



The “Deeming Resolution”: A Budget Enforcement Tool

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Summary

"Deeming resolution" is a term that refers to legislation deemed to serve as an annual budget resolution for purposes of establishing enforceable budget levels for a budget cycle. A deeming resolution is used when the House and Senate are late in reaching final agreement on a budget resolution or fail to reach agreement altogether.

The Congressional Budget Act of 1974 requires the annual adoption of a budget resolution establishing aggregate levels of revenues, spending, the debt limit, and the surplus or deficit, as well as allocations of spending. Enforcement of the budget resolution relies primarily upon points of order and reconciliation procedures. With regard to the enforcement of budget aggregates and committee spending allocations, the major points of order are found in Sections 311 and 302 of the act, respectively.

The term "deeming resolution" is not officially defined, nor is there any specific statute or rule authorizing such legislation. Instead, the use of a deeming resolution simply represents the House and Senate employing regular legislative procedures to deal with the issue on an ad hoc basis.

The form and content of a deeming resolution is not prescribed, so it may be shaped to meet the particular needs at hand. For example, the House and Senate have used simple resolutions as the legislative vehicle in the past, but a deeming resolution may be incorporated into a bill, such as an annual appropriations act, as a single provision. At a minimum, deeming resolutions provide new spending allocations to the Appropriations Committees, but they also may set new aggregate budget levels, provide revised spending allocations to other House and Senate committees, or provide for other related purposes.

For purposes of this report, a distinction is drawn between instances in which the budget resolution was adopted in a tardy manner and instances in which no budget resolution was adopted at all. For FY1999, the first of five years that the two chambers did not reach final agreement on a budget resolution, the Senate adopted two deeming resolutions (S.Res. 209 on April 2, 1998, and S.Res. 312 on October 21, 1998) and the House included deeming provisions in two resolutions dealing with other subjects as well (H.Res. 477, adopted on June 19, 1998, and H.Res. 5, adopted on January 6, 1999).

In the absence of a budget resolution for FY2003, the House on May 22, 2002, adopted a deeming provision in H.Res. 428, a special rule for H.R. 4775, a supplemental appropriations act. The Senate did not adopt a deeming resolution during the session. In a related action, the Senate extended certain expiring budget enforcement provisions by adopting S.Res. 304 on October 16, 2002.

For FY2005 and FY2007, the House and Senate again used deeming resolutions when they were unable to reach final agreement on the budget resolutions for those fiscal years. For FY2011, only the House agreed to a formal deeming resolution. The Senate chose instead to rely on informal limits on budgetary legislation. For FY2012, the House has agreed to H.Res. 287, a special rule deeming H.Con.Res. 34 as adopted, pending the adoption by the House and Senate of a budget resolution for FY2012.

This report will be updated as developments warrant.

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Introduction

“Deeming resolution” is a term that refers to legislation which is deemed to serve as an annual budget resolution for purposes of establishing enforceable budget levels for a budget cycle. A deeming resolution is used when the House and Senate are late in reaching final agreement on a budget resolution or fail to reach agreement altogether. Either chamber may initiate its own budget enforcement procedures by adopting a “deeming resolution” in the form of a simple resolution. This report describes substantive enforcement procedures associated with the budget resolution, explains the concept of a “deeming resolution,” discusses House and Senate action on deeming resolutions, and provides information on a related topic, waiving a bar against the consideration of budgetary legislation for a fiscal year before a budget resolution for that fiscal year has been adopted.

Substantive Enforcement of the Budget Resolution

The Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, as amended) requires the adoption by April 15th of each year of a concurrent resolution on the budget.¹ The annual budget resolution sets forth aggregate levels of revenues, spending, the debt limit, and the surplus or deficit, as well as allocations of spending (both budget authority and outlays) by each of major functional categories of the budget. The congressional budget process was first implemented in 1975 for FY1976, with full implementation of the process occurring the following year. Over the years, the time frame of the budget resolution has lengthened from one fiscal year to at least five fiscal years (and sometimes as many as 10 fiscal years, plus revisions to the current fiscal year).

Enforcement of the budget resolution relies primarily upon points of order and reconciliation procedures. Point-of-order provisions contained in the 1974 Congressional Budget Act, which sometimes are supplemented by point-of-order provisions carried in annual budget resolutions, allow any Member in either chamber to prevent the consideration of legislation that would violate budget resolution policies.² Of course, points of order are not self-enforcing and may be waived with a sufficient majority, thereby allowing legislation in violation of budget resolution policies to be considered. In the Senate, most of the points of order pertaining to budget enforcement require the affirmative vote of three-fifths of the membership (60 votes, if no seats are vacant) in order to be waived.

With regard to the substantive enforcement of the budget resolution (i.e., enforcement of budgetary levels), the major points of order under the 1974 Congressional Budget Act are found in Sections 311 and 302, which deal with the enforcement of budget aggregates and committee spending allocations, respectively. House and Senate rules and practices differ somewhat with regard to these two points of order.

¹ In its original form, the 1974 Congressional Budget Act required the annual adoption of two budget resolutions—one in the spring and one in the fall. The two required budget resolutions were adopted each year for the first seven years of the congressional budget process (FY1976-FY1982). Beginning with FY1983, however, the House and Senate adopted the practice of acting on only one budget resolution a year. For more information, see CRS Report RL30297, *Congressional Budget Resolutions: Historical Information*, by Bill Heniff Jr. and Justin Murray.

² For a listing of the points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

Section 311(a) generally bars the consideration of any spending measure that would violate the aggregate budget authority and outlays levels for the first fiscal year covered by the budget resolution, and any revenue measure that would violate the aggregate revenue level for the first fiscal year or the sum of all fiscal years covered by the budget resolution.

Section 302(a) generally requires that the aggregate amounts of spending recommended in the annual budget resolution be allocated by committee; the House and Senate Appropriations Committees receive an allocation for only one fiscal year, but the remaining House and Senate committees receive allocations for all of the years covered by the budget resolution.³ Section 302(b) requires the House and Senate Appropriations Committees to subdivide their allocations by subcommittee.⁴ Section 302(f) generally bars the consideration of any spending measure that would violate the committee spending allocations made under Section 302(a) or the Appropriations Committees’ suballocations of spending made under Section 302(b). In view of the different time frames for making committee spending allocations, the spending levels are enforceable for one year in the case of the Appropriations Committees but are enforceable for a multi-year period in the case of the other House and Senate committees.

The purpose of the budget reconciliation process is to change substantive law so that revenue and mandatory spending levels are brought into line with budget resolution policies. Reconciliation generally has been used to reduce the deficit through spending reductions or revenue increases, or a combination of the two. In more recent years, however, the reconciliation process also encompassed revenue reduction generally and spending increases in selected program areas. At the beginning of the 110th Congress, the House and Senate adopted rules restricting the use of reconciliation to deficit reduction.⁵

Reconciliation is a two-step process.⁶ Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision, into a single, omnibus budget reconciliation measure. Under the second step, the omnibus budget reconciliation measure is considered in the House and Senate under expedited procedures (for example, debate time in the Senate on a reconciliation measure is limited to 20 hours and amendments must be germane). The process culminates with enactment of the measure, thus putting the policies of the budget resolution into effect.

³ If the budget aggregates for the fiscal year in progress (the “current year”) are revised in the budget resolution, then the current-year spending allocations to committees are revised as well.

⁴ The spending allocations to committees usually are included in the joint explanatory statement on the budget resolution; the spending suballocations made by the Appropriations Committees are set forth in House or Senate reports, as appropriate.

⁵ For additional information, see CRS Report RL33818, *Federal Budget Process Reform in the 110th Congress: A Brief Overview*, by Robert Keith.

⁶ Reconciliation procedures are discussed in detail in CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

The “Deeming Resolution”

When the House and Senate do not reach final agreement on a budget resolution in a timely manner (or fail to reach final agreement altogether) during a session, they are faced with a mixed situation regarding budget enforcement for upcoming fiscal years. The multi-year budget levels in the prior year’s budget resolution remain in effect and provide some basis for enforcing points of order with respect to revenue and mandatory spending legislation. Changing economic and technical factors over the past year, however, may have rendered the prior budget levels out of date, thereby undermining their value as a realistic basis for enforcement of present policies. Further, the House and Senate must adopt a new budget resolution each year in order for the enforcement of annually appropriated spending levels to be continuous. If a budget resolution is not adopted for a fiscal year, there is no allocation of spending made to the Appropriations Committees under Section 302(a) and no basis for them to make the required spending suballocations under Section 302(b).⁷

Consequently, when the House and Senate have been presented with such situations, they have resorted to the use of deeming resolutions to provide a basis for updated enforcement. The term “deeming resolution” is not officially defined, nor is there any specific statute or rule authorizing such legislation. Instead, the use of a deeming resolution simply represents the House and Senate employing regular legislative procedures to deal with the issue on an ad hoc basis.

