



Federal Budget Process Reform in the 111th Congress: A Brief Overview

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Summary

Procedural change is a recurrent feature of federal budgeting, although the scope and impact of changes may vary from year to year. In order to advance their budgetary, economic, or political objectives, both Congress and the President regularly propose and make changes to the federal budget process. This report briefly discusses the context in which federal budget process changes are made and identifies selected reform proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive.

A variety of sources give rise to the interest in budget process reform, including Congress, the President, state and local government officials, and special commissions, among others. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act (but which was invalidated by court action in 1998). State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted.

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives. Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations). Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

This report will be updated as developments warrant.

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The Context of Budget Process Reform

Sources of Budget Process Reform Proposals

A variety of sources give rise to the interest in budget process reform, including Congress, the President, state and local government officials, and special commissions, among others. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act (but which was invalidated by court action in 1998). State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted. (Citations to laws identified in this report are provided in the **Appendix**.)

Outside of Congress itself, the President probably has been the most important source of budget process reform proposals over the years. The President's annual budget submission to Congress typically includes at least several proposed changes in budget procedure.² In his final budget submission, for example, President George W. Bush advocated proposals involving such matters as enhanced controls over mandatory and discretionary spending, stricter standards for emergency spending designations, changes in how baseline calculations are made, earmark reform, line-item veto, biennial budgeting, a joint budget resolution, and an automatic continuing resolution.³

In late November 2008, President-elect Barack Obama signaled his interest in pursuing budget process reform during the 111th Congress when he announced that he intended to nominate Peter Orszag to the position of director of the Office of Management and Budget (OMB) and Rob Nabors to the position of OMB deputy director. In making the announcement, President-elect

¹ CRS reports on different budget process reforms are listed under the appropriate terms under "Current Legislative Issues" on the CRS homepage; other pertinent CRS reports may be accessed in several ways, including by subject term and author searches on the CRS homepage. Also, see CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno, for a discussion of selected reforms proposed in past years.

² In recent years, the President's budget process reform proposals have been included in a separate chapter of the *Analytical Perspectives* volume.

³ See the Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009, Analytical Perspectives*, February 4, 2008, Chapter 15 (Budget Reform Proposals), pp. 215-225.

Obama stated: “In these challenging times, when we are facing both rising deficits and a sinking economy, budget reform is not an option. It is an imperative.”⁴

Perhaps more than any other factor over the years, concern about the size and persistence of the federal deficit has animated calls for budget process reform. The federal deficit, which amounted to \$162 billion for FY2007 and \$455 billion for FY2008, jumped to \$1.414 trillion (9.9% of Gross Domestic Product) for FY2009 in the face of a significant economic downturn. In its January 2010 report presenting baseline budget projections, the Congressional Budget Office (CBO) estimated the baseline deficit at \$1.3 trillion for FY2010 and \$1.0 trillion for FY2011, and continuing at historically high levels through FY2020.⁵

The dramatic increase in the deficit, its likely persistence at high levels in the short term, and its unsustainable path in the long run, already has fueled strong interest in procedural reform. On January 14, 2009, several private organizations, including the Peter G. Peterson Foundation, the Pew Charitable Trusts, and the Committee for a Responsible Federal Budget, announced a joint enterprise (the Peterson-Pew Commission on Budget Reform) to foster changes in the budget process.⁶

The next day, President-elect Obama stated in an interview with the *Washington Post* that he would convene a “fiscal responsibility summit” prior to submitting the FY2010 budget to Congress, focusing on control of long-term obligations for entitlement programs.⁷ The summit was held on February 23, 2009, and included a session on budget process reform in which, among other issues, the notion of different types of commissions to formulate long-term budget solutions was addressed.⁸ (The following year, President Obama created the National Commission on Fiscal Responsibility and Reform by executive order, as discussed later in this report.)

In his budget submission for FY2010, President Obama pledged to cut the deficit in half by the end of his first term and asked Congress to act on various changes in the budget process that would, in part, contribute to this goal. The proposed changes included, among other things, restoration of the statutory “pay-as-you-go” requirement (with significant modifications), expedited legislative procedures for the consideration of certain presidential rescission proposals, and a limit on advance appropriations; similar proposals were included in his FY2011 budget.⁹

⁴ The Office of the President-Elect, “President-elect Barack Obama announces Office of Management and Budget Director and Deputy Director,” press release, November 25, 2008, available on the Obama transition website at <http://change.gov/newsroom>.

⁵ Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2010 Through 2020*, January 2010, Summary Table 1 (CBO’s Baseline Budget Outlook), p. xii.

⁶ Information regarding the commission may be found on the websites of the organizations, at <http://www.pgpf.org>, <http://www.pewtrusts.org>, and http://www.newamerica.net/programs/fiscal_policy#.

⁷ Michael D. Shear, “Obama Pledges Entitlement Reform,” *Washington Post*, January 16, 2009, p. A-1.

⁸ Activities during the summit are summarized in The White House, *Fiscal Responsibility Summit*, March 20, 2009; see the discussion of budget process reform on pp. 28-33. The report is available on the White House website at http://www.whitehouse.gov/assets/blog/Fiscal_Responsibility_Summit_Report.pdf.

