page 232).

[9] The *Final Sequestration Report for FY2002* is available on the OMB Website [www.omb.gov].

Another major PAYGO measure enacted during the 2001 session was the Crop Year 2001 Agricultural Economic Assistance Act (P.L. 107-25). Although it had no budgetary impact for FY2002, it added $5.5 billion to the PAYGO balance for FY2001. After the September 11 terrorist attacks on the United States, Congress and the President enacted the Air Transportation Safety and System Stabilization Act into law (P.L. 107-42), incurring over $1 billion in net costs to compensate air carriers for losses due to the attacks and for related purposes. Section 102 in Division C of the Defense Appropriations Act for FY2002, as enacted into law, prevented a PAYGO sequester for FY2002 by requiring the OMB director to set the balances on the PAYGO scorecard for FY2001 and FY2002 to zero. According to the OMB *Final Sequestration Report*, the combined balance for FY2001-2002 on the scorecard before the required adjustment was $130.279 billion. In its earlier sequestration update report, OMB had noted maximum savings achievable from a PAYGO sequester for FY2002 of $33.3 billion.[10] Consequently, had a full PAYGO sequester (including a 4% cut in Medicare) been implemented, there still would have been a balance on the scorecard of nearly $100 billion. The remaining PAYGO balances for FY2003-2006 range from $110 billion to $135 billion a year.

During the 2002 session, the effects of any direct spending or revenue legislation enacted through September 30 will be recorded on the PAYGO scorecard. The FY2002 effects of any such legislation will be added to the PAYGO scorecard for FY2003 in determining whether a PAYGO sequester for FY2003 is needed.

Suspension of Budget Enforcement Procedures

Section 258 of the 1985 Balanced Budget Act provides that certain budget enforcement procedures in that act and the 1974 Congressional Budget Act may be suspended because of low economic growth or war. In the case of war, enforcement procedures are suspended automatically upon the enactment of a declaration of war. With regard to low economic growth, the suspension of procedures occurs only if a suspension resolution directed toward that purpose is enacted into law.[11] The process is triggered by the issuance of a "low-growth report" by the Congressional Budget Office (CBO).

During the years that these suspension provisions have been available, the United States has faced sustained low economic growth only twice—in late 1990/early 1991 and in late 2001/early 2002. CBO issued low-growth reports three times in 1991, but all three suspension resolutions were defeated in the Senate by a wide margin. The House did not act on such legislation. More recently, CBO issued low-growth reports on October 31, 2001, and on January 30, 2002. In each instance, the Senate Budget Committee reported unfavorably a suspension resolution that subsequently was defeated on the floor. The Senate rejected S.J.Res. 28 on November 13, 2001, by a vote of 1-99, and rejected S.J.Res. 31 on February 14, 2002, by voice vote; the House did not act on such legislation.

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[10] U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002, Mid-Session Review,* Appendix B (Washington: August 2001), page 67.

[11] Low-growth suspension procedures are discussed in CRS Report RL31068, *Budget Enforcement Procedures Suspended During Low Economic Growth*, by Robert Keith.