Inasmuch as the form and content of a deeming resolution is not prescribed, its form and content may be shaped to meet the particular needs at hand. For example, the House and Senate have used simple resolutions as the legislative vehicle in the past, but a deeming resolution may be incorporated into a bill, such as an annual appropriations act, as a single provision. At a minimum, deeming resolutions provide new spending allocations to the Appropriations Committees, but they also may set new aggregate budget levels, provide revised spending allocations to other House and Senate committees, or provide for other related purposes. A deeming resolution may even declare that a budget resolution (in its entirety), passed earlier in the session by one chamber, is deemed to have the force and effect as if adopted by both chambers.

House and Senate Action on Deeming Resolutions

Both the House and Senate have acted on several deeming resolutions in the past. For purposes of this review, a distinction is drawn between instances in which the budget resolution was adopted in a tardy manner and instances in which no budget resolution was adopted at all.

Tardy Adoption of the Budget Resolution

For 31 of the 36 fiscal years covering FY1976-FY2011, the House and Senate adopted at least one budget resolution, as shown in **Table 1**. The House and Senate were not able to reach agreement on budget resolutions for FY1999, FY2003, FY2005, FY2007, and FY2011. In most of the 31 years for which a budget resolution was adopted, final agreement on the measure was

⁷ See “Brother, Can You Spare a Deem?” in the Senate Budget Committee (Republican Staff) *Budget Bulletin* of May 5, 2008, for a discussion of the status of enforcement procedures in the Senate in the absence of a budget resolution; it is available online at <http://www.senate.gov/~budget/repUBLICAN/analysis/2008/bb06-2008.pdf>.

reached in April, May, or early June, allowing the House and Senate to bring the regular appropriations bills and other budgetary legislation to the floor with little or no delay.

In some instances, however, the final budget resolution was not in place until late June, or even until August or October. The general practice of the Senate in such years, particularly with regard to the regular appropriations bills, was to consider legislation within the framework of the Senate-passed budget resolution but not to adopt a deeming resolution. For example, spending levels provided in the appropriations bills generally were consistent with the spending allocations to the Senate Appropriations Committee and the spending suballocations thereunder that would have been made had the Senate-passed levels become the final ones. Consideration of the measures usually occurred by unanimous consent.

The tardy adoption of budget resolutions has been more of a problem for the House than the Senate, especially because the House usually begins the consideration of the regular appropriations bills at an earlier point in the session. In 1990, the House made a procedural change to allow the consideration of the regular appropriations acts to begin if the budget resolution was not finalized in a timely manner. The Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101-508, as amended) added a temporary provision to the 1974 Congressional Budget Act authorizing the chairman of the House Budget Committee to issue a provisional spending allocation to the House Appropriations Committee (consistent with the statutory limits on discretionary spending set by the BEA) if the budget resolution were not agreed to by the April 15 deadline.⁸ In 1997, the Budget Enforcement Act (BEA) of 1997 (Title X of P.L. 105-33) repealed Section 603 (and all of the other sections in Title VI of the 1974 Congressional Budget Act), but incorporated a modified version of the provision into Section 302 as a permanent part of procedure.⁹ The modification requires the allocation to the House Appropriations Committee to be consistent with the most recently agreed to budget resolution rather than the statutory limits on discretionary spending (the statutory limits expired at the end of FY2002).

Table I. Dates of Final Adoption of Budget Resolutions: FY1976-FY2011

Fiscal Year	Date Adopted	Fiscal Year	Date Adopted
1976	05-14-1975	1994	04-01-1993
1977	05-13-1976	1995	05-12-1994
1978	05-17-1977	1996	06-29-1995
1979	05-17-1978	1997	06-13-1996
1980	05-24-1979	1998	06-05-1997
1981	06-12-1980	1999	[none]
1982	05-21-1981	2000	04-15-1999
1983	06-23-1982	2001	04-13-2000
1984	06-23-1983	2002	05-10-2001

⁸ See the new Section 603 of the 1974 Congressional Budget Act as added by Section 13111 of the BEA of 1990 (104 Stat. 1388-605).

⁹ See Section 302(a)(5) of the 1974 Congressional Budget Act as added by Section 10106 of the BEA of 1997 (111 Stat. 680-681).

Fiscal Year	Date Adopted	Fiscal Year	Date Adopted
1985	10-01-1984	2003	[none]
1986	08-01-1985	2004	04-11-2003
1987	06-27-1986	2005	[none]
1988	06-24-1987	2006	04-28-2005
1989	06-06-1988	2007	[none]
1990	05-18-1989	2008	05-17-2007
1991	10-09-1990	2009	06-05-2008
1992	05-22-1991	2010	04-29-2009
1993	05-21-1992	2011	[none]

Source: Prepared by the Congressional Research Service.

Notwithstanding the authority established in 1990 for making provisional spending allocations to the House Appropriations Committee based on prior budget resolutions, the House on several occasions has adopted deeming resolutions so that consideration of regular appropriations acts could proceed under more updated spending allocations. In 1990, 1995, and 1996, and 2011 several special rules¹⁰ on regular appropriations bills included provisions that deemed a House-passed budget resolution to be in effect (until superseded by final House-Senate agreement on a budget resolution), or that deemed a particular spending allocation to be in effect.¹¹

In 1990, when the final adoption of the budget resolution for FY1991 was delayed until October 9 (while extensive negotiations were conducted in a budget summit between the administration and Congress), the Senate adopted a deeming resolution to allow consideration of the regular appropriations acts for that year to proceed. S.Res. 308, which set forth FY1991 allocations of \$680.512 billion in new budget authority and \$690.606 billion in outlays to the Senate Appropriations Committee “for purposes of section 302(a) of the Congressional Budget Act of 1974,” was adopted by the Senate on July 12, 1990, by unanimous consent.¹² Under the terms of S.Res. 308, the spending allocations were effective pending final agreement on the budget resolution or the agreement to different spending levels in the budget summit negotiations.

Failure to Adopt the Budget Resolution

As stated previously, the House and Senate failed to adopt a budget resolution five times during the past 36 years—in 1998 for FY1999, in 2002 for FY2003, in 2004 for FY2005, in 2006 for FY2007, and in 2010 for FY2011. House and Senate action on deeming resolutions for these years is summarized in **Table 2** and discussed in more detail below. The **Appendix** sets forth the text of the deeming resolutions.

¹⁰ A special rule is a simple House resolution (i.e., numbered “H.Res.”) reported by the House Rules Committee that sets the parliamentary terms for the consideration of one or more specified measures.

¹¹ See H.Res. 413 (Section 3), adopted on June 19, 1990; H.Res. 167 (Section 2), adopted on June 16, 1995; and H.Res. 451 (Section 2) and 453, adopted on June 11 and 13, 1996, respectively.

¹² See the remarks of Senator Robert C. Byrd in the *Congressional Record* of July 12, 1990, at pp. S9642-9643, in which he explains the purpose of S.Res. 308 and the status of congressional action on the regular appropriations acts for FY1991.

Table 2. House and Senate Action on Deeming Resolutions for FY1999, FY2003, FY2005, FY2007, and 2011

Fiscal Year	Congress	House Deeming Resolution		Senate Deeming Resolution		Type of Measure
		Measure Number	Date Adopted	Measure Number	Date Adopted	
1999	105 th	H.Res. 477	06/19/1998	S.Res. 209	04/02/1998	<p>House: The initial deeming resolution was Section 2 of H.Res. 477, a special rule providing for the consideration of the Military Constructions Appropriations Act for FY1999. A follow-up measure in the next session was part of the opening-day rules package (Section 2(a) of H.Res. 5).</p> <p>Senate: The two deeming resolutions were simple Senate resolutions directed solely to that purpose.</p>
	106 th	H.Res. 5	01/06/1999 ^a	—	—	
2003	107 th	H.Res. 428	05/22/2002	[none]	[none]	<p>House: The initial deeming resolution was Section 2 of H.Res. 428, a special rule providing for the consideration of a supplemental appropriations act for FY2002 (H.R. 4775). A follow-up measure in the next session was part of the opening-day rules package (Section 3(a)(4) of H.Res. 5).</p> <p>Senate: Actions to establish a deeming resolution were unsuccessful.</p>
	108 th	H.Res. 5	01/07/2003 ^a			
2005	108 th	H.Res. 649	05/19/2004	P.L. 108-287 (H.R. 4613)	07/22/2004 (08/05/2004)	<p>House: The initial deeming resolution was Section 2 of H.Res. 649, a special rule providing for the consideration of the conference report on the FY2005 budget resolution (S.Con.Res. 95). A follow-up measure in the next session was part of the opening-day rules package (Section 3(a)(4) of H.Res. 5).</p> <p>Senate: The deeming resolution was Section 14007 (118 Stat. 1014) of the Defense Appropriations Act for FY2005 (H.R. 4613), which became P.L. 108-287.</p>
	109 th	H.Res. 5	01/04/2005 ^a	—	—	
2007	109 th	H.Res. 818	05/18/2006	P.L. 109-234 (H.R. 4939)	06/15/2006	<p>House: The initial deeming resolution was Section 2 of H.Res. 818, a special rule providing for the consideration of the Department of Interior Appropriations Act for FY2007 (H.R. 5386). A follow-up measure in the next session was part of the opening-day rules package (Section 511(a)(4) of H.Res. 6).</p> <p>Senate: The deeming resolution was Section 7035 (120 Stat. 489-490) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery for FY2006 (H.R. 4939), which became P.L. 109-234.</p>
	110 th	H.Res. 6	01/05/2007 ^a	—	—	
2011	111 th	H.Res. 1493	07/01/2010	—	—	<p>House: The deeming resolution was agreed to as part of H.Res. 1500, a special rule providing for consideration of a Senate amendment to the Supplemental Appropriations Act, 2010 (H.R. 4899).</p>

Source: Prepared by the Congressional Research Service.

a. Deeming resolution provisions were included in the resolution establishing the House rules at the opening of the Congress.