⁹ See the Office of Management and Budget, *Budget of the United States Government: (1) Fiscal Year 2010, Analytical Perspectives*, May 7, 2009, Chapter 15 (Budget Reform Proposals), pp. 215-220; and (2) *Fiscal Year 2011, Analytical Perspectives*, February 1, 2010, Chapter 13 (Budget Process), pp. 143-155.

Avenues of Reform

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.¹⁰ Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations).¹¹ Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

In some years, changes made in the budget process were comprehensive. The Budget and Accounting Act of 1921 established the executive budget process, the Congressional Budget Act of 1974 created the congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act of 1990 imposed additional budget controls on a temporary basis. In other years, such as 1987, 1993, and 1997, existing budget process statutes were modified in a less comprehensive fashion and extended for limited periods. At other times, Congress and the President enacted statutes changing only selected aspects of the budget process; the Line Item Veto Act (of 1996) is one example. Finally, in every Congress, the House and Senate have modified existing rules and practices affecting the budget process and sometimes instituted new ones.

Like other types of legislation, statutes making changes in the budget process are subject to review by the judiciary. In several major instances, the Supreme Court has declared procedures established by Congress and the President to be invalid on constitutional grounds. The one-House legislative veto (found in many acts, including the Impoundment Control Act of 1974), for example, was invalidated by *I.N.S. v. Chadha* in 1983, 103 S.Ct. 715 (1983); the triggering of a sequester by the Comptroller General under the Gramm-Rudman-Hollings Act was invalidated by *Bowsher v. Synar* in 1986, 478 U.S. 714 (1986); and the Line Item Veto Act was invalidated by *Clinton v. City of New York* in 1998, 118 S.Ct. 2091 (1998). In the wake of court decisions, Congress and the President may successfully modify legislation (e.g., 1987 legislation modifying the Gramm-Rudman-Hollings Act, vesting the authority to trigger a sequester in the OMB

¹⁰ For an overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith.

¹¹ A comprehensive listing and description of major budget process laws enacted over the past century (and full legal citations to them) is provided in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al.

director), but sometimes persistent efforts to enact corrective legislation do not succeed (e.g., line-item veto proposals).

Given that nearly every committee of the House and Senate has jurisdiction over legislation with a budgetary impact, interest in the budget process and proposals to change it radiate throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, Oversight and Government Reform, and Rules Committees in the House, and with the Budget, Homeland Security and Governmental Affairs, and Rules and Administration Committees in the Senate, other House and Senate committees, particularly the appropriations and tax committees, may exert influence over budget process changes affecting their legislative interests.

Initial Budget Process Changes in the 111th Congress

The first opportunity in a new Congress to change budget procedures usually occurs on the first or second day of session. The House, which unlike the Senate is not a continuous body, must adopt its rules anew at the beginning of each Congress. Traditionally, the House adopts its rules from the previous Congress, with modifications (that may include changes in the budget process), in the form of a simple resolution.

On January 6, 2009, the House adopted the opening-day rules package for the 111th Congress, H.Res. 5, by a vote of 242-181. The measure included several changes in the budget process, including modifications to the “pay-as-you-go” rule and earmarking rules that had been adopted at the beginning of the 110th Congress.¹² Some of the specific changes made by H.Res. 5 are discussed below under the applicable areas of reform.

A second opportunity for budget process changes typically comes in March and April, when the two chambers consider the annual budget resolution for the fiscal year beginning on October 1. Under authority referred to as the “elastic clause” (in Section 301 of the 1974 Congressional Budget Act), either chamber may include procedural provisions in the annual budget resolution that are consistent with the purposes of the 1974 act.

Various procedural provisions were incorporated into the FY2010 budget resolution (S.Con.Res. 13), on which the House and Senate reached final agreement on April 29, 2009, principally in a separate title (Title IV—Budget Process). These provisions included House and Senate restrictions on the use of advance appropriations and emergency designations, procedures to adjust budget levels to accommodate program integrity initiatives, and a Senate point of order pertaining to short-term deficits.¹³

Congress also may express its interest in the budget process in venues that do not involve legislative activity. In the past, consideration in the Senate of nominations to the position of OMB director and deputy director often has afforded the opportunity to discuss budget process reforms.¹⁴ Nominations to the position of OMB director and deputy director are considered,

¹² For a detailed discussion of these changes in the budget process, see CRS Report RL34149, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress*, by Bill Heniff Jr.

¹³ The House and Senate reached final agreement on the FY2010 budget resolution by agreeing to the conference report on S.Con.Res. 13 (H.Rept. 111-89; April 27, 2009), by a vote of 233-193 in the House and 53-43 in the Senate.

¹⁴ During the 110th Congress, for example, the Senate considered the nomination of Jim Nussle to be OMB director, (continued...)

pursuant to S.Res. 445 (108th Congress), by both the Senate Budget Committee and the Senate Homeland Security and Governmental Affairs Committee.