As **Table 2** shows, the House and Senate have followed different patterns in terms of action on deeming resolutions. For each of the five fiscal years, the House used the same approach, adopting a deeming resolution in the months following the prescribed date for reaching final agreement with the Senate on a budget resolution.

For the first four of the five fiscal years in which a deeming resolution was utilized, the legislative vehicle was a special rule reported by the House Rules Committee. Three of these special rules provided for the consideration of an annual appropriations act (two regular appropriations acts and one supplemental appropriations act) and the other provided for the consideration of a conference report on a budget resolution. Each of these special rules contained a separate section setting forth the deeming resolution provisions. In the fifth of the five fiscal years, the legislative vehicle was not a special rule, but a freestanding resolution that also included other provisions related to budget enforcement. This resolution was automatically adopted when the House agreed to H.Res. 1500, a special rule reported by the House Rules Committee providing for consideration of a Senate amendment to a supplemental appropriations bill.

In the House, initial deeming resolutions have been renewed by the adoption of a new resolution beginning the next session of Congress. Such additional deeming resolution provisions have been adopted by the House as part of the opening-day rules package, usually numbered H.Res. 5 (in 2007, the rules package was H.Res. 6, which was approved by a separate vote on each title over the first two days).

The initial deeming resolution first used by the House, for FY1999, only provided spending allocations to the House Appropriations Committee. In the next three instances (FY2003, FY2005, FY2007), the initial deeming resolution had a broader application, putting into effect the entire budget resolution at its latest stage of action (House passage or House agreement to the conference report). The deeming resolution for FY2011 provided spending allocations to the House Appropriations Committee, and, among other things, extended enforcement provisions of the FY2010 budget resolution. Deeming resolutions have frequently included language blocking the automatic engrossment of a joint resolution increasing the public debt limit, as provided for under House Rule XXVII, forcing a debt-limit increase under regular legislative procedures.¹³

The Senate has employed varied practices with respect to deeming resolutions. For FY1999, it adopted two simple resolutions for this purpose in a single session (the first only provided spending allocations to the Senate Appropriations Committee, but the second had a much broader application). In the following instance, for FY2003, the Senate did not adopt a deeming resolution, despite several attempts to do so. In two instances, for FY2005 and FY2007, the Senate included deeming resolution provisions in statute, including a regular appropriations act (enacted in August) and a supplemental appropriations act (enacted in June). These latter two deeming resolutions focused principally on establishing new allocations of total discretionary spending to the Senate Appropriations Committee, and repealing or making inapplicable appropriations caps for the pertinent fiscal years, included in the prior year's budget resolution, that were considered obsolete and too restrictive.

¹³ See CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill Heniff Jr.

Actions for FY1999

Overall budget policy for FY1999 had been outlined the previous year, in 1997, under the terms of a five-year agreement reached between Congress and President Clinton. Although each chamber passed a budget resolution in 1998, they could not reach agreement on a final version.

In order to impose a binding restraint on annual appropriations acts and other budgetary legislation for that year, the House and Senate followed similar approaches. The Senate passed its version of the FY1999 budget resolution, S.Con.Res. 86, on April 2, 1998. Anticipating an impasse with the House, the Senate also that day agreed to S.Res. 209, a measure setting forth spending allocations to the Senate Appropriations Committee "until a concurrent resolution on the budget for fiscal year 1999 is agreed to by the Senate and the House of Representatives."¹⁴ On October 21, 1998, several weeks after FY1999 had begun, the Senate agreed to S.Res. 312, informally referred to as the "deeming budget resolution."¹⁵ The measure amended S.Res. 209 by incorporating budget aggregates for FY1999-FY2003 and authorizing the chairman of the Senate Budget Committee to file committee spending allocations consistent with them.

The budget aggregates included in S.Res. 312 reflected the policies of the previous budget resolution updated for enacted legislation and revised economic and technical assumptions and provided the basis for enforcement under Section 302, Section 311, and other sections of the 1974 Congressional Budget Act.

On June 19, 1998, the House adopted H.Res. 477, a special rule providing for the consideration of the Military Construction Appropriations Act for FY199 (H.R. 4059). Section 2 of the resolution set forth spending allocations to the House Appropriations Committee for FY1999.

On January 6, 1999, at the beginning of the next session, the House adopted H.Res. 5, a measure setting forth its standing rules. Section 2(a) of the resolution, which established separate orders, directed the chairman of the House Budget Committee to publish budget aggregates and committee spending allocations for FY1999-FY2003 in the *Congressional Record* and stated that these levels should provide the basis for enforcement in lieu of a budget resolution.¹⁶ House Budget Committee Chairman John Kasich submitted the aggregates and allocations on February 25 and March 3, 1999.¹⁷

Actions for FY2003

As the prospect of a second instance without final agreement of the House and Senate on a budget resolution became more likely, both chambers turned to deeming resolutions as an enforcement alternative. Concern about budget discipline also was heightened by anticipation of the expiration toward the end of the session of statutory budget enforcement mechanisms under the Balanced Budget and Emergency Deficit Control Act of 1985 (i.e., the discretionary spending limits and pay-as-you-go requirement, which were enforced by sequestration) and the Senate's pay-as-you-

¹⁴ The text of S.Res. 209 is set forth on page S3160 of the *Congressional Record* of April 2, 1998.

¹⁵ The text of S.Res. 312, and the debate thereon, may be found in the *Congressional Record* of October 21, 1998, on pages S12915 and S12916.

¹⁶ The text of Section 2(a) of H.Res. 5 is printed in the *Congressional Record* of January 6, 1999, on page H34.

¹⁷ See the remarks of Rep. Kasich in the *Congressional Record* of February 25 and March 3, 1999, on pages H809-H 810 and H949-H951, respectively.

go point of order and three-fifths vote requirement in the Senate for waivers of certain points of order under the 1974 Congressional Budget Act.¹⁸

The House adopted a budget resolution for FY2003, H.Res. 353, on March 20, 2002. About two months later, on May 22, and with the Senate not having considered a budget resolution on the floor, the House included a deeming provision in a special rule, H.Res. 428, on a supplemental appropriations act for FY2002 (H.R. 4775).¹⁹ Section 2 of the special rule provided that the budget resolution passed in March by the House, H.Con.Res. 353, "shall have force and effect in the House as though Congress has adopted such concurrent resolution." Additionally, the chairman of the House Budget Committee was directed to have the committee spending allocations and other budgetary information printed in the *Congressional Record*. House Budget Committee Chairman Jim Nussle submitted the required information that same day.²⁰

With regard to the extension of expiring budget enforcement mechanisms, the House Budget Committee held a hearing on the matter on April 25, 2002. Representative John Spratt, ranking minority Member of the House Budget Committee, introduced H.R. 5502, the Restoring Budget Disciplines Act of 2002, on September 30, 2002. His bill would have extended the discretionary spending limits and pay-as-you-go requirement for five fiscal years, through FY2007. The House did not take any action on such legislation. In early October, Speaker Dennis Hastert indicated that the House might not act on such legislation until 2003.²¹

The Senate Budget Committee reported a budget resolution for FY2003, S.Con.Res. 100, on April 11, 2002, but it was not considered on the Senate floor during the session.²²

During June 2002, several efforts were made in the Senate to amend legislation with provisions serving as a "deeming resolution" or otherwise extending certain budget enforcement procedures. On June 5, during consideration of an emergency supplemental appropriations act (H.R. 4775), the Senate rejected Gregg-Feingold amendment #3687, which would have extended certain budget enforcement procedures through FY2007, and Santorum amendment #3765, which would have deemed the budget resolution reported earlier by the Senate Budget Committee to be in effect.²³ The Gregg-Feingold amendment fell on a point of order after a motion to waive the point of order was rejected on a 49-49 vote (rollcall vote #133). The Santorum amendment was tabled by a 96-0 vote (rollcall vote #134). The next day, on June 6, Daschle amendment #3764, an extension of certain budget enforcement procedures through FY2007, also failed.²⁴ The amendment fell on a point of order that it was nongermane after cloture had been invoked.

¹⁸ For more information on these enforcement procedures, see (1) CRS Report RL31137, *Sequestration Procedures Under the 1985 Balanced Budget Act*, by Robert Keith; CRS Report RS21378, *Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith; (3), CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr.; and (4) CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

¹⁹ See the consideration of H.Res. 428 in the *Congressional Record* of May 22, 2002, at pages H2891-H2902.

²⁰ See the remarks of Rep. Jim Nussle in the *Congressional Record* of May 22, 2002, at pages H2929-H2930.

²¹ See "Hastert Supports Renewal of Pay-Go But Expects No Action Until 2003," by Bud Newman in *BNA's Daily Report for Executives*, October 4, 2002.

²² See S.Rept. 107-141; Committee reported S.Con.Res. 100 favorably by a vote of 12-10.

²³ For the text and discussion of the Gregg-Feingold amendment, see pages S5005-S5015 in the *Congressional Record* of June 5, 2002; for the text and discussion of the Santorum amendment, see pages S5018-S5021.

²⁴ For the text and discussion of the Daschle amendment, see pages S5015-S5022 and S5114-S5120 in the *Congressional Record* of June 5 and 6, 2002, respectively.

On June 20, during consideration of the National Defense Authorization Act (S. 2514), the Senate rejected Feingold amendment #3915, as perfected by the modified Reid-Conrad amendment #3916.²⁵ The Feingold amendment, as perfected, would have extended the discretionary spending limits through FY2004 and certain other budget enforcement procedures through FY2007. It fell on a point of order when a motion to waive the point of order was rejected on a 59-40 vote, one short of the required 60 affirmative votes (rollcall vote #159).

On September 18, 2002, Senators Kent Conrad and Pete Domenici, the chairman and ranking minority Member, respectively, of the Senate Budget Committee, sent a letter to Majority Leader Daschle urging action on a resolution extending the Senate's pay-as-you-go point of order and the three-fifths vote requirement for certain waivers of the 1974 Congressional Budget Act.²⁶ Majority Leader Daschle confirmed that the Senate would consider such legislation before adjournment.²⁷

On October 16, the Senate considered S.Res. 304, a measure introduced earlier in the session encouraging the Senate Appropriations Committee to report the regular appropriations bills for FY2003 by July 31, 2002. The Senate agreed to the resolution by unanimous consent, after adopting by unanimous consent Conrad amendment #4886, a substitute amendment extending the Senate's pay-as-you-go point of order and the three-fifths vote requirement for certain waivers of the 1974 Congressional Budget Act through April 15, 2003.²⁸ The resolution did not address extension of the discretionary spending limits and pay-as-you-go requirement in statute.

The following year, in 2003, the House and Senate took additional actions pertaining to budget enforcement for FY2003. On the opening day of the 108th Congress, January 7, 2003, the House adopted H.Res. 5, a measure setting forth its standing rules. Separate orders pertaining to the budget process and other matters were set forth in Section 3 of the resolution.²⁹ Section 3(a)(4) made the provisions of the FY2003 budget resolution adopted in 2002 (H.Con.Res. 353) effective for purposes of budget enforcement in 2003, pending adoption of a FY2003 budget resolution.

In addition, Section 3(a)(4) of H.Res. 5 directed the chairman of the House Budget Committee, when elected, to have the committee spending allocations and other budgetary information printed in the *Congressional Record*. On the next day, January 8, the House adopted H.Res. 14. Section 2 of that resolution authorized Representative Jim Nussle of Iowa, the prospective chairman of the House Budget Committee, to submit the spending allocations and other information required by H.Res. 5, which he did later that day.³⁰

²⁵ For the text of the Feingold amendment, as perfected by the modified Reid-Conrad amendment, and its discussion, see pages S5808-S5821 in the *Congressional Record* of June 20, 2002.

²⁶ The letter, as well as the text of the resolution, is available online at <http://www.senate.gov/~budget/democratic/budgetresFY03/resletter091902.pdf>.

²⁷ See "Daschle Promises Senate Will Debate Resolution Extending Budget Disciplines," by Bud Newman in BNA's *Daily Report for Executives*, October 2, 2002.

²⁸ See the consideration of S.Res. 304 in the *Congressional Record* of October 16, 2002, at pages S10527-S10531 and page S10553. Also, see "In Late Deal, Senate Approves by Voice Vote Renewing Expiring Budget Enforcement Rules," by Bud Newman in BNA's *Daily Report for Executives*, October 17, 2002.

²⁹ For more information on this topic, see CRS Report RL31728, *House Rules Changes Affecting the Congressional Budget Process in the 108th Congress (H.Res. 5)*, by Bill Heniff Jr.

³⁰ See the remarks of Rep. Jim Nussle in the *Congressional Record* of January 8, 2003, at pages H74-H75. Rep. Nussle was elected chairman of the House Budget Committee on January 8 by virtue of the House's adoption of H.Res. 24.

On April 11, 2003, the House and Senate reached final agreement on a budget resolution for FY2004 (H.Con.Res. 95).³¹ In addition to setting forth the appropriate budgetary levels for FY2004-FY2013, the budget resolution also established budgetary levels for FY2003. The FY2004 budget resolution also included certain procedural requirements applicable to FY2003. In particular, Section 421 directed the chairmen of the House and Senate Budget Committees to make appropriate revisions in spending allocations to accommodate any supplemental appropriations for FY2003 enacted into law before May 1, 2003.³²

As of the end of the 109th Congress, the House and Senate did not renew the discretionary spending limits and PAYGO requirement in statute that expired at the end of 2002.

Actions for FY2005

The Senate Budget Committee initiated action on the budget resolution for FY2005 by reporting S.Con.Res. 95 on March 5, 2004 (in lieu of a written report to accompany the measure, a committee print was issued, S.Prt. 108-365, March 2004). Two weeks later, the House Budget Committee reported its version of the FY2005 budget resolution, H.Con.Res. 393 (H.Rept. 108-441, March 19, 2004). The Senate passed S.Con.Res. 95 on March 12, and the House passed H.Con.Res. 393 on March 25.

At the end of March, both chambers agreed to go to conference on S.Con.Res. 95. A conference report on the measure was filed in the House on May 19 (H.Rept. 108-498). The House agreed to the conference report on May 19, but the Senate did not consider it.

The House considered the conference report on the FY2005 budget resolution under the terms of a special rule, H.Res. 649 (H.Rept. 108-500, May 19, 2004); the special rule was adopted on May 19 by a vote of 220-204. In anticipation of the possibility that final Senate approval of the budget resolution might be delayed, or might not occur at all, a "deeming resolution" provision was included in Section 2 of H.Res. 649.

By adopting H.Res. 649, the House put into effect the budget policies embodied in the conference report on S.Con.Res. 95 as adopted by the House, as well as the procedures under Title III of the 1974 Congressional Budget Act used to enforce them. Accordingly, in the House regular appropriations acts for FY2005 and other budgetary measures are subject to aggregate spending ceilings and revenue floors, as well as allocations of spending to committees.

Section 2(b) of H.Res. 649 barred the automatic engrossment of a measure raising the debt limit by the amount recommended in the budget resolution, an action otherwise required under House Rule XXVII whenever a budget resolution is finally agreed to by the House and Senate. Consequently, the automatic engrossment of such a measure could have occurred in 2004 only if the Senate adopted the conference report on S.Con.Res. 95. Congress and the President enacted legislation raising the debt limit (P.L. 108-415; November 19, 2004) under regular legislative procedures. (In most instances, the House and Senate use other means to enact debt-limit legislation.³³)

³¹ See the conference report on H.Con.Res. 95, H.Rept. 108-71 (April 10, 2003).

³² P.L. 108-11, the Emergency Wartime Supplemental Appropriations Act, 2003, was enacted into law on April 16, 2003.

³³ See CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill (continued...)

For the two months following House action on the deeming resolution provision, the Senate did not consider the conference report on the FY2005 budget resolution nor act on a deeming resolution. During this period, however, Senate action on the regular appropriations acts for FY2005 was subject to a ceiling of \$814 billion on total appropriations for that year included in the prior year's budget resolution, which remained in effect.

The \$814 billion ceiling for FY2005 presented the Senate with two problems. First, the conference agreement on the FY2005 budget resolution revised the recommended level of appropriations for that fiscal year upward by \$7 billion to a new total of \$821 billion. In order for the Senate to consider regular appropriations acts for FY2005 at a level comparable to House action, the \$7 billion difference would have to be accommodated through a procedure such as designating an equivalent amount of appropriations to be emergency spending, a course of action that was considered less desirable. Second, the \$814 billion ceiling applied to total appropriations only; it did not provide a basis for the enforcement of spending levels during the consideration of individual acts (unless all 13 of the individual acts were packaged together into a single, omnibus act).