The Senate Budget Committee and the Senate Homeland Security and Governmental Affairs Committee held hearings on January 13 and January 14, 2009, respectively, regarding President-elect Obama's choices for director (Peter Orszag) and deputy director (Rob Nabors) of OMB. The prospective nominees discussed the need to review a variety of budget process reform proposals, addressing such concerns as the growth of entitlement spending over the long run and the need to better integrate budgeting and performance evaluation activities in OMB.¹⁵

Both President Obama and Congress continued to address budget process reform in 2010, during the second session of the 111th Congress. As previously mentioned (and discussed below), President Obama created the National Commission on Fiscal Responsibility and Reform by executive order, and the President and Congress enacted a major procedural reform into law, the Statutory Pay-As-You-Go Act of 2010 (also discussed below). The consideration of other budget process reforms is pending.

Selected Budget Process Reform Proposals

Among the various budget process reform proposals that have been or may be considered during the 111th Congress, many pertain to categories such as internal "pay-as-you-go" (PAYGO) rules in the House and Senate; restoration of the statutory discretionary spending limits and PAYGO process; earmarking; and modifications to budget resolution, reconciliation, and appropriations processes. To illustrate the diversity of proposals, these and other categories of reform are discussed briefly below.

PAYGO Rules and Discretionary Spending Limits

Statutory Enforcement Procedures

From 1991 through 2002, federal budget legislation was constrained by statutory limits on discretionary spending and a PAYGO requirement for direct spending (sometimes referred to as mandatory spending) and revenue legislation.¹⁶ Both of these budget constraints were established by the Budget Enforcement Act of 1990, which amended the Balanced Budget and Emergency Deficit Control Act of 1985. The discretionary spending limits and the PAYGO requirement were enforced by sequestration, a process by which violations were remedied by automatic, across-the-board spending cuts. These statutory budget constraints were extended in 1993 and 1997 (and

(...continued)

confirming his appointment on September 4, 2007 (by a vote of 69-24). Although budget process changes were not a prominent part of the debate in committee and on the floor, a PAYGO requirement and other procedural matters were discussed briefly.

¹⁵ Kerry Young, "Orszag to Suggest Program Cuts in February Budget Outline," *CQ Today*, January 14, 2009; and Jonathan Nicholson, "OMB Chief-Designate Orszag Plans February Budget Outline Submission," Bureau of National Affairs, *Daily Report for Executives*, January 14, 2009.

¹⁶ The statutory PAYGO process in effect during that period is explained in CRS Report R41005, *The Statutory PAYGO Process for Budget Enforcement: 1991-2002*, by Robert Keith.

further modified by other legislation), but the discretionary spending limits expired at the end of FY2002 and the PAYGO requirement effectively was terminated in December 2002.

In recent years, there has been considerable interest in restoring, and possibly making significant modifications to, the statutory enforcement procedures. Some observers have argued that the budget enforcement mechanisms associated with the Budget Enforcement Act promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a total budget surplus in FY1998—the first in almost 30 years—and the following three fiscal years.

With the return of sizeable deficits in the short term due to economic decline and in the long term due principally to the growth of Medicare, Medicaid, and Social Security, some have argued for restoring such statutory mechanisms to strengthen fiscal discipline. A principal point of contention with regard to the PAYGO requirement has been whether it should apply to revenue legislation. While some maintain that revenue reductions should not face the hurdle of a statutory PAYGO requirement because they are needed to fuel growing revenues, others assert that accommodating further revenue reductions in a PAYGO requirement (i.e., by applying it only to direct spending) likely would undermine efforts to achieve significant deficit reduction, in part by encouraging some spending initiatives to be reformulated as revenue-losing provisions.

The FY2008 and FY2009 budget resolutions included sense-of-the-Congress statements that a statutory PAYGO requirement should be reinstated to help control the deficit (Section 508 of S.Con.Res. 21 and Section 515 of S.Con.Res. 70, respectively), but the 110th Congress did not take any action in this regard.

On June 9, 2009, President Obama announced that he would submit a PAYGO proposal to Congress, the Statutory Pay-As-You-Go Act of 2009, that would restore a process applying to both direct spending and revenue legislation.¹⁷ The House responded to the President's proposal first, passing a bill (H.R. 2920) the following month and incorporating it into several other measures toward the end of the session. In January 2010, the Senate added a statutory PAYGO proposal to a measure increasing the debt limit (H.J.Res. 45); the House concluded action on the measure in early February, and President Obama signed it into law on February 12, 2010, as P.L. 111-139, the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act).¹⁸

The Statutory PAYGO Act establishes a process intended, as Section 2 of the act states, “to enforce a rule of budget neutrality on new revenue and direct spending legislation.” The budgetary effects of revenue and direct spending provisions enacted into law, including both costs and savings, are recorded by the OMB director on two PAYGO scorecards covering rolling 5-year and 10-year periods (i.e., in each new session, the periods covered by the scorecards roll forward one fiscal year).¹⁹ The budgetary effects of PAYGO measures are determined by statements inserted into the *Congressional Record* by the chairmen of the House and Senate Budget Committees and referenced in the measures. As a general matter, the statements are expected to

¹⁷ The legislative text of the proposal, along with a section-by-section summary and related documentation, is provided on the OMB website at http://www.whitehouse.gov/omb/news_060909_paygo/.

¹⁸ For a summary and legislative history of the act, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Robert Keith.

¹⁹ The PAYGO scorecards are available on the OMB website at http://www.whitehouse.gov/omb/paygo_default/. Through the end of May 2009, the 5-year scorecard showed a credit in excess of \$4 billion and the 10-year scorecard showed a credit in excess of \$16 billion.

reflect cost estimates prepared by CBO. If this procedure is not followed for a PAYGO measure, then the budgetary effects of the measure are determined by OMB.

Shortly after a congressional session ends, OMB finalizes the two PAYGO scorecards and determines whether a violation of the PAYGO requirement has occurred (i.e., if a debit has been recorded for the budget year on either scorecard). If so, the President issues a sequestration order that implements largely across-the-board cuts in nonexempt direct spending programs sufficient to remedy the violation by eliminating the debit. Many direct spending programs and activities are exempt from sequestration. If no PAYGO violation is found, no further action occurs and the process is repeated during the next session.

In the case of the statutory limits on discretionary spending, one issue has been the period of time for which they should be established. Advocates of two- or three-year limits argue that the five-year framework employed earlier leads to limits that are too unrealistic in the later years (due to changing circumstances). Limits that are unrealistically high fail to impose discipline, while limits that are unrealistically low encourage evasions through gimmickry and other means. Shorter-term limits, they argue, are more apt to be realistic and effective constraints on spending.

During the 111th Congress, the Senate has considered, but rejected, several amendments (offered by Senators Jeff Sessions and Claire McCaskill) that would have established discretionary spending limits as part of the Congressional Budget Act of 1974.

House and Senate PAYGO Rules

As a supplement to the statutory PAYGO requirement, the Senate established its own PAYGO rule in 1993 as a provision in the FY1994 budget resolution.²⁰ The rule, which operates differently than the statutory requirement, has been modified several times.

Over the years, several unsuccessful efforts were made to establish a PAYGO rule in the House. A PAYGO rule was contained in the House's rules package for the 110th Congress, in Section 405 of H.Res. 6. Title IV was considered separately and adopted by the House on January 5, 2007, by a vote of 280-152 (all five titles of H.Res. 6 were adopted by the House and took effect on that day). The House's PAYGO rule imposes a bar against revenue and direct spending legislation that increases a deficit (or reduces a surplus) over different time periods (i.e., the 6-year and 11-year periods beginning with the current fiscal year).

In May 2007, the Senate revised its PAYGO rule as part of the FY2008 budget resolution (Section 201 of S.Con.Res. 21). The revised Senate rule conforms closely to the House rule, applying to the same two time periods and eliminating any exception for revenue or direct spending proposals assumed in the budget resolution; it expires on September 30, 2017. In addition, the revised Senate PAYGO rule is buttressed by other Senate rules designed to discourage legislation that increases the deficit in both the short and long terms; these rules can be waived only by the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

The implementation of the House and Senate PAYGO rules in the 110th Congress was associated with considerable controversy regarding issues of compliance and the need to effectively waive

²⁰ An overview of statutory and rules-based PAYGO procedures is provided in CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*, by Robert Keith.

the rules for the consideration of some major legislation, especially bills dealing with the housing crisis and economic downturn in a manner that substantially increases the deficit in the short term. In response to some of these concerns, modifications to the House PAYGO rule were included in Section 2(j) of H.Res. 5, which was adopted on January 6, 2009. The changes include (1) an alignment with the Senate PAYGO rule so that both Houses use the same CBO baseline for enforcement; (2) a procedure to allow one House-passed measure to pay for spending in a separate House-passed measure, if the two are linked at the engrossment stage; and (3) a procedure for designating in legislation emergency exceptions to the rule.²¹

Earmarking

Reform of congressional earmarking practices in appropriations, direct spending, and tax legislation (and accompanying reports) was addressed by the House and Senate with the adoption of new rules in 2007, during the 110th Congress. Some changes in earmark rules and practices occurred at the beginning of the 111th Congress, as discussed below, and additional reforms in this area continue to be examined.

Although definitions of earmarking vary, an earmark generally is considered to be an allocation of resources to specifically targeted beneficiaries, either through earmarks of discretionary or direct spending, limited tax benefits, or limited tariff benefits. Earmarks may be proposed by the President or may be originated by Congress. Concern about recent earmarking practices arose because some of them were inserted into legislation or accompanying reports without any identification of the sponsor, and the belief that many earmarks were not subject to proper scrutiny and diverted resources to lesser-priority items or items without sufficient justification, thereby contributing to wasteful spending or revenue loss.

The essential feature of earmark reform proposals is a bar against the consideration of legislation that does not identify individual earmarks and the Members who sponsored them, the distribution of such information in a way that makes it readily available before the legislation is considered, and certification by earmark sponsors that neither they nor their spouses have a financial interest in the earmark.