On July 22, 2004, the Senate resolved these problems by adopting the conference report on H.R. 4613, the Defense Appropriations Act for FY2005. President Bush signed the measure into law on August 5, 2004, as P.L. 108-287. Section 14007 (118 Stat. 1014) of the act, which took effect upon enactment, established the revised level of \$821 billion as the allocation of new budget authority to the Senate Appropriations Committee for purposes of Section 302(a) of the 1974 act (and repealed the outdated limit of \$814 billion in the prior year's budget resolution).

In 2005, the House took additional actions pertaining to budget enforcement for FY2005. On the opening day of the 109th Congress (January 4, 2005), the House adopted H.Res. 5, a measure setting forth its standing rules. Separate orders pertaining to the budget process and other matters were set forth in Section 3 of the resolution.³⁴ Section 3(a)(4) made the conference report on the FY2005 budget resolution (S.Con.Res. 95), adopted by the House on May 19, 2004, but not considered by the Senate, effective for purposes of budget enforcement in 2005, pending adoption of a FY2005 budget resolution. The House's deeming resolution also provided for the continuation into the new Congress of the Section 302(a) allocations for FY2005, as made and adjusted in the prior session.

Actions for FY2007

House and Senate actions on deeming resolutions for FY2007 were similar to the pattern that occurred two years earlier.

The Senate Budget Committee initiated action on the budget resolution for FY2007 by reporting S.Con.Res. 83 on March 10, 2006 (in lieu of a written report to accompany the measure, a committee print was issued, S.Prt. 109-057, March 2006). Three weeks later, the House Budget Committee reported its version of the FY2007 budget resolution, H.Con.Res. 376 (H.Rept. 109-402, March 31, 2006). The Senate passed S.Con.Res. 83 on March 16, and the House passed

(...continued)

Heniff Jr.

³⁴ For more information on this topic, see CRS Report RS22021, *House Rules Changes Affecting the Congressional Budget Process in the 109th Congress (H.Res. 5)*, by Bill Heniff Jr.

H.Con.Res. 376 on May 18. Unlike the case for FY2005, however, the House and Senate did not take any conference action on the FY2007 budget resolution.

Once again, the House included deeming resolution provisions in a special rule on an annual appropriations act. On May 18, 2006, the House agreed to H.Res. 818 (H.Rept. 109-469, May 17, 2006), a special rule providing for the consideration of H.R. 5386, the Interior Appropriations Act for FY2007; the House agreed to the measure by a vote of 218-192. Section 2 of H.Res. 818 put into effect the budget policies embodied in the FY2007 budget resolution, H.Con.Res. 376, as adopted by the House, as well as the procedures under Title III of the 1974 Congressional Budget Act used to enforce them. In addition, Section 2 barred the automatic engrossment of a measure raising the debt limit by the amount recommended in the budget resolution, an action otherwise required under House Rule XXVII whenever a budget resolution is finally agreed to by the House and Senate. Congress and the President increased the debt limit in 2006 under regular legislative procedures (P.L. 109-182, March 20, 2006).

Several weeks following House action on the deeming resolution provision, the Senate addressed the matter as well. As had been the case two years earlier, Senate action on the regular appropriations acts for FY2007 was subject to a cap established in the budget resolution for the prior year that was judged to be too tight. The FY2007 budget resolution passed by the Senate, as well as by the House, reflected a cap on appropriations for the fiscal year of \$873 billion, but the cap for that fiscal year established in the FY2006 budget resolution was \$7 billion lower, at \$866 billion. This situation raised the same problems that the Senate faced in 2004.

On June 15, 2006, the Senate resolved the matter by adopting the conference report on H.R. 4939, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery for FY2006. President Bush signed the measure into law the same day, as P.L. 109-234. Section 7035 (120 Stat. 489-490) of the act, which took effect upon enactment, established the revised level of \$873 billion as the allocation of new budget authority to the Senate Appropriations Committee for purposes of Section 302(a) of the 1974 act (and made the outdated limit of \$866 billion in the prior year's budget resolution inapplicable). Further, the \$873 billion cap was made subject to provisions in the Senate-passed budget resolution pertaining to limitations and adjustments applicable to emergency spending.

The following year, in 2007, the House took additional actions pertaining to budget enforcement for FY2007. During the first two days of the 110th Congress, January 4 and 5, the House adopted H.Res. 6 a measure setting forth its standing rules. Separate votes were taken on each title of the measure (rather than a single vote on adoption of the measure in its entirety); the first two titles were agreed to on January 4 and the remaining three titles were agreed to on January 5. Title V, which dealt with various special orders and miscellaneous matters, was agreed to by a vote of 232-200.

Special orders pertaining to the budget process and other matters were set forth in Section 511 of the resolution.³⁵ Section 511(a)(4)(A) made the provisions of the FY2007 budget resolution adopted in the preceding year (H.Con.Res. 376) effective for purposes of budget enforcement in 2007, pending adoption of a FY2008 budget resolution.

³⁵ For more information on this topic, see CRS Report RL34149, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress*, by Bill Heniff Jr.

In addition, Section 511(a)(4)(B) of H.Res. 6 directed the chairman of the House Budget Committee, when elected, to have the committee spending allocations and other budgetary information printed in the *Congressional Record*. On February 6, 2007, Representative John Spratt, the chairman of the House Budget Committee, submitted the information required by H.Res. 6.³⁶

The House and Senate reached final agreement on the FY2008 budget resolution (S.Con.Res. 21) on May 17, 2007.³⁷ In addition to recommending spending levels for FY2008-FY2012, the measure revised the spending levels for FY2007. In the House, the revised spending levels for FY2007 effectively superseded the levels established in the deeming resolution automatically (because the deeming resolution was in effect only until the FY2008 budget resolution was adopted). In the Senate, however, affirmative action had to be taken to terminate the deeming resolution, thereby avoiding any conflict with the newly revised spending levels. Accordingly, Section 208 of the FY2008 budget resolution stated that "Section 7035 of P.L. 109-234 shall no longer apply in the Senate."

Actions for FY2011

Several events occurred in early 2010 that may have affected the unfolding of the FY2011 budget process, including the adoption of a budget resolution. First, congressional consideration of health care reform legislation³⁸ extended several months into 2010, when Congress is typically beginning work on the budget resolution. Combined with the new legislation's impact on long-term direct spending, this may have inhibited support for adopting of a budget for FY2011. Second, in February of 2010, Congress passed the Statutory Pay-As-You-Go Act of 2010,³⁹ establishing a budget enforcement mechanism designed to prevent new direct spending and revenue legislation from increasing the deficit over a congressional session. With the enactment of Statutory PAYGO, Congress created enforceable parameters to which new direct spending and revenue legislation must adhere, arguably reducing the need to adopt a new budget resolution.

Lastly, also in February 2010, President Obama issued an executive order creating the National Commission on Fiscal Responsibility and Reform (the Fiscal Commission), tasked with devising a plan that would balance the federal budget by FY2015.⁴⁰ The commission comprises 12 sitting Members of Congress, appointed by Senate and House leaders, and six additional members appointed by the President. The recommendations of the commission must be submitted to the President by December 1, 2010, with 14 out of 18 votes needed to report recommendations,⁴¹ and

³⁶ See the remarks of Rep. John Spratt in the *Congressional Record* of February 6, 2007, at p. H1234.

³⁷ See *Concurrent Resolution on the Budget for Fiscal Year 2008*, conference report to accompany S.Con.Res. 21, H.Rept. 110-153 (May 16, 2007).

³⁸ H.R. 3590, Patient Protection and Affordable Care Act, and H.R. 4872, Health Care and Education Reconciliation Act of 2010.

³⁹ P.L. 111-139.

⁴⁰ That is, balancing the budget excluding net interest payments, referred to in the executive order as the primary deficit.

⁴¹ President of the United States, *Executive Order 13531—National Commission on Fiscal Responsibility and Reform*, February 18, 2010, available at <http://www.whitehouse.gov/the-press-office/executive-order-national-commission-fiscal-responsibility-and-reform>.

some congressional leaders stated a desire to await the recommendations of the President's Fiscal Commission before taking a vote on a long-term budget plan.⁴²

In spite of these factors, the Senate Budget Committee reported a budget resolution for FY2011 (S.Con.Res. 60) on April 26, 2010, but the Senate took no further action to consider the measure. The House Budget Committee did not report a budget resolution amidst reports of an impasse over discretionary spending levels.⁴³

On June 22, 2010, House Majority Leader Steny Hoyer stated that, "It isn't possible to debate and pass a realistic, long-term budget until we've considered the bipartisan commission's deficit-reduction plan, which is expected in December. I believe that Congress must take up and vote on that plan." He went on to say that the House was "working to adopt a budget enforcement resolution written by [Budget Committee] Chairman John Spratt, which will set limits on discretionary spending that require further cuts below the President's budget; reinforce our commitment to PAYGO; direct committees to identify reforms to eliminate waste, duplication, and inefficiencies within their jurisdiction; endorse the goals of the president's bipartisan fiscal commission; and reiterate the commitment to vote on the commission's recommendations."⁴⁴

As the House was preparing to take action on a deeming resolution, the Senate signaled that it would not move forward on the budget resolution reported from the Senate Budget Committee in April. Senate Budget Committee Chairman Kent Conrad stated, "Obviously, I'd prefer that we do what I've done, which is take a budget resolution through the committee, prepared to take it to the floor. But if [the House is] not going to do it, it makes no sense for us to do it, because you can't reach conclusion ... What does make sense, to me, is to put in a budget enforcement mechanism, like the one [the House is] discussing, so that you do have spending limits put in place."⁴⁵

On July 1, 2010, the House agreed to H.Res. 1500, a special rule providing for consideration of Senate amendments to H.R. 4899, making emergency supplemental appropriations for disaster relief and summer jobs for the fiscal year ending September 30, 2010, and for other purposes. H.Res. 1500 also included provisions modifying the House PAYGO rule,⁴⁶ as well as a provision adopting H.Res. 1493, which provided for budget enforcement for FY2011 until the beginning of the 112th Congress.