Earmark reform provisions, requiring the identification of earmarks and their sponsors before legislation may be considered and imposing other restrictions on the use of earmarks, were contained in Title IV (Section 404) of the House's rules package for the 110th Congress, H.Res. 6, adopted on January 5, 2007. The earmark reform provisions were added to the rules of the House as Clause 9 of Rule XXI and Clauses 16 and 17 of Rule XXIII. The earmark identification requirement applies to all legislation; if no earmarks are included, then a statement to that effect must be supplied.

Later in the session, on June 18, 2007, the House adopted H.Res. 491, a measure dealing (for the remainder of the 110th Congress) with the consideration of conference reports on regular appropriations acts containing earmarks that were not submitted to the conference by either chamber. The measure established a point of order intended to curtail the practice of "air-

²¹ The changes are explained in "Section-by-Section of Rule Changes – 111th Congress," undated, available on the Democratic website of the House Rules Committee at http://www.rules.house.gov/111/LegText/111_hres_ruleschng_smmry.pdf.

dropping” earmark provisions, not first passed by either chamber, into appropriations acts at the conference stage. The point of order is disposed of by the question of consideration.

On January 18, 2007, the Senate adopted S. 1, ethics reform legislation. Title I of the act, referred to separately as the Legislative Transparency and Accountability Act of 2007, included earmark reform provisions requiring the prior identification of earmarks, and their sponsors, in all spending and revenue legislation, and various other constraints on earmarking practices. Senator Robert C. Byrd, the chairman of the Senate Appropriations Committee, announced on April 17 that the committee would follow a policy of requiring earmark disclosure for the FY2008 appropriations cycle, similar to the requirements set forth in S. 1, pending further action on the measure.

On July 31, 2007, the House passed S. 1 with an amendment under the suspension of the rules procedure, by a vote of 411-8. The Senate agreed to the House amendment, by a vote of 83-14, on August 2, thus clearing the measure. President George W. Bush signed the bill into law on September 14, 2007, as P.L. 110-81 (121 Stat. 735-776), the Honest Leadership and Open Government Act of 2007. In its final form, P.L. 110-81 included earmark reform provisions in Section 521 (Congressionally Directed Spending), which were added to the Standing Rules of the Senate as a new Rule XLIV.

At the beginning of the 111th Congress, on January 6, 2009, the chairmen of the House and Senate Appropriations Committees, Representative David Obey and Senator Daniel Inouye, jointly announced further changes in earmark practices. The changes, which took effect for FY2010 appropriations acts, included (1) a requirement that Members post information on their earmark requests at the time they are made; (2) the dissemination of earmark disclosure tables at the time of subcommittee action; and (3) a reduction of earmarks to 50% of the FY2006 level for non-project-based accounts and a cap at 1% of discretionary spending in subsequent years.²²

In addition, on January 6, 2009, the House also adopted changes in its earmark rules as part of its action on H.Res. 5. Section 2(i) of the resolution incorporated the prohibitions of H.Res. 491 of the prior Congress (restricting the use of “air-dropped” earmarks) into Clause 9 of House Rule XXI.

In March 2010, Chairman Obey and Chairman Inouye announced that the earmark policies applicable to the FY2010 appropriations acts would be continued into the FY2011 appropriations cycle.²³ The House Appropriations Committee also imposed a ban on earmarks for for-profit companies. Further, House Minority Leader John Boehner announced, on March 11, 2010, that the Republican Conference had agreed that day to a unilateral moratorium on all earmarks for FY2011, including tax- and tariff-related earmarks.²⁴ (House Republicans had rejected a short-

²² House Appropriations Committee, “House and Senate Appropriations Committees Announce Additional Reforms in Committee Earmark Policy,” press release, January 6, 2009, available on the committee’s website at <http://appropriations.house.gov/pdf/Obey-InouyeRelease01-06-09.pdf>.

²³ See (1) House Appropriations Committee, “Recent History of Earmark Reform,” fact sheet, March 2010; and (2) Senate Appropriations Committee, “Senate Appropriations Committee Policy on Earmarks,” press release, March 11, 2010.

²⁴ See (1) Jackie Kucinich, “GOP Adopts Sweeping Earmark Ban,” *Roll Call*, March 11, 2010, and (2) Edward Epstein and David Clarke, “House Republicans Embrace One-Year Moratorium on Earmarks,” *CQ Today*, March 11, 2010.

term earmark moratorium in late 2008, but created a special 10-member panel to examine further earmark reforms in 2009.)²⁵

Congressional Budget Resolution and Reconciliation

The Congressional Budget Act of 1974 requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least five fiscal years. The budget resolution, which is a concurrent resolution and therefore does not become law, provides an overall budget plan that guides congressional action on individual spending, revenue, and debt-limit measures. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of revenue, spending, and debt-limit legislation to carry out budget resolution policies; enforcement of budget resolution policies also occurs by means of various points of order that may be raised on the floor. Budget resolutions and reconciliation measures are considered under expedited procedures in both chambers.

Some Members of Congress, as well as the President, have argued that the budget resolution would be more effective in enforcing budget policy by making it a joint resolution requiring the President's approval. A joint budget resolution would directly involve the President in congressional actions on the budget early in the process. If the President and Congress reach an impasse on a joint budget resolution, however, some are concerned that action on spending and revenue bills might be significantly delayed.

In the Senate, a 50-hour limit on the consideration of a budget resolution applies under the expedited procedures. When the time limit expires, many amendments may still be pending; they are brought up for disposition by vote but without any time left to debate them, a situation referred to as "vote-arama." The Senate typically ameliorates the consequences of a "vote-arama" by allowing a minimal amount of debate time (e.g., two minutes per side) for each amendment under unanimous consent, but proposals have been offered in past Congresses in an effort to eliminate "vote-aramas" altogether. The Senate Budget Committee examined the phenomenon of "vote-arama" and other issues relating to the consideration of budget resolutions in a hearing on February 12, 2009.²⁶

During the 1980s and much of the 1990s, reconciliation was used principally as a means of reducing the deficit. While some reconciliation measures included spending increases or revenue reductions, the net impact of the legislation was to reduce the deficit. In recent years, the reconciliation process has been used mainly to expedite the passage of legislation that increases the deficit, primarily through revenue reduction.

Some Members in the House and Senate have argued that the reconciliation process should be altered so that it may be used only to reduce the deficit. As part of the changes in the budget process included in the rules package for the 110th Congress, H.Res. 6, the House included a ban (in Section 402) against the consideration of a budget resolution containing reconciliation

²⁵ See (1) David Clarke and Alan K. Ota, "House GOP Backs Away from Earmark Moratorium," *CQ Today*, November 20, 2008; and (2) Catharine Richert, "House Republicans Create Anti-Earmark Panel," *CQ Today*, December 19, 2008.

²⁶ Access to a video of the hearing and the prepared statements of witnesses is available on the Senate Budget Committee (Majority) website at <http://budget.senate.gov/democratic/hearingstate.html>.

directives that would increase the deficit or reduce the surplus over the six-year or 11-year periods beginning with the current fiscal year. The Senate included a similar ban for the same two time periods in the FY2008 budget resolution (Section 202 of S.Con.Res. 21).

Because reconciliation legislation is considered in the Senate under expedited procedures, with a 20-hour time limit for debate, the issue of “vote-arama” applies as well. The proposals offered in the past to deal with this situation with respect to the consideration of budget resolutions also have applied to the consideration of reconciliation bills.

Annual Appropriations Process

Discretionary spending, which amounts to more than one-third of federal spending, is provided each year in regular, supplemental, and continuing appropriations acts. Discretionary spending funds most of the routine operations of federal agencies.

Considerable attention was focused during the past two Congresses on Appropriations Committee structure. At the beginning of the 109th Congress, the House and Senate Appropriations Committees consolidated and realigned their subcommittees in order to streamline the appropriations process, facilitate the timely enactment of appropriations bills, and minimize the likelihood of using consolidated appropriations acts. Both committees disbanded their VA-HUD Subcommittee, and the House Appropriations Committee disbanded two others (District of Columbia and Legislative Branch), leaving 12 Senate and 10 House appropriations subcommittees.

At the start of the 110th Congress, further adjustments in subcommittee alignments of the House and Senate Appropriations Committees were made, leaving each committee with 12 subcommittees. Among the changes made, each committee established a Financial Services and General Government Subcommittee and the House Appropriations Committee reestablished a Legislative Branch Subcommittee.

Later during the 110th Congress, the House adopted H.Res. 35, a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence. This action represented the House’s response to one of the recommendations of the 9/11 Commission. Although the Senate may address the commission’s recommendation with respect to intelligence activities in the 111th Congress, no further major realignments in subcommittee structure of either committee are expected at this time.

When a regular appropriations act or a continuing resolution is not in place after the start of the fiscal year on October 1, an agency does not have the legal authority to incur obligations in order to function and must shut down, resulting in the furlough of federal employees and disruptions in service. To prevent a government shutdown (or the threat of one) due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution. An automatic continuing resolution would provide an uninterrupted source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. Although such a device could eliminate or reduce employee furloughs and service

disruptions, some view an automatic continuing resolution as substituting a formulaic response for deliberate and informed decision making.

Item Veto/Expanded Rescission Authority

When a spending or revenue act is sent to the President for his consideration, he must approve or veto the measure in its entirety. After a spending measure has become law, the President may impound funds through rescission, which cancels the funding, or deferral, which delays the expenditure of funds. Congress exercises its responsibilities in this area through procedures established under the Congressional Budget and Impoundment Control Act of 1974 and the regular legislative process.

Advocates of greater budget discipline proposed the Line Item Veto Act, which became law in 1996 (P.L. 104-130) but was struck down by the Supreme Court on June 25, 1998, in *Clinton v. City of New York*, 118 S.Ct. 2091 (1998). Under this act, the President was authorized to strike individual items of discretionary spending, direct spending, and certain limited tax benefits in any law.