H.Res. 1493, referred to as a "budget enforcement resolution," set forth enforceable spending allocations to the House Appropriations Committee for FY2011 and included other provisions, such as extending discretionary spending enforcement provisions from the FY2010 budget resolution.⁴⁷ H.Res. 1493 granted authority to the House Budget Committee chairman to exclude the effect of any "current policy adjustment" from a determination of the budgetary effects of any

⁴² Office of the Majority Leader Steny Hoyer, "Majority Leader Hoyer Delivers Speech on Deficit Reduction at Third Way Event," press release, June 22, 2010, <http://majorityleader.house.gov/media/statements.cfm?pressReleaseID=4293>. Ibid

⁴³ Chuck Conlon and Greg Vadala, "Republicans Renewed their Criticisms of Democrats Concerning the Possibility That the House May Not Consider a Budget Resolution This Year.," *CQ.com*, May 11, 2010, Budget Tracker. David Clarke and Chuck Conlon, "Democrats Eye Pay-as-You-Go Language for 'Deeming' Measure," *CQ Today Online News*, May 14, 2010.

⁴⁴ Ibid.

⁴⁵ David Clarke and Greg Vadala, "Democrats Plan Short-Term Budgets," *CQ Today Online News*, June 22, 2010.

⁴⁶ House Rule XXI, Clause 10(a).

⁴⁷ S.Con.Res. 13 (111th Congress).

provision in a bill, joint resolution, amendment, or conference report.⁴⁸ This provision replaced a provision in the prior year’s budget resolution that granted similar authority to the House Budget Committee chairman.⁴⁹

H.Res. 1493 also included non-binding “sense of the House” language on deficit reduction stating, among other things, that the budget should be in primary balance by 2015; that House committee chairs should identify changes in law that help achieve deficit reduction by reducing waste, fraud, abuse, and mismanagement; and that prior to the close of the 111th Congress, any recommendations made by the President’s Fiscal Commission and approved by the Senate shall be brought to a vote in the House. Lastly, H.Res. 1493 stated that any deficit reduction achieved by the enactment of recommendations made by the President’s Fiscal Commission should be excluded from the determination of budgetary effects of such legislation in the House so that, for the purposes of PAYGO, it is not available as an offset for any subsequent legislation.

On January 5, 2011, the House adopted H.Res. 5, a measure setting forth House standing rules for the 112th Congress. Section 3(b) of the resolution, which establishes separate orders, directs the chairman of the House Budget Committee to insert in the *Congressional Record* budget aggregates and allocations as would be included in a budget resolution and stated that these levels shall be considered as contained in a concurrent resolution on the budget for FY2011.⁵⁰ This was similar to action taken for FY1999, discussed above.

The Senate did not agree to a formal deeming resolution specifying an enforceable 302(a) spending allocation for the Senate Appropriations Committee. On July 15, 2010, the Senate Appropriations Committee, however, moved forward with consideration of FY2011 regular appropriations bills. Senate Appropriations Committee Chairman Daniel Inouye stated, “while the Senate Budget Committee passed a resolution which is \$4 billion below the President’s request, the House did not act. Accordingly, the Committee needs to approve subcommittee funding levels at which we can mark up our twelve appropriations bills.”⁵¹ The Senate Appropriations Committee moved forward with the consideration of FY2011 appropriations bills relying on levels referred to as “subcommittee spending guidance,”⁵² although such levels were not binding for budget enforcement purposes on the Senate floor.

⁴⁸ The “current policy adjustment” includes four specific policy areas as described in the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139). The four specified areas are: Medicare physicians’ payments, the estate and gift tax, the alternative minimum tax (AMT), and extension of certain income tax cuts for the middle-class enacted in 2001 and 2003.

⁴⁹ H.Res. 1493 stated that Section 421 of the budget resolution for FY2010 (S.Con.Res.13 111th Congress) shall no longer apply.

⁵⁰ H.Res. 5 (112th Congress).

⁵¹ United States Senate Committee on Appropriations, “Chairman Inouye Opening Statement at July 15 Full Committee Markup,” press release, July 14, 2010, <http://appropriations.senate.gov/news.cfm?method=news.view&id=567dffbd-691b-40d6-a210-c512322cf023>.

⁵² Senate Appropriations FY2011 Subcommittee Spending Guidance is available at <http://appropriations.senate.gov/news.cfm?method=news.view&id=0753bbc3-1b0d-4115-a277-63b041c69e12>.

Waivers of Section 303 of the 1974 Congressional Budget Act

The tardy adoption of a budget resolution, or the failure to adopt it at all, leads to another enforcement problem, but one that involves timing issues rather than substantive enforcement. Under Section 303(a) of the 1974 Congressional Budget Act, the House and Senate generally may not consider spending or revenue legislation for a fiscal year until the budget resolution for that fiscal year has been adopted.

The section poses less of a problem for the House than it does for the Senate. First, Section 303(b) provides an exception in the House for general appropriations bills considered after May 15, but this exception does not apply in the Senate. Second, the House may include waivers of the Section 303(a) point of order in special rules governing the consideration of individual measures.

Section 303(c) also bars the consideration of appropriations measures in the Senate until the spending allocation to the Senate Appropriations Committee required by Section 302(a) has been made. Unlike many other points of order under the 1974 act, waivers of Section 303(a) only require a simple majority vote in the Senate.

Over the years, the Senate has waived Section 303(a) dozens of times for various types of budgetary legislation. In many years, however, the Senate has chosen not to waive Section 303(a) with respect to the consideration of regular appropriations bills. Instead, the Senate Appropriations Committee in these instances generally delayed action on its bills until after the budget resolution had been adopted. Data collected from the 94th-100th Congresses show that, with respect to regular appropriations bills, Section 303(a) waivers were granted in only 13 cases,⁵³ as follows:

- FY1984, for three bills considered in June 1983 (the FY1984 budget resolution was adopted on June 23);
- FY1985, for eight bills considered June-September 1984 (the FY1985 budget resolution was adopted on October 1); and
- FY1986, for two bills considered in July-August 1985 (the FY1986 budget resolution was adopted on August 1).

In most of these 13 cases, the waiver was obtained under a successful motion directed specifically to waiving Section 303(a). In several other instances, the waiver was obtained under a unanimous consent request. The use of the waiver motions or unanimous consent requests in these cases attested to the consensus regarding the need to consider the regular appropriations bills. After all, such motions are subject to extended debate, and any Senator can raise an objection to a unanimous consent request. An extended debate on a motion, and an objection to a unanimous consent request, occurred only once (both occurred in August 1984 in connection with the Agriculture appropriations bill for FY1985). The extended debate on the waiver motion began on

⁵³ See the following out-of-print reports, which are available from the author: (1) CRS Report 89-37, *Senate Consideration of Regular Appropriations Bills Under Waivers of Section 303(a) of the 1974 Budget Act*, by Robert Keith; and (2) CRS Report 89-76, *Waivers of the 1974 Budget Act Considered in the Senate During the 100th Congress*, by Robert Keith.

August 1 and was brought to a close on August 8, when the Senate voted 68-34 to invoke cloture. The subsequent vote to approve the waiver motion (63-34) was the only rollcall vote taken on such motions; the others were approved by voice vote.

In more recent years, the budget resolution has been adopted in a fairly timely manner. During the period covering the 102nd Congress through the 111th Congress, of the 15 budget resolutions that were adopted, 11 were adopted in April or May; the remaining four were adopted in June. In addition, in recent years the Senate sometimes has deferred the initial consideration of some of the regular appropriations bills until late in the session due to political difficulties, or even abandoned the consideration of individual appropriations bills in favor of consolidated appropriations measures. Accordingly, in the 15 years during this period that budget resolutions were adopted, the Senate Appropriations Committee was able to avoid the need for waivers of Section 303(a).

During the years in which the House and Senate failed to agree on a budget resolution, regular appropriations bills generally were taken up by unanimous consent, without efforts to raise points of order under Section 303(a).

Appendix. Text of Deeming Resolutions

FY1999

▪ H.Res. 477, Section 2 (105th Congress)

Sec. 2. Pending the adoption by the Congress of a concurrent resolution on the budget for FY1999, the following allocations contemplated by section 302(a) of the Congressional Budget Act of 1974 shall be considered as made to the Committee on Appropriations:

- (1) New discretionary budget authority: \$531,961,000,000.
- (2) Discretionary outlays: \$562,277,000,000.
- (3) New mandatory budget authority: \$298,105,000,000.
- (4) Mandatory outlays: \$290,858,000,000.

▪ H.Res. 5, Section 2(a)(1) (106th Congress)

Sec. 2. Separate Orders.

(a) Budget Enforcement—(1) Pending the adoption by the Congress of a concurrent resolution on the budget for fiscal year 1999—

(A) the chairman of the Committee on the Budget, when elected, shall publish in the Congressional Record budget totals contemplated by section 301 of the Congressional Budget Act of 1974 and allocations contemplated by section 302(a) of that Act for each of the fiscal years 1999 through 2003;

(B) those totals and levels shall be effective in the House as though established under a concurrent resolution on the budget and sections 301 and 302 of that Act; and

(C) the publication of those totals and levels shall be considered as the completion of Congressional action on a concurrent resolution on the budget for fiscal year 1999.

▪ S.Res. 209 (105th Congress)

Resolved, That for the purposes of section 302(a) of the Congressional Budget Act of 1974, the estimated allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations shall be—

For non-defense—

- (1) \$289,547,000,000 in total budget outlays, and
- (2) \$255,450,000,000 in total new budget authority;

for defense—

- (1) \$266,635,000,000 in total budget outlays, and
- (2) \$271,570,000,000 in total new budget authority;

for violent crime reduction—

- (1) \$4,953,000,000 in total budget outlays, and
- (2) \$5,800,000,000 in total new budget authority;

for mandatory—

- (1) \$291,731,000,000 in total budget outlays, and
- (2) \$299,159,000,000 in total new budget authority; until a concurrent resolution on the budget for fiscal year 1999 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

FY1999—continued

▪ **S.Res. 312 (105th Congress)**

Resolved, That Senate Resolution 209, agreed to April 2, 1999 (105th Congress), is amended by striking all after the resolving clause and inserting the following:

Section 1. Senate Budget Levels.

(a) In General.—For the purpose of enforcing the Congressional Budget Act of 1974 and section 202 of House Concurrent Resolution 67 (104th Congress), the following levels, amounts, and allocations shall apply in the Senate in the same manner as a concurrent resolution on the budget for fiscal year 1999 and including the appropriate budgetary levels for fiscal years 2000, 2001, 2002, and 2003:

(1) Federal Revenues.—The recommended levels of Federal revenues are as follows:

Fiscal year 1999: \$1,358,919,000,000.

Fiscal year 2000: \$1,388,039,000,000.

Fiscal year 2001: \$1,424,774,000,000.

Fiscal year 2002: \$1,480,891,000,000.

Fiscal year 2003: \$1,534,362,000,000.

(2) New Budget Authority.—The appropriate levels of new budget authority are as follows:

Fiscal year 1999: \$1,417,136,000,000.

Fiscal year 2000: \$1,453,654,000,000.

Fiscal year 2001: \$1,489,637,000,000.

Fiscal year 2002: \$1,517,259,000,000.

Fiscal year 2003: \$1,577,949,000,000.

(3) Budget Outlays.—The appropriate levels of total budget outlays are as follows:

Fiscal year 1999: \$1,402,185,000,000.

Fiscal year 2000: \$1,438,029,000,000.

Fiscal year 2001: \$1,473,660,000,000.

Fiscal year 2002: \$1,484,272,000,000.

Fiscal year 2003: \$1,548,914,000,000.

(4) Social Security Revenues.—The amounts of revenues of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund are as follows:

Fiscal year 1999: \$441,749,000,000.

Fiscal year 2000: \$460,115,000,000.

Fiscal year 2001: \$477,722,000,000.

Fiscal year 2002: \$497,290,000,000.

Fiscal year 2003: \$518,752,000,000.

(5) Social Security Outlays.—The amounts of outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund are as follows:

Fiscal year 1999: \$321,261,000,000.

Fiscal year 2000: \$330,916,000,000.

Fiscal year 2001: \$344,041,000,000.

Fiscal year 2002: \$355,614,000,000.

Fiscal year 2003: \$368,890,000,000.

(b) Revisions.—

(1) In General.—The Chairman of the Senate Committee on the Budget may file 1 set of revisions to the levels, amounts, and allocations provided by this resolution and those revisions shall only reflect legislation enacted in the 105th Congress and not assumed in this resolution.

(2) Congressional Pay-Go Scorecard.—Upon making revisions pursuant to paragraph (1) and for the purpose of enforcing section 202 of House Concurrent Resolution 67 (104th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and receipts for any fiscal year to zero.

(c) Effective Date and Expiration.—This resolution shall—

(1) take effect on the date that the Congress adjourns sine die or the date the 105th Congress expires, whichever date is earlier; and

(2) expire on the effective date of a concurrent resolution on the budget for fiscal year 1999 agreed to pursuant to section 301 of the Congressional Budget Act of 1974.

Sec. 2. Committee Allocations.

Upon the adoption of this resolution, the Chairman of the Committee on the Budget shall file allocations consistent with this resolution pursuant to section 302(a) of the Congressional Budget Act of 1974.

FY2003

▪ H.Res. 428, Section 2 (107th Congress)

Sec. 2. (a) Pending the adoption of a concurrent resolution on the budget for fiscal year 2003, the provisions of House Concurrent Resolution 353, as adopted by the House, shall have force and effect in the House as though Congress has adopted such concurrent resolution.

(b) The chairman of the Committee on the Budget shall submit for printing in the Congressional Record—

(1) the allocations contemplated by section 302(a) of the Congressional Budget Act of 1974, which shall be considered to be such allocations under a concurrent resolution on the budget;

(2) ‘Accounts Identified for Advance Appropriations,’ which shall be considered to be the programs, projects, activities, or accounts referred to section 301(b) of House Concurrent Resolution 353; and

(3) an estimated unified surplus, which shall be considered to be the estimated unified surplus set forth in the report of the Committee on the Budget accompanying House Concurrent Resolution 353 referred to in section 211 of such concurrent resolution.

(c) The allocation referred to in section 231(d) of House Concurrent Resolution 353 shall be considered to be the corresponding allocation among those submitted by the chairman of the Committee on the Budget under subsection (b)(1).

▪ **H.Res. 5, Section 3(a)(4) (108th Congress)**

Sec. 3. Separate Orders.

(a) Budget Matters.—

...

(4)(A) During the One Hundred Eighth Congress, pending the adoption of a concurrent resolution on the budget for fiscal year 2003, the provisions of House Concurrent Resolution 353 of the One Hundred Seventh Congress, as adopted by the House, shall have force and effect in the House as though the One Hundred Eighth Congress has adopted such a concurrent resolution.

(B) The chairman of the Committee on the Budget (when elected) shall submit for printing in the Congressional Record—

(I) the allocations contemplated by section 302(a) of the Congressional Budget Act of 1974 to accompany the concurrent resolution described in subparagraph (A), which shall be considered to be such allocations under a concurrent resolution on the budget;

(ii) “Accounts Identified for Advance Appropriations”, which shall be considered to be the programs, projects, activities, or accounts referred to section 301(b) of House Concurrent Resolution 353 of the One Hundred Seventh Congress, as adopted by the House; and

(iii) an estimated unified surplus, which shall be considered to be the estimated unified surplus set forth in the report of the Committee on the Budget accompanying House Concurrent Resolution 353 of the One Hundred Seventh Congress referred to in section 211 of such concurrent resolution.

(C) The allocation referred to in section 231(d) of House Concurrent Resolution 353 of the One Hundred Seventh Congress, as adopted by the House, shall be considered to be the corresponding allocation among those submitted by the chairman of the Committee on the Budget under subparagraph (B)(I).

FY2005

▪ **H.Res. 649, Section 2 (108th Congress)**

Sec. 2. (a) Upon adoption in the House of the conference report to accompany Senate Concurrent Resolution 95, and until a concurrent resolution on the budget for fiscal year 2005 has been adopted by the Congress—

(1) the provisions of the conference report and its joint explanatory statement shall have force and effect in the House; and

(2) for purposes of title III of the Congressional Budget Act of 1974, the conference report shall be considered adopted by the Congress.

(b) Nothing in this section may be construed to engage rule XXVII.

▪ **H.Res. 5, Section 3(a)(4) (109th Congress)**

Sec. 3. Separate Orders.

(a) Budget Matters.—

...

(4)(A) During the One Hundred Ninth Congress, until a concurrent resolution on the budget for fiscal year 2005 is adopted by the Congress, the provisions of the conference report to accompany Senate Concurrent Resolution 95 of the One Hundred Eighth Congress shall have force and effect in the House as though the One Hundred Ninth Congress has adopted such conference report.