In the years following the Supreme Court decision, various proposals have been made in Congress to grant item veto authority to the President in a manner that passes constitutional muster or to otherwise expand his rescission powers. President George W. Bush, in 2006, proposed a “legislative line-item veto,” under which Congress would have to consider proposed rescissions in an expedited manner. The House passed H.R. 4890, the Legislative Line Item Veto Act of 2006, on June 22, 2006, by a vote of 247-172; the Senate did not act on the measure. The Senate considered a legislative line-item veto proposal in the 110th Congress, in the form of an amendment offered by Senator Judd Gregg, first to S. 1 and then to minimum wage legislation, H.R. 2; in both instances, the Gregg amendment ultimately was withdrawn.

As part of the budget process proposals included in his FY2010 and FY2011 budget submissions, President Obama asked Congress to establish expedited legislative procedures for the consideration of certain rescission proposals offered by the President. On May 28, 2010, Representative John Spratt introduced the President’s proposal as H.R. 5454, the Reduce Unnecessary Spending Act of 2010.

Although advocates of the item veto or expanded rescission powers for the President contend that such tools will enhance budgetary discipline, critics suggest that their usefulness for budgetary discipline is overstated and that they may adversely affect the balance of power between Congress and the President over budget decisions.

Commission/Task Force on Long-Term Budgetary Issues

Considerable attention has been focused recently on the large imbalances projected in the federal budget over the long term, particularly with respect to the Social Security, Medicare, and Medicaid programs. One device advocated by some as a means of compelling action on long-term budgetary issues is a bipartisan commission or task force empowered to recommend legislative changes that would correct or mitigate the imbalances.²⁷

²⁷ For background on this issue, see CRS Report R40986, *Proposals for a Commission to Address the Federal* (continued...)

Advocates of the commission or task force approach argue that it would be an effective means of surmounting political opposition and achieving an end result because of the bipartisan nature of the group, the avoidance of preconditions with respect to policy options (i.e., all options would be “on the table”), and the action-forcing nature of expedited legislative procedures. Adherents to the use of regular legislative procedures to deal with these issues maintain that while they may entail a more time-consuming and difficult route, they afford more openness and participation in the decision-making process and are more likely to lead to widespread acceptance of the results.

During the 110th Congress, a leading example of such a proposal was the Bipartisan Task Force for Responsible Fiscal Action Act of 2007 (S. 2063, introduced by Senators Kent Conrad and Judd Gregg, and H.R. 3655, introduced by Representatives Jim Cooper and Frank Wolf). The bill would have established a bipartisan, 16-member task force (including the Treasury Secretary and another member from the executive branch, and seven members each from the House and Senate). The task force would have been charged with developing legislative recommendations (by December 9, 2008) to significantly improve the long-term balances in the federal budget, including the balances in Social Security and Medicare; the recommendations would have needed to be approved by at least 12 of the task force members. Under the proposal, the recommendations would have been considered by the House and Senate during the 2009 congressional session (during the first year of the new presidential administration), under expedited legislative procedures that would limit consideration to 100 hours in each chamber and bar amendments.²⁸

In the 111th Congress, Representatives Cooper and Wolf introduced a measure recommending a similar approach—H.R. 1557, the Securing America’s Future Economy Commission Act, also referred to as the SAFE Commission Act; the bill was introduced in the Senate by Senator George Voinovich as S. 1056. Senators Conrad and Gregg did not immediately introduce their Bipartisan Task Force bill, but advocated its approach in the media.²⁹

On November 10, 2009, the Senate Budget Committee held a hearing on the matter, “Bipartisan Process Proposals for Long-Term Fiscal Stability.”³⁰ Senators Conrad and Gregg introduced S. 2853, the Bipartisan Task Force for Responsible Fiscal Action Act of 2009, on December 9, 2009.

On January 26, 2010, during consideration of the debt-limit measure (H.J.Res. 45) that became the vehicle for the Statutory PAYGO Act of 2010, competing amendments to establish a Bipartisan Task Force for Responsible Fiscal Act, offered by Senator Kent Conrad and Judd Gregg (S.Amdt. 3302) and Senator Max Baucus (S.Amdt. 3306), were considered. The vote on the Conrad-Gregg amendment was 53-46, and having failed to secure the minimum 60 votes required by a unanimous consent agreement, it was withdrawn; the second amendment, offered by Senator Baucus, was withdrawn by unanimous consent without a vote.

(...continued)

Government’s Long-Term Fiscal Situation, coordinated by Clinton T. Brass, Matthew Eric Glassman, and Jacob R. Straus.

²⁸ The proposal was explained by Senators Conrad and Gregg in the *Congressional Record* (daily ed.), September 18, 2007, pp. S11662-S11665.

²⁹ See Kent Conrad and Judd Gregg, “A Fiscal Battle on Two Fronts,” *Washington Post*, January 5, 2009, available on the Senate Budget Committee website at http://budget.senate.gov/democratic/documents/2009/Wash%20Post_A%20Fiscal%20Battle.pdf.

³⁰ A video presentation of the hearing is available on the website of the Senate Budget Committee at <http://www.senate.gov/fplayers/CommPlayer/commFlashPlayer.cfm?fn=budget111009&st=870>.

Following the Senate's rejection of the Conrad and Baucus amendments, President Obama elected to create a commission by executive order. On February 18, 2010, the President signed Executive Order 13531, creating the National Commission on Fiscal Responsibility and Reform.³¹ Under the executive order, the commission "is charged with identifying policies to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run." The commission must vote no later than December 1, 2010, on a final report regarding recommendations to achieve its mission, and at least 14 affirmative votes are required for the final report to be issued. With a membership composed of 18 members—10 Democrats and 8 Republicans—the 14-vote threshold ensures that any recommendations issued by the commission would be supported by at least half the members from each party.

Capital Budgeting

Unlike many states, the federal government does not employ separate capital and operating budgets; instead, all revenue and spending is merged together into a "unified" budget. Information on capital budgeting, however, has been provided for many years as a separate chapter in one of the volumes of the President's budget. Interest in adopting a capital budget for the federal government has been examined from time to time. In 1999, a commission established by President Bill Clinton pursuant to Executive Order 13037 (March 3, 1997), the President's Commission to Study Capital Budgeting, recommended several changes in budgetary practice but did not recommend the adoption of a formal capital budget.

Advocates of capital budgeting generally regard it as a means of boosting resources for infrastructure needs (e.g., surface transportation and aviation systems struggling to meet capacity and deteriorating water infrastructure), overcoming an alleged bias against capital spending in the current budget process, and rationalizing decision-making in this area. Critics of capital budgeting assert that shifting a significant portion of the budget to an accrual basis (in which costs are apportioned over the lifetime of an asset rather than accounted for up front) would unduly complicate the budget process and undermine the task of setting priorities over the full range of governmental activities.

As a first step toward improved budgeting for infrastructure needs, some have advocated more information gathering and analysis in this area. One proposal introduced in the 110th Congress, for example, would have created a bipartisan National Commission on the Infrastructure of the United States charged with studying, among other things, "the methods used to finance the construction, acquisition, rehabilitation, and maintenance of public works improvements (including general obligation bonds, tax-credit bonds, revenue bonds, user fees, excise taxes, direct governmental assistance, and private investment)."

Biennial Budgeting

While many authorizations are enacted on a multiyear cycle, Congress acts on budget resolutions and appropriations acts annually. Biennial budgeting proposals would change the cycle under which Congress acts on budget resolutions and appropriations acts (and annual authorization acts) to two years.

³¹ *Federal Register*, vol. 75, no. 35, Tuesday, February 23, 2010, "National Commission on Fiscal Responsibility and Reform," pp. 7927-7928. The commission's website is <http://www.fiscalcommission.gov/>.

Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to allow more time for congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision-making. In the view of some, however, a biennial approach could impair Congress's ability to respond quickly to changing economic and budgetary circumstances.

Appendix. Citations to Selected Budget Process Laws

Budget and Accounting Act of 1921

P.L. 67-13; June 10, 1921; 42 Stat. 20-27.

Budget and Accounting Procedures Act of 1950

P.L. 81-784; September 12, 1950; 64 Stat. 832-845.

Congressional Budget and Impoundment Control Act of 1974

P.L. 93-344; July 12, 1974; 88 Stat. 297-339.

Balanced Budget and Emergency Deficit Control Act of 1985

Title II of P.L. 99-177 (Increasing the Statutory Limit on the Public Debt); December 12, 1985; 99 Stat. 1038-1101.

Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987

Title I of P.L. 100-119 (Increasing the Statutory Limit on the Public Debt); September 29, 1987; 101 Stat. 754-784.

Budget Enforcement Act of 1990

Title XIII of P.L. 101-508 (Omnibus Budget Reconciliation Act of 1990); November 5, 1990; 104 Stat. 1388-573 through 630.

Omnibus Budget Reconciliation Act of 1993

P.L. 103-66; August 10, 1993; 107 Stat. 683-685 (Title XIV).

Unfunded Mandates Reform Act of 1995

P.L. 104-4; March 22, 1995; 109 Stat. 48-71.

Line Item Veto Act

P.L. 104-130; April 9, 1996; 110 Stat. 1200-1212.

Budget Enforcement Act of 1997

Title X of P.L. 105-33 (Balanced Budget Act of 1997); August 5, 1997; 111 Stat. 677-712.

Statutory Pay-As-You-Go Act of 2010

Title I of P.L. 111-139; February 12, 2010; 124 Stat. 8-30.

Notes: Major portions of selected budget process laws are codified as follows:

- 2 U.S.C. 621, et seq. (Congressional Budget and Impoundment Control Act of 1974, as amended);
- 2 U.S.C. 900, et seq. (Balanced Budget and Emergency Deficit Control Act of 1985, as amended); and
- 31 U.S.C. 1101, et seq. (Budget and Accounting Act of 1921, as amended).

For additional information on these and other budget process laws, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al..

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