(B) The allocations of spending authority included in the conference report, as adjusted during the 108th Congress, shall be considered the allocations contemplated by section 302(a) of the Congressional Budget Act of 1974.

▪ **P.L. 108-287, Section 14007 (118 Stat. 1014)**

Sec. 14007. 2005 Discretionary Limits.

(a) In General.—For the purposes of section 302(a) of the Congressional Budget Act of 1974, the allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations for fiscal year 2005 shall be—

(1) for total discretionary spending—

(A) \$821,419,000,000 in total new budget authority; and

(B) \$905,328,000,000 in total budget outlays; and

(2) for mandatory—

(A) \$460,008,000,000 in total new budget authority; and

(B) \$445,525,000,000 in total budget outlays;

until a concurrent resolution on the budget for fiscal year 2005 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

(b) Adjustments and Limits.—The following limits and adjustments provided in S.Con.Res. 95 (108th Congress) shall apply to subsection (a):

(1) Sections 311 and 403 for fiscal year 2005.

(2) Sections 312 and 402 which shall apply to both fiscal years 2004 and 2005.

(c) Definition.—In this section, the term ‘total discretionary spending’ includes the discretionary category, the mass transit category, and the highway category.

(d) Repeal.—Section 504 of H.Con.Res. 95 (108th Congress) is repealed.

(e) Effective Date.—This section shall take effect on the date of enactment of this Act.

FY2007

▪ H.Res. 818, Section 2 (109th Congress)

Sec. 2. (a) Upon adoption of House Concurrent Resolution 376, and until a concurrent resolution on the budget for fiscal year 2007 has been adopted by the Congress, the provisions of House Concurrent Resolution 376 and its accompanying report shall have force and effect in the House for all purposes of the Congressional Budget Act of 1974 as though adopted by the Congress.

(b) Nothing in this section may be construed to engage rule XXVII.

▪ H.Res. 6, Section 511(a)(4) (110th Congress)

Sec. 511. Separate Orders.

(a) Budget Matters.—

...

(4)(A) During the One Hundred Tenth Congress, pending the adoption of a concurrent resolution on the budget for fiscal year 2008, the provisions of House Concurrent Resolution 376 of the One Hundred Ninth Congress shall have force and effect in the House as though the One Hundred Tenth Congress has adopted such a concurrent resolution.

(B) The chairman of the Committee on the Budget (when elected) shall submit for printing in the Congressional Record—

(I) the allocations contemplated by section 302(a) of the Congressional Budget Act of 1974 to accompany the concurrent resolution described in subparagraph (A), which shall be considered to be such allocations under a concurrent resolution on the budget; and

(ii) “Accounts Identified for Advance Appropriations”, which shall be considered to be the program, projects, activities, or accounts referred to in section 401(b) of House Concurrent Resolution 376 of the One Hundred Ninth Congress, as adopted by the House.

▪ **P.L. 109-234, Section 7035 (120 Stat. 489-490)**

Sec. 7035. 2007 Discretionary Limits. (a) In General.—For the purposes of section 302(a) of the Congressional Budget Act of 1974, the allocations of the appropriate levels of budget totals for the Committee on Appropriations of the Senate for fiscal year 2007 shall be—

(1) \$872,778,000,000 in total new budget authority for general purposes discretionary;

and

(2) \$577,241,000,000 in total new budget authority for mandatory; until a concurrent resolution on the budget for fiscal year 2007 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

(b) Adjustments and Limits.—The limits and adjustments provided in section 402 of S.Con.Res. 83 (109th Congress), as passed the Senate, for fiscal year 2007 shall apply to subsection (a).

(c) Application.—The section 302(a) allocations in subsection (a) shall be deemed to be allocations set forth in the joint explanatory statement of managers accompanying the concurrent resolution on the budget for fiscal year 2007, as though adopted by Congress, for all purposes under titles III and IV of the Congressional Budget Act of 1974. Section 302(a)(4) of the Congressional Budget Act of 1974 shall not apply to this section.

(d) Exceptions.—The following provisions of H.Con.Res. 95 (109th Congress) shall not apply in the Senate—

(1) Section 404; and

(2) until January 3, 2007, section 403(b)(2).

(e) Effective Date.—This section shall take effect on the date of enactment of this Act.

FY2011

▪ **H.Res. 1493 (111th Congress)**

(a) Budget Enforcement- For the purposes of budget enforcement:

(1) BUDGET ALLOCATIONS- The following allocations shall be the allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974 to the Committee on Appropriations and shall be enforceable under section 302(f)(1) of that Act:

(A) FISCAL YEAR 2010- In addition to amounts allocated under the concurrent resolution on the budget for fiscal year 2010 (S.Con.Res. 13), the allocation for new discretionary budget authority to the Committee on Appropriations shall be increased up to \$538,000,000 for program integrity initiatives listed in section 422(a) of S.Con.Res. 13. The outlay allocation for fiscal year 2010 and fiscal year 2011 shall be adjusted accordingly.

(B) FISCAL YEAR 2011-

(i) New discretionary budget authority, \$1,121,000,000,000.

(ii) Discretionary outlays, \$1,314,000,000,000.

(iii) New mandatory budget authority, \$765,584,000,000.

(iv) Mandatory outlays, \$755,502,000,000.

(2) DISCRETIONARY SPENDING ENFORCEMENT PROVISIONS- The provisions of the concurrent resolution on the budget for fiscal year 2010 (S.Con.Res. 13) shall remain in force and effect in the House, except that the references in section 424 (point of order against advance appropriations) to fiscal years 2010 and 2011 shall be references to fiscal years 2011 and 2012, respectively.

(b) Additional Enforcement Provisions- For the purposes of the Congressional Budget Act of 1974 or the concurrent resolution on the budget for fiscal year 2010 (S.Con.Res. 13)-

(1) section 421 of S.Con.Res. 13 shall no longer apply to the consideration of bills, joint resolutions, amendments, or conference reports;

(2) the chairman of the Committee on the Budget may exclude the effect of any 'current policy adjustment' as provided in section 4(c) of the Statutory Pay-As-You-Go Act of 2010 from a determination of the budgetary effects of any provision in a bill, joint resolution, amendment, or conference report; and

(3) the terms 'budget year', 'current year', and 'direct spending' have the meanings given those terms in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, except that the term 'direct spending' shall include provisions in appropriation Acts that make outyear modifications to substantive law as described under section 3(4)(C) of the Statutory Pay-As-You-Go Act of 2010.

(c) Sense of the House on Deficit Reduction-

(1) FINDINGS- The House finds that—

(A) passage of the Statutory Pay-As-You-Go Act of 2010, passage of legislation to reform the defense acquisition system, and passage of health care reform legislation reducing the deficit represented valuable contributions to fiscal responsibility;

(B) strengthening the economy and creating jobs are critical to reducing the long-term deficit;

(C) fiscally responsible investments in education, including the retention of high-quality teachers in the classroom, help to lay the foundation for a stronger economy;

(D) the discretionary levels for 2011 included in this resolution represent a reduction below the President's comparable budgetary request, and further contribute to fiscal discipline; and

(E) defending our country requires necessary investments and reforms to strengthen our military—including providing sufficient resources to aggressively pursue implementation of GAO recommendations to achieve efficiencies, and evaluating defense plans to ensure weapons systems that were developed to counter Cold War-era threats are not redundant and applicable to 21st century threats.

(2) SENSE OF THE HOUSE ON DEFICIT REDUCTION- It is the sense of the House that—

(A) by 2015 the Federal budget should be in primary balance—meaning that outlays in the Federal budget shall equal receipts during a fiscal year, not counting outlays for debt service payments;

(B) the debt-to-GDP ratio should be stabilized at an acceptable level once the economy recovers;

(C) not later than September 15, 2010, the chairs of committees should submit for printing in the Congressional Record findings that identify changes in law that help achieve deficit reduction by reducing waste, fraud, abuse, and mismanagement, promoting efficiency and reform of government, and controlling spending within Government programs those committees may authorize;

(D) prior to the adjournment of the 111th Congress, any recommendations made by the National Commission on Fiscal Responsibility and Reform and approved by the Senate should be brought to a vote in the House of Representatives; and

(E) any deficit reduction achieved by the enactment of such legislation should be used for deficit reduction only and should not be available to offset the costs of future legislation.

(d) Reserve Fund for Deficit Reduction- Upon enactment of legislation containing recommendations in the final report of the National Commission on Fiscal Responsibility and Reform, established by Executive Order No. 13531 on February 18, 2010, that decreases the deficit for either time period provided in clause 10 of rule XXI of the Rules of the House of Representatives, the chairman of the Committee on the Budget shall, for the purposes of the Statutory Pay-As-You-Go Act of 2010, exclude any net deficit reduction from his determination of the budgetary effects of such legislation, to ensure that the deficit reduction achieved by that legislation is used only for deficit reduction and is not available as an offset for any subsequent legislation.

(e) House Rule XXVIII- Nothing in this resolution shall be construed to engage rule XXVIII of the Rules of the House of Representatives.

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